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Thursday
March 3, 1983

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Federal Aviation Administration

Communications Common Carriers
Federal Communications Commission

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Farmers Home Administration

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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Pipeline Safety
Research and Special Programs Administration

Radio Broadcasting
Federal Communications Commission

Trade Practices
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United States Investments Abroad
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

United States Standards for Grades of Orange Juice; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correction.

SUMMARY: This document corrects a portion of the USDA's amendment to the United States Standards for Grades of Orange Juice appearing on pages 55455–55463 in the **Federal Register** of December 10, 1982, with respect to soluble orange solids in sweetened canned orange juice and with respect to color in orange juice from concentrate.

EFFECTIVE DATE: March 3, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Jennings, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447–6247.

SUPPLEMENTARY INFORMATION: This document corrects a portion of the USDA's amendment to the United States Standards for Grades of Orange Juice appearing on pages 55455–55463 in the **Federal Register** of December 10, 1982, with respect to soluble orange solids in sweetened canned orange juice and with respect to color in orange juice from concentrate. Errors appear in Table I and in Table VIII. Table I should not specify a minimum soluble orange solids requirement and Table VIII should specify different requirements under very good color and under good color.

PART 52—[AMENDED]

§ 52.1557 [Corrected]

Accordingly, Table I in the United States Standards for Grades of Orange Juice, § 52.1557, is corrected to remove "soluble orange solids, exclusive of sweetener (percent by weight of finished product): Minimum. 10.5 and 10.0." Table VIII of the standards is corrected to read:

Color	Very good. (Not as good as OJ 5 but much better than OJ 6).	Good. (Fails Grade A, but not off color)

These changes are made only to make corrections in the amendment. It has been determined that good cause is found, under the administrative procedure provision of 5 U.S.C. 533, that notice and other public procedure with respect to this correction are impracticable and unnecessary. Furthermore, good cause is found for making this correction effective upon publication in the **Federal Register.**

(Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1625)).

Done at Washington, D.C. on February 28, 1983.

Eddie F. Kimbrell,

Deputy Administrator, Commodity Services.

[FR Doc. 83-5438 Filed 3-2-83; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 906

Oranges and Grapefruit Grown in Texas; Special Purpose Exemption

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule permits handling of smaller size grapefruit for conversion into fresh juice under certain conditions including the requirements that such grapefruit pack 64 count in 7/10 bushel cartons and grade at least U.S. No. 1. Such action is designed to develop a fresh juice outlet for smaller size grapefruit.

DATES: Interim rule effective February 28, 1983, through March 31, 1983. Comments which are received by March 15, 1983, will be considered prior to issuance of a final rule to become effective April 1, 1983.

ADDRESS: Send two copies of comments to the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250.

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

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of the Texas grapefruit crop for the benefit of producers, and will not substantiallly affect costs for the directly regulated handlers.

This interim rule is issued under the marketing agreement, as amended, and Order No. 906, as amended (7 CFR Part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Texas Valley Citrus Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting or recordkeeping provisions that are included in this interim rule have been or will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained.

This interim rule revises the administrative rules for Texas grapefruit (Subpart—Rules and Regulations), to permit the use of smaller sized grapefruit for fresh juice (juice prepared without pasteurization or preservative treatment). Under this marketing order, fresh grapefruit shipments are subject to minimum grade and size requirements. Under the order grapefruit used for fresh juice (fruit for conversion into juice without pasteurization or preservative treatment) are considered fresh shipments and therefore are subject to

the marketing order requirements. The interim rule would permit the use of smaller sized grapefruit for fresh juice, with appropriate safeguards. The objective of this action is to encourage use of Texas grapefruit for fresh (not pasteurized) juice. The Texas citrus industry is experiencing difficulty in marketing its grapefruit crop this season, particularly in the processing sector. Therefore, they are attempting to develop a new outlet for the fruit. The Texas Valley Citrus Committee met on January 25, 1983, and recommended this action.

It is found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date of this interim rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) in that the time intervening between the date when information upon which this interim rule is based became available and the time when this interim rule must become effective in order to effectuate the declared policy of the Act is insufficient. It is necessary to effectuate the declared purposes of the Act to make this interim rule effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 906

Marketing agreement and orders, Oranges, Grapefruit, Texas.

Therefore, Subpart—Rules and Regulations (§§ 906.120–906.151) are amended as follows (this interim rule expires March 31, 1983, and will not be published in the annual Code of Federal Regulations):

1. Section 906.120(b) is amended by revising the last sentence to read as follows:

§ 906.120 Fruit exempt from regulations.

* * * * *

(b) * * * Fruit for conversion into juice without pasteurization or preservative treatment, as herein described, shall be deemed fresh fruit and subject to all regulations under this part unless handled in accordance with § 906.124.

* * * * *

2. A new § 906.124 is added to read as follows:

§ 906.124 Grapefruit for fresh juice.

During the period February 28, 1983, through March 31, 1983, any handler may, without regard to § 906.40 and the regulations issued thereunder, handle grapefruit for conversion into juice without pasteurization or preservative treatment, under the following conditions:

(a) Grade, size, container, and inspection requirements:

(1) Such grapefruit shall grade at least U.S. No. 1.

(2) Such grapefruit shall be packed 64 count in 7/10 bushel cartons: *Provided,* That the diameter range shall be from 3 inches to 3⅞ inches.

(3) Such grapefruit shall meet pack requirements as specified in (a)(1)(ii) of § 906.340 (47 F.R. 56311): *Provided,* That such cartons shall be prominently marked with the words "For Juice Only" on both end panels of the carton in letters not less than ¾ inch high.

(4) Such grapefruit shall be shipped only if an appropriate inspection certificate has been issued for such fruit within 48 hours prior to the time of shipment.

(5) Such grapefruit shall be shipped by the handler directly to an approved juicer as provided in paragraph (b) of this section, and such grapefruit shall not be offered for resale or otherwise diverted into normal channels of trade for fresh fruit, and shall be used only for conversion into juice.

(6) *Terms:* The term U.S. No. 1 shall mean the same as in the U.S. Standards for Grades of Grapefruit, Texas and States other than Florida, California, and Arizona, (7 CFR 51.620–51.653); and the term 7/10 bushel carton shall mean a closed fully telescopic fiberboard carton with inside dimensions of 16½ × 10¾ × 9⅝ inches, described in Freight Container Tariff 2G as container No. 6506.

(b) Reporting and recordkeeping requirements are as follows:

(1) *Approved Juicer.* Any person who desires to acquire 64 count grapefruit as an approved juicer shall, prior thereto, file an application with the committee on a form approved by it, which shall contain, but not be limited to, the following information: name and address of applicant; location of store or stores where conversion is to take place, approximate quantity of 64 count grapefruit to be used each month; a statement that the grapefruit will be used only for conversion into fresh juice at the store, and will not be resold or disposed of in fresh fruit channels; and agree to submit such reports as are required by the committee. Such application shall be investigated by the committee staff. After such investigation, the staff shall report its findings to the committee or to its delegated subcommittees. Based upon the staff report and other information, the committee, or its delegate, shall approve or disapprove the application and notify the applicant accordingly. If the application is approved, the applicant's name shall be placed on the list of approved juicers.

(2) *Certification by approved juicer.* Upon request of the committee, each approved juicer shall submit to the committee on or before the 10th day of each month a report of the 64 count grapefruit used during the preceding calendar month. Each report shall contain a certification to the United States Department of Agriculture and to the committee as to the truthfulness of the information shown therein.

(3) *Disqualification.* The committee or delegated subcommittee, may suspend or revoke permission to handle grapefruit as an approved juicer whenever a juicer uses grapefruit inconsistent with these provisions.

(4) *Diversion report.* (i) Each handler who ships 64 count grapefruit to approved juicers for conversion shall report to the committee on a diversion report the following: name and address of the juicer's place of business where the 64 count grapefruit was shipped; the net weight or container count of such grapefruit; truck license number or rail car initial and number; inspection certificate number; and such other information as the committee may require.

(ii) Each such handler shall prepare four copies of the diversion report and sign them. The original copy shall be submitted to the committee within seven days of shipment. One copy shall be retained by the handler. One copy shall be given to the party transporting the fruit who shall deliver it to the approved juicer. The approved juicer shall record on that copy of the diversion report the actual net weight or container count of 64 count grapefruit received and forward such copy to the committee office. One copy shall be submitted to the approved juicer along with the invoice.

(5) Handlers and approved juicers shall maintain records substantiating reports of the disposition of 64 count grapefruit filed with the committee and make such records available to authorized representatives of the committee at their business offices at any reasonable time during business hours. Records include copies of all applicable purchase orders, sales contracts, or disposition documents together with any other information which the committee may deem necessary to determine the disposition of 64 count grapefruit.

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

Dated: February 28, 1983.

D. S. Kuryloski,

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

[FR Doc. 83-5439 Filed 3-2-83; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 907

[Navel Orange Reg. 568]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period March 4–March 10, 1983. Such action is needed to provide for orderly marketing of fresh navel oranges for this period due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: March 4, 1983.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202–447–5975.

SUPPLEMENTARY INFORMATION:

Findings

This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of the California-Arizona navel orange crop for the benefit of producers and will not substantially affect costs for the directly regulated handlers.

This regulation is issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy for 1982–83. The marketing policy was recommended by the committee following discussion at a public meeting on September 21, 1982. The committee met again publicly on March 1, 1983 at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports the demand for navel oranges is light.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared policy of the Act to make this regulatory provision effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (navel).

PART 907—[AMENDED]

1. Section 907.868 is added as follows:

§ 907.868 Navel orange regulation 568.

The quantities of navel oranges grown in California and Arizona which may be handled during the period March 4, 1983 through March 10, 1983, are established as follows:

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

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

Dated: March 2, 1983.

D. S. Kuryloski,

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

[FR Doc. 83-5707 Filed 3-2-83; 11:53 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1944

Section 504 Rural Housing Loans and Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) revises its regulation regarding Section 504 Rural Housing loans and grants to correct an error of omission. The intended effect of this revision is to make the program operable in areas where 50 percent of area median income is so low that loans cannot be authorized because there is no repayment ability. This revision will provide very-low-income families with assistance to substantially improve their living environment by removing health and safety hazards from their homes.

EFFECTIVE DATE: March 3, 1983.

FOR FURTHER INFORMATION CONTACT: Nancy Monesson, Program Specialist, Farmers Home Administration, USDA, Room 5347, South Agriculture Building, 14th and Independence, SW., Washington, D.C. 20250, telephone (202) 382–1474.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1512–1 which implements Executive Order 12291, and has been designated nonmajor. This determination is based on the fact that there will be little, if any, increase in cost to the Government or to the borrowers affected by this regulation. The changes made will assure that very-low-income people, historically served by this program, and for whose benefit the program was designed, will not be excluded because of unintentionally restrictive language in the income eligibility requirements. This is accomplished by providing for a maximum income range for eligibility that does not go below $5,000.

The only alternative action considered was to make no change in the existing regulations, which has the effect of denying all 504 housing loans in areas where 50 percent of area median income is too low to repay a loan at one (1) percent.

FmHA has determined that an emergency situation exists which warrants publication without opportunity for a prior public comment period on this final action.

The Agency's inadvertent failure to include an adjustment in the maximum income eligibility requirement has created an undue hardship on very-low-income families. The correction will enable the Agency to continue to serve a large number of very-low-income families, excluded under the present regulation language, having no alternative means of making repairs to their homes to remove safety and health

hazards. For example: Families living in areas covered by Ponce, Puerto Rico, which includes 12 separate counties, are eligible only when their adjusted family incomes do not exceed $1,600 a year. The correction will permit the program to serve families in those areas having adjusted family incomes up to $5,000. Therefore, the decision to publish this revision as an emergency final rule without prior public comment has been determined to be in the best interest of the public.

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 emergency final rule are impracticable and contrary to the public interest; and good cause is found for making this emergency final rule effective less than 30 days after this document is published in the **Federal Register**.

This regulation does not directly affect any FmHA programs or projects which are subject to A-95 clearinghouse review. The Catalog of Federal Domestic Assistance program affected is: 10.417, Very Low-Income Housing Repair Loans and Grants.

This document has been reviewed in accordance with 7 CFR Part 1901, Subpart G, "Environmental Impact Statements." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

List of Subjects in 7 CFR Part 1944

Aged, Grant programs—housing and community development, Home improvement, Loan programs—housing and community development.

PART 1944—[AMENDED]

Therefore, Subpart J of Part 1944, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

1. In § 1944.453, paragraph (l) is revised to read as follows:

§ 1944.453 Definitions.

* * * * *

(l) *Very low income.* An adjusted annual income that is 50 percent of median income for each designated area as set forth in Exhibit C to Subpart A of Part 1944 of this chapter, but not to exceed $11,500.

2. In § 1944.458, paragraph (a)(4) is revised to read as follows:

§ 1944.458 Eligibility requirements.

(a) * * *

(4) *Income.* The applicant must have an adjusted income less than that needed by a typical applicant in the area to repay a Section 502 loan with interest credit. The maximum adjusted income for eligibility is 50 percent of area median income as set forth in Exhibit C to Subpart A of Part 1944 of this chapter, or $5,000, whichever is greater, but is not to exceed $11,500.

* * * * *

(42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70)

Dated: January 7, 1983.

Michael E. Brunner,

Acting Administrator, Farmers Home Administration.

[FR Doc. 83-5443 Filed 3-2-83; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Addition of Rich International Airways, Inc.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds Rich International Airways, Inc. to the list of carriers which have entered into agreements with the Service to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

EFFECTIVE DATE: February 18, 1983.

FOR FURTHER INFORMATION CONTACT: Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 Eye Street, NW., Washington, D.C. 20536, Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: This amendment to 8 CFR 238.3 is published pursuant to 5 U.S.C. 552. The Commissioner of Immigration and Naturalization Service entered into an agreement with Rich International Airways, Inc. on February 18, 1983 to guarantee passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

The agreement provides for the waiver of certain documentary requirements and facilitates the air travel of passengers on international flights while passing through the United States.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely makes an editorial change to the listing of transportational lines.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant impact on a substantial number of small entities.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Airlines, Aliens, Government contracts, Travel, Travel restriction.

Accordingly, 8 CFR Part 238 is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

§ 238.3 [Amended]

In § 238.3 *Aliens in immediate and continuous transit,* the listing of transportation lines in paragraph (b) *Signatory lines* is amended by: Adding in alphabetical sequence, "Rich International Airways, Inc.".

(Sec. 103, 66 Stat. 173 (8 U.S.C. 1103); 238, 66 Stat. 202 (8 U.S.C. 1228))

Dated: February 25, 1983.

Perry A. Rivkind,

Associate Commissioner for Management, Immigration and Naturalization Service.

[FR Doc. 83-5442 Filed 3-2-83; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. 12553; Amdt. No. 1 to Special Conditions No. 23-48-WE-15]

Special Conditions; Piper PA-60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: This amendment to Special Conditions No. 23-48-WE-15 permits their application to Piper Aircraft Corporation (Piper) Models PA-60-601P, PA-60-602P, and PA-60-700P airplanes as well as future derivative PA-60 pressurized airplanes. The FAA has determined that these Special Conditions, originally developed for pressurized Aerostar Model 600/601 airplanes when the Type Certificate

(TC) was held by Ted Smith Associates, are also applicable to the aforementioned airplanes as well as future derivative PA-60 airplanes. The amendment will allow future PA-60 derivative airplanes to be added to the TC without revising the Special Condition document.

EFFECTIVE DATE: April 4, 1983.

FOR FURTHER INFORMATION CONTACT: William L. Olson, Aerospace Engineer, Aircraft Certification Division, 601 East 12th Street, Room 1656, Federal Office Building, Kansas City, Missouri 64106; Telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Type Certification Basis

The certification basis for the Piper Model PA-60-601P airplane is as follows: Part 23 of the Federal Aviation Regulations (FAR), effective February 1, 1965 through Amendment 23-6, effective August 1, 1967; Amendment 23-7 § 23.1091, effective August 13, 1969; Amendment 23-14 §§ 23.929 and 23.1419, effective November 19, 1973; Amendment 23-18 §§ 23.1093 and 23.1193, effective March 17, 1977; Amendment 23-23 § 23.1416, effective December 1, 1978; Part 36 of the FAR, effective December 1, 1969 through Amendment 36-9; Special Federal Aviation Regulation (SFAR) 27, effective February 1, 1974; and Special Conditions No. 23-48-WE-15.

The certification basis for the Piper Model PA-60-602P airplane includes all applicable requirements of the Model PA-60-601P airplane and the following: Amendment 23-7 § 23.1041, effective August 13, 1969 and Amendment 23-21 § 23.1043, effective January 6, 1978.

The certification basis for the Piper Model PA-60-700P airplane includes all applicable airworthiness requirements of the Model PA-60-602P airplane and the following: Amendment 23-7 §§ 23.207, 23.909, and 23.1527, effective August 13, 1969; Amendment 23-14 §§ 23.201, 23.203, 23.205 and 23.435, effective November 19, 1973; Amendment 23-17 § 232.1143, effective February 1, 1977; Amendment 23-18 § 23.901, effective March 17, 1977; Amendment 23-20 §§ 23.1301 and 23.1351, effective September 1, 1977; Amendment 23-21 § 23.1047, effective January 6, 1978; Part 36 of the FAR effective December 1, 1969, through Amendment 36-12; Special Conditions No. 23-48-WE-15, Docket No. 12553, issued February 7, 1973, including Amendment No. 1.

Background

On November 5, 1980, the Piper Aircraft Corporation's Vero Beach Division, P.O. Box 1328, Vero Beach, Florida 32960, submitted an application to amend TC No. A17WE to add a new Model PA-60-700P airplane in the normal category. This new airplane, like its predecessor pressurized models, PA-60-601P and PA-60-602P, is a high-performance, turbocharged, twin-engine, mid-wing aircraft with seats for six occupants. The Model PA-60-700P differs from the PA-60-601P and PA-60-602P models in that engine power has been increased from 290 to 350 horsepower and maximum gross weight has been increased from 6000 to 6200 pounds.

TC No. A17WE, originally issued to Ted Smith Associates for the Aerostar Model 600, has been amended to include growth models and was eventually transferred to the Piper Vero Beach Division. In the development process, pressurization was added and Special Conditions were developed for the novel or unusual design features associated with an outward opening external cabin door. These Special Conditions, No. 23-48-WE-15, which were issued on February 7, 1973, provide a level of safety equivalent to that required by Part 23 of the FAR and were necessary because the applicable airworthiness regulations did not contain adequate or appropriate safety standards for such an outward opening cabin door on a pressurized airplane. The Special Conditions for type certification of the Piper PA-60-601P airplane are applicable to Piper Models PA-60-602P and PA-60-700P airplanes and other PA-60 series airplanes for the same novel or unusual features for which these Special Conditions were developed. Accordingly, this amendment extends the applicability status of Special Conditions No. 23-48-WE-15 to all pressurized Piper PA-60 series airplanes, as appropriate, to Type Certificate No. A17WE without revising the Special Condition document. This does not preclude the application of later amendments under the provisions of § 21.101(b)(1) of the FAR or the issuance of Special Conditions that may be necessary under the provisions of § 21.101(b)(2) of the FAR for future PA-60 series airplanes.

Coordination

The applicant and other interested persons have been given an opportunity to participate in the making of these Special Conditions. Notice No. SC-82-7-CE was published in the **Federal Register** on January 20, 1983, and no comments were received.

List of Subjects in 14 CFR Part 21

Aviation safety, Aircraft, Air transportation, Safety.

The Special Condition Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the FAA hereby amends Special Conditions No. 23-48-WE-15 which were issued on February 7, 1973 to Ted Smith Associates for type certification of the Aerostar Model 601P airplane under Type Certificate No. A17WE is hereby amended by amending its applicability to read as follows:

Special Conditions for the type certification of Piper PA-60 series airplanes under Type Certification No. A17WE.

(Sec. 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)); and § 11.28 and § 11.29(b) of the Federal Aviation Regulations (14 CFR 11.28 and 11.29(b)).

Issued in Kansas City, Missouri, on February 23, 1983.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 83-5287 Filed 3-2-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 83-NM-05-AD; Amdt. 39-4577]

Airworthiness Directives; Boeing Models 707/720/727/737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document revises an existing Airworthiness Directive (AD) which requires the installation of a leading edge position aural warning system on Boeing Model 707/720/727/737 Series airplanes, on or before March 31, 1983. This revision makes two changes to the AD: (1) Modifications that have been found acceptable are listed, and (2) the compliance time for the Models 727 and 737 airplanes is being extended to December 26, 1983, provided the cockpit procedure described herein is adopted.

DATE: Effective March 7, 1983.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Gary D. Lium, Systems & Equipment Branch, ANM-130S, Seattle Aircraft

Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 767-2500. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: AD 80-22-12, Amendment 39-3951 (45 FR 70230, October 23, 1980), requires the installation of leading edge device logic which will provide aural warning when the leading edge devices have not been extended prior to takeoff. This AD applies to Boeing Model 707/720/727/737 series airplanes and requires that the modification be completed on or before March 31, 1983. Recently, the Air Transport Association of America (ATA) petitioned the FAA for an alternate compliance date for this AD, to allow operators additional time to complete the required modifications on 727 and 737 series airplanes. This request was made for the following reasons:

1. Late delivery of Boeing service bulletins and modification kits prevented some airlines from accomplishing the modification during regularly scheduled maintenance visits. Accomplishment of the modification by March 31, 1983, would require substantial down-time, resulting in loss of public service and revenue to the airlines.

2. Revision of the AD will eliminate the need for numerous individual airline petitions for extension and would make the alternate compliance available to all 727 and 737 operators.

Extension of the compliance time would be predicated on the adoption of a cockpit procedure, prior to takeoff, which would assure that the leading edge devices are in the proper position. This new procedure, described below, would accomplish the same result in the interim as the airplane modification, and thus provide an equivalent level of safety during the additional time period prior to the modification. The cockpit procedure described for the Models 727 and 737 is not possible for the Models 707 and 720 because these airplanes are not equipped with a leading edge device annunciator panel, and therefore, these airplanes are not included within the extension.

Since this revision provides additional information and grants an extension in compliance time, it is clarifying and relieving in nature, and imposes no additional burden on any person. Therefore, notice and public procedure hereon are unnecessary, and the amendment may be made effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by revising AD 80-22-12, Amendment 39-3951 (45 FR 70230, October 23, 1980), to read as follows:

Boeing: Applies to Model 707, 720, 727, and 737 series airplanes certificated in all categories. Compliance time as follows: To assure the flight crew has positive warning when the leading edge devices are not extended for takeoff, accomplish the following unless already accomplished:

A. On or before March 31, 1983, except as provided for in paragraph C., below, install leading edge device logic that will provide aural warning when the leading edge devices have not been extended prior to takeoff in accordance with the following:

(1) (For Boeing 707/720 Series Airplanes) Boeing Service Bulletin No. 3404, Revision 2, dated January 21, 1983, or other previous or subsequent FAA approved revisions.

(2) (For Boeing 727 Series Airplanes) Boeing Service Bulletin No. 727-31-50, Revision 1, dated January 15, 1982, or other previous or subsequent FAA approved revisions.

(3) (For Boeing 737 Series Airplanes) Boeing Service Bulletin No. 737-31-1038, Revision 3, dated October 29, 1982, or other previous or subsequent FAA approved revisions.

B. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. This modification may be delayed until December 26, 1983, for the Model 727 and 737 series airplanes, provided the following cockpit checklist procedure, as implemented by each operator, is FAA approved by the appropriate Principal Operations Inspector: "The Leading Edge Device (LED) annunciator panel must be observed and must indicate proper leading edge device position prior to each takeoff."

D. Modification of the airplane in accordance with paragraph A or B, above, constitutes terminating action for this AD. Once the modification is completed, the special cockpit procedure described in paragraph C, above, may be discontinued.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may also be examined at FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington 98108.

This amendment becomes effective March 7, 1983.

(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)

Note.—The FAA has determined that this document involves an amendment that is clarifying and relieving in nature and does not impose any additional burden on any person. Therefore: (1) It is not major under Executive Order 12291 (46 FR 13193; February 19, 1981), and (2) it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because its anticipated impact is so minimal, it does not warrant preparation of a regulatory evaluation. I certify that it will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act because it involves few, if any, small entities.

Issued in Seattle, Washington, on February 18, 1983.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 83-5125 Filed 3-2-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 82-NM-112-AD; Amdt. 39-4578]

Airworthiness Directives; British Aerospace BAC 1-11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to British Aerospace BAC 1-11 200 and 400 series airplanes that would require inspection for cracks and repair, as necessary, of the windshield glazing frame. Cracks have been found in several airplanes with as low as 22,000 hours time in service. If left unrepaired, these cracks could lead to failure of the adjacent fuselage frame and loss of cabin pressurization.

DATE: Effective April 4, 1983.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, D.C. 20041, or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 767-2530. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway

South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority of the United Kingdom has classified British Aerospace BAC 1-11 Alert Service Bulletin 53-A-PM5425, Issue 3, as mandatory. A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring inspections and repairs, if necessary, of the windshield glazing frame was published in the **Federal Register** on January 9, 1978. The comment period closed on February 24, 1978. Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received. U.S. Air provided comments as follows:

1. All U.S. Air BAC 1-11 aircraft are being inspected every "B" check (approximately 1,125 landings). To preclude special scheduling and an unjustifiable economic impact on the current inspection program, the repetitive inspection frequency should be 1,200 landings;

2. The proposed AD does not provide credit for all previous repetitive inspections; and

3. U.S. Air has issued an Engineering Order to accomplish BAC Service Bulletin 53-PM-5525. This modification reinforces the lower frame segment across the windshield center-post. The proposed AD does not consider this modification for terminating the repetitive inspections.

The FAA concurs that the repetitive inspection interval may be increased to 1,200 landings without jeopardizing safety, and credit should be given for previously accomplished inspections and modifications. These items have been incorporated into the AD.

It is estimated that 50 airplanes will be affected by this AD, that it will take approximately 200 manhours per airplane to accomplish the required inspections and modifications, and that the average labor cost will be $35 per manhour. Repair parts are estimated at $6,000 per airplane. Based on these figures, the total cost impact of this AD is estimated to be $650,000. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

After review of the available data, including the above comments, the FAA has determined that air safety and the public interest require the adoption of the proposed amendment with the changes previously noted.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

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:

British Aerospace: Applies to BAC 1-11 200 and 400 series airplanes, certified in all categories. Compliance is required as indicated, unless already accomplished. to detect cracking of the windshield glazing frame and prevent possible failure of the adjacent fuselage frame, accomplish the following:

A. For airplanes that have accumulated less than 25,000 total landings on the effective date of this AD, comply with the following:

1. Prior to the accumulation of 15,000 landings or within the next 500 landings after the effective date of this AD, whichever occurs later, unless accomplished within the previous 2,000 landings, visually inspect the windshield glazing frame for cracks internally and externally in accordance with the instructions contained in paragraph 4 entitled "Guidance to Operators" of British Aerospace Alert Service Bulletin 53-A-PM5425, Issue 3, dated February 20, 1978 (hereinafter referred to as the service bulletin).

2. Repeat the inspection specified in paragraph A.1 of this AD at intervals not to exceed 2,500 landings from the last inspection until 25,000 landings are accumulated and thereafter comply with the inspection interval specified in paragraph B of this AD.

B. For airplanes that have accumulated 25,000 landings or more on the effective date of this AD, inspect the area in accordance with paragraph 4 entitled "Guidance to Operators" of the service bulletin within the next 400 landings after the effective date of this AD, unless accomplished within the last 800 landings, and thereafter continue to inspect the area at intervals not to exceed 1,200 landings from the last inspection.

C. If cracks are found during any inspection required by this AD that do not extend forward of the cutouts for the windshield wiper shafts, accomplish the repair modification specified in BAC Modification PM2857, Part (a).

1. Within the next 750 landings after discovery of the cracks on airplanes with less than 25,000 landings at the time of the inspection.

2. Within the next 250 landings after discovery of the cracks on airplanes with 25,000 or more landings at the time of the inspection.

D. If cracks are found during any inspection required by this AD that extend forward of the cutouts for the windshield wiper shafts (refer to Figure 1 of the service bulletin), accomplish the repair modification specified in BAC Modification PM2857, Part (a), prior to further flight.

E. Incorporation of BAC Modification PM2857, Part (a), or PM3346 or PM5525 eliminates the repetitive inspection requirement of this AD and constitutes terminating action.

F. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

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

H. For the purpose of complying with this AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's time in service by the operator's fleet average from takeoff to landing for the airplane type.

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).

This amendment becomes effective April 4, 1983.

(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)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities since it involves few, if any, small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on February 18, 1983.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 83-5124 Filed 3-2-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 83-ASO-9]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of Control Zone and Transition Area, Moultrie, Georgia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment alters the Moultrie, Georgia, control zone and transition area by correcting the geographical coordinates of the airport and the name of the airport. No change in airspace is intended by this action.

DATES: Effective Date: 0901 G.m.t., April 14, 1983. Comments must be received on or before April 1, 1983.

ADDRESSES: Send comments on the rule in the triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, ASO-530, Air Traffic Division, P.O. Box 20636, Atlanta, GA 30320. The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, GA 30344, telephone (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320; telephone (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves technical corrections to the description of the control zone and transition area and, 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 rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.171 and § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to correct the geographical coordinates of Moultrie Municipal Airport and to correct the name of the airport upon which controlled airspace is predicated. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Advisory Circular AC 70-3A dated January 3, 1983. Under the circumstances presented, the FAA concludes that there is a need for a regulation to properly list the geographical coordinates of the airport and to correct the name of Moultrie-Thomasville Airport to Moultrie Municipal Airport so that the description of the control zone will be technically correct. The corrections are so minor and nonsubstantive, I find that notice or public procedure under 5 U.S.C. 553(b) is unnecessary.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Control zone, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.171 and § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) are further amended, effective 0901 G.m.t., April 14, 1983, as follows:

Moultrie Municipal Airport, GA—Revised

By amending 71.171 in the description of the Moultrie, GA, control zone by deleting the words, "* * * Moultrie-Thomasville Airport (lat. 31°04'58"N., long. 83°48'15"W.) * * *", and substituting for them the words, "* * * Moultrie Municipal Airport (Lat. 31°05'05" N., Long. 83°48'12"W.) * * *".

By amending 71.181 in the description of the Moultrie, GA, transition area by deleting the words, "* * * Moultrie-Thomasville Airport (lat. 31°04'58" N., long. 83°48'15" W.) * * *", and substituting for them the words, "* * * Moultrie Municipal Airport (Lat. 31°05'05" N., Long. 83°48'12" W.) * * *".

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in East Point, Georgia, on February 14, 1983.

Jonathan Howe,

Director, Southern Region.

[FR Doc. 83-5126 Filed 3-2-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 82-AGL-25]

Alteration of Transition Area and Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: The nature of this Federal action redescribes both the control zone and transition area designated for Brainerd, Minnnesota. The intended effect of this action is to accommodate a new NDB Runway 23 instrument approach procedure while, at the same time, returning some designated airspace to a non-controlled status. Also, it ensures segregation of aircraft using instrument approach procedures in instrument weather conditions from other aircraft operating under visual weather conditions.

EFFECTIVE DATE: April 14, 1983.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: The development of an NDB Runway 23 approach procedure for Brainerd-Crow Wing County Airport requires that the current designated airspace for Brainerd, Minnesota, be altered to ensure the procedure is contained within controlled airspace, although the minimum descent altitude for the procedure may be established below the floor of the 700 foot controlled airspace. During the review for the alteration, it was noted that current procedures at Brainerd-Crow Wing County Airport do not require all of the designated airspace in effect. This action returns designated airspace to a non-controlled status involving two main areas approximately 6 miles by 6 miles in size. One area is located northwest of Brainerd-Crow Wing and the other is southeast of Brainerd-Crow Wing. Both areas extend approximately from the 8 mile radius to the 14 mile radius of Brainerd-Crow Wing County Airport.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

History

On page 57497 of the **Federal Register** dated December 27, 1982, the FAA

proposed to amend §§ 71.171 and 71.181 of the Federal Aviation Regulations (14 CFR Part 71) so as to alter the control zone and transition area airspace near Brainerd, Minnesota. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

Except for editorial changes, this amendment is the same as that proposed in the notice. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were published in Advisory Circular AC 70-3A dated January 3, 1983.

List of Subjects in 14 CFR Part 71

Control zones, Transition areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) are amended, effective 0901 G.m.t., April 14, 1983, as follows:

Brainerd, MN

Within a 5-mile radius of Brainerd-Crow Wing County Airport (latitude 46°23'52" N, longitude 94°08'12" W.); within 2 miles each side of the Brainerd Runway 23 localizer course extending from the 5-mile radius zone to 5.5 miles northeast of the airport. This control zone will be effective during the specific dates and times established in advance by a Notice to Airmen and continuously published in the Airport/Facility Directory.

Brainerd, MN

That airspace extending upward from 700 feet above the surface within a 8.5-mile radius of the Brainerd-Crow Wing County Airport (latitude 46°23'52" N, longitude 94°08'12" W.).

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655)) and 14 CFR 11.69).

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It is certified that this—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Des Plaines, Illinois, on February 22, 1983.

Monte R. Belger,

Acting Director, Great Lakes Region.

[FR Doc. 83-5286 Filed 3-2-83; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

Benchmark Survey of U.S. Direct Investment Abroad—1982

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This action amends the rules to provide for the conduct of a statistical survey, the BE-10, Benchmark Survey of U.S. Direct Investment Abroad—1982, as required by the International Investment Survey Act of 1976.

EFFECTIVE DATE: These rules are effective March 3, 1983.

ADDRESS: The forms will be mailed to prospective respondents during the first two weeks of March, 1983; persons subject to the reporting requirements who have not received forms by the end of March, should request forms by writing to International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, D.C. 20230 or by calling (202) 523-0632 during office hours—7:30 a.m. to 4:00 p.m. Washington, D.C. time.

FOR FURTHER INFORMATION CONTACT: For information concerning the rules, contact George R. Kruer, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, D.C. 20230, (202) 523-0657.

SUPPLEMENTARY INFORMATION: The International Investment Survey Act of 1976, 22 U.S.C. 3101-3108, requires that a benchmark survey of U.S. direct investment abroad be conducted covering 1982. The last such survey covered 1977.

In the September 30, 1982 **Federal Register**, Volume 47, No. 190, (47 FR 43074) the Bureau of Economic Analysis (BEA) published a notice of proposed rulemaking soliciting written public comments on the proposed rules and the draft report forms. Simultaneously, the draft report forms and associated instructions were submitted to the Office of Management and Budget (OMB) for approval pursuant to the Paperwork Reduction Act. Meetings were held with interested parties under OMB auspices. All comments received in the meetings and in writing to both OMB and BEA were considered in preparing the final rules and final report forms. Numerous changes were made to the report forms to effect a substantial reduction in the reporting burden and to increase the usefulness of the data. However, the changes did not result in any substantive changes to the proposed rules in preparing these final rules. The change in the definition of "U.S. Reporter," as contained in the final rule, is for clarification purposes only and is not intended to change the scope of the definition.

The OMB number for the approved BE-10 survey is 0608-0049, and the expiration date is 12/31/83.

BEA has determined that these final rule changes are not "major" under Executive Order 12291. The public use burden will be undertaken within the Department of Commerce proposed FY 1983 Information Collection Budget ceiling.

Regulatory Flexibility Act—The provisions of the Regulatory Flexibility Act relating to preparation of a regulatory flexibility analysis were not applicable to the rule changes because the changes will not have a significant economic impact on a substantial number of small entities. The exemption level, as approved, will eliminate reporting for most small businesses.

Accordingly, the General Counsel, Department of Commerce, has certified under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that these rule changes will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 806

Economic statistics, Foreign investment in the United States, Penalties, Reporting requirements, United States investments abroad.

(5 U.S.C. 301, 22 U.S.C. 3101-3108, and Executive Order 11961)

Part 806 is therefore modified as set forth below.

George Jaszi,

Director, Bureau of Economic Analysis.

PART 806—[AMENDED]

15 CFR Part 806 is amended as follows:

1. In § 806.14(a), paragraph (2) is revised to read as follows:

§ 806.14 U.S. direct investment abroad.

(a) *Specific definitions.*

* * * * *

(2) "U.S. Reporter" means the U.S. person which has direct investment in a

foreign business enterprise, including a branch. If the U.S. person is an incorporated business enterprise, the U.S. Reporter is the fully consolidated U.S. domestic enterprise consisting of (i) the U.S. corporation whose voting securities are not owned more than 50 percent by another U.S. corporation, and (ii) proceeding down each ownership chain from that U.S. corporation, any U.S. corporation (including Domestic International Sales Corporations) whose voting securities are more than 50 percent owned by the U.S. corporation above it.

* * * * *

2. Section 806.16 is revised to read as follows:

§ 806.16 Rules and regulations for BE-10, Benchmark Survey of U.S. Direct Investment Abroad—1982.

A BE-10, Benchmark Survey of U.S. Direct Investment Abroad, will be conducted covering 1982. All legal authorities, provisions, definitions, and requirements contained in § 806.1 through 806.13, 806.14 (a), (b), (c), (d) and (g)(2) are applicable to this Survey. Specific additional rules and regulations for the BE-10 Survey concerning who must report and forms required are given below.

(a) *Basic requirement*—A BE-10 report is required from every U.S. person having a foreign affiliate—that is, every U.S. person having direct or indirect ownership or control of at least 10 per centum of the voting stock of an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise—at any time during the U.S. person's 1982 fiscal year. A business enterprise's 1982 fiscal year is the enterprise's financial reporting year that has an ending date in calendar year 1982. For a person that does not have a financial reporting year, or does not have a financial reporting year ending in calendar year 1982, its 1982 fiscal year is deemed to be the same as calendar year 1982. Reports are required even though the foreign business enterprise may have been established, acquired, seized, liquidated, sold, expropriated, or inactivated during FY 1982.

(b) *Form BE-10A (Report for U.S. Reporter).* (1) Filing—A completed Form BE-10A is required from each U.S. Reporter (see definition). Exception: When a U.S. business enterprise owns a foreign affiliate and the U.S. business enterprise is owned more than 50 per centum by a U.S. individual, the report should be filed by, and Form BE-10A data should be for, the business enterprise rather than the individual. Any direc transactions with, or positions in, the foreign affiliate by the individual must be included in the U.S. business enterprise's report.

(2) Partial exemption when all foreign affiliates are exempt—When there are foreign affiliates, but all are exempt from filing Form BE-10B, then only items 1 through 4 of Form BE-10A, and Form BE-10A SUPPLEMENT, which lists exempt foreign affiliates, must be completed and filed.

(3) Partial exemption based on type of U.S. Reporter—U.S. Reporters that are religious, charitable, or other nonprofit organizations and individuals who directly own a foreign affiliate are required to file Form BE-10A, completing in Part I (Identification of U.S. Reporter), only items 1, 2, 8, 9, and 12; the remaining items in Part I and all items in Part II (Financial and Operating Data of U.S. Reporter) need not be completed.

(c) *Form BE-10B (Report for Foreign Affiliate).* (1) Filing—A U.S. person is required to file one Form BE-10B for each foreign affiliate which is not exempt pursuant to (2) below. (Under those limited conditions where foreign affiliates may be consolidated, the consolidated entity is considered to be one foreign affiliate.) To determine whether, for purposes of reporting, a given foreign business enterprise is considered its foreign affiliate, a U.S. person should sum its percentages of voting ownership through all lines, or chains of ownership, direct and indirect. If the resulting sum is at least 10 percent, then the enterprise is the U.S. person's foreign affiliate and, unless otherwise exempt, must be reported. In the case of a line of indirect ownership, the U.S. person's percentage ownership in a given foreign business enterprise should be computed as its direct ownership percentage in the first foreign business enterprise in the chain, multiplied by that first enterprise's direct ownership percentage in the second enterprise in the chain, multiplied by the second enterprise's direct ownership percentage in the third enterprise in the chain, multiplied by the corresponding percentages for all other intervening enterprises in the chain, multiplied by the last intervening enterprise's direct ownership percentage in the given foreign business enterprise. To illustrate, suppose that the U.S. person owned 50 percent of foreign business enterprise A directly, and that A owned 75 percent of foreign business enterprise B that, in turn, owned 80 percent of foreign business enterprise C. Then the U.S. person's percentage of indirect ownership of B would be 37.5 percent (the product of the first two percentages), its indirect ownership of C would be 30 percent (the product of all three percentages), and B and C (as well as A) would be considered the U.S. person's foreign affiliates.

(2) Total exemption—A Form BE-10B need not be filed if the foreign affiliate's total assets, sales or gross operating revenues excluding sales taxes, and net income after provison for foreign income taxes, are each (i.e., all three are) less than $3,000,000.00 (positive or negative), and the foreign affiliate does not own another foreign affiliate for which a Form BE-10B must be filed. If the latter condition is not met, then Form BE-10B must be filed for the foreign affiliate holding the equity interest regardless of the value of its assets, sales, or net income. That is, all affiliates upward in a chain of ownership must be reported. An affiliate's receivables due from its parent may not be eliminated from total assets when applying the exemption criteria.

(3) Number of Forms BE-10B required—If two or more U.S. Reporters jointly own a foreign affiliate, directly or indirectly, each U.S. Reporter must submit a Form BE-10B for the affiliate. The U.S. Reporter having the highest percentage ownership (direct and indirect combined) in the foreign affiliate must file a Form BE-10B in which all Parts, including either Part IV or Part V as required, have been completed; and the other U.S. Reporter(s) must file a Form BE-10B in which only Part I, items 1 through 25, and Part III, if there is direct ownership or direct financial positions or transactions, have been completed. If the ownership percentages are the same, the U.S. Reporters must decide among themselves which one will submit the complete report.

(4) Foreign affiliate consolidation—In cases where the recordkeeping system of the foreign affiliates makes it impossible or extremely difficult to file a separate report for each foreign affiliate, a U.S. Reporter may consolidate affiliates in the same country when the following conditions apply:

(i) The affiliates are in the same BEA 3-digit industry, as defined in the *Direct Investment Industry and Foreign Trade Classifications Booklet;* or

(ii) The affiliates are integral parts of the same business operation. For example, if German affiliate A manufactures tires and a majority of its sales are to German affiliate B which produces autos, then affiliates A and B may be consolidated.

Under no circumstances may a U.S. Reporter consolidate foreign affiliates in different countries.

(d) *Relationship between Forms BE-10A and BE-10B.* The term "U.S. Reporter" as defined means the fullyy consolidated U.S. domestic enterprise; therefore, on Form BE-10B, when data on trade and financial relationships between the U.S. Reporter and the foreign affiliate are requested, the data must reflect the foreign affiliate's relationship with the entire U.S. enterprise, not merely with one division, operating unit, or part.

(e) *Specialized report forms for banks*—Specialized report forms have been adopted for banks (that is, for business enterprises over 50 percent of whose total revenues are generated by activities classified in DI industry code 600), because much of the information on banks' foreign activities which is requested on the standard forms is already being reported to other agencies of the Federal Government. The specialized report forms are designed to yield only such additional information as is deemed necessary. Use of specialized Forms BE-10A BANK and BE-10B BANK is at the discretion of BEA; in situations where their possible use is not clear-cut, permission must be secured from BEA in advance of filing.

(1) Form BE-10A BANK has been developed for reporting by a U.S. Reporter that is a bank or a bank holding company. It is not to be used by a U.S. Reporter that may technically be classified as a bank holding company because of an interest in a banking activity, but that has over 50 percent of it revenues generated by non-bank activities. (Activities of subsidiaries that may not be banks but that provide support to the parent company, such as real estate subsidiaries set up to hold the office building occupied by the parent company, are considered bank activities.)

(2) Form BE-10B BANK is for reporting of a foreign affiliate that is a bank and in which the U.S. Reporter holds a direct and/or indirect ownership interest. However, a foreign bank affiliate of the U.S. Reporter in which the U.S. Reporter holds only an indirect ownership interest of 50 percent or less is exempt from being reported on Form BE-10B BANK, but must be listed on Form BE-10A SUPPLEMENT. Incorporated foreign bank affiliates in which the U.S. Reporter holds a direct equity interest, or an indirect equity interest of more than 50 percent, must be separately reported. All branch banks of the U.S. Reporter in a given foreign country must be consolidated on one Form BE-10B BANK even if it is the Reporter's practice to report data for these branches separately on Federal Reserve Form FR105f or on Comptroller of the Currency Form CC7610-09.

(3) A U.S. Reporter that is a bank, but that has a nonbank foreign affiliate, must file a Form BE-10A BANK for itself and a standard Form BE-10B for the nonbank foreign affiliate.

(4) A U.S. reporter that is not a bank, but that has a bank foreign affiliate, must file a standard Form BE-10A for itself and a Form BE-10B BANK for the bank foreign affiliate.

(5) Banks located on U.S. military bases abroad and servicing base personnel are not considered "foreign" and a Form BE-10B BANK should *not* be filed for them.

(6) The specialized report forms, where their use is permitted, replace the standard forms, and the regulations and instructions should be so construed.

(f) *Due date*— BE-10 reports comprising both Form BE-10A and Form(s) BE-10B are due on the following dates:

June 30, 1983—U.S. Reporter required to file less than 20 Forms BE-10B

July 31, 1983—U.S. Reporter required ato file 20 to 99 Forms BE-10B

August 31, 1983—U.S. Reporter required to file 100 or more Forms BE-10B

(g) Inquiries concerning the BE-10 Survey should be directed to: Bureau of Economic Analysis (BE-50, SSB), U.S. Department of Commerce, Washington, D.C. 20230, or phone (202) 523-0632 during office hours—7:30 a.m. to 4:00 p.m. Washington, D.C. time

[FR Doc. 83-5464 Filed 3-2-83; 8:45 am]

BILLING CODE 3510-06-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket C-3103]

ConAgra, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement requires an Omaha, Neb. manufacturer and seller of bakery and hard wheat flour, among other things, to timely divest seven specified flour production facilities to a Commission-approved buyer(s), capable of maintaining the facilities as competitive entities. Additionally, the order prohibits the company from acquiring, for a period of ten years, any interest in any flour milling plant in eleven western states without prior Commission approval.

DATE: Complaint and order issued February 16, 1983.[1]

FOR FURTHER INFORMATION CONTACT: FTC/C, Thomas J. Campbell, Washington, D.C. 20580. (202) 523-3601.

SUPPLEMENTARY INFORMATION: On Thursday, Aug. 12, 1982, there was published in the **Federal Register**, 47 FR 35004, a proposed consent agreement with analysis In the Matter of ConAgra, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

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

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

List of Subjects in 16 CFR Part 13

Wheat flour.

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

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 83-5421 Filed 3-2-83; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Docket 9118]

Indiana Federation of Dentists; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final Order.

SUMMARY: This Final Order, among other things, prohibits an Anderson, Ind. dental association ("IFD") from engaging in any action or course of conduct having the effect of requiring or organizing dentists to refuse to submit

[1] Copies of the Complaint and the Decision and Order filed with the original document.

radiographs or other materials requested by third-party payers for use in benefit determinations or to deal with a third-party payer in a certain way. The order also forbids IFD from engaging in any action that compels a third-party payer to deal with or operate in a certain way in connection with dental health care benefits programs; or whose purpose is to influence a customer's choice of dentists based on the degree of non-cooperation between such dentists and a third-party payer. Additionally, the association is required to timely mail to each of its members a copy of the Commission order together with a letter advising that IFD has abandoned all policies and guidelines that fail to conform to the provisions of the order, and that members are free to deal with dental health care programs and payers as they see fit.

DATES: Complaint issued October 18, 1978. Final Order issued February 17, 1983.[1]

FOR FURTHER INFORMATION CONTACT: FTC/CS-8, L. Barry Costilo, Washington, D.C. 20580. (202) 724-1197.

SUPPLEMENTARY INFORMATION: In the Matter of Indiana Federation of Dentists, an unincorporated association. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13 are as follows: Subpart—Coercing and Intimidating: § 13.350 Customers or prospective customers; § 13.367 Members. Subpart—Combining or Conspiring: § 13.384 Combining or conspiring: § 13.395 To control marketing practices and conditions; § 13.410 To eliminate competition in conspirators' goods; § 13.430 To enhance, maintain or unify prices. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures.

List of Subjects in 16 CFR Part 13

Dental associations, Dental health care services, Dental x-rays.

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

The Final Order, including further order requiring report of compliance therewith, is as follows:

In the Matter of INDIANA FEDERATION OF DENTISTS, an unincorporated association. Docket No. 9118.

Final Order

This matter, having been heard by the Commission upon the appeal of respondent from the Initial Decision, and upon briefs and oral argument thereof and opposition thereto, and the Commission for the reasons stated in the accompanying Opinion having determined to deny the appeal of respondent Indiana Federation of Dentists.

It is ordered that the Initial Decision of the administrative law judge be adopted as Findings of Fact and Conclusions of Law except to the extent inconsistent with the accompanying Opinion. Other Findings of Fact and Conclusions of Law of the Commission are contained in the accompanying Opinion.

It is further ordered that the following Order to Cease and Desist is hereby entered.

I

It is ordered that the following definition shall apply in this Order: "third-party payer" means any entity that provides a program of reimbursement for dental health care services to employees or members of any other organization, and any person who provides evaluative services in connection with any such reimbursement program.

II

It is further ordered that respondent, its successors or assigns, and its officers and representatives shall cease and desist from engaging in any activity, course of conduct, practice, or policy that in whole or in part:

A. Requests, urges, recommends or suggests that dentists, or has the purpose or effect of requiring or organizing dentists to: (1) Refuse to submit radiographs or other pre-treatment or post-treatment reports, analyses, and materials in response to a third-party payer's request for use in benefit determination; or (2) refuse to deal in any particular way with any one or more third-party payers;

B. Compels, threatens, or coerces any third-party payer to operate or deal in any way in connection with dental health care benefits program; or

C. Has the purpose of causing or inducing consumers to choose dentists who do not cooperate with third-party payers, or influencing to any degree consumers' choice of dentists based on the degree or manner of non-cooperation between such dentists and any third-party payer or payers.

III

It is further ordered that nothing contained herein shall be deemed: (1) To prohibit members of IFD, acting individually and not at the encouragement or inducement of IFD, from dealing with third-party payers in the way each sees fit; or (2) to prohibit respondent from adopting *bona fide* guidelines concerning the exposure of dental patients to radiation.

IV

It is further ordered that, within thirty (30) days after this Order becomes final, respondent shall mail to each of its members a copy of the Commission Order in this matter, as well as a letter, in the form shown as "Appendix A" to this Order, advising that respondent has abandoned all policies, guidelines, principles, work rules and statements that directly or indirectly request, urge, recommend or suggest that dentists, or have the purpose or effect of requiring or organizing dentists to: (1) Refuse to submit radiographs or other pre-treatment or post-treatment reports, analyses, and materials in response to a third-party payer's request for use in benefit determination; or (2) refuse to deal in any particular way with any one or more third-party payers. The letter shall further advise that dentists are free to choose to deal with any such programs and payers in such manner as they decide individually. Respondent shall also mail a copy of the Order and the letter to every person who joins respondent within three (3) years of the date of service of this Order;

V

It is further ordered that, within sixty (60) days after service of this Order, and annually on the anniversary date of the original report, for each of the five (5) years thereafter, respondent shall file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this Order.

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in it, such as dissolution or other action resulting in the emergence of a successor organization, which may affect compliance obligations arising out of this Order.

By the Commission, Commissioner Douglas not participating.

Issued: February 17, 1983.

Benjamin I. Berman,

Acting Secretary.

Appendix "A"

[Respondent's Letterhead]

Dear Doctor: As you may be aware, the Federal Trade Commission has issued an order against the Indiana Federation of Dentists. This order requires, in essence, that the Indiana Federation of Dentists cease and desist from certain activities that are concerned with dental health care benefits programs and cooperation by dentists with the administrators of such programs. The order also requires that you be sent a copy of the order and this letter.

You are hereby notified that the Indiana Federation of Dentists has abandoned all policies, guidelines, and principles that directly or indirectly request, urge, recommend or suggest that dentists, or have the purpose or effect of requiring or organizing dentists to: (1) refuse to submit radiographs or other pre-treatment or post-treatment reports, analyses, and materials in response to a third-party payer's request for use in benefit determination; or (2) refuse to deal in any particular way with any one or more third-party payers. You are further notified that you are free to choose to deal with any such payers and programs in such manner as you decide individually.

A copy of the FTC's order is enclosed.

Sincerely,

President

Enclosure

[FR Doc. 83-5423 Filed 3-2-83; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint, Initial Decision, Opinion of the Commission and Final Order filed with the original document.

16 CFR Part 13

[Docket 9129]

Michigan State Medical Society; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission

ACTION: Final Order

SUMMARY: This Final Order, among other things, requires an East Lansing, Mich. medical society to cease from entering into agreements with its members to affect the amount, manner of calculating or terms of reimbursement for physical services; and to refrain from influencing its members to refuse to enter into any participation agreement not acceptable to the Society or its members; or to complete the claim forms used by any third-party payer. The Society is barred from entering, either on its own behalf or on behalf of its members, into any agreement with a third-party payer that concerns the amount, manner of calculation, or terms of reimbursement; and from influencing, by any means, a member's decision to accept or reject a participation agreement. The order also bars the association from engaging in any action having the effect of coercing, compelling or inducing a third-party payer to accept the position taken by the Society regarding the terms or conditions of a participation agreement. Additionally, the association is required to publish provisions of the order in a prescribed manner and to provide current and future members with a copy of the order.

DATES: Complaint issued July 27, 1979. Final Order issued February 17, 1983.[1]

FOR FURTHER INFORMATION CONTACT: FTC/CS-8, M. Elizabeth Gee, Washington, D.C. 20580. (202) 724-1303.

SUPPLEMENTARY INFORMATION: In the Matter of Michigan State Medical Society, a corporation. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Coercing and Intimidating: § 13.350 Customers or prospective customers. Subpart—Combining or Conspiring: § 13.384 Combining or conspiring: § 13.395 To control marketing practices and conditions; § 13.410 To eliminate competition in conspirators' goods. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures; § 13.533-40 Furnishing information to media.

List of Subjects in 16 CFR Part 13

Medical associations, Medical services, Physicians' agreements.

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

The Final Order, including further order requiring report of compliance therewith, is as follows:

In the Matter of MICHIGAN STATE MEDICAL SOCIETY, a corporation. Docket No. 9129.

Final Order

This matter having been heard by the Commission upon the appeal of respondent from the Initial Decision, and upon briefs and oral argument in support thereof and in opposition thereto, and the Commission having determined for the reasons stated in the accompanying Opinion to deny the appeal of respondent:

It is ordered that the Initial Decision of the administrative law judge be adopted as the Findings of Fact and Conclusions of Law of the Commission, except to the extent inconsistent with the accompanying Opinion. Other Findings of Fact and Conclusions of Law of the Commission are contained in the accompanying Opinion.

It is further ordered that the following Order to Cease and Desist be, and it hereby is, entered.

I

It is ordered that for purposes of this order the following definitions shall apply:

A. "MSMS" means Michigan State Medical Society, its House of Delegates, Council, committees, officers, representatives, agents, employees, successors and assigns.

B. "Third-party payer" means any person, corporation, government agency or other entity which agrees to pay for or reimburse all or part of any expense for physicians' services incurred by another person or group of persons. "Third-party payer" includes, but is not limited to, Blue Cross and Blue Shield of Michigan, and Medicaid.

C. "Medicaid" means the program of health care for indigent persons created by Title XIX of the Social Security Act, entitled "Grants to States for Medical Assistance Programs," 42 U.S.C. 1396 *et seq.* (1976 & Supp. III 1979), including regulations, policies and procedures of Michigan that implement the program in Michigan.

D. "Reimbursement" means money paid by a third-party payer for physicians' services.

E. "Physician" means a doctor of medicine or of osteopathy.

F. "Participation agreement" means any agreement between a third-party payer and a physician in which the third-party payer agrees to pay the physician for the provision of physicians' services and in which the physician agrees to accept payment from the third-party payer for the provision of physicians' services.

II

It is further ordered that MSMS shall cease and desist from:

A. Entering into or attempting to enter into any agreement or understanding, either express or implied, with any MSMS members to affect or attempt to affect the amount, manner of calculating, or terms of reimbursement, including but not limited to, any agreement or understanding that:

1. Any MSMS members will cancel or refuse to enter into participation agreements;

2. Any MSMS members will refuse to complete claim forms used by any third-party payer;

3. MSMS can act on behalf of any members through proxy, power of attorney, or otherwise, to cancel or refuse to enter into any participation agreement; or

4. Any MSMS members will sign or enter into participation agreements only on terms acceptable to MSMS or to any other MSMS member.

B. Advocating, suggesting, urging, advising, inducing or recommending that any MSMS members engage in any action to affect or attempt to affect the amount, manner of calculating, or terms of reimbursement, including, but not limited to, advocating, suggesting, urging, advising, inducing or recommending that any MSMS members:

1. Cancel or refuse to enter into any participation agreement with any third-party payer;

2. Refuse to complete claim forms used by any third-party payer;

3. Agree to permit MSMS to act on behalf of any MSMS members through proxy, power of attorney, or otherwise, to cancel or refuse to enter into any participation agreement; or

4. Sign or enter participation agreements only on terms acceptable to MSMS or to any other MSMS member.

C. Entering into or attempting to enter into any agreement or understanding, either on its own behalf or as representative of any of its members, with any third-party payer concerning the amount, manner of calculating, or terms of reimbursement, or concerning the decision of any of its members jointly to accept or reject the terms or conditions of any participation agreement.

D. Making any express or implied threat of acts by any MSMS members, or engaging in any other acts, with the purpose or effect of coercing, compelling or inducing any third-party payer to accept a position taken by MSMS or any MSMS members concerning the amount, manner of calculating, or terms of reimbursement, or the terms or conditions of any participation agreement.

III

It is further ordered that this Order shall not be construed to prevent MSMS from:

A. Participating in professional peer review of fees charged by individual physicians in individual cases.

B. Exercising rights permitted under the First Amendment to the United States Constitution to petition any federal or state government executive agency or legislative body concerning legislation, rules or

[1] Copies of the Complaint, Initial Decision, Opinion of the Commission, Concurring Statement of Commissioner Pertschuk, Concurring Statement of Commissioner Bailey and the Final Order filed with the original document.

procedures, or to participate in any federal or state administrative or judicial proceeding.

C. Providing information or views, on its own behalf or on behalf of its members, to third party payers concerning any issue, including reimbursement.

IV

It is further ordered that MSMS:

A. Mail a copy of this Decision and Order to each of its component societies, each of its specialty sections, and a copy of the Order to each of its members within thirty days following service of this Order.

B. Publish this Order in an issue of *Michigan Medicine* published no later than 60 days after the date the Order is served, and in the first *Medigram* published after the Order is served. The Order shall be published in the same type size normally used for articles which are published in *Michigan Medicine* and in the *Medigram*.

C. For a period of three years, provide each new MSMS member with a copy of this Order at the time the member is accepted into membership.

D. Require, as a condition of affiliation with MSMS, that any component society or specialty section agree by action taken by its governing body to be bound by the provisions of Parts I–III of this Order.

V

It is further ordered that MSMS shall file a written report with the Commission within ninety days of the date of service of this Order, and annually on the anniversary date of the original report for each of the five years thereafter, and at such other times as the Commission may by written notice to MSMS require, setting forth in detail the manner and form in which it has complied with this Order.

It is further ordered that MSMS shall notify the Commission at least thirty days prior to any proposed change to itself, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or association, or any other change which may affect compliance with this Order.

By the Commission, Commissioner Douglas not participating.

Issued: February 17, 1983.

Benjamin I. Berman,

Acting Secretary.

Attachments: Concurring Statements of Commissioners Pertschuk and Bailey.

Concurring Statement of Commissioner Pertschuk

I agree fully with the Commission's opinion except that I join Commissioner Bailey in concluding that the conduct should have been judged *per se* unlawful. Because I believe a determination that a *per se* analysis should have been applied here is somewhat more difficult than in other cases, it may be useful to elaborate on how that determination should have been made.

In *Broadcast Music*,[1] the Supreme Court indicated that, once an arrangement has been identified as "price-fixing," it is *per se* unlawful; however, such a determination "will often, but not always, be a simple matter."[2] In that case, in fact, the Court found that a blanket licensing scheme in which composers agreed on a single price for use of all their compositions should not be condemned as unlawful *per se* even though it might be price-fixing in a "literal sense."[3] The rationale for inquiring about competitive effects under a rule of reason analysis was, in part, that there were tenable arguments that the arrangement could help competition because it amounted to a separate product that was not available to the entertainment media by offerings of individual composers.

In *Maricopa*[4] the Court examined an arrangement in which foundations for medical care, composed of competing physicians, adopted maximum fee schedules after consulting with local medical societies and submitting proposed schedules to a vote of the entire membership of the foundations. The foundations had arranged with approved insurers that the insurers would agree to pay any charges up to the approved maximums and that the member physicians would accept these reimbursement levels as payment in full. Unlike the licensing arrangement in *Broadcast Music*, however, the Court found that this arrangement offered no tenable arguments of procompetitive benefits. It did not amount to a new risk-sharing entity in competition with other insurers, but essentially was "an agreement among hundreds of competing doctors concerning the price at which each will offer his own services to a substantial number of consumers."[5]

Here we examine conduct by competing physicians which amounted to a threatened refusal to deal with health insurers unless reimbursement rates were fixed at particular levels. The most that can be said for MSMS' agreement was that, technically, it did not directly establish the fees that competing physicians charged, but only the fees that the insurers paid. Yet, because of the great importance of third party payments, not only in Michigan, but all across the country, reimbursement levels have become the cost central aspect of price in health care transactions. The novelty of medical price-fixing is that all of us who pay health insurance premiums or taxes are victims, not merely those who receive services.

There is not even an argument here that MSMS' conduct was aimed at establishing a new competitive entity or that the efforts to force insurers to pay uniform levels of fees across the state led to efficiencies in fee determination, as was half-heartedly proposed in *Maricopa*.[6] Thus, this case is actually much stronger than *Maricopa* in justifying *per se* condemnation of MSMS' attempt to force changes in reimbursement levels.

I do not quarrel with the Commission opinion's careful assessment of the nature of the commercial transactions here and a limited examination of proffered justifications. This analysis is a necessary predicate to concluding that the arrangement fits "into the horizontal price fixing mold."[7] Once that determination is made, however, as I believe it should have been, a conclusion that the conduct is unlawful *per se* necessarily follows.

Concurring Statement of Commissioner Bailey

If I could agree that price-fixing by medical doctors should be subject to a rule of reason analysis (Slip Op. at 34), I would agree completely with the majority opinion. I believe the analysis conducted in the opinion convincingly demonstrates that MSMS' fee-related concerted behavior cannot be justified as procompetitive or as having no competitive effects.

However, the Supreme Court has clearly and consistently told us that once it is determined that a collaboration fosters price-fixing, no examination of alleged procompetitive justifications for that behavior is warranted. Further, "the nature of [the collaborators'] occupation, standing alone, does not provide sanctuary from the Sherman Act * * *" *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 787 (1975). Very recently, in *Arizona v. Maricopa County Medical Society*, 102 S. Ct. 2466 (1982), the Court applied this principle to a combination of competing physicians who were found to have engaged in maximum fee setting and unequivocally concluded that "the fact that doctors [were] parties to the price fixing agreement" could not change the analysis. 102 S. Ct. at 2475.

Here we are faced with collective actions that were intended to influence directly third party payments to physicians.[8] (Slip Op. 31)

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[1] Broadcast Music, Inc. v. Columbia Broadcasting System, Inc., 441 U.S. 1 (1979).

[2] *Id.* at 9.

[3] *Id.* at 8.

[4] Arizona v. Maricopa Medical Society, 50 LW 4687 (June 15, 1982) (80-419).

[5] *Id.* at 4693.

[6] *Id.* at 4692.

[7] *Id.* at 4693. This limited examination is for the purpose of determining the essential nature of the restraint, not overall competitive effects and "[t]he scrutiny occasionally required must not merely subsume the rule of reason [citing *Professional Engineers*] or else we should apply the rule of reason from the start." *Broadcast Music* at 19, fn. 33.

[8] In my opinion, only in its claim that it fought reductions in Medicaid payments in order to preserve quality of care for low-income patients did respondent raise a colorable alternative explanation for its conduct. However, as the majority opinion clearly describes, the record will not support this assertion: MSMS' true purpose in threatening a

Because those payments represent the bulk of physicians' service fees, the doctors' united front had the potential to inhibit price and nonprice competition both among doctors and among insurance companies. (Slip Op. 33, 35) I do not see room in the long line of precedent on price-fixing for an artificial distinction between conduct which involves direct fee setting and conduct which tampers with the method of setting fees. Therefore I would not qualify the description of the conduct before us by saying it "approaches the kind of behavior that previously has been classified as *per se* illegal". (Slip Op. 34) I think such conduct must, under present law, be viewed as classic price fixing.

Any combination which tampers with price structures is engaged in an unlawful activity * * * to the extent that [members of the price-fixing group] raised, lowered or stabilized prices they would be directly interfering with the free play of market forces. *United States v. Socony Vacuum Oil Co.*, 310 U.S. 150, 218 (1940) *quoted in Maricopa*, 102 S. Ct. at 2474.

Therefore, I would have forgone inquiry into whether MSMS' fee-related collective activities had actual or potential offsetting benefits to competition.

[FR Doc. 83-5422 Filed 3-2-83; 8:45 am]

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boycott of the program was to increase physician reimbursements. (Slip Op. 18-19) Therefore the Medicaid incidents must be characterized as merely another battle in respondent's long campaign against third party influence on doctors' pricing practices.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM79-14]

Incremental Pricing Regulations Implementing the Incremental Pricing Provision of the Natural Gas Policy Act of 1978; Order of the Director, OPPR of Publication of Incremental Pricing Acquisition Cost Thresholds Under Title II of the NGPA

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order prescribing incremental pricing thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: March 1, 1983.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Williams, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, D.C. 20426; (202) 357-8500.

SUPPLEMENTARY INFORMATION:

Issued: February 25, 1983.

In the matter of publication of prescribed incremental pricing acquisition cost threshold of the NGPA of 1978; Docket No. RM79-14.

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of March 1983 is issued by the publication of a price table for the applicable month.

List of Subjects in 18 CFR Part 282.

Natural gas.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

CALENDAR YEAR 1980

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Incremental Pricing Threshold	$1.702	$1.738	$1.750	$1.762	$1.776	$1.790	$1.804	$1.819	$1.834	$1.849	$1.863	$1.877
NGPA Section 102 Threshold	2.358	2.381	2.404	2.426	2.453	2.478	2.504	2.532	2.560	2.588	2.614	2.640
NGPA Section 109 Threshold	1.786	1.799	1.812	1.825	1.839	1.853	1.867	1.883	1.899	1.915	1.929	1.943
130 Percent of No. 2 Fuel Oil in New York City Threshold	7.170	7.260	7.410	7.110	7.360	8.040	7.840	7.380	7.400	7.400	7.450	7.580

CALENDAR YEAR 1981

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Incremental Pricing Threshold	$1.891	$1.908	$1.925	$1.942	$1.954	$1.967	$1.980	$1.990	$2.000	$2.010	$2.025	$2.041
NGPA Section 102 Threshold	2.667	2.698	2.729	2.761	2.787	2.813	2.840	2.863	2.886	2.909	2.940	2.971
NGPA Section 109 Threshold	1.957	1.975	1.993	2.011	2.024	2.037	2.050	2.060	2.070	2.080	2.096	2.112
130 Percent of No. 2 Fuel Oil in New York City Threshold	7.810	7.760	8.260	9.010	9.510	9.430	9.360	9.260	8.860	8.700	8.930	8.990

CALENDAR YEAR 1982

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Incremental Pricing Threshold	$2.057	$2.071	$2.085	$2.099	$2.106	$2.113	$2.120	$2.129	$2.139	$2.149	$2.159	$2.169
NGPA Section 102 Threshold	3.003	3.033	3.063	3.093	3.112	3.132	3.152	3.176	3.200	3.224	3.249	3.274
NGPA Section 109 Threshold	2.128	2.143	2.158	2.173	2.180	2.187	2.194	2.204	2.214	2.224	2.234	2.244
130 Percent of No. 2 Fuel Oil in New York City Threshold	9.180	9.340	9.470	9.340	9.280	8.000	8.170	8.670	8.660	8.950	8.640	8.890

CALENDAR YEAR 1983

	Jan.	Feb.	Mar.
Incremental Pricing Threshold	$2.179	$2.187	$2.195
NGPA Section 102 Threshold	3.299	3.321	3.344
NGPA Section 109 Threshold	2.254	2.262	2.270
130 Percent of No. 2 Fuel Oil in New York City Threshold	9.420	9.320	8.820

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 140

Reimbursement; Temporary Matching Fund Waiver

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This emergency regulation prescribes procedures for a temporary waiver of State matching fund requirements as mandated by section 145 of the Surface Transportation Assistance Act of 1982 (STAA of 1982). Section 145 allows a State to request an increase in the Federal share (normally 75–90 percent) of the construction costs of a qualifying Federal-aid highway project based upon a certification by the Governor of that State that sufficient funds are not available to pay the cost of the non-Federal share of the project. The provisions permit a State to receive up to 100 percent Federal funds for a project for a period through September 30, 1984; thereby allowing States the necessary time to adjust funding levels in order to meet the recently expanded Federal-aid highway program.

EFFECTIVE DATE: This final rule is effective March 3, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Harvey C. Wood, Chief, Federal/States Financial Management Branch, (202) 426–0563 or Mr. Frank L. Calhoun, 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.

SUPPLEMENTARY INFORMATION: On January 6, 1983, the President signed into law the STAA of 1982 (Pub. L. 97–424, 96 Stat. 2097). Section 145 requires regulations to be established which would provide procedures under which a State may request a waiver of its normal share of the construction cost of a qualifying Federal-aid highway project provided the Governor of the State certifies that sufficient funds are not available to pay the cost of the non-Federal share of the project. The regulation provides for an available period for the waiver through September 30, 1984, as well as repayment procedures. Since the provisions of section 145 of the STAA of 1982 were effective on January 6, 1983 (enactment of the STAA of 1982), and current regulations do not provide for such a temporary waiver, immediate promulgation of this regulation is required. For these reasons, it has been determined that circumstances warrant the issuance of an emergency regulation so as to immediately implement section 145 of the STAA of 1982.

Discussion of Regulation

Section 140.301 Purpose.

This section states the purpose of Subpart A, which is to implement section 145 of the STAA of 1982.

Section 140.303 Applicability.

The increased Federal share will apply to qualifying projects, as defined in the regulations, which are authorized prior to September 30, 1984, as specified by the statute.

Section 140.305 Definitions.

This section defines "Governor" to clarify that this provision is applicable to Puerto Rico and the District of Columbia, as well as all fifty States.

The section takes the definition from the statute of "qualifying project." Title 23 U.S.C. 106(a) is the provision for approval of plans, specifications, and estimates and 23 U.S.C. 117 is the certification acceptance provision.

Section 104.307 Submission of Certification by Governor.

This section contains the statutory requirement for certification by the Governor which is the initial step in requesting an increased Federal share.

The format of the certification is not prescribed by this regulation thus providing the Governor with flexibility as to the type of certification best suiting the State's situation.

Section 140.309 Request and approval of increase in Federal share.

The second step in requesting an increasing Federal share takes place when the State highway agency submits a request for authorization to proceed with work (23 CFR 630.114). This section establishes the basic procedures for requesting an increase in the Federal share which vary little from the regular procedures for requesting Federal participation in a project.

The FHWA recognizes that some qualifying projects will not be completed prior to September 30, 1984, at which time the State will be required to match its share of projects costs. This section provides the State with an option to request an obligation of Federal funds, only on the increased Federal share, based on the amount of costs the State expects to incur prior to September 30, 1984, instead of the total project costs. The State is still required to fully obligate the regular Federal share. For example, the State requests 100 percent Federal participation on an Interstate project (normally 90 percent participation) with an estimated cost of $10,000,000. Federal funds of $9,000,000 must be obligated for the regular Federal share. If the State estimates that only 50 percent of the project costs will be incurred by September 30, 1984, it may request that only 50 percent of the increased Federal share amount be obligated. In this case, instead of obligating $1,000,000 of Federal funds on the increased Federal share, only $500,000 would be obligated. The State would still be reimbursed for 100 percent of project costs incurred until September 30, 1984.

Paragraph (b) of this section identifies the fund categories that are presently available for matching fund waiver requests. The States are asked, where possible, to limit requests for matching fund waivers to projects funded from these categories although qualifying projects funded from other categories will be approved with prior concurrence from the FHWA Office of Fiscal Services.

Paragraph (c) of this section requires a statement to be included on the project

agreement, PR–2, submitted by the State which establishes the Federal share and amount of Federal funds requested by the State. The statement also establishes that claims paid after September 30, 1984, shall be at the regular Federal pro rata share.

Paragraph (d) of this section allows the State to use its normal billing procedures to claim reimbursement for the increased Federal share. The State is required to pro rate the costs claimed to the regular Federal share, and the non-Federal share, if any. This is necessary for FHWA to account for the amount reimbursed on the increased Federal share.

Section 140.311 Limitations on amount for qualifying projects.

This section reiterates the statute establishing the maximum amounts that can be obligated on qualifying projects in each State.

For the State's convenience and public information, FHWA has computed the amounts specified by the law and they are included as Appendix A of this regulation.

Paragraph (c) of this section clarifies that the amount obligated on a qualifying project is the amount obligated on both the regular Federal share and the increased Federal share as stated in the law. This total amount will be charged against the limitation.

Section 140.313 Repayment of the increased Federal share.

This section reiterates the statute's requirements for repaying the increased Federal share. The States are required to advise FHWA by September 1, 1984, regarding its intentions for making repayment or having deductions made to its apportionments. This is necessary to allow sufficient administrative time for adjusting project records prior to September 30, 1984.

Paragraphs (b) through (e) of this section merely restate the statutory requirements of section 145 for repayment or deduction of apportionments and impose no additional administrative requirements.

The FHWA has determined that this document responds to an emergency situation and for the reasons stated, Executive Order 12291 does not apply and it is impracticable for the agency to follow the procedures of the regulatory policies and procedures of the Department of Transportation. Therefore, good cause exists for publication as a final rule without notice and opportunity for comment and without a 30-day delay in effective date.

The FHWA will prepare, as soon as practicable, a regulatory evaluation/regulatory flexibility analysis. The evaluation will be available for inspection by contacting Mr. Harvey C. Wood at the address provided under the heading "For Further Information Contact."

In consideration of the foregoing, and under the authority of 23 U.S.C. 315; section 145, Surface Transportation Assistance Act of 1982, Pub. L. 97–424, 96 Stat. 2097 and 49 CFR 1.48(b), the FHWA is amending Part 140 of title 23, Code of Federal Regulations by adding thereto a new Subpart C, to read as set forth below.

List of Subjects in 23 CFR Part 140

Accounting, Highways and roads, Grant programs—transportation.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The coordination process provided in OMB Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs apply to this program.)

Issued: February 25, 1983.

R. A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

As added, Subpart C reads as follows:

PART 140—REIMBURSEMENT

Subpart C—Temporary Matching Fund Waiver

Sec.

140.301 Purpose.
140.303 Applicability.
140.305 Definitions.
140.307 Submission of certification by Governor.
140.309 Request and approval of increase in Federal share.
140.311 Limitations on amount for qualifying projects.
140.313 Repayment of the increased Federal share.
Appendix A—Maximum obligation amounts for matching fund waiver projects authorized prior to September 30, 1984.

Authority: Section 145, Pub. L. 97–424, 96 Stat. 2097; 23 U.S.C. 315; 49 CFR 1.48(b).

Subpart C—Temporary Matching Fund Waiver

§ 140.301 Purpose.

The purpose of this regulation is to prescribe procedures for administering section 145 of the Surface Transportation Assistance Act of 1982, providing for a temporary waiver of State matching fund requirements.

§ 140.303 Applicability.

The provisions of this subpart are applicable to qualifying projects as defined herein during the period January 6, 1983, and ending September 30, 1984.

§ 140.305 Definitions.

(a) As used in this subpart:

"Governor" means the Governor of any one of the fifty States, or Puerto Rico, and includes the Mayor of the District of Columbia.

"Qualifying project" means a project approved under 23 U.S.C. 106(a), or a project for which the United States becomes obligated to pay under 23 U.S.C. 117 for which the Governor has submitted a certification as set forth in this subpart.

"Increased Federal share" means the portion of the approved Federal share which is in excess of the regular Federal share that would have been approved if a matching fund waiver had not been requested.

§ 140.307 Submission of certification by Governor.

The Governor of the State shall submit a certification, in writing, to the Federal Highway Administration (FHWA) Division Administrator certifying that sufficient funds are not available to pay the cost of the non-Federal share of a qualifying project, taking into account all State and local funds that are available for obligation on Federal-aid highway projects. Funds encumbered or committed to other existing programs are considered unavailable for matching purposes.

§ 140.309 Request and approval of increase in Federal share.

(a) The State Highway agency (SHA) may submit a request in writing to the FHWA Division Administrator for an increase in the Federal share of a qualifying project up to and including 100 per centum at the time the SHA submits a request for an authorization to proceed with work under § 630.114 of this title. The request shall specify the amount of regular Federal funds and the amount of the increased Federal share desired. To maximize the obligation of Federal funds, the amount obligated for the increased Federal share may be based on the estimated costs to be incurred by the State before September 30, 1984, instead of the total estimated project costs. The FHWA letter of authorization to proceed with work shall set forth the approved pro rata share and the amount of Federal funds obligated.

(b) The State should, to the extent possible, limit requests for an increased Federal share to projects funded from the following major categories in order to simplify fiscal control:

Interstate
Interstate Discretionary
Interstate Resurfacing (4R)

Interstate Substitution (highway projects only)
Consolidated Primary
Rural Secondary
Urban System
Bridge Replacement and Rehabilitation
Rail-Highway Crossings
Hazard Elimination

Qualifying projects funded from other categories will be approved with prior concurrence from the FHWA, Office of Fiscal Services.

(c) The SHA in submitting the project agreement, Form PR-2, pursuant to § 630.304 of this title, shall include in it the following provision:

The Federal-aid participation is increased to ——— percent for reimbursement claims paid on or before September 30, 1984, in accordance with Pub. L. 97-424, section 145. The additional Federal funds requested total $———. Claims paid after September 30, 1984, shall be at the regular Federal pro rata share of ——— percent.

(d) The State may claim reimbursement for the increased Federal share as a part of its normal billing procedures. Participating costs incurred by the State on qualifying projects shall be charged on a pro rata basis to the regular Federal share, increased Federal share, and non-Federal share, if any.

§ 140.311 Limitations on amount for qualifying projects.

(a) The total amount which may be obligated for qualifying projects in any State under this subpart shall not be greater than the excess of (1) the sum of the amount of obligation authority distributed to the State for fiscal year 1983, plus the amount of the minimum allocation available to the State under 23 U.S.C. 157, if any, over (2) the amount of obligation authority distributed to the State for fiscal year 1982 under section 3(b) of the Federal-Aid Highway Act of 1981.

(b) The amounts determined under paragraph (a) of this section have been computed by the FHWA and set forth in Appendix A of this subpart.

(c) The total amount obligated on both the regular Federal share and the increased Federal share shall be charged to this limitation.

§ 140.313 Repayment of the increased Federal share.

(a) The State shall repay the amount of the increased Federal share made pursuant to this subpart on or before September 30, 1984. If such repayment is not made by the State, the FHWA shall make the deductions as provided in paragraph (b) of this section. The State shall advise the FHWA Division Administrator by September 1, 1984, regarding its intentions for making repayments or having deductions made to its apportionments.

(b) If the total amount of the increased Federal share is not repaid on or before September 30, 1984, deductions shall be made from the State's fiscal year 1985 and fiscal year 1986 apportionments which are made under 23 U.S.C. 104(b), excluding the apportionment for Interstate construction under 23 U.S.C. 104(b)(5)(A). The total amount deducted shall be the amount reimbursed to the State on the increased Federal share of all qualifying projects. In each of the fiscal years, one-half of the total deduction shall be made from these apportionments on a pro rata basis.

(c) The total amount deducted in accordance with paragraph (b) of this section shall be reapportioned to those States which did not receive an increased Federal share under this subpart and to those States which have made repayment under this section. These reapportioned funds shall be distributed by the FHWA in accordance with the apportionment formula established for the Federal-aid primary system in 23 U.S.C. 104(b)(1). The reapportioned amount shall supplement the States' primary system apportionments for fiscal years 1985 and 1986.

(d) The apportionments made on October 1, 1984, and October 1, 1985, shall subsequently be adjusted by the FHWA in order to reflect the deductions made under paragraph (b) of this section and the reapportionments made under paragraph (c) of this section.

(e) The FHWA shall deposit all repayments made by a State under paragraph (a) of this section to the Highway Trust Fund and shall credit the repayments to the appropriate apportionment accounts of the State.

APPENDIX A TO SUBPART C OF PART 140—MAXIMUM OBLIGATION AMOUNTS FOR MATCHING FUND WAIVER PROJECTS AUTHORIZED PRIOR TO SEPT. 30, 1984

[Thousands of dollars]

State	Amount
Alabama	$59,556
Alaska	34,806
Arizona	40,388
Arkansas	37,206
California	234,552
Colorado	47,615
Connecticut	47,356
Delaware	13,231
Florida	90,754
Georgia	76,308
Hawaii	16,960
Idaho	18,969
Illinois	131,496
Indiana	120,714
Iowa	37,986
Kansas	48,427
Kentucky	41,313
Louisiana	38,770
Maine	14,459

APPENDIX A TO SUBPART C OF PART 140—MAXIMUM OBLIGATION AMOUNTS FOR MATCHING FUND WAIVER PROJECTS AUTHORIZED PRIOR TO SEPT. 30, 1984—Continued

[Thousands of dollars]

State	Amount
Maryland	64,090
Massachusetts	49,583
Michigan	149,622
Minnesota	38,087
Mississippi	57,051
Missouri	102,423
Montana	34,894
Nebraska	32,196
Nevada	13,332
New Hampshire	12,554
New Jersey	85,941
New Mexico	10,323
New York	192,239
North Carolina	100,369
North Dakota	5,038
Ohio	196,379
Oklahoma	73,055
Oregon	37,783
Pennsylvania	127,060
Rhode Island	16,112
South Carolina	34,224
South Dakota	22,704
Tennessee	63,593
Texas	314,109
Utah	28,114
Vermont	10,331
Virginia	58,096
Washington	59,187
West Virginia	40,880
Wisconsin	66,015
Wyoming	23,296
District of Columbia	9,590
Puerto Rico	13,209
Total	3,292,345

[FR Doc. 83-5465 Filed 3-2-83; 8:45 am]

BILLING CODE 4910-22-M

Coast Guard

33 CFR Part 100

[CGD11 CR-03-83]

Establishment of Special Local Regulations for "Parker Enduro"

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Parker Enduro Regatta on the Colorado River. This event will be held on 5 and 6 March 1983, at Lake Moovalya. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective on 5 March 1983, and terminate on 6 March 1983.

FOR FURTHER INFORMATION CONTACT: Lt N. M. Turner, Commander (bpa), Eleventh Coast Guard District, 400 Oceangate, Long Beach, California 90822, (213) 590-2213.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been

published for these regulations and they are being made effective in less than 30 days from the date of publication. There was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information: The principal individuals involved in drafting this rule are Lt Noris M. Turner, Chief, Boating and Public Affairs Branch, Eleventh Coast Guard District, and Lt Catherine M. Kelly, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Regulations: Parker Area Chamber of Commerce "Parker Enduro Regatta" will be conducted beginning March 5, 1983, on the Colorado River at Lake Moovalya. This event will have 100 inboard/outboard jet boats 14- to 25-feet in length that could pose hazards to life. Vessels desiring to transit the regulated area may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

Evaluation: These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the regulated area will be open for the passage of commercial vessels and can be opened periodically to recreational vessels.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding the following section

§ 100.1103 Parker Area Chamber of Commerce/Parker Enduro.

(a) *Regulated Area.* The following regulated area will be closed intermittently to all vessel traffic from 11:30 AM to 4:30 PM on 5 March 1983 and from 8:00 AM to 3:30 PM on 6 March 1983: That portion of the Colorado River/Lake Moovalya Ah-Villa County Park/Roadrunner Resort to Approximately ½ mile south of Bluewater Marina.

(b) *Special Local Regulations.* (1) No vessels, other than participants, U.S. Coast Guard operated and employed small craft, public vessels, state and local law enforcement agencies and the sponsor's vessels shall enter the regulated area during the above hours, unless cleared for such entry by or through a patrolling law enforcement vessel, or an event committee boat.

(2) These regulations are temporary in nature and shall cease to be in effect or further enforced at the end of the period set forth.

(46 U.S.C. 454, 49 U.S.C. 1655(b)(1); 33 CFR 100.35; 49 CFR 1.46(b))

Dated: February 15, 1983.

A. P. Manning,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 83-5412 Filed 3-2-83; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Hampton Roads, Va.; Regulation 83-04]

Safety Zone Regulations; Croatan Sound, N.C.

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard established a safety zone in Croatan Sound, North Carolina, in the vicinity of the US–64 bridge on February 11, 1982. This zone was established to prevent further damage to and the possible collapse of the US–64 bridge which was severely damaged by a collision with a tug and tow on November 5, 1982. Adverse weather conditions have delayed repairs to the bridge and make it necessary to continue the previously established safety zone beyond its original termination date of February 1, 1983. Entry into this zone is prohibited except as otherwise stated.

EFFECTIVE DATE: This regulation becomes effective on February 1, 1983. It terminates when repairs to the US–64 bridge are completed or March 15, 1983, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander W. K. Six, Chief, Port Operations Department, Coast Guard Marine Safety Office, Hampton Roads, Norfolk, Virginia 23510, (804) 441–3296.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to safeguard the bridge, watercraft and their occupants.

Drafting Information: The drafter of this regulation is Lieutenant Commander W. K. Six, project officer for the Captain of the Port.

Discussion of Regulation: To prevent possible damage to watercraft, their occupants, and the US–64 bridge, no watercraft will be permitted to enter, remain in, moor in, or transit this safety zone unless specifically authorized by the Captain of the Port, Hampton Roads, Virginia. This action is necessary due to the heavy damage sustained by the bridge in a collision with a tug and tow. The sustained damage is of such a degree that another collision or excessive wake may cause the failure of the entire bridge structure. This rule is in response to a request by the North Carolina Department of Highways for Coast Guard assistance in precluding vessels from transiting the area.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

In consideration of the foregoing, Part 165 of title 33, Code of Federal Regulations, is amended by adding a new § 165.515 to read as follows:

§ 165.515 Safety zone: Croatan Sound, North Carolina.

(a) *Location.* The following area is a safety zone: The water under and one hundred yards on either side of the US–64 bridge over the Croatan Sound.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part. No person may enter or operate any tug and tow within this zone. No person may enter or operate any vessel through the channel span, or the two adjacent spans within this zone.

(33 U.S.C. 1225 and 1231; 49 CFR 1.46; 33 CFR 165.3)

Dated: February 1, 1983.

D. C. O'Donovan,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads, U.S. Coast Guard.

[FR Doc. 83-5411 Filed 3-2-83; 8:45 am]

BILLING CODE 4910-14-M

PANAMA CANAL COMMISSION

35 CFR Parts 103, 113, 119, and 123

Revised Shipping and Navigation Rules for the Panama Canal; Correction

AGENCY: Panama Canal Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects the effective date contained in the final regulations implementing Revised Shipping Navigation Rules for the Panama Canal which were published February 15, 1983 (48 FR 6708).

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Secretary, Panama Canal Commission, (202) 724–

0104, or Mr. Dwight A. McKabney, General Counsel, Panama Canal Commission, telephone in Balboa Heights, Republic of Panama, 52-7511.

SUPPLEMENTARY INFORMATION: Accordingly, the Panama Canal Commission is correcting 48 FR 6708 dated February 15, 1983 as follows:

"**EFFECTIVE DATE:** February 15, 1983:" is corrected to read "**EFFECTIVE DATE:** March 17, 1983."

Dated: February 24, 1983.

Michael Rhode, Jr.,

Secretary.

[FR Doc. 83-5359 Filed 3-2-83; 8:45 am]

BILLING CODE 3640-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 6E1819/R527; PH-FRL 2316-4]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Dinoseb

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the pesticide dinoseb in or on the raw agricultural commodity lentils. The regulation to establish a maximum permissible level for residues of the pesticide in or on the commodity was requested, pursuant to a petition, by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: March 3, 1983.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Donald Stubbs, Emergency Response Section, Registration Division (TS-767C), Environmental Protection Agency, Rm. 716 B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. 22202, (703-557-1192).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule published in the **Federal Register** of February 2, 1983 (48 FR 4678) that announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 6E1819 to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Stations of Idaho and Washington.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, proposed the establishment of a tolerance for residues of the pesticide dinoseb (2-*sec*-butyl-4,6-dinitrophenol) from application of its phenol or its readily hydrolyzable salts (alkanolamine salts, ammonium salt, or sodium salt) in or on the raw agricultural commodity lentils at 0.1 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the notice of proposed rulemaking.

The pesticide is considered useful for the purpose for which the tolerance is sought. It is concluded that the tolerance would protect the public health and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346(a)(e))

Dated: February 24, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.281 is revised to read as follows:

§ 180.281 Dinoseb; tolerances for residues.

Tolerances are established for residues of the herbicide, insecticide, and fungicide dinoseb (2-*sec*-butyl-4,6-dinitrophenol) from application of its phenol or its readily hydrolyzable salts (alkanolamine salts, ammonium salt, or sodium salt) in or on the following raw agricultural commodities:

Commodities	Parts per million
Alfalfa	0.1(N)
Alfalfa, hay	0.1(N)
Almonds	0.1(N)
Almonds, hulls	0.1(N)
Apples	0.1(N)
Apricots	0.1(N)
Barley, forage	0.1(N)
Barley, grain	0.1(N)
Barley, straw	0.1(N)
Beans	0.1(N)
Beans, forage	0.1(N)
Beans, hay	0.1(N)
Birdsfoot, trefoil	0.1(N)
Birdsfoot, trefoil, hay	0.1(N)
Blackberries	0.1(N)
Blueberries	0.1(N)
Boysenberries	0.1(N)
Cherries	0.1(N)
Citrus	0.1(N)
Clover	0.1(N)
Clover, hay	0.1(N)
Corn, fodder	0.1(N)
Corn, forage	0.1(N)
Corn, fresh (inc. sweet K + CWHR)	0.1(N)
Corn, grain (inc. popcorn)	0.1(N)
Cotton, forage	0.1(N)
Cottonseed	0.1(N)
Cottonseed, hulls	0.1(N)
Cucurbits	0.1(N)
Currants	0.1(N)
Dates	0.1(N)
Figs	0.1(N)
Filberts	0.1(N)
Garlic	0.1(N)
Gooseberries	0.1(N)
Grapes	0.1(N)
Hops	0.1(N)
Lentils	0.1
Loganberries	0.1(N)
Nectarines	0.1(N)
Oats, forage	0.1(N)
Oats, grain	0.1(N)
Oats, straw	0.1(N)
Olives	0.1(N)
Onions	0.1(N)
Peaches	0.1(N)
Peanuts	0.1(N)
Peanuts, forage	0.1(N)
Peanuts, hay	0.1(N)
Peanuts, hulls	0.1(N)
Pears	0.1(N)
Peas	0.1(N)
Peas, forage	0.1(N)
Peas, hay	0.1(N)
Pecans	0.1(N)
Plums (prunes)	0.1(N)
Potatoes	0.1(N)
Raspberries	0.1(N)
Rye, forage	0.1(N)
Rye, grain	0.1(N)
Rye, straw	0.1(N)
Soybeans	0.1(N)
Soybeans, forage	1.0
Soybeans, hay	1.0
Strawberries	0.1(N)
Vetch	0.1(N)
Vetch, hay	0.1(N)
Walnuts	0.1(N)
Wheat, forage	0.1(N)
Wheat, grain	0.1(N)
Wheat, straw	0.1(N)

[FR Doc. 83-5563 Filed 3-2-83; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 1-3, 1-7, 1-15

[FPR Amdt. 228]

Federal Procurement Regulations; Revisions to Negotiated Overhead Rate Clauses and Contract Cost Principles

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This amendment revises a number of contract cost principles applicable to commercial organizations and several instructions regarding the use of contract clauses. Most of the revisions to the cost principles deal with accounting for unallowable costs and unallowable directly associated costs and are based on concept introduced in Cost Accounting Standard 405 and the Defense Acquisition Regulation (DAR). The revisions dealing with contract clauses are designed to achieve compatibility with earlier FPR changes. All revisions are intended to achieve substantial Government-wide uniformity in the treatment of contract costs.

EFFECTIVE DATE: April 18, 1983.

FOR FURTHER INFORMATION CONTACT: Philip G. Read, Director, Office of Federal Procurement Regulations, Office of Acquisition Policy (202-523-4755).

SUPPLEMENTARY INFORMATION: The contract cost principle revisions made in this amendment are summarized as follows:

(1) A new section on accounting for unallowable costs is added, the most significant provisions of which:

(a) Establish special identification requirements for unallowable costs and unallowable directly associated costs;

(b) Specify that unallowable costs be subject to the same accounting principles governing cost allocability as allowable costs;

(c) Set forth principles for satisfying the unallowable cost identification and visibility requirements; and

(d) Provide guidance concerning the determination and accounting treatment of unallowable directly associated costs.

(2) The cost principles dealing with bad debts, entertainment costs, interest and other financial costs, and professional and consultant service costs are revised to substitute the term "directly associated costs" for the term "related costs." This was done to conform the language of these cost principles to revised terminology introduced in the new section on accounting for unallowable costs (see paragraph (1), above).

(3) The cost principle on organization costs is revised to specifically exclude activities whose purpose is providing compensation from the ambit of unallowable organization costs.

List of Subjects

41 CFR Part 1-3

Cost accounting standards, Government procurement, Procurement by negotiation, Small purchases, Types of contracts.

41 CFR Part 1-7

Contract clauses, Government procurement.

41 CFR Part 1-15

Cost principles, Government procurement.

PART 1-3—PROCUREMENT BY NEGOTIATION

Subpart 1-3.7—Negotiated Overhead Rates

Section 1-3.704-1 is revised to read as follows:

§ 1-3.704-1 Contracts with concerns other than educational institutions.

Insert the following clause in contracts with concerns other than educational institutions when postdetermined negotiated overhead rates are to be used pursuant to this subpart.

Negotiated Overhead Rates—Postdetermined

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost, Fixed Fee, and Payment,"[1] the allowable indirect costs under this contract shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties, as specified below.

(b) The Contractor, as soon as possible but not later than ninety (90) days after the expiration of his fiscal year, or such other period as may be specified in the contract, shall submit to the Contracting Officer, with a copy to the cognizant audit activity, a proposed final overhead rate or rates for that period based on the Contractor's actual cost experience during that period, together with supporting cost data. Negotiation of overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with[2] ———— as in effect on the date of this contract.

(d) The results of each negotiation shall be set forth in a modification of this contract, which shall specify (1) the agreed final rates, (2) the bases to which the rates apply, and (3) the periods for which the rates apply.

(e) Pending establishment of final overhead rates for any period, the Contractor shall be reimbursed either at negotiated provisional rates as provided in the contract, or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when the final rates for that period are established. To prevent substantial over or under payment, and to apply either retroactively or prospectively: (1) Provisional rates may, at the request of either party, be revised by mutual agreement, and (2) billing rates may be adjusted at any time by the Contracting Officer. Any such revision of negotiated provisional rates provided in the contract shall be set forth in a modification to this contract.

(f) Any failure by the parties to agree on any final rates under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract.

(End of clause)

PART 1-7—CONTRACT CLAUSES

Subpart 1-7.2—Cost-Reimbursement Type Supply Contracts

Section 1-7.203-9 is revised to read as follows:

§ 1-7.203-9 Negotiated overhead rates.

Insert the appropriate clause set forth in § 1-3.704 under the conditions prescribed therein.

Subpart 1-7.4—Cost Reimbursement Type Research and Development Contracts

Section 1-7.402-3 is amended to add paragraph (b)(7) as follows:

§ 1-7.402-3 Allowable cost, fee, and payment.

* * * * *

(b) * * *

[1] The contracting agency may substitute the title of its own parallel clause when the title is other than "Allowable Cost, Fixed Fee, and Payment."

[2] In paragraph (c), insert the reference which is appropriate to the agency: The appropriate subpart of Part 1-15 and, if applicable, the corresponding agency regulations, or any special "Allowable Cost" clause in the contract, which lists allowable and unallowable costs.

(7) In contracts with nonprofit organizations subject to the cost principles in Subpart 1–15.6, substitute Subpart 1–15.6 in paragraph (a)(1)(i) of prescribed in paragraph (a), of this section.

PART 1–15—CONTRACT COST PRINCIPLES AND PROCEDURES

The table of contents for Part 1–15 is amended to add one entry under Subpart 1–15.2 as follows:

Subpart 1–15.2—Contracts with Commercial Organizations

Sec.

* * * * *

1–15.201–6 Accounting for unallowable costs.

* * * * *

Subpart 1–15.2—Contracts With Commercial Organizations

1. Section 1–15.201–6 is added to read as follows:

§ 1–15.201–6 Accounting for unallowable costs.

(a) Costs that are expressly unallowable or mutually agreed to be unallowable, including mutually agreed to be unallowable directly associated costs, shall be identified and excluded from any billing, claim, or proposal applicable to a Government contract. This requirement may be satisfied by any form of cost identification which is adequate for purposes of contract cost determination and verification.

(b) Costs which specifically become designated as unallowable, or as unallowable directly associated costs of unallowable costs, as a result of a written decisions furnished by a contracting officer pursuant to contract disputes procedures, shall be identified if included in or used in the computation of any billing, claim, or proposal applicable to a Government contract. This identification requirement applies also to any costs incurred for the same purpose under like circumstances as the costs specifically identified as unallowable under either this paragraph or paragraph (a) of this section.

(c) All unallowable costs covered by paragraphs (a) and (b) of this section shall be subject to the same cost accounting principles governing cost allocability as allowable costs. In circumstances where these unallowable costs normally would be part of a regular indirect cost allocation base or bases, they shall remain in such base or bases.

(d) Where the total of the allocable and otherwise allowable costs exceeds a limitation-of-cost or ceiling-price provision in a contract, full direct and indirect cost allocation shall be made to the contract cost objective in accordance with established cost accounting practices and standards which regularly govern a given entity's allocations to Government contract cost objectives. In any determination of unallowable cost overrun, the amount thereof shall be identified in terms of the excess of allowable costs over the ceiling amount, rather than through specific identification of particular cost items or cost elements.

(e) The detail and depth of records required as backup support for proposals, billings, or claims shall be that which is adequate to establish and maintain visibility of identified unallowable costs (including directly associated costs), their accounting status in terms of their allocability to contract cost objectives, and the cost accounting treatment which has been accorded such costs. Adherence to this cost accounting principle does not require that allocation of unallowable costs to final cost objectives be made in the detailed cost accounting records. It does not require that unallowable costs be given appropriate consideration in any cost accounting determinations governing the content of allocation bases used for distributing indirect costs to cost objectives. Unallowable costs involved in the determination of rates used for standard costs, or for indirect cost proposals or billing, need be identified only at the time rates are proposed, established, revised, or adjusted.

(f)(1) A directly associated cost is any cost which is generated solely as a result of the incurrence of another cost, and which would not have been incurred had the other cost not been incurred. When an unallowable cost is incurred, its directly associated costs are also unallowable.

(2) If a directly associated cost is included in a cost pool which is allocated over a base that includes the unallowable cost with which it is associated, the direclty associated cost shall remain in the cost pool. Since the unallowable costs will attract its allocable share of costs from the cost pool, no further action is required to assure disallowance of the directly associated cost. In all other cases, the directly associated costs, if material in amount, must be purged from the cost pool as unallowable costs.

(3) In determining the materiality of a directly associated cost, consideration should be given to the significance of (i) the actual dollar amount, (ii) the cumulative effect of all directly associated costs in a cost pool, or (iii) the ultimate effect on the cost of Government contracts.

(4) Salary expenses of employees who participate in activities which generate unallowable costs shall be treated as directly associated costs to the extent of the time spent on the proscribed activity, provided the costs are material in accordance with paragraph (f)(3) of this section (except when such salary expenses are, themselves, unallowable). The time spent in proscribed activities should be compared to total time spent on company activities (estimated when actual time records are not available), to determine if the costs are material. Time spent by employees outside the normal working hours should not be considered except when it is evident that an employee engages so frequently in company activities during periods outside normal working hours as to indicate that such activities are a part of his regular duties.

(5) When a selected item of cost under § 1–15.205 provides that directly associated costs be unallowable, it is intended that such directly associated costs be unallowable only if determined to be material in amount in accordance with the criteria provided in paragraphs (f)(3) and (f)(4) of this section, except in those situations where allowance of any of the directly associated costs involved would be considered to be contrary to public policy.

2. Section 1–15.205–2 is revised to read as follows:

§ 1–15.205–2 Bad debts.

Bad debts, including losses (whether actual or estimated) arising from uncollectible customers' accounts and other claims, and any directly associated costs such as collection costs and legal costs, are unallowable.

3. Section 1–15.205–11 is revised to read as follows:

§ 1–15.205–11 Entertainment costs.

Costs of amusement; diversion; social activities; and any directly associated costs such as meals, lodging, rentals, transportation, and gratuities, are unallowable (but see § 1–15.205–10 and § 1–15.205–43).

4. Section 1–15.205–17 is revised to read as follows:

§ 1–15.205–17 Interest and other financial costs.

Interest on borrowings (however represented), bond discounts, costs of financing and refinancing capital (net worth plus long-term liabilities), legal and professional fees paid in connection with the preparation of prospectuses, costs of preparation and issuance of

stock rights, and directly associated costs are unallowable except for interest assessed by State or local taxing authorities under the conditions set forth in § 1–15.205–41. (But see § 1–15.205–24.)

5. Section 1–15.205–23 is revised to read as follows:

§ 1–15.205–23

Organization costs.

(a) Except as provided in paragraph (b) of this section, expenditures in connection with (1) planning or executing the organization or reorganization of the corporate structure of a business, including mergers and acquisitions, or (2) raising capital (net worth plus long-term liabilities) are unallowable. Such expenditures include but are not limited to incorporation fees and costs of attorneys, accountants, brokers, promoters and organizers, management consultants, and investment counsellors, whether or not employees of the contractor. Unallowable "reorganization" costs include the cost of any change in the contractor's financial structure, excluding administrative costs of short-term borrowings for working capital, resulting in alterations in the rights and interests of security holders whether or not additional capital is raised.

(b) The cost of activities primarily designed for the purposes of providing compensation will not be considered organization costs subject to this section, but will be governed by § 1–15.205–6. These activities include the acquisition of stock for (1) executive bonuses, (2) employee savings plans, and (3) employee stock ownership plans.

6. Section 1–15.205–31 is amended to revise paragraph (d) to read as follows:

§ 1–15.205–31 Professional and consultant service costs—legal, accounting, engineering, and other.

* * * * *

(d) Costs of legal, accounting, and consulting services, and directly associated costs, incurred in connection with organization and reorganization, defense of antitrust suits, and the prosecution of claims against the Government, are unallowable. Costs of legal, accounting, and consulting services, and directly associated costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the contract. (Also see § 1–15.205–23.)

* * * * *

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: February 19, 1983.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 83-5440 Filed 3-2-83; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6353

[A-12828]

Arizona; Partial Revocation of Reclamation Project Withdrawals

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will partially revoke six Executive orders and one Departmental order which withdrew certain lands in Arizona for the Hassayampa Project. This action will lift the withdrawals on 17,559.28 acres of public lands near Wickenburg, Arizona. Of this total, 17,046.00 acres would be opened to surface entry and 15,270.03 would be opened to mining. All lands affected by this order have been and will remain open to mineral leasing.

EFFECTIVE DATE: March 3, 1983.

FOR FURTHER INFORMATION CONTACT: Mario L. Lopez, Arizona State Office, 602–261–4774.

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

1. Executive Orders dated July 25, 1941, March 27, 1943, April 7, 1944 (two orders), September 14, 1945, and July 3, 1946, and the Departmental order dated March 30, 1956, which withdrew lands for the Hassayampa Project, are hereby revoked insofar as they affect the following described lands:

Gila and Salt River Meridian

T. 5 N., R. 3 W.,
Sec. 18, NW¼NE¼SE¼, S½NE¼SE¼, W½SE¼, SE¼SE¼;
Sec. 19, lots 1, 2, W½NE¼, E½NW¼;
Sec. 20, E½NE¼.
T. 9 N., R. 3 W.,
Sec. 1, lot 4, SW¼NW¼, W½SW¼, SE¼SW¼;
Sec. 2, lots 1, 2, S½NE¼, SE¼;
Sec. 11, E½;
Sec. 14, E½NE¼, N½NW¼, NW¼SE¼;
Sec. 15, S½;
Sec. 16, S½SW¼;
Sec. 17, S½S½;
Sec. 19, S½NE¼, SE¼;
Sec. 20, N½, SW¼;
Sec. 21, lots 1, 2, N½NE¼, SW¼NE¼, NW¼, E½SW¼, SE¼SE¼;
Sec. 22, NW¼, NW¼SW¼;
Sec. 30, lots 1 to 4, inclusive, E½, E½W½;
Sec. 31, lots 2, 3, 4, 8, 9, 10, NE¼NW¼, SE¼SW¼.
T. 6 N., R. 4 W.,
Sec. 3, lots 9, 10;
Sec. 11, SW¼SW¼;
Sec. 14, W½;
Sec. 15, NE¼NE¼, E½SE¼;
Sec. 22, E½E½;
Sec. 23, NW¼NE¼, SW¼NW¼, W½SW¼.
T. 7 N., R. 4 W.,
Sec. 19, W½NE¼;
Sec. 20, NE¼NW¼, S½SW¼;
Sec. 28, SW¼SW¼;
Sec. 29, SW¼NE¼;
Sec. 33, E½NE¼, NE¼SE¼.
T. 8 N., R. 4 W.,
Sec. 1, lots 1 to 5, inclusive, S½NW¼, SW¼, W½SE¼, SE¼SE¼;
Sec. 2, lots 1, 3, 4, S½N½, N½S½, SW¼SW¼, SE¼SE¼;
Sec. 3, S½NE¼, SE¼;
Sec. 4, lots 3 to 6, inclusive;
Sec. 6, lots 1 to 16, inclusive;
Sec. 10, E½;
Sec. 11, lot 1, E½, NW¼NW¼, S½NW¼, SW¼;
Sec. 12, all;
Sec. 13, N½NE¼NE¼, SW¼NE¼NE¼, E½NW¼NE¼, E½W½NW¼NE¼, W½NW¼, W½W½E½NW¼, W½NW¼SW¼;
Sec. 14, N½, N½S½, N½S½SW¼, SW¼SW¼SW¼, NW¼SW¼SE¼;
Sec. 15, all;
Sec. 18, lots 6, 7, E½SW¼, SE¼.
T. 9 N., R. 4 W.,
Sec. 25, E½;
Sec. 33, S½;
Sec. 34, all;
Sec. 35, N½, SW¼;
Sec. 36, N½.
T. 8 N., R. 5 W.,
Sec. 1, lots 1 to 7, inclusive, SW¼NE¼, S½NW¼, SW¼, W½SE¼;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, W½;
Sec. 13, lots 1 to 4, inclusive, W½NE¼, W½;
Sec. 14, N½, N½S½;
Sec. 15, all;
Sec. 23, NE¼NW¼, NW¼SW¼.

The area described contains 17,559.28 acres in Maricopa and Yavapai Counties.

2. At 10:00 a.m. on April 13, 1983, the unappropriated, unreserved public lands described in paragraph 1 shall be open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10:00 a.m. on April 13, 1983, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. Of the lands described in paragraph 1, the surface estate of the following

lands has been conveyed out of Federal ownership. Therefore, these lands will not be open to the operation of the public land laws.

T. 5 N., R. 3 W.,
Sec. 18, NW¼NE¼SE¼, S½NE¼SE¼, W½SE¼, SE¼SE¼;
Sec. 19, lots 1, 2, W½NE¼, E½NW¼;
Sec. 20, E½NE¼.
T. 7 N., R. 4 W.,
Sec. 20, NE¼NW¼;
T. 8 N., R. 5 W.,
Sec. 14, W½NW¼NE¼NE¼;

The area described contains 513.28 acres in Maricopa and Yavapai Counties.

4. At 10:00 a.m. on April 13, 1983, the unappropriated, unreserved public lands described in paragraph 1 shall be open to the operation of the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law.

5. Of the lands described in paragraph 1, the following lands were restored to mineral entry by Restoration Orders dated November 12, 1954 and November 21, 1958:

T. 7 N., R. 4 W.,
Sec. 20, W½SW¼SW¼;
T. 8 N., R. 5 W.,
Sec. 1, lots 1 to 7, inclusive, SW¼NE¼, S½NW¼, SW¼, W½SE¼;
Sec. 11, N½, SW¼, NW¼SE¼;
Sec. 12, W½;
Sec. 13, lots 1 to 4, inclusive, W½NE¼, W½;
Sec. 14, E½NE¼, SW¼NE¼, NW¼NW¼, NE¼SW¼, N½SE¼.

The area described contains 2,289.25 acres in Maricopa and Yavapai Counties.

6. All lands described in this order have been and will continue to be open to applications and offers under the mineral leasing laws.

Inquiries concerning the public lands should be addressed to the Arizona State Director, Bureau of Land Management, U.S. Department of the Interior, 2400 Valley Bank Center, Phoenix, Arizona 85073.

Dated: February 22, 1983.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 83-5356 Filed 3-2-83; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6354

[ORE-06398]

Oregon; Revocation of Stock Driveway Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order which withdrew certain lands for use as a stock driveway. This action will restore 1,025.17 acres of land to operation of the public land laws generally.

EFFECTIVE DATE: April 13, 1983.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503-231-6905.

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

1. Public Land Order No. 1967 of September 1, 1959, which withdrew the following described public land for a stock driveway is hereby revoked:

Willamette Meridian

T. 33 S., R. 18 E.,
Sec. 7, E½NE¼, N½SW¼NE¼, and N½SE¼NW¼;
Sec. 8, W½NE¼, SE¼NE¼, and N½NW¼;
Sec. 9, lots 4 to 8, inclusive;
Sec. 10, W½SW¼, SE¼SW¼, and S½SE¼;
Sec. 13, N½S½ and SW¼SW¼;
Sec. 14, S½NW¼ and that portion of the NE¼SE¼ lying south of a line with the bearing of North 64°35' W., beginning 1,144 feet north of the Section corner common to sections 13, 14, 23, and 24;
Sec. 15, N½NE¼.

The area described contains approximately 1,025.17 acres in Lake County.

2. At 7:30 a.m., on April 13, 1983, the land will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. All valid applications received at or prior to 7:30 a.m., on April 13, 1983, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The land has been and continues to be open to applications and offers under the mineral leasing laws and to location under the United States mining laws.

Inquiries concerning the land should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Dated: February 22, 1983.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 83-5350 Filed 3-2-83; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6355

[NM 42701-WR]

New Mexico; Revocation of Stock Driveway No. 58, New Mexico No. 7

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Secretarial order which withdrew 160 acres for a stock driveway. The land lies within the Carson National Forest and thus is subject only to such forms of surface use as may by law be made of national forest lands. However, the land remains closed to disposal by an existing powersite classification. It has been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: March 3, 1983.

FOR FURTHER INFORMATION CONTACT: Dolores Vigil, New Mexico State Office, 505-988-6538.

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

1. Secretarial Order of February 4, 1919, creating Stock Driveway No. 58, New Mexico No. 7, lying wholly within the Carson National Forest, is hereby revoked in its entirety:

New Mexico Principal Meridian

T. 24 N., R. 4 E.,
Sec. 4, W½W½.

The area described contains 160 acres in Rio Arriba County.

2. The land has been and will remain open to mining and mineral leasing, and also to such forms of surface use as may by law be made of national forest lands. However, Powersite Classification No. 371 will continue to close the land to disposal.

Inquiries concerning the lands should be addressed to Chief, Lands Unit, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501.

Dated: February 22, 1983.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 83-5352 Filed 3-2-83; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6357

[I-15303]

Idaho; Partial Revocation of Stock Driveway Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes the Secretarial Order of June 19, 1922, affecting 1,547.37 acres of land withdrawn for stock driveway purposes. This action will restore the lands to

operation of the public land laws. The lands have been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: April 13, 1983.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, Idaho State Office, 208–334–1597.

SUPPLEMENTARY INFORMATION: By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order of June 19, 1922, which withdrew public lands for use and designation as Stock Driveway No. 157, is hereby partially revoked as it affects the following described lands:

Boise Meridian, Idaho

T. 2 S., R. 38 E.,
Sec. 33, lots 4 and 5, W½SE¼.
T. 3 S., R. 38 E.,
Sec. 4, lots 7, 8 and 9.
T. 4 S., R. 39 E.,
Sec. 4, W½NE¼;
Sec. 21, NW¼;
Sec. 36, SE¼NW¼.
T. 5 S., R. 40 E.,
Sec. 1, S½SW¼;
Sec. 5, SW¼SW¼.
Sec. 6, SE¼SW¼.
Sec. 8, SW¼NE¼, N½NW¼, SE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 11, SW¼NE¼, NE¼SW¼, S½SW¼, NW¼SE¼;
Sec. 12, NW¼;
Sec. 14, NW¼NW¼;
Sec. 15, N½NE¼, SW¼NE¼, S½NW¼.

The area described contains 1,547.37 acres in Bingham and Caribou Counties.

2. At 7:45 a.m. on April 13, 1983, the lands described in paragraph 1 will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals and classifications, and the requirements of applicable law. All valid applications received at or prior to 7:45 a.m. on April 13, 1983, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing. The lands have been and will remain open to the mining and mineral leasing laws.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Federal Building, Box 042, Boise, Idaho 83724.

Dated: February 22, 1983.

Garrey E. Carruthers,
Assistant Secretary of the Interior.

[FR Doc. 83-5353 Filed 3-2-83; 8:45 am]
BILLING CODE 4310-84-M

43 CFR Public Land Order 6358

[CA 8193 WR]

California; Revocation of Stock Driveway Withdrawal No. 53

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes the remaining 40 acres of a withdrawal of land used for a stock driveway. It restores the land to operation of the public land laws generally. The land has been and remains open to mining and mineral leasing.

EFFECTIVE DATE: April 13, 1983.

FOR FURTHER INFORMATION CONTACT: Larry Weitzel, California State Office 916–484–4431.

SUPPLEMENTARY INFORMATION: By virture of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Secretary's Order of December 13, 1918, which withdrew lands for Stock Driveway Withdrawal No. 53 (California No. 3), is hereby revoked as to the remaining described land:

Mount Diablo Meridian

T. 22 N., R. 16 E.,
Sec. 10, SE¼NW¼.

The area described contains 40 acres in Plumas County.

2. At 10 a.m. on April 13, 1983, the land, shall be open to operation of the public land laws generally, subject to valid existing rights the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on April 13, 1983, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

The land has been and continues to be open to location under the mining laws and to applications and offers under the mineral leasing laws.

Inquiries concerning the land should be addressed to the State Director, Bureau of Land Management, Room E–2841, Federal Building, 2800 Cottage Way, Sacramento, California 95825.

Dated: February 22, 1983.

Garrey E. Carruthers,
Assistant Secretary of the Interior.

[FR Doc. 83-5354 Filed 3-2-83; 8:45 am]
BILLING CODE 4310-84-M

43 CFR Public Land Order 6359

[A-12885]

Arizona; Partial Revocation of Reclamation Project Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a Secretarial order which withdrew lands for the Colorado River Storage Project, Arizona. The affected lands total 3,828.51 acres for which the State of Arizona has filed an application under the State Indemnity Lieu Program. Consequently, the entire tract will remain closed to surface entry and mining. The lands have been and will remain open to mineral leasing until consummation of the transfer to the State.

EFFECTIVE DATE: March 3, 1983.

FOR FURTHER INFORMATION CONTACT: Mario L. Lopez, Arizona State Office, 602–261–4774.

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

1. Secretarial Order dated May 8, 1919, which withdrew lands for the Boulder Canyon Reservoir, Colorado River Storage Project, is hereby revoked insofar as it affects the following described lands:

Gila and Salt River Meridian

T. 29 N., R. 20 W.,
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, lots 1 to 4, inclusive, E½, E½W½;
Sec. 18, lots 1 to 4, inclusive, E½, E½W½;
Sec. 19, lots 1 to 4, inclusive, E½, E½W½;
Sec. 30, lots 1 to 4, inclusive, E½, E½W½;
Sec. 31, lots 1 to 4, inclusive, E½, E½W½.

The areas described aggregate 3,828.51 acres in Mohave County.

2. All lands described in paragraph 1 have been classified for state selection purposes and will not be open to other appropriation under the public land laws, including the mining laws.

3. The lands have been and will remain open to applications and offers under the mineral leasing laws until consummation of the transfer to the State of Arizona.

Inquiries concerning the public lands should be addressed to the Arizona State Director, Bureau of Land Management, U.S. Department of the Interior, 2400 Valley Bank Center, Phoenix, Arizona 85073.

Dated: February 22, 1983.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 83-5351 Filed 3-2-83; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6360

[R-4634]

California; Reservoir Site Restoration No. 48, Partial Revocation of Reservoir Site Reserve No. 17

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes an Executive Order which withdrew national forest lands for Reservoir Site Reserve No. 17. The affected 3,581 acres remain withdrawn from mining by the Act of May 29, 1928, but will be opened to such other forms of disposition as may be made of national forest lands.

EFFECTIVE DATE: April 13, 1983.

FOR FURTHER INFORMATION CONTACT: Marie Getsman, California State Office, 916-484-4431.

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

1. The Executive Order of June 8, 1926, which withdrew national forest lands for reservoir site purposes is hereby revoked insofar as it affects the following described lands:

San Bernardino Meridian

Angeles National Forest

T. 1 N., R. 9 W.,
Sec. 6, SE¼SW¼;
Sec. 7, SE¼SW¼NE¼, W½NE¼NW¼, and SW¼SE¼;
Sec. 8, NW¼NW¼;
Sec. 18, SE¼ of lot 1, lot 2, and SE¼NW¼.
T. 2 N., R. 9 W.,
Sec. 19, N½, SW¼;
Sec. 20, W½NE¼, SW¼NW¼ and NW¼SE¼;
Sec. 21, SE¼NE¼;
Sec. 22, N½SE¼SE¼, N½S½SE¼SE¼, and SE¼SE¼SE¼SE¼;
Sec. 23, SW¼SW¼
Sec. 25, N½, and N½S½;
Sec. 26, lots 1, 2, 4 and 5, N½NE¼, S½SW¼NE¼, NE¼SE¼NE¼, E½NW¼ SE¼NE¼, S½SE¼NE¼, and S½SE¼NW¼.
Sec. 27, lots 1 and 2, NE¼NE¼NE¼NE¼, SE¼NE¼, and W½NW¼;
Sec. 28, lots 2 and 3, and S½N½;
Sec. 29, S½NW¼;
Sec. 30, S½NE¼, and E½NW¼.
T. 2 N., R. 10 W.,
Sec. 13, SE¼SW¼, and SW¼SE¼;
Sec. 22, SE¼NE¼, and SE¼;
Sec. 23, SW¼NE¼, S½NW¼, N½SW¼, and SE¼;
Sec. 24, W½NE¼, SE¼NE¼, W½, and SE¼.

The above lands aggregate approximately 3,581 acres in Los Angeles County, California.

2. All of the lands remain withdrawn from location and entry under the mining laws under the Act of May 29, 1928, 45 Stat. 956; however, at 10 a.m. on April 13, 1983, the lands will be opened to such other forms of disposition as may be made of national forest lands. The lands have been and will remain open to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825.

Dated: February 22, 1983.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 83-5355 Filed 3-2-83; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

Oversight of the Radio and TV Broadcast Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends radio and TV broadcast station regulations in Volume III, Parts 73 and 74 of the rules of the FCC. Amendments are made to delete certain regulations, correct inaccurate rule texts, contemporize certain requirements and to execute editorial revisions as needed for purposes of clarity and ease of understanding.

DATE: Effective March 4, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Steve Crane, Mass Media Bureau, (202) 632-5414.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 73

Radio broadcast.

47 CFR Part 74

Radio.

Order

Adopted: February 10, 1983.
Released: February 18, 1983.

In the Matter of Oversight of the Radio and TV Broadcast Rules.

1. In this *Order*, the Commission focuses its attention on the oversight of its radio and TV broadcast rules. Modifications are made herein to update, delete, clarify or correct broadcast regulations as described in the following amendment summaries:

(a) The Department of Communications, Government of Canada, has submitted to the FCC a revised version of its AM conductivity map ("Ground Conductivity Map," dated January 1980). This map replaces the "Provisional Ground Conductivity Map" dated June 1960. Groundwave studies for any AM application tendered to the FCC after January 1, 1983, which involve Canada, must be based on the January, 1980 "Ground Conductivity Map." References to the old Canadian map are made in Section 73.183(c) and Note 2 which follows it, and in this *Order* we make appropriate amendments in the rule text to reflect the change to the 1980 map.

A change is also made in Note 1 to § 73.183(c), deleting the statement that USA M3 ground conductivity maps may be obtained from the Superintendent of Documents, Government Printing Office. The GPO no longer offers M3 maps. (See appendix item 1.)

(b) In the Report and Order in the Low Power TV proceeding in BC Docket 78-253 the change adopted in § 73.3594(f) was inadvertently misstated. It is corrected via this *Order*. (See appendix item 2.)

(c) In § 73.3597, Procedures on transfer and assignment applications, there are a number of inaccuracies in the text. Separately the textual errors are not significant; however, collectively they provide good reason to modify and clarify the affected paragraphs. Such rewrite is accomplished herein. (See appendix item 3.)

(d) With the adoption of the Report and Order in General Docket 80-603, the Commission established policy pertaining to Direct Broadcast Satellites. This subject and pertinent citations are added to the Listing of Policies in Part 73. The listing is designated § 73.4091, Direct Broadcast Satellites. (See appendix item 4.)

(e) In Part 74, only Subpart D (Remote Pickup Broadcast Stations) and Subpart H (Low Power Auxiliary Stations) address the procedure to be followed by the licensee when operation of an auxiliary station is permanently discontinued. In Subparts D and H the licensee is directed to "forward the station license to the FCC in Washington, D.C. for cancellation."

Permanent discontinuance of operation is defined as "a station which is not operated for a period of one year. * * *" In Subparts E (Aural Broadcast STL and Intercity Relay Stations) and F (TV Auxiliary Broadcast Stations) no discontinuance procedures are stated. However, the permanent discontinuance of operation of the STL's and relay stations have, in the past, been noted and cancelled when, at license renewal time for the main stations, the licensee failed to apply for renewal of auxiliaries. (Failure to renew a remote pickup or low power auxiliary has also served the same "cancellation notice" function.)

Two minor complications have arisen which seriously weaken, at renewal time, this procedure:

The use of the new simplified renewal application, FCC Form 303–S, presumes renewal has been requested for the licensee's currently authorized auxiliary stations *unless specifically indicated to the contrary*. Lack of such "indication" guarantees renewal of the auxiliary. We believe that, inadvertently, the potential for retaining a no-longer-used auxiliary station is great under this system. Since the 303–S has no specific question regarding the licensee's application for auxiliary station renewal the procedure requires the licensee to request cancellation of the auxiliary authorization in a separate document filed with the Form 303–S. The potential for failing to overtly make this request is obvious.

Couple to this situation the extension of station license periods to 7 years and 5 years for radio and TV respectively, and the dormancy period for unused, but uncancelled, auxiliary licenses increases greatly.

As a result of the above, the FCC records no doubt show a much lower inventory of auxiliary frequencies to persons searching our records for such availabilities. Our records, very possibly, may reflect a greater channel usage than actually exists. To alleviate this potential for inaccuracy in channel usage (and provide an accurate inventory for those searching for frequencies), we duplicate the discontinuance of operation and license cancellation procedures of Subparts D and H in Subparts E (Aural STL) and Intercity Relay Stations) and F (TV Auxiliary Broadcast Stations). Licensees are herein directed, in §§ 74.532 and 74.632, to return the station license to FCC, Washington, D.C. if operation of the station is permanently discontinued. (See appendix items 5 and 6.)

(f) Subpart I of Part 74 contains the regulations pertaining to Instructional TV Fixed Service (ITFS). This service, at its inception, was called "Educational TV Fixed Station," and thereby was often confused with noncommercial educational television in Part 73. To clearly identify the services, the ITFS designation was made. The old terminology survives in 74.937(f) where reference is made to "* * * a new educational television fixed station. * * *" It is corrected to read ITFS herein. (See appendix item 7.)

(g) The following subject titles are corrected in the Alphabetical Index in Part 73:

Multiplex ownership: should read Multiple ownership

Multiple subcarriers, Use of: should read Multiplex subcarriers, Use of

(See appendix item 8.)

2. No substantive changes are made herein which impose additional burdens or remove provisions relied upon by licensees or the public. We conclude, for the reasons set forth above, that these revisions will serve the public interest.

3. These amendments are implemented by authority designated by the Commission to the Chief, Mass Media Bureau. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rulemaking, effective date provisions and public procedure thereon are unnecessary pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B).

4. Since a general notice of proposed rulemaking is not required, the Regulatory Flexibility Act does not apply.

5. Therefore, It is ordered, That pursuant to Sections 4(i) 303(r) and 5(d)(1) of the Communciations Act of 1934, as amended, and §§ 0.71 and 0.283 of the Commission's Rules, Parts 73 and 74 of Volume III of the FCC Rules and Regulations are amended as set forth in the attached appendix, effective.

6. For further information on this *Order*, contact Steve Crane, (202) 632–5414, Mass Media Bureau.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 164, 303)

Federal Communications Commission.

Laurence E. Harris,

Chief, Mass Media Bureau.

Appendix

PART 73—[AMENDED]

1. In § 73.183, paragraph (c) and Notes 1 and 2 which follow it, are revised to read as follows:

§ 73.183 Groundwave signals.

* * * * *

(c) In all cases where measurements taken in accordance with the requirements are not available, the groundwave strength must be determined by means of the pertinent map of ground conductivity and the groundwave curves of field strength versus distance. The conductivity of a given terrain may be determined by measurements of any broadcast signal traversing the terrain involved. Figure M3 (see Note 1) shows the conductivity throughout the United States by general areas of reasonably uniform conductivity. When it is clear that only one conductivity value is involved, Figure R3 of § 73.190, which is a replica of Figure M3 and contained in these standards, may be used; in all other situations Figure M3 must be employed. It is recognized that in areas of limited size or over a particular path, the conductivity may vary widely from the values given; therefore, these maps are to be used only when accurate and acceptable measurements have not been made. (For determinations of interference and service requiring a knowledge of ground conductivities in Mexico, Annex XIV–C to the Agreement Between the United States of America and the United Mexican States Concerning Radio Broadcasting in the Standard Broadcasting Band (535–1605 kHz), Mexico, D.F., 1968, may be used. Similarly, for values of ground conductivity in Canada, a map issued by the Department of Communications, Government of Canada entitled "Ground Conductivity Map," dated January, 1980, may be used. Where different conductivities appear in the maps of two countries on opposite sides of the border, such differences are to be considered as real, even if they are not explained by geophysical cleavages. A uniform ground conductivity of 10 millimhos per meter may be assumed for Cuba.)

Note 1.—Figure R3 in § 73.190 is a replica of Figure M3. Figure M3, which is incorporated in these Standards by reference, was derived by indicating ground conductivity values in the United States on the United States Albers equal area projection map (based on standard parallels 29½° and 45½°; North American datum; scale 1/2,500,000).

Note 2.—Copies of "Ground Conductivity Map" may be obtained by contacting the Chief, Broadcast Applications Engineering Division, Department of Communications, 300 Slater Street, Ottawa, Ontario K1A 0C8, Canada. Cost is $100.00, Canadian. Remittance should be made by check or money order payable to Receiver General for Canada.

* * * * *

2. Section 73.3594 is amended by revising paragraph (f) as follows:

§ 73.3594 Local public notice of designation for hearing.

* * * * *

(f) When an application for a low power TV, TV translator, FM translator, or FM booster station which is subject to the provisions of § 73.3580 is designated for hearing, the applicant shall give notice of such designation as follows: Notice shall be given at least once during the 2-week period immediately following release of the FCC's order, specifying the time and place of the commencement of the hearing in a daily, weekly or biweekly publication having general circulation in the community or area to be served. However, if there is no publication of general circulation in the community or area to be served, the applicant shall determine an appropriate means of providing the required notice to the general public, such as posting in the local post office or other public place. The notice shall state:

* * * * *

3. Section 73.3597 is amended by revising paragraphs (c)(1)(i) and (ii), (d)(1) and (2), the introductory text of (d)(3), and (d)(3)(vi) and (4) as follows:

§ 73.3597 Procedures on transfer and assignment applications.

* * * * *

(c) (1) * * *.

(i) "Unbuilt station" refers to an AM, FM, or TV broadcast station or a low power TV station for which a construction permit is outstanding, and, regardless of the stage of physical completion, for which program tests have not commenced or, if required, been authorized.

(ii) "Seller" includes the assignor(s) of a construction permit for an unbuilt station, the transferor(s) of control of the holder of such construction permit, and any principal or such assignor(s) or transferor(s) who retains an interest in the permittee or acquires or reacquires such interest within 1 year after commencing program tests.

* * * * *

(d) (1) Whenever an agreement for the assignment of the construction permit of an unbuilt station or for the transfer of control of the permittee of an unbuilt station, or any arrangement or understanding incidental thereto, provides for the retention by the seller of any interest in the station, or for any other actual or potential benefit to the seller in the form of loans or otherwise, the question is raised as to whether the transaction involves actual or potential gain to the seller over and above the legitimate and prudent out-of-pocket expenses allowable under paragraph (c)(2) of this section. In such cases the FCC will designate the assignment or transfer applications for evidentiary hearing. However, a hearing is not mandatory in cases coming within (d)(2) below.

(2) It is not intended to forbid the seller to retain an equity interest in an unbuilt station which he is transferring or assigning if the seller obligates himself, for the period ending 1 year after commencing program tests, to provide that part of the total capital made available to the station, up to the end of that period, which is proportionate to the seller's equity share in the permittee, taking into account equity capital, loan capital, and guarantees of interest and amortization payments for loan capital provided by the seller before the transfer or assignment. This condition will be satisfied.

* * * * *

(3) In cases which are subject to the requirements of (d)(2)(i), (ii) and (iii) above:

* * * * *

(vi) The provisions of (d)(3)(iv) and (v) above shall cease to apply 1 year after commencing program tests.

(4) Applications subject to this paragraph (d) will, in any event, be designated for evidentiary hearing in any case where the agreements, arrangements or understandings with the seller provide for the seller's option to acquire equity in the station or to increase equity interests he retains at the time of the assignment or transfer of control. An evidentiary hearing will similarly be held in any case in which the assignee(s), transferee(s) or any of their principals, or any person in privity therewith, has an option to purchase all or part of the seller's retained or subsequently acquired equity interests in the station.

4. New § 73.4091 is added to the Policy listings in Subpart H, Part 73 to read as follows:

§ 73.4091 Direct broadcast satellites.

(a) See Report and Order, General Docket 80-603, FCC 82-285, adopted June 23, 1982. 90 FCC 2d 676; 47 FR 31555, July 21, 1982.

(b) See Memorandum Opinion and Order, FCC 82-427, adopted September 23, 1982. 91 FCC 2d

(c) See Memorandum Opinion and Order, FCC 82-498, adopted November 4, 1982. 91 FCC 2d

PART 74—[AMENDED]

5. Section 74.532 is amended by adding new paragraph (e) as follows:

§ 74.532 Licensing requirements.

* * * * *

(e) In case of permanent discontinuance of operation of a station licensed under this Subpart, the licensee shall forward the station license to the FCC, Washington, D.C., 20554, for cancellation. A station which is not operated for a period of one year is considered to have been permanently discontinued.

6. Section 74.632 is amended by adding new paragraph (f) as follows:

§ 74.632 Licensing requirements.

* * * * *

(f) In case of permanent discontinuance of operation of a station licensed under this Subpart, the licensee shall forward the station license to the FCC, Washington, D.C., 20554, for cancellation. A station which is not operated for a period of one year is considered to have been permanently discontinued.

7. Section 74.937 is amended by revising paragraph (f) to read as follows:

§ 74.937 Antennas.

* * * * *

(f) The power gain compared to an isotropic antenna and the directive properties of the transmitting and receiving antennas proposed to be employed, as well as the geometric distribution of the transmitting and receiving points, shall be supplied with each application for a new ITFS fixed station or for changes in the antenna facilities of an existing station.

8. The following subject titles in the alphabetical index of Part 73 are corrected as follows:

Multiplex ownership should read Multiple ownership.

Multiple subcarriers, Use of should read Multiplex subcarriers, Use of.

[FR Doc. 83-5128 Filed 3-2-83; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte No. MC-96 (Sub-2)]

Passenger Broker Entry Control

AGENCY: Interstate Commerce Commission.

ACTION: Discontinuance of proceeding.

SUMMARY: The Commission is discontinuing this proceeding because the Bus Regulatory Reform Act of 1982 exempts passenger brokers from licensing requirements.

EFFECTIVE DATE: March 1, 1983.

FOR FURTHER INFORMATION CONTACT: Andrew L. Lyon (202) 275–7805, or Howell I. Sporn (202) 275–7691.

SUPPLEMENTARY INFORMATION: In this proceeding the Commission previously adopted rules: (1) Simplifying the procedure for obtaining a passenger broker license, (2) revising the Commission's regulations by increasing the passenger broker surety bond requirement, and (3) adding a consumer notice requirement. The decision adopting the rules appeared at 44 FR 70167, December 6, 1979, as corrected at 44 FR 74838, December 18, 1979.

The United States Court of Appeals for the District of Columbia Circuit stayed the decision and the adopted rules pending review. Upon completion of review and affirmance of the Commission's decision, the stay was lifted, thereby enabling the Commission to implement the rules. The Commission delayed implementation due to legislation pending in the Congress dealing with bus passenger operations and passenger brokers. No further action has been taken by the Commission.

The Bus Regulatory Reform Act of 1982 (Bus Act) was signed into law on September 20, 1982, and became effective November 19, 1982. Section 14 of the Bus Act exempts passenger brokers from licensing requirements and gives the Commission power to impose on passenger brokers such requirements for bonds or insurance or both as the Commission determines are needed. Consequently, the Commission no longer has authority to implement the application rules and the consumer notice requirement adopted in this proceeding. Accordingly, the rules adopted as a result of this proceeding which were codified at 49 CFR Parts 1045B and 1046 were removed in Ex Parte No. 55 (Sub-No. 56) (47 FR 53260, November 24, 1982). Also, implementation of the increased bond requirement is inappropriate as the Commission recently decided not to reinstitute any bond or insurance requirement for passenger brokers at this time, in Ex Parte No. MC–5 (Sub-No. 4), *Passenger Broker Surety Bonds or Insurance*, 133 M.C.C. 57 (1983).

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

This proceeding is discontinued.

This decision is issued pursuant to authority in 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: February 22, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-5110 Filed 3-2-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Amdt. 195–26, Docket PS–72]

Transportation of Hazardous Liquids by Pipeline Retention of Radiographic Film

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: This final rule deletes the requirement in § 195.234(g) to retain radiographic film for 3 years after a line is placed in service and to map the location of the radiographed welds. The existing rule does not enhance safety but does impose a significant cost burden.

EFFECTIVE DATE: April 4, 1983.

ADDRESS: Copies of this amendment may be obtained from the Dockets Branch, Room 8426, Materials Transportation Bureau, U.S. Department of Transportation, 400 7th Street S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Frank Robinson, 202–426–2392.

SUPPLEMENTARY INFORMATION: Under the requirements of § 195.234, at least 10 percent of the girth welds made daily on a pipeline must be nondestructively tested to determine the acceptability of the welds. In addition, 100 percent of the girth welds that are located in specified areas (where a defect might occur or a spill could have serious consequences) must be nondestructively tested. To assure compliance with these testing requirements, § 195.234(g) requires that a record be kept for 3 years of welds that have been nondestructively tested, showing, if practicable, the location of the weld, and including the developed film for welds tested by radiography. Besides serving as a check on compliance, MTB believes that the intent § 195.234(g) is that retained radiographs would be advantageous in analyzing any leak that might develop in a radiographed weld.

In addition to the § 195.234(g) requirement, § 195.266(a) requires that a complete record be kept for the life of the facility showing the total number of girth welds and the number nondestructively tested, including the number rejected and the disposition of each rejected weld.

Two persons petitioned MTB to delete the radiograph retention requirement from § 195.234(g). In a letter dated September 21, 1977 (Pet. 77–11), Consolidated X-Ray Service Corporation requested that § 195.234(g) be made identical to the comparable recordkeeping requirement for gas pipelines set forth in § 192.243(f), which does not require retention of radiographs, or the exact location of each weld. Consolidated argued that the requirement for gas pipelines should be sufficient for liquid pipelines, since the construction methods (i.e., materials used, welding practices, and inspection techniques) are the same for the two types of pipelines.

Consolidated also pointed out that although radiograph retention was initially proposed for inclusion in § 192.243(f) (35 FR 1112), it was deleted in the final rule (35 FR 13248) in favor of the current, more general requirement on grounds that the "retention of X-ray film would present a substantial clerical burden and will not prove too valuable in accident investigation."

Colonial Pipeline Company, by letter dated October 17, 1978, also requested that the requirement to retain weld radiographs be deleted from § 195.234(g). Colonial argued that the objective of radiographic inspection of girth welds is to control the quality of welding, and that this objective is met by immediately bringing any problems that are detected to the attention of the welders. Thus, Colonial concluded, a weld radiograph loses its usefulness after a weld is initially accepted or rejected. In further argument against the need to retain radiographs beyond their initial interpretation, Colonial argued that a record of film interpretation and subsequent disposition of the weld, combined with a metallurgical examination, would be sufficient to explain any weld failure that might occur. Colonial also said the burdens associated with radiograph retention (the clerical tasks of rolling, marking, transporting, and storing film as much as 132 inches in length) are costly, and the time spent by inspectors who perform these tasks reduces their effectiveness in visually inspecting and interpreting film of additional welds.

A notice of proposed rulemaking (NPRM) was published on October 4, 1982 (47 FR 43745), proposing to delete § 195.234(g) based on the information

contained in the petitions and other information given in the notice.

Twenty-one commenters responded to the notice: the American Petroleum Institute (API), the American Gas Association (AGA), the Interstate Natural Gas Association of America (INGAA), five gas pipeline companies, and thirteen liquid pipeline companies. All of the commenters supported the deletion of § 195.234(g). Additionally, at a meeting in Washington, D.C., on December 17, 1981, the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) supported deletion of the rule. The Committee report is available for public review and copying.

In view of the information contained in the petitions together with other information given in the notice, the support of the THLPSSC and the 21 commenters, the MTB believes that § 195.234(g) is unnecessary for pipeline safety and imposes a $3.28 million annual cost burden. For these reasons MTB deletes § 195.234(g) in this final rule.

Since this final rule will have a positive effect on the economy of less than $100 million a year, will result in a cost savings to consumers, industry, and government agencies, and no adverse effects are anticipated, the action is not "major" under Executive Order 12291 or "significant" under Department of Transportation procedures.

Based on the facts available concerning the impact of this rulemaking action, I certify pursuant to section 605 of the Regulatory Flexibility Act, that the action will not have a significant economic impact on a substantial number of small entities. Few, if any, small entities will be affected by this rule.

List of Subjects in 49 CFR Part 195

Pipeline safety, Girth welds, Nondestructive testing, Radiographic inspection, Radiographic film, Mapping girth welds, Recordkeeping, and Record retention period.

PART 195—[AMENDED]

§ 195.234 [Amended]

For reasons given above, 49 CFR Part 195 is amended by removing § 195.234(g).

(49 U.S.C. 2002; 49 CFR 1.53, and Appendix A to Part 1)

Issued in Washington, D.C. on February 24, 1983.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 83-5360 Filed 3-2-83; 8:45 am]

BILLING CODE 4910-60-M

Federal Highway Administration

49 CFR Part 387

[BMCS Docket No. MC-94-1; Amdt. No. 81-9]

Minimum Levels of Financial Responsibility for Motor Carriers; Technical Correction

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Technical correction to final rule.

SUMMARY: An emergency regulation which revised the existing minimum levels of financial responsibility requirements for motor carriers to implement provisions required by section 406 of the Surface Transportation Assistance Act of 1982 (STAA of 1982) was published in the **Federal Register** on February 7, 1983 (48 FR 5559). A technical correction is being made to the final rule which adds three commodities to the commodity transported column of both "Schedule of Limits" charts included in §§ 387.9 and 387.15 of 49 CFR. The three commodities were inadvertently omitted from the charts upon publication of the emergency regulation.

EFFECTIVE DATE: January 6, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Bureau of Motor Carrier Safety, 202-426-9767; or Mrs. Kathleen S. Markman, Office of the Chief Counsel, 202-426-0346, 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: The final rule implementing the provisions required by section 406 of the STAA of 1982 (Pub. L. 97-424, 96 Stat. 2097) was published in the **Federal Register** on February 7, 1983 (48 FR 5559). In revising the charts showing the schedule of limits, any quantity of Class A or B explosives; any quantity of poison gas; or large quantity radioactive materials, were inadvertently omitted from paragraph (2), commodity transported column. Therefore, § 387.9 and § 387.15 are being amended to reinstate these commodities in paragraph (2) of both "Schedule of Limits" charts. For clarity and convenience, both charts are being reproduced in full and corrected.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. The economic impact, if any, anticipated as a result of this action is so minimal, a full regulatory evaluation is not required.

Under the criteria of the Regulatory Flexibility Act, it is certified that this rulemaking does not have a significant economic impact on a substantial number of small business entities.

Notice and opportunity for comment are not required under the regulatory policies and procedures of the DOT because it is not anticipated that such action would result in the receipt of useful information. Also, because the emergency final rule was effective January 6, 1983, these technical corrections are effective on January 6, 1983.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

List of Subjects in 49 CFR Part 387

Hazardous materials transportation, Insurance, Motor carriers, Surety bonds.

(Sec. 406, Pub. L. 97-424, 96 Stat. 2097; 49 CFR 1.48 and 301.60)

Issued on: February 24, 1983.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety, Federal Highway Administration.

In consideration of the foregoing, the FHWA is amending Part 387 of title 49, Code of Federal Regulations, to read as set forth below.

PART 387—[AMENDED]

1. The "Schedule of Limits" chart in § 387.9, is amended to read as follows:

§ 387.9 Financial responsibility minimum levels.

* * * * * * *

SCHEDULE OF LIMITS

[Public liability]

Type of carriage*	Commodity transported	July 1, 1981	July 1, 1983
(1) For-hire (In interstate or foreign commerce)	Property (nonhazardous)	$500,000	$750,000
(2) For-hire and Private (In interstate, foreign, or intrastate commerce).	Hazardous substances, as defined in 49 CFR 171.8, liquefied compressed gas, or compressed gas transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or in bulk (any quantity) Class A or B explosives or poison gas; or large quantity radioactive materials as defined in 49 CFR 173.389.	1,000,000	5,000,000
(3) For-hire and Private (In interstate or foreign commerce: in any quantity) or (In intrastate commerce: in bulk only).	Oil listed in 49 CFR 172.101; hazardous waste, hazardous materials and hazardous substances defined in 49 CFR 171.8 and listed in 49 CFR 172.101, but not mentioned in (2) above or (4) below.	500,000	1,000,000
(4) For-hire and Private (In interstate or foreign commerce).	Any quantity of Class A or B explosives; any quantity of poison gas; or large quantity radioactive materials as defined in 49 CFR 173.389.	1,000,000	5,000,000

*NOTE.—The type of carriage listed under numbers (1), (2), and (3) apply to vehicles with a gross vehicle weight rating of 10,000 pounds or more. The type of carriage listed under number (4) applies to all vehicles with a gross vehicle weight rating of less than 10,000 pounds.

2. The "Schedule of Limits" chart in Illustration I of § 387.15 is amended to read as follows:

§ 387.15 Forms.

* * * * * * *

SCHEDULE OF LIMITS

[Public liability]

Type of carriage*	Commodity transported	July 1, 1981	July 1, 1983
(1) For-hire (In interstate or foreign commerce)	Property (nonhazardous)	$500,000	$750,000
(2) For-hire and Private (In interstate, foreign, or intrastate commerce).	Hazardous substances, as defined in 49 CFR 171.8, liquefied compressed gas, or compressed gas transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or in bulk (any quantity) Class A or B explosives or poison gas; or large quantity radioactive materials as defined in 49 CFR 173.389.	1,000,000	5,000,000
(3) For-hire and Private (In interstate or foreign commerce: in any quantity) or (In intrastate commerce: in bulk only).	Oil listed in 49 CFR 172.101; hazardous waste, hazardous materials and hazardous substances defined in 49 CFR 171.8 and listed in 49 CFR 172.101, but not mentioned in (2) above or (4) below.	500,000	1,000,000
(4) For-hire and Private (In interstate or foreign commerce).	Any quantity of Class A or B explosives; any quantity of poison gas; or large quantity radioactive materials as defined in 49 CFR 173.389.	1,000,000	5,000,000

*NOTE.—The type of carriage listed under numbers (1), (2), and (3) apply to vehicles with a gross vehicle weight rating of 10,000 pounds or more. The type of carriage listed under number (4) applies to all vehicles with a gross vehicle weight rating of less than 10,000 pounds.

Note.—This table showing the schedule of limits may appear at the bottom or on the reverse side of Form MCS-90.

[FR Doc. 83-5251 Filed 3-2-83; 8:45 am]

BILLING CODE 4910-22-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1201, 1207 and 1241

Indexing the Annual Operating Revenues of Railroads and Motor Carriers of Property

AGENCY: Interstate Commerce Commission.

ACTION: Rule related notice.

SUMMARY: The Interstate Commerce Commission has adopted a methodology for indexing gross annual operating revenues for railroads and motor carriers of property to eliminate the effects of inflation from the classification process. The Commission's price deflator formula will provide assurances that carriers are moved to a higher classification because of real business expansion, and not from inflationary consequences.

The annual average Railroad Freight Price Index will be used as the railroad deflator. The annual average Producer Price Index for all commodities will be used as the motor carrier deflator. Each index is developed by the Bureau of Labor Statistics. The base years for railroads and motor carriers are 1978 and 1980, respectively. The indexes and deflators are listed in the **SUPPLEMENTARY INFORMATION** section of this Notice.

DATE: Effective for carrier classifications beginning January 1, 1983.

ADDRESSES: Copies of this notice may be purchased by contacting: TS Infosystems, Inc., Room 2227, 12th and Constitution Ave., N.W., Washington, D.C. 20423; (202) 289-4357—D.C. Metropolitan Area, (800) 424-5403—toll free for outside D.C. area.

FOR FURTHER INFORMATION CONTACT: Leonardo A. Rodriguez or William G. Norris (202) 275-7448.

SUPPLEMENTARY INFORMATION: By Final Rule in Docket No. 38559, Railroad Classification Index, served and published in the **Federal Register** on January 20, 1983 (48 FR 2542) and Final Rule in Docket No. 38377, Indexing the Annual Operating Revenues of Motor Carriers of Property, served on October 7, 1982, and published in the **Federal Register** on October 12, 1982 (47 FR 44731), the Commission revised the method of classifying railroads and motor carriers of property for accounting and reporting purposes. The new methodology continues to classify carriers based on gross operating revenues. However, a price deflator formula was adopted to assess whether a carrier's gross operating revenue increases are caused by inflation or a real business expansion. Both Final Rules stated that the Commission would publish the deflators in the **Federal Register.** The deflators for 1980, 1981 and 1982 are:

	Railroads		Motor carriers of property	
	Railroad freight index		Producer prices index	
	Index	Deflator percent	Index	Deflator percent
1978	213.1			
1980	284.5	74.90	252.4	
1981	327.6	65.05	275.5	91.62
1982	351.4	60.64	281.0	89.82

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-5115 Filed 3-2-83; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 48, No. 43
Thursday, March 3, 1983

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1910 and 1944

Individual Credit Reports

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations for the ordering and processing of individual credit reports by collecting a credit report fee from the applicant before credit reports are ordered rather than including a credit report fee as part of the loan. The amendment is needed to reduce unnecessary cost to the Government for credit reports obtained in conducting the credit investigation of individual applicants, their partners, cosigners, or individual members of associations. The intended effect of the action is to establish collection procedure which will reduce the costs to FmHA for this service without placing undue financial burden on the loan applicants.

DATE: Comments must be received on or before May 2, 1983.

ADDRESSES: Submit all written comments in duplicate to the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington D.C. 20250. All written comments made pursuant to this notice will be available for public inspection during regular hours at the above address.

FOR FURTHER INFORMATION CONTACT: Frank Colon, Deputy Director, Single Family Housing Processing Division, Farmers Home Administration, USDA, Room 5347, South Agriculture Building, 14th and Independence, SW, Washington, D.C 20250, telephone (202) 382-1482.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Secretary's Memorandum 1512-1 which implements Executive Order 12291, and has been determined "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries, organizations, government agencies or geographic region There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets, since it does not affect FmHA loan eligibility or loan servicing requirements.

The FmHA program or projects which are affected by this regulation should be carried out in accordance with 7 CFR Part 3015, "Intergovernmental Review of the Department of Agriculture Programs and Activities."

The Catalog of Federal Domestic Assistance programs affected are:

CFDA No. and program title

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.408 Grazing Association Loans
10.409 Irrigation, Drainage, and Other Soil and Water Conservation Loans
10.410 Low to Moderate Income Housing Loans (Rural Housing Loans-Section 502-Insured)
10.413 Recreation Facility Loans
10.414 Resource Conservation and Development Loans
10.515 Rural Rental Housing Loans
10.416 Soil and Water Loans (SW Loans)
10.417 Very Low-Income Housing Repair Loans and Grants
10.419 Watershed Protection and Flood Prevention Loans
10.422 Business and Industrial Loans
10.428 Economic Emegency Loans
10.429 Above-Moderate Income Housing Loans (Guaranteed Rural Housing Loans)

This document has been reviewed in accordance with 7 CFR Part 1901, Subpart G, "Environmental Impact Statements." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Credit reports are obtained whenever the responsible FmHA official determines that the credit report information is needed to determine the eligibility of applicants. The reports are purchased from credit report companies under contract with the Government. The average contract price for Fiscal Year (FY) 82 was approximately $18.50 per basic report. However, this amount was increased by the cost of "supplemental" or "antecedent" reports when these were needed to complete the 2-year reporting period required in the contract. Payments for credit reports received are made by the FmHA Finance Office for monthly billings submitted by the contractors. Under the present FmHA regulations, to recover the cost of the reports, FmHA, applicants, whose loans are approved, are charged a $12 fee per report.

The fee is deducted from the loan check at the Finance Office if only one report was ordered and received. If two or more reports were obtained or if no loan check is issued, as in the case of transfers and assumptions, the loan closing official collects at loan closing, $12 for each credit report obtained. The cost of credit reports for unsuccessful applicants is borne by FmHA. Credit reports obtained for servicing actions are charged to the loan account as a servicing expense. Under these authorities, the cost to FmHA for the credit report service during the last four fiscal years was as follows:

Fiscal year	Amount paid to contractors	Amount collected from borrowers	Expense incurred by FmHA
1978	$2,149,896	$778,512	$1,371,384
1979	2,329,745	922,045	1,407,700
1980	2,114,675	877,985	1,236,690
1981 [1]	2,532,545	747,551	1,784,994

[1] In FY-81, FmHA paid for a total of 156,000 reports at approximately $16.23 per report, and collected from borrowers for approximately 62,300 reports at $12 per report.

The loss to the Government in obtaining the credit report service is further discussed in an audit completed by the Office of the Inspector General in early 1982. It recommends that FmHA amend its regulations to require all loan applicants to pay a nonrefundable fee before credit reports are ordered, and increase the fee charged to the applicant to an amount sufficient to recover the

contracting charges for the reports. Based on the above, the following alternatives were considered in preparing this proposed rule:

Alternative 1.—Continue with present FmHA policies and procedures but increase the fee charged successful applicants to an amount comparable to the average cost of credit reports for the fiscal year. With this option, the amount recovered will be increased; however, there will be no recovery for funds invested by FmHA to purchase credit reports for unsuccessful applicants.

Alternative 2.—Collect the actual cost of credit reports obtained, at loan closing. The results of this option will be similar to those in option 1.

Alternative 3.—Collect from the loan applicant before a credit report is ordered, a fee comparable to the average cost of the credit report for the fiscal year except for Section 504 of RH loan applicants where the credit report fee charged applicant will be included as part of the FmHA loan. This option was selected as it will conserve funds from the Rural Housing Insurance Fund, the Agricultural Credit Insurance Fund, and the Rural Development Insurance Fund. The disadvantage of this option is that, although the process is simplified, the number of staff hours used in processing, is increased. However, the extra cost of operation is offset by the extra amount of funds recovered. Consider the following for FY–81:

Amount Paid by FmHA to contractors for 156,000 credit reports purchased, $2,532,545
Amount that would have been recovered under Option 3 at $16 average cost/credit report for the fiscal year (156,000×$16), $2,496,000 (approx.)
Less cost of extra man-hours that would have been used under Option 3 (156,000×.25×$6) where 156,000 represents fees collected; .25 hours is the time spent in processing a collection; and $6 is the cost/hour, $234,000
Net FmHA recovery under Option 3 ($2,496,000 −$234,000), $2,262,000 (approx.)
Total loss to FmHA under Option 3 ($2,532,545 −$2,262,000), $270,545 (approx.)

The amendment applies to prospective applicants as well as applicants on the waiting lists for individual FmHA loans whose loan documents have not been submitted to the FmHA Finance Office for fund obligation prior to the effective date of the final rule. Other administrative changes are included in the proposal.

The FmHA proposes to amend Subpart B of Part 1910, Chapter XVIII, Title 7, Code of Federal Regulations, as follows:

1. Revise § 1910.52(a) by deleting the reference to the Department of Housing and Urban Development and inserting such reference, if applicable, in paragraph (a) of Exhibit A (available in any FmHA office).

2. Delete § 1910.52(c).

3. Rember § 1910.52(d) as "(c)," remove the reference to a $12 credit report fee charged the applicant from the paragraph and insert the amount charged in paragraph (a) of Exhibit A.

4. Renumber § 1910.52(e) as "(d)," and make reference in the second sentence to the "Director, Directives and Administrative Services Division."

5. Insert a new § 1910.52(e) for the procedure to be followed in obtaining addresses of credit bureaus serving other states.

6. Revise § 1910.53 to indicate that a credit report fee will be collected from the loan applicant before a credit report(s) is ordered, except in the case of Section 504 Rural Housing loan applicants where the credit report fees for credit reports needed to complete the credit investigation will be included as part of the FmHA loan.

7. Revise § 1910.54 to add the definitions of "applicant" and "County Supervisor," and renumber other paragraphs in the section, accordingly.

8. Revise § 1910.55(e) to list adverse items that should be excluded from the credit report under the provisions of paragraph 605 of the Fair Credit Reporting Act.

9. Delete § 1910.58 as the information is now contained in § 1910.53(b).

10. Revise § 1910.59 to change the title of the section to "Type of credit report to be ordered," and to limit the authority for ordering "individual" credit reports only and discontinue the authority for ordering the more costly "joint" reports.

11. Revise § 1910.61 to clarify the procedure to be used in processing unacceptable credit reports and/or incorrect billing data from credit report contractors.

12. Revise § 1910.62(a) to delete reference to the inclusion of a credit report fee as part of the FmHA loan and to update the Truth in Lending requirements.

13. Delete § 1910.62 (b) and (c) as the collection of fees from the loan applicant is described in § 1910.53.

List of Subjects

7 CFR Part 1910

Administrative practice and procedure, Applications, Credit, Government contracts, Loan programs—agriculture, Loan programs—housing and community development, Low- and moderate-income housing, Marital status discrimination, Reporting and recordkeeping requirements, Sex discrimination.

7 CFR 1944

Administrative practice and procedure, Aged, Fair housing, Grant programs—housing and community development, Handicapped, Loan programs—housing and community development, Low- and moderate-income housing, Migrant labor, Mortgages, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

Therefore, as proposed, Chapter XVIII of Title 7, Code of Federal Regulations is amended as follows:

PART 1910—GENERAL

Subpart A—Receiving and Processing Applications

1. Section 1910.3 is amended by adding a new paragraph (m) to read as follows:

§ 1910.3 Receiving applications.

* * * * *

(m) Fees for the total amount charged for individual credit reports as indicated in paragraph (a) in the "General" section of Exhibit A (available in any FmHA office) of Subpart B of this Part, will be collected from the loan applicants before credit reports are ordered, except in the case of Section 504 Rural Housing loan applicants where the total amount charged will be included as part of the FmHA loan. In cases where a fee cannot be collected from the applicant, the application will be handled as prescribed in paragraphs (d), (e), and (f) of § 1910.4 of this subpart.

Subpart B—Credit Reports (Individual)

2. Subpart B of Part 1910 is amended by revising § 1910.51 through § 1910.100 and Exhibit B to read as follows:

Subpart B—Credit Reports (Individual)

Sec.

1910.51 Purpose.
1910.52 General.
1910.53 Policy.
1910.54 Definitions.
1910.55 Contractor bureau requirements.
1910.56–1910.58 [Reserved]
1910.59 Type of credit report to be ordered.
1910.60 Processing order tickets.
1910.61 Invoicing and payments
1910.62 Loan documentation procedure.
1910.63 Unsatisfactory contractor performance.
1910.64 Confidential handling of credit reports.
1910.65–1910.100 [Reserved]
Exhibit A [1]

[1] Exhibits A–E do not appear in the Code of Federal Regulations.

Exhibit B
Exhibit C
Exhibit D
Exhibit E

Subpart B—Credit Reports (Individual)

§ 1910.51 Purpose.

This Subpart describes the policies and procedures for obtaining individual type credit reports. Credit reports will be ordered when needed to determine the eligibility of applicants requesting Farmers Home Administration (FmHA) loans.

§ 1910.52 General.

(a) FmHA obtains credit reports from credit reporting companies listed in Exhibit A of this Subpart (available in any FmHA office) or in other credit report contracts authorized by the Contracting Officer, FmHA. County Supervisors are cautioned to order only from those firms. Furthermore, special reports, supplemental employment reports, joint reports, commercial credit reports, and special services are not authorized.

(b) Credit reports may be ordered under the provisions of this Subpart only by FmHA employees.

(c) Regardless of the amount of the fee charged the Government, the cost charged the applicant for each credit report is as indicated in paragraph (a) in the "General" section of Exhibit A. (This figure is not to be confused with the schedule of charges of the credit report contractors appearing in the Exhibit A).

(d) The Finance Office will furnish each County, District and State Office with address rosters of the Credit Bureau Reports, Inc. (CBR) affiliate bureaus serving this area. Addresses of other contractors may be requested from the Director, Directives and Administrative Services Division, National Office, when needed.

(e) The County Supervisor may call the Finance Office (FTS 279–4423, or for non-FTS offices, commercial 314–425–4423) for the addresses of credit bureaus serving the area of residence of out-of-state loan applicants.

(f) Whenever Exhibit A does not list a contractor for a particular town or area, the County Supervisor may request, through the State Director, that the National Office (Attn: Directives and Administrative Services Division) establish a contract source for that town or area. Meanwhile, § 1910.4 (a)(1), (2), (4), (5), (6) and (7) of Subpart A of this Part will be followed in conducting the credit investigation.

(g) Exhibit B is a sample format of an order ticket which is printed by, and at the expense of, the contractor and supplied to County Offices. CBR order ticket forms are supplied to the County Office through the Finance Office. If additional CBR order tickets are needed, they may be requisitioned from the Finance Office in accordance with § 2024.103 of FmHA Instruction 2024–C (available in any FmHA office). Order ticket forms of firms other than CBR may be ordered from the nearest local office of the contractor. Order tickets of one contractor must not be used to order credit reports from another contractor. Only FmHA employees may use these order tickets. They will not be supplied to brokers, lenders, packagers, etc.

(h) Exhibits C, D and E (available in any FmHA Office), show the type of credit information that contractors must furnish on manual and computerized forms.

§ 1901.53 Policy.

(a) A credit report fee as indicated in paragraph (a) in the "General" section of Exhibit A of this Subpart will be charged the loan applicant for every credit report ordered. For example, if one credit report is ordered, the amount shown will be charged. However, if two credit reports are ordered (e.g., for the applicant and the coapplicant), the amount shown times 2, will be the total amount charged the applicant, and so on.

(b) When credit reports are needed (except for Section 504 Rural Housing loans), the total amount charged will be collected (preferably, in money order or check) from the loan applicant before credit reports are ordered, and:

(1) The County Supervisor will acknowledge receipt of the credit report fee by using Form FmHA 451–1, "Acknowledgment of Cash Payment" (available in any FmHA office). Collections for credit report fees will be submitted to the Finance Office on Form FmHA 451–2, "Schedule of Remittances," as miscellaneous changes, Code–2.

(2) Additional credit reports ordered to update the applicant's credit will be handled as prescribed in paragraphs (a) and (b) of this section.

(3) If a credit report fee was collected and a credit report will not be ordered, the County Supervisor will submit to the Finance Office, Attention 360–D1, a memorandum, subject, "Request for Refund, Loan Applicant(s) ——, ——, ——," accompanied by copies of Form FmHA 452–2 for such collections.

(c) No credit reports will be ordered in servicing loans. An investigation needed to complete the action, will be conducted by the County Supervisor.

(d) When credit reports are ordered for Section 504 RH loan applicants, the total amount charged will be included as part of the FmHA loan, and:

(1) The total amount charged will be entered and identified as "credit report(s)" in line item number "25" of Form FmHA 444–2, "Single Family Housing Fund Analysis."

(2) Form FmHA 1940–1, "Request for Obligation of Funds," will be coded "1" in the "Credit Report" block. Block 22 (Amount of Loan), will be increased by the total amount charged for credit reports. CAUTION: If the fee charged for the credit report(s) will cause the maximum $7,500 authorized for this type of loan to be exceeded, the credit report(s) will not be ordered and the credit investigation will be completed as prescribed in § 1910.4 (a)(1), (2), (4), (5), (6), and (7) of Subpart A of this Part.

(3) Additional credit reports ordered to update the applicant's credit, will be handled as prescribed in paragraph (d) of this section and correction, if needed, made in space "26" of Form FmHA 440–57, "Acknowledgement of Obligated Funds Check Request."

(4) The Finance Office will deduct from the loan check, the total amount charged for credit reports before the loan check is issued.

(5) If a credit report(s) is ordered and received and the loan will not be closed, FmHA will bear the cost of the report(s).

(e) The County Supervisor will determine the need and be responsible for ordering credit reports. These will be obtained whenever the credit information from a credit report would be helpful or needed to determine the eligibility of a loan applicant and when it appears that the credit report will not have to be updated before loan closing. Credit reports will not be ordered when:

(1) The information available indicates that a loan will not be made. In this respect, County Supervisors must train their staffs in the proper evaluation of loan applications to preclude the ordering of unnecessary credit reports.

(2) An applicant resides in a remote area and the credit bureau would not be able to provide sufficient or conclusive credit information. However, County Supervisors are cautioned that information relative to judgments, garnishment of wages, foreclosures and bankruptcies can better be obtained from credit reports as opposed to searches conducted by the County Supervisor.

(3) The applicant's needs can be met with a loan not exceeding $7,500 and the County Supervisor determines on the basis of the information available that the applicant does not have debts other than those reported. However, credit reports will be ordered if they are

essential to complete the credit investigation.

(f) "Individual" credit reports will be ordered as opposed to the more costly "joint" reports, which are no longer authorized.

§ 1910.54 Definitions.

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

(a) "Antecedent Report" is a previous residence report required when the minimum two year up-to-date credit coverage is not available in the bureau's reporting territory. The report contains information from another bureau located in an area outside of the area covered by the reporting bureau.

(b) "Applicant" also includes coapplicant(s), spouse, cosigner, each individual in an association, and general partner(s) in a partnership.

(c) "Basic report" is a report that does not include supplemental or antecedent information and which contains all credit and public record information available covering no less than a two-year period.

(d) "County Supervisor" also includes the County Supervisor's authorized representative and other authorized FmHA officials. The term also means Area Loan Specialist in Alaska.

(e) "Individual Report" is a report providing information on one person only. It may be supplemented by "antecedent and/or "supplemental credit reference" reports to provide all the information required by the two-year report period.

(f) "Joint Report" is a report providing information on both spouses (partners in marriage). This type of report is not authorized for FmHA.

(g) "Order ticket" (Exhibit B of this Subpart) is the form used for ordering a credit report.

(h) "Report period" is the two-year period before the date the credit report is prepared.

(i) "Repository" is an entity engaged in gathering, recording, and updating information relative to the credit history of individuals in an area. The area covered may encompass several towns, cities, counties, or parts of counties.

(j) "Special services" are any services which are not included in § 1910.54 (a), (c), (e), and (k) of this Subpart and which will result in additional cost.

(k) "Supplemental Credit Reference Report" is a report which is required when the applicant lives in the bureau's reporting area but, because of shopping patterns, credit references are located in another bureau's reporting area.

§ 1910.55 Contractor bureau requirements.

(a) Unless the contract states otherwise, the contractor must provide all credit and public record information available for the report period as defined in § 1910.54(h) of this Subpart.

(b) The contractor must provide all information specified in Exhibit C, D, or E, except that employment information need not be reported.

(c) The contractor must make appropriate certifications regarding check and/or source of public records and credit record history.

(d) The trade or credit history portion of the report must cover a minimum of two years brought up to date. Accounts must be rated to indicate past and current payment records and original amount, monthly installment, and unpaid balance of the debt. All additional available account information must be furnished. The contractor must clear bank, savings and loan, and credit union accounts and clear all local references indicating the date the account was cleared. The contractor should contact the applicant to obtain any additional information necessary to provide a quality report.

(e) Public record information must be obtained by special check of public records or, as an equivalent, from accumulated and regularly filed records of a qualified legal reporting service. All items of public record information must be reported except that adverse items (e.g., bankruptcies that antedate the report by more than fourteen years; suits, judgments, paid tax liens, accounts placed for collection, records of arrest, indictments, convictions of crime, and any other adverse items which antedate the report by more than seven years) are to be excluded as provided under paragraph 605 of the Fair Credit Reporting Act. For purposes of these contracts all adverse items may be excluded which outdate the report by seven years.

(f) Reports which do not require antecedent information shall be delivered by the contractor within eight working days of receipt of the order or twelve working days when antecedent information is required.

§§ 1910.56–1910.58 [Reserved]

§ 1910.59 Type of credit report to be ordered.

Pursuant to the Equal Credit Opportunity Act (ECOA), credit bureaus will maintain credit information in three different forms on a married couple: individual accounts on each spouse, joint accounts covering both spouses, and undesignated accounts (those accounts not designated by the credit grantor as either individual or joint accounts). However, only "individual" reports as defined in § 1910.54(e) of this Subpart may be ordered by FmHA. If credit report information is needed on the spouse and others to complete the credit investigation, a separate "individual" report request which will be paid by the applicant, is prepared for each person as opposed to the more costly "joint" or "special services" reports. Exhibit B, of this Subpart will be used for this purpose.

§ 1910.60 Processing order tickets.

Order tickets will be processed as follows:

(a) An original and 3 copies of Exhibit B of this Subpart will be prepared, except that an extra copy will be furnished when requested by a credit bureau. A copy will be kept in the applicant's file. The original and the remaining copies will be sent to the credit bureau serving the place of residence of the applicant.

(b) All appropriate entries on the order ticket will be completed. Extra entries for "special services," which would result in additional costs, are prohibited.

(c) The "former name," "previous residence address" and "how long residence" blocks must be completed. If an applicant has resided less than two years at the present address, the previous address block must be completed so that the contractor will know where to obtain an antecedent report.

(d) USDA/FmHA should appear on the order ticket with State and County Office Code, applicant's social security number, if available, and loan fund code. Loan fund codes are listed in Exhibit A of FmHA Instruction 450.1 (available in any FmHA Office). If an applicant is to receive more than one type of loan, use the loan fund code for the largest loan.

§ 1910.61 Invoicing and payments.

(a) Optional procedure #1 (Applicable to Credit Bureau Reports, Inc., only).

(1) The contracting bureau returns a copy of the order ticket (with billing block filled in) to the FmHA office with each credit report, and sends a monthly statement to the Finance Office with one copy of each order ticket attached.

(2) The County Supervisor reviews the report, verifies the billing data against the schedule of charges in Exhibit A of this Subpart, and proceeds as follows:

(i) If the report is acceptable and the billing data correct, the "Receipt" certification block on the order ticket is

completed and the order ticket is sent to the Finance Office.

(ii) If the report is not acceptable and/or the billing data is incorrect, the County Supervisor will contact the reporting bureau for corrections. Regardless of the results of the contact, the County Supervisor will submit immediately to the Finance Office (Attn.: FC–360–D1), for flagging action on payment, the following:

(A) A memorandum stating the reasons for not accepting the credit report and/or for changing the billing data on the order ticket,

(B) A copy of the order ticket with corrected billing data, and

(C) A copy of the credit report.

(3) The Finance Office matches order tickets received from the contracting bureau against those verified and received from the FmHA office, and makes payment accordingly.

(b) Optional procedure #2 (Applicable to contracting bureau other than Credit Bureau Reports, Inc.).

(1) Contractor sends a monthly invoice to the FmHA office with a copy of the order ticket attached to support each credit report charge.

(2) FmHA personnel verify the billing data against the schedule of charges shown in Exhibit A of this Subpart or in other credit report contracts authorized by the Contracting Officer, FmHA. If acceptable, a stamp or handwritten certification and signature is placed on the invoice to the effect that services were satisfactorily rendered and that it is approved for payment. The invoice with attachments is then sent to the Finance Office. The Finance Office makes payment to the contracting bureau.

(c) In all cases:

(1) When a credit report is received without an order ticket attached, the County Supervisor will contact the reporting bureau to ensure that FmHA is not being billed for credit reports ordered by parties other than FmHA. Such reports are not encouraged as they frequently result in extra expenses to the loan applicant and extra work for the County Supervisor in verifying the authenticity of the information in the report.

(2) If a report is not acceptable and/or the billing data is incorrect, the County Supervisor will contact the reporting bureau for corrections. If no agreement is reached, the County Supervisor will submit to the National Office, Directives and Administrative Services Division, for review and final determination, the items listed in paragraph (a)(2)(ii) of this Section. After reviewing that case, the National Office authorizes the Finance Office (by memorandum) to make, readjust, or deny payment to the contracting bureau. A copy of the memorandum is also sent to the FmHA office involved. Order tickets received in the Finance Office which do not match those received from the contracting bureau, will be returned to the responsible FmHA field office for reconciliation and compliance with the procedures set forth in this paragraph.

(3) The credit report approval date and cost is posted to the order ticket copy kept in the applicant's file.

§ 1910.62 Loan documentation procedure.

(a) The credit report fees collected will be promptly remitted to the Finance Office in accordance with paragraph (b) of this section. When Form FmHA 1940–41, "Truth in Lending Disclosure Statement," Form FmHA 440–58, "Estimate of Settlement Costs," or Form FmHA 1940–59, "Settlement Statement," is required, the cost of the credit report will be entered on these forms in accordance with instructions contained in the appropriate Forms Manual Inserts (FMI) for the forms.

(b) Any funds collected as payment for credit reports will be handled in accordance with FmHA Instruction 1951–B and the FMI for Form FmHA 451–2 (available in any FmHA office). The loan fund code should appear on the "Schedule of Remittances." Such payments will not reduce the amount due on the borrower's loan indebtedness.

§ 1910.63 Unsatisfactory contractor performance.

The County Supervisor will monitor credit reports received for promptness, completeness, and adequacy and discuss any deficiencies found with the reporting bureau for the correction of such deficiencies. In the case of recurring deficiencies, the County Supervisor will request the State Director to contact the bureau's parent office in an attempt to improve the bureau's performance. If adequate response is not obtained, the State Director will report the problem to the Contracting Officer in the Directives and Administrative Services Division of the National Office.

§ 1910.64 Confidential handling of credit reports.

The confidential information furnished to FmHA in a credit report shall be used as an aid in conducting business and is based on information obtained by the credit bureau from sources deemed reliable. Disclosures of information contained in the credit report to the consumer will be made by the credit bureau making the report as required by the Fair Credit Reporting Act, Public Law 91–508, except that FmHA must make credit reports available to the subject of the report in response to a request made under the Privacy Act of 1974. Requests from credit parties, including credit bureaus, concerning information about FmHA borrowers or applicants will be handled in accordance with the provisions of FmHA Instruction 2018–F (available in any FmHA office).

§§ 1910.65–1910.100 [Reserved]

BILLING CODE 3410–07–M

FmHA Instruction 1910-B
Exhibit-B

SAMPLE FORMAT
USDA-FmHA REQUEST FOR FACTUAL DATA REPORT
(Order Ticket for Individual Report)

Date Requested: _____, 19__ Loan Fund Code _____

Contractor's Name and Address	Mail Report in Duplicate to:

Case No.: _____ Social Security No.: ___ __ _____

Subject's Name: _____
(Surname) (Given Name) (Middle Initial)

Subject's Former Name: _____
(Surname) (Given Name) (Middle Initial)

Subject's Residence Address: _____
(House No., Street, R.F.D.) (City)

_____
(State) (ZIP Code) (How Long)

Subject's Previous Residence Address: _____
(House No., Street, R.F.D.) (City)

_____
(State) (ZIP Code) (How Long)

Age or Date of Birth: _____ Subject's Occupation _____

Employer's Name and Address: _____

Spouse's Name _____

ALL CREDIT AND TRADE REFERENCES GIVEN BY SUBJECT

Name of Firm	Account No.	Address	City	State

By requesting this report, it is agreed that the information received will be for our use and will not be divulged to anyone other than the named USDA-Farmers Home Administration, except as required by Public Laws 91-508, 93-579, and 94-239, and the contract.

BILLING CODE 3410-07-C

PART 1944—HOUSING

Subpart A—Section 502 Rural Housing Loan Policies, Procedures and Authorizations

§ 1944.3 [Amended]

3. Section 1944.3(b)(9) is amended by removing the words "credit reports."

4. Section 1944.26 is amended by revising paragraph (c)(1) to read as follows:

§ 1944.26 Application processing.

* * * * *

(c) * * *

(1) Selected applicants will be notified that they have not more than 30 days in which to submit the necessary material (including the amount the applicant must pay to FmHA for each credit report needed to complete the credit investigation) to continue the processing of the loan. When credit reports will be ordered, the notification must also indicate that the credit report fee paid by the applicant is non-refundable after credit reports have been ordered. The amount charged the applicant for each credit report is as prescribed in paragraph (a) in the "General" section of Exhibit A (available in any FmHA office) of Subpart B of Part 1910 of this Chapter.

* * * * *

Subpart J—Section 504 Rural Housing Loans and Grants

5. Section 1944.456 is amended by revising paragraph (i) to read as follows:

§ 1944.456 Loan and grant purposes.

* * * * *

(i) Payment of incidental expenses such as fees for credit reports, surveys, title clearance, loan closing, and architectural or other technical services. When a credit report(s) is essential to complete the credit investigation, a credit report fee as prescribed in paragraph (a) in the "General" section of Exhibit A (available in any FmHA office) of Subpart B of Part 1910 of this Chapter, will be included in the FmHA loan for each credit report ordered. The amount included in the loan check for credit reports, will be deducted from the loan check at the Finance Office before the first loan check is issued. If a credit report is ordered and received and the loan will not be closed, FmHA will bear the cost of the report.

* * * * *

(7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; Sec. 10, Pub. L. 93-357, 88 Stat. 392; delegation of authority by the Under Secretary for Rual Development, 7 CFR 2.70; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23)

Dated: January 28, 1983.

Charles W. Shuman,

Administrator, Farmers Home Administration.

[FR Doc. 83-5164 Filed 3-2-83; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 82-AGL-28]

Proposed Alteration of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action amends the Circleville, Ohio, transition area description by deleting the Lockborne AFB exclusion currently contained in the published description.

The intended effect of this action is to insure segregation of the aircraft using approach procedures in instrument weather conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATE: Comments must be received on or before April 7, 1983.

ADDRESS: Send comments on the proposal in triplicate to FAA Office of Regional Counsel, AGL-7, Attention: Rules Docket Clerk, Docket No. 82-AGL-28, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official 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.

An informal docket will also be available for examination during normal business hours in the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: This action amends the Circleville, Ohio, transition area description by deleting all reference to Lockborne AFB as currently referenced in the published Circleville, Ohio, description. The exclusion is no longer necessary. The Lockborne AFB has been renamed Rickenbacker AFB and airspace associated with Rickenbacker AFB will be contained in a later docket in connection with a revised Columbus, Ohio, transition area description. (The Columbus, Ohio, description also references Lockborne AFB and also requires revision.) This action amends only the Circleville, Ohio, transition area description.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 82-AGL-28." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

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, SW., 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 NPRM's 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§ 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area airspace near Circleville, Ohio.

Section 71.181 of Part 71 of the Federal Aviation Regulations was published in Advisory Circular AC 70–3A dated January 3, 1983.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend§ 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Circleville, Ohio

That airspace extending upward from 700 feet above the surface within a 12-mile radius of the Pickaway County Memorial Airport (latitude 39°31'00"N., longitude 82°58'55"W.)

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65.)

Note.—The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It is certified that this: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Des Plaines, Illinois, on February 16, 1983.

Monte R. Belger,

Acting Director, Great Lakes Region.

[FR Doc. 83-5196 Filed 3-2-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 83-ASO-3]

Proposed Amendment to Restricted Area R-3004, Fort Gordon, GA

Correction

In FR Doc. 83-3700 beginning on page 6991 in the issue of Thursday, February 17, 1983, make the following correction.

In column three, paragraph three, line six should read "82°12'15" W.; to lat. 33°22'53" N., long.".

BILLING CODE 1505-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 8978]

Borden, Inc.; Proposed Order Modification With Statement To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Agreed Order In Settlement of Judicial Review Proceedings.

SUMMARY: In settlement of judicial review proceedings resulting from the entry of a Commission cease and desist order after full adjudicatory proceedings, this agreed modification, accepted subject to final Commission approval, would require a producer of processed lemon juice to refrain, for a period of seven years, from pricing its product below its variable costs for the product in any sales district. "Variable costs" would be defined as all costs which the firm could have chosen not to incur during the relevant time period. The relevant time period would consist of all consecutive fiscal quarters in which the firm's prices failed to cover it total costs, and thus would vary with the duration of any price reduction. The firm would also be required to file annual compliance reports detailing its market share, costs and net revenues. The proposed order would take the place of an order previously entered by the Commission, which was affirmed by a court of appeals in a judgment that is the subject of a pending petition for a write of certiorari in the Supreme Court. *In the Matter of Borden, Inc.*, 92 F.T.C. 669, 778, 832 (1978) affirmed *Borden, Inc. v. FTC*, 674 F. 2d 498 (1982), petition for a writ of certiorari filed August 25, 1982, Sup. Ct. No. 82–328.

DATE: Comments must be received on or before April 4, 1983.

ADDRESS: Comments should be directed to: FTC/S, Office of the Secretary, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/CD, Barbara A. Clark, Washington, D.C. 20580, (202) 634–4793.

SUPPLEMENTARY INFORMATION: Pursuant to Section 5(c)–(k) of the Federal Trade Commission Act, 38 Stat. 719–721, as amended, 15 U.S.C. 45(c)–(k) and an order of the Commission entered on February 25, 1983 notice is hereby given that the following agreed order to cease and desist, having been accepted by the Commission in settlement of litigation, subject to final approval, has, in the exercise of the Commission's discretion, been placed on the public record for a period of thirty (30) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

Proposed Order

The Commission having considered the proposal of Borden, Inc., to terminate the pending proceedings for judicial review of the order to cease and desist entered herein on November 7, 1978; and the Commission and Borden having agreed upon the provisions of a final order modifying the order of November 7; accordingly,

It is hereby ordered, that the Commission's Order in this matter, dated November 7, 1978, is hereby revised to read as follows:

Order

It is ordered, that Respondent, in connection with the production, marketing and sale of processed lemon juice in or affecting commerce, as "commerce" is defined in the Federal Trade Commission act, shall forthwith cease and desist from:

Selling ReaLemon brand reconstituted lemon juice at a price or prices so that Respondent's net revenue during any fiscal quarter for any sales district is below Respondent's variable cost of the product sold in that quarter and sales district.

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

A. "Total cost" means the sum of all costs properly attributable to sales made by Respondent of ReaLemon brand reconstituted lemon juice during the relevant fiscal quarter in the relevant sales district.

1. "Total cost," and its various elements, shall be calculated in the same manner as reflected in Respondent's accounting records as of January 1, 1983. With respect to elements of cost incurred over

geographic markets that do not coincide with Respondent's sales districts, such elements of cost shall, be allocated to a sales district on the basis of unit volume sold during the relevant quarter in the relevant sales district, or on the basis of identifiable factors that make allocation to a particular sales district proper, or on the basis of a combination of these two approaches. Similarly, with respect to allocations of elements of cost which, as of January 1, 1983, were made only annually, such elements of cost shall be apportioned to the relevant quarter on the basis of the unit volume sold during that quarter in the relevant sales district, or on the basis of identifiable factors that make allocation to a particular quarter proper, or on the basis of a combination of the these two approaches. The methods of allocation chosen shall be uniform for all sales districts and for all quarters for which an annual compliance report must be submitted. The methods shall not be changed without prior notice to the Commission.

2. The cost of spot television advertising purchased for a station in a particular sales district shall be allocated to the sales district in which the station is located. The costs of all television advertising other than spot television shall be allocated to the relevant sales district for the relevant time period on the basis of the volume of unit sales in that district.

B. "Variable cost" means the sum of all cost included within total costs which Respondent could have avoided during the relevant time period.

1. A cost, whether an element of cost or a portion of an element of cost, shall be considered as one which Respondent could have avoided if, during any part of the relevant time period, Respondent could have chosen not to incur that cost consistent with prudent business practices, and without violating contractual or other legal commitments.

2. The relevant time period, for any fiscal quarter and sales district in which Respondent's net revenue in that quarter and sales district was below its total cost, shall be the period composed of the quarter and any consecutive preceding quarters in which Respondent's net revenue in that sales district was also below its total cost. The relevant time period for any other fiscal quarter and sales district shall be the period composed of that quarter.

C. "Net revenue" means gross revenue to Respondent resulting from sales of ReaLemon brand reconstituted lemon juice, net of returns and allowances, cash discounts, and trade promotions. "Net revenue" and its various elements shall be calculated in the same manner as reflected in Respondent's accounting records as of January 1, 1983.

D. "Fiscal quarter" means the period which coincides with Respondent's standard accounting quarters.

E. "Sales district" means each of the geographic subdivisions of the country, designated, identified and used as such by Respondent in its sales and accounting records (currently twenty-two (22)). If the sales district are changed, the Commission will be notified.

F. "Trade promotions" means discounts or other financial incentives to the grocer or wholesaler, such as buying allowances or retailer coupons. "Trade promotions" (regardless of the manner in which that term is used by Borden in its accounting records) shall not be considered as a "cost" and shall be considered a reduction in net revenue.

G. "Unit" means one case of 12 bottles of ReaLemon brand reconstituted lemon juice in the 32 ounce size, or an equivalent volume of ReaLemon brand reconstituted lemon juice bottled in different sizes.

H. "Respondent" means Borden, Inc., its successors and assigns, officers, agents, representatives, and employees, directly or indirectly, or through any corporation, subsidiary, affiliate, division, or other device.

It is further ordered, that this Order shall remain in effect for seven years from the date it becomes final. During that period, Respondent shall file annual compliance reports with the Commission within 60 days of the end of its fiscal year. Each annual report shall include, for each sales district in which Respondent sold ReaLemon brand reconstituted lemon juice: (a) Copies of A. C. Nielsen market survey reports, or substantially similar market survey reports, detailing the quarterly and annual market shares of ReaLemon brand reconstituted lemon juice and the quarterly and annual market shares of its branded and private label competitors, (b) an accounting quarterly of its total costs for ReaLemon brand reconstituted lemon juice, and (c) an accounting quarterly of its net revenue from sales of ReaLemon brand reconstituted lemon juice.

Each annual report shall also include, for each sales district and fiscal quarter in which Respondent's net revenue for such sales district and fiscal quarter was below its total cost, proof that Respondent's net revenue in that district and quarter exceeded Respondent's variable costs of the product sold in that district and quarter.

Statement of the Commission on the Proposed Order Modification in Borden, Inc., To Aid Public Comment

The Federal Trade Commission has provisionally determined to accept an agreement from Borden, Inc. to settle the pending proceedings for judicial review of a previous Commission order.

The proposed order modification has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this time will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

In its opinion and final order in this case, the Commission found that Borden, Inc., had violated Section 2 of the Sherman Act, 15 U.S.C. 2, and consequently, Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by monopolizing the market for processed lemon juice in the United States.[1] *In the Matter of Borden, Inc.*, 92 F.T.C. 669, 778, 832 (1978). On respondent's petition for review, the United States Court of Appeals for the Sixth Circuit affirmed and enforced the Commission's order. *Borden, Inc.* v. *FTC*, 674 F. 2d 498 (1982). On August 25, 1982, Borden filed a petition for a writ of certiorari in the Supreme Court of the United States seeking review of the court of appeals judgment. Sup. Ct. No. 82-328. That petition is still pending. After it was filed, the Commission and respondent undertook negotiations looking to a mutually acceptable disposition of the important questions of competitive policy raised in this matter. That process has culminated in the proposed order attached hereto, which the Commission is contemplating entering as soon as it reacquires jurisdiction over this case.[2] To that end, the Commission

[1] The Commission decided this case solely under the standards of monopolization developed under Section 2 of the Sherman Act, as comprehended within Section 5 of the Federal Trade Commission Act. It expressly noted that it did not address other possible grounds for liability under Section 5 of the FTC act. 92 F.T.C. at 781, n.4.

[2] The Commission has no jurisdiction to change its prior order so long as the record in the case is before the courts on judicial review. The Commission's power to modify or set aside its order in whole or in part continues only "until the record in the proceeding has been filed in a court of appeals of the United States." 15 U.S.C. 45(b), (c). Thereafter, the Commission does not reacquire jurisdiction to alter, modify or set aside its order until all proceedings on judicial review are completed, including any proceedings on petition for a writ of certiorari in the Supreme Court. 15 U.S.C. 45(g). The Commission's invitation and

is making the text of the proposed order available for public comment for 30 days.[3]

The Commission has determined to settle the pending litigation that resulted from its decision and order of November 7, 1978 because its prior decision herein does not set forth a satisfactory, cost-based standard for predation under Section 2 of the Sherman Act and Section 5 of the Federal Trade Commission Act. Continue defense of that decision in the pending proceeding before the Supreme Court would therefore be inconsistent with the Commission's present view of the matter. Since the court of appeals' judgment was based on grounds to which the Commission no longer adheres, the Commission plans to request the Solicitor General to advise the Supreme Court that the petition for a writ of certiorari should be granted, and that the decision of the court of appeals should be vacated with instructions to remand the case to the Commission. Upon remand, the Commission proposes to enter the attached order in settlement of the litigation, and of the Commission's complaint against respondent.

The Commission is of the view that the standard of conduct it applied to Borden's competitive behavior is inconsistent with the purposes of Section 2 of the Sherman Act and Section 5 of the Federal Trade Commission Act because it may discourage dominant firms from vigorously competing. Subsequent to its ruling in this case, the Commission held in *E. I. du Pont de Nemours & Co.*, 96 F.T.C. 653, 750–751 (1980):

> Antitrust policy wisely disfavors monopoly, but it also seeks to promote vigorous competitive behavior. Indeed, the essence of the competitive process is to induce firms to become more efficient and to pass the benefits of the efficiency along to consumers. That process would be ill-served by using antitrust to block hard, aggressive competition that is solidly based on efficiencies and growth opportunities, even if monopoly is a possible result. Such a view, we believe, is entirely consistent with the "superior skill, foresight and industry" exception in [*United States* v. *Aluminum Company of America*, 148 F. 2d (C.A. 2 1948)] and subsequent cases, for those decisions clearly indicate that monopoly may be lawfully created by superior competitive ability.

That standard informs the Commission's present view of this case.

A. Product Differentiation

The Commission found that Borden had "manipulated"—*i.e.*, reduced— the premium price that consumer preference had conferred upon its brand, in those areas of the national market in which it faced direct competition. In short, Borden reduced prices in order to defend its market share in response to a competitive challenge. The Commission found Borden's price reductions to be unlawful in part because, in the Commission's view, the ReaLemon trademark and the premium price it commanded reflected a form of "spurious product differentiation." 92 F.T.C. at 805. The Commission believed that processed lemon juices are not substantially different, that (apart from advertising cost advantages) producers of processed lemon juice are equally efficient, and that consumer preferences for the ReaLemon brand constituted a significant barrier to entry protecting Borden's monopoly position. 92 F.T.C. at 800, 695, 721.

The Commission recognizes that brand preferences and advertising costs may affect the costs of entry. The conditions of entry, in turn, are one of several factors that may affect the appropriate standard for determining whether any given price reduction is predatory—although, as we discuss blow, experts are far from agreed on the question of what sort of standard to use or how such effects ought to be taken into account. Compare, e.g., P. Joskow & A. Klevorick, *A Framework for Analyzing Predatory Pricing Policy*, 89 *Yale L. J.* 213, 249 (1979), with Y. Brozen, *Concentration and Public Policy* 216–65 (1982). Among the factors that have been suggested as relevant to this inquiry are the extent of any differences between the promotional costs faced by later entrants and those faced by the dominant firm when it originally established its brand (see R. Schmalansee, *Product Differentiation Advantages of Pioneering Brands*, 72 *Am. Econ. Rev.* 349 (1982)); and the extent to which promotional expenditures represent sunk costs which could not be recovered by an unsuccessful entrant (cf. W. Baumol & R. Willing, *Fixed Costs, Sunk Costs, Entry Barriers, and Sustainability of Monopoly*, 96 *Q.J. Econ.* 405, 418–19 (1981)).

However, the Commission did not analyze brand preferences and promotional costs as neutral factors affecting the conditions of entry, and thereby affecting the appropriate predation standard.[4] Instead, the Commission apparently viewed product differentiation as something pernicious in and of itself, which rendered suspect *any* attempt by Borden to respond to Golden Crown's competition by reducing price. In the commission's view, the fact that Borden's price cuts were made from the position of strength reflected by its price premium was itself enough to remove those price cuts from the category of "ordinary marketing methods available to all," and turn them instead into illegal predatory pricing. 92 F.T.C. at 803.

This approach not only unduly limits the ability of an established brand to compete by reducing prices, it also misperceives the nature of product differentiation and of the price premiums reflecting consumer familiarity with or acceptance of an established brand. While such premiums may indeed affect the conditions of entry, they also serve important competitive functions. An integral part of the competitive process—i.e., the process by which consumers select the mix of goods and services they most prefer—is the cost to consumers of becoming informed about a brand's advantages and availability. An established brand is one which has invested capital to reduce those costs, having acquainted most consumers with the product and its quality. The premium accruing to a brand name is thus a form of good will, whose value can be measured by the strength of consumers' preference for that brand. See, e.g., T. Nagle, *Do Advertising-Profitability Studies Really Show that Advertising Creates a Barrier to Entry?*, 24 *J. L. & Econ.* 333 (1981). Federal statutory policy with respect to trademarks expressly encourages and protects this form of good will. 15 U.S.C. 1167.

In this case, consumers were willing to pay a premium price in reliance upon Borden's familiar and successfully advertised trademark. That willingness reflected a marketplace judgment about interbrand competition, which "is the primary concern of antitrust law." *Continental TV* v. *GTE Sylvania*, 433 U.S. 36, 52, n.14 (1977). From an economic standpoint, cost efficiencies achieved with respect to the image value of a successfully advertised product are in many ways similar to cost efficiencies achieved in any other

consideration of public comment on the proposed settlement is not inconsistent with the court's exclusive jurisdiction because such action affects only the Commission's position in the litigation.

[3] A public comment period is not required by the Commission's rules, as this is neither a consent agreement terminating an administrative complaint pursuant to Rule 3.75 nor a modification of a final order pursuant to Rule 2.51. However, because of the importance of the issues involved in this matter, the Commission has chosen to seek public comment voluntarily.

[4] Thus, while Commissioner Pitofsky believed that entry conditions justified application of an average total cost rather than an average variable cost standard, he had to concur separately to express that view. 92. F.T.C. at 817–832.

aspect of its production and distribution. Professor Scherer, in the passage adopted by the Commission (92 F.T.C. at 804), conceded as much.[5]

The Commission's decision did not adequately weigh the competitive advantages of Borden's product differentiation and antitrust law's promotion of interbrand competition. Instead, it assumed that consumer preference for Borden necessarily constituted an *anticompetitive* barrier protecting Borden's monopoly position from erosion by new entrants. Moreover, it therefore barred Borden from reducing its prices in competetive markets until its monopoly position had disappeared, *i.e.*, until enough consumers were buying competing brands to neutralize Borden's brand advantage. 92 F.T.C. 805–809, 832–833. This indefinite restraint on price competition, as Commissioner Clanton observed, "threatens to prolong unduly the interval over which consumers must pay higher prices and during which less efficient firms are sheltered from competition." 92 F.T.C. at 814. Because the Commission's analysis of Borden's brand advantage appears to be inconsistent with the purposes of the antitrust laws to promote vigorous competition, as recognized in its *du Pont* decision, the Commission can no longer defend this aspect of its opinion.

B. Geographic Price Differentiation

The Commission also considers the treatment of geographic price discrimination in its prior opinion to be unsound. The opinion recognized (92 F.T.C. 804, n.38*) that "price discrimination among different geographic markets does not of itself constitute a violation of Section 2 of the Sherman Act or Section 5 of the FTC Act." The fact that Borden may have charged lower prices than elsewhere to retailers in areas where it faced competition could not produce competitive injury to those retailers, or to Borden's customers located outside those markets, because the former do not compete with the latter. Nor can such price differences have caused any injury to competing producers of lemon juice within those markets, at least absent proof that Borden was subsidizing its losses in competitive markets with its profits in monopoly markets. Although the Commission stated in its opinion that Borden in part subsidized its price cuts with continued monopoly pricing elsewhere 92 F.T.C. at 802, as Judge Kennedy observed (674 F. 2d at 519), the Commission made no specific finding to support its statement; it presumed what had not been proved.

The only effect of Borden's geographic price differences was to confront Borden's competitors with prices lower than Borden charged in markets where they did not compete. Any losses they suffered, therefore, resulted not from "discrimination," but from the absolute level of Borden's prices in the markets where they actualy competed. When a dominant firm like Borden, that operates nationally, is threatened with loss of market share by the aggressive price rivalry of competitors, common sense and sound antitrust policy should recognize, as did Commissioners Pitofsky and Clanton, that the firm's local price reductions can be "a wholesome part of the competitive process" (92 F.T.C. at 818–822). Otherwise such firms would be required to maintain uniform monopoly prices nationwise in order to protect competitors, a paradoxical and anticompetitive result. Thus, in the Commission's present view, only if Borden's responsive pricing in locally competitive markets had been below lawfully permissible cost levels, would there have been a basis for finding unlawful monopolization.[6]

C. Respondent's Intent

The Commission's opinion condemned Borden's "pricing very close to average variable cost" (92 F.T.C. 804) as "exclusionary in intent and effect" *(id.)* and therefore unlawful because of Borden's monopoly market share. See *United States* v. *Griffith*, 334 U.S. 100, 107 (1948); *American Tobacco Co.* v. *United States*, 328 U.S. 781, 809, 811 814 (1946); *United States* v. *Grinnell Corp.*, 384 U.S. 563 (1966). This condemnation, however, is merely a conclusory characterization. Such pricing should be legally "exclusionary" only if it is at sub-cost levels that Section 2 condemns as predatory. Borden's intent to compete in defense of its market share was to be expected, and, not surprisingly, was clearly shown by its marketing plans. In *du Pont*, however, (96 F.T.C. at 727) the Commission held that efforts to win every sale are not enough to evidence an intent to exclude in the sense condemned by *Griffith*, *American Tobacco Co.* and *Grinnell*. The line between "intent to exclude" and "intent to acquire market share" is too attenuated to be reliably drawn solely from documentary evidence of management's state-of-mind. Executives on the front line of the competitive struggle are notoriously prone to overzealous hyperbole, and "[a]fter all, competition consists of winning business from rivals." *MCI Communication Corporation, et al.* v. *American Telephone and Telegraph Company*, 1982–83 Trade Cases ¶ 65, 137 (7th Cir. January 12, 1983), at 71,374. See also Posner, *Antitrust Law: An Economic Perspective*, 189–190 (1976); Areeda, *1982 Supplement to Antitrust Law*, ¶ 714.2c. The proof of Borden's intent reflects these uncertainties. Thus, as Commissioner Clanton and Pitofsky noted (92 F.T.C. at 814, 818), it is actual pricing behavior, rather than executive plans, that constitute the best evidence as to whether or not Borden had an intent to exclude. Judge Kennedy was correct, therefore when she observed: "Borden surely meant to obtain as much of the reconstituted lemon juice market as it could, but that is the very essence of normal competition, a goal that we approve even for a monopolist" (Pet. App 35a). As noted in the *du Pont* case, *supra*, this is a view now shared by the Commission.

D. Comparison With Rival's Costs

The court of appeals read the Commission's opinion as condemning price manipulation by a monopolist if such conduct forces its *competitors* to price below *their own* average variable cost. 674 F. 2d at 515–516. This interpretation cannot be squared with the competitive process protected by the Sherman Act. That statute protects price competition because it is "the central nervous system of the economy." *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150, 224 n. 59 (1940). In effect, the court of appeals rule would require dominant firms to raise a price umbrella over competitors by maintaining minimum prices set with reference to their competitors' costs rather than their own.

Such a rule would turn the competitive process upside down by requiring dominant firms to maintain prices at monopoly levels, and by

[5] The Commission had relied upon Professor Scherer's observation that while an image advantage permitting the maintenance of a price premium is like a unit cost advantage, temporary price cutting that excludes "'producers handicapped only by an inferior brand image is socially undesirable.'" Scherer, *Predatory Pricing and the Sherman Act:* A Comment, 89 *Harv. L. Rev.* 869, 889 (1976). Professor Scherer's disapproval of image advantage exclusionary pricing, however, did not rest on economic factors. He observed in a sentence omitted from the passage quoted by the Commission that "[a]ssessing the social efficacy of such cases calls for strong non-economic value judgments." *Id.* The Commission agrees with Judge Kennedy's dissent in the court of appeals (674 F. 2d at 519, n.2) that social values unrelated to the protecting of competition are not a concern of tribunals acting under the Sherman Act.

[6] The Commission did not, in finding liability, invoke the Robinson-Patman Act or the reasoning of *Utah Pie Co.* v. *Continental Baking Co.*, 386 U.S. 685 (1967).

depriving consumers of the benefits of price competition. Price competition induces firms to maximize their profits by achieving cost efficiencies in production, marketing (including advertising), and distribution. Lower costs enable them to price at levels which will capture market share from their rivals. If firms must price with reference to their rivals' costs, the entire mechanism by which competitive pricing produces cost efficiency is destroyed. The reasons are explained in Commissioner Pitofsky's concurring opinion (92 F.T.C. at 821):

> A rule that prevents a monopolist from cutting price in response to new or augmented competition requires the monopolist to wait passively as small, perhaps less efficient arrivals take business away. During this time, consumers who continue to buy from the monopolist are paying higher prices because the law prevents the monopolist from pursuing its own best business interest by instituting price reductions that may be possible due to its efficiency. New entrants protected by a legally mandated umbrella price may themselves charge higher prices than would otherwise be the case—sufficiently below the monopolist price to take some of its business but sufficiently high to make supra-competitive profits themselves. Pursuing this scenario, the whole industry may become economically inefficient for the period of time the administered price umbrella is in effect. Finally, a legally mandated umbrella price generates extremely burdensome administrative problems in supervising the monopolist's prices policies.

The court of appeals' approval of umbrella pricing is directly attributable to the ambiguities in the Commission's opinion. The Commission expressly stated that "the ALJ did not find that 'ReaLemon' was sold below cost, nor do we * * *" (92 F.T.C. at 804).[7] On the other hand, the Commission also stated that "while it does not appear that ReaLemon was sold below average variable cost, at least not as a consistent course of conduct, it does appear that Borden sold below average total cost, when fixed costs are added in" (92 F.T.C. at 807). The Commission then indicated that to the extent Borden priced below average total cost, it violated the rule against this practice proposed by Professor Posner [8] (92 F.T.C. at 804, 805). But it never expressly adopted this rule as a basis of decision. As the court of appeals correctly observed (678 F. 2d at 515), the Commission made no choice between average variable and average total cost rules. Instead, it based its decision on a determination that "in any event, the effect of Borden's spurious product differentiation, making it necessary for competitors to sell considerably below ReaLemon, created a circumstance where even prices above marginal cost could, as the record indicates (I.D. 194–200), be predatory in the sense that even equally efficient competitors could be driven from the market." 92 F.T.C. at 805. Thus, the Commission's holding did not at all rest on a pricing standard based on the seller's costs, but instead, on the costs of the seller's competitors. The Commission's holding invited the umbrella pricing rule, based on "manipulation" of Borden's premium price, that was adopted by the court of appeals. 674 F. 2d 515–516.

In a subsequent decision, another panel of the Sixth Circuit, distinguishing the Borden case, has stated that "Borden was found to be predatorially pricing by setting its prices below average total cost." *Richter Concrete Corp. et al.* v. *Hilltop Concrete Corp., et al.*, 1982–83 Trade Cas. ¶ 65,003, at 70,591, n.6 (1982). The *Richter* panel, however, was of the view that mere proof of pricing below average total cost is insufficient to support an inference of predatory pricing. Instead, it read the *Borden* decision as condemning Borden's below cost pricing because of presence of other factors as well: Borden's geographic price discrimination; its 90% market share; the high entry barrier due to consumer preference to ReaLemon; and Borden's subjective intent to eliminate competition. *Id.* As we have shown above, however, the Commission's discussion of these additional factors, either jointly or severally, did not necessarily establish a predatory intent to foreclose competition within the meaning of Section 2. Thus, insofar as the court's affirmance of the Commission's decision might be read as resting upon Borden's pricing below average total cost, the Commission's prior opinion failed to set forth a reasoned explanation of why such pricing is improper.[9]

E. Conclusion

The proper standard for determining predatory pricing continues to be a subject of debate among economists and in the courts. See J. Brodley & G. Hay, *Predatory Pricing: Competing Economic Theories in the Evolution of Legal Standards*, 66 Cornell L. Rev. 738, 740 (1981). The courts that have considered the matter have looked to some measure of marginal or incremental costs because "when a price floor is set substantially *above* marginal or incremental costs, a price umbrella is created which allows less efficient rivals to remain in the market sheltered from full price competition." *MCI Communications Corp.* v. *American Telephone & Telegraph Co., supra*, at 71,378 *(emphasis in original). Accord, Northeastern Telephone Co.* v. *AT&T*, 651 F. 2d 76, 87–90. Most courts have used average variable costs as a factor against which to test an alleged predator's pricing levels, but almost always have expressed a willingness to consider other factors. *MCI Communications Corp., supra*, at 71,379–71,382. See *e.g., Chillicothe Sand & Gravel Co.* v. *Martin Marietta Corp.*, 615 F. 2d 427 (7th Cir. 1980). Some movement away from emphasis on short-run marginal costs has now appeared in the decisions. E.g., *MCI Communications Inc.* v. *American Telephone & Telegraph Co., supra; William Inglis & Sons Baking Co.* v. *ITT Continental Baking Co.*, 668 F. 2d 1014 (9th Cir. 1981), *cert. denied*, 103 S. Ct. 58 (1982). See Note, *Predatory Pricing: The Retreat from the AVC rule and the Search for a Practical Alternative*, 22 *B. C. L. Rev.* 467 (1981). Because all incremental costs vary in the long run, the debate has increasingly focused on what costs are to be attributed to a particular operation, and over what period of time. There has been a deep concern for the goal of developing practically administrable standards that can be used by courts, counsel and businessmen. See *Areeda, 1982 Supplement to Antitrust Law*, ¶¶710'–721'.

For the reasons given above, the Commission's discussion of these issues in its earlier opinion has not clarified them; nor has it articulated reasons consistent with sound antitrust policy for finding Borden liable for monopolization under Section 2 of the Sherman Act. The Commission therefore believes that the public interest would not be served by defending its earlier opinion in the Supreme Court. Instead, the Commission has provisionally agreed to a settlement of the litigation, and proposes to modify the order to prohibit Borden from pricing its ReaLemon product below its variable costs in any sales district. "Variable costs" are defined as all costs which Borden could have chosen not to incur

[7] The Commission apparently was referring to the absence of pricing below average variable cost. It agreed with the ALJ's findings in this respect (92 F.T.C. 753–754, and 800).

[8] R. Posner, Antitrust Law: An Economic Perspective 168–193 (1976).

[9] We note also that the Sixth Circuit's subsequent explanation of *Borden* in *Richter* appears to be more consistent with Commissioner Pitofsky's concurring opinion, than with the Commission's ruling. The Commission expressed no agreement with Commissioner Pitofsky's proposal that the average total cost test be adopted as the rule of decision in this case. His concurrence was apparently necessary because the majority was not adopting such a test.

during the relevant time period. The relevant time period will consist of all consecutive fiscal quarters in which Borden's prices failed to cover its total costs, and thus will vary with the duration of any challenged price reduction.

The Commission is not here deciding that the standard imposed by this order is necessarily the appropriate standard in all instances for finding a violation of the antitrust laws as an initial matter.[10] Nor are we deciding that this order is necessarily the exclusive model for the relief to be granted in future predatory pricing cases. The proposed order reflects the particular circumstances of this case, including the fact of a Commission decision based on grounds which can no longer be defended, and the difficulty of re-opening this now stale record or re-litigating the case under a more appropriate standard of liability. The Commission believes that this order represents an appropriate settlement of the pending litigation.

Benjamin I. Berman,

Acting Secretary.

Separate Statement of Commissioner David A. Clanton

While I join in the Commission's decision today, I feel compelled to correct some misimpressions about that decision that could be created by the separate statements of my fellow Commissioners. Focusing on the fact that the proposed settlement only prohibits Borden from pricing below variable costs, Commissioner Bailey, for example, states that the Commission is now endorsing this standard as the appropriate one for judging antitrust liability as an initial matter.

Clearly, that is not what the Commission has decided. In fact, I share many of Commissioner Bailey's concerns about adopting such a standard as the sole test of antitrust liability,* as would (I believe) my fellow Commissioners in the majority. This is why the Commission did not make such a decision, and why the final paragraph of the Commission's Statement explicity disclaims any such decision. Similarly, as that paragraph also makes abundantly clear, we are not deciding that the proposed settlement represents the appropriate remedial order to enter in every case where antitrust liability has already been found. While some in the private sector may wish to ignore those disclaimers, and persist in the belief that the Commission nevertheless has made such a decision, I can at least point out that they do so at their own peril.

[10] The order therefore should not be read as approving all future pricing activity by Borden which does not violate the order, or as attempting to immunize such pricing from any future antitrust challenge. The fact that certain conduct has not been prohibited by a particular Commission order does not mean that that conduct could not still violate the general prohibitions of the antitrust laws.

* See my concurring opinion in the original Borden decision, 92 F.T.C. at 813.

The reason the Commission is provisionally accepting the proposed settlement has to do with the alternatives available at this stage of the litigation. One option, asking that the case be remanded to the Commission, is impractical due to the staleness of the record and the difficulties and expense of a new trail. Another option, defending the Commission's original decision before the Supreme Court, would also require us to defend the Commission's original order. That order prohibited Borden from pricing "below cost" without even attempting to define which costs were included in the relevant standard—and, if that were not enough, added a similarly undefined prohibition against charging "unreasonably low prices." ** The third option, of course, is to accept the proposed settlement.

Thus, the comments that will be most useful to the Commission will be those that compare the proposed order with the possible alternatives, and make a recommendation on that basis. To assist in those comments, I have attached the order currently pending in this case as an appendix to this statement.

Current Order (92 F.T.C. at 832–33)

It is ordered, that Borden, Inc., and its successors and assigns, officers, agents, representatives and employees, directly or indirectly, or through any corporation, subsidiary, affiliate, division or other device, in connection with the production, marketing and sale of processed lemon juice in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

(1) Granting price reductions, directly or indirectly, which result in differrent net prices among Borden's ReaLemon customers, whether or not such customers compete in the same geographic area, which differences in price are not attributable to differing costs of manufacture, sale or delivery, and the effect of which is to hinder, restrain or eliminate competition between respondent Borden and its competitors in the production, marketing and sale of processed lemon juice;

(2) Selling ReaLemon lemon juice below its cost or at reasonably low prices, the effect of which is to hinder, restrain or eliminate competition between respondent Borden and its competitors in the production, marketing and sale of processed lemon juice;

(3) Granting promotional allowances or payments of any kind for customers' promotional services, the effect of which is to hinder, restrain or eliminate competition between respondent Borden and its competitors in the production, marketing and sale of processed lemon juice.

It is further ordered, that Borden, Inc., shall within sixty (60) days from the date this order becomes final, and every year thereafter for a period of ten (10) years, submit a detailed written report of its actions, plans and progress in complying with the provisions of this order, and fulfilling its objectives.

** To avoid creating the same misimpression I objected to earlier, I should point out that Commissioners Pertschuk's and Bailey's perference for defending the original order does *not* mean that they endorse the terms of that order as the appropriate standard for determining antitrust liability as an initial matter, or even as the appropriate model for relief in future predation cases where liability is found. The same understanding should be brought to the Commission's acceptance of the terms of the proposed settlement.

Dissenting Statement of Commissioner Pertschuk Concerning Proposed Order Modification in Borden, Inc., Docket No. 8978

February 25, 1983.

A majority of the Commission has voted to take the extraordinary step of weakening an order on the Commission's own initiative, after the order has been upheld by the court of appeals. The agreement adopted by the majority is a retreat to an order standard that is extremely lenient in allowing future predation by a monopolist, unduly ambiguous, and at odds with sound reasoning in recent court opinions. Moreover in order to implement this agreement, the Commission in essence is asking the Supreme Court—highly improperly in my view—to take cases that have long passed from an agency's jurisdiction and return them so that a new administration can re-decide them to apply its prevailing philosophy retroactively as well as prospectively. I cannot support, for proponents of any view, this approach to the administration of justice.

The majority seeks to modify the current *Borden* order in four principal ways: (1) changing the prohibition on below cost pricing to prohibit only pricing below "variable costs"; (2) dropping any prohibition of discriminatory pricing by geographic area; (3) dropping the provision on anticompetitive promotional allowances; and (4) including a 7 year sunset provision. What's left of the Commission's order is a cryptic provision prohibiting pricing below "variable costs," plus a novel definition of variable costs as those costs which are "avoidable, consistent with prudent business practices." This rubric actually changes the conventional concept of variable costs altogether and opens the door for Borden to construe it as narrowly as possible.

Before I discuss the legal and economic shortcomings as well as the administrative problems in the order, it is worthwhile to describe the steps which led to this "settlement." The Commission's order in *Borden* was affirmed by the court of appeals in early 1982. Borden petitioned for certiorari to the Supreme Court in August 1982, and the Commission's response was due to the Court in 30 days. Rather than oppose the petition as would have been the normal case, the Justice Department, on the Commission's behalf, asked for a series of extensions to accommodate "Settlement" discussions. During this period of negotiations, the draft orders exchanged between our staff and Borden grew steadily weaker (weaker than Borden originally proposed in fact) until the final agreement was reached. We have received no staff analysis of or recommendations on the legal and economic issues in the case, though the Bureau of Competition has forwarded a narrowly focused analysis of compliance problems in interpreting and enforcing the agreement. During this period, the makeup of the Commission changed so as to produce

majority support for this agreement. In short, this settlement was not the result of a compromise to avoid further litigation, producing a compromise applicable only to this case, but a decision to change the order on policy grounds.

The *Borden* case presents a good example of why there is a rule against predatory pricing. The record in the case showed Borden was a monopolist with a 90% market share. While one brand of reconstituted lemon juice is for all practical purposes, virtually identical with any other, the ReaLemon trademark, which Borden promoted heavily, constituted a long-standing barrier to entry. Borden's rivals and retailers alike recognized that as a result of this advantage, Borden was able to charge up to 30% more than equally efficient competitors and remain competitive. Borden priced differently in different geographic areas. It charged monopoly prices in areas where it faced no real market challenge and used selective price cuts to discipline or threaten competition in areas where it did face a competitive threat. Borden's internal documents reflected an intention to price selectively so as to eliminate its major rival in many areas—Golden Crown. This combination of factors makes a particularly strong case for concluding that Borden had crossed over the line from healthy aggressive pricing to anticompetitive predation likely to maintain the concentrated lemon juice market as the province of an almost total monopolist.

In articulating the standard of liability, the Commission quite properly did not focus solely on a comparison of prices and costs but considered other factors, including Borden's monopolist position, the difficulty of entry caused by its brand name advantage, the pattern of geographic price discrimination, and Borden's predatory intent. The Commission also clearly found that Borden had sold below average total costs. (92 F.T.C. at 807) Although the Commission was not unanimous in stating a standard for liability, it was unanimous in concluding Borden had engaged in predatory pricing. I do not believe many courts would quarrel with the essential holding that pricing at or near average variable costs by a monopolist, in a market with significant barriers to entry, and coupled with geographic price discrimination and predatory intent constitutes a violation of both Section 2 of the Sherman Act and Section 5 of the FTC Act. As the majority points out, it is true that the Commission did not establish any single cost-based standard for predation. But doing so would have been exceedingly difficult given the lack of legal or economic consensus in this area; it also would have been unnecessary, given that the evidence showed Borden violated even a very conservative standard of predation.

I would not defend each and every sentence in the Commission's 1978 opinion. If it were to be written today, with the benefit of further thinking and caselaw on predation, I would advocate that some passages be written differently. (I would venture, however, that this is the case for almost all opinions and all Commissioners. The conventional route for refining past opinions is to restate the principles in the next one.) While I concede that the court of appeals opinion reviewing the case went too far in claiming that the Commission's standard was based on *competitors'* costs (674 F. 2d at 515–516), the court clarified its holding in a subsequent opinion.[11]

The Commission's statement also criticizes the opinion in *Borden* by suggesting that the opinion condemned product differentiation through advertising as "something pernicious in and of itself." (Majority statement at 5) I do not think that is a fair statement of the Commission's position in *Borden*. Advertising was significant in *Borden* because it created a barrier to entry, a view that has been supported by the courts.[12] Any language in the opinion which may suggest otherwise is not my view or, to the best of my knowledge, the view of the Commissioners who joined the opinion. While the advertising may have had some positive effects as well, its antitrust significance here is that by serving to erect a barrier to market entry by firms producing an indistinguishable product by equally efficient methods, it fostered a situation in which unassisted market forces could not readily redress any attempts by Borden to exploit its monopoly power. And, the record in this case is clear that Borden did engage, successfully, in such efforts.

There is not yet a consensus about the proper standard for predation, but one point is clear: The reasoned opinions point away from the narrow, virtually impossible to meet average variable cost standard initially proposed by Professors Areeda and Turner in 1975. As Professors Brodley and Hay have pointed out, this standard, while appearing to offer a simple formulation consistent with economically efficient resource allocation, has the distinct disadvantage (for small firms trying to break into a market) that "it holds dominant firm pricing per se legal."[13] Consequently, virtually every recent appellate decision has declined to adopt a strict average variable cost rule for all situations.[14] While the Areeda-Turner rule is overly lenient as a standard for predation, the agreement adopted by the majority of the Commission, though using some terminology borrowed from Areeda-Turner, sets out an even more permissive standard—one that would mean a violation in this or any other industry would rarely occur and even more rarely could be proven.

In understanding the Commission's standard, it is important to note that, though the term "variable costs" is used, the standard is far from the standard conception of the term. The revised order actually prohibits *total* variable costs from exceeding total revenues in a single quarter in a single sales district. This is a very different idea from prohibiting pricing of products below the *average* variable cost per unit (a surrogate for marginal cost), and it leads to easy avoidance of the standard. For example, in a single sales district (there are 22 in the country) Borden could price very low in some cities, far below average variable costs, while compensating by selling at monopoly prices elsewhere in the district. Second, Borden could sell products from a very profitable area at selectively low prices into a district where a new entrant was trying to break in. The lower prices for these sales would reduce revenue for the district but not enough to violate the standard. In short, the idea seems to be that a potential predator must obey the law on *average*, rather than in particular situations. This novel approach is analogous to a speeder pleading with the highway

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[11] The Sixth Circuit characterized its Borden holding in Richter Concrete Corp. v. Hilltop Concrete Corp., 1982–83 Trade Cas. ¶65,003 (1982). "Borden was found to be predatorially pricing by setting its prices below average total cost." *Id.* at 70,591, n.8.

[12] Berkey Photo, Inc. v. Eastman Kodak Co., 603 F.2d. 263, 287 (2d Cir. 1979), *cert. denied*, 444 U.S. 1093 (1980).

[13] J. Brodley and G. Hay, "Predatory Pricing: Competing Economic Theories and the Evolution of Legal Standards," 66 Cornell L. Rev. 738, 793 (1981). As Brodley and Hay point out, the Areeda-Turner rule led to several difficulties. First, cost determination proved to be exceedingly complex in adjudication. Second, some adjustments had to be made in using the average variable cost as a surrogate for marginal cost to remain consistent with the economic theory of the rule itself. Third, several writers have rejected the Areeda-Turner rule even on efficiency grounds. Finally, the rule made it extremely difficult for plaintiffs to prove a violation. *Id.* at 768. Professor Williamson has called the rule "a defendant's paradise." Predatory Pricing: A Strategic and Welfare Analysis," 87 Yale L.J. 284, 305 (1977). For an excellent review of trends in predation law, *see* J. Hurwitz and W. Kovacic, "Judicial Analysis of Predation: The Emerging Trends," 35 Vanderbilt L. Rev. 63 (January 1982).

[14] The Ninth Circuit has recently stated in some instances pricing above average total costs could be predatory. Transamerica Computer Co., Inc. v. I.B.M. Corp., [1983] TRADE REG. REP. (CCH) ¶65,218 (9th Cir.). In Northeastern Tel. Co. v. Am. Tel. & Tel. Co., 651 F. 2d 767, 788 (2d Cir. 1981), the Second Circuit said "the relationship between a firms prices and its marginal costs provides the best single determinant of predatory pricing" but applied this presumption only to a "run of the mill case." The Fifth Circuit in International Air Ind., Inc. V. American Excelsior Co., 517 F. 2d 714, 724 (1976), required a showing of below average variable cost pricing or pricing below the short-run profit maximizing price when barriers to entry make such predation worthwhile. The Seventh Circuit in Chillicothe Sand & Gravel v. Martin Marietta Corp., 615 F. 2d 427, 432 (1980), viewed average variable cost as a useful factor but expressly indicated willingness to "consider the presence of other factors." The Eighth Circuit in Superturf, Inc. V. Monsanto Co., 660 F. 2d 1275, 1281 (1981), expressly noted that a monopolist who prices above average variable cost "may still be held to have engaged in a predatory act." The Ninth Circuit in Cal. Computer Products v. Intern. Business Machines, 613 F. 2d 727, 743 (1979), noted "that refinement of the marginal or average variable cost test will be necessary as future cases arise," and expressly declined to "foreclose the possibility that a monopolist who reduces prices to some point above marginal or average variable cost might still be held to have engaged in a predatory act because of other aspects of its conduct." The Tenth Circuit in Pac. Eng. & Prod. Co. of Nev. v. Kerr-McGee Corp., 551 F. 2d 790, 797, cert. denied, 434 U.S. 879 (1977), found average variable costs to be "extremely beneficial," but nevertheless refused to base its test for predation solely on cost, and indicated it would look to other factors as well.

patrolman that he has driven under 55 on average—an argument no doubt herefelt by the speeder but rarely recognized by the law.

The second difference between the Commission's "variable cost" idea and the conventional notion of variable costs is that "variable" in the agreement actually means "avoidable" by Borden and only then when avoiding expenses is consistent with "prudent business practice." What this will come to mean in real life is subject to much speculation, but one thing seems certain: much of Borden's advertising and labor expenses—costs Areeda and Turner have presumptively included in variable costs—will be excluded in Borden's own calculations on the grounds that it was "imprudent" to cancel them. Indeed, it would be hard for this Commission, or any other "outsider" to disagree with Borden's own experts and executives about what is prudent and avoidable for Borden.

I will not discuss in detail other substantive and administrative problems with the order, with one exception—the seven year sunset provision. The original *Borden* order, as is typically the case, was not limited in duration. Our rules provide that respondents may petition to modify orders based on changed conditions, but a ban on predatory practices or any other practice found to violate Section 5 has traditionally been permanent. One irony of the sunset is that because of the leniency of the Commission's order—much more permissive than the current state of the law—Borden is "subjected" to a less stringent standard than binds other monopolists until the sunset provision expires. If the Commission tries to sue Borden on the basis of *another* standard (as the Commission's statement suggests in fn. 10) Borden will no doubt argue that it was conforming to the Commission's order, that the Commission never would incorporate in any order a conduct standard lower than the recognized threshold of legality, and any transgression of any more restrictive standard was done in good faith. Under these circumstances, I am surprised Borden did not hold out for a permanent order.

The Commission now asks the Supreme Court to grant an extension for public comment on this agreement. While I surely support the opportunity for the public to comment, I respectfully believe that the Court should deny the Commission's request. A majority of the Commission is willing to circumvent the lengthy litigation in this matter in order to substitute a legal and policy approach held by the current administration. While I respect the right of the majority to decide the next opinion and to submit its views on that opinion to a court of appeals, I sincerely hope that the Court will not countenance what is in effect a dismissal of this matter by granting the Commission's request. Regardless of the legal merits, I consider it unseemly for this Commission to ask the Supreme Court to help it dismiss a case and vacate existing opinions in the matter five years after the case has left the Commission's jurisdiction, simply to accommodate the views of the administration in power. If accepted, this request threatens to set an unwise precedent for all agencies which, having undergone a change of philosophy and administration want to undo the efforts of past administrations in matters that, without the Supreme Court's aid, are no longer within its grasp.

The majority is doing much more by accepting this agreement than quibbling about language in the Commission's or Court of Appeals' opinions. It is trying to point predation law in a different direction—toward a solely cost-based standard that will be infrequently violated in real life and even less frequently proved. While it may appeal to some as embodying the height of economic rationality, as a practical matter, the standard in this order would take the Commission out of the business of policing predation.

Dissenting Statement of Commissioner Patricia P. Bailey on Proposed Order in Borden Inc., Docket 8978

I cannot agree with many of the policy pronouncements in the majority's statement, and I have only slight hope that the public comment period will resolve my concerns about the wisdom and efficacy of this consent.

Were I deciding *Borden* today, I might well write a different opinion from the one of four years ago (in which I was not a participant), because of both my own views and the evolving state of the law. However, the 1978 opinion is by no means susceptible of the majority's criticism that it embraces a "standard of conduct [which is] inconsistent with the purposes of Section 2 of the Sherman Act and Section 5 of the Federal Trade Commission Act." (Majority Statement, p. 3). On the contrary, *Borden*, whatever its arguable deficiencies, is within the mainstream of judicial and academic opinion which looks at a variety of factors, in addition to "below cost" pricing, to evaluate predatory intent and dangerous probability of success.

The evil of *Borden*, it seems, is that the case "does not set forth a satisfactory cost-based standard for predation." (*Id.*) Judging from this language and the proposed consent, the majority feels that a variable cost standard, and only a variable cost standard, should determine liability on a predation theory. This flies in the face of every [15] recent circuit court decision on predatory pricing and the Commission's own recent examination of dominant firm behavior.

Since 1975 there has been "a virtual explosion in the legal and economic literature dealing with predatory pricing." J. Brodley & G. Hay, *Predatory Pricing: Competing Economic Theories and the Evolution of Legal Standards*, 66 Cornell L. Rev. 738, 740 (1981) At least nine different economic theories for detecting predation have been advanced,[16] and the courts have been both selective and idiomatic in applying these tests.[17] However, the circuits are united in refusal to find that prices above average variable cost but below average total cost are conclusively lawful regardless of market conditions.[18] Rather, each case has indicated that pricing above average variable cost but below average total cost may be unlawful if other factors demonstrate predatory intent and injury to competition. Among the factors which have been mentioned are (1) market conditions which would thwart or aid monopolization, notably the height of entry barriers: *William Inglis & Sons v. ITT Continental Baking Co., supra* at 933; *Northeastern Tel. Co. v. AT&T Co.*, 651 F. 2d 76, 88–89 (2d Cir. 1981), *cert. denied*, 102 S. Ct. 1438 (1982); *International Air Industries, Inc.*,

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[15] The majority opinion in MCI Communications Corp. v. American Tel. & Tel. Co., 1982–83 Trade Cas. ¶65,137 (7th Cir. 1983) comes close to placing definitive reliance on a cost standard; however the standard referred to, long-run incremental cost, is considerably more inclusive than a variable cost standard, and particularly the variable cost standard proposed by the majority of this Commission.

[16] The seminal discussion recommended a short-run marginal cost pricing rule using average variable cost as a practical surrogate for marginal cost. P. Areeda & D. Turner, Predatory Pricing and Related Practices of Section 2 Under the Sherman Act, 88 Harv. L. Rev. 697 (1975). This proposal was challenged for disregarding the risk that a dominant firm can successfully pursue a strategy of sacrificing short-term profit for long-term benefits in order to exclude actual or threatened competition. F. Scherer, Predatory Pricing and the Sherman Act: A Comment, 89 Harv. L. Rev. 869 (1976) [offering an economic model for testing cost based rules and suggesting a broad rule-of reason approach]. Other commentators proposed long-run pricing rules that emphasized different cost factors. R. Posner, Antitrust Law: An Economic Perspective, 184–196 (1976) (presumptively condemning sales below average total cost with intent to exclude a competitor); P. Joskow & A. Klevorick, A Framework for Analyzing Predatory Pricing Policy, 89 Yale L.J. 213 (1979) (proposing a two-tier test: only if monopolistic conditions exist in the market may pricing below the average variable cost be conclusively illegal, or pricing below average total cost be presumptively illegal under specified conditions). Other economists recommend approaches focusing on output changes or the timing of price cuts. O. Williamson, Predatory Pricing, a Strategic and Welfare Analysis, 87 Yale L.J. 284 (1977) (barring dominant firms from expanding output or selling below full cost to forestall entry); W. Baumol, Quasi-Permanence of Price Reductions: A Policy of Prevention of Predatory Pricing, 89 Yale L.J. 1 (1979) (barring price increases by a dominant firm for a specified period after its price cuts drive competitors from the market). Although not proposing a specific legal standard, two commentators have drawn attention to the prerequisites for successful entry-deterrance conduct. Salop, Strategic Entry Deterrance, 69 Am. Econ. Rev. 335 (1979); Spence, Entry, Capacity, Investment and Oligopolistic Pricing, 8 Bell J. Econ. 534 (1977). And finally, in fairness, I should note that at least one commentator has argued that there should be no standard at all, since no problem exists. R. Bork, The Antitrust Paradox 154 (1978).

[17] J. Hurwitz & W. Kovacic, Judicial Analysis of Predation: the Emerging Trends, 35 Vanderbilt L. Rev. 63 (1982).

[18] Most circuit courts have indicated that prices above average total cost are presumptively, if not *per se*, legal. *See, e.g.*, Chillicothe Sand & Gravel Co. v. Martin Marietta Corp., 615 F. 2d 427 (7th Cir. 1980); International Air Indus., Inc., v. American Excelsior Co., 517 F. 2d 714, 723 (5th Cir. 1975), *cert. denied*, 424 U.S. 943 (1976). *But see* Transamerica Computer Co., Inc. v. I.B.M. Corp., 1983-Trade Reg. Rep. (CCH) ¶65,218 (9th Cir.), holding that prices above average total cost are not presumptively legal. The circuits treat prices below average variable cost as presumptively illegal. *See, e.g.*, William Inglis & Sons Baking Co. v. ITT Continental Baking Co., 652 F. 2d 917, 939–940 (9th Cir 1981), *cert. denied*, 81–2083, Oct. 4, 1982.

supra, 517 F. 2d at 724; (2) independent proof of predatory intent: *SuperTurf Inc. v. Monsanto Co.*, 660 F. 2d 1275 (8th Cir. 1981); *O. Hommel Co. v. Ferro Corp.*, 659 F. 2d 340, 348–50 (3rd Cir. 1981), *cert. denied*, 102 S. Ct. 1711 (1982); *William Inglis & Sons Baking Co., supra* at 942–43; *Chillicothe Sand & Gravel Co., supra* at 433; (3) overall market capacity: *Pacific Engineering & Production Co. v. Kerr-McGee Corp.*, 551 F. 2d 790, 796–97 (10th Cir.), *cert. denied*, 434 U.S. 879 (1977); *William Inglis & Sons Baking Co. v. ITT Continental Baking Co.*, 461 F. Supp. 410, 418–419 (N.D. Cal. 1978), *aff'd in part and rev'd in part*, 652 F. 2d 917 (9th Cir. 1981). In addition, it is of course an antitrust truism that a firm with monopoly power may not be permitted the same latitude of conduct as its smaller rival. *U.S. v. Aluminum Company of America*, 148 F. 2d 416 (2d Cir. 1945); *United States v. United Shoe Machinery Corp.*, 110 F. Supp. 295 (D. Mass 1953). Courts have consistently acknowledged the need to protect equally efficient competitors from abuses of monopoly power.

The *Borden* opinion, as I read it, states that the record contains proof of (1) monopoly power; (2) anticompetitive intent, manifest in Borden documents which identify the threat Golden Crown posed to ReaLemon and present a calculated strategy for blocking Golden Crown at key entry points in order eventually to regain the pricing discretion of the pre-entry period; [19] (3) other conduct, which was arguably anticompetitive in the overall context, such as geographic price discrimination, local market saturation promotions, and high-impact regional advertising; (4) high barriers to entry in the form of ReaLemon's extraordinary brand image; (5) findings that Golden Crown lemon juice essentially matched ReaLemon in quality (thus indicating that the ReaLemon consumer franchise probably did not reflect current product superiority); and (6) findings that Golden Crown was as efficient as ReaLemon. With so many 'plus factors', particularly the evidence on noncompetitive market structure with vulnerable local competitors and direct evidence of predatory intent, surely the strictest possible cost standard is not required. The Commission did not, after all, find that Borden engaged in ephemeral price reductions, only slightly below its average total cost. Rather it found that Borden priced so far below ATC, for significant stretches of time, that it approached its average variable cost line—and crossed it if advertising expenses are counted as variable costs. [20] (see summary in Commissioner Pitofsky's concurring opinion, 92 FTC at 830–831).

The rule of reason approach in Borden—careful scrutiny of market structure, defendant's pricing levels and other conduct, available proof of intent and actual competitive consequences—is the approach I would bring to allegations of predation, and the one which I thought the Commission had reaffirmed in *E.I. DuPont de Nemours & Co.*, 96 F.T.C. 653, 745–46 (1980). I see no need to truncate predation analysis by attaching conclusive presumptions to comparisons of prices and costs. As Judge Wood has recently pointed out, economic and accounting evidence can be just as inexact and ambiguous as evidence of intent gleaned from documents and conduct. *MCI Communications Corp. v. American Tel. and Tel. Co.*, 1982–83 Trade Cas ¶ 65,137 (7th Cir., 1983) (dissent). The two weak components need each other.

I am also troubled by implications in the majority statement that geographic price discrimination is inherently procompetitive. This seems to me contrary to the letter and policy of the Robinson-Patman Act, which we should strive to reconcile with the other antitrust laws. While geographically selective price reductions can be a legitimate response to competition, [21] they can also be a highly effective monopolization strategy, as the Supreme Court has long recognized: If this method of competition were approved, the pattern for growth of monopoly would be simple. As long as the price warfare was strictly intrastate, interstate business could grow and expand with impunity at the expense of local merchants. The competitive advantage would then be with the interstate combines, not by reason of their skills or efficiency but because of their strength and ability to wage price wars. *Moore v. Mead's Fine Bread Co.*, 348 U.S. 115, 119 (1955).

See also U.S. v. Grinnell Corp., 284 U.S. 563, 570, 576 (1966). Many of the current commentators on the predation issue have focussed on the effectiveness of a multimarket strategy. *See, generally*, Salop, ed. *Strategy, Predation and Antitrust Analysis*, (1981); R. Posner, *Antitrust Law: An Economic Perspective*, 62–65, 176–80 (1976). Accordingly, I would not automatically approve geographic price discrimination, but would carefully examine it in light of other conduct to determine if other indicia of an attempt to lessen competition or monopolize are present.

If the majority are incorrect for their exclusive reliance on a cost standard as the determinant of liability, they are doubly incorrect in their choice of the cost standard on which they rely. Even courts which have placed the most reliance on a cost-based standard for predation have looked to *average* variable costs. This order looks only to total variable costs, assessed, moreover, in multi-state markets. These markets are defined, not by competitive realities, but by the boundaries of Borden's sales districts. Currently there are 22, but the order permits Borden to increase or decrease this number at will. As long as total revenues exceed total variable costs, Borden is absolved of wrongdoing. Many, if not most, predation cases have alleged a smallish target market—a city or county area. [22] Yet Borden is now free to confront rivals in such areas with an absolute giveaway program, so long as sales in the remaining parts of the sales district bring total revenues above total variable costs. I would like to hear from some producers of reconstituted lemon juice about their vulnerability to a less-than-sales-district sized price war.

Compounding this problem, the order appears to allow Borden to play a shell game when allocating costs to individual sales districts and time periods. Allocations can be made without prior FTC approval, and without any limitation as to frequency. The order says costs may be allocated according to "identifiable factors that make allocations to a particular sales district proper", but gives virtually no guidance [23] on the precise method of allocation. I would welcome comments for corporate accountants on the feasibility of using such flexibility to hide predatory pricing.

Finally, the order is defective in a practical sense: it appears that compliance monitoring and enforcement will require *de novo* investigations and trial. The essential problem is that the order does not define "variable cost" with any specificity. A cost will qualify as variable if it is "avoidable" consistent with "prudent business practice." I fear that in assessing avoidability, our staff would have to look at market definition and market power in order to know if Borden's actions were prudent under the circumstances. Moreover, on costs which traditionally are seen as variable (such as advertising or labor) it would seem that the burden of proof has shifted; on Borden's mere say-so, our staff now must show that each element of each category of cost was not avoidable, rather than Borden's showing why the characterization does not apply. Since Borden has the most control over the evidence on point, it will be an uphill struggle for our compliance staff.

To the extent that Borden can argue that certain costs, although traditionally considered marginal, nonetheless cannot be avoided consistent with prudent business practices, the standard by which Borden will be judged could be less than acutal marginal cost. It is ironic that Areeda and Turner instituted the search for a cost threshold from a desire to find an objective and workable standard for distinguishing between pricing above or below marginal cost, which they concluded is "the economically sound division between acceptable, competitive behavior and 'below-cost' predation". P. Areeda and D. Turner, *supra* at 716. Today the Commission abandons the quest for objectivity and manageability and endorses a test which rests so much on Borden's subjective conclusions that even the relationship to marginal cost is attenuated.

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[19] In other words, Borden's price reductions were not simply a response to lower priced competition. They reflected an internal strategy to give up short-term profits in order to eliminate competition and recoup thereafter—the textbook definition in predation. P. Areeda and D. Turner, *supra*, at 693.

[20] The proposed order allows Borden to claim many advertising costs as fixed. I disagree with this provision. I see no unique circumstances in this case or industry which would warrant deviation from the normal practice, endorsed by Areeda and Turner, of presuming that advertising costs are variable. P. Areeda & Turner, III Antitrust Law, 173 (1978).

[21] See discussion by Commissioner Pitofsky in his concurring opinion in *Borden*, 92 FTC at 820–822.

[22] Indeed, Borden's "Golden Crown Strategy" was aimed at specific metropolitan areas and geographic regions. 92 FTC at 727–728, 732–756.

[23] The exception is contained in provision A2, regarding certain costs of television advertising.

Lastly, I am not as sanguine at the majority about the chances of this consent being declared devoid of precedential significance. Most consents are indeed *sui generis*; but this one, accompanied by a lengthy statement full of sweeping statements on the "correct" application of predation theory, seems destined to play a continuing jurisprudential role. We may be able to erase it from our institutional memory (although I doubt that companies seeking equity and parity will allow us to do so uncontested), but we can hardly dictate its use in private actions.

One further aspect of this matter concerns me apart from the actual merits of the settlement or the majority's theories on predatory pricing. What we have here is not a standard settlement. What we have here is a proposal, couched in terms of a settlement, to repudiate the Court of Appeal's decision affirming the 1978-Commission's final decision in order to allow the 1983-Commission to redecide the case. The Supreme Court is being asked to facilitate this change in the Commission's decision, not by rendering a decision on the merits, but by performing the purely administrative function of returning the matter to the agency's jurisdiction so that the agency can change its mind. such an effort seriously distorts the proper relationship of a federal agency to the judiciary, and sets a highly visible precedent for any agency, any time it undergoes a change in administration or guiding principles, to petition the courts to reach backward in time to rewrite opinions long completed and to nullify independent judicial efforts long since expended.

The reality of the Commission's position is not that, since 1978, the law of predatory pricing has become clear; it has not. In any event the terms of the settlement do not conform to any previously expressed standards of law in the area. Rather, the composition of a federal agency has changed, and it now believes its view of predatory pricing is "better" than the one applied earlier.[24] Whether or not this is true, the Commission ought to be content to use its newer view of the law to guide its decision on current matters. By such a process, comment on older cases may be offered, new precedent issued, and the course of the law possibly shifted. To go beyond the bounds of this traditional power, however, is to disrupt the orderly process of jurisprudence—an expansionist view of this agency's role to which I do not subscribe. It is noteworthy, moreover, that this "better" view of the law had not surfaced at the Federal Trade Commission even as recently as February 1982, when, after briefing and argument by Commission attorneys, the Court of Appeals issued its affirmance of the 1978 FTC Opinion. Indeed, the Commission did not see fit to "educate" the Sixth Circuit about these new views even after it received the Court's "favorable" decision, and when that Court still could have modified its opinion or reheard the case *en banc*. Because the only purpose of the extention now requested is to permit the Commission to subsequently ask this Court to help it implement its agreement with Borden, I would urge that the request be denied.

Separate Statement of Commissioner George W. Douglas in the Matter of Borden, Inc., Docket No. 8978

I wholeheartedly concur with the majority statement in support of the revised order for the simple reason that it seeks to correct what has proven to be an egregiously bad order founded on a tortured economic treatment of advertising as an entry barrier, an erroneous concept of geographic price discrimination, and an undefined cost-based standard for predation. Indeed, of all the issues explored in the minority comments and in the majority's statement, the one point that stands clear is that none of the five Commissioners is satisfied with the original decision and order in the case.

First, in the Commission's original, 1978 order, Borden was prohibited from pricing its ReaLemon brand of reconstituted lemon juice "below its costs" or at "unreasonably low prices" (92 FTC 669 at 833). The language used was so vague and undefined ("costs" were not defined at all) that upon appeal the Sixth Circuit Court was able to read into the order a prohibition against Borden from pricing its product at any level that would cause its competitors to price below *their* average variable costs (674 F. 2d 498, at 515–516).

Clearly, forcing Bordon to erect a price umbrella over its competitors' heads in effect turns the economic theory of competitive markets on its head, to the extent that under the guise of promoting competition, the Commission would require market leaders to maintain prices above competitive levels so as to enable other firms successfully to market products perceived by consumers as inferior.

Second, I am not at all persuaded by Commissioner Bailey's and Pertschuk's concerns that the cost standard referenced in the modified order is either vague or unenforceable; rather, in comparison with the original order, it is a model of clarity, setting forth with as much direction as possible a cost based standard that comports with traditional economic concepts.

Third, I dispute Commissioner Pertschuk's claim that the revised order is "at odds with sound reasoning in recent court opinions." To the contrary, the revised order is well-attuned to the prevailing tendency of courts to employ more clearly delineated cost-based tests—especially variable cost standards—in evaluating pricing conduct. Indeed, to cling to the language and reasoning of the Commission's original order would confound sound economic principles, and would ignore the basic direction of judicial analysis over the past eight years. In my judgment the Federal Trade Commission should enforce the antitrust laws with the *best* economic evidence and insight available, whether found in court opinions or elsewhere. In this instance the Commission modifies an order which has become, through its own mistaken rationale, through its vagueness, and through its interpretation by the Sixth Circuit, paradoxically anticompetitive in itself.

[24] If it were at all clear (1) that the Commission applied the wrong legal standard to this case in 1978, or (2) that the Court of Appeals in 1982 repeated or added to the alleged error in its affirmance of the Commission, (3) or that a "correct" standard applicable to predatory pricing had emerged judicially, or (4) that the Commission itended to apply any such judicially endorsed standard—I might be more sympathetic to the majority's position.

[FR Doc. 83-5486 Filed 3-1-83; 10:21 am]
BILLING CODE 6750-01-M

16 CFR Part 429

Regulatory Flexibility Act for Review of Trade Regulation Rule on Cooling-Off Period for Door-to-Door Sales

AGENCY: Federal Trade Commission.

ACTION: Proposed rule, request for comments.

SUMMARY: The Federal Trade Commission (FTC), in accordance with the Regulatory Flexibility Act and publication of a Plan for Periodic Review of Commission Rules, 46 FR 35118 (1981), is soliciting comments and data on whether the Rule on Cooling-Off Period for Door-to-Door Sales has had a significant economic impact on substantial number of small entities and if it has, whether the Rule should be amended to minimize any significant economic impact on small entities. Another Notice is being published simultaneously soliciting comments on two studies relating to the effects of the Rule on industry and consumers.

DATE: All comments and data should be received by the Commission no later that April 4, 1983.

ADDRESS: Comments should be sent to Secretary, Federal Trade Commission, Washington, D.C. 20580. Comments should be identified as "RFA" comments.

FOR FURTHER INFORMATION CONTACT: Lewis Franke, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, Phone 202–376–2891.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 et seq. (RFA) requires that the FTC conduct periodic review of the Rules which have or will have a significant economic impact upon a substantial number of small entities.

The Rule on a Cooling-Off Period for Door-to-Door Sales makes it an unfair or deceptive act or practice for sellers of consumer goods or services with a purchase price of $25.00 or more who sell away from their place of business to fail to furnish to the buyer certain information regarding the buyer's right to cancel sales within three business days from the date of the transaction

and to give the buyer a full refund of any downpayment upon the buyer's cancellation.

The Rule requires a seller to furnish the buyer with a completed receipt or copy of a contract pertaining to the sale with a summary notice informing the buyer of the right to cancel the transaction. The Rule also requires the seller to furnish the buyer with a completed Notice of Cancellation in duplicate to be attached to the contract or receipt and which is easily detachable. The Rule was promulgated October 26, 1972, 37 FR 22933 (1972). This Rule is being reviewed by the FTC in accordance with the periodic review requirement of RFA.

The purpose of the statutory periodic review is limited to determining whether the Rule should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the Rule upon a substantial number of such small entities.

In order to conduct the periodic review of this Rule pursuant to RFA the FTC poses the following questions for public comment. The Commission requests that the factual data (e.g., economic and accounting information, statistical analysis, surveys, studies, etc.) upon which submitted comments are based be included with the comments.

(1) Has the Rule had a significant economic impact (costs and/or benefits) on a substantial number of small entities? Please describe the details of any such significant negative and/or positive economic impact.

(2) Is there a continued need for the Rule?

(3)(a) What burdens, if any, does complicance with the Rule place on small entitities?

(b) To what extent are these burdens ones which small entities would also experience under a voluntary policy of giving consumers the right to cancel within a specified time?

(4) What changes, if any, should be made to the Rule which would minimize the economic impact on small entities?

(5) To what extent does the Rule overlap, duplicate or conflict with other other Federal and with state and local governmental rules?

(6) Have technology, economic conditions or other factors changed in the area affected by the Rule since its promulgation in 1972 and, if so, what effect do these changes have on the Rule or those covered by it?

List of Subjects in 16 CFR Part 429

Trade practices.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 83-5573 Filed 3-2-83; 8:45 am]

BILLING CODE 6750-01M

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16 CFR Part 429

Review of Certain Studies on Trade Regulations Rule on Cooling-Off Period for Door-to-Door Sales

AGENCY: Federal Trade Commission.

ACTION: Request for comments on studies.

SUMMARY: The Federal Trade Commission (FTC) is soliciting comments on two studies of the effects of the Rule on industry and consumers that the FTC is releasing to the public. One study is entitled "An Impact Evaluation of the Cooling-Off Period for Door-to-Door Sales Trade Rule," conducted by Market Facts, Inc. The general purpose of this study was to evaluate nationwide consumer experiences when purchasing goods or services from door-to-door salespeople. The second study, by Walker Research, Inc., is entitled "Three Day Cooling-Off Period Trade Regulation Rule Evaluation Study," whose purpose was to collect data from industry relating to the costs and benefits of the Rule.

Pursuant to the Regulatory Flexibility Act, another Notice is being published simultaneously soliciting comments on the economic impact of the Rule on small business.

DATE: All comments and data should be received by the Commission no later than April 4, 1983.

ADDRESS: Comments should be sent to Secretary, Federal Trade Commission, Washington, D.C. 20580. Copies of both studies are available for distribution by the FTC Public Reference Branch Room 130. Comments relating to the studies should be marked "Study Comments."

FOR FURTHER INFORMATION CONTACT: Lewis Franke, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, Phone 202-376-2891.

SUPPLEMENTARY INFORMATION: Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46, empowers the Commission to make public from time to time information obtained by it as is in the public interest.

The Rule on a Cooling-Off Period for Door-to-Door Sales makes it an unfair or deceptive act or practice for sellers of consumer goods or services with a purchase price of $25.00 or more who sell away from their place of business to fail to furnish to the buyer certain information regarding the buyer's right to cancel sales within three business days from the date of the transaction and to give the buyer a full refund of any downpayment upon the buyer's cancellation.

The Rule requires a seller to furnish the buyer with a completed receipt or copy of a contract pertaining to the sale with a summary notice informing the buyer of the right to cancel the transaction. The Rule also requires the seller to furnish the buyer with a completed Notice of Cancellation in duplicate to be attached to the contract or receipt and which is easily detachable. The Rule was promulgated October 26, 1972, 37 FR 22933 (1972).

Some industry members have indicated an interest in modifying the Rule to permit the use of a one-contract form which incorporates all of the right to cancel disclosures and further may be used by the buyer for cancellation purposes. The Walker Research industry study indicates that the printing of cancellation forms is one of the increased costs caused by the Rule (See pages 33-39 of the Walker Research, Inc. Study). The FTC has on previous occasions rejected industry proposals on the grounds that the two form notice is easier for the buyer to use and insures the buyer of a record of the transaction. The continued viability of this rationale may be affected by the findings of the Market Facts consumer survey concerning the extent that consumers invoke the Rule. (See page III-26 of the Market Facts Study, Inc. and page 7 of the Walker Research, Inc. Study.)

Further, some industry members have suggested that "money back guarantee" transactions should be excluded from the Rule requirements. In the past the FTC has rejected this proposal. Certain findings of the industry survey (see page 7 of the Walker Research Study) concerning direct selling firm "money back guarantee" policies, and of the consumer survey (see pp. III-41 through III-46 of the Market Facts Study) concerning consumer interpretations of the term "money back guarantee" may provide additional information on the desirability of excluding these transactions from the Rule.

The following questions relate to those two issues of industry concern, and to others about which the Commission seeks information:

(1)(a) Would modify the Rule to permit a contract form or receipt combining the notice of the right to cancel with the form used by the consumer to cancel reduce costs?

(b) Would a combined notice/cancellation form significantly lessen the protection consumers now have?

(c) Would such modifications reduce paperwork and costs? If so how?

(d) Would printing new forms increase costs?

(e) Could a one-form contract or receipt be devised that would provide the consumer with a permanent record of the transaction? (Businesses and other members of the public are encouraged to submit sample forms incorporating the above modifications.)

(2)(a) How does industry define a "money back guarantee"?

(b) How do consumers understand the term "money back guarantee"? Does the term mean that the transaction may be cancelled by the consumer at any time without giving a reason?

(c) Should "money back guarantee" transactions be exempted from the Rule requirements?

(d) Should there be only certain limited circumstances under which this type of transaction would be exempted? What are they?

(e) How would the buyer be informed of the right to cancel?

(3) Should the Rule be more limited in its application? For example, should party plan sales be exempted from the Rule's coverage? (See page III–2 of Market Facts Study.) Should the exempted amount be raised from $25.00 to account for inflation that has occurred since the Rule's promulgation?

(4) Should the Rule be broadened to cover, for example, telephone solicitations? (See page III–47 of Market Facts Study.)

(5) Are firms presently complying with the rule? In what ways are firms not complying with the rule? Are certain types of firms not complying with the rule? (See pages III–32, III–38 through 39, Table III–15 of the Market Facts Study.)

(6) Are some types of firms experiencing significantly higher rates of cancellation within 3 days than other types? If so, what factors explain this difference? (See pages 42–45 of the Walker Research study.)

Comments would also be appreciated on the methodology and conclusions of the two studies.

List of Subjects in 16 CFR Part 429

Trade practices.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 83-5559 Filed 3-2-83; 8:45 am]

BILLING CODE 6750-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1145

Proposed Rule To Regulate Under the CPSA a Risk of Injury That May Be Presented by Certain Mesh-Sided Cribs and Play Yards

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rules.

SUMMARY: The Commission is investigating the possibility that certain play yards (playpens) and portable cribs with mesh sides may present a potential hazard of asphyxia from airway blockage or chest compression if an infant becomes entrapped between the base or floor of the play yard or crib and the mesh side, in a pocket which forms when a side of the play yard or crib is not fully raised. The Commission proposes, should regulatory action become necessary regarding the possible risk of asphyxia by airway blockage or chest compression which may be associated with these products, to use the procedures of the Consumer Product Safety Act rather than those of the Federal Hazardous Substances Act. The Commission preliminarily determines that this transfer is in the public interest because, in the event the Commission believes that a risk of asphyxia by airway blockage or chest compression is associated with those products, public notification and remedial action can be accomplished more expeditiously under the CPSA than under the FHSA.

DATE: Comments concerning this proposal must be received in the Office of the Secretary by April 4, 1983.

ADDRESS: Comments should be sent to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; (301) 492–6800.

FOR FURTHER INFORMATION CONTACT: Lynn Lichtenstein, Trial Attorney, Division of Administrative Litigation, Consumer Product Safety Commission, Washington, D.C. 20207; (301) 492–6626.

SUPPLEMENTARY INFORMATION: By this notice, the Commission proposes to regulate under the Consumer Product Safety Act (CPSA, 15 U.S.C. 2051 *et seq.*), a possible risk of asphyxia by airway blockage or chest compression that may be associated with certain play yards (playpens) and portable cribs with mesh sides, which are described in detail below.

Section 30(d) of the CPSA (15 U.S.C. 2079(d) governs these proposed rules. That section provides:

> A risk of injury which is associated with a consumer product and which could be eliminated or reduced to a sufficient extent by action under the Federal Hazardous Substances Act * * * may be regulated under this Act [the CPSA] only if the Commission by rule finds that it is in the public interest to regulate such risk of injury under this Act.

A. Background

In 1982, the Commission received two reports of infant deaths associated with play yards (playpens) with mesh sides. The product involved in these incidents utilized metal tubing to form a frame which supports a floor, generally of pressed wood, approximately 5½ to 6½ inches above the surface on which the play yard is placed during use. A thin pad covers the floor of the play yard.

The play yard is enclosed on all four sides by means of an open mesh fabric. The mesh fabric sides extend down from the top of the play yard toward the floor. Approximately two or three inches above the floor, the mesh fabric is sewn to a strip of material, sometimes called a draft shield. The draft shield is attached to the floor of the play yard.

The tubular frame of the play yard is constructed in such a manner that at least one of the sides can be lowered when the product is in use.

The two fatalities associated with play yards of this type reported in 1982 involved infants aged 2½ months and 3½ months. Both of these incidents occurred when the infants was left in a play yard of the type described above with one of the sides lowered.

When one side of the play yard is in a lowered position, the mesh fabric and draft shield on that side becomes slack and forms a pocket at the level of the floor of the play yard. If an infant moves or falls off the edge of the play yard floor into the pocket formed by the mesh side and draft shield, the weight of the infant creates a downward force on the pocket.

Because the floor of the play yard is approximately 5½ to 6½ inches above the level of the surface on which the play yard rests, the infant becomes trapped in the pocket formed by the mesh side and draft shield. The downward force created by the infant's weight causes the pocket to constrict and the infant is pressed against the pocket alone or against the edge of the play yard floor.

In one of the cases reported in 1982, the infant's face was pressed against the draft shield apparently with sufficient force to block passage of air into the nose or mouth. In the other case, the compression force against the infant's chest was great enough to interfere with the infant's ability to breathe. In either

of these events, asphyxia—loss of consciousness from too little oxygen—may result. If asphyxia continues for a period of three to five minutes, loss of oxygen may result in permanent brain damage. If asphyxia continues for a longer period, death will ensue.

In 1982, the Commission also received a report of an infant death associated with a portable crib with mesh sides. The crib involved in this incident is similar in design and construction to the play yards described above. However, the legs of the portable crib can be adjusted so that the floor of the crib may be raised to approximately 18 inches above the surface on which the crib is placed, and the crib mattress, which covers the crib floor, is somewhat thicker than the pad used with the play yard.

The same risk of injury is associated with portable cribs with mesh sides as the one described in the discussion of play yards. When a side of the crib is lowered, the mesh fabric and draft shield on that side form a pocket near the crib floor. If an infant is left in such a crib with one side lowered, and moves or falls off the mattress into the mesh pocket, the weight of the infant will cause the pocket to constrict. Constriction of the pocket will press the infant's face or body against the draft shield, the floor of the crib, the edge of the mattress, or the mesh itself, resulting in asphyxia. As stated above, asphyxia can cause permanent brain damage or death.

In addition to the crib fatality reported in 1982, the Commission has reports of four similar infant deaths; two in 1978, one in 1977, and one in 1973. All of these earlier deaths appear to have resulted from asphyxia.

B. Regulation Under FHSA

At this time, the play yards and portable cribs described above could be subject to regulation by the Consumer Product Safety Commission under provisions of the Federal Hazardous Substances Act (FHSA, 15 U.S.C. 1261 *et seq.*) as articles intended for use by children.

The Commission has issued requirements for full-size baby cribs at 16 CFR 1500.18(a)(13) and Part 1508, and for non-full-size cribs at 16 CFR 1500.18(a)(14) and Part 1509 under provisions of the FHSA. However, the play yards and cribs described in this notice are not subject to requirements for full-size cribs because they do not have the dimensions of a "full-size crib" as that term is defined at 16 CFR 1508.1, and are specifically excluded from the requirements for non-full-size cribs by provisions of 16 CFR 1509.2(b)(1). Additionally, the risk of injury described in this notice is not addressed by the requirements for full-size or non-full cribs in 16 CFR 1500.18(a) (13) or (14), Part 1508, or Part 1509.

In accordance with provisions of section 3(e) through (i) of the FHSA (15 U.S.C. 1262 (e), (f), (g), (h), (i)), the Commission could begin a proceeding for the issuance of a rule to declare that the play yards and portable cribs with mesh sides which are described in this notice present a mechanical hazard. If issued on a final basis, such a rule would have the effect of classifying these children's products as "banned hazardous substances" as that term is used in section 2(a)(1)(A) of the FHSA (15 U.S.C. 1261(q)(1)(A)), and would prohibit the distribution or sale of these products in the United States, as well as their importation into this country. If a children's article presents an "imminent hazard," provisions of section 3(e)(2) of the FHSA (15 U.S.C. 1262(e)(2)) authorize the Commission to issue an immediate order declaring the product to be a banned hazardous substance pending completion of a proceeding to issue a banning rule.

A final rule issued under provisions of sections 3 (e) through (i) of the FHSA would also make the products in question subject to provisions of section 15 of the FHSA (15 U.S.C. 1274). That section authorizes the Commission to determine, after affording all interested persons opportunity for a hearing, that notification to the public of the hazard presented by a product which is a "banned hazardous substance" is necessary in order to adequately protect the public. That section also authorizes the Commission, after affording all interested persons opportunity for a hearing, (which could be combined with a hearing regarding the need for public notification), to require the manufacturer, distributor or dealer of a product which is a banned hazardous substance to elect to repair or replace the product or to refund the purchase price of the product.

However, the provisions of section 15 of the FHSA concerning public notification and corrective action would be applicable to the products which are the subject of this notice only if the Commission had first issued a rule under provisions of section 3(e) through (i) of the FHSA to announce the Commission's determination that the products present a mechanical hazard. A proceeding to issue such a rule is complex and time-consuming.

Such a proceeding is initiated by publication of an advance notice of proposed rulemaking in the **Federal Register** to invite comments from all interested persons about the risk of injury associated with the product which is the subject of the proceeding and possible means of addressing that risk of injury, including voluntary standards now in existence or which might be developed. If, after consideration of all information received in response to the advance notice of proposed rulemaking, the Commission decides to continue the proceeding, publication of a second notice in the **Federal Register** is required to propose the rule and invite written comments on the proposal. The Commission must then analyze all comments received in response to the proposal and publish a third notice in the **Federal Register** to issue the rule on a final basis.

C. Regulation Under CPSA

The CPSA has provisions for requiring public notification of substantial hazards which may be presented by these articles and for ordering corrective action to be taken with regard to them without the necessity of first completing a rulemaking proceeding.

Additionally, the CPSA has provisions which authorize the Commission in certain cases to obtain an administrative order for public notification of the hazard presented by a product and for repair, or replacement of the product, or refund of the purchase price of the product without any necessity of first completing a rulemaking proceeding. The FHSA has no corresponding provisions.

Section 15 of the CPSA (15 U.S.C. 2064) confers upon the Commission the authority to order public notification of the hazard presented by a product if the Commission determines, after affording all interested persons opportunity for a hearing, that the product presents a "substantial product hazard," and that notification is required in order to adequately protect the public from that substantial product hazard. Additionally, section 15 of the CPSA authorizes the Commission to order any manufacturer, importer, distributor, or retailer of a product to elect to repair or replace the product, or to refund the purchase price of the product, if the Commission determines, after affording all interested persons opportunity for a hearing, that the product presents a "substantial product hazard," and that issuance of such an order is in the public interest.

If the products described in this notice were subject to regulations under the CPSA, no requirement for rulemaking would exist in order to invoke the provisions of section 15 of that Act.

Additionally, provisions of section 12 of the CPSA (15 U.S.C. 2061) authorize the Commission to file an action in a United States district court against a manufacturer, importer, distributor, or retailer of a consumer product which presents an imminent and unreasonable risk or death or severe personal injury. The court has the authority to order the recall of the product, its repair or replacement, or refund of the purchase price. The court also has authority to order a firm to undertake extensive notification efforts to advise purchasers and the general public of the nature of the risk and of the firm's obligation for remedial action. The Commission may file an action under section 12 of the CPSA without any requirement for having first undertaken a rulemaking proceeding. As noted above, no corresponding provisions exist in the FHSA.

Because notification to the public of any hazard which may be presented by the products described in this notice and remedial action with regard to those products could be accomplished more expeditiously under the CPSA than under the FHSA, the Commission has preliminarily determined that it would be in the public interst to regulate under the CPSA rather than the FHSA any risk of asphyxia by airway blockage or chest compression which may be associated with those products if an infant becomes entrapped between the mesh side and the floor, or in the mesh of a play yard; or between the mesh side and the floor, or in the mesh of a play yard; or between the mesh side and the floor, or the edge of the mattress, or in the mesh of a portable crib.

As noted above, the FHSA has provisions for issuance of an immediate order to declare a children's article to be a banned hazardous substance if it presents an "imminent hazard." However, some products may present a "substantial product hazard" warranting issuance of an order for public notification and corrective action, without amounting to an "imminent hazard" as that term is used in section 3(e)(2) of the FHSA.

In making the preliminary determination set forth above, the Commission has decided that notwithstanding provisions of section 3(e)(2) of the FHSA, use of the procedures of the CPSA may lead to more expeditious notification and corrective action than might be obtained by following the procedures of the FHSA.

If the Commission issues the rule proposed below on a final basis, and thereafter determines that a standard or regulation may be needed to address any risk of asphyxia by blockage or compression which these products may present, the CPSA would also authorize the Commission to issue a standard or banning rule. Procedures for issuance of a standard are set forth in sections 7 and 9 of the CPSA (15 U.S.C. 2056, 2058); procedures for issuance of a banning rule are in sections 8 and 9 of the CPSA (15 U.S.C. 2057, 2058).

D. Impact on Small Businesses

Section 603 of the Regulatory Flexibility Act (RFA, 5 U.S.C. 603) requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis of the impact of any proposed rule on small entities, including small businesses. Section 605(b) of the RFA provides that an agency is not required to prepare a regulatory flexibility analysis if the agency certifies that the rule, if issued on a final basis, will not have a significant economic impact on a substantial number of small entities.

The regulation proposed below, if issued on a final basis, will not by itself impose any legal or other obligation on any person or firm. The rule would simply express the Commission's determination that any action taken to eliminate or reduce the risk of injury with which it is concerned will be taken following the procedures set forth in the CPSA rather than the FHSA.

If the Commission issues a final rule based on the proposal published below, and then determines that it should act to eliminate or reduce the risk or injury which is the subject of the rule, the Commission will be required to initiate and follow through to completion appropriate judicial or administrative proceedings under one or more sections of the CPSA before it can impose any obligation on any person or firm.

Since a final rule based on the proposal imposes no obligation on any person or firm, the Commission hereby certifies that it will not have a significant economic impact on a substantial number of small businesses.

E. Environmental Considerations

The regulation proposed below falls within the categories of Commission actions described in 16 CFR 1021.5(c) that have little or no potential for affecting the human environment. For this reason, neither an environmental assessment nor an environmental impact statement is required.

F. Conclusion and Proposal

After consideration of the information set forth above, and provisions of the FHSA and the CPSA, the Commission hereby proposes to regulate under the CPSA rather than the FHSA the possible risk of asphyxia by airway blockage or chest compression which may be associated with the play yards and portable cribs described in this notice if infants become entrapped between the mash side and the floor, or in the mesh of such play yards; or between the mesh side and the floor or mattress, or in the mesh of such portable cribs. Until issuance of any final regulations under section 30(d) of the CPSA, the Commission has authority to regulate under the FHSA any risk of injury described in this notice which these products may present.

List of Subjects in 16 CFR Part 1145

Administrative practice and procedure, Consumer protection, Infants and children.

PART 1145—REGULATION OF PRODUCTS SUBJECT TO OTHER ACTS UNDER THE CONSUMER PRODUCT SAFETY ACT

Therefore, under provisions of the Consumer Product Safety Act (section 30(d), Pub. L. 92–573, 86 Stat. 1207, as amended Pub. L. 94–284, 90 Stat. 503, Pub. L. 97–35, 95 Stat 703; 15 U.S.C. 2079(d)), the Commission proposes to amend the Code of Federal Regulations, Title 16, Chapter II, Subchapter B, Part 1145, by adding new §§ 1145.11 and 1145.12, as follows:

§ 1145.11 Certain play yards (play pens) with mesh sides: risk of asphyxia from airway blockage or chest compression.

(a) The Commission finds that it is in the public interest to regulate under the Consumer Product Safety Act, rather than under the Federal Hazardous Substances Act, the possible risk of asphyxia from airway blockage or chest compression that may be associated with play yards (play pens) with mesh sides.

(b) Therefore, if the Commission finds regulation to be necessary, any such play yards (play pens) shall be regulated only under one or more provisions of the Consumer Product Safety Act.

§ 1145.12 Certain portable cribs with mesh sides; risk of asphyxia from airway blockage or chest compression.

(a) The Commission finds that it is in the public interest to regulate under the Consumer Product Safety Act, rather than under the Federal Hazardous Substances Act, the possible risk of asphyxia from airway blockage or chest compression that may be associated with portable cribs with mesh sides.

(b) Therefore, if the Commission finds regulation to be necessary, any such

portable cribs shall be regulated only under one or more provisions of the Consumer Product Safety Act.

Interested persons are invited to submit written comments by April 4, 1983. Comments may be accompanied by written data, views, and arguments, and should be addressed to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

Received comments may be seen in the Office of the Secretary, eighth floor, 1111 18th Street, NW., Washington D.C., between 8:30 a.m. and 5:00 p.m. Monday through Friday.

(Sec. 30(d), Pub. L. 92-573, 86 Stat. 1207, as amended Pub. L. 94-284, 90 Stat. 503, Pub. L. 97-35, 95 Stat. 703; 15 U.S.C. 2079(d))

Dated: February 28, 1983.

Sheldon Butts,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 83-5441 Filed 3-2-83; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

Seaway Regulations, Miscellaneous Amendments

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Proposed rule.

SUMMARY: The Saint Lawrence Seaway Development Corporation and its counterpart agency, the St. Lawrence Seaway Authority of Canada, publish joint Seaway Regulations. As a result of discussions with the St. Lawrence Seaway Authoirty, it has been determined that a number of the existing regulations need clarification. Therefore the Seaway Corporation proposes to amend 33 CFR Part 401, Subpart A.

DATES: Comments received by April 18, 1983 will be considered.

ADDRESS: Interested parties may submit written comments to the Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York 13662 (Attn: General Counsel). Persons who want the receipt of their comments acknowledged in writing may submit a stamped self-addressed postcard for this purpose.

FOR FURTHER INFORMATION CONTACT: Frederick A. Bush, General Counsel, (315) 764-3245.

SUPPLEMENTARY INFORMATION: As a result of discussions with its counterpart agency, the Saint Lawrence Seaway Development Corporation proposes to amend the joint Seaway Regulations for the reasons set forth in the summary.

List of Subjects in 33 CFR Part 401

Hazardous materials transportation, Navigation (water), Penalties, Radio, Reporting and recordkeeping requirements, Vessels, Waterways.

In § 401.3, paragraph (d)(1) will be reworded to clearly indicate that the dimensions addressed in the regulations are set out in the block diagram.

Section 401.9 will be revised to remove any question that 19.8 m applies to the overall length of the vessel.

In the table in § 401.1C(c), the column heading, "Ship's Overall Length", will be changed to "Overall Length of Vessels", and the information in this column will be revised to eliminate any misunderstanding regarding the vessel's dimensions that are covered by the regulations, and to assure that all dimensions are included.

In § 401.12(a)(5), the word "lines" will replace the word "wires" to bring it into conformity with other areas of that section, and as in § 401.10, the information under the column, "Overall Length of Vessels", will be revised for the reason previously stated.

In § 401.15, the phrase "in overall length" will be added for clarity.the intent of the regulation.

In § 401.40, paragraph (c) will be reworded in order to more clearly define the intent of the regulation.

Section 401.45 will be revised to clearly indicate that the regulation is concerned with the speed of a vessel entering a lock chamber.

In § 401.47, paragraph (c) will be reworded to conform to paragraph (c) of § 401.40.

In the table to § 401.48 items 2. (a), (b), (d) and (e), the phrase "in overall length" will be added for clarity.

In § 401.51, the regulation will be divided into two paragraphs to make it easier to understand.

In § 401.74, the addresses of the Saint Lawrence Seaway Development Corporation and the St. Lawrence Seaway Authority will be added for the convenience of the user.

In § 401.80, a phrase will be added citing Schedule III as the schedule which the vessel owner may look to for compliance with this regulation.

In § 401.82, the word "nearest" will be added to indicate that a vessel extending more than 33.5 m above water level must furnish precise information concerning its height to the nearest Seaway station. As previously written, the regulation had been interpreted to mean that any Seaway station could be contacted, while the intent was to require that it be reported to the nearest Seaway station.

Paragraph (b)(2) of § 401.97 will be reworded to indicate that the Saint Lawrence Seaway Tariff of Tolls is an agreement between the governments of the United States and Canada.

This proposed regulation involves a foreign affairs function of the United States; therefore Executive Order 12291 does not apply to this rulemaking. The Saint Lawrence Seaway Development Corporation certifies that, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), this proposed rule will not have a significant impact on a substantial number of small entities. The Seaway Regulations relate to the activities of commercial users of the Seaway, the vast majority of whom are foreign vessel operators, and therefore any resulting costs will be borne primarily by foreign vessels. On the other hand, the economic benefits derived from a safe and efficiently operated St. Lawrence Seaway are considerable. Finally, the Corporation has determined that this rulemaking is not a major Federal action affecting the quality of the human environment under the National Environmental Policy Act, and therefore an environmental impact statement is not required.

PART 401—[AMENDED]

For the stated reasons, it is proposed to amend the Seaway Regulations as follows.

1. In § 401.3, paragraph (d)(1) is revised to read as follows:

§ 401.3 Maximum vessel dimensions.

* * * * *

(d) * * *

(1) A vessel having a beam width of less than 23.16 m and having dimensions exceeding the limits set out in the block diagram illustrated in Appendix I shall not transit a lock except in accordance with a permit to transit issued by the Authority.

2. In § 401.9, paragraph (a) is revised to read as follows:

§ 401.9 Radiotelephone equipment.

(a) Self-propelled vessels, other than pleasure craft of less than 19.8 m in overall length, shall be equipped with VHF (very high frequency) radiotelephone equipment.

* * * * *

3. In § 401.10, the table in paragraph (c) is revised as follows:

§401.10 Mooring lines.

* * * * *

(c) * * *

Overall length of vessels	Length of mooring line	Breaking strength
40 m or more but not more then 60 m.	110 m	89 kN.
More than 60 m but not more than 90 m.	110 m	134 kN.
More than 90 m but not more than 120 m.	110 m	178 kN.
More than 120 m but not more than 160 m.	110 m	250 kN.
More than 160 m but not more than 222.5 m.	110 m	300 kN.

4. In § 401.12, paragraph (a)(5) and the table are revised to read as follows:

§ 401.12 Minimum requirements—mooring lines and fairleads.

(a) * * *

(5) Every vessel shall have a minimum of two spare mooring lines available and ready for immediate use.

* * * * *

TABLE

Overall length of vessels	For mooring lines nos. 1 and 2	For mooring lines nos. 3 and 4
60 m or more but not more than 90 m.	Between 10 m and 25 m from the stem.	Between 10 m and 25 m from the stern.
More than 90 m but not more than 120 m.	Between 12 m and 30 m from the stem.	Between 15 m and 35 m from the stern.
More than 120 m but not more than 150 m.	Between 12 m and 35 m from the stem.	Between 15 m and 40 m from the stern.
More than 150 m but not more than 180 m.	Between 15 m and 40 m from the stem.	Between 20 m and 45 m from the stern.
More than 180 m but not more than 222.5 m.	Between 20 m and 50 m from the stem.	Between 20 m and 50 m from the stern.

5. Section 401.15 is revised to read as follows:

§ 401.15 Stern anchors.

Every vessel of more than 110 m in overall length, the keel of which is laid after January 1, 1975, shall be equipped with a stern anchor.

6. Section 401.40 is amended by revising paragraph (c) to read as follows:

§ 401.40 Entering a lock.

* * * * *

(c) No vessel shall use thrusters when passing a lock gate.

7. Section 401.45 introductory text is revised to read as follows:

§ 401.45 Emergency procedure.

When the speed of a vessel entering a lock chamber has to be checked in an emergency, a signal consisting of five blasts on a horn shall be given.

* * * * *

8. In § 401.47, paragraph (c) is revised to read as follows:

§ 401.47 Leaving a lock.

* * * * *

(c) No vessel shall use thrusters when passing a lock gate.

9. In the table to § 401.48, items 2. (a), (b), (d) and (e) are revised to read as follows:

§ 401.48 Turning basins.

* * * * *

2. * * *

(a) Turning Basin No. 1—Opposite St. Catharines Wharf for vessels up to 107 m in overall length.

(b) Turing Basin No. 2—Between Lock 7 and Guard Gate for vessels up to 180 m in overall length.

* * * * *

(d) Turning Basin No. 4—North of Lock No. 8 for vessels up to 170 m in overall length.

(e) For vessels up to 80 m in overall length.:

* * * * *

10. Section 401.51 is revised to read as follows:

§ 401.51 Signalling approach to a bridge.

(a) Unless a vessel's approach has been recognized by a flashing signal, the master shall signal the vessel's presence to the bridgemaster by VHF radio when it comes abreast of any of the bridge whistle signs.

(b) The signs referred to in paragraph (a) of this section shall be placed at distances varying between 670 m and 1,500 m upstream and downstream from movable bridges at sites other than lock sites.

11. In § 401.74, paragraph (a) is revised to read as follows:

§ 401.74 Transit declaration.

(a) A Seaway Transit Declaration Form (Cargo and Passenger), which may be obtained from the Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York 13662, or the St. Lawrence Seaway Authority, 202 Pitt Street, Cornwall, Ontario K6J 3P7, shall be forwarded to the Corporation or the Authority by the representative of a vessel, other than a pleasure craft of not more than 317.5 tonnes, within fourteen days after the vessel first enters the Seaway on any upbound or downbound voyage.

* * * * *

12. In § 401.80, paragraph (a) is revised to read as follows:

§ 401.80 Reporting dangerous cargo.

(a) The master of any explosive vessel or hazardous cargo vessel shall report to a Seaway station, as set out in Schedule III, the nature, quantity, and IMCO classification of the dangerous cargo and where it is stowed on the vessel.

* * * * *

13. Section 401.82 is revised to read as follows:

§ 401.82 Reporting mast height.

A vessel, any part of which extends more than 33.5 m above water level, shall not transit any part of the Seaway until precise information concerning the height of the vessel has been furnished to the nearest Seaway station.

14. In § 401.97, paragraphs (b)(2) and (e)(1) are revised to read as follows:

§ 401.97 Closing procedures.

* * * * *

(b) * * *

(2) It reports at the applicable calling in point referred to in paragraph (c) of this section within a period of 96 hours after the clearance date in that navigation season, it furnishes the applicable operational surcharge established by agreement between the United States and Canada, known as the *St. Lawrence Seaway Tariff of Tolls*, and the transit is authorized by the Corporation and the Authority.

* * * * *

(e) * * *

(1) At the time of such entry or departure, report to the nearest Seaway station the furthermost destination of the vessel's voyage and any intermediate destinations within that section; and

* * * * *

(68 Stat. 93–96, 33 U.S.C. 981–990, as amended and Sections 4, 5, 6, 7, 8, 12 and 13 of SEC. 2 of Pub. L. 95–474, 92 Stat. 1471)

Issued at Washington, D.C. on February 22, 1983.

Saint Lawrence Seaway Development Corporation.

D. W. Oberlin,

Administrator.

[FR Doc. 83-5357 Filed 3-2-83; 8:45 am]

BILLING CODE 4910-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 433

Medicaid Program; Medicaid Management Information Systems; Conditions of Approval and Reapproval and Procedures for Reduction of Federal Financial Participation

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposal adds to regulations new conditions and procedures for initial approval and for reapproval of Medicaid Management Information Systems (MMIS) to update

the regulations to reflect additional requirements added by section 901 of the Mental Health Systems Act of 1980 (Pub. L. 96-398). The proposal specifies procedures for reducing the level of Federal financial participation in a State's administrative expenditures when a State fails to meet the conditions for initial operation, initial approval or reapproval of an MMIS.

It also proposes procedures with respect to waivers of the conditions of approval and reapproval and to appeals of adverse decisions. These provisions are intended to improve States' MMIS, and to ensure efficient system operations, and to detect cases of fraud, waste, and abuse effectively.

DATES: To assure consideration, comments should be mailed by May 2, 1983.

ADDRESS: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: BPO-11-P, P.O. Box 17073, Baltimore, Md. 21235.

If you prefer, you may deliver your comments to room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, Washington, D.C. or to Room 132, East High Rise, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to BPO-11-P.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication, in Room 309-G of the Department's office at 200 Independence Avenue, SW., Washington, D.C. 20201 on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

FOR FURTHER INFORMATION CONTACT:

Charles R. Booth, Initial Approvals and System Requirements (301) 594-5415, or

Newton Dikoff, Reapprovals and Performance Standards (301) 594-8190.

SUPPLEMENTARY INFORMATION:

I. Background

A. Medicaid Management Information Systems

A Medicaid Management Information System (MMIS) is a mechanized system of claims processing and information retrieval used in State Medicaid programs under title XIX of the Social Security Act (the Act). The system is used to process Medicaid claims and to retrieve and produce utilization data and management information about recipients and services. Under section 1903(a)(3)(A) of the Act and regulations at 42 CFR 433.112, Federal financial participation (FFP) is available at a rate of 90 percent in State expenditures for design, development, installation or improvement of the systems. (As with all Medicaid FFP rates, the rates presented in this preamble and in the regulations are subject to any adjustment that occurs under sections 1903 (s) and (t) of the Act.) Similarly, under section 1903(a)(3)(B) of the Act and 42 CFR 433.113, FFP is available at 75 percent for operation of an approved MMIS. These rates are higher than the normal matching rate of 50 percent under section 1903(a)(7) of the Act for general administrative operations of the State agency.

Over the past few years, it has become evident that these systems have the potential for saving millions of Medicaid dollars through improved program management and the detection of fraud, waste and abuse. However, the optimal potential can be realized only if the systems are fully operational and updated from time to time to meet program needs. (Future updates that are being considered include uniform billing, uniform diagnostic and procedure coding, and modified Medicaid quality control programs for claims processing. These updates are subject to required public notice and comment.) Thus, in order to assure the maximum savings that efficient computerized administrative systems can offer, Congress enacted legislation to promote their efficient use.

B. Title IX of the Mental Health Systems Act of 1980

Title IX of Pub. L. 96-398, the Mental Health Systems Act of 1980, added a new paragraph (r) to section 1903 of the Social Security Act (42 U.S.C. 1396b(r)). That legislation requires each State with a Medicaid program, with certain exceptions, to have an approved operating MMIS before established deadlines and, if the State fails to do so, prescribes FFP reductions by increments in the funding available under section 1903(a) (2) and (7) of the Act. (Those sections provide 75 percent FFP for compensation and training of skilled medical professional and support staff, and 50 percent FFP for general administrative expenditures.) The legislation also imposes new conditions for approval and reapproval of systems and prescribes FFP reductions by increments for failure to meet the conditions. However, the law requires HCFA to waive the FFP reductions and modify deadlines if it determines that a State has good cause for being unable to comply or the State cannot comply due to circumstances beyond its control. We are required to report to Congress all waivers of FFP reductions, the bases for the determinations, and modifications of deadlines.

Because the basic requirements of section 1903(r) of the Act were sufficiently complete and clear to take effect without regulations, we have already put into effect the portions of that section for which we had to act by specific dates. We notified the States of the statutory requirements well before the deadlines. Part of the proposed regulations supplement the existing MMIS regulations and reflect these statutory changes.

However, other issues arising from section 1903(r) have not been resolved by the terms of the statute. (For example, the statute does not specify the mechanisms by which a State may challenge adverse determinations under section 1903(r).) These regulations propose procedures that will resolve these ambiguities. In the interim, we have acted in accordance with the proposed procedures pending publication of a final rule.

C. Evaluating Performance

HCFA's approach in evaluating performance for both initial approval and yearly reapproval is based on a two-step process. First, an MMIS must meet specific system requirements that govern its structure and composition. The structure and composition have been designed to further program objectives. For example, the claims processing subsystem must have the ability to identify third party liability and assure that Medicaid is the payor of last resort.

The second step involves applying performance standards to both system operating procedures and the information that the system produces, to determine whether the system is performing in an acceptable manner. Performance standards establish levels of achievement in terms of accuracy, timeliness, and cost.

Although system requirements are currently the same for both initial approval and yearly reapproval, the present performance standards differ.

D. Yearly Performance Reviews

The basic purpose of the reviews for MMIS is to improve the effectiveness and efficiency of the Medicaid program on both an individual State basis and nationwide.

Approved systems must meet performance standards, current system requirements and other conditions of reapproval, or be subject to FFP reductions.

In accordance with section 1903(r)(6)(C) of the Act, however, we did not reduce FFP for States that failed to meet the reapproval conditions before the yearly review we conducted in fiscal year 1982 (from October 1, 1981 through September 30, 1982). We conducted a "dry run" review of most of the approved MMIS during fiscal year 1981, to see if they met the conditions of reapproval. The "dry run" enabled us to develop a systems performance data base, and to assist the States in developing and improving their systems, as the law requires. (We reviewed them against the then proposed conditions of reapproval in order to give States an informational advance evaluation of their performance, before we conducted a review in fiscal year 1982 that resulted in FFP reductions in six States.) We used the data base from the dry run to refine our review methodology and established empirically-based numerical scores for acceptable performance.

The initial "dry run" review gave the States a "no risk" opportunity through September 30, 1981 to determine if their systems met the conditions of reapproval and to correct detected weaknesses in their MMIS operations. Beginning with fiscal year 1982, we started conducting reviews during each Federal fiscal year that could result, at the end of that year, in determinations to reduce FFP for the following year.

Current system requirements and performance standards for MMIS yearly reapproval have been published in Part 11 of the State Medicaid Manual (SMM). (Before October 1982, the performance standards had not been included in Part 11.) We had previously furnished the States with the seven standards, 15 elements, and 54 factors that we used for the MMIS yearly reapproval reviews for FY 82.

E. Publication of Conditions of Approval and Reapproval

We published a notice with comment period on the performance standards for reapproval (with all the standards and elements, and several illustrative factors) on June 30, 1981, in the **Federal Register** (46 FR 33653) as part of the implementation plan for reviewing previously approved State systems. The performance standards for reapproval have been added as Chapter 4 to Part 11 of the State Medicaid Manual (the successor to Part 7 of the Medical Assistance Manual). Part 11 of the SMM now contains both the performance standards (including their factors and elements) for reapproval and system requirements for initial approval and reapproval. Any changes made in these standards and requirements or any additional standards or requirements will appear in Part 11 of the SMM.

Although we do not anticipate that the performance standards will change frequently, the elements, factors, and related aspects of the conditions for reapproval may be modified from time to time to reflect new information and the results of experience. Moreover, when necessary we plan to add new system requirements or other conditions appropriate for the proper and efficient operation of an MMIS. We intend to solicit public comment on future proposed substantive changes to be made in Part 11 of the SMM by publishing notices in the **Federal Register**. However, due to the technical nature of the MMIS performance standards and requirements, and our belief that MMIS is of interest only to a very limited audience, we would not publish in the **Federal Register** the text of the proposed changes or the changes which are finally adopted. We would summarize the changes to be made in the **Federal Register** notice, and make the text available to the States and to any other interested parties who request it. HCFA's response to any comments received would be the subject of a subsequent **Federal Register** notice that would also announce any modifications in the changes originally proposed to be made in Part 11 of the SMM. Of course, the text of the changes would be made available to the public.

As part of the process for development of the performance standards for reapproval to be used during fiscal year 1984, and in view of the recent publication of the performance standards in Part 11, we are at this time requesting comments on all of Part 11, which now contains all the conditions for initial approval and annual reapproval of MMIS. States have already been provided with copies of Part 11. Other interested individuals may obtain a copy of Part 11 of the SMM by telephoning the Inquiries Staff of the Bureau of Program Operations at (301) 594-8715. Individuals with questions concerning reapproval procedures or performance standards should call Newton Dikoff (301) 594-8190. For questions concerning procedures for initial approval or system requirements call Charles R. Booth (301) 594-5415. Comments should be submitted by the deadline for submitting comments on this notice of proposed rulemaking and to the same address, as stated above.

II. Major Provisions of the Regulations

The provisions of the proposed regulations would update the regulations to reflect the additional requirements of section 1903(r) of the Act and would amend 42 CFR Part 433, Subpart C, Mechanized Claims Processing and Information Retrieval Systems. The references in this preamble to specific sections are to those in the proposed rule, which makes some numbering and other technical changes in the current rules.

A. Initial Operation

As required by section 1903(r)(1) of the Act, these regulations would require a State (unless a waiver is obtained) to have in operation an MMIS system that the State detailed in an advance planning document (APD) that was approved by the Secretary. Section 1903(r)(1) of the Act requires the system to have been in operation by the earlier of: (1) September 30, 1982; or (2) the last day of the sixth month following the date specified for operation of the system in the State's most recently approved APD submitted before October 7, 1980 (the date of enactment of Pub. L. 96-398). This means that a State that submitted an APD after October 7, 1980, had to have its system operating by September 30, 1982. If the State submitted an APD before October 7, 1980 that was approved by the Secretary and that contained an operating date before March 1, 1982, the system must have been operating by the last day of the sixth month following the specified operating date. These deadlines were delayed only if the Secretary determined that the State was unable to comply for good cause or for circumstances beyond its control (see sections II-M and II-N below).

When system operation begins, the State receives 50 percent FFP in its expenditures for system operation until the system is approved. The FFP in State expenditures for system operation increases to 75 percent, effective with the first day of the calendar quarter after the system was determined to be operating satisfactorily. This 75 percent rate may be given retroactive effect if we determine the system to have been operational for an entire calendar quarter before the quarter in which the system received its initial approval.

If a system had not been in operation by the specified deadline, HCFA would have reduced the rate of FFP in both State expenditures for skilled medical personnel and staff (section 1903(a)(2)) and general administrative expenses (section 1903(a)(7)) by 5 percentage points for every two-quarter period of non-operation beyond the deadline described above. (The rate of FFP under section 1903(a) (2) and (7) would not have been reduced more than 25 percentage points for each type of FFP.)

However, of the seven States that do not now have operating systems, requirements for four States were waived under section 1903(r)(7), and another State has requested a waiver under that section. Section 1903(r)(7) provides waivers for operating an MMIS in certain States with small populations. Also, HCFA has granted two States six-month waivers of the FFP reductions for good cause under section 1903(r)(8).

B. Initial Approval of an Operating System

As required by section 1903(r)(2) of the Act, these regulations would require that a State have an operating system initially approved by HCFA by the last day of the fourth quarter that begins after the date on which HCFA establishes that the system became operational.

Section 1903(r)(3) (A) of the Act provides retroactive funding (at the 75 percent rate under section 1903(a)(3)) for operation of an approved system from the first quarter beginning after the system became operational. If a system were operating but not approved by the specified deadline, HCFA would reduce FFP in State expenditures under section 1903(a) (2) and (7) by 5 percentage points each for every two-quarter period for which the system is operating but not approved beyond that deadline. Again, the rate of FFP may not be reduced more than 25 percentage points for each type of FFP.

If the State were subjected to a reduction of FFP under section 1903(a) (2) and (7) of the Act because it did not meet the deadline for initial approval by HCFA, section 1903(r)(3)(B) requires that the State be subjected to reductions in the retroactive FFP otherwise available for operating an approved system under section 1903(a)(3)(B). That section also requires that funding must be reduced by five percentage points for every two-quarter period beyond the deadline for initial approval. Funding of the system for the quarters following the quarter in which the system is initially approved will be at the 75 percent rate specified in section 1903(a)(3) of the Act (and is not subject to reduction under section 1903(r)(3)(B) of the Act).

In order to minimize the accumulation of the FFP reductions that could occur if there is a delay in the approval process, we would continue the current practice under which a State contacts HCFA when its system has been in operation between three and six months and requests initial approval of the system. At that time, we would review and evaluate State-furnished information developed by the system and schedule an on-site visit.

We have found that we need at least six months of claims processing data to evaluate the system performance properly. We believe this amount of data is necessary to validate statistically provider and patient profiles that provide specific information on use of covered types of services and to evaluate the overall performance of the system. Because States frequently begin processing claims three months before the system becomes fully operational, six months of claims processing data generally is available three months after a system becomes operational.

When States that are now without an operating system or that wish to replace a currently approved system submit their request for approval, they should submit their request with the supporting documentation within three months after the system begins operating to allow us the needed time to complete our evaluation within the first year of system operation.

If a State were unable to submit the data necessary for initial approval by the end of three months after the system becomes operational, the State could possibly be entitled to a waiver of reduction of FFP under section 1903(r)(B)(A). We recommend that, where appropriate, we be notified at this point of the State's possible entitlement to a waiver, rather than after the year ends, to avoid a needless disruption in the level of FFP available to the State. Procedures for waiving FFP reductions are explained in paragraphs II–M and II–N of this document.

All State systems that were approved by HCFA as operational before October 8, 1980, are deemed to be initially approved, unless the approved system is no longer in operation. If a system discontinues operation, and the State does not replace the system with another approved system or does not intend to renew operations of the system, FFP paid under section 1903(a) (2) and (7) would be reduced as required under section 1903(r)(2)(C) unless the State is entitled to a waiver. A waiver of the requirement for an approved operating system is available only to States that meet the criteria in paragraph II–L of this document.

C. Appeals of Initial Operations and Approval Decisions

An agency may appeal reductions in FFP resulting from the denial of an initial approval and reductions in FFP for expenses of the system for initial operations under the procedures of the Departmental Grant Appeals Board contained in 45 CFR Part 16 (governing reconsiderations of disallowances of claims for FFP under section 1903 of the Act).

D. Replacement Systems

We can foresee that a State may want to discontinue operating an approved system in order to replace it with a more efficient one or for other appropriate reasons. Under the proposed regulations, replacement systems would have to be approved by HCFA in accordance with the initial approval conditions. HCFA would require that the State file an APO that contains: (1) The date the new system will become operational; and (2) a plan that assures an orderly transition from the system being replaced.

FFP would be available at 90 percent in expenditures for the design, development and installation of the replacement system if the State owns the software. (Software includes computer programs, procedures, and associated documentation that is part of the MMIS.) FFP for automated equipment (hardware) and services are governed by Departmental regulations beginning at 45 CFR 95.601. While the replacement system is being prepared to become operational, we would continue to fund, at 75 percent, the already approved operating system. When a replacement system becomes operational, FFP would be available at 50 percent of expenditures for operation of the replacement system until we approve it. At that time, increased FFP would be available at 75 percent retroactively to the date HCFA determines the replacement system met all conditions for initial approval. However, although a State may be operating both systems for a limited period of time, FFP would be available at 75 percent for only one system at any time. (FFP would be available at 50 percent for the other operating system.)

E. Replacement of System Operators

A State may replace the operator of an approved MMIS at any time. (Either a State organization or an outside contractor may be responsible for operating an MMIS.) FFP continues to be available at 75 percent for an approved operating system regardless of who operates it. Although we require the State to notify us before a change of operators, there are no additional HCFA requirements. The following Departmental requirements apply also: 45 CFR Part 74, Administration of Grants, and 45 CFR Part 95, which prescribes the conditions under which the Department will provide FFP for the costs of automated data processing.

F. New Conditions of Approval and Reapproval.

In order to receive 75 percent FFP for operation of an MMIS, States must meet, in addition to current requirements of 42 CFR 433.113 (which would be redesignated as § 433.116), the following requirements added by section 1903(r) of the Act for approval and for reapproval, which would be added to the regulations by these proposed regulations. For initial approval, the statute specifies the following:

1. The system must be capable of developing provider, physician, and patient profiles that are sufficient to provide specific information as to the use of covered types of services and items, including prescribed drugs.

A similar condition is currently contained in 42 CFR 433.113(g), although that section does not use the same wording as the statute. The regulations address themselves only to "provider and patient profiles," rather than "provider, physician, and patient profiles." However, because a physician is a provider as defined by the Medicaid program, the effect of the proposed regulations is the same as that of the statute. Also, the current section requires the profiles for "program management and utilization review purposes." Again, we believe the current language of the regulations encompasses the statutory purpose as providing "specific information as to the use of covered types of services and items, including prescribed drugs." Accordingly, we are not proposing to modify the existing language in regulations.

2. The State must provide that information on probable fraud or abuse obtained from, or developed by, the system, is made available to the State's Medicaid fraud control unit (if any) certified under section 1903(q) of the Act.

This condition is already a State plan requirement in other Medicaid regulations (42 CFR 455.21, "Cooperation with State Medicaid fraud control units"). We propose, however, to add it as a new paragraph (h) both to the initial approval conditions for MMIS contained in redesignated 42 CFR 433.116 and to the reapproval conditions for MMIS contained in a new 42 CFR 443.119, with the appropriate cross-reference.

3. The system must meet all performance standards and other conditions for initial approval that HCFA develops and about which it notifies the States.

Except as explained above, there would be no changes in the existing conditions in the regulations for initial approval specified in redesignated 42 CFR 433.116 (c) through (g) and Part 11 of the SMM.

For reapproval, States would be required to meet the first two requirements above, and, also, performance standards and other conditions for reapproval that HCFA is required to develop under section 1903(r)(6) (B) to (F) of the Act. These would include the system requirements in Part 11 of the SMM. The initial list of performance standards that must be met for reapproval was issued earlier to all the States and published in the **Federal Register** on June 30, 1981 (46 FR 33653). It was also published in the SMM. For purposes of clarity, we propose to have separate regulations specifying conditions for initial approval and conditions for reapproval. Current regulations do not clearly distinguish between them.

Also, HCFA is considering revising the claims processing quality control (MQC) program in the future. Our proposal would add a claims processing quality control component as an additional condition for MMIS approval and annual reapproval. The claims processing quality control component would measure whether the State paid only those claims: (1) That are for covered services, (2) that are for recipients who are on the eligibility roles, (3) that are for eligible providers, (4) that are not duplicate claims, and (5) that are within the appropriate fee schedule.

Separate Medicaid quality control claims processing requirements would then be eliminated for States with MMIS since the substance of the claims processing quality control program would be incorporated into the MMIS conditions and performance review.

This component's specific requirements would vary depending on the most recent quality indicators of State claims processing operations. States with documented poor performance would be required to use the Medicaid quality control claims processing review program (generally referred to as MQC II) that nine States are currently using on a demonstration basis.

We would authorize MMIS States with documented superior claims processing operations to submit alternative claims processing review programs, which they may use if they receive our approval based upon the program's effectiveness, efficiency, and economy.

We would also require non-MMIS States with documented superior claims processing operations to use MQC II, and allow a 60 percent reduction in sample size.

If adopted, we plan to use this claims processing quality control component as part of the initial approval and reapproval process starting in fiscal year 1984. The claims processing requirements that HCFA will propose should reduce the sampling requirements and overall burden to States by 50 percent. However, the full effect of this burden reduction will apply only to States that are fully successful in maintaining low error rates for claims processing programs.

Before adopting this component as an additional MMIS requirement, we would follow the notice and comment procedure outlined in section I–E of this notice. As is true for other MMIS activities, only systems-related functions would be funded at more than 50 percent FFP. We are encouraging States to put into place the claims processing quality control component in fiscal year 1983, using the MQC II system or an alternative system if the State qualifies for that option.

After analysis and consideration of the public comments on the claims processing quality control proposal and the MMIS changes proposed in this document, we plan to publish final requirements. At that time, if practical, we would combine in a single **Federal Register** document all claims processing quality control requirements with the final rule that involves conditions of MMIS approval and reapproval and procedures for reduction of FFP.

G. Reapproval: Basis for and Amount of Reduction.

Section 1903(r)(4)(B) of theAct requires us to reduce FFP to no more than 70 percent, but not less than 50 percent, for an MMIS that fails to meet the conditions of reapproval. We may not reduce FFP by more than 10 percent points in any four-quarter period. That is, a State whose system fails to meet the conditions of reapproval three years in a row and that is subject to the maximum potential reduction each year would receive 65 percent FFP the first year, 55 percent FFP the second year, and 50 percent the third year. In such a case, only 50 percent FFP would be available to the State until it meets the conditions of reapproval in a subsequent yearly review period.

Under the proposed regulations, we would reduce FFP by increments from 75 percent to 50 percent of State expenditures, in accordance with the statutory provisions, if successive yearly reviews of a State's MMIS operations show that the system no longer meets

the requirements for reapproval specified in new 42 CFR 433.119 (performance standards, system requirements, and other conditions of reapproval).

If the State system were to fail to meet requirements in place during the evaluation period, the State would be subject to a reduction in FFP. To avoid a further reduction in FFP because of the requirements, the State would be required to demonstrate that the system met the requirements during the next annual review, when the system would be examined to see if the requirements were met.

H. Reapproval: Notice of Results of Review.

During each yearly review, we evaluate performance for each State's MMIS over a period of at least six months. We are continuing to provide technical assistance, as in the past, to enable States to correct system deficiencies. As early as possible in the first quarter after the end of the fiscal year under review, we notify each State whether its system has met the conditions of reapproval. If the system failed to meet these conditions, the notice would include—

1. A statement that the State's FFP for systems operation will be reduced, and the percentage to which it is reduced, for the four quarters immediately following the quarter in which the notice is issued;
2. The findings of fact on which we made our determination; and
3. A statement that State claims in excess of the reduced FFP rate will be disallowed and that any such disallowance will be appealable to the Grant Appeals Board.

I. Reapproval: Timing, Duration and Restoration of the FFP Reduction.

By law (section 1903(r)(4)(B) of the Act), the first review that could result in a reduction of FFP to a State could not begin before Federal fiscal year 1982 (October 1, 1981 to September 30, 1982). Under the regulations, review periods would continue to coincide with Federal fiscal years and any reduction of FFP would begin in the January following the end of the fiscal year.

States with systems approved before October 1, 1981, received 75 percent FFP for MMIS operation for the four quarters of fiscal year 1982 in addition to the following quarter in which we issued our annual review determinations. No decision to reduce FFP under the reapproval provisions of section 1903(r) of the Act was made before the fifth quarter and any reduction became effective after that quarter. States with systems initially approved on or after October 1, 1981 also received at least five quarters of 75 percent FFP. For example, if a system was initially approved in June 1982, retroactive to January 1, 1982, there was no review of the system (for purposes of determining FFP reductions) during the remainder of that fiscal year. FFP at 75 percent for MMIS operation would be effective for the three quarters (January-September) of that year, the following full fiscal year, and at least the first subsequent quarter of the next fiscal year.

HCFA interprets section 1903(r) of the Act to establish the mechanism under which States that have had their MMIS disapproved will have their FFP reduced for at least four quarters after the quarter in which the disapproval is made and up to the first quarter beginning after the system is reapproved. Section 1903(r)(4)(A) of the Act requires us to review at least once each fiscal year; we are making a review determination only once each fiscal year. We will continue to conduct the required regular yearly reviews in all States to determine whether systems receiving reduced funding subsequently meet the conditions of reapproval, and whether systems receiving full funding continue to meet those conditions.

As we make regular review determinations once each fiscal year, we would not resume full FFP for a system receiving reduced funding until we complete the next regular yearly review that results in a favorable determination. Yearly review determinations actually take effect after the end of the fiscal year (i.e., we would resume 75 percent FFP for MMIS operation, or reduce it if applicable, effective the following January).

Under the proposed regulation, a State that receives reduced FFP because of deficiencies found during the review process could receive the withheld amount retroactively, if the next yearly review determination shows that the system then meets all conditions of reapproval. The restoring of withheld FFP would also be subject to HCFA's judgment that return of the funds would improve the effective administration of the State's plan. This provision for retroactive adjustment is intended as an incentive for States to correct the system deficiencies as soon as possible.

Under section 1903(r)(4)(C) of the Act and these regulations, HCFA could restore FFP retroactively for as many as four quarters that immediately precede the quarter in which the State's system is reapproved. However, we are not required to restore funds for any quarter.

Because section 1903(r)(4)(C) of the Act precludes restoration of the withheld FFP for more than these four quarters, the withheld FFP would be lost permanently for the year in question if the subsequent yearly review showed the system still failing to meet any condition of reapproval.

HCFA's decisions to restore FFP, and the number of quarters of the restoration are discretionary and, therefore, not subject to appeal to the Grant Appeals Board. In making these decisions, we would consider any relevant information, such as the amount of improvement shown as a result of the latest yearly review.

During the period in which a State receives FFP for MMIS operation at a reduced rate, claims by the State for FFP at any higher level for MMIS would be disallowed; i.e., the State would not be eligible to receive 75 percent FFP for MMIS funding.

J. Reconsideration by the Departmental Grant Appeals Board.

States have the opportunity to request a reconsideration from the Board of the disallowance of claims for FFP. Where FFP for MMIS expenditures is reduced or the section 1903(a) (2) and (7) FFP is reduced because of the State's failure to meet the requirements of section 1903(r) of the Act, the State could request Grant Appeals Board review of the resulting disallowance by filing a written request with the Board. This request should be filed with a copy of the disallowance letter, within 30 days from the date of that letter. By requesting a reconsideration of the disallowance, the State could challenge the basis of the decision to reduce FFP. However, under this process, the State would not be able to make this challenge until after the end of the first quarter in which FFP is reduced.

The Board would be able to verify the accuracy of the computation of the amount of FFP that has been disallowed from a State's claim.

However, the Board would not review the specific percentage used in reducing the State's FFP because of failure to meet MMIS conditions of reapproval except to determine whether the percentage reduction is outside the range of discretion provided to HCFA under the statute (section 1903(r)(4)(B) of the Act).

As stated earlier, HCFA's decision whether to restore FFP, and the number of quarters' restoration of FFP, would not be subject to appeal before the Board.

If the reduction of FFP goes into effect, the reduction continues pending a Board review of the disapproval of the State's MMIS. If the Board subsequently

reverses the disallowance, the case would be remanded to HCFA to restore withheld FFP retroactively.

K. Notification to States of Changes in Conditions of Approval and Reapproval.

Currently, changes in conditions of approval may be announced only once a year. We publish a notice in the **Federal Register** describing the proposed revision, and respond in the **Federal Register** to comments on revisions making substantive changes. We propose to continue to follow this procedure. Systems requirements used for reapproval would be published in the **Federal Register** in the same manner.

Also, we propose to publish changes in performance standards and other conditions for reapproval in the SMM after first publishing a notice in the **Federal Register** advising the public of the changes and inviting comment, and after responding to the comments received, if any, in a subsequent **Federal Register** notice. Under section 1903(r) of the Act, we are required to inform the States of conditions of reapproval at least three months before the beginning of the review period in which the procedures, standards and other conditions will be used. Although we might publish changes in performance standards several times during the year, they would not be effective until the next fiscal year's review and then only if they are published at least three months before the fiscal year begins.

L. Waiver of Conditions for Initial Operation and Approval

HCFA will continue to waive the requirements for initial approval and for operating an MMIS for States with small populations if a State has demonstrated to HCFA's satisfaction that an MMIS would not significantly improve the efficiency of the administration of the State plan. Under section 1903(r)(7) of the Act, only a State that had fewer than one million residents in 1976 (as reported by the Bureau of Census), and total Medicaid expenditures (including FFP) of less than $100 million in fiscal year 1976 (as reported by the State for the period of October 1, 1975 through September 30, 1976) is entitled to receive this waiver.

To obtain the waiver, a State must submit the applicable information stated in the immediately preceding paragraph.

If HCFA determines, after granting a waiver of MMIS requirements, that an MMIS would significantly improve the administration of a State Medicaid program, the law requires HCFA to withdraw the waiver and prepare a timetable for State compliance. This timetable must be comparable with the time period allowed under the statute for initial approval of other operating systems, which is two years. During this period, a State must submit an APD, which will specify the proposed operating date of the system. The requirements for approval of an operating system will apply to a system required by HCFA after a waiver is withdrawn.

Section 1903(r)(7)(A)(ii) also directs the Secretary to waive these requirements for the Commonwealths, territories, and possessions of the United States under the same conditions as described above for States with small populations. Additionally, section 1108(c) of the Act limits the total amount of FFP that is available to Guam, Puerto Rico, the Virgin Islands and the Northern Mariana Islands to fixed amounts. (There is no ceiling on the availability of FFP in the States). Historically, these territories have received the entire fixed amount each year. Because additional FFP is not available for developing or operating an approved system, as it is for States, we believe that to require these jurisdictions to comply with the proposed MMIS regulations would not significantly improve the efficiency of the administration of their Medicaid programs. We reach this conclusion since, under these circumstances, any MMIS expenditures in these jurisdictions would invariably result in a diminution of Federal funds available for providing services and administering other aspects of their Medicaid programs. Therefore, without necessity for a further showing, we granted waivers of MMIS requirements to Guam, Puerto Rico, the Virgin Islands, and the Northern Mariana Islands.

M. Waiver of Reductions for Good Cause

Under these regulations, HCFA would waive the FFP reductions if we determine that a State is unable to comply with a requirement of these regulations for good cause. Under the law, no waiver of an FFP reduction for good cause can exceed two quarters.

N. Waiver of Reductions Due to Circumstances Beyond the Control of the State

HCFA would waive the FFP reductions for a period during which a State is unable to comply due to circumstances beyond its control. This situation would exist when a State or the contractor responsible for the MMIS is without fault in being unable to comply; e.g., a natural disaster occurred or a delay was caused by HCFA. We would also defer all remaining deadlines for the initial approval process for the same length of time.

III. Regulatory Impact Analyses

Executive Order 12291

The Secretary has determined, in accordance with Executive Order 12291, that this rule does not constitute a major rule because it will not have an annual impact on the economy of $100 million or more, result in a major increase in costs or prices for consumers, any industries, any governmental agencies or any geographic regions, or otherwise meet the thresholds of the Executive Order.

These proposed regulations would not result in any significant economic impact. The regulations implement statutory provisions, and we estimate that the annual impact of the statutory provisions will be no more than $25 million. We do not expect the statutory requirements for initial approval to result in any additional expenditures because 42 States and the District of Columbia already operate approved systems; two States have approved APDs and are currently installing their systems; four States with Medicaid programs have received waivers from compliance with the MMIS requirements; and the waiver of one State is pending. Territories are not subject to the MMIS requirements. Also, neither the statutory provisions nor these proposed regulations would have an impact on the cost of replacement systems.

However, if all currently approved MMIS systems were found deficient during the next yearly review, the maximum payment reduction to States could amount to $25 million.

Regulatory Flexibility Act

The Secretary certifies under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that these proposed regulations will not have a significant economic impact on a substantial number of small entities. As defined by the Regulatory Flexibility Act, a "small entity" includes the term "small governmental jurisdiction", which means "governments of cities, counties, towns, townships, villages, school districts or special districts, with a population of less than fifty thousand." No State meets this definition, and as these regulations only affect States, a regulatory flexibility analysis is not required.

IV. Response to Comments

Because of the large number of comments we receive, we cannot acknowledge or respond to them

individually. However, in preparing the final rule, we will consider all comments and will respond to them in the preamble to that rule.

V. Reporting Requirements

The system requirements contained in 42 CFR 433.122(b), 433.116, 433.117, and 433.123 of this proposed rule contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these information collection requirements. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Administrator at the address that appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, D.C. 20503, ATTN: Desk Officer for HHS.

The system requirements were approved on April 4, 1982 by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). The OMB approval number is 0938–0247, and the expiration date was December 31, 1982. HCFA has applied for reapproval, and the request is currently pending in OMB.

List of Subjects in 42 CFR Part 433

Administrative practice and procedure, Assignment of rights, Claims, Contracts (agreements), Cost allocation, Federal financial participation, Federal matching provision, Grant-in-aid program—health, Mechanized claims processing and information retrieval systems, Medicaid, State fiscal administration, Third party liability.

PART 433—[AMENDED]

42 CFR Part 433, Subpart C is amended as set forth below:

1. The Table of Contents is revised to read as follows:

Subpart C—Mechanized Claims Processing and Information Retrieval Systems

Sec.
433.110 Basis, purpose, and applicability.
433.111 Definitions.
433.112 FFP for design, development, installation, or improvement of mechanized claims processing and information retrieval systems.
433.113 Reduction of FFP for failure to operate a system and obtain initial approval.
433.114 Procedures for obtaining initial approval; notice of decision.
433.116 FFP for operation of mechanized claims processing and information retrieval systems.
433.117 Initial approval of replacement systems.
433.119 Conditions for yearly reapproval; notice of decision.
433.120 Procedures for reduction of FFP after yearly approval review.
433.121 Reconsideration of the decision to reduce FFP after the yearly review.
433.122 Reapproval of a disapproved system.
433.123 Notification of changes in system requirements, performance standards or other conditions for approval or reapproval.
433.127 Termination of FFP for failure to provide access to claims processing and information retrieval systems.
433.130 Waiver of conditions of initial operation and approval.
433.131 Waiver for noncompliance with conditions of approval and reapproval.

2. Section 433.110 is revised to read as follows:

§ 433.110 Basis, purpose, and applicability.

(a) This subpart implements the following sections of the Act:

(1) Section 1903(a)(3) of the Act, which provides for FFP in State expenditures for the design, development, or installation of mechanized claims processing and information retrieval systems and for the operation of certain systems. Additional HHS regulations and HCFA procedures for implementing these regulations are in 45 CFR Part 74, 45 CFR Part 95, Subpart F, and Part 11, State Medicaid Manual; and

(2) Section 1903(r) of the Act, which—(i) Requires reductions in FFP otherwise due a State under section 1903(a) if a State fails to meet certain deadlines for operating a mechanized claims processing and information retrieval system or if the system fails to meet certain conditions of approval or conditions of reapproval;

(ii) Requires at least an annual Federal performace review of the mechanized claims processing and information retrieval systems; and

(iii) Allows waivers of conditions of approval, conditions of reapproval, and FFP reductions under certain circumstances.

(b) The requirements under section 1903(r) of the Act do not apply to Puerto Rico, Guam, the Virgin Islands and the Northern Mariana Islands.

3. Section 433.111 is amended by reprinting the introductory text of the section for the convenience of the reader and revising the first definition to read as follows:

§ 433.111 Definitions.

For purposes of this section:

"Advance Planning Document (APD)" means a written plan of action to acquire the proposed system. Content requirements for the APD are in 45 CFR Part 95, Subpart F, and in Part 11 of the State Medicaid Manual (SMM).

* * * * *

4. Section 433.112 is amended by changing the words "the Administrator" to "HCFA" wherever they appear, and by revising the introductory text of paragraph (6) and paragraphs (b) (2) and (7) to read as follows:

§ 433.112 FFP for design, development, installation or improvement of mechanized claims processing and information retrieval systems.

* * * * *

(b) HCFA will approve the system if the following conditions are met:

* * * * *

(2) The system meets the system requirements and performance standards for initial approval in Part 11, State Medicaid Manual, as periodically amended.

* * * * *

(7) The costs of the system are determined in accordance with 45 CFR 74.171.

* * * * *

§ 433.116 [Redesignated from § 433.113]

5. Section 433.113 is redesignated as § 433.116.

6. A new § 433.113 is added to read as follows:

§ 433.113 Reduction of FFP for failure to operate a system and obtain initial approval.

(a) Except as waived under §§ 433.130 or 433.131, FFP will be reduced as specified in paragraph (b) of this section unless the Medicaid agency has in continuous operation a mechanized claims processing and information retrieval system that meets the following conditions:

(1) The APD for the system was approved by HCFA;

(2) The system is operational by the earlier of—

(i) September 30, 1982; or

(ii) The last day of the sixth month following the date specified for operation in the State's most recently approved APD that was submitted before October 7, 1980; and

(3) The system is initially approved by the last day of the fourth quarter that begins after the date the system became operational as determined by HCFA.

(b) HCFA will reduce FFP in expenditures for compensation and training of skilled professional medical personnel and support staff under

section 1903(a)(2) of the Act, and for general administration under section 1903(a)(7) of the Act, by the following increments applied separately to those two categories of expenditures:

(1) Five percentage points for the first two quarters beginning after a deadline in paragraph (a) of this section;

(2) An additional five percentage points during each additional two-quarter period, through the quarter in which the State achieves compliance with the conditions for initial operation or initial approval of an operating system. FFP reductions will not exceed 25 percent for each type of reduction.

(c) HCFA will reduce FFP, otherwise available for operating an approved system under 1903(a)(3)(B), for every two-quarter period beyond the deadline for initial approval. No reduction will be made after the quarter during which the system is initally approved.

§ 433.127 [Redesignated from § 433.114]

7. Section 433.114 is redesignated as § 433.127.

8. A new § 433.114 is added to read as follows:

§ 433.114 Procedures for obtaining initial approval; notice of decision.

(a) To obtain initial approval, the Medicaid agency must inform HCFA in writing that the system meets the conditions specified in § 433.116 (c) through (h).

(b) If HCFA disapproves the system, or determines that the system met requirements for initial approval on a date later than the date required under § 433.113(a)(3), the notice will include—

(1) The findings of fact upon which the determination was made; and

(2) The procedures for appeal of the determination in the context of a reconsideration of the resulting disallowance, to the Departmental Grant Appeals Board.

§ 433.123 [Redesignated from § 433.115]

9. Section 433.115 is redesignated as § 433.123.

10. The redesignated § 433.116 is amended by revising paragraphs (a), (b), (c), and (h) to read as follows:

§ 433.116 FFP for operation of mechanized claims processing and information retrieval systems.

(a) Subject to § 433.113(c), FFP is available at 75 percent of expenditures for operation of a mechanized claims processing and information retrieval system approved by HCFA, from the first day of the calendar quarter after the date the system met the conditions of initial approval, as established by HCFA (including a retroactive adjustment of FFP if necessary to provide the 75 percent rate beginning on the first day of that calendar quarter).

(b) HCFA will approve the system operation if the conditions specified in paragraphs (c) through (h) of this section are met.

(c) The conditions of § 433.112(b) (1) through (4) and (7) through (9), as periodically modified under § 433.112(b)(2), must be met.

* * * * *

(h) If the State has a Medicaid fraud control unit certified under section 1903(q) of the Act and § 455.300 of this chapter, the Medicaid agency must have procedures to assure that information on probable fraud or abuse that is obtained from, or developed by, the system is made available to that unit. (See § 455.21 of this chapter for State plan requirements.)

11. New §§ 433.117, 433.119, 433.120, 433.121 and 433.122 are added to read as follows:

§ 433.117 Initial approval of replacement systems.

(a) A replacement system must meet all conditions of initial approval of a mechanized claims processing and information retrieval system.

(b) The agency must submit an APD that includes—

(1) The date the replacement system will be in operation; and

(2) A plan for orderly transition from the system being replaced to the replacement system.

(c) FFP is available at—

(1) 90 percent in expenditures for design, development, and installation in accordance with the provisions of § 433.112; and

(2) 75 percent in expenditures for operation of an approved replacement system in accordance with the provisions of § 433.116(b) through (h), from the date that the system met the conditions of initial approval, as established by HCFA.

(d) FFP is available at 75 percent in expenditures for the operation of an approved system being replaced until the replacement system is in operation and approved.

§ 433.119 Conditions for yearly reapproval; notice of decision.

(a) HCFA will review yearly each system operation initially approved under § 433.114 and reapprove it for FFP at 75 percent of expenditures if the following conditions are met:

(1) The system meets the conditions of §433.112(b) (1), (3), (4), and (7) through (9).

(2) The system meets the conditions of §433.116 (d) through (h).

(3) The system meets the performance standards for reapproval and the system requirements in Part 11 of the State Medicaid Manual as periodically amended.

(b) HCFA will issue to each Medicaid agency, by the end of the first quarter after the fiscal year of the review, a written notice informing the agency whether its system is reapproved or disapproved. If the system is disapproved, the notice will also include—

(1) HCFA's decision to reduce FFP for system operations, and the percentage to which it is reduced, beginning with the next calendar quarter;

(2) The findings of fact upon which the determination was made; and

(3) A statement that State claims in excess of the reduced FFP rate will be disallowed and that any such disallowance will be appealable to the Grant Appeals Board.

§ 433.120 Procedures for reduction of FFP after yearly reapproval review.

(a) If HCFA determines after the yearly review that the system no longer meets the conditions of reapproval in § 433.119, HCFA will reduce FFP for system operations for at least four quarters. However, no system will be subject to reduction of FFP for at least the first four quarters after the quarter in which the system is initially approved as eligible for 75 percent FFP.

(b) HCFA will reduce FFP in expenditures for system operations from 75 percent to no more than 70 percent and no less than 50 percent; however, HCFA will not reduce FFP by more than 10 percent in any four-quarter period. The percentage to which the FFP is reduced will depend primarily on the following criteria:

(1) The number of conditions judged unsatisfactory;

(2) The extent to which conditions were not met; and

(3) The significance of the unsatisfactory conditions in overall mechainized claims processing and information retrieval system operations.

§ 433.121 Reconsideration of the decision to reduce FFP after the yearly review.

(a) The agency appeal to the Departmental Grant Appeals Board, under 45 CFR Part 16, a disallowance concerning a reduction in FFP claimed for system operation caused by a disapproval of the State's MMIS. If the Board finds such a disallowance to be appropriate, the discretionary determination to reduce FFP by a particular percentage amount (instead of by a lesser percentage) is not subject to

review by the Board unless the percentage reduction exceeds the range authorized by section 1903(r)(4)(B) of the Act.

(b) The decisions concerning whether to restore any FFP retroactively and the actual number of quarters for which FFP will be restored under § 433.122 of this subpart are not subject to administrative appeal to the Grant Appeals Board under 45 CFR part 16.

(c) An agency's request for a reconsideration before the Board under paragraph (a) of this section does not delay implementation of the reduction in FFP. However, any reduction is subject to retroactive adjustment if required by the Board's determination on reconsideration.

§ 433.122 Reapproval of a disapproved system.

When FFP has been reduced under § 433.120(a), and HCFA determines upon subequent yearly review that the system meets all current performance standards, system requirements and other conditions of reapproval, the following provisions apply:

(a) HCFA will resume FFP in expenditures for system operations at the 75 percent level beginning with the quarter following the yearly review determination that the system again meets the conditions of reapproval.

(b) HCFA may retroactively waive a reduction of FFP in expenditures for system operations if HCFA determines that the waiver could improve the administration of the State Medicaid plan. However, HCFA cannot waive this reduction for any quarter before the fourth quarter immediately preceding the quarter in which HCFA issues the determination (as part of the yearly review process) stating that the system is reapproved.

12. The redesignated § 433.123 is revised to read as follows:

§ 433.123 Notification of changes in system requirements, performance standards or other conditions for approval or reapproval.

(a) Whenever HCFA modifies system requirements or other conditions for approval under § 433.112 or § 433.116, or performance standards or other conditions of reapproval under § 433.119, HCFA will—

(1) Publish a notice in the Federal Register making available the proposed changes for public comment;

(2) Respond in a subsequent Federal Register notice to comments received; and

(3) Issue the new or modified standards or conditions in the State Medicaid Manual.

(b) For changes in system requirements or other conditions for approval, HCFA will allow an appropriate period for Medicaid agencies to meet the requirement determining this period on the basis of the requirement's complexity and other relevant factors.

(c) For performance standards and other conditions for reapproval, HCFA will notify Medicaid agencies at least one calendar quarter before the review period to which the new or modified standards or conditions apply.

13. New §§ 433.130 and 433.131 are added to read as follows:

§ 433.130 Waiver of conditions of initial operation and approval.

(a) HCFA will waive requirements for initial operation and approval of systems under § 433.113 for a State meeting the requirements of paragraph (b) of this section and that had a 1976 population of less than one million and made total Federal and State Medicaid expenditures of less than $100 million in fiscal year 1976. Population figures are those reported by the Bureau of the Census. Expenditures for fiscal year 1976 are those reported by the State for that year.

(b) To be eligible for this waiver, the agency must submit its reasons to HCFA in writing and demonstrate to HCFA's satisfaction that an MMIS will not significantly improve the efficiency of the administration of the State plan.

(c) If HCFA denies the waiver request, the notice of denial will include—

(1) The findings of fact upon which the denial was made; and

(2) The procedures for appeal of the denial.

(d) If HCFA determines, after granting a waiver, that an MMIS would significantly improve the administration of the State Medicaid program, HCFA may withdraw the waiver and require that a State obtain initial approval of an MMIS within two years of the date of waiver withdrawal.

§ 433.131 Waiver for noncompliance with conditions of approval and reapproval.

If a State is unable to comply with the conditions of approval or of reapproval and the noncompliance will cause a percentum reduction in FFP, HCFA will waive the FFP reduction in the following circumstances:

(a) *Good Cause.* If HCFA determines good cause, HCFA will waive the FFP reduction. A waiver for good cause will not extend beyond two consecutive quarters.

(b) *Circumstances beyond the control of a State.* The State must satisfactorily explain the circumstances that are beyond its control. When HCFA grants the waiver, HCFA will also defer all other MMIS deadlines for the same length of time that the waiver applies.

(Sec. 1102 of the Social Security Act; 42 U.S.C. 1302)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: November 12, 1982.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: December 16, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 83-5283 Filed 3-2-83; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2560

Alaska Occupancy and Use; Requirements for Occupancy and Use of a Native Allotment; Withdrawal

AGENCY: Burau of Land Management, Interior.

ACTION: Notice of Withdrawal of Proposed Rulemaking.

SUMMARY: Notice is hereby given of the withdrawal of the proposed rulemaking that would have provided a procedure for carrying out the policy of the Department of the Interior regarding the requirement for 5 years for use and occupancy of a Native allotment under the Alaska Native Allotment Act, as amended, published in the **Federal Register** on August 6, 1980 (45 FR 52303). The Department has determined that the requirements contained in the proposed rulemaking are not needed, but can be carried out through procedures set out in Bureau of Land Management's Manual.

DATE: This withdrawal is effective March 3, 1983.

ADDRESS: Suggestions or inquiries should be sent to: Director (311), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Sue Wolf, (202) 343-6511.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

February 28, 1983.

[FR Doc. 83-5282 Filed 3-2-83; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 20870; FCC 83-38]

Regulatory Policies and Procedures for the Domestic Public Land Mobile Radio Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Policies and procedures concerning objective need showings for applications requesting an additional one-way frequency for one-way signaling stations are being proposed. The present rules do not provide applicants with sufficient information as to what is required in need showings before applications can be granted. Applicants requesting an additional one-way frequency must show that the existing or projected grade of service is .50 before an additional channel is granted. The proposed standards are concurrently being adopted as an interim rule.

DATES: Comments must be received on or before April 4, 1983 and Replies on or before May 4, 1983.

ADDRESS: Secretary's Office, Rm. 222, FCC, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Carmen A. C. Borkowski, (202) 632-6450.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 22

Communications common carriers, Mobile radio service, Radio common carriers.

Adopted: January 27, 1983.

Released: February 14, 1983.

In the matter of Regulatory Policies and Procedures for the Domestic Public Land Mobile Radio Service; CC Docket No. 20870; Further notice of proposed rulemaking.

1. In this notice we propose to adopt objective need standards for one-way service. We think the public interest will benefit from the adoption of objective need standards for one-way service. In a *Third Report and Order* in this proceeding adopted concurrently with this *Further Notice* we found that objective need standards promote efficient use of a limited spectrum. Our present rules for one-way service do not provide a specific methodology to be followed in demonstrating need for proposed facilities, this has created excessive administrative burdens and delays in authorizing facilities to the public. Accordingly, we are proposing that objective need standards governing one-way applications requesting an additional frequency be adopted.[1] In addition, these objective one-way need standards were adopted concurrently as an interim rule pending the conclusion of this rulemaking proceeding. *See* Rules Section in todays Fed. Reg.[2] The experience we have gained from using objective need standards for two-way service demonstrate to us that one-way standards are also needed. Although one way service is different from two-way service, one-way stations are much more heavily loaded, average air time per transmission is much less and storage techniques are commonly used—in some areas much is the same. Accordingly, the procedures we are proposing for one-way frequencies are substantially the same as the ones we adopted in the *Third Report and Order* for the two-way frequencies, except for the grade of service level, which will be 0.50. Applications for one additional paging channel will be granted, if the application shows that the existing system's present grade of service is 0.50 or greater or that the existing grade of service is 0.40 or greater with a projected grade of service of 0.50 or greater. This rulemaking is largely a formalization and clarification of existing procedures. As in the case of two-way service, we tentatively fined that adoption of objective need standards for one-way service is in the public interest. Applicants will be certain as to what is required to obtain and additional frequency. Objective need standards will promote efficient use of a limited spectrum and permit authorizing facilities to the public in an expeditious and efficient manner. Accordingly, we invite comments on this proposal.

Regulatory Flexibility Act—Initial analysis

2. *Reasons for Action and Objective.* These rules are being proposed in order to give greater clarity to the Commission's processing standards with respect to need showings for an additional one-way frequency in the DPLMRS. The rules will ease regulatory burdens for small entities. The objectives are to streamline, clarify and codify existing regulations and policies and to provide service to the public in the most efficient and expeditious manner possible.

3. *Legal Basis.* The authority for this proposed rulemaking is contained in Sections 4 and 303 of the Communications Act of 1934, as amended.

4. *Small Entities Affected and Potential Impact.* The impact of the proposed rule revisions will be on all DPLMRS applicants and licensees and on members of the public receiving mobile service. Existing and potential applicants for this service range in size from single individuals and small partnerships to large multimillion dollar corporations. The proposed rules will clarify requirements and simplify and reduce the paperwork and administrative procedures for obtaining an additional one-way frequency and serving the public.

5. *Relevant Federal Rules which Overlap, Duplicate or Conflict with this Action.* None

6. *Reporting, Record-Keeping and Compliance Requirements.* This action will reduce the reporting and recordkeeping requirements. This action will reduce the reporting and recordkeeping requirements. Licensees will no longer be required to submit demographic or statistical studies and other methods of evidencing need used in the past. The same level of engineering and other technical skills will be required as is presently necessary to properly submit an application in these radio services.

7. *Alternatives that would lessen impact.* We have considered the alternative of exempting small businesses from the proposed rule. This would not establish an easier standard for receiving an additional channel, therefore, it would not lessen adverse economic impact on these entities. Therefore, we have opted for lessening the regulatory burdens on small entities by clarifying our rules.

8. Interested parties are invited to submit written comments on their views concerning the adoption of objective need standards for an additional one-way frequency to the Federal Communications Commission, Washington, D.C. 20554. Comments should address specifically with supportive data actual channel usage for tone/voice, tone only, tone/optical readout and mixed, or a combination thereof as well as specific recommendations concerning channel loading standards for the previously cited units.[3]

[1] In General Docket No. 80-183, First Report and Order, 89 FCC 2d 1337 (1982), we eliminated the requirement of demonstrating public need for the proposed facilities for applications requesting one initial one-way frequency. We also established that initial and additional frequencies would be limited to no more than one at a time.

[2] Applications which fail to demonstrate need in accordance with the interim standards will be returned as unacceptable for filing pursuant to § 22.20 of the Rules.

[3] In this regard comments can rely on business judgment and/or historical experience with supportive data or evidence.

9. Comments should be submitted in accordance with Rule § 1.419, 47 CFR 1.419 Comments should be submitted by April 4, 1983. Reply comments by May 4, 1983. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's Rules, 47 CFR 1.1231. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

10. Pending the conclusion of this rulemaking proceeding, we will follow the objective need standards of the interim rule adopted concurrently with this Further Notice.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 83-5420 Filed 3-2-83; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 82-716; RM-4102; RM-4140]

TV Broadcast Stations in Anchorage and Seward, Alaska; Order Extending Time for Filing Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; Extension of reply comment period.

SUMMARY: Action taken herein extends the time for filing reply comments in a proceeding involving the assignment of VHF Television Channel 5 and/or Channel 9 to Anchorage, Alaska, and the substitution of Channel 8 for unused Channel 9 at Seward, Alaska (47 FR 49416). Alaska 13 Corporation requests the additional time to file reply comments.

DATE: Reply comments must be filed on or before February 7, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

In the Matter of an amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Anchorage and Seward, Alaska); BC Docket No. 82-716, RM-4102, RM-4140; Order.

Adopted: January 25, 1983.
Released: February 7, 1983.

1. On October 14, 1982, the Commission adopted a Notice of Proposed Rule Making, 47 FR 49416, published November 1, 1982, in response to petitions filed by the State of Alaska and by Pioneer Broadcasting Company, Inc., proposing two options. The first proposal was to reassign Channel 9 from Seward to Anchorage on a reserved basis, to assign Channel 5 to Anchorage, Alaska, and to substitute Channel 8 for unused Channel 9 at Seward. The second option proposed to reassign Channel 9 from Seward to Anchorage as an unreserved assignment, with a reservation on Channel 5 at Anchorage instead, and to substitute Channel 8 for Channel 9 in Seward. The reply comment deadline is currently January 27, 1983.

2. On January 19, 1983, counsel for Alaska 13 Corporation (licensee of Station KIMO (TV), Anchorage, Alaska) filed a request seeking additional time in which to file reply comments to and including February 7, 1983. Counsel states that according to the comments filed January 11 and 13, 1983, the State of Alaska Division of Telecommunications Systems and Alaska Public Broadcasting Commission have withdrawn from this proceeding. As a result, it is not clear whether Alaska Public Television intends to pursue the allocation of Channel 9 to Anchorage. The requested extension would permit any other party, who wishes to withdraw, additional time to do so thereby saving the Commission and commenting parties from expending resources to address comments from parties no longer interested in the proceeding.

3. We believe that the requested extension of time is justified in order to provide interested parties an opportunity to respond to comments filed in this proceeding. It does not appear that any party involved in this proceeding would be adversely affected by the extension of time..

4. Accordingly, it is ordered, That the date for filing reply comments in BC Docket No. 82-716 is extended to and including February 7, 1983.

5. This action is taken pursuant to authority contained in sections 4(i), 5(d)(1) and 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 83-5417 Filed 3-2-83; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 48, No. 43
Thursday, March 3, 1983

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

Forest Service

Allegheny Front RARE II Further Planning Area Oil-Gas Operations by Non-Federal Owners of Prior Severed Mineral Rights, Allegheny National Forest, Warren County, Pennsylvania; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement to determine possible effects on wilderness and other values of various proposals for oil or gas development by non-Federal owners of mineral rights severed at the time or prior to the acquisition by the Government of the 8,696 acres of National Forest lands comprising the RARE II Allegheny Front Further Planning Area. Approximately 95% of such mineral rights are privately owned.

The current proposal is for 26 new oil-gas wells for immediate development. Companies intend additional developments and production that will include road construction, installation of storage tanks and powerlines and other facilities commonly used for local oil-gas production. The mineral owners claim the legal right to carry out these activities pursuant to the severance documents.

A range of alternatives will be considered. They will include; denying access for mineral operations; acquisition and subordination of the mineral rights; and issuance of permits for the operations. Each alternative must address potential operational impacts for the entire Further Planning Area. However, the final decision of whether or not to recommend the Allegheny Front for wilderness study will either be made legislatively or as a part of the Allegheny National Forest Planning Process, according to Section 6 National Forest Management Act.

Federal, State and local agencies, special interest groups, organizations and individuals will be invited to participate in the scoping process. This process will include:

1. Identification of those issues to be addressed.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.

The Forest Supervisor will hold a public meeting in his office at the Allegheny National Forest; Warren, PA, April 5, 1983 at 7:00 p.m.

The responsible official is Regional Forester Steve Yurich, USDA-Forest Service, 633 West Wisconsin Avenue, Milwaukee, Wisconsin.

Analysis is expected to take seven months. The draft environmental impact statement should be available in July 1983. The final environmental impact statement is scheduled for completion in November 1983.

Written comments and suggestions concerning the analysis should be sent to John P. Butt, Forest Supervisor, Spiridon Building, Box 847, Warren, Pennsylvania 16365 by April 8, 1983.

Questions about the proposed action and environmental impact should be directed to James Schuler, District Ranger, Sheffield Ranger District, Sheffield, PA 16347 Telephone: (814) 968-3232.

Dated: February 23, 1983.

Larry Henson,

Deputy Regional Forester.

[FR Doc. 83-5328 Filed 3-2-83; 8:45 am]

BILLING CODE 3410-11-M

Modoc National Forest Grazing Advisory Board; Meeting

The Modoc National Forest Grazing Advisory Board will meet at 1:00 p.m., March 23, 1983, in the Conference Room of the Supervisor's Office at 441 North Main Street, Alturas, California.

The purpose of this meeting is to discuss Stewardship projects with Range Betterment Funds on the Warner Mountain Ranger District.

The meeting will be open to the public. Persons who wish to attend or who would like further information should notify William E. Britton, Modoc Supervisor's Office, telephone 916-233-5811. Written statements may be filed with the Board before or after the meeting.

Glenn Bradley,

Forest Supervisor.

February 23, 1983.

[FR Doc. 83-5329 Filed 3-2-83; 8:45 am]

BILLING CODE 3410-11-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Discussion on Utilization of Discretionary Funds in FY 1983; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of ATBCB meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (ATBCB) has scheduled a meeting to be held from 1:00 p.m. to 5:00 p.m., Tuesday, March 8, 1983, to take place in the Main Hall of the Disabled American Veterans (DAV) National Service and Legislative Headquarters, 807 Maine Avenue, SW., Washington, D.C. 20024. Portions of the meeting on ATBCB discretionary funds for FY 1983 will be open only to ATBCB members and Federal agency staff.

Items to be considered are as follows: Discussion on the utilization of ATBCB discretionary funds in FY 1983; courtroom accessibility policy; safe transport of disabled air travelers; status report on ATBCB retreat; resolution regarding the voting accessibility act.

DATE: March 8, 1983—1:00 p.m.—5:00 p.m.

ADDRESS: Main Hall, Disabled American Veterans (DAV) National Service and Legislative Headquarters, 807 Maine Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Larry Allison, Director of Public Information (202) 245-1591 (voice or TDD).

Committee meetings of the ATBCB will be held on Monday, March 7, 1983, and Tuesday morning, March 8, in the Hubert Humphrey Building. Contact Larry Allison, Director of Public Information (202)245-1591 (voice or TDD), for further information.

Wm. Bradford Reynolds,

Chairperson.

[FR Doc. 83-5451 Filed 3-2-83; 8:45 am]

BILLING CODE 4000-07-M

CIVIL AERONAUTICS BOARD

[Order 83-2-104; Docket 41302]

Air Canada; Proposed U.S.-Canada "Seat Sale" Fares; Order of Suspension and Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 22nd day of February, 1983.

By tariff revisions filed January 21, 1983, for effectiveness February 25, Air Canada has proposed new low "Seat Sale" fares on all of its North American routes except Canada-Florida. The proposed roundtrip fares would be available for travel through June 20, 1983, and would be priced at $79 for markets up to 500 miles, $119 for 501 to 1,500 miles, $169 for 1,501 to 2,300 miles, and $209 for markets of more than 2,300 miles. The "Seat Sale" would be subject to a 21-day advance-purchase requirement, a first-Sunday/30-day minimum/maximum stay provision, capacity and day-of-travel restrictions, and a 100 percent cancellation penalty.

Despite the relatively short duration and restrictive conditions of the "Seat Sale" fares, we believe that the proposal would offer significant benefits to the traveling public. The Air Canada initiative is particularly encouraging since low-fare options have been fairly limited in U.S.-Canada markets, compared to U.S. domestic routes. The Government of Canada has repeatedly rejected innovative low-fare filings by U.S. carriers in the market, including tariffs which represent *bona fide* competitive responses to Canadian carrier filings. It is this continuing reluctance on the part of the Canadian aviation authorities to permit competitive pricing by U.S. carriers that prompts our present concern with Air Canada's "Seat Sale" fares.

Specifically, since April 1980, Continental Air Lines has repeatedly sought Canadian government approval for tariffs establishing interline fares between Canada and the South Pacific (via Los Angeles) at levels that match the Canada-South Pacific fares Canadian Pacific Air Lines currently offers (via Honolulu). In addition, a number of U.S. carriers have now filed competitive responses to Air Canada's "Seat Sale" fares. Many of these "Seat Sale" filings have apparently now been approved, but the Canadian authorities have repeatedly blocked Continental's efforts to compete with C P Air on the Canada-South Pacific routes. Despite our persistent efforts to resolve the matter by negotiation, Continental's diligent attempts to develop an acceptable fares package, and our ready approval of comparable U.S.-South Pacific tariffs by C P Air, the Canadian authorities continue to deny Continental the right to match C P Air's Canada-South Pacific fares. While we welcome the Canadian government's acceptance of U.S. carriers' "Seat Sale" fares, their continued reluctance to permit the same competitive pricing freedom with respect to Continental's Canada-South Pacific fares makes it imperative that we take action at this point.

Our policy is to allow most new low-fare filings that would encourage greater use of air transportation and offer a wider array of choices for the consumer. Consequently, we would normally conclude that we should not suspend the "Seat Sale" proposal, based on a number of factors: (1) The Air Canada filing would provide significant public benefits, albeit for a short period of time; (2) the Canadian and U.S. traveling public should not be denied the benefits of any low fares by any carrier; and (3) our permissiveness would have the effect of conveying to our Canadian friends an open-minded attitude toward permissive filings by all carriers. We hope that cooperation between our two governments will produce an environment that would provide the public with low fares and permit any carrier on either side to file prices in an open competitive regime without arbitrary government intervention. In the interim, we cannot allow Canadian carriers to dictate fare levels unilaterally, in any major market.

In this case, we believe it is essential for us to take action in order to effectively preserve the public's right to low fares in these markets. The public stands to gain much more over the long run by our firm support of the right of competitive carriers to provide a variety of fare choices which make air travel available to more consumers and expand the total market, than they would be unqualified approval of these temporary Canadian fares.

We have concluded, therefore, that the public interest requires a suspension of Air Canada's proposal.

Accordingly, under the Federal Aviation Act of 1958, as amended, particularly sections 102, 204(a), 403, 801 and 1002(j) thereof,

1. We shall institute an investigation to determine whether the fares and provisions set forth in Appendix A hereof, and rules and regulations or practices affecting such fares and provisions, are or will be discriminatory, unduly preferential, unduly prejudicial or otherwise unlawful, and if we find them to be unlawful, to act appropriately to prevent the use of such fares, provisions or rules, regulations, or practices;

2. Pending hearing and decision by the Board, we suspend the tariff provisions specified in the attached Appendix,[1] and defer their use from February 25, 1983, to and including February 24, 1984, unless otherwise ordered by the Board, and shall permit no changes to be made therein during the period of suspension except by order or special permission of the Board;

3. We shall submit this order to the President [2] and it shall become effective on February 25, 1983.

4. We shall file copies of this order in the aforesaid tariffs and serve them upon Air Canada, American Airlines, Inc., Canadian Pacific Air Lines, Ltd., Continental Air Lines, Inc., Eastern Air Lines, Inc., Frontier Airlines, Inc., Republic Airlines, Inc., United Air Lines, Inc., and Western Airlines, Inc.

We shall publish this order in the **Federal Register.**

By the Civil Aeronautics Board.

Phyllis T. Kaylor,[3]

Secretary.

[FR Doc. 83-5425 Filed 3-2-83; 8:45 am]

BILLING CODE 6320-01-M

[Order 83-2-113; Docket 41320]

Application of Classic Air, Inc. for a Certificate of Public Convenience and Necessity

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order Instituting a Fitness Investigation of Classic Air, Inc., 83-2-113, Docket 41320.

SUMMARY: The Board is issuing an order instituting a fitness investigation of Classic Air, Inc.

DATES: Persons wishing to file requests for additional evidence or petitions to intervene in the Classic Air, Inc. Fitness Investigation shall file their petitions in Docket 41320 by March 10, 1983, and serve such filings on all persons listed below.

ADDRESSES: Requests for additional evidence and petitions to intervene should be filed in the Docket Section, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

In addition, copies of such filings should be served on: Classic Air, Inc.; the Mayors and Airport Managers of Los Angeles, Lake Tahoe, California, Las

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[1] *Note.*—The appendix is filed as part of the original document.

[2] We submitted this order to the President on February 23, 1983. We received notification that the President did not intend to disapprove the Board's Order on February 24, 1983.

[3] All members concurred.

Vegas and Grand Canyon; the Arizona Department of Transportation, the California Transportation Commission and the Nevada Public Service Commission; the Federal Aviation Administration; the Department of Justice; and the Department of Transportation.

Service will also be required on any other person filing petitions.

FOR FURTHER INFORMATION CONTACT: Sherry L. Kinland, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5333.

SUPPLEMENTARY INFORMATION: The Complete text of Order 83-2-113 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 83-2-113 to that address.

By the Bureau of Domestic Aviation: February 28, 1983.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-5424 Filed 3-2-83; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 209]

Resolution and Order Approving the Application of the Huntsville-Madison County Airport Authority for a Foreign-Trade Zone in Huntsville, Ala., Within the Huntsville Customs Port of Entry

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Huntsville-Madison County Airport Authority, filed with the Foreign-Trade Zones Board (the Board) on July 30, 1982, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Huntsville, within the Huntsville Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended,and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry to the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Huntsville-Madison County Airport Authority (the Grantee) has made application (filed July 30, 1982) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Huntsville, within the Huntsville, Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, Therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 83 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, the Foreign-Trade Zone Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 24th day of February 1983, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Malcolm Baldrige,

Chairman and Executive Officer.

Attest:

John J. De Ponte,

Executive Secretary.

[FR Doc. 83-5450 Filed 3-2-83; 8:45 am]

BILLING CODE 3510-25-M

[Order No. 208]

Resolution and Order Approving the Application of the City of Mobile, Alabama, for a Foreign-Trade Zone in Mobile, Within the Mobile Customs Port of Entry

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18,

1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the City of Mobile, Alabama, filed with the Foreign-Trade Zones Board (the Board) on January 4, 1982, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Mobile, within the Mobile Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which building may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant To Establish, Operate, and Maintain a Foreign-Trade Zone in Mobile, Alabama

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the City of Mobile, Alabama (the Grantee) has made application (filed January 4, 1982) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Mobile, within the Mobile Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 82 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 24th day of February 1983, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Malcolm Baldrige,

Chairman and Executive Officer.

Attest: **John J. Deponte,**

Executive Secretary.

[FR Doc. 83-5449 Filed 3-2-83; 8:45 am]

BILLING CODE 3510-25-M

International Trade Administration

Disposition of Applications for Duty-Free Entry of Scientific Articles

In view of the requirements of schedule 8, Part 4, Headnote 1, Tariff Schedules of the United States, which provide that articles imported under Tariff item 851.60 be used exclusively for noncommercial purposes for a period of five years after entry, and U.S. Customs Service ruling CON 5–02 CO:R:E:E:E: 720803 KP dated December 17, 1982 providing that instruments which enter the United States for investigational purposes pursuant to the Food and Drug Administration regulation 21 CFR Part 812 involve commercial use and therefore are not eligible for duty-free entry under item 851.60, the processing of the applications listed below has been permanently suspended. No further applications involving instruments subject to the 21 CFR Part 812 shall be accepted for processing.

Docket No. 81–00268. Applicant: A.T. & S.F. Memorial Hospitals, Inc., 600 Madison, Topeka, KS 66607. Instrument: MBB–A Medilas 2 YAG Coagulation Laser. Application received by U.S. Customs Service: July 14, 1982.

Docket No. 82–00225. Applicant: University of Maryland Hospital, Divison of Gastroenterology, Room N3W148, 22 S. Greene Street, Baltimore, MD 21201. Instrument: MBB-AT Medilas 2 YAG Coagulation Laser. Application received by U.S. Customs Service: May 24, 1982.

Docket No. 82–00324. Applicant: Memorial Sloan-Kettering Cancer, Urologic Service, Department of Surgery, Memorial Hospital, 1275 York Ave., New York, NY 10021. Instrument: MBB-AT Medilas 2 YAG Coagulation Laser. Application received by U.S. Customs Service: August 5, 1982.

Docket No. 82–00348. Applicant: Saint Joseph Hospital, Division of Gastroenterology, 7620 York Road, Towson, MD 21204. Instrument: MBB-AT Medilas 2 YAG Coagulation Laser. Application received by U.S. Customs Service: September 16, 1982.

Docket No. 82–00350. Applicant: University of Arkansas for Med. Sciences, Division of Gastroenterology,

Univ. Hospital (Room 3D29) 4301 West Markham, Slot 567, Little Rock, AR 72205. Instrument: MBB–AT Medilas 2 YAG Coagulation Laser. Application received by U.S. Customs Service: September 16, 1982.

Docket No. 82–00353. Applicant: Hektoen Institute for Medical Research, Division of Gastroenterology, Cook County Hospital, 1835 W. Harrison, Chicago, IL 60612. Instrument: MBB-AT Medilas 2 YAG Coagulation Laser and Accessories. Application received by U.S. Customs Service: September 20, 1982.

Docket No. 82–00374. Applicant: Tampa General Hospital, Gastroenterology, Center, Davis Islands, Tampa, FL 33606. Instrument: MBB-AT Medilas 2 YAG Coagulation Laser. Application received by U.S. Customs Service: October 5, 1982.

Docket No. 83–30. Applicant: Arziona Family Planning Service, 3412 N. 4th Avenue, Phoenix, AZ 85013. Instrument: MBB–A Medilas 2 YAG Coagulation Laser. Application received by U.S. Customs Service: October 20, 1982.

Docket No. 82–00380. Applicant: Willis Eye Hospital, 9th and Walnut Streets, Philadephia, PA 19107. Instrument: Q-Switched ND YAG Laser. Application received by U.S. Customs Service: October 5, 1982.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Education and Scientific Materials)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 83-5419 Filed 3-2-83; 8:45 am]

BILLING CODE 3510-25-M

Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Cotton Yarn From Peru

AGENCY: International Trade Administration, Commerce.

ACTION: Amendment to the final affirmative countervailing duty determination and countervailing duty order.

SUMMARY: On February 1, 1983, we published a final affirmative countervailing duty determination and countervailing duty order on cotton yarn from Peru (48 FR 4508). Due to a mathematical error in the calculation of the CERTEX rate, the benefit provided by CERTEX is lowered, and therefore, the net bounty or grant provided on the export of cotton yarn from Peru is lowered by the same amount.

In the "Final Determination" section of the notice, we stated: "The estimated net bounty or grant is 38.288 percent of the f.o.b. value of the export of cotton yarn." This should read: "The estimated net bounty or grant is 37.956 percent of the f.o.b. value of the export of cotton yarn."

In the "CERTEX" section of the notice paragraph 11, we stated: "Since the above-described linkage has not been demonstrated, we have determined that the CERTEX payments must be considered as conferring bounties or grants in the amount of 26.298 percent of the f.o.b. value of the export in the amount of 26.298 percent of the f.o.b. value of the export for all exporters of cotton yarn, regardless of area of production." This should read: "* * * in the amount of 25.966 percent * * *"

In the "Administrative Procedures" section of the notice we stated: "The net bounty or grant is 38.288 percent of the f.o.b. value of the export of cotton yarn." This should read: "The net bounty or grant is 37.956 percent of the f.o.b. value of the export of cotton yarn."

This amendment corrects the three sections quoted: No other information in the February 1, 1983 determination is affected by this amendment.

EFFECTIVE DATE: March 3, 1983.

FOR FURTHER INFORMATION CONTACT: Vincent P. Kane or Melissa G. Skinner, Office of Investigations Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, Telephone: (202) 377–5414 or 3530.

Lawrence J. Brady,

Assistant Secretary for Trade Administration.

[FR Doc. 83-5292 Filed 3-2-83; 8:45 am]

BILLING CODE 3510-25-M

National Technical Information Service

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Bend Research, Inc., having a place of business at Bend, Oregon an exclusive right in the United States to manufacture, use and sell products embodied in the invention, "Composite Membrane for Reverse Osmosis," U.S. Patent Application Serial No. 259,349 filed May 1, 1981 and its continuation application filed December 8, 1982. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101–4.1. The proposed license may be granted unless, within sixty days from the date of this notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Government Inventions and Patents, P.O. Box 1423, Springfield, Virginia 22151. NTIS will maintain and make available for public inspection a file containing all inquiries, comments and other written materials received in response to this Notice and a record of all decisions made in this matter.

Dated: February 23, 1983.

Douglas J. Campion,

Program Coordinator, Office of Government Inventions and Patents, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 83-5333 Filed 3-2-83; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Department of the Army

Department of the Army Historical Advisory Committee; Notice of 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: Department of the Army Historical Advisory Committee.

Date: 29 April 1983.

Place: Conference Room, 8222–C Casimir Pulaski Building, 20 Massachusetts Ave., NW., Washington, D.C.

Time: 1000–1140; 1345–1515.

Proposed Agenda: 1000–1140—Review of historical activities; 1345–1515—Discussion of activities and executive session of the committee.

Purpose of meeting: The committee will review the past year's historical activities based on reports and manuscripts received throughout the year and formulate recommendations through the Chief of Military History to the Chief of Staff, US Army and the Secretary of the Army for advancing the purpose of the Army Historical Program.

2. Meetings of the Advisory Committee are open to the public. Due to space limitations, attendance may be limited to those persons who have notified the Advisory Committee Management Office in writing, at least five days prior to the meeting of their intention to attend the April 29 meeting.

3. Any members of the public may file a written statement with the Committee before, during or after the meeting. To the extent that time permits, the Committee Chairman may allow public presentations or oral statements at the meeting.

4. All communications regarding this Advisory Committee should be addressed to LTC Grady A. Smith, Advisory Committee Management Officer for the Chief of Military History, HQS Department of the Army, Washington, D.C. 20314.

Dated: February 1, 1983.

Grady A. Smith,

LTC, AGC, Executive Officer.

[FR Doc. 83-5610 Filed 3-2-83; 8:45 am]

BILLING CODE 3710-08-M

United States Army Medical Research and Development Advisory Committee Blood Preservation and Substitutes Subcommittee; Partially Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Subcommittee meeting:

Name of Committee: United States Army Medical Research and Development Advisory Committee, Subcommittee on Blood Preservation and Substitutes.

Date of Meeting: March 18, 1983.

Time and Place: 0830 hrs, Conference Room AS3102, Letterman Army Institute of Research, Presidio of San Francisco, CA.

Proposed Agenda: This meeting will be open to the public from 0830 to 1000 hrs for the administrative review and discussion of the scientific research program of the Blood Preservation and Substitutes Group, Letterman Army Institute of Research. Attendance by the public at open sessions will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), United States Code, Title 5 and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 1015-1700 hrs for the review, discussion and evaluation of individual programs and projects conducted by the US army Medical Research and Development Command, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. J. Ryan Neville, Assistant Director, Research Contract Management, Letterman Army Institute of Research, Presidio of San Francisco, CA 94129 [415/561-4367], will furnish summary minutes, roster of Subcommittee members and substantive program information.

Harry G. Dangerfield,

Colonel, MC, Deputy Commander.

[FR Doc. 83-5575 Filed 3-2-83; 8:45 am]

BILLING CODE 3710-92-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Mississippi and Louisiana Estuarine Areas, Freshwater Diversion Into Lakes Maurepas, Pontchartrain and Borgne, and Mississippi Sound

AGENCY: U.S. Army Engineer District, New Orleans, DOD.

ACTION: Notice of Intent to Prepare A Draft Invironmental Impact Statement.

SUMMARY: 1. *Proposed Action.* The proposed work to be analyzed in this statement is the diversion of Mississippi River water into estuarine areas at three potential locations in southeastern Louisiana. The purposes of the proposed work include improvement of wildlife and fisheries production, reduction of saltwater intrusion, enhancement of vegetative growth, and restoration of coastal wetlands. The potential diversion sites are at the following locations, all in southeastern Louisiana:

a. Through the eastbank levee at approximately river mile 128, then via a dredged canal within the Bonnet Carre' Spillway to Lake Pontchartrain, a distance of about 6 miles.

b. Through the Inner Harbor Navigation Canal at about mile 92.6 to Lake Pontchartrain, the Gulf Intracoastal Waterway, and Mississippi River Gulf Outlet.

c. Through the eastbank levee at approximately river mile 84, then via a dredged canal to Lake Borgne, a distance of about 5 miles.

2. *Alternatives.*

a. Measures considered to meet study planning objectives included freshwater diversions, saltwater barriers, regulating alterations of wetlands, filling open water areas, establishing sanctuaries, and managing fish and wildlife. Freshwater diversion was concluded to be the most effective measure to achieve the objectives.

b. A total of 13 freshwater diversion sites were investigated. The 13 sites have been screened to 3 sites based on engineering, socioeconomics, and environmental considerations.

c. The no action alternative is also being considered. However, this would not be accepted because no action would allow continued deterioration of the estuarine environment of coastal Louisiana.

3. *Scoping Process.*

a. Two initial public meetings were held on February 1st and 9th, 1978 at Gulfport, Mississippi and New Orleans, Louisiana, respectively. A coordination meeting was held on April 23, 1980 with representatives of Federal, state, and local agencies interested in freshwater diversion to discuss the status of the study and the planned course of action. Ad hoc interagency meetings were held on May 28 and June 22-24, 1982 to develop objectives for enhancing fish and wildlife resources through freshwater diversion. Various informal meetings were held and more will be held with representatives of Federal and state fish and wildlife agencies, local interests, environmental groups, and other special interest groups.

b. Significant issues to be addressed in the draft EIS include coastal wetland deterioration, adverse and beneficial impacts of freshwater diversion on the estuarine ecosystem, water quality, project costs, real estate requirements, effects of diversion on local drainage, impacts on the human environment and cultural and historical resources.

c. The US Fish and Wildlife Service has provided a planning aid report on the proposed action. In the future, the agency will provide a Fish and wildlife Coordination Act Report.

d. Periodic reviews will be held with US Fish and Wildlife Service and other Federal, state and local agencies.

4. *Scoping Meetings.* The public meeting is scheduled for November 1983. Public distribution of notices relatives to the study will be provided.

5. *Availability.* The draft EIS is scheduled to be available to the public in October 1983.

ADDRESS: Questions concerning the proposed action and draft EIS can be directed to Dennis L. Chew, US Army Corps of Engineers District, New Orleans, Planning Division, Post Office Box 60267, New Orleans, Louisiana 70160, telephone (504) 838-2523.

Dated: February 23, 1983.

Robert C. Lee,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 83-5428 Filed 3-2-83; 8:45 am]

BILLING CODE 3710-84-M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Icicle Creek Hydropower Study

AGENCY: U.S. Army Corps of Engineers, Seattle District, DoD.

ACTION: Notice of Intent to prepare a draft environmental impact statement (DEIS) for a study called the Icicle Creek Hydropower Study. Icicle Creek is a tributary to the Wenatchee River in central Washington.

SUMMARY:

a. *Proposed Action.* The Corps of Engineers began this feasibility study in September 1982. The purpose of the study is to determine the feasibility of meeting a portion of future projected Pacific Northwest electrical energy needs through hydopower development of Icicle Creek in Chelan County, Washington. At present, the most promising hydropower alternative would involve construction of a small diversion dam near river mile (R.M.) 11 of Icicle Creek. The dam would create a small, constant pool with a surface area of 1 acre or less. From the dam a penstock would extend downsteam to a powerhouse near R.M. 6. When electricity from the powerhouse is needed, water would be diverted into the penstock and would run through the powerhouse turbines, and then the water would be discharged back into the creek near R.M. 6. The maximum installed capacity of the powerhouse would be between 40 and 80 megawatts, and the average annual energy that could be produced would be between 300,000 and 500,000 megawatt hours. As the feasibility study progresses, these capacity and energy estimates will be refined. Powerlines from the powerhouse to the local power grid would also be required.

b. *Alternatives.* Other alternatives which would produce or conserve electricity will be investigated.

c. *Public Involvement and Review.* A coordination letter describing the study, hydropower alternatives, potential impacts, and specific future Icicle Creek studies will be sent to interested agencies and groups in February 1983. Public meetings, workshops, and agency meetings will be scheduled throughout the feasibility study.

d. *Significant Issues.* The following two main issues have surfaced to date. These issues and others will be addressed in the DEIS.

(1) Icicle Creek is important for its fish, wildlife, recreation, and esthetic values. A hydropower plan must be developed which will not have serious adverse impacts to these values.

(2) Icicle Creek has annual variations in flow which do not correspond to the annual variations in Pacific Northwest Electricity demand. During periods of peak electricity demand, Icicle Creek flows will sometimes be meager, and during periods of lesser demand, Icicle Creek flows will sometimes be relatively large. A cost-effective hydropower plan must be developed around this constraint.

e. *Other Environmental Review and Consultation Requirements.* The study is being coordinated with the U.S. Fish and Wildlife Service and will satisfy requirements of the Fish and Wildlife Coordination Act and Section 7(c) of the Endangered Species Act. Section 404 of Public Law 92-500 requires an evaluation of the effects of activities on aquatic ecosystems involving the discharge of dredged or fill material in waters of the United States. A "Section 404b evaluation," which discusses the plan's potential impacts on the Icicle Creek aquatic ecosystem, will be developed.

f. *Availability of DEIS.* The DEIS is presently scheduled to become available to the public in the summer of 1985.

g. *Address.* Information about the proposed action and DEIS can be obtained by contacting: Mr. Paul Cooke, Environmental Resources Section, Seattle District, Corps of Engineers, Post Office Box C-3755, Seattle, Washington 98124, Telephone (206) 764-3624 (FTS 399-3624).

Dated: February 24, 1983.

Norman C. Hintz,

Colonel, Corps of Engineers District Engineer.

[FR Doc. 83-5429 Filed 3-2-83; 8:45 am]

BILLING CODE 3710-GB-M

DEPARTMENT OF EDUCATION

National Institute of Handicapped Research; Rehabilitation Engineering Centers

AGENCY: Department of Education.

ACTION: Application Notice for Transmittal of Applications for Fiscal Year 1983.

Applications are invited for new Rehabilitation Engineering Centers for fiscal year 1983 under the National Institute of Handicapped Research in the three priority areas stated below.

Authority for this program is contained in Section 204(b)(2) of the Rehabilitation Act of 1973, as amended by Pub. L. 95-602 (29 U.S.C. 762(b)(2)).

The following three priorities were announced as final priorities, pursuant to Departmental regulations and procedures, on August 25, 1982. An application notice soliciting applications to compete for funding under these three priorities as well as other NIHR final priorities for fiscal year 1983 was also published in the **Federal Register** on August 25, 1982 (47 FR 32768 and 37281).

However, very few applications were received in response to these three priorities and those that were received were deemed inadequate for funding as a result of the Department's scientific and technical review process. Applications which were received under these three priorities were considered to be not fully responsive to the substantive research requirements of the priorities. Areas of deficiency in these applications included failure to focus on rehabilitation aspects of the research issue; inadequately defined programs of research, particularly in terms of interdisciplinary components; inadequately developed approaches to evaluation; and, in some cases, failure to propose senior staff sufficiently qualified by background and prior experience.

Nevertheless, the Secretary is convinced of the importance of these three priority areas to the advancement of rehabilitation research and to meeting critical needs of handicapped individuals. Therefore, the Secretary is reannouncing these three final funding priorities. No changes have been made in the wording of the priorities. Applicants who submitted applications in the earlier competition are invited to submit new applications as are all other interested eligible agenices and organizations.

Closing Date for Transmittal of Applications

Applications for grant awards must be mailed or hand delivered by May 6, 1983.

Applications Delivered By Mail

Any applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.133, 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing, consisting of one of the following:

(1) A legible dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered. Amendments received after the closing

date also will not be considered in the review of the application.

Applications Delivered By Hand

An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between the hours of 8:00 a.m. and 4:30 p.m. (Washington, D.C. time), daily except Saturdays, Sundays, and Federal holidays. An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information

Awards are made under this program to States and public or private agencies and organizations including institutions of higher education.

NIHR is authorized to support research and related activities under several program authorities. The priorities identified in this Notice cover research and related activities to be conducted through Rehabilitation Engineering Centers.

Rehabilitation Engineering Research Centers (RECs) conduct coordinated programs of advanced research of an engineering or technological nature. RECs are also encouraged to develop systems for the exchange of technical and engineering information and to improve the distribution of technological devices and equipment to handicapped individuals. Each REC must be located in a clinical rehabilitation setting and is encouraged to collaborate with institutions of higher education.

Ideally each REC conducts a program of research, scientific evaluation, and training that advances the state-of-the-art in technology or its application, contributes substantially to the solution of rehabilitation problems, and becomes an acknowledged Center of excellence in a given subject area. RECs are encouraged to develop practical applications for their research through scientific evaluation activities that validate their findings as well as related findings of other Centers. RECS generally conduct training programs to disseminate and encourage utilization of new rehabilitation engineering knowledge through such means as development of or contribution to undergraduate and graduate texts and curricula, in-service training, continuing education, and distribution of information and appropriate technology.

Rehabilitation Engineering Research Centers will be funded for periods up to 60 months. Funding Priorities for RECs (3).

Improving Personal Licenses Vehicled and Transportation

Mobility for handicapped persons is seriously impaired by problems of accessibility to mass transit. Alternative transportation resources are often the only viable option. Personal vehicles can be an option for many handicapped individuals, but there are many issues of design, operation, cost and safety to be resolved.

A Center in this area must design equipment to modify personal vehicles; establish safety and performance criteria for vehicular equipment matched to the capabilities of disabled drivers (especially the most severely disabled); study access and safety systems to determine the most appropriate devices and combinations of devices for disabled drivers; and initiate a program of training of disabled drivers to utilize appropriate equipment and modifications best suited to their needs.

The Secretary intends to fund at least one REC in this area in an amount up to $500,000.

Improving Rehabilitation of Low Back Pain

Disability as a result of low back pain is one of the most common handicapping conditions affecting millions of Americans and limiting their productivity. Very little systematic, coordinated research has been focused upon the rehabilitation of persons with chronic low back syndrome. It is anticipated that a substantial improvement of low-back-related disability can result from concentrated, coordinated research which combines the efforts of medical and engineering scientists.

The REC in this area will design and develop methods and equipment to quantify low back pain; evaluate existing, and design new orthotic systems, including electrical stimulation for the mitigation of back and neck pain; evaluate the effectiveness of electrical stimulation for the control of low back pain and for increasing muscular strength to stabilize the low back; and evaluate existing exercise regimens and design new ones to reduce the incidence of low back pain.

The Center must also develop new equipment and methods for training persons to manage low back pain, including electrical and biofeedback systems, and develop modified seating and other components to reduce low back pain.

The Secretary intends to fund at least one REC in this are in an amount up to $500,000.

Development of New Generation Hearing Aids

Hearing aids can be used to various degrees of satisfaction by those persons impaired by conductive, sensorineural, mixed and central hearing losses.

Hearing aids technology has advanced to a state where it could benefit from additional research to improve the quality of amplification and frequency responses produced and the clarity of sound perceived by the user.

Such a Center shall develop performance evaluation standards and evaluate all currently available hearing aids systems for quantity and quality of amplification and frequency responses relating to conductive, sensorineural, mixed and central hearing losses; develop new concepts in hearing aids using the latest technologies for sound reproduction and pattern recognition of messages; develop diagnostic and prescriptive instruments and common prescriptive criteria to optimize use of residual hearing and hearing enhancement; and evaluate newly-developed hearing aids.

The Secretary intends to fund at least one REC in this area in an amount up to $400,000.

The Secretary intends to fund at least one grant or cooperative agreement in each of these three areas, assuming satisfactory applications and continued availability of funds. However, this Notice does not bind the U.S. Department of Education to fund projects in any or all of these areas, or to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulation.

Application Forms

Application forms and further information may be obtained by writing to or calling the National Institute of Handicapped Research, U.S. Department of Education, Switzer Office Building, Room 3511, 330 C Street, SW., Washington, D.C. 20202. (Attention: Peer Review Unit); 202/245-0555.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance

requirement beyond those imposed under the statute and regulations.

Applicable Regulations

Regulations governing the program include the following:

(A) Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 74, 75, 77, and 78; and

(B) Applicants for fiscal year 1983 grants should base their applications on Section 204(b)(2) of the Act, applicable NIHR regulations in 34 CFR Parts 350 and 353 and EDGAR.

FOR FURTHER INFORMATION CONTACT: For further information, contact Ms. Edythe Glazer, National Institute of Handicapped Research, U.S. Department of Education, Switzer Office Building, Room 3511, 330 C Street, SW., Washington, D.C. 20202. Telephone: 202/245-0555, TTY for deaf individuals 202/472-4217.

(29 U.S.C. 762)

(Catalog of Federal Domestic Assistance No. 84.133, National Institute of Handicapped Research)

Dated: February 28, 1983.

Douglas A. Fenderson, Ph. D.,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 83-5427 Filed 3-2-83; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Council on Women's Educational Programs

AGENCY: National Advisory Council on Women's Educational Programs, Ed.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule for a Demonstration Site Visit, and proposed agenda of a meeting of the National Advisory Council on Women's Educational Programs, and its Executive, Civil Rights, Federal Policies, Practices, and Programs, and Women's Educational Equity Act Program Committees. This notice also describes the functions of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: March 25, 1983, 8:00 a.m. to 9:30 p.m. and March 26, 1983, 8:00 a.m. to 3:00 p.m.

ADDRESS: The meetings will be held at Airport Hilton Inn, I-40 at Guilford-Jamestown Road; Greensboro, North Carolina.

FOR FURTHER INFORMATION CONTACT: Sharon Petersen, Administrative Assistant to the Executive Director, National Advisory Council on Women's Educational Programs, 425 13th Street NW., Suite 416, Washington, D.C. 20004, (202) 376-1038.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Women's Educational Programs is established pursuant to Public Law 95-561. The Council is mandated to: (a) Advise the Secretary on matters relating to equal education opportunities for women and policy matters relating to the administration of the Women's Educational Equity Act of 1978; (b) make recommendations to the Secretary with respect to the allocation of any funds pursuant to the Act, including criteria developed to insure an appropriate geographical distribution of approved programs and projects throughout the Nation; (c) recommend criteria for the establishment of program priorities; (d) make such reports as the Council determines appropriate to the President and Congress on the activities of the Council; and (e) disseminate information concerning the activities of the Council.

The Executive Committee meeting will meet March 25, 1983, from 7:30 a.m. to 9:30 a.m. at the Airport Hilton Inn, I-40 at Guilford-Jamestown Road, Greensboro, North Carolina.

The demonstration site visit will be held March 25, 1983, from 11:00 a.m. to 3:30 p.m. at the Reidsville City School System Demonstration site in Reidsville, 920 Johnson Street, Reidsville, N.C. and at nearby schools.

The Civil Rights Committee, Women's Educational Equity Act Program Committee and the Federal Policies, Practices and Programs Committee, will meet March 25, 1983, from 7:00 p.m. to 9:30 p.m. at the Airport Hilton Inn, I-40 at Guilford-Jamestown Road, Greensboro, North Carolina.

The meeting of the National Advisory Council on Women's Educational Programs will take place from 8:00 a.m. to 9:30 a.m. on March 25, 1983 and from 8:00 a.m. to 3:00 p.m. on March 26, 1983 at the Airport Hilton Inn, I-40 at Guilford-Jamestown Road, Greensboro, North Carolina. The agenda includes reports of the Executive Committee and Executive Director; Civil Rights, Federal Policies, Practices, and Programs, and Women's Educational Equity Act Program Committees; old and new business; and planning for future meetings.

The meeting of the Council will be open to the public. Records will be kept of the proceedings and will be available for public inspection at the office of the National Advisory Council on Women's Educational Programs, 425 13th Street NW., Suite 416, Washington, D.C. 20004.

Signed at Washington, D.C., on February 28, 1983.

Rosemary Thomson,

Executive Director.

[FR Doc. 83-5461 Filed 3-2-83; 8:45 am]

BILLING CODE 4000-01-M

National Board of the Fund for the Improvement of Postsecondary Education; Meeting

AGENCY: National Board of the Fund for the Improvement of Postsecondary Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92-463), Section 10(a)(2).

DATE: March 27, 1983 at 2:00 p.m. through March 28, 1983 at 3:00 p.m.

ADDRESS: Washington Hilton Hotel, 1919 Connecticut Avenue, NW., Washington, D.C. March 27 (2:00 p.m. to 5:00 p.m.); and Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, D.C. March 28 (9:00 a.m. to 3:00 p.m.)

FOR FURTHER INFORMATION CONTACT: Sven Groennings, Director, Fund for the Improvement of Postsecondary Education, 7th & D Streets, SW., Washington, D.C. 20202 (202-245-8091).

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under Section 1003 of the Higher Education Amendments of 1980, Title X (20 U.S.C. 1135a-1). The National Board of the Fund is established to "advise the Secretary and the Director of the Fund for the Improvement of Postsecondary Education on priorities for the improvement of postsecondary education . . . and on the selection of projects under consideration for support by the Fund in its competitions."

The meeting of the National Board will be open to the public. The proposed agenda include:

—On March 27, the Board will participate in a public forum on "Priorities for Improvement," a special event marking the 10th anniversary of the Fund, held in conjunction with the Annual Meeting of the American Association for Higher Education.

—On March 28, the Board will address special efforts in conjunction with math, science, and technology

education issues, and examine progress to date of this year's Mina Shaughnessy Scholars Program, and the Final Year Dissemination and Comprehensive Program competitions.

Records shall be kept of all Board proceedings, and shall be available for public inspection at the Fund for the Improvement of Postsecondary Education, 7th and D Streets, SW., Room 3100, Washington, D.C. 20202 from the hours of 8:00 a.m. to 4:30 p.m. weekdays, except Federal Holidays.

Dated: February 18, 1983.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 83-5428 Filed 3-2-83; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Forms Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: Under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), Department of Energy (DOE) notices of proposed collections under review will be published in the **Federal Register** on the Thursday of the week following their submission to the Office of Management and Budget (OMB). Following this notice is a list of the DOE proposals sent to OMB for approval since Thursday, January 27, 1983.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The form number; (2) Form title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Type of respondent; (7) An estimate of the number of respondents; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to fill out the form; and (9) A brief abstract describing the proposed collection.

DATES: Last Notice published Thursday, January 27, 1983 (48 FR 3801).

FOR FURTHER INFORMATION CONTACT:

John Gross, Director, Forms Clearance and Burden Control Division, Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., NW., Washington, DC 20585 (202) 252-2308

Jefferson B. Hill, Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503 (202) 395-7340

Vartkes Broussalian, Federal Energy Regulatory Commission Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, D.C. 20503 (202) 395-3807

SUPPLEMENTARY INFORMATION: Copies of proposed collections and supporting documents may be obtained from Mr. Gross. Comments and questions about the items on this list should be directed to the OMB reviewer; comments should also be provided Mr. Gross. If you anticipate commenting on a form, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise the OMB reviewer of your intent as early as possible.

Issued in Washington, D.C., February 26, 1983.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

DOD FORMS UNDER REVIEW BY OMB

Form No. (1)	Form title (2)	Type of request (3)	Response frequency (4)	Response obligation (5)	Respondent description (6)	Estimated number of respondents (7)	Annual respondent burden (8)	Abstract (9)
BPA:								
BPA-787A-C	Pacific Northwest Residential Energy Survey.	New	On Occasion	Voluntary	A—Households. B—Electric Utilities. C—Natural Gas Companies.	A-6100 B-56 C-6	A-6100 B-448 C-48	BPA-787A-C will collect information on residential units and their energy consumption. The survey will be conducted between April 1983 and February 1984. The data will be used to forecast energy demand and plan resources to meet the anticipated demand. The data will be published by the Bonneville Power Administration.
CE:								
CE-189P,C,S	Industrial Energy Conservation Program for Energy Efficiency Improvement and Recovered Materials Utilization.	Extension	Annually	Mandatory	Corporations consuming more than one trillion Btu's of Energy per year in SIC codes 201-399.	15,204	157,760	The information collected on Form CE-189P,C,S will be used by the Integrated Energy Systems Branch of the Office of Industrial Programs to prepare the report on the Industrial Energy Efficiency Improvement Program required by Public Law 95-619.
EIA:								
EIA-6	Coal Distribution Report.	Extension	Quarterly	Mandatory	All companies that owned or purchased and distributed in excess of 50,000 tons of coal during the prior year.	1,450	14,500	Form EIA-6 collects data on the origin of coal produced and purchased by coal production district; distribution by consumer category; shipment by method of transportation and by state of destination; other uses; and stocks of coal. The data are published quarterly in the Coal Distribution Report.

DOD Forms Under Review By OMB—Continued

Form No. (1)	Form title (2)	Type of request (3)	Response frequency (4)	Response obligation (5)	Respondent description (6)	Estimated number of respondents (7)	Annual respondent burden (8)	Abstract (9)
FERC:								
FERC-534	Application for Production Related Costs.	Extension	On Occasion	Mandatory	Natural gas producers, interstate pipeline companies, intrastate pipeline companies and local distribution companies.	9,652	75,037	Information collected on Form FERC-534 is needed by the FERC to review producer claims for certain extraordinary costs which are incurred after gas is produced at the well-head and which are not included in NGPA price categories.
FPC-12	Power System Statement.	New—(expired more than 6-months previous).	Annually	Mandatory	Electric Utilities	420	84,000	Form FPC-12 is used to gather technical data on individual power systems for use in staff analyses related to hydroelectric licensing, proposed mergers, proposed interconnections, and wholesale rate investigations. Data are also used for statistical purposes in Energy Information Administration publications.

*This notice does not contain information collection requirements contained in regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act.

[FR Doc. 83-5283 Filed 3-2-83; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP83-6-000]

Arkansas Louisiana Gas Co., a division of Arkla, Inc.; Request Under Blanket Authorization

February 25, 1983.

TAke notice that on October 4, 1982, Arkansas Louisiana Gas Company, a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Tennessee 71151, filed in Docket No. CP83-6-000 a request as amended October 12, 1982, November 22, 1982, and December 14, 1982, pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) to construct and operate three sales taps on its jurisdictional facilities to permit direct sales of gas under the authorization issued in Docket Nos. CP82-384-000 and CP82-384-001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Arkla proposes the construction and operation of sales taps to permit direct sales as follows:

Customer name	Annual sale Mcf	Arkla jurisdictional line	End use
Robert Carter, Stephens, Ark.	90	SM-23	Domestic purposes at new home.
Dennis Mason, Magnolia, Ark.	90	KM-47	Domestic purposes at new home.
Billy Rosewell, Sheridan Ark.	90	AM-19	Domestic purposes at trailer at new home.

Arkla states that the impact of service to the new customers would be *de minimis* upon Arkla's peak day and annual deliveries, which during 1981 were 1,645,087 Mcf and 446,542,880 Mcf, respectively. Arkla also indicates it projects no curtailment to any class of customer on the entire Arkla system during the next winter.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-5400 Filed 3-2-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-62-000]

Arkansas Louisiana Gas Co., a division of Arkla, Inc.; Request Under Blanket Authorization

February 25, 1983.

Take notice that on November 4, 1982, Arkansas Louisiana Gas Company, a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP83-62-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) to construct and operate a sales tap on its jurisdictional Line JM-2 to permit direct sales of gas under the authorization issued in Docket Nos. CP82-384-000 and CP82-384-001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Arkla proposes to construct and operate a sales tap to permit direct sales of gas to Nibco Inc. of Augusta, Arkansas, which would use an estimated 109,560 Mcf annually and 1,760 Mcf on a peak day for manufacturing plumbing equipment.

Arkla states that the impact of service to the new customer would be *de minimis* upon Arkla's peak day and annual deliveries, which during 1981

were 1,645,087 Mcf and 446,542,880 Mcf, respectively. Arkla also indicates it projects no curtailment to any class of customer on the entire Arkla system during the next winter.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-5401 Filed 3-2-83; 8:45 am]

BILLING CODE 6717-01-M

[RP81-18-019]

High Island Offshore System; Tariff Revision

February 25, 1983.

Take notice that on February 15, 1983, High Island Offshore System (HIOS) tendered for filing Seventh Revised Sheet No. 4 to Original Volume No. 1 of its F.E.R.C. Gas Tariff.

HIOS states that the purpose of this filing is to reflect the further revision of its rates in compliance with the settlement of its rate proceeding in Docket No. RP81-18-001, as approved in the Commission's order issued June 3, 1982. Such further revision results from the partial settlement of the U-T Offshore Ssytem's (U-TOS) rate proceeding in Docket No. RP81-20-001, approved by Commission Order dated December 1, 1982. Pursuant to this partial settlement, U-TOS has made a refund to HIOS for the period January 1, 1981 through November 30, 1982, and reduced its charge to HIOS under Rate Schedule X-1 of its F.E.R.C. Gas Tariff for the period commencing December 1, 1982.

It is stated that HIOS will pass through to its Shippers the refund it has received from U-TOS for the period January 1, 1981 through November 30, 1982. Also, HIOS will refund to its Shippers the difference between the rates shown on Seventh Revised Sheet No. 4 and the rates actually billed and collected for the period commencing December 1, 1982.

HIOS has requested a waiver of Part 154 of the Commission's Regulations under the Natural Gas Act to the extent necessary to permit Seventh Revised Sheet No. 4 to be accepted for filing and made effective on December 1, 1982.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before March 4, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party to the proceeding must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kennth F. Plumb,

Secretary.

[FR Doc. 83-5402 Filed 3-2-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-189-000]

Montana-Dakota Utilities Co., Application

February 25, 1983.

Take notice that on February 4, 1983, Montana-Dakota Utilities Co. (Applicant), 400 North Fourth Street, Bismarck, North Dakota 58501, filed in Docket No. CP83-189-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain facilities and associated services rendered in connection with the purchase, transportation and exchange of natural gas under an agreement with Colorado Interstate Gas Company (CIG) dated January 24, 1975, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to abandon the 4-inch tap connection to the South Big Coulee lateral, Stillwater County, Montana, which consists of a 4-inch valve, drip and 2-inch blow-off valve. It is stated that the subject tap connection was used to allow deliveries of natural gas from CIG's Brickley #29-4-20 well in the South Big Coulee area. Applicant asserts that gas production has ceased from the Brickley #29-4-20 well, and therefore, the facilities and services authorized in Docket No. CP75-264 are no longer required.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 18, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-5403 Filed 3-2-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA83-1-16-003]

National Fuel Gas Supply Corp.; Proposed Tariff Change

February 25, 1983.

Take notice that on February 16, 1983, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute Forty-first Revised Sheet No. 4, proposed to be effective February 1, 1983.

National states that the purpose of this revised tariff sheet is to comply

with Commission order dated February 3, 1983, requiring that National reflect any downward modification in its pipeline suppliers and the elimination of the $6.4 million undercollection in the current surcharge. National further states that Substitute Forty-first Revised Sheet No. 4 reflects a decrease in National's rate of 15.42 cents per Mcf.

It is stated that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Sections 211 and 214, of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before March 4, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-5404 Filed 3-2-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA83-1-59-003]

Northern Natural Gas Co.; Filing

February 25, 1983.

Take notice that on February 15, 1983, Northern Natural Gas Company (Northern) tendered for filing, in compliance with the Commission's "Order Accepting For Filing And Suspending Proposed Tariff Sheets Subject To Refunds And Conditions" issued December 17, 1982, additional information regarding the Northern's filing in Docket No. TA83-1-59-000.

Ordering Paragraph (B) of the Commission's Order required a recalculation of interest on producer refunds made to Northern. Attached to the instant filing as Appendix A is a narrative and supporting schedules detailing the adjustment.

Ordering Paragraph (C) required an adjustment to Account No. 191 for costs associated with an exchange transaction with Getty Oil. Northern states that this adjustment would result in a rate increase. To avoid this consequence, Northern proposes that the rate treatment and accounting entries detailed on Appendix B to the filing, pursuant to which any required adjustments to the instant filing would be deferred with interest, and reflected in Northern's next PGA filing.

Northern requests that this filing be accepted as compliance with the December 17, 1982 Order.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the Sections 211 and 214, of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before March 4, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-5405 Filed 3-2-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA83-1-17-008, (PGA83-1, IPR83-1, DCA83-1]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 25, 1983.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on February 15, 1983 tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following sheets:

Third Substitute Sixty-fourth Revised Sheet No. 14
Second Substitute Sixty-fourth Revised Sheet No. 14A
Second Substitute Sixty-fourth Revised Sheet No. 14B
Second Substitute Sixty-fourth Revised Sheet No. 14C
Second Substitute Sixty-fourth Revised Sheet No. 14D

The above sheets are being issued in substitution for those sheets filed January 25, 1983 which reflected a revision to Texas Eastern's semiannual PGA tracking adjustment to be effective February 1, 1983 filed on December 30, 1982. The above sheets are being filed in compliance with Ordering Paragraph (A)(i) of the Commission's Order issued January 31, 1983 in Docket No. TA83-1-17-003 (GPGA83-1, IPR83-1, DCA83-1). Ordering Paragraph (A)(i) requires Texas Eastern to revise its February 1, 1983 PGA filing to reflect the proper pipeline supplier rates. The above sheets reflect reductions from all three of Texas Eastern's pipeline suppliers, Southern Natural Gas Company, Texas Gas Transmission Corporation and United Gas Pipe Line Company. The impact of these rate reductions from pipeline suppliers is a decrease of $.115/dth in the demand component of Texas Eastern's rates and a decrease of $.0047/dth in the commodity component of Texas Eatern's rates.

The proposed effective date of the above tariff sheets is February 1, 1983.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 4, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-5406 Filed 3-2-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-178-000]

Texas Gas Transmission Corp.; Request Under Blanket Authorization

February 25, 1983.

Take notice that on January 31, 1983, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP83-178-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) to add a new delivery point under the authorization issued in Docket No. CP82-407-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas states that it would construct and operate a delivery point located on its Slaughters-Montezuma Main Line in Warrick County, Indiana, to serve Southern Indiana Gas and

Electric Company (SIGECO), an existing customer of Texas Gas, pursuant to a service agreement dated September 1, 1970. It is indicated that the maximum volume of natural gas delivered during the first year would be 85,000 Mcf with proposed maximum annual deliveries reading approximately 500,000 Mcf at the proposed point. It is stated that the gas would be for residential and small commercial service. It is asserted that the addition of this delivery point would not increase SIGECO's contract demand and would be without detriment to Texas Gas' existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-5407 Filed 3-2-83; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted To Office of Management and Budget for Review

On February 24, 1983 the Federal Communications Commission submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of these submissions are available from Richard D. Goodfriend, Agency Clearance Officer, (202) 632-7513. Comments should be sent to Edward H. Clarke, Office of Management and Budget, OIRA, Room 3201 NEOB, 726 Jackson Place, NW., Washington, D.C. 20503.

Title: Ownership Report
Form No.: FCC 323
Action: Extension
Respondents: All licensees and permittees of AM, FM and TV Commercial broadcast stations
Estimated Annual Burden: 5,046 Responses; 80,736 Hours.
Title: Application for Ship Radio Station License and Temporary Operating Authority
Form No.: FCC 506/506-A
Action: Extension
Respondents: Individuals, associations, partnerships, corporations and local governmental entities eligible to hold a radio station authorization in the ship radio service
Estimated Annual Burden: 67,500 Responses; 22,500 Hours.
Title: Application for Renewal of Radio Station License
Form No.: FCC 574-R
Action: New
Respondents: Businesses and State and local governments applying for renewal of their radio station licenses in the Land Mobile and General Mobile Radio Services
Estimated Annual Burden: 40,000 Responses; 2,667 Hours. This renewal application will be in the form of a computer-generated mailer sent to licensees 90 days prior to expiration. The data need only be verified or corrected and mailed to FCC.
Title: Supplemental Return Notice for the General Mobile Radio Service
Form No.: FCC 6024-B
Action: New
Respondents: Individuals, associations, partnerships and corporations eligible to hold a radio station authorization in the General Mobile Radio Service
Estimated Annual Burden: 250 Responses; 62 Hours.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 83-5348 Filed 3-2-83; 8:45 am]

BILLING CODE 6712-01-M

Advisory Committee for the 1985 ITU World Administrative Radio Conference on the Use of the Geostationary Satellite Orbit and the Planning of the Space Services Utilizing it (Space WARC Advisory Committee)

February 25, 1983.

Task Group A-1 of Working Group A: U.S. Requirements

Chairman: W. Naleszkiewicz (301) 652-4660
Date: Tuesday, March 8, 1983
Time: 9:30 A.M. - 4:30 P.M.
Location: Federal Communications Commission, 2025 M Street, NW., Room 7317, Washington, D.C.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 83-5345 Filed 3-2-83; 8:45 am]

BILLING CODE 6712-01-M

Meeting of the Telecommunications Industry Advisory Group Steering Committee

Pursuant to Section 10(a)(2) of The Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Telecommunications Industry Advisory Group Steering Committee scheduled to meet on Tuesday, March 15, 1983. The meeting will be held at 9:30 a.m. in Conference A (10th Floor) at AT&T located at 1120 20th Street NW., Washington, D.C. and will be open to the public.

The agenda is as follows:

I. Review of Minutes of Previous Meeting
II. General Administrative Matters
III. Presentation of Plant Account Model
IV. Consideration of Revenue Account Proposals
V. Other Business
VI. Presentation of Oral Statements
VII. Adjournment

With prior approval of the Chairman, Gerald P. Vaughan, oral statements, while not favored or encouraged, may be allowed if time permits and if the Chairman determines that an oral presentation is conducive to the effective attainment of Steering Committee objectives. Anyone not a member of the Steering Committee and wishing to make an oral presentation should contact Stephen T. Duffy, Group Vice-Chairman (202/634-1509), at least five days prior to the meeting date.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-5346 Filed 3-2-83; 8:45 am]

BILLING CODE 6712-01-M

Telecommunications Industry Advisory Group Income and Other Accounts Subcommittee

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of two meetings of the Telecommunications Industry Advisory Group's (TIAG) Income and Other Accounts Subcommittee Scheduled to meet on Thursday, March 17, 1983, and Thursday, March 31, 1983. Each meeting will begin at 9:30 a.m. and will be open to the public. The meeting locations are as follows:

Thursday, March 17, 1983

Federal Communications Commission, Room #7317, 2025 M Street, NW., Washington, D.C.

Thursday, March 31, 1983

GTE Service Corporation, Suite 900, 1120 Connecticut Avenue, NW., Washington, D.C.

The agenda are as follows:
I. General Administrative Matters
II. Discussion of Assignments
III. Other Business
IV. Presentation of Oral Statements
V. Adjournment

With prior approval of Subcommittee Chairman Glenn L. Griffin, oral statements, while not favored or encouraged, may be allowed at the meeting if time permits and if the Chairman determines that an oral presentation is conducive to the effective attainment of Subcommittee objectives. Anyone not a member of the Subcommittee and wishing to make an oral presentation should contact Mr. Griffin (214/659-3484) at least five days prior to the meeting date.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 83-5347 Filed 3-2-83; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

Federal Savings and Loan Advisory Council; Meeting

February 28, 1983.

Pursuant to Section 10(a) of Pub. L. 92-463, entitled the Federal Advisory Committee Act, notice is hereby given to the Meeting of the Federal Savings and Loan Advisory Council on Tuesday, April 5, Wednesday, April 6, and Thursday, April 7, 1983. The meeting will commence at 10:30 a.m. April 5; 9:15 a.m. April 6; and 9:00 a.m. April 7. The meetings will be held at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C., Bank Board Conference Room, Sixth Floor.

Tuesday, April 5

10:30 a.m.—Opening of Council Meeting
12:00 Noon—Lunch
1:30 p.m.—Subcommittees begin Deliberations
Current Value Reporting
The Role of the Bank Board in the New Economic and Regulatory Environment
Performance Evaluation System for District Banks
5:00 p.m.—Adjourn

Wednesday, April 6

9:15 a.m.—Subcommittees Complete Work on Resolutions
12:00 Noon—Lunch
1:15 p.m.—Council Initiates Discussion and Votes on Resolutions
5:00 p.m.—Adjourn

Thursday, April 7

9:00 a.m.—Presentation and Discussion of Resolutions to the Chairman and Board Members
11:30 a.m.—Lunch
1:00 p.m.—Adjourn

The meeting of the Federal Savings and Loan Advisory Council is open to the public.

Richard T. Pratt,

Chairman.

[FR Doc. 83-5413 Filed 3-2-83; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

February 23, 1983.

Background

When executive departments and independent agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Paperwork Reduction Act [44 U.S.C. Chapter 35]. Department and agencies use a number of techniques to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibilities under the act also considers comments on the forms and recordkeeping requirements that will affect the public. Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. OMB's 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.

List of Forms Under Review

Immediately following the submission of a request by the Federal Reserve for OMB approval of a reporting or recordkeeping requirement, a description of the report is published in the **Federal Register**. This information contains the name and telephone number of the Federal Reserve Board clearance officer (from whom a copy of the form and supporting documents is available). The entries are grouped by type of submission—i.e., new forms, revisions, extensions (burden change), extensions (no change), and reinstatements.

Copies of the proposed forms and supporting documents may be obtained from the Federal Reserve Board clearance officer whose name, address, and telephone number appear below. 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.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829)

OMB Reviewer—Richard Sheppard—Officer of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-6880).

Request for implementation of new report

1. Report title: Report on Total Foreign Exchange Turnover.
Agency form No.: FR 3026
Frequency: One-time
Reporters: Selected foreign exchange brokers and banking institutions. SIC Code: 602, 605
Small businesses are not affected.
General description of report:
Respondent's obligation to respond is voluntary; a pledge of confidentiality is promised [5 U.S.C. 552(b)(4) and (b)(8)].

This information is needed to provide the Federal Reserve System with information about the growth of the U.S. foreign exchange market as well as changes in the practices and structure of the market.

Board of Governors of the Federal Reserve System, February 25, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-5298 Filed 3-2-83; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de Novo Nonbank Activities; Barclays Bank PLC et al.

The organizations identified in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commence *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, 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 comment that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearing should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. **Federal Reserve Bank of New York.** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Barclays Bank PLC* and its subsidiary, *Barclays Bank International Limited*, each a bank holding company whose principal office is in London, England (leasing activities; Arizona, Arkansas, Colorado, Louisiana, New Mexico, Oklahoma and Texas): To engage through their subsidiary, Barclays American/Leasing, Inc. ("BAL"), in lease financing of personal property by means of leases that meet the standards of Section 225.4(a)(6) of Regulation Y. This activity would be conducted from an office of BAL located in Houston, Texas, serving customers in the States of Arizona, Arkansas, Colorado, Louisiana, New Mexico, Oklahoma and Texas. This notification is for the relocation of an existing office located in Houston, Texas. Comments on this application must be received not later than March 25, 1983.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *The Wachovia Corporation*, Winston-Salem, North Carolina (mortgage banking and insurance activities; North Carolina): To engage, through its subsidiary, Wachovia Mortgage Company, in providing mortgage banking services, including the origination and processing of residential, construction, development, and income property mortgage loans, the purchase and sale or placement of mortgage loans, the administration and servicing of mortgage loans, the management and sale of properties acquired through foreclosure or transfers in lieu of foreclosure, and acting as agent for credit life and accident and health insurance and for property and casualty insurance related to extensions of credit. Property and casualty insurance will be offered pursuant to the grandfather provision in section 601(D)(i) of the Garn-St Germain Depository Institutions Act. Such activities will be conducted at an office in Wilson, North Carolina, serving the Wilson, Rocky Mount, and Goldsboro, North Carolina markets. Comments on this application must be received not later than March 25, 1983.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First Bankers Corporation of Florida*, Pompano Beach, Florida (management consulting activities, central and southern Florida): To engage, through its subsidiary, The First Bankers Management Group, Inc., in providing management consulting advice to bank and nonbank depository institutions, including, but not limited to, advice concerning bank operations, systems and procedures; computer operations and mechanization; implementation of electronic funds transfer systems; site planning and evaluation; bank mergers and the establishment of new branches; operation and management of a trust department; international banking; foreign exchange transactions; purchasing policies and practices; cost analysis, capital adequacy and planning; auditing; accounting procedures; tax planning; investments, to the extent permitted by Regulation Y promulgated by the Federal Reserve Board; credit policies and administration, including credit documentation, evaluation, and debt collection; product development, including specialized lending provisions; marketing operations, including research, market development and advertising programs; personnel operations, including recruiting, training, evaluation and compensation; and security measures and procedures. These activities would be conducted from offices in Pompano Beach, Florida, serving central and southern Florida. Comments on this application must be received not later than March 25, 1983.

D. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Intermountain Bancorporation*, Columbia Falls, Montana (data processing activities; Montana): To engage through its subsidiary, Data-Mont in providing bookkeeping or data processing services for the internal operations of the holding company and its subsidiaries and storing and processing other banking, financial, or related economic data, such as performing payroll, accounts receivable or payable or billing services. These activities would be conducted from an office in Columbia Falls, Montana, serving the State of Montana. Comments on this application must be received not later than March 24, 1983.

2. *Northwest Bancorporation*, Minneapolis, Minnesota (financing and insurance activities; North Carolina): To engage through its subsidiaries, Dial Finance Company of North Carolina, Dial Credit Company of North Carolina and First Dial, Inc., in the activities of consumer and commercial finance, and the sale of credit related insurance, including credit life, credit accident and health and property and credit related casualty insurance related to extensions of credit by Dial Finance Company of North Carolina, Dial Credit Company of North Carolina and First Dial, Inc. These activities would be conducted from a new office in Raleigh, North Carolina, serving Raleigh, North Carolina. Comments on this application must be received not later than March 24, 1983.

E. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *BankAmerica Corporation*, San Francisco, California (financing, servicing, and insurance activities; *de novo* office; Illinois): To engage, through its indirect subsidiary, FinanceAmerica Corporation, a Delaware corporation, in the activities of making or acquiring for its own account loans and other extensions of credit such as would be made or acquired by a finance company; servicing loans and other extensions of credit; and offering credit-related life insurance and credit-related accident and health insurance. Credit-related property insurance will not be offered. Such activities will include, but not be limited to, making consumer installment loans, purchasing installment sales finance contracts, making loans and other extensions of credit to businesses, making loans and other extensions of credit secured by real and personal property, and offering credit-related life and credit-related accident and health insurance directly related to extensions

of credit by FinanceAmerica Corporation. Credit-related life and credit-related accident and health insurance may be reinsured by BA Insurance Company, Inc., an affiliate of FinanceAmerica Corporation. These activities will be conducted from a *de novo* office located in Mount Vernon, Illinois, serving the entire State of Illinois. Comments on this application must be received not later than March 25, 1983.

2. *Torrey Pines Group,* Solana Beach, California (mortgage banking activities; California, western United States): To engage, through its subsidiary, Torrey Pines Equity Corp., in mortgage banking activities, including negotiating, making, acquiring, servicing, selling, buying and/or exchanging for its own account or for the account of others, real property sales contracts and promissory notes secured directly or collaterally by liens on real property or such other extensions of credit as would be made or arranged by a mortgage banking company. This activity would be conducted from an office located in Solana Beach, California. These activities would be performed in the states of California, Arizona, Nevada, New Mexico, Texas, Utah, Oregon, Florida and Washington. Comments on this application must be received not later than March 25, 1983.

Board of Governors of the Federal Reserve System, February 25, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-5300 Filed 3-2-83; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies; Home National Corp. et al.

The companies listed in this notice have 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 bank holding companies by acquiring voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. 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.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Home National Corporation,* Milford, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of The Home National Bank of Milford, Milford, Massachusetts. Comments on this application must be received not later than March 25, 1983.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *DeKalb Financial Corp.,* Waterloo, Indiana; to become a bank holding company by acquiring 80 percent of the voting shares of Citizens State Bank, Waterloo, Indiana. Comments on this application must be received not later than March 25, 1983.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *North Central Financial Corporation,* Melbourne, Arkansas; to become a bank holding company by acquiring 80 percent of the voting shares of The Bank of North Arkansas, Melbourne, Arkansas. Comments on this application must be received not later than March 25, 1983.

D. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *Shawsville Bancorp, Inc.,* Shawsville, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Shawsville, Shawsville, Virginia. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Richmond. Comments on this application must be received not later than March 25, 1983.

Board of Governors of the Federal Reserve System, February 25, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-5299 Filed 3-2-83; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules; Carlisle Corp. et al.

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvement Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective
(1) Carlisle Corporation's proposed acquisition of all assets of Numeridex, Incorporated.	Feb. 3, 1983.
(2) Primos Production's proposed acquisition of certain assets of Petro-Lewis Corporation.	Feb. 4, 1983.
(3) International Business Machines Corporation's proposed acquisition of certain voting securities of Intel Corporation.	Do.
(4) The Rank Organisation Public Limited Company's proposed acquisition of certain voting securities of Telecom Plus International, Inc.	Feb. 3, 1983.
(5) Electronics Data Systems Corporation's proposed acquisition of all voting securities of Business Records Corporation.	Feb. 8, 1983.
(6) Perpetual Corporation's, (Lewis Allbritton, UPE) proposed acquisition of all assets of Leake Industries, Inc.	Do.
(7) DWG Corporation's proposed acquisition of certain voting securities of Graniteville Company.	Feb. 7, 1983.
(8) Paul W. Dillon's proposed acquisition of certain voting securities of The Kroger Company.	Feb. 10, 1983.
(9) Horizon Savings and Loan Company's proposed acquisition of all voting securities of Permanent Savings & Loan Association.	Do.
(10) General Host Corporation's proposed acquisition of all voting securities of Frank's Nursery & Crafts, Inc.	Do.
(11) Hampshire Investments, Inc.'s proposed acquisition (Lisa Garrett, UPE) of all voting securities of Stater Brothers Markets, (Petrolane, Incorporated, UPE).	Feb. 15, 1983.
(12) Cintas Corporation's (Richard T. Farmer, UPE) proposed acquisition of assets of Valley Industrial Services, (Petrolane, Incorporated, UPE).	Do.
(13) Crane Company's proposed acquisition of all voting securities of Kentucky-Tennessee Clay Company.	Feb. 16, 1983.
(14) Goldome Bank for Savings's proposed acquisition of all voting securities of United National Corporation.	Do.
(15) Dov Grossman's proposed acquisition of all assets of Gould, Inc.	Feb. 15, 1983.
(16) The Charter Company's proposed acquisition of all voting securities of Northeast Petroleum Industries, Inc.	Feb. 17, 1983.
(17) The Charter Company's proposed acquisition of certain voting securities of Tesoro Petroleum Corporation.	Do.

Transaction	Waiting period terminated effective
(18) The Wichita Coca-Cola Bottling Company's (Frank M. Lale, UPE) proposed acquisition of all assets of the Midwest Division of the Coca-Cola Bottling Company of New York.	Do.
(19) Kidde Incorporated's proposed acquisition of certain voting securities of Victor Technologies, Incorporated.	Do.
(20) Clayton and Dubilier, Inc.'s proposed acquisition of all assets of the Printing Equipment Sector of Harris Corporation and all voting securities of Harris Marinoni S.A., Harris do Brasil-Industriaet Comercio Ltda and Harris Gesell Schaft, m.b.H.	Feb. 22, 1983.

FOR FURTHER INFORMATION CONTACT: Patricia A. Foster, Compliance Specialist, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523–3894.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 83-5340 Filed 3-2-83; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Solicitation Offer and Award (Contract for Building Services), GSA Form 1467

AGENCY: General Services Administration.

ACTION: Notice of Information Collection; Extension.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the General Services Administration (GSA) plans to request the Office of Management and Budget to review and approve the extension of an information collection request for the continued collection of data.

DATES: Comments on the information collection requests must be submitted on or before March 23, 1983.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Anthony Artigliere, GSA Clearance Officer, GSA (ORAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Shirley Scott, GSA (202) 566–1181.

SUPPLEMENTARY INFORMATION: The information collection is used to solicit bids for building service contracts, report on socio-economic programs, and to determine compliance with Federal regulations. The estimated annual number of responses is 12,500; each response requires an estimated 15 minutes to prepare. A copy of the information collection proposal may be obtained from the Directives and Reports Management Branch (ORAI), Room 3011, GS Building, Washington, DC 20450, telephone 566–1164.

Dated: February 18, 1983.

Clarence A. Lee, Jr.,

Director of Administrative Services.

[FR Doc. 83-5414 Filed 3-2-83; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Adolescent Family Life Demonstration Projects; Delegation of Authority

Notice is hereby given that on December 9, 1982, the Secretary of Health and Human Services delegated to the Assistant Secretary for Health, with authority to redelegate, all the authority vested in the Secretary under Title XX of the Public Health Service Act, as amended (42 U.S.C. 300z *et seq.*) concerning adolescent family life demonstration projects. The delegation to the Assistant Secretary for Health excluded the authority under section 2009(a) to reserve not less than one per centum and not more than three per centum of appropriated funds for the evaluation of adolescent family life demonstration projects, the authority to promulgate regulations, and the authority to submit reports to the Congress.

Dated: February 23, 1983.

Dale W. Sopper,

Assistant Secretary for Management and Budget.

[FR Doc. 83-5445 Filed 3-2-83; 8:45 am]

BILLING CODE 4160-17-M

Miscellaneous; Delegation of Authority

Notice is hereby given that on December 9, 1982, the Secretary of Health and Human Services delegated to the Assistant Secretary for Health all the authority under Title V of the Public Health Service Act, as amended (42 U.S.C. 219 et seq.) concerning certain functions of the Public Health Service. The delegation to the Assistant Secretary for Health excluded:

(1) The authority under section 501 to accept gifts of real property subject to a reverter clause. Offers of property shall not be accepted if the total costs associated with acceptance are expected to exceed the cost of purchasing a similar item and the cost of normal care and maintenance.

(2) The authority under section 508 concerning the transfer of funds between appropriations.

(3) The authority under section 513 to determine the portions, but not more than one per centum, of appropriations to be set aside for evaluation programs. This exclusion does not affect the authority to award grants and contracts for evaluation projects which have been approved by the Assistant Secretary for Planning and Evaluation.

(4) The authority to promulgate regulations and submit reports to the Congress.

The Assistant Secretary for Health may redelegate all authorities delegated to him under Title V except the authority to accept offers of real property.

Previous delegations made by the Secretary to the Assistant Secretary for Health under Title V (33 FR 4894 and 33 FR 16412) have been superseded. However, provision has been made for redelegations of authority made under these superseded delegations to continue in effect pending further redelegations, provided they are consistent with the delegation to the Assistant Secretary for Health.

Dated: February 23, 1983.

Dale W. Sopper,

Assistant Secretary for Management and Budget.

[FR Doc. 83-5444 Filed 3-2-83; 8:45 am]

BILLING CODE 4160-17-M

Social Security Administration

Proposed Availability of Funding for Targeted Assistance Grants for Services for Refugees in Local Areas of High Need

AGENCY: Office of Refugee Resettlement (ORR), SAA, HHS.

ACTION: Notice of proposed availability of funding for targeted assistance grants for refugee services in high-need local areas.

SUMMARY: This notice announces the proposed availability of funds and award procedures for targeted assistance project grants for services to refugees under the Refugee Resettlement Program (RRP) in localities with large refugee populations, high refugee concentrations, and high use of assistance, and where specific needs exist for supplementation of currently available resources. In FY 1983, funds are expected to be available for targeted assistance grants.

DATE: Comments on the requirements and procedures set forth in this notice will be considered if received by April 14, 1983.

ADDRESS: Address written comments, in duplicate, to: David Howell, Office of Refugee Resettlement, Room 1332, Switzer Building, 330 C Street, SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: David Howell, (202) 472-6510.

SUPPLEMENTARY INFORMATION:

I. Purpose and Scope

This notice announces the proposed availability of funds for targeted assistance grants for services to refugees in counties where, because of factors such as unusually large refugee populations, high refugee concentrations, and high use of public assistance, there exists and can be demonstrated a specific need for supplementation of currently available resources for services to this population.

A total of at least $30,000,000 in funds which Congress has designated for this purpose is currently expected to be available for targeted assistance for refugees. (A separate announcement will be made for targeted assistance for Cuban and Haitian entrants.)

The purpose of the proposed grants is to provide to unemployed refugees who reside in qualifying counties direct services which are intended to result in economic self-sufficiency and reduced dependency. Funds awarded under this proposed program are intended to support projects which enhance refugee employment potential and increase the ability of refugees to find and retain jobs. Innovative approaches to accomplish this objective will be entertained and are encouraged.

Funds awarded under this targeted assistance program will be generally related to the existence of and relative extent of refugee need in each qualifying county, as indicated by a qualification and allocation formula (described in this notice), and to the quality and quantity of refugee services proposed, as documented in applications. It is intended that if an application is deficient, comment and technical assistance will be provided to the applicant by the granting agency in order that a proposal can be developed which will merit the award of funds at the level determined by the allocation formula. An award of funds will be made only if, and to the extent that, an application is determined acceptable by the Director of ORR.

II. Authorization

Targeted assistance projects would be funded under the authority of section 412(c) of the Immigration and Nationality Act (INA), as amended by the Refugee Act of 1980 (Pub. L. 96-212), 8 U.S.C. 1522(c).

III. Eligible Grantees

The Department proposes to limit eligible grantees to those agencies of State governments which are responsible for the refugee program under 45 CFR 400.5 (except that under certain circumstances—see section VII, below—a grant could be made directly to a local entity). It is proposed that the above mentioned State agency submit proposals on behalf of the county governments of the qualified counties in that State. In the absence of a statewide county system, or in the absence of an appropriate county-level refugee program agent or agency and with the concurrence of the county government, the State may designate a city or other entity, either public or private nonprofit, to administer the targeted assistance funds for a qualified local area. It is further proposed that the county government or other designated entity develop the targeted assistance proposal according to local needs and capabilities and that the proposed activities be required to be identified and planned in cooperation with voluntary refugee resettlement agencies, the business community, and refugees in that area. In submitting proposals on behalf of qualified local entities in the State, the State agency would provide assurance that the proposed activities do not duplicate existing refugee support service activities in the targeted localities and would certify that not less than 95% of each locality's allocated amount would be passed through to the designated administering entity.

Applications submitted in response to this notice are not subject to review by State and areawide clearinghouses under the procedures in Part I of Office of Management and Budget Circular No. A-95.

IV. Qualification and Allocation Formula

The Department proposes a two-stage formula for qualification for, and allocation of, targeted assistance funds. The first stage of the proposed formula defines the qualification of counties for targeted assistance through the use of four equally-weighted criteria which have been selected to collectively indicate local conditions and problems which the proposed program is intended to address. In order to qualify for application for targeted assistance funds, a county would be required to be above the median or above a selected cutoff point of jurisdictions for which data were reviewed (as described in section V, below) in three of the four following criteria: (1) The number of refugees placed in the county during Federal fiscal years 1980-82; (2) the ratio of the overall county population to the refugees in item (1), above; (3) the number of refugees in the county who were receiving cash assistance under the programs of aid to families with dependent children program (AFDC), including the unemployed parent (UP) portion of that program, and refugee cash assistance (RCA) on October 1, 1982; and (4) the ratio of refugees in item (3) to the number of refugees in item (1). A county which places above the cutoff point in any three of the above categories would qualify to apply for targeted assistance funds. It would then be included in the list of qualifying localities for determination of its targeted assistance allocation. Discussion of the derivation and use of data is presented in section V, below.

The second stage of the proposed targeted assistance formula is designed to reflect the relative level of need for funds among those counties which have qualified to apply under the formula's first stage. It proposes that the relative degree of need of each qualified locality is best indicated by the number of refugees residing in that locality who are not self-sufficient. Therefore the Department proposes the following single criterion as the basis for the allocation of targeted assistance funds among the eligible counties: The number of refugees residing in the country who have been in the United States 36 months or less and who were receiving cash assistance under AFDC, AFDC-UP, or RCA on October 1, 1982. (These data are adopted to represent refugee need for targeted assistance services on a basis which makes some adjustment for the variation in caseloads caused by State-to-State assistance program differences. Thus the presence or absence of General Assistance is neutralized in the calculation.) A county's allocation would be the proportion of available funds which equals that county's proportion of all such refugee recipients residing in all counties which have qualified to apply for targeted assistance funds under the first stage of the formula. Further discussion of the data and proposed allocation amounts are presented in section VI, below.

The proposed two-stage formula separates qualification for the targeted assistance program from the proposed amount to be allocated to each qualifying locality in order to obtain a high degree of sensitivity to need and of equity in the distribution of available resources.

In summary, the Department recognizes that local need for targeted assistance funds may be reflected in several different, if interrelated, factors. It proposes that such need be addressed in a manner which, to the extent measurable, takes into account both the variety and cumulative impact of those factors. Therefore the first stage of the proposed formula allows for differences in local circumstances and problems by measuring each of four factors separately. It then selects qualified localities by identifying those which exhibit consistently high indications of need across most of the criteria.

With respect to the second stage of the formula, the Department considers the purpose of this program to be to provide self-sufficiency-related services to refugees in all qualifying areas on an equitable basis. Therefore the amount of funds allocated to each county is proposed as a proportion of the available funds which is equal to each county's proportion of the refugees in all qualifying counties who are not self-sufficient.

V. Discussion of Data and Application of Criteria

This section discusses the development and application of the four criteria and explains the data bases used to derive them. A table is included to show which counties were considered and how they scored on each criterion.

The Department proposes to use the county as the basic unit to which the criteria are applied. This insures that uniform units are compared nationwide. All relevant data are available at the county level, which is not the case with other possible units. The county is thought to be a meaningful local unit in which need for additional services to the resident refugee population can be identified and addressed.

An initial list of counties was developed which could be screened according to the proposed criteria. From ORR's data system, all counties that received more than 900 initial resettlements of Southeast Asian refugees during either of two time periods were listed. The time periods were October 1979 through December 1980 (a 15-month period during which 196,057 refugees arrived) and January 1981 through September 1982 (a 21-month period during which 175,243 arrived). Thus, all counties were listed that received more than approximately one-half of one percent of the new arrivals in either time period. Together, these time periods constitute the entire 36-month period considered in the allocation of funds for social services for FY 1983. The number of counties meeting this initial criterion was 40. (Washington, D.C., was treated as a county for this purpose.)

The ORR refugee data system contains information on the refugee's initial place of resettlement as recorded in documents carried by the refugee at the time of arrival in the U.S. The system contains records on 99 percent of the Southeast Asian refugees who arrived during the 3-year period considered. The county of arrival could not be identified (although the State was identified) for about 15 percent of those who arrived during 1980, 6 percent of those who arrived during 1981, and 1 percent of those arriving in 1982. Because of this, arrival numbers by county are somewhat understated; however, the "unknown" placements are distributed proportionately across all of the States, and no county is thought to suffer a relative disadvantage due to the missing information.

Consideration was confined to Southeast Asian refugees primarily because this population is in greatest need for targeted assistance services, but also because comparable data are not available at the county level for other groups of refugees over the 3-year period. (Data available to the Department indicate that Southeast Asian refugees have a higher rate of cash assistance use and lower employment rates than other refugee groups; however, eligibility for participation in targeted assistance projects would *not* be confined to Southeast Asian refugees.)

This initial list was compared with three other lists of places thought to be significantly affected by their refugee populations, as compiled by three organizations: The Committee on Migration and Refugee Affairs of the American Council of Voluntary Agencies for Foreign Service, Inc. (ACVA), the National Association of Counties, and the U.S. Conference of Mayors. In cases where these lists referred to a non-county entity, the county thought to best approximate the organization's meaning was used. From the ACVA list, places designated as either "impacted" or "sensitive" were considered. All counties so identified were added to the ORR list, unless they had clearly been named as "impacted" due to the presence of Cuban/Haitian entrants rather than refugees. While all lists showed substantial overlap, the review of these additional three sources resulted in the addition of 20 more counties to ORR's initial list of 40. In this way, 60 counties were screened according to the proposed criteria.

Criterion 1, the number of Southeast Asian refugees initially resettled in the county during FY's 1980, 1981, and 1982, appears in Column B of Table 1. The median of Criterion 1 for the counties screened is 2,066.5. Criterion 2 appears in Column E of the same table; it consists of the county population according to the 1980 U.S. Census divided by the refugee arrival figure in Column B and may be interpreted as persons per refugee. The median of Criterion 2 is 244.5. Criterion 3, the number of refugees receiving ORR-reimbursed AFDC, AFDC–UP, or RCA benefits as of October 1, 1982, appears in Column D. The source of this information was the counties themselves. (Counties that did not meet the first two criteria, and thus would not be eligible in any case, were not asked to supply this information.) The cutoff point for Criterion 3 was established at 1,000, in order to insure a sizable pool of refugees needing services. Criterion 4, the ratio of refugees receiving assistance as shown in Column D to refugees initially resettled-in the county as shown in Column B, appears in Column F. The cutoff point for Criterion 4 was established at 50 percent, the approximate national average dependency rate. This criterion should not be interpreted as a dependency rate, for several reasons: (1) It does not include all types of assistance; (2) refugees of all nationalities are compared only with Southeast Asians in the population base; (3) no effort was made to correct the base population figure for secondary migration. However, the Department feels that Criterion 4 is a good measure of the *relative* need for additional services in the area; and it is an indirect indicator of secondary migration since secondary migrants would be included in the cash assistance data.

It is possible that some counties which have experienced extreme growth in refugee population due to net secondary in-migration may, in fact, qualify for targeted assistance funds if secondary arrivals are considered. In most circumstances, counties with notable secondary migration already qualify on the basis of initial placements, or would not qualify under any circumstance because secondary migrants do not sufficiently increase the local refugee population. However, in the event that uncommonly high numbers of secondary arrivals would, by their presence and use of cash assistance, qualify a county which has not met the criteria for qualification as presented in this proposed notice, the granting agency will consider an adjustment of the local refugee population figure.

If State and county officials believe that a county would qualify on the basis of secondary migration, State officials should submit a letter containing supporting evidence. The following evidence is requested:

- As of 10/1/82, the total numbers of refugees in the county who has been in the U.S. 36 months or less and who were receiving refugee cash assistance (RCA), aid to families with dependent children (AFDC, including AFDC–UP), and general assistance (GA) (each category *must be* separately reported);
- If possible, statistics on the proportion of the cash assistance caseload that consists of persons initially resettled out of the county and/or out of the State.
- The best available information on the amount of in-migration and out-migration of refugees experienced by the county, with emphasis on the past two years. Discussion should be confined to the population entering since October 1, 1979, and should clearly identify what refugee groups are being discussed. The evidence should include a description of the information collection system(s) used by the State and/or county, including data sources, time period covered, timeliness, and validation procedures. Surveys or other special studies can only be considered if they are submitted for review.

Letters must be received by 30 days from date of publication of this notice to be considered. Address letters, in duplicate to: Linda Gordon, Office of Refugee Resettlement, Room 1332, Switzer Building, 330 C Street, SW., Washington, D.C. 20201.

The qualification of additional counties for the proposed targeted assistance program would necessarily increase the number of refugees to be used in calculating the proportionate allocation of funds. Such an adjustment would, therefore, reduce slightly the individual allocations to each of the other qualifying counties below the amount indicated in this notice.

Application of these four criteria resulted in the identification of 25 counties that meet three of the four criteria and therefore qualify for the proposed program.

While recognizing that differing views may exist, we believe that these criteria comprise good indicators of high-need counties and that the proposed cutoff points establish a reasonable basis for identifying those counties which have the greatest needs and would qualify for targeted assistance funds. The basic intent of the proposed targeted assistance program is to concentrate the available funds in those areas which have the greatest need for funds in addition to those provided under the social services allocations and where there are appreciable numbers of unemployed and dependent refugees on whose behalf special self-support efforts are required.

VI. Proposed Allocations

The proposed allocation to be available for targeted assistance are shown in Column H of Table 1.

TABLE 1.—COUNTIES FOR PROPOSED TARGETED ASSISTANCE PROGRAM AND FORMULA CALCULATION

(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
County, state	Arrivals 10/79–9/82	1980 Census (000)	Cash assistance 10/1/82	Population ratio	Percent receiving assistance	Formula base*	Proposed allocation
Alameda, CA	*4924	1105	*7481	*224	*152	7,481	$1,387,898
Los Angeles, CA	*29088	7478	*35272	257	*121	35,272	6,543,768
Orange, CA	*13909	1932	*16810	*139	*121	16,810	3,118,642
Sacramento, CA	*3950	783	*6402	*198	*162	6,402	1,187,718
San Diego, CA	*10441	1662	*12529	*178	*120	12,529	2,324,418
San Francisco, CA	*11259	679	*8948	*60	*79	8,948	1,660,060
San Joaquin, CA	*2825	347	*8716	*123	*309	8,716	1,617,019
Santa Clara, CA	*10207	1295	*12593	*127	*123	12,593	2,336,291
Denver, CO	*2943	491	*1987	*167	*68	1,987	368,634
Honolulu, HI	*3709	763	*1826	*206	49	1,826	338,765
Cook, IL	*7127	5253	*6723	737	*94	6,723	1,247,271
Sedgwick, KA	*2929	367	*1848	*125	*63	1,848	342,847
Orleans, LA	*2432	557	*1062	*229	44	1,062	197,025
Suffolk, MA	*6555	650	*3788	*99	*58	3,788	702,761
Hennepin, MN	*2193	941	*2881	429	*131	2,881	534,492
Ramsey, MN	*5573	460	*3951	*83	*71	3,951	733,001
New York, NY	*4806	1428	*4641	297	*97	4,641	861,012
Multnomah, OR	*7404	563	*3711	*76	*50	3,711	688,476
Philadelphia, PA	*7322	1688	*3453	*231	47	3,453	640,611
Providence, RI	*2356	571	*2171	*242	*92	2,171	402,770
Harris, TX	*12130	2410	*4140	*199	34	4,140	768,065
Salt Lake, UT	*5118	619	*1273	*121	25	1,273	236,171
Arlington, VA	1954	153	*1935	*78	*99	1,935	358,987
Fairfax, VA*	*2179	729	*1784	335	*82	1,784	330,973
King, WA	*9461	1270	*5780	*134	*61	5,780	1,072,323

Note.—An asterisk (*) beside a figure indicates county meets that criterion.
* Number of refugees receiving AFDC, AFDC-UP, and RCA as of October 1, 1982.
* Includes independent cities of Alexandria, Fairfax, and Falls Church.

VII. Eligible Projects

In applying for targeted assistance funds on behalf of a qualified county in the State, a State agency would be required to certify that: (1) The proposed activities do not duplicate existing services available under Federal funding for the Refugee Resettlement Program (RRP); (2) the State will make available to the county or designated local entity not less than 95% of the amount of the award for purposes of implementing the proposed activities; (3) the State's authorization to the county or designated local entity to use funds awarded will be made within 45 days of the State's receipt of the notification of the grant award, or, in lieu of this, the State may recommend that the award be granted directly to the eligible entity; (4) the proposal was developed through a local process which involved meaningful consultation with appropriate public and private groups involved in resettlement, including representation from voluntary refugee resettlement agencies, the business community, and refugees in the local area; and (5) proposed services will be designed for and made available only to refugees in the qualifying counties who are unemployed.

In developing a proposal, a county or designated local entity would be required to set forth in detail: (1) Evidence of specific needs and

definition of targeted population; (2) a statement of specific employment objectives for use of the funds in increasing refugee self-sufficiency in the area; (3) a description of the strategy proposed to achieve these objectives; including detailed discussion of individual program activities, number of clients to be served, and the integration and/or coordination of proposed activities with the overall refugee service system in the area; (4) an estimation of anticipated outcomes achieved within 6 months from date of grant award and 12 months from such date; (5) a description of program monitoring and evaluation of the proposed activities; and (6) a detailed budget, including itemization by individual project, and containing a local administration cost not to exceed 10% of the amount allowed for the county by the formula.

Allowable activities include any activity permissible under section 412(c) of the INA which is directly related to the furtherance of refugee economic self-sufficiency by aiding refugees in finding and retaining jobs, increasing refugee employability potential, and/or enhancing refugee job market possibilities. Creative approaches to such activities are encouraged. Allowable activities would include, for example, job development, job placement, business and employer incentives (such as on-site employee orientation and vocational English training, or bilingual supervisor assistance), business technical assistance, short-term job training specifically related to opportunities in the local economy, and on-the-job training. Stipened programs are allowable if justification is provided for support of enrollees and if not more than 30% of the cost of such a project is allocated for stipends. Use of targeted assistance funds for venture capital, either as grants or loans, is specifically not allowed. Support services, such as day care and transportation, are allowable when specifically necessary to enable clients to participate in the targeted assistance program. Proposals which include voluntary corporate participation and a generally high degree of business involvement are especially welcomed.

VIII. Criteria for Evaluating Applications

In developing targeted assistance proposals, counties or designated local entities must consider and spell out clearly the appropriateness of the proposed activities to the local economy, the appropriateness of the proposed activities for the refugee population(s) in the area, and the relationship of the proposed activities to existing refugee services carried out with Federal funds.

Targeted assistance grant applications will be evaluated on the following criteria:

1. Certification by the State agency that, for each local entity on whose behalf an application is being submitted, the five conditions listed in the first paragraph of section VII, above, have been met.

2. Documentation of specific needs for targeted assistance projects and discussion of characteristics of anticipated refugee client population.

3. Description of specific employment objectives for use of funds, including justification that the proposed objectives are appropriate to the needs of the proposed refugee clients and the local economy and will result in jobs and employment of the clients.

4. Results anticipated within 6 months from date of grant award and 12 months from such date.

5. Justification of the strategic approach to achieving the stated objectives, including complementarity among targeted assistance activities and with other existing refugee services.

6. Adequacy of justification for and description of each specific activity that is proposed.

7. Adequacy of proposed plan for determination of measurable, performance-based project outcomes on a semiannual basis.

8. Description of the local planning process which was used to develop the proposal, including identification of interests and sectors represented.

9. Assurance that services will be provided by qualified non-profit or for-profit agencies or individuals.

10. Reasonableness of estimated costs in relation to anticipated results.

ORR proposes to allow 45 days from the date of publication of the final notice for the submittal of applications.

IX. Review, Technical Assistance, and Award Procedure

Applicants will be evaluated on a non-competitive basis by a review panel of experts according to the criteria above, and in accordance with the HHS Grants Administration Manual (chapter 1-55). Applications will be reviewed in terms of the amount allowable to the eligible entity under the proposed formula. The Department will provide technical assistance to an eligible entity if it is necessary in order to develop a proposal which warrants the award of funds at the proposed allocation amount and if such assistance is requested on behalf of the eligible entity by the applying State agency.

Awards for targeted assistance programs will be made on the basis of the acceptability of proposals submitted on behalf of eligible entities and within the amounts allowed by the proposed allocation formula. The panel will make recommendations regarding acceptability of applications to the Director of the Office of Refugee Resettlement (ORR). Determination of the acceptability of applications, determination of whether an award will be made to a State or local entity, decisions to provide technical assistance, and determination of award amounts are at the discretion of the Director of ORR.

X. HHS Regulations That Apply

The following HHS regulations apply to grants under this Notice:

42 CFR Part 441, Subparts E and F, Services: Requirements and limits applicable to specific services—Abortions and Sterilizations:

45 CFR Part 16, Department grant appeals process.

45 CFR Part 74, Administration of grants.

45 CFR Part 75, Informal grant appeals procedures.

45 CFR Part 80, Nondiscrimination under programs receiving Federal assistance through the Department of Health, Education, and Welfare effectuation of Title VI of the Civil Rights Act of 1964.

45 CFR Part 81, Practice and procedure for hearings under Part 80 of this title.

45 CFR Part 84, Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.

XI. Reporting and Recordkeeping

Section VII of this announcement establishes reporting requirements which necessitate OMB review and approval. HHS will seek OMB approval of these requirements.

Applications for these grants are to be submitted on Form SSA-96 which has current OMB approval (OMB No. 0960-0184). In completing Form SSA-96, States must address the evaluation criteria listed in Section VIII.

(Catalog of Federal Domestic Assistance No. 13.814, Refugee Assistance State Administered Programs)

Dated: February 25, 1983.

John A. Svahn,

Commissioner of Social Security.

[FR Doc. 83-5289 Filed 3-2-83; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Shakopee Mdewakanton Sioux Community Resolution and Ordinance Regulating the Sale and Distribution of Intoxicating Beverages

February 18, 1983.

This Notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that the following Resolution and Ordinance relating to the application of the Federal Indian Liquor Laws on the Shakopee Mdewakanton Indian Reservation, Minnesota, was duly adopted on December 12, 1982, by the Shakopee Mdewakanton General Council which has jurisdiction over the area of Indian country included in the ordinance, reading as follows:

John W. Fritz,

Assistant Secretary—Indian Affairs.

Liquor Ordinance

WHEREAS, The General Council of the Shakopee Mdewakanton Sioux Community has the power under the Constitution of the Shakopee Mdewakanton Sioux Community to promulgate resolutions governing the conduct of Business in the community; and

WHEREAS, The Shakopee Mdewakanton Sioux Community is desirous of establishing liquor outlets on the reservation; and

WHEREAS, A community liquor ordinance is necessary before such liquor outlets can be established;

NOW THEREFORE BE IT RESOLVED, that the Shakopee Wdewakanton Sioux Community hereby approves of the attached liquor ordinance for the Shakopee Mdewakanton Sioux Community; and

BE IT FURTHER RESOLVED, that this ordinance shall be given to the Minnesota Sioux Area Field Office for forwarding to Washington for publication in the Federal Register at the earliest possible date; and

BE IT FURTHER RESOLVED, that this resolution may be rescinded or amendment only by an affirmative vote of at least two-thirds (⅔) of the eligible voting members of the community.

CERTIFICATION: This resolution was passed by a vote of *twenty-five* (25) yes, *one* (1) no, *two* (2) abstentions, with a quorum present, at a duly called special meeting of the General Council held December 12, 1982 at the Shakopee Sioux Community Center Building.

/s/ Norman M. Crooks, Chairman

/s/ Amy E. Stade, Secretary-Treasurer

Shakopee Mdewakanton Sioux Community Liquor Ordinance

Section I. Definitions

A. "License" shall mean permission to operate an off-sale retail liquor outlet on the Shakopee Mdewakanton Sioux Reservation issued under the provisions of the ordinance.

B. "Vendor" shall mean a person holding a current valid license.

C. "Liquor Commissioner" shall mean a person appointed by the Shakopee Mdewakanton Sioux Community General Council to oversee liquor sales operations on the Reservation.

Section II. Liquor Commissioner

A. The term of the Liquor Commissioner shall be two years from the date of his/her appointment.

B. The liquor Commissioner must be a member of the Shakopee Mdewakanton Sioux Community 21 years of age or older.

C. The liquor Commissioner shall report at least monthly to the General Council on liquor sale operations within the reservation, shall promptly upon receipt remit any excise taxes, application or license fees collected to the Treasurer, and shall perform all other duties as set forth in this ordinance.

Section III. Licenses

There is hereby authorized to be issued a maximum of five annual licenses to operate as off-sale vendors under the terms and conditions of this ordinance.

1. Licenses shall be for the term of one year or less, running from the date of issuance to December 31 of the calendar year of issuance.

2. A fee for issuance of a license shall be $1000.00 payable upon receipt of the license.

3. Application procedure.

a. An applicant for a license must be a member of the Shakopee Mdewakanton Sioux Community 21 years of age or older.

b. The applicant shall complete an application form, as provided by the Liquor Commissioner, and shall submit it to him/her within 20 days after announcement that one or more licenses under this ordinance are available for issuance.

c. The applicant shall accompany his/her application with:

i. A non-refundable application fee of $10.00.

ii. Proof that the applicant's financial assets exceed his/her liabilities by an amount equal to or greater than *$5000.00.*

d. Twenty days after announcement that one or more licenses are available, the Liquor Commissioner shall declare the application period closed, shall promptly reject any incomplete application notifying the applicant at once, and shall proceed to evaluate the balance of the applications for the available licenses, according to the information contained therein and accompanying documents. He/she shall issue the available license(s) to the applicant(s) most qualified to operate as a vendor under the terms and conditions of this ordinance.

4. Upon receipt of a license hereunder, an applicant shall post a bond in an amount, to be established by the Liquor Commissioner annually, sufficient to ensure payment to the Community of the projected annual excise tax.

Section IV. Excise Tax

A. There is hereby imposed an excise tax on the sale of each bottle or other container of liquor sold by a vendor in the amount of *.5 cents a bottle* and case, .10 cents a keg.

B. Each vendor must file, with the Liquor Commissioner, a complete report of sales during a month and remit the excise tax on such sales. Such report and remittance must be made no later than the 15th day of the month following that to which the report applies.

Section V. Operation Under License

A. The license issued hereunder shall authorize the vendor to operate a retail sales outlet for the sale of unopened and sealed liquor or beer only.

B. All vendors must conform their operations to those laws of the State of Minnesota relating to the sale or possession of intoxicating beverages or beer as indicated in Minnesota Statutes Annotated.

C. A vendor must keep complete and accurate records of inventory, sales, payroll, taxes paid and withheld, and all other facets of business operations. The books and records maintained by each vendor operating under a license shall be open for inspection by the Liquor Commissioner at all times during normal business hours.

Section VI. Revocation or Suspension of License

A. The Liquor Commissioner may suspend a license issued under this ordinance for violation of any of the terms of this ordinance.

1. For failure to submit the report or remit the excise tax required by Section IV(B), or for refusal to permit inspection of books or records as required by Section V(C), such suspension shall cease upon compliance with the indicated section.

2. No suspension shall continue for more than ninety days, provided, however, that the Liquor Commissioner may make a recommendation at any time to the General Council that a license be revoked.

B. The General Council may revoke a license issued under this ordinance for violation of any of the terms of this ordinance.

1. Upon receiving a request, from the Liquor Commissioner or his/her assistant, to consider revocation of a license, the General Council shall schedule the matter for a hearing at a regular or special meeting of the General Council.

2. The General Council shall provide written notice at least 3 days in advance to the vender that revocation of his/her licenses will be considered.

3. The General Council shall permit statements or testimony by any person wishing to give such at the revocation hearing.

4. The General Council may, by majority vote revoke a license.

C. One prior license revocation shall not prevent a person, otherwise qualified, from applying for a subsequent license under Section III. Two prior license revocations shall render a person ineligible from applying for subsequent licenses.

[FR Doc. 83-5340 Filed 3-2-83; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[Group 807]

California; Filing of Plat of Survey

February 17, 1983.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California immediately.

Mount Diablo Meridian, California

T. 8 N., R. 9E.

2. This plat, representing the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, and certain mineral surveys, and the survey of the subdivision of sections 13, 24, 25, and 26, T. 8 N., R. 9 E., MDM, under Group 807, California, was accepted January 27, 1983.

3. The plat will immediately become the basic record describing the land for all authorized purposes. The plat has been placed in the open files and is available to the public for information only.

4. This survey was executed to meet certain administrative needs of this bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California, 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 83-5320 Filed 3-2-83; 8:45 am]

BILLING CODE 4310-84-M

[Group 726]

California; Filing of Plat of Survey

February 17, 1983.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Humboldt Meridian, California

T. 11 N., R. 6 E.

2. This plat, representing the dependent resurvey of a portion of the Second Standard Parallel North, on the south boundary of T. 11 N., R. 6 E., a portion of the west boundary, a portion of the subdivisional lines, and certain mineral survey boundaries in sections 30 and 31, and the survey of the subdivision of section 31, and the metes and bounds survey of Lots 19 and 20, section 31, T. 11 N., R. 6 E., Humboldt Meridian, under Group No. 726, California, was accepted January 28, 1983.

3. The plat will immediately become the basic record for describing the land for all authorized purposes. The plat has been placed in the open files and is available to the public for information only.

4. This survey was executed to meet certain administrative needs of this Bureau and the U.S. Department of Agriculture, Forest Service.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 83-5321 Filed 3-2-83; 8:45 am]

BILLING CODE 4310-84-M

[Group 719]

California; Filing of Plat of Survey

February 15, 1983

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, California

T. 13 N., R. 7 W.

2. This plat, representing the survey of the Sulphur Bank Rancheria in section 5 and 6, T. 13 N., R. 7 W., MDM, under Group No. 719, California, was accepted February 7, 1983.

3. The plat immediately become the basic record for describing the land for all authorized purposes. The plat has been placed in the open files and is available to the public for information only.

4. This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California, 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 83-5322 Filed 3-2-83; 8:45 am]

BILLING CODE 4310-84-M

[Group 757]

California; Filing of Plat of Survey

February 16, 1983.

1. These plats of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

San Bernardino Meridian, California

T. 7 N., R. 7 W.

2. These plats, representing the dependent resurvey of a portion of the subdivisional lines, and the survey of the subdivision of sections 2, 3, and 4, Township 6 North, Range 7 West, the dependent resurvey of a portion of the south boundary, a portion of the subdivisional lines, and the survey of the subdivision of sections 33, 34, and 35, Township 7 North, Range 7 West, San Bernardino Meridian, under Group No. 757, California, were accepted February 7, 1983.

3. These plats will immediately become the basic record for describing the land for all authorized purposes. The plats have been placed in the open files and are available to the public for information only.

4. This survey was executed to meet certain administrative needs of this Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge

Chief, Records and Information Section.

[FR Doc. 83-5319 Filed 3-2-83; 8:45 am]

BILLING CODE 4310-84-M

[INT DEIS 83-5]

Draft Environmental Statement; Clear Creek Shale Oil Project; Colorado

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Availability of the Draft Environmental Impact Statement (DEIS).

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the BLM has prepared a DEIS for the proposed Clear Creek Shale Oil Project.

DATE: Comments will be accepted until May 3, 1983.

ADDRESS: Comments should be sent to: Chevron EIS Team Leader, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81501.

FOR FURTHER INFORMATION CONTACT: Bob Kline, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81501, (303) 243-6552.

SUPPLEMENTARY INFORMATION: The BLM prepared a DEIS on the proposed Clear Creek Shale Oil Project in northwest Colorado. The project would produce 100,000 barrels per day (bpd) of shale oil. The DEIS analyzes the proposal,

three major project configurations, a 50,000 bpd production rate alternative, and various alternative configurations of discrete actions as part of the overall proposal. The DEIS analyzes the environmental and socioeconomic impacts of the proposal and alternatives.

AVAILABILITY: Single copies of the Draft EIS may be obtained at the above address: Public reading copies are also available at the following locations:

Mesa County Public Library, Grand Junction, CO 81501
Mesa College Library, Grand Junction, CO 81501
Conservation Library, Denver Public Library, 1537 Broadway, Denver, CO 80203
Garfield County Public Library, Glenwood Springs, CO 81601

Public meetings to receive oral and/or written comments on the proposed project will be held at 7:30 P.M. at the following locations.

April 4, 1983

Grand Junction—BLM Office, 764 Horizon Drive

April 5, 1983

DeBeque—DeBeque School, Minter Ave.

April 6, 1983

Rifle—Rifle High School Auditorium, 1353 Prefontaine

April 7, 1983

Denver—Ramada Inn Foothills, Winchester Room, 11595 W. 6th Ave

Oral comments will be limited to 10 minutes and should be accompanied with a written synopsis of the comments.

Dated: February 24, 1983.

George C. Francio,

Bureau of Land Management, State Director.

[FR Doc. 83-5327 Filed 3-2-83; 8:45 am]

BILLING CODE 4310-84-M

1982 Amendments to the California Desert Plan and Eastern San Diego County Management Framework Plan; Availability of Final Environmental Impact Statement

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 (FEIS) concerning the 1982 Amendment review of the California Desert Plan and the Eastern San Diego County Management Framework Plan (MFP). Forty-nine amendments were accepted for consideration. The amendments propose changes in both general plan guidelines and in site-specific measures. The latter include changes in vehicle access restrictions, Areas of Critical Environmental Concern (ACECs), grazing allotments, wilderness suitability recommendations, and multiple-use class designations. Under the preferred alternative, 28 amendments would be accepted as proposed, nine amendments would be accepted with modifications, and 12 would be rejected.

Comments on the FEIS are being solicited from public agencies and interested individuals and organizations. The Bureau invites written comments on the statement to be submitted by May 10, 1983, to the following address. Use of any other address may result in comments not being processed. 1982 Plan Amendments, Bureau of Land Management, California Desert District, 1695 Spruce Street, Riverside, CA 92507, Telephone (714) 351-6386

A limited number of copies of the Final Environmental Impact Statement are available upon request at the address listed above. Copies are also available for review at two other locations:

USDI—Bureau of Land Management, 2800 Cottage Way, Rm. E-2841, Sacramento, CA 95825
USDI—Bureau of Land Management, 1725 Eye Street, NW., Suite 906, Washington, D.C. 20240

For any further information contact Gerald E. Hillier, District Manager, (714) 351-6394.

Dated: February 24, 1983.

Ed Hastey,

State Director.

[FR Doc. 83-5326 Filed 3-2-83; 8:45 am]

BILLING CODE 4310-84-M

[Public Lands Exchange I-17821]

Public Lands Exchange; Idaho.

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action, I-17821—Exchange, Public Lands in Cassia County, Idaho.

SUMMARY: The following described lands have been examined and identified as suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Boise Meridian, Idaho

Legal Description

T. 13 S., R. 25 E.
Sec. 28: SE¼SW¼
T. 16 S., R. 25 E.
Sec. 11: S½SE¼SW¼NE¼NE¼, S½S½SE¼NE¼NE¼, N½SE¼, NE¼SW¼
Sec. 12: S½SW¼SW¼NW¼NW¼, SE¼SW¼NW¼NW¼, SW¼SE¼NW¼NW¼
T. 16 S., R. 26 E.
Sec. 1: SE¼
Sec. 14: W½SW¼
Sec. 15: SW¼

Totaling 570.00 acres of public land.

In exchange for these lands the Federal Government will acquire the following described lands from Roscoe Ward:

Boise Meridian, Idaho

Legal Description

T. 15 S., R. 26 E.
Sec. 4: SE¼SW¼, S½SE¼
Sec. 9: NE¼NE¼
Sec. 10: N½NW¼, SE¼NW¼, SW¼NE¼
T. 16 S., R. 26 E.
Sec. 15: W½NE¼
Sec. 23: NE¼NE¼

Totaling 440 acres of private land.

The purpose of this exchange is to acquire privately-owned lands which are chiefly valuable for wildlife habitat, livestock grazing, and access. The public interest will be well served by making the exchange which is consistent with local governmental planning and zoning regulations and with Federal programs and planning. The values of the lands to be exchanged are approximately equal. If necessary, the acreage will be adjusted, or money will be paid, not to exceed 25% of the total value of the public lands, to equalize the values upon completion of the final appraisal of the lands.

The terms and conditions applicable to the public lands are:

1. A reservation to the United States for rights-of-way for ditches and canals pursuant to the Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. Reserving to the United States a right-of-way over and across a strip of land 66 feet in width along the west boundary of the SE¼SW¼ Sec. 28, T. 13 S., R. 25 E. for the full use as a road by the United States of America, its licensees and permittees, including the right of access and use for and by the people of the United States generally, to lands owned, administered, or controlled by the United States.

3. The patent will be issued recognizing that they lie within a floodplain and as such the patentees or their successors will be limited by section 3(d) of Executive Order 11988 of May 24, 1977 from seeking compensation from the United States or its agencies in

the event existing or future facilities on the patents are damaged by floods.

4. All minerals are reserved to the United States.

5. The lands are subject to valid existing rights.

No reservations or conditions exist on the private lands to be conveyed to the United States.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant. The segregation will terminate as provided by the above cited regulation.

Detailed information concerning the exchange, including the environmental analysis and the record of public discussions, is available for review at the Burley District Office, 200 S. Oakley Highway, Burley, Idaho 83318.

For a period of 45 days interested parties may submit comments to the Burley District Office, Bureau of Land Management, Route 3, Box 1, Burley, Idaho 83318.

Dated: February 22, 1983.

Nick James Cozakos,

District Manager.

[FR Doc. 83-5325 Filed 3-2-83; 8:45 am]

BILLING CODE 4310-84-M

Management Framework Plan; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Planning Activity.

SUMMARY: The Management Framework Plan for the South Bearpaw Management Unit, southern Blaine County in Montana, will be amended during 1983. The purpose of the amendment is to determine the future management for the Ervin Ridge Wild Free Roaming Horse Herd. Alternatives to be considered will include no action, management at some population level, or removal of the wild horses. No preferred alternative has been identified at this time. Public participation will be sought throughout the development of an Environmental Analysis. Meetings will be held with interested parties at their request and mailings will solicit public comment during February, March and August, 1983. Issues expected to be considered include: management feasibility, potential for conflict with livestock grazing, potential for conflict with wildlife habitat requirements, and economic factors.

FOR FURTHER INFORMATION CONTACT: Donald F. Ryan, Area Manager, Bureau of Land Management, Havre Resource Area, Drawer 911, Havre, Montana 59501, 406-265-5891.

Dated: February 22, 1983.

Donald F. Ryan,

Area Manager.

[FR Doc. 83-5318 Filed 3-2-83; 8:45 am]

BILLING CODE 4310-84-M

New Mexico, Albuquerque District, New Mexico; District Advisory Council Meeting

The second meeting of the re-chartered Albuquerque District Advisory Council will be held April 26-27, 1983, starting in Farmington and ending in Albuquerque with attendance at the San Juan River Regional Coal Team meeting April 27. The Advisory Council meeting on April 26 will consist of a briefing-tour of public resources in the Bisti Coal region, departing the Holiday Inn, Farmington, 600 East Broadway, at 8:30 a.m. The tour will also include an explanation of the Rio Puerco Resource Area's water supply system, and will end in Albuquerque around 5 p.m. On April 27, the Advisory Council will attend the San Juan River Regional Coal Team meeting at the Albuquerque Convention Center, Ballroom A, starting at 9 a.m.

This council is managed in accordance with the Federal Advisory Committee Act of 1972, the Federal Land Policy and Management Act of 1976 and the Rangelands Improvement Act of 1976.

The public is welcome to attend all portions of this meeting, although transportation for the tour is arranged only for District Advisory Council members. Statements by the public may be made to the Advisory Council at 8:30 a.m. April 27 in Ballroom A, Albuquerque Convention Center.

Minutes of the meeting will be prepared and made available for review within 30 days following the meeting.

L. Paul Applegate,

District Manager.

[FR Doc. 83-5323 Filed 3-2-83; 8:45 am]

BILLING CODE 4310-84-M

[OR 24850 (Wash.)]

Realty Action; Sale Public Land in Yakima County, Washington

This Notice amends the original Notice of Realty Action published January 6, 1983 (48 FR 743). The sale date scheduled for March 8, 1983, is cancelled. The sale will be rescheduled at a later date. Sealed bids received for the originally scheduled March 8, 1983, sale date will be returned. Information about the sale is available at the BLM, Spokane District Office, East 4217 Main Avenue, Spokane, WA 99202.

Date of Issuance: February 22, 1983.

Roger W. Burwell,

District Manager.

[FR Doc. 83-5324 Filed 3-2-83; 8:45 am]

BILLING CODE 4310-84-M

Cedar City District Grazing Advisory Board Meeting

Notice is hereby given in accordance with Public Law 92-463 that a meeting of the Cedar City District Grazing Advisory Board will be held on Wednesday, March 30, 1983. The meeting will begin at 9:30 a.m. in the Bureau of Land Management Cedar City District Office located at 1579 North Main Street, Cedar City, Utah.

The agenda is as follows: (1) Review of Proposed Allotment Management Plans, (2) Rangeland Planning Proposals, (3) Rangeland Betterment Projects, (4) General Board Business.

Grazing Advisory Board meetings are open to the public. Interested persons may make oral statements or file written statements for the Board's consideration. Oral statements will be received at 9:30 a.m. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 1579 North Main Street, Cedar City, Utah 84720, phone 801-586-2401, by March 25, 1983. Depending on the number of persons wishing to make 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 for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: February 25, 1983.

Dennis Curtis,

Acting District Manager.

[FR Doc. 83-5430 Filed 3-2-83; 8:45 am]

BILLING CODE 4310-84-M

[M-55661]

Notice of Realty Action—Exchange of Public and Private Lands in Custer County, Montana

February 25, 1983.

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice of Realty Action M–55661, Exchange of Public and Private Lands in Custer County.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Montana Principal Meridian

T. 9 N., R. 53 E.,
Sec. 20: NE¼
T. 8 N., R. 54 E.,
Sec. 8: NW¼NE¼, S½NE¼, SE¼

Aggregating 440 acres of public lands.

In exchange for these lands, the United States will acquire the following described lands:

Montana Principal Meridan

T. 9 N., R. 52 E.,
Sec. 14: S½NW¼, SW¼, W½SE¼

Aggregating 320 acres of private lands and a Public Access Easement across other private lands allowing legal access to the above described lands. This Easement contains 20.66 acres of private lands.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the Bureau of Land Management, District Manager,P. O. Box 940, Miles City, Montana 59301. Any comments will be evaluated by the BLM, Montana State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Information related to this exchange, including the environmental assessment and land report, is available for review at the Miles City District Office, West of Miles City, Montana.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the public lands described above from settlement, sale, location and entry under the public land laws, including the mining laws, but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976.

The exchange will be made subject to:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.

2. All mineral ownerships under the public and private lands involved will remain with the present owners.

3. All valid existing rights (e.g., rights-of-way, easements and leases of record).

4. The exchange is based on appraised fair market values on the public and private lands and the access easement involved in this action.

This exchange is consistent with Bureau of Land Management policies; planning and state and local officials have been contacted. The public interest will be served by completion of this exchange.

Ray Brubaker,
District Manager.

[FR Doc. 83-5431 Filed 3-2-83; 8:45 am]
BILLING CODE 4310-84-M

[U-060]

Utah; Resource Management Plan/ Environmental Impact Statement

February 25, 1983.

AGENCY: Bureau of Land Management, Moab District, Grand Resource Area, Utah.

ACTION: Notice of Availability of Draft Resource Management Plan/ Environmental Impact Statement (RMP/ EIS).

This notice amends the Federal Register Notice published on February 14, 1983, page 6593. Due to printing delays, the comment period has been shifted forward. The comment period will begin on March 16 and end on June 13. Comments received by June 13 will be considered in the preparation of the Final RMP/EIS for the Grand Resource Area. All other information remains as stated in the original notice.

FOR FURTHUR INFORMATION CONTACT: Colin P. Christensen, Grand Resource Area Manager, (801) 259–8193.

Kenneth V. Rhea,
Associate District Manager.

[FR Doc. 83-5432 Filed 3-2-83; 8:45 am]
BILLING CODE 4310-84-M

[W-84029]

Wyoming; Invitation for Coal Exploration License; Ark Land Company

Ark Land Company, a wholly owned subsidiary of Arch Mineral Corporation, hereby invites all interested parties to participate on a pro rata cost sharing basis in its coal exploration program concerning federally owned coal underlying the following described land in Sweetwater County, Wyoming:

T. 14 N., R. 102 W., 6th Prin Mer
Sec. 1: Lots 5, 6, 7, 8, S½N½, S½
Sec. 2: Lots 5, 6, 7, 8, S½N½, S½
Sec. 3: Lots 5, 6, 7, 8, S½N½, S½
Sec. 4: Lots 5, 6, 7, S½N½, N½S½, S½SE¼, SE¼SW¼
Sec. 5: SE¼NE¼, N½SE¼
Sec. 8: SE¼
Sec. 9: All
Sec. 10: E½NE¼, NE¼Se¼, S½S½
Sec. 11: All
Sec. 12: All
Sec. 13: All
Sec. 14: All
Sec. 15: All
Sec. 17: All
Sec. 18: Lots 5, 6, 7, 8, E½W½, E½
Sec. 19: Lots 5, 6, 7, E½NW¼, NE¼, NE¼SW¼, N½SE¼
Sec. 20: N½, N½S½
Sec. 21: N½, N½S½
T. 14 N., R. 103 W., 6th Prin Mer
Sec. 13: All
Sec. 24: N½, N½S½
T. 15 N., R. 102 W., 6th Prin Mer
Sec. 5: SE¼, E½SW¼
Sec. 8: N½NE¼, SE¼NE¼, NW¼, N½SW¼
Sec. 15: N½, SW¼, W½SE¼
Sec. 17: NW¼SE¼, S½S½
Sec. 18: E½E½
Sec. 20: W½, W½E½
Sec. 27: N½NE¼, SW¼NE¼, SE¼, S½ SW¼
Sec. 28: SE¼NE¼, E½SE¼
Sec. 33: NE¼SE¼, S½SE¼
Sec. 34: All
Sec. 35: All

Containing 14,533.12 acres.

All of the coal in the above lands consists of unleased Federal coal.

The purpose of the exploration program is to obtain information about the coal resources and to gather environmental data within the boundaries of the aboved described area.

A detailed description of the proposed drilling program is available for review during normal business hours in the following offices (under serial number W–84029): Bureau of Land Management, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82001, and the Bureau of Land Management, Highway 187 North, P.O. Box 1869, Rock Springs, Wyoming 82901.

This notice of invitation will be published in this newspaper once each week for two consecutive weeks beginning the week of March 14, 1983, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Ark Land Company, no later than 30 days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Ark Land Company, Attn: Mr. Jack Cully, Manager Western Exploration Division, P.O. Box 340, Hanna, Wyoming 82327, and the Bureau of Land Management, Wyoming State Office, Branch of Energy Minerals, P.O. Box 1828, Cheyenne, Wyoming 82001.

The foregoing notice is published in the **Federal Register** pursuant to Title 43

Code of Federal Regulations, § 3410.2–1(c)(1).

J. Stan McKee,

Acting Chief, Branch of Energy Minerals.

[FR Doc. 83-5434 Filed 3-2-83; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; Fourth Regular Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: By this notice, the Service extends the comment period of its Federal Register notice of February 7, 1983, (48 FR 5603). That notice requested information and comments on the Service's proposed negotiating positions for the fourth regular meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

ADDRESSES: Information and comments on proposed negotiating positions should be sent to the Associate Director, Federal Assistance, U.S. Fish and Wildlife Service, (WPO), Washington, D.C. 20240. Written information and comments received by the Service will be open to the public inspection during normal business hours at the Federal Wildlife Permit Office, Room 620, 1000 N. Glebe Road, Arlington, Virginia.

DATE: The Service will consider information and comments (in reponse to its February 7, 1983, Federal Register notice) received by March 15, 1983.

FOR FURTHER INFORMATION CONTACT: Richard M. Parsons, Chief, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240, Telephone: 703/235–2418.

SUPPLEMENTARY INFORMATION: On February 15, 1983, the Service held a public meeting to receive information and comments on its proposed negotiating positions for the fourth regular meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora to be held in Gaborone, Botswana, April 19–30, 1983. At that meeting, several persons requested that the Service's notice, which announced the meeting and published the proposed negotiating positions (48 FR 5603), be amended to extend the comment period to March 15, 1983, in order to allow the public sufficient time to adequately respond to the request for information and comments.

The Service believes the request for an extension of the comment period to March 15, 1983, to be reasonable. Therefore, the Service hereby extends the comment period of its Federal Register notice of February 7, 1983, to March 15, 1983.

This notice was prepared by Arthur Lazarowitz, Federal Wildlife Permit Office.

Dated: February 25, 1983.

Robert A. Jantzen,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 83-5271 Filed 3-2-83; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that ODECO Oil and Gas Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS 043, Block 88, Eugene Island 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 Minerals Management Service is considering approval of the Plan and that is it available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, 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 Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local govenments, and other interested parties became effective 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: February 23, 1983.

John L. Ranking,

Acting Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 83-5314 Filed 3-2-83; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that The Superior Oil Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS 0246, Block 101, West 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 Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, 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 Minerals Management Service 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 § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: February 25, 1983.

John L. Rankin,

Acting Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 83-5315 Filed 3-2-83; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that The Superior Oil Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS 0254, Block 150, West 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 Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, 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 Minerals Management Service 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 § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: February 25, 1983

John L. Rankin,

Acting Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 83-5316 Filed 3-2-83; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, 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 South Bay Marchand Federal Unit Agreement No. 14–08–001–3915, submitted on February 10, 1983, a proposed supplemental plan of development/production describing the activities it proposes to conduct on the South Bay Marchand Federal Unit.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekends 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 Minerals Management Service 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: February 22, 1983.

John L. Rankin,

Acting Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 83-5317 Filed 3-2-83; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that Gulf Oil Exploration and Production Company has submitted a Development and Production Plan describing the activities if proposes to conduct on Lease OCS–G 1119, Block 52, Vermilion 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 Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002. Phone (504) 837–46720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service 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 § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: February 23, 1983.

John L. Rankin,

Acting Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 83-5433 Filed 3-2-83; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that ODECO Oil & Gas Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS 043, Block 88, Eugene Island 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 Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, 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 Minerals Management Service 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

§ 250.34 of Title 30 of the Code of Federal Regulations.

Dated: February 23, 1983.

John L. Rankin,

Acting Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 83-5453 Filed 3-2-83; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Volume No. OP1-FC-73]

Motor Carriers; Decision Notice; Finance Applications

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 of the Interstate Commerce Act, and complies with the appropriate transfer rules.

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.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsideration; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1181.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 20 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board No. 3, Members Krock, Joyce and Dowell.

Agatha L. Mergenovich,

Secretary.

Please direct status inquiries to Team 1, (202) 275-7992.

MC-FC-81251. By decision of February 24, 1983, issued under 49 U.S.C. 10321, the property brokers regulations at 49 CFR 1045, and the transfer rules at 49 CFR Part 1181, Board Number 3 approved the acquisition of control of EMPLOYEE TRANSFER CORPORATION (ETC), of Chicago, IL, a property broker operating pursuant to License No. MC-159301 and Sub-No. 1 thereunder by THE EQUITABLE LIFE HOLDING CORPORATION (EQUITABLE), of New York, NY, a non-carrier. ETC is a wholly-owned subsidiary of LINCOLN NATIONAL CORPORATION, also a non-carrier. ETC is authorized to engage in operations, in interstate or foreign commerce as a broker of (1) general commodities (except household goods) between points in the United States and (2) household goods, between points in the coterminous United States. Representative: Robert J. Gallagher, Suite 1200, 1000 Connecticut Ave., NW., Washington, DC 20036.

[FR Doc. 83-5309 Filed 3-2-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Motor Common and Contract Carriers of Property (fitness-only); Motor Common Carriers of Passengers (fitness-only); Motor Contract Carriers of Passengers; Property Brokers (other than household goods). The following applications for motor common or contract carriage of property and for a broker of property (other than household goods) are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** on December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common or contract carriage of passengers filed on or after November 19, 1982, are governed by Subpart D of the Commission's Rules of Practice. See 49 CFR Part 1160, Subpart D, published in the **Federal Register** on November 24, 1982, at 49 FR 53271. For compliance procedures, see 49 CFR 1160.86. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E.

These applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have 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, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it is fit, willing, and able to perfrom the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. 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 opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication 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.

Agatha L. Mergenovich,

Secretary.

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 in for a named shipper "under contract."

Please direct status inquiries to Team 1, (202) 275-7992.

Volume No. OP1-69

Decided: February 18, 1983.

By the Commission, Review Board No. 3. Members Krock, Joyce, and Dowell.

MC 108570 (Sub-7), filed February 1, 1983. Applicant: L & L COACH LINES, INC., 519 Maryland Ave., Hagerstown, MD 21740. Representative: Edward N. Button, 635 Oak Hill Ave., Hagerstown, MD 21740, (301) 739-4860. Transporting *passengers*, in charter and special operations, between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 115880 (Sub-7), filed February 2, 1983. Applicant: BROOKFIELD BUS SERVICE, INC., 3 Railroad Place, Maspeth, NY 11378. Representative: Arthur Wagner 342 Madison Ave., New York, NY 10137 (212) 366-0300. Transporting *passengers*, in charter and special operations, between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 159661, filed February 7, 1983. Applicant: ANCHOR TOURS, INCORPORATED, 3473 Johnson Drive, Lithonia, GA 30058. Representative: Stephen Monroe, (same address as applicant) (404) 979-2100. Transporting *passengers*, in charter and special operations, beginning and ending at points in GA, and extending to points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 165770, filed January 17, 1983. Applicant: ECOLE TRANSPORTATION CORP., 231 West Lincoln Ave., Mount Vernon, NY 10550. Representative: Norman Turk, 225 Broadway, New York, NY 10007, (212) 619-1540. Transporting *passengers*, in charter and special operation, between points in Westchester County, NY, on the one hand, and, on the other points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 165801, filed January 20, 1983. Applicant: RACINE BROKERAGE SERVICES, INC., 952 Brookstown Ave., P.O. Box 5127, Wionston-Salem, NC 27113. Representative: W. L. Trull (same address as applicant) (919) 727-0516. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 165951, filed February 7, 1983. Applicant: ATLANTIC COACH LINES, INC., 2519 Gresham Rd., SE., Atlanta, GA 30316. Representative: Mark S. Gray, 1006 South Tower, 225 Peachtree St., NE., Atlanta, GA 30303, (404) 523-1717. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 165961, filed January 28, 1983. Applicant: ROBERT R. BOCKERT, 8317 N.E. 30th Ave., Vancouver, WA 98665. Representative: Robert R. Bockert (same address as applicant), (206) 573-0401. As a *broker* of *general commodities* (except household goods), between points in the U.S.

MC 166000, filed January 31, 1983. Applicant: CHARLES E. SULLIVAN, 350 Spring Green Rd., Warwick, RI 02886. Representative: Charles R. Reilly, 391 Davisville Rd., North Kingstown, RI 02852, (401) 884-0969. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 166021, filed February 2, 1983. Applicant: VISTA CHARTER SERVICE, INC., 1045 Crest View Rd., Vista, CA 92083. Representative: Harold O. Orlofske, P.O. Box 368, Neenah, WI 54956, (414) 722-2848. Transporting *passengers*, in charter and special operations, beginning and ending at points in CA, and extending to points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 166051, filed February 1, 1983. Applicant: THOMAS J. MURPHY d.b.a. T. M. BROKERAGE, Forty Carver Ave., Westwood, NJ 07675. Representative: Rick A. Rude, Suite 611, 1730 Rhode Island Ave., NW., Washington, DC 20036, (202) 223-5900. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 166060, filed February 4, 1983. Applicant: SHORT LINES TRANSIT, INC., 1305 East Benson Highway, Tucson, AZ 85714. Representative: Louis W. Barassi, 70 West Cushing St., Tucson, AZ 85701, (602) 624-2301. Transporting *passengers*, in charter and special operations, beginning and ending at points in AZ, and extending to points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately funded charter and special transportation.

MC 166080, filed February 4, 1983. Applicant: CHARLES R. WANN SR., d.b.a. J & C ENTERPRISES, 795 6th St., Penrose, CO 81240. Representative: Charles R. Wann, Sr. (same address as applicant) (303) 372-6844. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

Volume No. OP1-71

Decided: February 23, 1983.

By the Commission, Review Board No. 1. Members Parker, Chandler, and Fortier.

MC 460 (Sub-11), filed February 4, 1983. Applicant: OKLAHOMA TRANSPORTATION COMPANY, 1206 Exchange Ave., Oklahoma City, OK 73108. Representative: Robert W. Allen (same address as applicant) (405) 239-6831. Transporting *passengers*, in charter and special operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 139270 (Sub-1), filed February 8, 1983. Applicant: OTTERTAIL COACHES, INC., 318 West Maple, Fergus Falls, MN 56537. Representative: A. L. Fitch (same address as applicant) (218) 739-3393. Transporting *passengers*, in charter and special operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 107450 (Sub-5), filed February 8, 1983. Applicant: METROPOLITAN COACH CORPORATION, 1617 Brook Rd., Richmond, VA 23220. Representative: Calvin F. Major, 200 West Grace St., Suite 115, P.O. Box 5010, Richmond, VA 23220 (804) 649-7591. Transporting *passengers*, in charter and special operations, between points in the U.S. (including AK, but excluding HI).

Note.—Applicant intends to provide privately-funded charter and special transportation.

MC 144621 (Sub-56), filed January 24, 1983. Applicant: COLUMBINE

CARRIERS, INC., 52275 U.S. Hwy 31 North, P.O. Box 66, South Bend, IN 46624. Representative: Charles J. Kimball, 665 Capitol Life Center, 1600 Sherman St., Denver, CO 80203 (303) 839-5856. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 154651 (Sub-1), filed February 9, 1983. Applicant: WILLIE MACK, INC., 549 Jackson Avenue, Elizabeth, NJ 07201. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904 (201) 572-5551. Transporting *passengers*, in charter and special operations between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 153171 (Sub-1), filed February 4, 1983. Applicant: TWENTY FIRST CENTURY BUS SERVICE CORP., d.b.a. TWENTY FIRST CENTURY TOURS, 1756 Ocean Avenue, New York, NY 11716. Representative: Arthur Wagner, 342 Madison Avenue, New York, NY 10173 (212) 755-9500. Transporting *passengers*, in charter and special operations, between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 166041, filed February 3, 1983. Applicant: RHODE ISLAND MOTOR COACH CO., INC., 261 Warren Ave., East Providence, RI 02914. Representative: James M. Burns, 1365 Main St., Suite 403, Springfield, MA 01103 (413) 781-8205. Transporting *passengers*, in charter and special operations, between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 166030, filed January 31, 1983. Applicant: LIFE LINE TOURS, INC., 112 Park Drive, Cranford, NJ 07016. Representative: Ann Stemmer (same address as applicant) (201) 276-8912. Transporting *passengers*, in charter operations, beginning and ending at Manhattan, Bronx, Queens, Brooklyn and Staten Island, NY, and points in NJ, and extending to points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter transportation.

MC 166040, filed February 3, 1983. Applicant: VALLERY FREIGHT LINES, INC., 12301 West Freeway, P.O. Box 12301, Fort Worth, TX 76126. Representative: Billy R. Reid, 1721 Carl St., Fort Worth, TX 76103 (817) 332-4718. As a *broker* of *general commodities* (except household goods) between points in the U.S. (except AK and HI).

MC 166101, filed February 4, 1983. Applicant: DAVID BENEUX, P.O. Drawer F, Mulberry, AR 72947. Representative: Harry Keifer (same address as applicant), (501) 997-1683. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 166220, filed February 9, 1983. Applicant: MARK AND JOAN KLEIN, P.O. Box 155, Mead, WA 99021. Representative: Mark Klein (same address as applicant), (509) 466-9051. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

For the following, please direct status calls to Team 2 at 202-275-7289.

Volume No. OP2-077

Decided: February 23, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 115432 (Sub-8), filed January 31, 1983. Applicant: PAWTUXET VALLEY BUS LINES, INCORPORATED, 76 Industrial Lane, West Industrial Lane. Representative: Charles J. Williams, P.O. Box 186, Scotch Plains, NJ 07076, 201-322-5030. Transporting *passengers*, in charter and special operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 165612, filed January 10, 1983. Applicant: BERRY BROS. BUS SERVICE, INC., 7920 Becket St., Norfolk, VA 23518. Representative: Edward L. Berry (same address as applicant), 804-588-4962. Transporting *passengers*, in charter and special operations, beginning and ending at Chesapeake, Virginia Beach, Norfolk, Portsmouth, Newport News, Hampton, Poquoson, Suffolk, and Williamsburg, VA, and Elizabeth City, NC, points in Isle of Wright, Sussex, James City, York, Surry, North Hampton, Accomack, and South Hampton Counties, VA, and Dare, Currituck and Hertford Counties, NC, and extending to points in the U.S.

Note.—Applicant seeks to provide privately-funded, charter and special transportation.

MC 165983, filed January 31, 1983. Applicant: WYO-NEBR. SECURITY COURIER SERVICE, INC., 1413 East Overland, Scottsbluff, NE 69361. Representative: George A. Sommer, 118 West 18th St., Scottsbluff, NE 69361, 308-632-7833. 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. (except AK and HI).

For the following, please direct status calls to Team 4 at 202-275-7669.

Volume No. OP4-107

Decided: February 25, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 946 (Sub-8), filed February 16, 1983. Applicant: FERDINAND ARRIGONI, INC. dba NEW YORK BUS SERVICE, 3320 Hutchinson Ave., Bronx, NY 10475. Representative: Samuel B. Zinder, 98 Cutter Mill Rd., Great Neck, NY 11021 (516) 482-0881. Transporting *passengers*, in charter and special operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 12907 (Sub-1), filed February 15, 1983. Applicant: KERRVILLE TOURS, INC., 429 Sidney Baker St., Kerrville, TX 78028. Representative: Jerry Prestridge, P.O. Box 1148, Austin, TX 78767 (512) 472-8800. Transporting *passengers*, in charter and special operations, between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 53686 (Sub-3), filed February 17, 1983. Applicant: J. MEREDITH BUS CO., 109 Brick Rd., Marlton, NJ 08003. Representative: Raymond A. Thistle, Jr., Five Cottman Court, 426 Cottman St., Jenkintown, PA 19046 (215) 576-0131. Transporting *passengers*, in special and charter operations, beginning and ending at points in CT, DE, MD, NJ, NY, PA, RI, VA, WV, and DC, and extending to points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 96336 (Sub-3), filed February 17, 1983. Applicant: CAVALIER TRANSPORTATION CO., INC., 1621 N. 28th St., Richmond, VA 23223. Representative: Calvin F. Major, 200 W. Grace St., P.O. Box 5010, Richmond, VA 23220 (804) 649-7591. Transporting *passengers*, in charter and special operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 148177 (Sub-1), filed February 15, 1983. Applicant: T & T BUS COMPANY, INC., R.D. #2, Caton Rd., Corning NY 14830. Representative: Jeremy Kahn,

Suite 733 Investment Bldg., 1511 K St., NW, Washington, DC 20005 (202) 783–3525. Transporting *passengers*, in charter and special operations, beginning and ending at points in PA and NY, and extending to points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 166287, filed February 16, 1983. Applicant: GEORGE F.K. KERKOW d.b.a. STRATFORD LIMOUSINE SERVICE, 515 Henry Ave., Stratford, CT 06497. Representative: George F. K. Kerkow (same address as applicant) (203) 375–3685. Transporting *passengers*, in charter and special operations, beginning and ending at points in CT and extending to points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 166296, filed February 16, 1983. Applicant: MICHAEL AUSTIN NOFTZ d.b.a. MIKE NOFTZ, 789 Madison, P.O. Box 428, Lafayette, OR 97127. Representative: Mervyn Noftz, Rt. 3, Box 3681, Red Bluff, CA 96080, (916) 529–3173. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

[FR Doc. 83-5311 Filed 3-2-83; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Motor Common and Contract Carriers of Property (except fitness-only); Motor Common Carriers of Passengers (public interest); Freight Forwarders; Water Carriers; Household Goods Brokers. The following applications for motor common or contract carriers of property, water carriage, freight forwarders, and household goods brokers are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common carriage of passengers, filed on or after November 19, 1982, are governed by Subpart D of 49 CFR Part 1160, published in the **Federal Register** on November 24, 1982 at 47 FR 53271. For compliance procedures, see 49 CFR 1160.86. Carriers operating pursuant to an intrastate certificate also must comply with 49 U.S.C. 10922(c)(2)(E). Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E. In addition to fitness grounds, these applications may be opposed on the grounds that the transportation to be authorized is not consistent with the public interest.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative 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 that it 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.

We make an additional preliminary finding with respect to each of the following types of applications as indicated: common carrier of property-that the service proposed will serve a useful public purpose, responsive to a public demand or need; water common carrier-that the transportation to be provided under the certificate is or will be required by the public convenience and necessity; water contract carrier, motor contract carrier of property, freight forwarder, and household goods broker-that the transportation will be consistent with the public interest and the transportation policy of section 10101 of chapter 101 of Title 49 of the United States Code.

These presumptions shall not be deemed to exist where the application is opposed. 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 opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication 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.

Agatha L. Mergenovich
Secretary.

Please direct status inquiries to Team one at (202) 275–7992.

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." Applications filed under 49 U.S.C. 10922(c)(2)(B) to operate in intrastate commerce over regular routes as a motor common carrier of passengers are duly.

Volume No. OP1–70

Decided: February 18, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 2060 (Sub-18), filed February 3, 1983. Applicant: PINE HILL-KINGSTON BUS CORP., P.O. Box 1758, Kingston, NY 12401. Representative: Lawrence E. Lindeman, 4660 Kenmore Ave., Suite 1203, Alexandria, VA 22304, (703) 751–2441. *Over regular routes,* transporting *passengers,* (1) between Rome and New York, NY, from Rome over NY Hwy 49 to Utica, then over Interstate Hwy 90 to NY Hwy 28, then over NY Hwy 28 to Interstate Hwy 87, then over Interstate Hwy 87 to NY Hwy 17, then over NY Hwy 17 to the NY–NJ State line, then over NJ Hwy 17 to NJ Hwy 3, then over NJ Hwy 3 to Interstate Hwy 495, then over Interstate Hwy 495 to New York, and return over the same route, serving the off-route point of Herkimer, NY, (2) between Mt. Tremper, NY, and junction NY Hwys 375 and 28, from Mt. Tremper over NY Hwy 212 to Woodstock, NY, then over NY Hwy 375 to NY Hwy 28, and return over the same route, (3)

between Oneonta and Kingston, NY, from Oneonta over NY Hwy 23 to NY Hwy 296, then over NY Hwy 296 to NY Hwy 23A, then over NY Hwy 23A to NY Hwy 32, then over NY Hwy 32 to Interstate Hwy 87, then over Interstate Hwy 87 to Kingston, and return over the same route, (4) between Kingston, NY, and junction NY Hwys 32 and 17, from Kingston over U.S. Hwy 9W to NY Hwy 32, then over NY Hwy 32 to NY Hwy 17, and return over the same route, (5) between Kingston, NY, and junction NY Hwy 299 and Interstate Hwy 87, from Kingston over NY Hwy 32 to New Paltz, NY, then over NY Hwy 299 to Interstate Hwy 87, and return over the same route, (6) between junction NY Hwy 17 and Interstate Hwy 287 and Freeport, NY from junction NY Hwy 17 and Interstate Hwy 287 over Interstate Hwy 287 to Interstate Hwy 95, then over Interstate Hwy 95 to Interstate Hwy 295 then over Interstate Hwy 295 to NY Hwy 25, then over NY Hwy 25 to NY Hwy 25B, then over NY Hwy 25B, to Mineola, then over Mineola Blvd, Franklin Ave., Henry St., Greenwich St., Nassau Rd., and Main St. to Freeport, and return over the same route serving the off-route points of Nanuet, White Plains, New Rochelle, Queens Village, Mineola, and Hempstead, NY, (7) between junction Interstate Hwy 287 and Garden State Parkway and junction Interstate Hwys 287 and 295, from junction Interstate Hwy 287 and Garden State Parkway over Garden State Parkway to Interstate Hwy 80 then over Interstate Hwy 80 to Interstate Hwy 95, then over Interstate Hwy 95 to junction Interstate Hwys 95 and 295, and return over the same route, (8) between junction NY Hwys 23 and 23A and Shandaken, NY, from junction NY Hwys 23 and 23A over NY Hwy 23A to Lexington, NY then over NY Hwy 42 to Shandaken, and return over the same route, and (9) between New York, NY, and junction Interstate Hwys 87 and 287 near Elmsford, NY, from New York over city streets to Interstate Hwy 87, then over Interstate Hwys 87 to Interstate Hwy 287, and return over the same route, serving all intermediate points in connection with routes (1) to (9) above.

Note.— Applicant intends to tack the sought rights to its existing authority. Applicant seeks to provide regular-route service in interstate or foreign commerce and in intrastate commerce under 49 U.S.C. 10922(c)(2)(B) over the same route.

MC 2110 (Sub-15), filed February 7, 1983. Applicant: BOWLUS TRUCKING CO., INC., 200 County Rd. 143, Fremont, OH 43420. Representative: James Duvall, 220 W. Bridge St., P.O. Box 97, Dublin, OH 43017, (614)–889–2531. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 9251 (Sub-6), filed February 7, 1983. Applicant: S & M TRUCK LINE, INC., P.O. Box 813, Mt. Angel OR 97362. Representative: John A. Anderson, Suite 801—The 1515 Bldg., 1515 SW. Fifth Ave., Portland OR 97201 (503) 227–4586. Transporting *food and related products*, between points in WA, OR, and CA, on the one hand, and, on the other, points in WA, OR, CA, AZ, NV, ID, and UT.

MC 15100 (Sub-4), filed February 7, 1983. Applicant: JOHN DeGRAND & SON, INC., 32 Hood Terrace, West Haven, CT 06516. Representative: Palmer S. McGee, Jr., One Constitution Plaza, Hartford, CT 06103 (203) 278–1330. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in VT, ME, NH, MA, CT, RI, NY, NJ, PA, MD, DE, VA, NC, SC, and DC.

MC 47171 (Sub-227), filed February 7, 1983. Applicant: COOPER MOTOR LINES, INC., P.O. Box 2820, Greenville, SC 29602. Representative: Harris G. Andrews (same address as applicant) (803)879–2103. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Signode Corp., of Glenview, IL.

MC 52861 (Sub-94), filed February 7, 1983. Applicant: WILLS TRUCKING, INC., 3185 Columbia Rd., Richfield, OH 44286. Representative: James W. Moore (same address as applicant) (216) 659–9381. Transporting *bulk commodities, and metal products*, between points in the U.S. (except AK and HI), under continuing contract(s) with The David J. Joseph Company, of Cincinnati, OH.

MC 155311 (Sub-1), filed January 14, 1983. Applicant: SUNCO CARRIERS, INC., 2029 West Memorial Blvd., P.O. Box 2811, Lakeland, FL 33803. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328 (404) 256–4320. Transporting *food and related products*, between points in the U.S. (except AK and HI).

MC 117940 (Sub-375), filed February 4, 1983. Applicant: NATIONWIDE CARRIERS, INC., P.O. Box 104, Maple Plain, MN 55359. Representative: Allan L. Timmerman, 5300 Highway 12, Maple Plain, MN 55359 (612) 479–1984. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with ITOFCA Consolidators, Inc. and ITOFCA, Inc., each of Downers Grove, IL.

MC 133811 (Sub-8), filed February 7, 1983. Applicant: H. E. MCCONNELL AND H. E. MCCONNELL, II d.b.a. H. E. MCCONNELL & SON TRUCKING COMPANY, 5117½ East Broadway, North Little Rock, AR 72114. Representative: James M. Duckett, 221 W. 2nd St., Suite 411, Little Rock, AR 72201, (501) 375–3022. Transporting *plastic products*, between points in TX, on the one hand, and, on the other, points in AR, LA, MS, and OK.

MC 134121 (Sub-5), filed February 11, 1983. Applicant: ROBERT FRANK DEASON, d.b.a. DEASON GRAIN COMPANY, P.O. Box 365, Lewisburg, TN 36091. Representative: Roland M. Lowell, 5th Floor, 501 Union St., Nashville, TN 37219, (615) 255–0540. Transporting (1) *paper and paper products*, between points in TN, on the one hand, and, on the other, points in AL, GA and MS, and (2) *metal products*, between points in TN, on the one hand, and, on the other, points in AL, GA, KY, IL, IN, MI, MS, OH, OK and SC.

MC 142011 (Sub-8), filed January 21, 1983. Applicant: LEISURE TIME TOURS, INC., 4 Leisure Lane, Mahwah, NJ 07430. Representative: Michael R. Werner, 241 Cedar Lane, Teaneck, NJ 07666, (201) 836–1144. Over regular routes, transporting *passengers*, between Cockeysville, MD, and Atlantic City, NJ, from Cockeysville over Interstate Hwy 83 to junction Interstate Hwy 695, then over Interstate Hwy 695 to junction Interstate Hwy 95, then over Interstate Hwy 95 to junction MD Hwy 272, then over MD Hwy 272 to junction MD Hwy 40, then over MD Hwy 40 to junction DE Hwy 896, then over DE Hwy 896 to junction Interstate Hwy 95, then over Interstate Hwy 95 to junction Interstate Hwy 295, then over Interstate Hwy 295 via the DE Memorial Bridge, to junction NJ Hwy 42, then over NJ Hwy 42 to junction Atlantic City Expressway, then over the Atlantic City Expressway to Atlantic City, and return over the same route, serving all intermediate points.

Note.—Applicant seeks to provide regular-route service in interstate or foreign commerce.

MC 144330 (Sub-97), filed February 1, 1983. Applicant: UTAH CARRIERS, INC., 2023 Wall Ave., Ogden, UT 84401. Representative: John T. Wirth, 717–17th St., Suite 2600, Denver, CO 80202–3357, (303) 892–6700. Transporting *building materials and construction materials*, between points in the U.S. (except AK and HI).

MC 145930 (Sub-11), filed February 4, 1983. Applicant: WILLIAM E. MOROG

d.b.a. JONICK & CO., 1840 Idaho Ave., Lorain, OH 44052. Representative: Boyd B. Ferris, 50 W. Broad St., Columbus, OH 43215, (614) 464–4103. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI).

MC 146630 (Sub-5), filed February 4, 1983. Applicant: SAWDUST SIERRA, INC., 2996 Timber Lane, Verona, WI 53593. Representative: Richard A. Westley, 4506 Regent St., Suite 100, P.O. Box 5086 Madison, WI 53705–0086 (608) 238–3119. Transporting (1) *paper and paper products and printed matter,* between points in Waukesha County, WI, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (2) *food and related products,* between points in Green and Lafayette Counties, WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 148791 (Sub-40), filed February 7, 1983. Applicant: TRANSPORT-WEST, INC., 1850 S 1100 W, Woods Cross, UT 84087. Representative: Rick J. Hall, P.O. Box 2465, Salt Lake City, UT 84110 (801)–531–1777. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Aspen Distribution, of Salt Lake City, UT.

MC 151911 (Sub-1), filed February 25, 1983. Applicant: HARREL R. BRIGGS AND SARAH BRIGGS, Route 9, Box 1648, Plant City, FL 33566. Representative: Frank L. Willard, Suite 1001, First and Merchants National Bank Bldg., Norfolk, VA 23510 (804)–627–0070. Transporting *food and related products,* between points in the U.S. (except AK and HI), under continuing contract(s) with the Smithfield Packing Co., of Smithfield, VA, and Nabisco Brands, Inc., of Parsippany, NJ.

MC 158310 (Sub-2), filed February 7, 1983. Applicant: STEWARD BROS. TRANSPORTATION, INC., Umpqua Star Route, Box 208A, Oakland, OR 97462. Representative: Billy R. Reid, 1721 Carl Street, Fort Worth, TX 76103 (817) 332–4718. Transporting *building materials, lumber and wood products, forest products, and metal products,* between points in AL, AR, AZ, CA, CO, FL, GA, IL, IN, IA, ID, KS, KY, LA, MS, MO, MT, NE, NV, NC, OR, OK, SC, TN, TX, UT, WA, and WY.

MC 160680 (Sub-1), filed February 8, 1983. Applicant: L.G.H. TRUCKING, INC., 710 Ventura St. N., Salem, OR 97303. Representative: John A. Anderson, Suite 801, The 1515 Bldg., 1515 SW Fifth Ave., Portland, OR 97201 (503) 227–4586. Transporting *food and related products, and pulp, paper and related products,* between points in OR, WA, ID and CA.

MC 162610 (Sub-2), filed February 7, 1983. Applicant: JETM DISTRIBUTION SYSTEMS, INC., 8424 W. 47th St., Lyons, IL 60534. Representative: Thomas M. O'Brien, 180 N. Michigan Ave., Suite 1700, Chicago, IL 60601 (312) 263–1600. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with United States Cold Storage, of Lyons, IL, Miller Potato Company, of Blue Island, IL, Dry Storage Corporation, of Des Plaines, IL, Kitchens of Sara Lee, Inc., of Deerfield, IL, Columbus McKinnon Corp., of Broadview, IL, and Goodman Equipment Corporation and Playskool, Inc., both of Chicago, IL.

MC 163721, filed February 2, 1983. Applicant: CHAPARRAL EQUIPMENT, LEASING AND RENTAL, INC., 2845 Workman Mill Road, Whittier, CA 90601. Representative: Miles L. Kavaller, 315 S. Beverly Dr., Suite 315, Beverly Hills, CA 90212 (213) 277–2323. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Interstate Freight Service, Inc., of Downey, CA.

MC 164790, filed February 1, 1983. Applicant: ROLAND WEAVER d.b.a. WEAVER TRUCKING COMPANY, P.O. Box 327, Vernon, TX 76384. Representative: William P. Parker, P.O. Box 54657, Oklahoma City, OK 73154 (405)–424–3301. Transporting *road and bridge construction materials,* between points in OK and TX.

MC 165411, filed January 26, 1983. Applicant: NORTHUMBERLAND LINES, INC., 16 Riverview, Mankato, MN 56001. Representative: Richard L. Gill, 1805 American National Bank Bldg., St. Paul, MN 55101 (612) 224–9454. Over regular routes, transporting *passengers,* between Mankato, MN, and Rochester, MN, from Mankato over MN Hwy 22, to junction MN Hwy 109, then over MN Hwy 109 to junction Interstate Hwy 90, then over Intersate Hwy 90 to Rochester, and return over the same route, serving all intermediate points.

Note.—Applicant seeks to provide regular-route service in interstate or foreign commerce.

MC 165941, filed January 27, 1983. Applicant: JAYMAC TRUCKING CO., 11 Willow Place, Albertson, NY 11507. Representative: Abel Jack Schwartz, One Old Country Rd., Carle Place, NY 11514 (516)–742–9192. Transporting *furniture and fixtures,* between points in NY, on the one hand, and, on the other, points in NY, NJ, PA, MA, CT, RI, ME, VT and NH.

MC 166091, filed February 4, 1983. Applicant: MCQUADE TRANSPORT, INC., P.O. Box 1355, Bismarck, ND 58502–1355. Representative: Charles E. Johnson, P.O. Box 2056, Bismarck, ND 58502–2056 (701)–223–5300. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in ND, on the one hand, and, on the other, points in the U.S. (except HI).

MC 166141, filed February 8, 1983. Applicant: TOM H. HOVINGH, 11688 40th Ave., Allendale, MI 49401. Representative: Paul D. Borghesani, Suite 300, Communicana, Bldg., 421 South Second St., Elkhart, IN 46516 (219) 293–3597. Transporting (1) *food and related products,* between points in Elkhart County, IN, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (2) *lumber and wood products,* between points in Kent County, MI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 166161, filed February 8, 1983. Applicant: D. S. LYNCH ENTERPRISES, INC., 195 East Valley Blvd. #4, Rialto, CA 92326. Representative: Daniel S. Lynch (same address as applicant) (714) 877–0845. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except HI), under continuing contract(s) with D. W. R. Transportation, Inc., of Mentone, CA.

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Decided: February 23, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

FF–661, filed January 28, 1983. Applicant: EDWARD DIETIKER, VELDA DIETIKER AND CHARLES DIETIKER, d.b.a. DOOR–TO–DOOR MOVING AND STORAGE, 918 La Beaume St., St. Louis, MO 63102. Representative: Charles Ephraim, 406 World Center Bldg., 918 16th St., NW., Washington, DC 20006. As a *freight forwarder* in connection with the transportation of *household goods, unaccompanied baggage and used automobiles,* between points in the U.S. (except VT and WV). Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either (1) state that a petition has been filed under 49 U.S.C. 11343(e) seeking an exemption

from the requirements of 49 U.S.C. 11343, (2) file an application under 49 U.S.C. 11343(A), or (3) submit an affidavit indicating why such approval is unnecessary, to the Secretary's office. In order to expedite issuance of any authority please submit a copy of this filing to Team 1, Room 2379.

MC 11220 (Sub-237), filed February 7, 1982. Applicant: GORDONS TRANSPORTS, INC., 185 West McLemore Ave., Memphis, TN 38101. Representative: James J. Emigh, P.O. Box 59, Memphis, TN 38101 (901) 775–2042. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Cotter & Company, of Chicago, IL.

MC 57880 (Sub-29), filed February 7, 1983. Applicant: ASHTON TRUCKING CO., P.O. Box 472, Monte Vista, CO 81144. Representative: Leslie R. Kehl, 1660 Lincoln St., Suite 1600, Denver, CO 80264 (303) 861–4028. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Sun Valley Waterbeds, Inc., of Phoenix, AZ.

MC 111401 (Sub-627), filed February 8, 1983. Applicant: GROENDYKE TRANSPORT, INC., 2510 Rock Island Blvd., P.O. Box 632, Enid, OK 73702. Representative: Alvin J. Meiklejohn, Jr., 1660 Lincoln Street, Suite 1600, Denver, CO 80264 (303) 861–4028. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Vulcan Materials Co., of Birmingham, AL.

MC 143730 (Sub-11), filed February 4, 1983. Applicant: PENINSULA TRUCKING CO., INC., 705 Morehouse Drive, New Castle, DE 19270. Representative: Richard M. Ochroch, 316 South 16th St., Philadelphia, PA 19102 (215) 735–2707. Transporting *general commodities* (except classes A and B explosives and household goods and commodities in bulk), between points in ME, NH, VT, NY, MA, CT, RI, PA, NJ, DE, MD, WV, VA, NC, SC, GA, FL, AL, and DC, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 146590 (Sub-11), filed February 8, 1983. Applicant: J.R.P., INC., 1300 Island Ave., McKees Rocks, PA 15136. Representative: Sally A. Davoren, 1500 Bank Tower, 307 Fourth Ave., Pittsburgh, PA 15222 (412) 471–3300. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. Condition: Issuance of a certificate in this proceeding is subject to prior or coincidental cancellation, at applicant's written request, of its permits held in No. MC–146590 Sub Nos. 2, 3, 5, 6, 7, 8X, 9 and 10.

Note.—The purpose of this application is to convert applicant's existing contract carrier authority in No. MC–146590 Sub-Nos. 2, 3, 5, 6, 7, 8X, 9 and 10 to common carrier authority.

MC 147101 (Sub-5), filed February 7, 1983. Applicant: LDF, INC., 30 Enterprise Ave., Secaucus, NJ 07094. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114 (216) 566–5639. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with International Freight Brokers, Inc., of Charlotte, NC.

MC 149560 (Sub-1), filed February 9, 1983.

Applicant: BRYSON INDUSTRIAL SERVICES, INC., 108, White Oak Lane, Lexington, SC 29072. Representative: Anne Greene (same address as applicant) (803) 796–6408. Transporting *clay, cat litter and oil and grease absorbents,* between point in Sumter County, SC, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with Mid-Florida Mining Company, of Lowell, FL.

MC 148281 (Sub-19), filed February 2, 1983. Applicant: SUSANA TRANSPORT SYSTEM, INC., 2845 Workman Mill Rd. Whittier, CA 90601. Representative: Miles L. Kavaller, 315 S. Beverly Dr., Suite 315, Beverly Hills, CA 90212 (213) 277–2323. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Interstate Freight Service, Inc., of Downey, CA.

MC 149111 (Sub-5), filed February 11 ,1983. Applicant: GENERAL COMMODITIES WAREHOUSE & DISTRIBUTING CO., INC., 1200 Lebanon Road, West Mifflin, PA 15122. Representative: Salley A. Davoren, 1500 Bank Tower, 307 Fourth Avenue, Pittsburgh, PA 15222 (412) 471–3300. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract(s) with Genco Transportation Services, Inc., of West Mifflin, PA.

MC 151841 (Sub-1), filed February 3, 1983.s Applicant: R. L. HARRISON TRUCKING CO., INC., 1107 Airlane Drive, Benton, AR 72015. Representative: Henry E. Seaton, 1024 Pennsylvania Bldg., 425 13th Street, N.W., Washington, DC 20004 (202) 347–8862. Transporting (1) *alcoholic beverages,* between points in the U.S. (expxept AK and HI), and (2) *such commodities* as are dealt in by wholesale and retail grocery houses, between points in AR, TN, AL, GA, MS, KY, MO, LA, FL and TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 159401 (Sub-1), filed February 2, 1983. Applicant: JOHNSON DISTRIBUTORSHIP, INC., Route 1, Box 920 AA, Flagstaff, AR 86001. Representative: Joe E. Fresquez, 403 N. Agassiz, P.O. Box 910, Flagstaff, AR 86002 (602) 779–6146. Transporting *general commodities* (except classes A and B explosives), between points in AZ.

MC 153610 (Sub-3), filed February 4, 1983. Applicant: LEASEWAY TRUCKING, INC., 1101–31st St. Downers Grove, IL 60515. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114 (216) 566–5639. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with The Goodyear Tire & Rubber Company, of Akron, OH.

MC 160361 (Sub-1), filed February 8, 1983. Applicant: INDUSTRIAL TRANSPORT, LTD., 1445 South Main St., Waterbury, CT 06706. Representative: Wesley S. Chused, 15 Court Square, Boston, MA 02108 (617) 742–3530. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in CT, NC, NJ and NY, on the one hand, and, on the other, those points in the U.S. in and east of WI, IL, MO, TN and MS.

MC 161980 (Sub-1), filed January 31, 1983. Applicant: TERS, INC., d.b.a. TRANSPORT ELECTRIC P.O. Box 2286, Hereford, TX 79045. Representative: Richard Hubbert, P.O. Box 10236, Lubbock, TX 79408 (806) 763–9555. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in TX, OK, KS, AL, IL, MO, CO, AR, IA, WA, WI, AZ, CA, LA, MS, GA, NM, IN, OR, and UT.

MC 165990, filed January 31, 1983. Applicant: LEE BRUMFIELD, d.b.a. SOUTHERN IDAHO SUPPLY, Rt. 7, Box 197, Blackfoot, ID 83221. Representative: Kevin M. Clark, 2417 Bank Dr., Ste. 8,

Boise, ID 83705, (208)–7714. Transporting (1)(a) *building materials* (b) *construction supplies*, (c) *fertilizers, and* (d) *chemicals, between points in AZ, CA, CO, ID, MT, NV, OR, UT, WA, and WY, and (2) coal*, between points in ID, NV, OR, and UT.

MC 166011 filed February 1, 1983. Applicant: BANKSTON TRUCK LINES, INC., Route 1, Box 27, Bankston, AL 35542. Representative: John R. Frawley, Jr., 120 Summit Parkway, Suite 200, Birmingham, AL 35209–4786 (205) 942–9116. Transporting *general commodities* (except classes A and B explosives, household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Jim Segrest & Associates, Inc., of Dolomite, AL.

MC 166081, filed February 3, 1983. Applicant: BARRY M. B OEDEL, d.b.a., NATIONAL SHIPPERS EXPRESS, P.O. Box 445, New Ulm, MN 56073. Representative: William S. Rosen, 1016 Conwed Tower, 444 Cedar St., St. Paul, MN 55101, (612) 227–7731. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 166111, filed February 9, 1983. Applicant: LEE SARTIN TRUCKING CO., INC., Box 152, Naugatuck, WV 25685. Representative: Lee Sartin, Jr., Rt. 1, Box 139, Kermit, WV 25674, (304) 393–3272. Transporting (1) *mandoseals*, (2) *rockdust*, (3) *gravel, and* (4) *concrete, blocks*, between points in the U.S., under continuing contract(s) with Marrowbone Development Company, of Naugatuck, WV.

MC 166121, filed February 4, 1983. Applicant: BHL TRANSPORT, INC., 777 West Putnam Avenue, Greenwich, CT 06830. Representative: Ronald L Shapss, 450 Seventh Avenue, New York, NY 10123, (212) 239–4610. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI).

MC 166130, filed February 7, 1983. Applicant: DICK'S TOWING & ROAD SERVICE, INC., 2012 S. 146th St., Seattle, WA 98168. Representative: Kenneth R. Mitchell, 2320A Milwaukee Way, Tacoma, WA 98421, (206) 383–3998. Transporting *motor vehicles*, between points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA and WY.

MC 166150, filed February 7, 1983. Applicant: VANS CARTAGE, INC., 145 S. St. Clair Street, Toledo, OH 43602. Representative: Michael M. Briley, 1200 Edison Plaza, P.O. Box 2088, Toledo, OH 43603, (419) 255–8220. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in IL, IN, MI and OH.

MC 166180, filed February 8, 1983. Applicant: SAMMET TRUCKING CO., R.R. #5, Upper Sandusky, OH43351. Representative: Homer F. Sammet, (same address as applicant) (419) 294–1342. Transporting *clay, concrete, glass or stone products*, between points in Wyandot County, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 166181, filed February 9, 1983. Applicant: COLES & MYERS, INC., 906 South 12th Street, Bethany, MO 64424. Representative: Tom B. Kretsinger, Jr., 20 East Franklin, Liberty, MO 64068 (816) 781–6000. Transporting *petroleum and petroleum products*, between points in MO and KS.

MC 166201, filed February 9, 1983. Applicant: D. L. SPIVEY TRUCKING, 1209 Carolina Rd., Suffolk, VA 23434. Representative: Steven T. Blomberg, Suite 200, 444 N. Frederick Ave., Gaithersburg, MD 20877 (301) 840–8565. Transporting *forest products and lumber and wood products*, between Franklin, Newport News, and Norfolk, VA, and points in Halifax and Hertford Counties, NC, on the one hand, and, on the other, those points in the U.S. in and east of MS, TN, KY, IL and WI.

MC 166211, filed February 10, 1983. Applicant: MICHIGAN BOAT CARTAGE, INC., 28210 Harper, St. Clair Shores, MI 48081. Representative: Frank J. Kerwin, 24055 Jefferson, Suite 200, P.O. Box 319, St. Clair Shores, MI 48080, (313) 777–0400. Transporting *boats, boat cradles, and parts for boats*, between points in the U.S. (except AK and HI).

For the following, please direct status calls to Team 2 at 202–275–7030.

Volume No. OP2–078

Decided: February 23, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 47002 (Sub-12), filed January 26, 1983. Applicant: EARL E. LOFLAND, INC., d.b.a. WEBER MOVING & STORAGE, 601 Garasches Lane, Wilmington, DE 19801. Representative: John C. Bradley, Suite 1301, 1600 Wilson Blvd., Arlington, VA 22209 703–522–0900. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S., under continuing contract(s) with K-Mart Corporation, of Troy, MI.

MC 109763 (Sub-15), filed January 25, 1983. Applicant: WOLF'S BUS LINES, INC., P.O. Box 235, York Springs, PA 17372. Representative: Lloyd R. Persun, 1801 North Front St., P.O. Box 729, Harrisburg, PA 17108–0729, 717–232–6701. Transporting *passengers*, between Gettyburg, PA and Atlantic City, NJ, over (a) U.S. Hwy 30, (b) U.S. Hwy 42, (c) U.S. Hwy 40, (d) U.S. Hwy 322, (e) Interstate Hwy 81, (f) Interstate Hwy 70, (g) Interstate Hwy 695, (h) Interstate Hwy 95, (i) Interstate Hwy 295, (j) Atlantic City Expressway, and (k) New Jersey Turnpike, serving all intermediate points.

Note.—Applicant seeks to provide regular-route service in interstate or foreign commerce.

MC 138762 (Sub-58), filed January 10, 1983. Applicant: MUNICIPAL TANK LINES LIMITED, P.O. Box 3500, Calgary, Alberta, Canada T2P 2P9. Representative: Ray F. Koby, P.O. Box 2567, Great Falls, MT 59401, 406–452–6415. Transporting (1) *chemicals and related products*, between ports of entry on the international boundary line between the U.S. and Canada, on the one hand, and, on the other (a) points in Spartanburg County, SC, (b) Louisville, KY, and points in Marshall County, IL, Salem County, NJ, and Lorain County, OH, (c) Detroit, MI, and points in Bay County, MI, (d) points in TX, LA, and MD, (e) points in AL, AR, GA, IL, IN, IA, KY, LA, MN, MS, MO, NC, PA, SC, TN, VA, and WI, (f) points in OH, IL, MI, NJ, PA, WI, MO, WV, IN, and MN, (g) points in Ascension Parish, LA, (h) points in NY, (i) points in Shelby County, TN, (j) Buffalo, NY, and points in Venango, Beaver, and Montgomery Counties, PA, and Hudson County, NJ, (k)(1) points in Bay County, FL, and Webster Parish, LA, and (2) points in Polk County, GA, (l)(1) points in AR, and (2) points in Gray County, TX, (m) Detroit, MI, and points in Bay County, MI, (n) points in Kent County, DE, and (o) St. Louis, MO, Baltimore, MD, and points in Adams County, IL; (2) *food and related products*, between ports of entry on the international boundary line between the U.S. and Canada, on the one hand, and, on the other (a) points in Rockingham County, NH, and (b) points in Shelby County, OH; (3) *commodities in bulk*, between ports of entry on the international boundary line between the U.S. and Canada, on the one hand, and, on the other (a) Cleveland, OH, Pittsburgh, PA, and points in Beaver County, PA, and (b) points in Bay County, FL, and Webster Parish, LA; (4) *petroleum, natural gas and their products*, between ports of entry on the international boundary line between the U.S. and Canada, on the one hand, and, on the other (a) points in MI, OH, and IN, and (b) points in NY; (5) *chemicals and related products, and petroleum, natural gas and their products*, between

ports of entry on the international boundary line between the U.S. and Canada, on the one hand, and, on the other (a) New Orleans, LA, and points in Harris, Jefferson, Bexar, and Galveston Counties, TX, and East Baton Rouge and Plaquemines Parishes, LA, and (b) points in Jefferson, Montgomery, and Travis Counties, TX; and (6) *building materials*, between ports of entry on the international boundary line between the U.S. and Canada, on the one hand, and, on the other (a) points in Bay County, MI, (b) Cleveland, OH, Pittsburgh, PA, and points in Beaver County, PA, and (c) Cleveland, OH.

Note.—Applicant currently holds authority in Certificate No. MC–138762 (Sub-No. 55X) to perform the above-described service only through ports of entry in Michigan and New York. The purpose of this application is to allow applicant to use all ports of entry.

MC 146123 (Sub-2), filed January 26, 1983. Applicant: MIDWEST CARGO SYSTEMS, INC., 1932 South Wentworth Ave., Chicago, IL 60616. Representative: Richard A. Kerwin, 180 North La Salle St., Chicago, IL 60601, 312–332–5106. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in IL, IN, IA, MI, MO, MN, and WI.

MC 147492 (Sub-13), filed January 24, 1983. Applicant: MEL MOTOR EXPRESS, INC., P.O. Box 29058, New Orleans, LA 70189. Representative: Sandra H. Roberson, (same address as applicant), 504–246–8221. Transporting *pulp, paper and related products, plastic, plastic products, cloth, aluminum foil, and matches*, between points in the U.S. (except AK and HI).

MC 165273, filed January 13, 1983. Applicant: THOMAS J. LESKO, d.b.a. LESKO TRANSPORTATION, 6614 7th St., Kenosha, WI 53142. Representative: Richard C. Alexander, 710 North Plankinton Ave., Milwaukee, WI 53203. Transporting (1) *meats and meat products and meat byproducts*, (2) *rubber and plastic products*, (3) *metal products*, and (4) *fiberglass products*, between Kenosha, WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 165672, filed January 13, 1983. Applicant: OMNI TRANSPORTATION COMPANY, INC., P.O. Box 233 Hwy 32, Oakhaven Industrial Park, Hope, AR 71801. Representative: Thomas B. Staley, 1550 Tower Bldg., Little Rock, AR 72201, 501–375–9151. Transporting *building materials and metal products*, between points in AR, TX, OK, KS, MO, TN, LA, MS, and AL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

For the Following, please direct Status calls to Team 4 at 202–275–7669.

Volume No. OP4–106

Decided: February 25, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 51146(Sub-866), filed January 11, 1983. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: Neil A DuJardin, (same address as applicant), (414) 498–7623. Transporting *such commodities* as are dealt in, or used by, manufacturers and distributors of printed matter, pulp, paper and related products, between points in the U.S. (except AK and HI), under continuing contract(s) with manufacturers and distributors of printed matter, pulp, paper and related products.

MC 111397 (Sub-141), filed January 15, 1983 Applicant: DAVIS TRANSPORT, INC., 1345 S. 4th St., Paducah, KY 42001. Representative: H. S. Melton, Jr., P.O. Box 7406, Paducah, KY 42001, (502) 442–5442. Transporting *food and related products*, between points in Wayne County, MI, on the one hand, and, on the other, points in U.S. (except AK and HI).

MC 119787 (Sub-14), filed February 15, 1983. Applicant: F. W. GROVES TRUCKING COMPANY, Route 4, Box 89, Leland, NC 28451. Representative: Ralph McDonald, P.O. Box 2246, Raleigh, NC 27602, (919) 828–0731. Transporting *those commodities which because of their size or weight require the use of special handling or equipment*, between points in the U.S. (except AK and HI).

MC 135046 (Sub-28), filed February 10, 1983. Applicant: ARLINGTON J. WILLIAMS, INC., 1398 S DuPont Hwy., Smyrna, DE 19977. Representative: James H. Sweeney, P.O. Box 9023, Lester, PA 19113, (215) 365–5141. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI. Condition: Issuance of a certificate in this proceeding is subject to coincidental cancellation of Permit Nos. MC–135046 Sub 22, issued April 30, 1982, and MC–135046 Sub P–27X, issued November 18, 1982, together with all underlying superseded permits. This is a conversion application filed under 49 U.S.C. 10925 (e).

MC 135306 (Sub-11), filed February 11, 1983. Applicant: DAN'S TRANSIT, INC., 7860 E Pleasant Valley Rd., Independence, OH 44131. Representative: David A. Turano, 100 E Broad St., Columbus, OH 43215, (614) 228–1541. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between Toledo, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 140487 (Sub-7), filed February 15, 1983. Applicant: YELLOWSTONE TRUCKING, INC., 1212 Appleway, Coeur d'Alene, ID 83814. Representative: Reed L. Sherar, 242 Cervantes, Lake Oswego, OR 97034, (503) 636–5520. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in AZ, CA, CO, IA, ID, IL, IN, KS, KY, MI, MN, MO, MT, ND, NE, NJ, NM, NV, NY, OH, OK, OR, PA, SD, TX, UT, WA, WI, WV, and WY.

MC 145947 (Sub-6), filed February 17, 1983. Applicant: INTERCO FREIGHT SYSTEMS, INC., 3201 N Hwy 67, Suite J2, Mesquite, TX 75150. Representative: Colin Barrett, 11764 Indian Ridge Rd., Reston, VA 22091, (703) 860–8521. Transporting *building materials and plumbing supplies*, between points in the U.S. (except AK and HI).

MC 166276, filed February 16, 1983. Applicant: OMAHA BEDDING & COUCH MANUFACTURING COMPANY, INC., d.b.a. OBEDCO TRANSPORTATION CO., 4011 S. 60 St., Omaha, NE 68117. Representative: Marshall D. Becker, Suite 610, 7171 Mercy Rd., Omaha, NE 68106, (402) 392–1220. Transporting *such commodities* as are dealt in by furniture stores, between Omaha, NE, on the one hand, and, on the other, points in the U.S., under continuing contract(s) with Nebraska Furniture Mart, Inc., of Omaha, NE.

MC 166297, filed February 17, 1983. Applicant: WAGONS WEST, INC., 3 West Main, P.O. Box 790159, Vernal, UT 84079. Representative: James Waymire, (same address as applicant), (801) 789–4891. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S., under continuing contract(s) with Overland Trading Co., Inc., of Vernal, UT.

For the following, please direct status calls to Team 5 at 202–275–7289.

Volume No. OP5–81

Decided: February 22, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

FF–569 (Sub-1), filed February 7, 1983. Applicant: GOLDEN COAST FORWARDING, LTD., 3600 S. Western Ave., Chicago, IL 60609. Representative: H. Barney Firestone, 180 N. Michigan Ave., Suite 1700, Chicago, IL 60601, 312–263–1600. As a freight forwarder, in connection with the transportation of

general commodities, between points in CA, OR and WA, on the one hand, and, on the other, points in MN.

MC 35628 (Sub-449), filed February 10, 1983. Applicant: IMFS, INC., d.b.a. INTERSTATE SYSTEM, 110 Ionia Ave., NW., Grand Rapids, MI 49503. Representative: Michael P. Zell, (same address as applicant), (616) 774–0400. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with AMCA International/ Consumer Products Division, of Bowling Green, KY, General Electric Company, of Bridgeport, CT, Herman Miller, Inc., of Zeeland, MI, Chrysler Corporation, of Detroit, MI, C & H Distributors, Incorporated, of Milwaukee, WI, Child World, Inc., of Avon, MA, Watts Regulator Company, of Lawrence, MA, and F. W. Woolworth Co., and DCA Food Industries, Inc., both of New York, NY.

MC 41098 (Sub-94), filed February 9, 1983. Applicant: GLOBAL VAN LINES, INC., One Global Way, Anaheim, CA 92803. Representative: Alan F. Wohlstetter, 1700 K St. NW., Washington, DC 20006, (202) 833–8884. Transporting *household goods* between points in the U.S., under continuing contract(s) with Miller Brewing Company, of Milwaukee, WI.

MC 79658 (Sub-55), filed February 8, 1983. Applicant: ATLAS VAN LINES, INC., 1212 St. George Rd., P.O. Box 509, Evansville, IN 47711. Representative: Robert C. Mills (same address as applicant), 812–424–2222. Transporting *household goods*, between points in the U.S. under continuing contract(s) with The Great Atlantic & Pacific Tea Company, Inc., of Montvale, NJ.

MC 108359 (Sub-11), filed January 31, 1983. Applicant: EMPIRE TRAILWAYS, INC., 384 East Avenue, Rochester, NY 14607. Representative: Lawrence E. Lindeman, 4660 Kenmore Ave., Suite 1203, Alexandria, VA 22304, (703) 751–2441. Over *regular* routes, transporting *passengers*, in intrastate, interstate or foreign commerce, (1) between the port of entry on the international boundary line between the United States and Canada near Niagara Falls, NY, and Buffalo, NY, over Interstate Hwy 190, (2) between Syracuse, NY, and Erie, PA, from Syracuse over Interstate Hwy 690 to junction Interstate Hwy 90, then over Interstate Hwy 90 to junction Interstate Hwy 79, then over Interstate Hwy 79 to Erie, and return over the same route, serving Weedsport and Dunkirk, NY and Northeast, PA, as off-route points, (3) between junction Interstate Hwy 90 and Interstate Hwy 490 (Interchange 45) and junction Interstate Hwy 90 and Interstate Hwy 490 (Interchange 47) over Interstate Hwy 490, (4) between junction Interstate Hwy 90 and New York Hwy 98 and Batavia, NY, over New York Hwy 98, (5) between junction Interstate Hwy 90 and New York Hwy 33 and Buffalo, NY, over New York Hwy 33, (6) between junction Interstate Hwy 90 and New York Hwy 179 and Buffalo, NY, from junction Interstate Hwy 90 and New York Hwy 179 over New York Hwy 179 to junction New York Hwy 5, then over New York Hwy 5 to Buffalo, and return over the same route, (7) between junction Interstate Hwy 90 and U.S. Hwy 20 and Erie, PA, over U.S. Hwy 20 and (8) between Cleveland, OH, and Erie, PA, from Cleveland over Interstate Hwy 90 to junction Interstate Hwy 79, then over Interstate Hwy 79 to Erie, and return over the same route, serving Austinburg, OH, as an off-route point, and serving all intermediate points in routes (1) through (8) above.

Note.—(1) Applicant intends (a) to tack this authority with its existing authority, and (b) to cancel No. MC–108359 Sub 7 issued February 18, 1982, and (2) Applicant seeks to provide regular route service in interstate and foreign commerce and in intrastate commerce under 49 U.S.C. 10922(c)(2)(B) over the same route.

MC 126198 (Sub-21) (B), filed February 7, 1983. Applicant: MICHAUD TRUCKING INCORPORATED, P.O. Box 54, Iron Mountain, MI 49801. Representative: John M. Nader, 1600 Citizens Plaza, Louisville, KY 40202, 502–589–5400. Transporting *furniture and fixtures*, and *lumber*, between points in Dickinson County, MI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Note.—Applicant also seeks authority in MC–126198 Sub 21 (A) published in this same issue.

MC 133959 (Sub-18), filed February 7, 1983. Applicant: ALBAUGH TRUCK LINE, INC., 123 Main St., Elkhart, IA 50073. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309, (515) 245–4300. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk) between points in the U.S. (except AK and HI), under continuing contract(s) with ITOFCA Consolidators, Inc., of Downers Grove, IL.

MC 134439 (Sub-6), filed February 2, 1983. Applicant: JAMES G. FERNEYHOUGH, d.b.a. J.G.F. TRUCKING COMPANY, P.O. Box 2173, Lynchburg, VA 24501. Representative: Calvin F. Major, 200 W. Grace St., P.O. Box 5010, Richmond, VA 23220, 804–649–7591. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk) between points in the U.S. (except AK and HI), under continuing contract(s) with Weyerhaeuser Company of Chicago, IL.

MC 144168 (Sub-8), filed February 7, 1983. Applicant: R. E. GARRISON TRUCKING, INC., P.O. Box 186, Cullman, AL 35055. Representative: Michael M. Knight, (same address as applicant), (202) 734–1470. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk) between points in AL, AZ, AR, CA, FL, GA, IL, IN, KY, LA, MI, MS, NC, NV, OH, SC, TN, NM, TX, WI, KS, CO, MO, NE, OK, OR, WA, UT, and PA.

MC 144189 (Sub-19), filed February 3, 1983. Applicant: CORPORATE TRANSPORT, INC., 107 7th North St., Liverpool, NY 13088. Representative: James T. Darby, 1021 Irving Ave., Colonial Beach, VA 22443, 804–224–0773. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk) between points in the U.S. (except AK and HI).

Note.—The applicant seeks to convert its contract authority to common authority.

MC 149049 (Sub-3), filed January 28, 1983. Applicant: MOTORWAY FREIGHT SYSTEMS, INCORPORATED, 22 West Columbus St., Pickerington, OH 43147. Representative: Frank L. Calvary, 3600 N. Star Rd., Columbus, OH 43221, (614) 459–4248. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 152959 (Sub-3), filed February 4, 1983. Applicant: MOBILE EXPRESS, INC., 6000 Gum Springs Rd., Longview, TX 75607. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 75062, 214–255–6279. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. under continuing contract(s) with Mobile Transportation, Inc., of Longview, TX.

MC 153628 (Sub-3), filed February 3, 1983. Applicant: WIND RIVER TRUCKING, INC., 309 Second Ave., NW., Park City, MT 59063. Representative: Charles M. Williams, 1600 Sherman St., No. 665, Denver, CO 80203,303–839–5856. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 154648 (Sub-2), filed February 8, 1983. Applicant: WAYNE PHILLIPS, INC., P.O. Box 648, Pharr, TX 78577. Representative: Wayne Phillips (same address as applicant), 512–787–0071. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 161678 (Sub-3), filed February 3, 1983. Applicant: CAPE TRANSIT CORP., 5501 Ocean Ave., Wildwood Crest, NJ 08260. Representative: Elliott Bunce, 1600 Wilson Blvd., Suite 1301, Arlington, VA 22209, (703) 522–0900. Applicant seeks authority in intrastate commerce to conduct service at all intermediate points on the route in No. MC 161678 (Sub-No. 1), in part, as follows: To operate over the route between Ocean City, MD and Atlantic City, NJ to provide intrastate service at all intermediate points between North Cape May, NJ and Atlantic City, NJ.

Note.—Applicant seeks to provide regular-route service in intrastate commerce under 49 U.S.C. 10922(c)(2)(B).

MC 163899 (Sub-1), filed February 8, 1983. Applicant: L & M TRANSPORTATION, INC., 2 Inverness Circle, Fairport, NY 14450. Representative: Harold O. Orlofske, P.O. Box 368, Neenah, WI 54956, (414) 722–2848. Transporting *rubber and plastic products* between points in Middlesex County, NJ, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 166099, filed February 3, 1983. Applicant: HARRY L. REEVES & JAMES T. REEVES, d.b.a., REEVES MOBILE HOME TOWING, 2141 Washington Way, Longview, WA 98632. Representative: Harry L. Reeves, (same address as applicant), (206) 636–4460. Transporting *mobile homes and modular buildings*, between points in OR and WA.

MC 166168, filed February 8, 1983. Applicant: JERRY CLARK, INC., d.b.a., INDUSTRY MOTOR XPRESS, 18145 E. Valley, La Puente, CA 91744. Representative: Earl N. Miles, 3704 Candlewood Dr., Bakersfield, CA 93306, (805) 872–1106. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of food and related products, between points in AZ, CA, CO, ID, MT, NV, NM, OK, OR, TX, UT, WA, and WY.

MC 166169, filed February 8, 1983. Applicant: SUNDANCE TRANSPORTATION, 1357 Milne Lane, Midvale, UT 84047. Representative: Gordon Jensen (same address as applicant), (801) 942–4340. Transporting (1) *ores*, (2) *minerals*, and (3) *such commodities* as are dealt in by mining, milling, and energy exploration industries, between points in the U.S. (except AK and HI), under continuing contract(s) with All-Minerals Corporation, of Murray, UT.

MC 166199, filed February 9, 1983. Applicant: SIOUX TANK LINE, INC., Highway 10 West, P.O. Box 136, Orange City, IA 51041. Representative: George L. Hirschbach, 920 West 21 St., P.O. Box 155, South Sioux City, NE 68776. (402) 494–5466. Transporting *commodities in bulk*, between points in IL, IA, KS, MN, MO, ND, and SD.

[FR Doc. 83-5312 Filed 3-2-83; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. OP3-63]

Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: February 24, 1983.

The following restriction removal applications, are governed by 49 CFR Part 1165. Part 1165 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747 and redesignated at 47 FR 49590, November 1, 1982.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1165.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

Agatha L. Mergenovich,

Secretary.

Please direct status inquiries to Team 3, at (202) 275–5223.

MC 116314 (Sub-34)X, filed February 9, 1983. Applicant: MAX BINSWANGER TRUCKING, P.O. Box 3264, Santa Fe Springs, CA 90670. Representative: John C. Russell, 1545 Wilshire Blvd., Suite 606, Los Angeles, CA 90017, (213) 483–4700. Lead certificate and Subs 8, 10, 11, 13, 14, 15, 17, 20, 21, 23, 24, 26, 28, 29, 32, and 33: (1) broaden cement, empty cement containers, cement, in bulk, in hopper-type vehicles, cement, in bags, pozzolan, in bulk, fly ash and bottom ash, in bulk, to "building materials and commodities in bulk"; (2) broaden parts of counties, cities and/or facilities as follows: Creal, Colton, and Victorville, CA (San Bernardino and Kern Counties); Gabbs, Hawthorne, and Yerington, NV (Nye, Mineral and Lyon Counties); Mohave County, AZ north of the Colorado River (Mohave County); Yuma and Mohave Counties, AZ on and north of Interstate Hwy 10 and south of the Colorado River (Yuma and Mohave Counties); plantsite at Gorman, CA (Los Angeles County); Monolith, CA (Kern County); Panaca, NV (Lincoln County); Creal, CA (Kern County); Yuma County, AZ, located south of Interstate Hwy 10 (Yuma County); Colton, CA (San Bernardino and Kern Counties); Victorville, CA (San Bernardino County); Crestmore and Oro Grande, CA (Riverside and San Bernardino Counties); ports of entry at or near Calexico, Tecate, and San Ysidro, CA (Imperial and San Diego Counties); points in Los Angeles Harbor Commercial Zone, CA (Ventura and Los Angeles Counties); plantsite at Moapa, NV (Clark County); Port Huenome, CA (Ventura County); (3)(a) in Subs 14, 23, and 24, delete the exception of Gabbs, Hawthorne and Yerington, NV; (b) in Sub 23 delete the exception of that part of Yuma County, AZ, on and north of Interstate Hwy 10; and (c) in Sub 24 delete the exception of Yuma, AZ and those parts of Yuma and Mohave Counties, AZ on and north of Interstate Hwy 10; (4) delete the restriction in Sub 17 having a prior movement by rail; and (5) broaden one-way movement to radial authority in the lead and all Subs.

[FR Doc. 83-5310 Filed 3-2-83; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387]

Exemptions for Contract Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Notices of Provisional Exemptions.

SUMMARY: Provisional exemptions are granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the below-listed contract tariffs may become effective on one day's notice. These exemptions may be revoked if protests are filed.

DATES: Protests are due within 15 days of publication in the **Federal Register.**

ADDRESS: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Douglas Galloway, (202) 275-7278

or

Tom Smerdon, (202) 275-7277.

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in these instances to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from abuse of market power; moreover, the transaction is of limited scope. Therefore, we find that the exemption requests meet the requirements of 49 U.S.C. 10505(a) and are granted subject to the following conditions:

These grants neither shall be construed to mean that the Commission has approved the contracts for purposes of 49 U.S.C. 10713(e) not that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review these contracts and to determine their lawfullness.

Sub-No.	Name of railroad, contract No. and specifics	Review Board [1]	Decided date
819	Atlanta & Saint Andrews Bay Railway Co. Exemption for Contract Tariffs ICC-ASAB-C-001 (used empty malt liquor containers), and ICC-ASAB-C-002 (spoiled malt liquors)	3	02-25-83
826	Norfolk and Western Railway Co. Exemption for Contract Tariff ICC-NE-C-0045 (iron or steel sheet and skelp)	3	02-25-83
827	Missouri Pacific RR Co. Exemption for Contract Tariff ICC-MP-C-0038, Supp. 3 (isobutylene)	1	02-25-83
828	Soo Line RR Co. Exemption for Contract Tariff ICC-SOO-C-023, Supp. 2 (molten sulphur)	2	02-25-83
829	Southern Pacific Transportation Co. Exemption for Contract Tariff ICC-SP-C-0410 (steel pipe)	3	02-25-83
830	Illinois Central Gulf RR Co. Exemption for Contract Tariff ICC-ICG-C-0072 (sulphuric acid)	3	02-25-83
831	Southern Pacific Transportation Co. Exemption for Contract Tariff ICC-SP-C-0406 (soybean meal)	1	02-25-83

[1] Review Board No. 1, Members Parker, Chandler, and Fortier. Review Board No. 2, Members Carleton, Williams, and Ewing. Review Board No. 3, Members Krock, Joyce, and Dowell.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-5307 Filed 3-2-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30109]

Illinois Central Gulf Railroad Company—Merger Exemption—New Orleans Great Northern Railway Company; Exemption

February 24, 1983.

Illinois Central Gulf Railroad Company (ICG) and its subsidiary New Orleans Great Northern Railway Company (NOGN) jointly filed a notice of exemption of the proposed merger of NOGN into ICG. The Railway Labor Executives' Association (RLEA) filed a protest in opposition which also requests that should the exemption be granted, labor conditions be imposed.

ICG owns more than 98 percent of NOGN's stock and has oprated NOGN as a leased line since 1933. NOGN uses the rental fee, its only income, to pay the interest on its Income Debentures. After the merger, ICG will, in lieu of paying the rental fee, assume NOGN's interest expense and pay interest directly to the holders of the Debentures, and will assume payment of the principal due in 2032. ICG now holds over 50 percent ($2,123,500) of that debt. (In Finance Docket No. 30110 ICG has filed an application to assume liability for these Debentures.)

ICG also will surrender for cancellation NOGN First Mortgage Bonds it owns in the total principal amount of $6,077,000, which constitutes the entire amount outstanding. These bonds, due July 1, 1983, are secured by a lien on all of NOGN's property. They are pledged as collateral under another mortgage, and their cancellation would be effected by substituting NOGN's property as direct collateral; this would eliminate the need for refinancing.

On the merger date, the separate corporate existence of NOGN shall cease and all shares of its stock owned by ICG shall be canceled. ICG will satisfy the claim of each remaining shareholder by a cash payment in an amount equal to the appraised fair market value as determined by an independent appraisal, less any indebtedness.

This is a transaction within a corporate family and will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. Therefore, the proposed transaction is the type specifically exempted from the necessity for prior review and approval by 49 CFR 1180.2(d)(3).

The parties indicate that NOGN has no employees other than its officers and directors, who are also officers of ICG. However, as a condition to use of the exemption any employee of ICG or NOGN affected by this transction shall be protected pursuant to *New York Dock Ry.-Control-Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-5308 Filed 3-2-83; 8:45 am]

BILLING CODE 7035-01-M

[No. MC-F-15017]

Integrated Transportation Systems, Inc.; Control Exemption; Multitrans, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: Under 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the requirement of prior review and approval under 49 U.S.C. 11343(a), the acquisition by Integrated Transportation Systems, Inc. (Integrated), and in turn, Donald R. Sheehy, Dennis C. Papa, and James J. Koegel who jointly control Integrated, of control of MultiTrans, Inc. (MC-160611). Messrs. Sheehy, Papa, and Koegel also control NewTrans, Inc., which owns all of the stock of Jones Motor Co., Inc. (MC-4963).

DATE: This exemption is effective on April 2, 1983. Petitions for reconsideration must be filed by March 23, 1983. Petitions for stay may be filed by March 14, 1983.

ADDRESSES: Send pleadings to (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, DC 20423,

and

(2) Petitioner's representative, Robert C. Bamford, Suite 1301, 1601 Wilson Boulevard, Arlington, VA 22209.

Pleadings should refer to No. MC–F–15017.

FOR FURTHER INFORMATION CONTACT: Warren C. Wood, (202) 275–7977.

SUPPLEMENTARY INFORMATION: For further information, see the decision served concurrently in No. MC–F–15017. To purchase a copy of the full decision contact: TS Infosystems, Inc., Room 2227, 12th and Constitution Ave., NW., Washington, D.C. 20423; or call (202) 289–4357 in the D.C. metropolitan area; or (800) 424–5403, Toll-free outside the D.C. area.

Decided: February 22, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett Commissioners Andre, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-5313 Filed 3-2-83; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387]

Exemptions for Contract Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Notices of Provisional Exemptions.

SUMMARY: Provisional exemptions are granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the below-listed contract tariffs may become effective on one day's notice. These exemptions may be revoked if protests are filed.

DATES: Protests are due within 15 days of publication in the **Federal Register**.

ADDRESS: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275–7278

or

Tom Smerdon, (202) 275–7277.

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in these instances to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from abuse of market power; moreover, the transaction is of limited scope. Therefore, we find that the exemption requests meet the requirements of 49 U.S.C. 10505(a) and are granted subject to the following conditions:

These grants neither shall be construed to mean that the Commission has approved the contracts for purposes of 49 U.S.C. 10713(e) nor that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review these contracts and to determine their lawfulness.

Sub-No.	Name of railroad, contract No., and specifics	Review Board [1]	Decided date
823	Southern Pacific Transportation Co., ICC-SP-C-0405 (Sulphate of potash), via Ports of Long Beach, Los Angeles, Oakland, Sacramento, San Diego, CA and British Columbia, Canada	3	2-23-83
832	Norfolk and Western Railway Co., ICC-NW-C-0047, (Grain products)	2	2-23-82

[1] Review Board No. 2, Members Carleton, Williams, and Ewing. Review Board No. 3, Members Krock, Joyce, and Dowell.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-5227 Filed 3-1-83; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-125 and 126; Preliminary]

Potassium Permanganate From the People's Republic of China and Spain

AGENCY: International Trade Commission.

ACTION: Institution of preliminary antidumping investigations and scheduling of a conference to be held in connection with the investigations.

EFFECTIVE DATE: February 22, 1983.

SUMMARY: The United States International Trade Commission hereby gives notice of the institution of preliminary antidumping investigations under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(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 imports from the People's Republic of China and Spain of potassium permanganate, provided for in item 420.28 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Carpenter, Office of Investigations, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202–523–0399.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on February 22, 1983, on behalf of the Carus Chemical Co., a U.S. producer of potassium permanganate. The Commission must make its determination in the investigations within 45 days after the date of the filing of the petition, or by April 8, 1983 (19 CFR 207.17).

Participation

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided for in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than seven (7) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the notice.

Service of Documents

The Secretary will compile a service list from the entries of appearance filed in the investigations. Any party submitting a document in connection with the investigations shall, in addition to complying with § 201.8 of the Commission's rules (19 CFR 201.8, as amended by 47 FR 13791, Apr. 1, 1982), serve a copy of the nonconfidential version of each such document on all other parties to the investigations. Such service shall conform with the requirements set forth in § 201.16(b) of the rules (19 CFR § 201.16(b)), as amended by 47 FR 33682, Aug. 4, 1982).

In addition to the foregoing, each document filed with the Commission in the course of these investigations must include a certificate of service setting forth the manner and date of such service. This certificate will be deemed proof of service of the document. Documents not accompanied by a certification of service will not be accepted by the Secretary.

Written Submission

Any person may submit to the Commission on or before March 23, 1983, a written statement of information pertinent to the subject matter of these

investigations (19 CFR 207.15). A signed original and fourteen (14) copies of such statements must be submitted (19 CFR 201.8, as amended by 47 FR 13791, Apr. 1, 1982).

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m., on March 21, 1983, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the staff investigator, Mr. Robert Carpenter (202–523–0399), not later than March 17, 1983, to arrange for their appearance. Parties in support of the imposition of antidumping duties in the investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Public Inspection

A copy of the petition and all written submissions, except for confidential business data, will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR 207, as amended by 47 FR 33682, Aug. 4, 1982), and part 201, subparts A through E (19 CFR Part 201, as amended by 47 FR 13791, Apr. 1, 1982, and 47 FR 33682, Aug. 4, 1982). Further information concerning the conduct of the conference will be provided by Mr. Carpenter.

This notice is published pursuant to section 207.12 of the Commission's rules (19 CFR 207.12).

Issued: February 25, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-5397 Filed 3-2-83; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Correction to Notice of a Consent Decree in an Action Under the Clean Water Act; Bethlehem Mines Corp.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on December 28, 1982, a consent decree in *United States v. Bethlehem Mines Corporation*, Civil Action No. 82–5724 was lodged in the United States District Court for the Eastern District of Pennsylvania.

A previous **Federal Register** notice, 48 FR 4060 (January 28, 1983) regarding this decree contained several inaccuracies due to clerical error. This notice corrects those inaccuracies.

The consent decree concerns the discharge of pollutants, primarily total suspended solids, in violation of the Clean Water Act at four outfalls or streams of water in the vicinity of the Panther Valley Division strip mines of Bethlehem Mines Corporation (a division of Bethlehem Steel Corporation) located in Carbon and Schuylkill Counties in Eastern Pennsylvania. The consent decree requires that Bethlehem commence and complete construction of a water treatment facility to treat discharges from Outfalls 001 and to monitor discharges from Outfalls 003, the Lausanne Tunnel.

The decree may be examined at the Office of the United States Attorney, 3310 United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania 19106, at the Region III office of the Environmental Protection Agency, 6th and Walnut Streets, Philadelphia, Pennsylvania, 19106, and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, 10th and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please enclose a check in the amount of $1.70 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

The Department of Justice will receive written comments relating to the consent decree for a period of thirty (30) days from the date of this notice. Comments should be directed to the Assistant Attorney General of the Land and Natural Resources Division of the Department of Justice, 9th and Pennsylvania Avenue, NW., Washington, D.C. 20530, and should refer to *United States v. Bethlehem Mines Corporation*, Department of Justice Reference No. 90–5–1–1–1653.

Sincerely,

Carol E. Dinkins,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 83-5335 Filed 3-2-83; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Hoskins Drug Co.; Revocation of Registration

On November 24, 1982, the Deputy Assistant Administrator, Office of Drug Control Drug Enforcement Administration, directed an Order to Show Cause to Hoskins Drug Company, 4130 Rozells Ferry Road, Charlotte, North Carolina 28216, seeking to revoke DEA Certificate of Registration A93193517 previously issued to Hoskins Drug Company. The statutory predicate for the order under 21 U.S.C. 824(a)(2) was the conviction on June 9, 1982, in the United States District Court for the Western District of North Carolina of Ralph Clayton Robinson, the owner of Hoskins Drug Company, of felony offenses relating to controlled substances. Thirty days have elapsed since the receipt of the order and no offense has been received. Therefore, the Acting Administrator finds under 21 CFR 1301.54(d) that Hoskins Drug Company has waived its right to a hearing in this matter and enters his final order under 21 CFR 1301.57.

The Acting Administrator finds tht Ralph Clayton Robinson was convicted of one count of conspiracy to distribute Schedule IV controlled substances in violation of 21 U.S.C. 846; two counts of possession with intent to distribute Schedule IV controlled substances in violation of 21 U.S.C. 841(a)(1); two counts of distribution of Schedule IV controlled substances in violation of 21 U.S.C. 841(a)(1); and one count of intentionally, knowingly and unlawfully omitting material information from records required to be made, kept and filed under 21 U.S.C. 827(a)(3) and 21 CFR 1304.24, in violation of 21 U.S.C. 843(a)(4)(A). The Acting Administrator, upon examination of the investigative file in this matter, finds that Robinson

and Jimmy Wayne Bryant, the pharmacist at Hoskins Drug Company, supplied quantities of controlled substances to George Gaddy, Jumenia Watts, and Johnnie Mae Dunlap Gaddy. These people in turn shipped the controlled substances via air freight to Indianapolis, Indiana where they were sold by a local drug dealer. In October 1981, two shipments were seized in Indianapolis containing a total of approximately 1,000 dosage units of Talwin (gluthetimide), a Schedule IV controlled substance. Agents of the North Carolina State Bureau of Investigation (SBI) Diversion Investigation Unit (DIU) conducted an audit of Hoskins Drug Company in November 1981. That audit revealed shortages of approximately 4,500 dosage units of Talwin, 4,200 dosage units of Valium (diazepam), a Schedule IV controlled substance and approximately 325 dosage units of Dilaudid (hydromorphone), a Schedule II narcotic.

The investigation revealed diversion of controlled substances from Hoskins Drug Company since November, 1980. On April 5, 1982, a grand jury sitting in the Western District of North Carolina handed up a six count indictment against Robinson. Following a jury trial, Robinson was convicted on all six counts. On June 9, 1982, the Honorable Robert D. Potter, U.S.D.J., sentenced Robinson to two years incarceration on count one, and one year incarceration on count six to run consecutively with the sentence imposed in count one for a total of three years incarceration plus a mandatory one year special parole term.

The Acting Administrator finds that revocation of the Certificate of Registration issued to Hoskins Drug Company is the appropriate action in this matter. In *Big T Pharmacy, Inc.*, Docket No. 80-34, 47 FR 51830 (1982), the Acting Administrator stated that pharmacies must operate through the agency of natural persons owners, stockholders, pharmacists or other key employees. When such persons misuse the pharmacy's registration by diverting controlled substances obtained thereunder, and when those individuals are convicted as a result of that diversion, the pharmacy's registration becomes subject to revocation under 21 U.S.C. 824, just as if the pharmacy itself had been convicted. That logic is compelling in this case. Ralph Clayton Robinson and Jimmy Wayne Bryant diverted Talwin from Hoskins Pharmacy at a time when abuse of Talwin and pyribenzamine was widespread in the Midwest. See *Odie Pharmacy*, 48 FR 356 (1983). The Acting Administrator concludes that the sale of highly abused controlled substances by the owner of a DEA registered pharmacy is not consistent with the high degree of trust which DEA must expect of pharmacies registered under the Controlled Substances Act.

The Acting Administrator notes that Robinson has sold his interest in Hoskins Drug Company to Yates Palmer, a Registered Pharmacist, who was not involved in the diversion of controlled substances from the pharmacy. DEA has granted Hoskins Drug Company's application for registration with Mr. Palmer as owner upon the understanding that Ralph Clayton Robinson will exercise no control or influence on the operation of Hoskins Drug Company or any successor.

It is the decision of the Acting Administrator to revoke the Certificate of Registration previously issued to Hoskins Drug Company. Accordingly, under the authority vested in the Attorney General by Section 304 of the Controlled Substances Act, as redelegated to the Acting Administrator of the Drug Enforcement Administration, the Acting Administrator hereby orders that DEA Certificate of Registration A93193517 previously issued to Hoskins Drug Company be and is hereby revoked.

Dated: February 18, 1983.

Francis M. Mullen, Jr.,

Acting Administrator.

[FR Doc. 83-5485 Filed 3-2-83; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substance; Registration

By Notice dated November 17, 1982, and published in the **Federal Register** on November 24, 1982 (47 FR 53155), Norac Company, Inc., 405 South Motor Avenue, Azusa, California 91702, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention amd Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: February 22, 1983.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 83-5484 Filed 3-2-83; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 82-24]

Herbert W. Schein, M.D., Jericho, New York; Hearing

Notice is hereby given that on September 14, 1982, the Drug Enforcement Administration, Department of Justice, issued to Herbert W. Schein, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke Certificate of Registration AS9439767 issued to him under Section 303 of the Controlled Substances Act (21 U.S.C. 823).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m. on Tuesday, March 15, 1983 in the U.S. Tax Court Courtroom, Room 208, 26 Federal Plaza, New York, New York.

Dated: February 24, 1983.

Francis M. Mullen, Jr.,

Drug Enforcement Administration.

[FR Doc. 83-5486 Filed 3-2-83; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 83-21]

Intent to Grant an Exclusive Patent License; Energy Transport

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant an Exclusive Patent License.

SUMMARY: NASA hereby gives notice of intent to grant to Energy Transport, of LaJolla, California, a limited, exclusive, royalty-bearing, revocable license to practice the invention described in U.S. Patent No. 4,343,772 for a "Thermal Reactor" which was issued on August 10, 1982, to the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the

NASA Patent Licensing Regulations, 14 CFR Part 1425, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Assistant General Counsel for Patent Matters whether to grant the exclusive license.

DATE: Comments to this notice must be received by March 2, 1983.

ADDRESS: National Aeronautics and Space Administration, Code GP–4, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, Director of Patent Licensing, (202) 755–3954.

Dated: February 23, 1983.

John E. O'Brien,

Deputy General Counsel.

[FR Doc. 83-5304 Filed 3-2-83; 8:45 am]

BILLING CODE 7510-01-M

[Notice 83-20]

Intent To Grant an Exclusive Patent License; Li-Cor, Inc.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant an Exclusive Patent License.

SUMMARY: NASA hereby gives notice of intent to grant to Li-Cor, Incorporated of Lincoln, Nebraska, a limited, exclusive, royalty-bearing, revocable license to practice the invention described in U.S. Patent No. 4,011,854 for a "Mount for Continuously Orienting a Collector Dish in a System Adapted to Perform Both Diurnal and Seasonal Solar Tracking" which was issued on March 15, 1977, to the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Assistant General Counsel for Patent Matters whether to grant the exclusive license.

DATE: Comments to this notice must be received by May 2, 1983.

ADDRESS: National Aeronautics and Space Administration, Code GP–4, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, Director of Patent Licensing, (202) 755–3954.

Dated: February 23, 1983.

S. Neil Hosenball,

General Counsel.

[FR Doc. 83-5303 Filed 3-2-83; 8:45 am]

BILLING CODE 7510-01-M

[Notice 83-22]

Intent To Grant an Exclusive Patent License; Solar Electric Systems, Inc.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant an Exclusive Patent License.

SUMMARY: NASA hereby gives notice of intent to grant to Solar Electric Systems, Incorporated, of San Diego California, a limited, exclusive, royalty-bearing, revocable license to practice the following inventions:

U.S. Patent No. 4,217,633: Solar Cell System Having Alternating Current Output; issued August 12, 1980

U.S. Patent No. 4,335,503: Method of Making a High Voltage V-Groove Solar Cell; issued June 22, 1982

U.S. Patent No. 4,341,918: High Voltage Planar Multi Junction Solar Cell; issued July 27, 1982

U.S. Patent No. 4,360,701: Heat Transparent High Intensity, High Efficiency Solar Cell; issued November 23, 1982.

The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentation. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Assistant General Counsel for Patent Matters whether to grant the exclusive license.

DATE: Comments to this notice must be received by May 2, 1983.

ADDRESS: National Aeronautics and Space Administration, Code GP–4, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, Director of Patent Licensing, (202) 755–3954.

Dated: February 23, 1983.

S. Neil Hoseball,

General Counsel.

[FR Doc. 83-5301 Filed 3-2-83; 8:45 am]

BILLING CODE 7510-01-M

[Notice 83-19]

Intent To Grant an Exclusive Patent License; SunWind, Ltd.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant an Exclusive Patent License.

SUMMARY: NASA hereby gives notice of intent to grant to SunWind, Ltd., of Sebastopol, California, a limited, exclusive, royalty-bearing, revocable license to practice the invention described in U.S. Patent No. 4,100,331 for "Dual Membrane, Hollow Fiber Fuel Cell and Method of Operating Same" which issued on July 11, 1978, to the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Assistant General Counsel for Patent Matters whether to grant the exclusive license.

DATE: Comments to this notice must be received by May 2, 1983.

ADDRESS: National Aeronautics and Space Administration, Code GP–4, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, Director of Patent Licensing, (202) 755–3954.

Dated: February 23, 1983.

S. Neil Hosenball,

General Counsel.

[FR Doc. 83-5304 Filed 3-2-83; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL CAPITAL PLANNING COMMISSION

Revised Procedures for Public Participation

AGENCY: National Capital Planning Commission.

ACTION: Notice of adopted procedures.

SUMMARY: The Commission's Revised Procedures for Citizen Participation were published in the **Federal Register** on September 3, 1980 (45 FR 58450). These procedures are being revised again as part of the Commission's ongoing effort to facilitate public input into its deliberations. By substituting "public" for "citizen," these revisions reflect a shift from a more narrow focus on citizen groups to a broader effort on the part of the Commission to solicit views and comments on proposed plans it is considering from a wide range of public and private entities. Aside from editorial changes and reorganization of the material, the only substantive change in these revised procedures is in the section dealing with Federal elements of the Comprehensive Plan. The Commission's current procedures refer to preliminary staff reports and background studies developed prior to the draft of a proposed element and solicit public comments on those early reports and studies. These revisions omit a specific reference to the material developed at the pre-draft stage. The revisions represent the Commission's current practice in considering Federal elements of the Comprehensive Plan, but do not preclude public input in the pre-draft stage.

EFFECTIVE DATE: March 3, 1983.

FOR FURTHER INFORMATION CONTACT: Samuel K. Frazier, Jr., Public Affairs Officer, National Capital Planning Commission, 1325 G Street NW., Washington, D.C. 20576, telephone 202/724–0174.

SUPPLEMENTARY INFORMATION: The proposed procedures were published for comment in the **Federal Register** on October 22, 1982 (47 FR 46910) with a deadline for comment of November 22, 1982. No comments were received.

Revised Procedures for Public Participation

The following procedures are designed to help members of the public make their views known to the National Capital Planning Commission on planning and related matters which come before it.

With what matters does the Commission deal?

The Commission is the central planning agency for the Federal Government in the National Capital Region, which includes the District of Columbia; Montgomery and Prince George's Counties in Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties in Virginia; and all cities within the geographic area bounded by such counties. It reviews and acts upon development plans and programs submitted by Federal agencies, the District of Columbia Government and, in some cases, regional agencies and local governments in the Washington suburbs. It also acts on plans and programs prepared by its staff. For the sake of simplicity, these procedures use the word "plan" to cover all matters reviewed and acted upon by the Commission.

How would you know when the Commission will consider a plan in which you are interested?

The Secretary to the Commission (telephone: 202/724–0206) provides scheduling information regarding items on the Commission's agenda. The office of the Secretary can tell you when a particular plan will be considered by the Commission and, upon request, will provide an annual schedule of Commission meeting dates. Each month, approximately three weeks before a Commission meeting, the Secretary issues a notice called "Tentative Agenda Items" (TAI). It lists items the Commission is tentatively scheduled to act upon at one of its next several meetings. There is no charge for the TAI. Those wishing to be placed on the mailing list should contact the Public Affairs Officer (telephone: 202/724–0174).

What documents are available?

Many plans are accompanied by supporting documents, including environmental information in the form of an assessment or impact statement. An environmental assessment contains a brief discussion of the plan, of alternatives, and of the environmental impacts of the proposed plan and alternatives. An environmental impact statement covers in more detail the items specified for an environmental assessment. The public may review these documents at the Commission's offices and may obtain copies in accordance with its Freedom of Information Act regulations. Each agenda item before the Commission for action is accompanied by a written recommendation by the Commission's Executive Director. The document, called an Executive Director's Recommendation or EDR, includes the rationale for the recommendation, a description of the plan, and a summary of environmental information. The EDR is ordinarily available from the Public Affairs Officer on the Monday before each Commission meeting.

Other helpful documents are located in the Commission's Central Files. They may be obtained from the Commission's Records Management Officer by requesting materials by file number as shown on the TAI.

How do you express your views to the Commission?

Approximately two weeks after the TAI is published, the Executive Director's Recommendations (EDR) is prepared for each item scheduled for action at the next Commission meeting. All written comments received in a timely fashion will be considered by the Executive Director in the preparation of the EDR.

Anyone who wishes to speak at a Commission meeting must notify the Public Affairs Officer prior to the date specified in the TAI. Agenda items on which no member of the public has asked to speak and the Executive Director has recommended Commission approval may be placed on the "Consent Calendar" and acted upon without presentation or discussion at the Commission meeting. Registering to speak prior to the deadline in the TAI insures that the Commission will hear oral presentations and that registrants will be notified if an item has been removed from the agenda for a particular meeting.

What if you wish to express your views on an item but cannot attend the meeting at which it will be discussed?

Submission of written views on any item is welcomed up to the time of its consideration by the Commission. However, the Secretary to the Commission can insure that copies of written statements will be reproduced and distributed to each member of the Commission only if such statements are received by noon of the day preceding the day of the meeting.

What should your statement contain?

A wide variety of plans come before the Commission. Members of the public can effectively make their views known to the Commission if they understand the scope of the Commission's authority and direct their comments accordingly. Therefore, the following is a brief description of the Commission's major functions and, for each function, the type of review the Commission will give the item.

(a) Comprehensive Plan for the National Capital

The Comprehensive Plan for the National Capital consists of: (1) "Federal elements" prepared and adopted by the Commission, and (2) "District elements"

prepared by the Mayor, adopted by the Council of the District of Columbia, and reviewed by the Commission.

(1) *Federal Elements and Amendments Thereto.* Federal elements deal with Federal activities and interests in the development of the National Capital. When a proposed element or amendment is prepared, the Commission authorizes its circulation for review and comment to Federal, District, regional, and local agencies and those organizations and individuals who have expressed an interest in the element. Public comments, written and oral, are welcome at this stage.

(2) *District Elements and Amendments Thereto.* District elements deal with land use, transportation, public works, and other issues related to the development of the District of Columbia. Following adoption by the Council of the District of Columbia, District elements are reviewed by the Commission to determine their effect on Federal activities and interests in the National Capital Region.

The Commission will entertain comments from the public only on the impact a District element or amendment would have on Federal interests or functions. Comments on other aspects of such elements or amendments should be presented to the Mayor and/or the Council during the District's preparation and adoption of such elements or amendments.

(b) Federal Capital Improvements Program

Each year the Commission prepares and adopts a Federal Capital Improvements Program which contains the Commission's recommended capital program for Federal agencies in the National Capital Region over the next five years. Members of the public are invited to make planning-related comments, either orally or in writing, during the circulation and adoption stages.

(c) Federal and District of Columbia and Other Local Plans

(1) *Federal Plans.* Federal agenices are urged to develop a process for public participation where there is a potential for the Federal plans to have an impact on adjacent communities. Where appropriate and as requested by the sponsoring agency, Commission staff may be involved in such a process. In addition, members of the public may express their views before the Commission when it reviews the agency submission.

(2) *District Plans.* Various plans are submitted by the District to the Commission for recommendation or approval. Consistent with the objectives of the District of Columbia Self-Government and Governmental Reorganization Act (the "Home Rule" Act), the Commission limits its review of most District plans to a "Federal interest" review. Accordingly, public comments on such plans should be correspondingly limited. There is, however, no such limitation on plans for District public buildings in the central area of the District of Columbia.

The Commission may participate in zoning cases either at the Zoning Commission's prehearing or public hearing stage or after the hearing, when proposed Zoning Commission action has been referred to the Commission as required by law. The Commission may also participate in cases before the Board of Zoning Adjustment. Commission review of zoning matters is limited to: (1) The effect of the proposed zoning on Federal activities and interests in the National Capital and (2) the consistency of the proposed zoning with adopted elements of the Comprehensive Plan for the National Capital. Written or oral comments within these limits are welcomed.

(3) *Other Local Plans in the Maryland and Virginia Portions of the Region.* On occasion the Commission reviews plans prepared by local jurisdictions in the Region and proposed zoning actions where there may be an impact on Federal facilities or interests. Its role is to make recommendations only. Comments by members of the public should be limited to the effect on the plan or proposed zoning on the Federal Establishment or other Federal interests in the National Capital Region. The Commission has approval powers over plans for certain parklands purchased with Federal grant-in-aid funds. If such a plan is before the Commisison for approval, comments from members of the public are not so limited.

Daniel H. Shear,

Secretary to the Commission.

[FR Doc. 83-5339 Filed 3-2-83; 8:45 am]

BILLING CODE 7520-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Artists in Education Advisory Panel; Renewal

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), Section 10(a)(4) of the National Foundation on the Arts and Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office of Management and Budget Circular A-63) notice is hereby given that renewal of the Artists in Education Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 9, 1985. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

Dated: February 22, 1983.

John H. Clark,

Director, Office of Council and Panel Operations National Endowment for the Arts.

[FR Doc. 83-5384 Filed 3-2-83; 8:45 am]

BILLING CODE 7537-01-M

Dance Advisory Panel; Renewal

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), Section 10(a)(4) of the National Foundation on the Arts and Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office of Management and Budget Circular A-63) notice is hereby given that renewal of the Dance Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 9, 1985. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

Dated: February 22, 1983.

John H. Clark,

Director, Office of Council and Panel Operations National Endowment for the Arts.

[FR Doc. 83-5385 Filed 3-2-83; 8:45 am]

BILLING CODE 7537-01-M

Design Arts Advisory Panel; Renewal

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), Section 10(a) (4) of the National Foundation on the Arts and Humanities Act of 1965, as amended (20 U.S.C. 959 (a) (4) and Paragraph 9 of Office of Management and Budget Circular A-63) notice is hereby given that renewal of the Design Arts Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 9, 1985. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the Standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

Dated February 22, 1983.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 83-5386 Filed 3-2-83; 8:45 am]

BILLING CODE 7537-01-M

Expansion Arts Advisory Panel; Renewal

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), Section 10(a)(4) of the National Foundation on the Arts and Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office of Management and Budget Circular A-63) notice is hereby given that renewal of the Expansion Arts Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 9, 1985. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the Standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

Dated: February 22, 1983.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 83-5387 Filed 3-2-83; 8:45 am]

BILLING CODE 7537-01-M

Federal Graphics Evaluation Advisory Panel; Renewal

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), Section 10(a)(4) of the National Foundation on the Arts and Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office of Management and Budget Circular A-63) notice is hereby given that renewal of the Federal Graphics Evaluation Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 9, 1985. In response to requests from top management of Federal agencies, the Committee reviews the quality of printed and graphic materials and makes expert recommendations for improvements. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

Dated: February 22, 1983.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 83-5388 Filed 3-2-83; 8:45 am]

BILLING CODE 7537-01-M

Inter-Arts Advisory Panel; Renewal

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), Section 10(a)(4) of the National Foundation on the Arts and Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office of Management and Budget Circular A-63) notice is hereby given that renewal of the Inter-Arts Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 9, 1985. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

Dated: February 22, 1983.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 83-5389 Filed 3-2-83; 8:45 am]

BILLING CODE 7537-01-M

Literature Advisory Panel; Renewal

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), Section 10(a)(4) of the National Foundation on the Arts and Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office of Management and Budget Circular A-63) notice is hereby given that renewal of the Literature Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 9, 1985. The Committee's objectives and scope of activities

include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

Dated: February 22, 1983.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 83-5390 Filed 3-2-83; 8:45 am]

BILLING CODE 7537-01-M

Media Arts Advisory Panel; Renewal

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), Section 10(a)(4) of the National Foundation on the Arts and Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office of Management and Budget Circular A-63) notice is hereby given that renewal of the Media Arts Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 9, 1985. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

Dated: February 22, 1983.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 83-5391 Filed 3-2-83; 8:45 am]

BILLING CODE 7537-01-M

Museum Advisory Panel; Renewal

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), Section 10(a) (4) of the National Foundation on the Arts and Humanities Act of 1965, as amended (20 U.S.C. 959(a) (4) and Paragraph 9 of Office of Management and Budget Circular A-63) notice is hereby given that renewal of the Museum Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 9, 1985. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

Dated: February 22, 1983.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 83-5392 Filed 3-2-83; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Renewal

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), Section 10(a)(4) of the National Foundation on the Arts and Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4), and Paragraph 9 of Office of Management and Budget Circular A-63) notice is hereby given that renewal of the Music Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 9, 1985. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

Dated: February 22, 1983.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 83-5393 Filed 3-2-83; 8:45 am]

BILLING CODE 7537-01-M

Office for Partnership Advisory Panel; Renewal

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), Section 10(a)(4) of the National Foundation on the Arts and Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office of Management and Budget Circular A-63) notice is hereby given that renewal of the Office for Partnership Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 9, 1985. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

Dated: February 22, 1983.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 83-5374 Filed 3-2-83; 8:45 am]

BILLING CODE 7537-01-M

Theater Advisory Panel: Renewal

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), Section 10(a)(4) of the National Foundation on the Arts and Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office of Management and Budget Circular A-63) notice is hereby given that renewal of the Theater Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 9, 1985. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

Dated: February 22, 1983.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 83-5395 Filed 3-2-83; 8:45 am]

BILLING CODE 7537-01-M

Visual Arts Advisory Panel; Renewal

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), Section 10(a)(4) of the National Foundation on the Arts and Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office of Management and Budget Circular A-63) notice is hereby given that renewal of the Visual Arts Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 9, 1985. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

Dated: February 22, 1983.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 83-5396 Filed 3-2-83; 8:45 am]

BILLING CODE 7537-01-M

Humanities Panel Meeting

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at 806 15th Street, N.W., Washington, D.C. 20506.

DATE: March 23, 1983.

TIME: 9:00 a.m. to 5:00 p.m.

ROOM: 1023.

PROGRAM: This meeting will review the applications submitted for the Planning and Assessment Studies Program, Office of Planning and Policy Assessment, for projects beginning after July 1, 1983.

The proposed meeting is for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) Trade secrets and commercial and financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate the implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that this meeting will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 724-0367.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 83-5400 Filed 3-2-83; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-265]

Commonwealth Edison Co. and Iowa-Illinois Gas & Electric Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 78 to Facility Operating License No. DPR-30 issued to Commonwealth Edison Company and Iowa-Illinois Gas and Electric Company, which revised the Technical Specifications for operation of the Quad Cities Nuclear Power Station, Unit 2, located in Rock Island County, Illinois. The amendment is effective as of the date of issuance.

The amendment changes provisions of the Technical Specifications pertaining to the reactor protection system delay and response times, and the average power range monitor gain adjustment.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact

statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) the application for amendment dated May 12, 1981 (2) Amendment No. 78 to License No. DPR-30, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Moline Public Library, 504-17th Street, Moline, Illinois. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 17th day of February 1983.

For the Nuclear Regulatory Commission.

Domenic B. Vassallo,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 83-5361 Filed 3-2-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-275OL; 50-323 OL]

Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2); Rescheduling of Oral Argument

Notice is hereby given that the oral argument in this proceeding previously scheduled for Thursday, March 3, 1983, has been rescheduled for *9:30 a.m. on Wednesday, March 16, 1983,* in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.

Dated: February 24, 1983.

For the Appeal Board.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 83-5363 Filed 3-2-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-387]

Pennsylvania Power & Light Co.; Allegheny Electric Cooperative, Inc.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 11 to Facility Operating License No. NPF-14, issued to Pennsylvania Power & Light Company and Allegheny Electric Cooperative, Inc., for Susquehanna Steam Electric Station, Unit 1 (the facility) located in Luzerne County, Pennsylvania. This amendment grants changes to Technical Specifications 6.5.2.8.e and 6.5.2.8.f to conform with requirements in Title 10 of the Code of Federal Regulations, to correct the NRC addressee for submittal of monthly operating reports in Technical Specification 6.9.1.6, and to correct a typographical error in Technical Specification Table 3.3.3-1. This amendment is effective as of the date of issuance.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commissions' regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) and environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for the amendment dated December 10, 1982 and February 8, 1983; (2) Amendment No. 11 to License NPF-14 dated February 24, 1983; and (3) the Commission's evaluation dated February 24, 1983. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555, and at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701. A copy of items (1), (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 24th day of February 1983.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 83-4304 Filed 3-2-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-277 and 50-278]

Philadelphia Electric Co., et al.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 87 and 87 to Facility Operating Licenses Nos. DPR-44 and DPR-56, issued to Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, which revised Technical Specifications (TSs) for operation of the Peach Bottom Atomic Power Station, Units Nos. 2 and 3 (the facility) located in York County, Pennsylvania. The amendments are effective as of the date of issuance.

The revised TSs permit changes to the surveillance requirements allowing an alternate method of performing the core spray loop flow rate test.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issance of these amendments.

For further details with respect to this action, see (1) the application for amendment dated December 1, 1982, (2) Amendment No. 87 to License No. DPR-44 and Amendment No. 87 to License No. DPR-56, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room 1717 H Street, N.W., Washington, D.C., and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 18th day of February 1983.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 83-5365 Filed 3-2-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-443-OL; 50-444-OL; ASLBP 82-471-02-OL]

Public Service Co. of New Hampshire, et al. (Seabrook Station, Units 1 and 2); Order Scheduling Prehearing Conference

February 24, 1983.

Pursuant to 10 CFR 2.752, the Board hereby schedules a prehearing conference to commence on Thursday, March 17, 1983, at 1:30 p.m. and terminate no later than 6:00 p.m., Friday, March 18, 1983. This conference will be held at the McCormick Federal Building, Post Office Square, Room 208, Boston, Massachusetts. Representatives of all parties, interested States, and interested municipalities are directed to attend.

At the prehearing conference, each representative must be familiar with all details of the case and possess complete authority to enter into any necessary agreements, including settlement agreements and stipulations. The parties shall be prepared to discuss the pending motions for summary disposition, as well as other matters specified in 10 CFR 2.752(a)(1)–(6) and pertaining to admitted contentions.[1] In particular, the intervenors representing States and municipalities involved in formulating emergency plans shall be prepared to state and discuss their authority to make commitments with respect to those plans. In addition, the Board requests that the NRC Staff arrange for the presence of a FEMA representative at this prehearing conference.

It is so ordered.

For the Atomic Safety and Licensing Board.

Helen F. Hoyt,

Chairperson, Administrative Judge.

Bethesda, Maryland.

[FR Doc. 83-5366 Filed 3-2-83; 8:45 am]

BILLING CODE 7590-01-M

[1] The matters for consideration specified in 10 CFR 2.752 are:

(1) Simplification, clarification, and specification of the issues;

(2) The necessity or desirability of amending the pleadings;

(3) The obtaining of stipulations and admissions of fact and of the contents and authenticity of documents to avoid unnecessary proof;

(4) Identification of witnesses and the limitation of the number of expert witnesses, and other steps to expedite the presentation of evidence;

(5) The setting of a hearing schedule; and

(6) Such other matters as may aid in the orderly disposition of the proceeding.

[Docket No. 50-395]

Virgil C. Summer Nuclear Station, Unit No. 1; Issuance of Amendment to Facility Operating License No. NPF-12

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 11 to Facility Operating License No. NPF-12, issued to South Carolina Electric & Gas Company and South Carolina Public Service Authority (the licensees) for the Virgil C. Summer Nuclear Station, Unit No. 1 (the facility) located in Fairfield County, South Carolina. The amendment provides for extended operation of the plant up to 3,000 hours within specified power levels. The amendment is effective as of its date of issuance.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) South Carolina Electric & Gas Company letter, dated January 31, 1983, (2) Amendment No. 11 to Facility Operating License No. NPF-12, and (3) the Commission's related Safety Evaluation.

All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and the Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180. A copy of Amendment No. 11 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 22nd day of February 1983.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 83-5367 Filed 3-2-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-361 and 50-362]

Southern California Edison Co., et al.; Notice of Issuance of Amendments; Facility Operating License Nos. NPF-10 and NPF-15

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 14 to Facility Operating License No. NPF-10, and Amendment No. 3 to Facility Operating License NPF-15 to Southern California Edison Company (SCE), San Diego Gas and Electric Company, The City of Riverside, California and The City of Anaheim, California (licensees) for the San Onofre Nuclear Generating Station, Units 2 and 3 (the facility) located in San Diego County, California. These amendments are effective February 18, 1983.

The amendments modify the Technical Specifications to change the flow rate of the control room emergency air cleanup system from 1500 cfm ± +10% to 2050 ± +150 cfm. These amendments were requested by the SCE letters of February 11 and 16, 1983.

Issuance of these amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Prior public notice of these amendments is not required because the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendments.

For further details with respect to this action, see (1) Southern California Edison Company's letters dated February 11 and 16, 1983, (2) Amendment No. 14 to Facility Operating License No. NPF-10, (3) Amendment No. 3 to Facility Operating License NPF-15,

and (4) the Commissioner's related Safety Evaluation.

These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., an the San Clemente Library, 242 Avenida Del Mar, San Clemente, California 92672. A copy of items (2), (3) and (4) may be obtained upon request address to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 18th day of February, 1983.

For the Nuclear Regulatory Commission.

George W. Knighton,

Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 83-5368 Filed 3-2-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

The Toledo Edison Co. and the Cleveland Electric Illuminating Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 52 to Facility Operating License No. NPF-3, issued to The Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), which revised Technical Specifications (TSs) for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility) located in Ottawa County, Ohio. The amendment is effective as of its date of issuance.

This amendment modifies TS Table 3.3-3 to permit defeat of the essential bus feeder breaker undervoltage trips for up to one minute when starting a reactor coolant pump or circulating water pump. The defeat will be accomplished through the use of a push button activated bypass circuit.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated March 23, 1979, as supplemented August 31, 1981, and March 19, 1982, (2) Amendment No. 52 to License No. NPF-3, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, DC, and at the University of Toledo Library, Documents Department, 2801 West Bancroft Avenue, Toledo, Ohio. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 17th day of February 1983.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 83-5369 Filed 3-2-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

The Toledo Edison Co. and the Cleveland Electric Illuminating Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 53 to Facility Operating License No. NPF-3, issued to The Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), which revised Technical Specifications for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility) located in Ottawa County, Ohio. The amendment is effective as of its date of issuance.

This amendment modifies Table 3.7-3 to delete safety related snubber 33A-GCB-4-H5 which has been replaced by a sway strut.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rule and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

For futher details with respect to this action, see (1) the application for amendment dated January 18, 1982, as supplemented Octover 28, 1982, (2) Amendment No. 53 to License No. NPF-3, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the University of Toledo Library, Documents Department, 2801 West Bancroft Avenue, Toledo, Ohio. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 17th day of February 1983.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 83-5370 Filed 3-2-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

The Toledo Edison Co. and The Cleveland Electric Illuminating Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 54 to Facility Operating License No. NPF-3, issued to The Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), which revised Technical Specifications (TSs) for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility) located in Ottawa County, Ohio. The amendment is effective as of its date of issuance.

This amendment modifies the TSs to eliminate the requirement for Thirty Day Written Reports under certain conditions. This change is consistent with applicable portions of Regulatory Guide 1.16. The amendment also clarifies the surveillance requirement applicable to the reactor coolant system pressure isolation valves by indicating that leak testing can be accomplished in

combination with a closed containment isolation valve.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amemdment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated September 25, 1981, (2) Amendment No. 54 to License No. NPF-3, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the University of Toledo Library, Documents Department, 2801 West Bancroft Avenue, Toledo, Ohio 43606. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 17th day of February 1983.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 83-5371 Filed 3-2-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-271]

Vermont Yankee Nuclear Power Corporation; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 75 to Facility Operating License No. DPR-28, issued to Vermont Yankee Nuclear Power Corporation which revised Technical Specifications for operation of the Vermont Yankee Nuclear Power Station (the facility) located near Vernon, Vermont. The amendment is effective as of its date of issuance.

The amendment modifies the Technical Specifications with respect to limiting conditions of operation for the standby liquid control system and administrative controls related to organizational structure.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the applications for amendment dated July 22, September 27, and December 7, 1982 (2) Amendment No. 75 to License No. DPR-28, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301. A copy of item (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 17th day of February 1983.

For the Nuclear Regulatory Commission.

Domenic B. Vassallo,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 83-5372 Filed 3-2-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-029]

Yankee Atomic Electric Company; Systematic Evaluation Program; Availability of Draft Integrated Plant Safety Assessment Report for the Yankee Nuclear Power Station

The Nuclear Regulatory Commission's (NRC) Office of Nuclear Reactor Regulation (NRR) has published its Draft Integrated Plant Safety Assessment Report related to Yankee Nuclear Power Station, which is operated by Yankee Atomic Electric Company in Framingham, Massachusetts.

The report documents the review completed under the Systematic Evaluation Program (SEP). The SEP was initiated by the NRC to review the design of older operating nuclear reactor plants to reconfirm and document their safety. The review has provided for (1) an assessment of the significance of differences between current technical positions on selected safety issues and those that existed when the Yankee plant was licensed, (2) a basis for deciding on how these differences should be resolved in an integrated plant review, and (3) a documented evaluation of plant safety. Equipment and procedural changes have been identified as a result of the review.

The report is being referred to the Advisory Committee on Reactor Safeguards and is being made available at the NRC's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301 for inspection and copying. Single copies of this report (Document No. NUREG-0825) may be requested from the U.S. Nuclear Regulatory Commission, Director, Division of Technical Information and Document Control, Washington, D.C. 20555, Attention: Publications Unit.

Dated at Bethesda, Maryland, this 10th day of February 1983.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 83-5374 Filed 3-2-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-29]

Yankee Atomic Electric Company; Yankee Nuclear Power Station; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 80 to Facility Operating License No. DPR-3, issued to Yankee Atomic Electric Company (the licensee), which revised the Technical Specifications for operation of the Yankee Nuclear Power Station (Yankee) (the facility) located in Franklin County, Massachusetts. The amendment is effective as of its date of issuance. However, the Technical Specification provisions approved by the amendment, except Specification 3/4 12-1, are to become effective October 1, 1983.

Specification 3/4 12-1 is effective immediately.

The amendment approves Technical Specification provisions which have been developed for the purpose of keeping releases of radioactive material to unrestricted areas during normal operations, including expected operational occurrences, as low as reasonably achievable.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated January 16, 1979, and supplements thereto dated July 30, 1982, September 30, 1982, November 8, 1982 and December 6, 1982, (2) Amendment No. 80 to License No. DPR-3, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 16th day of February, 1983.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 83-5373 Filed 3-2-83; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards will hold a meeting on March 10-12, 1983, in Room 1046, 1717 H Street NW., Washington, DC. Notice of this meeting was published in the **Federal Register** on March 3, 1983.

The agenda for the subject meeting will be as follows:

Thursday, March 10, 1983

8:30 A.M.-8:45 A.M.: Opening Remarks (Open)—The ACRS Chairman will report briefly on matters of current interest regarding ACRS activities.

8:45 A.M.-12:30 P.M. and 1:30 P.M.-6:00 P.M.: Clinch River Breeder Reactor (Open)—The members will hear and discuss the report of the ACRS project subcommittee and consultants who may be present regarding the request for a Construction Permit for this facility.

Members of the NRC Staff and representatives of the Applicant will make presentations and respond to questions regarding this matter.

Portions of this session will be closed as necessary to discuss Proprietary Information related to this project.

Friday, March 11, 1983

8:30 A.M.-9:30 A.M.: Regionalization of NRC Activities (Open)—Members of the Committee will meet with representatives of the NRC and discuss proposed regionalization of NRC Staff activities.

Portions of this session will be closed as necessary to discuss information that relates solely to the internal personnel rules and practices of the agency.

9:30 A.M.-12:00 Noon: Clinch River Breeder Reactor (Open)—The Members will hear and discuss the report of the ACRS project subcommittee and consultants who may be present regarding the request for a Construction Permit for this facility.

Members of the NRC Staff and representatives of the Applicant will make presentations and respond to questions regarding this matter.

Portions of this session will be closed as necessary to discuss Proprietary Information related to this project.

1:00 P.M.-1:30 P.M. Future ACRS Activities (Open)—The Members will discuss anticipated subcommittee and full Committee activities.

1:30 P.M.-5:30 P.M. Catawba Nuclear Power Station Units 1 and 2 (Open)—The Members of the Committee will hear and discuss the report of the ACRS Subcommittee and consultants who may be present regarding the request for an operating license for this facility.

Members of the NRC Staff and representatives of the Applicant will also make presentations and respond to questions regarding this matter.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this session.

Saturday, March 12, 1983

8:30 A.M.-12:30 P.M. Preparation of ACRS Reports to NRC (Open/Closed)—The Committee Members will discuss proposed ACRS reports and recommendations regarding matters considered during this meeting. In addition, the Members will discuss proposed ACRS comments regarding proposed changes in the NRC regulatory process as well as concerns regarding the impact of LOCA's on hydraulic control unit line integrity.

Portions of this session will be closed as necessary to discuss information that will be involved in an adjudicatory proceeding.

1:30 P.M.-3:30 P.M. ACRS Subcommittee Activity (Open)—Recent/ongoing activities of ACRS Subcommittees will be discussed, including those related to decay heat removal from nuclear systems, consideration of Class 9 accidents in the regulatory process, steam generator tube repairs and restart of the TMI-1 nuclear station and the NRC Systematic Evaluation Program.

3:30 P.M.-4:00 P.M. Concluding Session (Open)—Complete discussion of miscellaneous items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 1, 1982 (47 FR 43474). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a telephone call to the ACRS Executive Director (R. F. Fraley) prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the

ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss Proprietary Information [5 U.S.C. 552b(c)(4)], and information which will be involved in an adjudicatory proceeding [5 U.S.C. 552 b(c)(10)] and information that relates solely to the internal personnel rules and practices of the agency [5 U.S.C. 552 b(c)(2)].

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 A.M. and 5:00 p.m. EST.

Dated: February 25, 1983.

John C. Hoyle,

Advisory Committee Management officer.

[FR Doc. 83-5376 Filed 3-2-83; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting with the Groupe Permanent (France)

Representatives of the Groupe Permanent and the Advisory Committee on Reactor Safeguards (ACRS) will meet March 24, and 25, 1983, Room 1046, at 1717 H Street, NW, Washington, DC. The Groupe Permanent and the ACRS will exchange views regarding existing and proposed regulatory policies, practices and criteria for the regulation of nuclear facilities.

The meeting will be closed to public attendance to ensure the security of information identified and supplied by a foreign government in confidence (Sunshine Act Exemption 4). In order to receive and consider this information, the ACRS must be able to engage in frank discussion with representatives of the Groupe Permanent (France) and its advisory body on reactor safety. For the reason just stated, such a discussion would not be possible if held in public session.

I have determined, therefore, that it is necessary to close this meeing to permit the ACRS to obtain information necessary in carrying out its statutory responsibilities. The authority for such closure is Exemption (4) of the Sunshine Act, 5 U.S.C. 552b(c)(4).

Further information can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Raymond F. Fraley (telephone 202/634-3265) between 8:15 a.m. and 5:00 p.m., EST.

Dated: February 24, 1983

John C. Hoyle,

Advisory Committee Management Officer

[FR Doc. 83-5379 Filed 3-2-83; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Qualification Program for Safety-Related Equipment; Reschedule

The ACRS Subcommittee on Qualification Program for Safety-Related Equipment scheduled for March 8, 1983 has been rescheduled for March 15, 1983, Room 1046, 1717 H Street, NW, Washington, DC.

All other items regarding this meeting remain the same as announced in the **Federal Register** published Wednesday, February 23, 1983 (48 FR 7661).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Anthony Cappucci (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., EST.

Dated: February 24, 1983.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 83-5377 Filed 3-2-83; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Regulatory Policy and Procedures; Meeting

The ACRS Subcommittee on Regulatory Policy and Procedures will hold a meeting on March 16, 1983, Room 1167, 1717 H Street, NW, Washington, DC. The Subcommittee will continue its review of matters related to nuclear regulatory reform.

In accordance with the procedures outlined in the **Federal Register** on October 1, 1982 (47 FR 43474), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee and its Staff. Persons desiring to make oral statements should notify the cognizant Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting will be as follows:

Wednesday, March 16, 1983—8:30 a.m. Until the Conclusion of Business

During the initial portion of the meeting, the Subcommittee members may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff and others regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Marvin C. Gaske (telephone 202/634–3265) between 8:15 a.m. and 5:00 p.m., EST.

Dated: February 25, 1983.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 83-5380 Filed 3-2-83; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Waste Management; Meeting

The ACRS Subcommittee on Waste Management will hold a meeting on March 18 and 19, 1983, Room 1046, 1717 H Street, NW., Washington, D.C. The Subcommttee will review the Department of Energy's proposed general guidelines for recommendation of high-level waste (HLW) repository sites. Notice of this meeting was published February 23, 1983.

In accordance with the procedures outlined in the **Federal Register** on October 1, 1982 (47 FR 43474), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, March 18, 1983–8:30 a.m. Until the Conclusion of Business

Saturday, March 19, 1983–8:30 a.m. Until the Conclusion of Business

Discussion of the topics noted above.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

For further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Ms. R. C. Tang (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m., EST.

Dated: February 25, 1983.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 83-5378 Filed 3-2-83; 8:45 am]

BILLING CODE 7590-01-M

Request for Public Comment on Planned Studies of Quality Assurance Programs for Construction of Nuclear Power Plants Required by Pub. L. 97–415, NRC Authorization Act

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment.

SUMMARY: The NRC invites public comment on methods of improving the quality of nuclear power plant construction. The NRC Authorization Act, Section 13, Quality Assurance, for fiscal years 1982 and 1983, directs the NRC to conduct a study of existing and alternative programs for improving quality assurance and quality control in the construction of commercial nuclear power plants, and to undertake a pilot program to review and evaluate certain alternative concepts. The Act directs the NRC to obtain the comments of the public in conducting the study. The NRC is to provide a report to Congress on the results of the study and pilot program and on the recommendations and/or actions taken to improve quality assurance and quality control programs for nuclear power plants under construction. Sections 13(b), 13(c), and 13(d) of the NRC Authorization Act are reproduced under Supplementary Information below.

The NRC will consider public comments provided in response to this Federal Register Notice as input into the quality assurance studies required by the NRC Authorization Act.

DATES: Submit comments by May 1, 1983. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except to comments received on or before this date.

ADDRESS: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Attn: Docketing and Service Branch.

Hand deliver comments to Room 1121, 1717 H Street NW., Washington, D.C. between 8:15 a.m. and 5:00 p.m.

Examine comments received at: The NRC Public Document Room, 1717 H Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Terry L. Harpster, Chief, Quality Assurance Branch, Division of Quality Assurance, Safeguards, and Inspection Programs, Office of Inspection and Enforcement, (301) 492–4774.

SUPPLEMENTARY INFORMATION: The following paragraphs have been reproduced from the NRC Authorization Act, Sections 13(b), 13(c), and 13(d):

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"13(b) The Commission shall conduct a study of existing and alternative programs for improving quality assurance and quality control in the construction of commercial nuclear powerplants. In conducting the study, the Commission shall obtain the comments of the public, licensees of nuclear powerplants, the Advisory Committee on Reactor Safeguards, and organizations comprised of professionals having expertise in appropriate fields. The study shall include an analysis of the following:

(1) providing a basis for quality assurance and quality control, inspection, and enforcement actions through the adoption of an approach which is more prescriptive than that currently in practice for defining principal architectural and engineering criteria for the construction of commercial nuclear powerplants;

(2) conditioning the issuance of construction permits for commercial nuclear powerplants on a demonstration by the licensee that the licensee is capable of independently managing the effective performance of all quality assurance and quality control responsibilities for the powerplant;

(3) evaluations, inspections, or audits of commercial nuclear powerplant construction by organizations comprised of professionals having expertise in appropriate fields which evaluations, inspections, or audits are more effective than those under current practice;

(4) improvement of the Commission's organization, methods, and programs for quality assurance development, review, and inspection; and

(5) conditioning the issuance of construction permits for commercial nuclear powerplants on the permittee entering into contracts or other arrangements with an independent inspector to audit the quality assurance program to verify quality assurance performance.

For purposes of paragraph (5), the term 'independent inspector' means a person or other entity having no responsibility for the design or construction of the plant involved. The study shall also include an analysis of quality assurance and quality control programs at representative sites at which such programs are operating satisfactorily and an assessment of the reasons therefor.

13(c) For purposes of -

(1) determining the best means of assuring that commercial nuclear powerplants are constructed in accordance with the applicable safety requirements in effect pursuant to the Atomic Energy Act of 1954; and

(2) assessing the feasibility and benefits of the various means listed in subsection (b);

the Commission shall undertake a pilot program to review and evaluate programs that include one or more of the alternative concepts identified in subsection (b) for the purposes of assessing the feasibility and benefits of their implementation. The pilot program shall include programs that use independent inspectors for auditing quality assurance responsibilities of the licensee for the construction of commercial nuclear powerplants, as described in paragraph (5) of subsection (b). The pilot program shall include at least three sites at which commercial nuclear powerplants are under construction. The Commission shall select at least one site at which quality assurance and quality control programs have operated satisfactorily, and at least two sites with remedial programs underway at which major construction, quality assurance, or quality control deficiencies (or any combination thereof) have been identified in the past. The Commission may require any changes in existing quality assurance and quality control organizations and relationships that may be necessary at the selected sites to implement the pilot program.

13(d) Not later than fifteen months after the date of the enactment of this Act, the Commission shall complete the study required under subsection (b) and submit to the United States Senate and House of Representatives a report setting forth the results of the study. The report shall include a brief summary of the information received from the public and from other persons referred to in subsection (b) and a statement of the Commission's response to the significant comments received. The report shall also set forth an analysis of the results of the pilot program required under subsection (c). The report shall be accompanied by the recommendations of the Commission, including any legislative recommendations, and a description of any administrative actions that the Commission has undertaken or intends to undertake, for improving quality assurance and quality control programs that are applicable during the construction of nuclear powerplants."

BILLING CODE 7590-01-C

Dated at Bethesda, Maryland, this 18th day of February 1983.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Division of Quality Assurance, Safeguards, and Inspection Programs, Office of Inspection and Enforcement.

[FR Doc. 83-5375 Filed 3-2-83; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) the following information collection requirements for reclearance under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission: Revision and reduction.

2. The title of the information collection: 10 CFR Part 32 "Transfers of Radioactive Consumer Products."

3. The form number if applicable: Not applicable.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: NRC Licensees.

6. An estimate of the number of responses: 200.

7. An estimate of the total number of hours needed annually to complete the requirement or request: A reduction of 160 hours.

8. An indication of whether Section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: The final rule would reduce the reporting burden on licensed distributors of consumer products containing byproduct materials by extending the reporting period, on the number of products distributed, from an annual report to a report every 5 years.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, D.C. 20555. Comments and questions should be directed to the OMB reviewer Jefferson B. Hill, (202) 395-7340. NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this 24th day of February 1983.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 83-5362 Filed 3-2-83; 8:45 am]

BILLING CODE 7590-01-M

Ad Hoc Committee for Review of Nuclear Reactor Licensing Reform Proposals; Meeting

Notice is hereby given in accordance with Section 10 of the Federal Advisory Committee Act that NRC's Ad Hoc Committee for Review of Nuclear Reactor Licensing Reform Proposals will hold its next meeting at 9:30 a.m., March 17, 1983. This meeting will take place at the office of Shaw, Pittman, Potts and Trowbridge, South Building, 9th Floor Lobby, 1800 M Street, NW, Washington, D.C. and will be open for public observation. The Committee established this meeting date at its last meeting which was held on February 25, 1983, in public session. Advance notice is also given that the Committee has tentatively set March 24, 1983 as an additional meeting date. The need for this meeting will be determined at the March 17 session.

At these meetings, the committee will continue its review of administrative proposals for reforming the NRC's licensing process for nuclear plants. Transcripts of all meetings are made available for public inspection and copying at NRC's Public Document Room, 1717 H Street, NW, Washington, D.C.

Further information on the meetings may be obtained from Mr. Rothschild, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. (Telephone 202/634-1465).

Dated at Washington, D.C., this 28th day of February, 1983.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 83-5448 Filed 3-2-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 27-48]

US Ecology, Inc.; Special Nuclear Material License Amendment

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance of special nuclear material disposal license amendment.

SUMMARY: On January 28, 1983 the U.S. Nuclear Regulatory Commission (NRC) issued Amendment 3 to NRC License No. 16-19204-01 to US Ecology, Inc. (previously Nuclear Engineering Co.) The license allows for the receipt and disposal of special nuclear material (SNM) at US Ecology's low level waste disposal facility located on the Hanford Reservation near Richland, Washington. The amendment was developed primarily to provide increased compatibility with the State of Washington license for disposal of by-product and source material, to clarify licensee responsibilities with regard to site closure and decommissioning, and to define procedures for license termination following cessation of burial operations.

NRC has determined that the amended license will not result in any significant impact on the environment and therefore does not require preparation of an environmental impact statement. An environmental impact appraisal was prepared upon issuance of the license in 1979 and is available for public inspection.

ADDRESSES: The amended license and environmental impact appraisal are available for public inspection at the Commission's Public Document Room located at 1717 H Street, NW., Washington, D.C. 20555, and at the Richland Public Library Reference Department, Swift and Northgate Streets, Richland, Washington 99352.

FOR FURTHER INFORMATION CONTACT: Mr. Edward F. Hawkins, Acting Chief, Low-Level Waste Licensing Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone (301) 427-4433.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission, on January 28, 1983, issued to US Ecology, Inc., (formerly Nuclear Engineering Co.) an amendment to its license to receive and dispose by burial, special nuclear material at its commercial low level waste disposal facility located in the Hanford Reservation near Richland, Washington. (US Ecology's corporate headquarters are located at 9200 Shelbyville Road, Louisville, Kentucky 40207). The recently issued amendment amends License No. 16-19204-01 in its entirety. All information concerning this license can be located in NRC Docket No. 27-48.

NRC has determined that issuance of the amended license will result in no significant environmental impact and therefore does not require the preparation of an environmental impact statement (EIS). The SNM license, as amended, authorizes disposal of waste containing small amounts of uranium-233 and Uranium-235. Wastes containing plutonium in concentrations

greater than 100 nanocuries per gram are prohibited from the site.

Disposal of by-product and source material at the site is licensed by the State of Washington Department of Social and Health Services. That agency is also the site landlord. Preparation of this amendment has been coordinated with Washington State officials and is consistent with conditions of the state by-product and source material license, which was renewed October 11, 1982.

Conditions of this amendment clearly specify license obligations with regard to closure and decommissioning of the Hanford low level waste disposal facility and further specify licensee obligations beyond the license expiration date pending formal NRC licensing action.

The Commission finds that issuance of the amendment complies with the requirements of the Atomic Energy Act of 1954, as amended, and the requirements of Title 10, Chapter 1, Code of Federal Regulations.

Dated at Washington, D.C. this 23rd day of February 1983.

For the Nuclear Regulatory Commission.

Edward F. Hawkins,

Acting Branch Chief, Low-Level Waste Licensing Branch, Division of Waste Management.

[FR Doc. 83-5447 Filed 3-2-83; 8:45 am]

BILLING CODE 7590-01-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Report Forms Under OMB Review

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

DATE: Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESS: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: L. Jacqueline Brent, Office of Personnel and Administration, Overseas Private Investment Corporation, Room 405, 1129 Twentieth Street, NW., Washington, D.C. 20527; Telephone (202) 653–2818, or

OMB Reviewer: Francine Picoult, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503; Telephone (202) 395–7231.

SUMMARY OF FORM UNDER REVIEW:

Type of Request: New.

Title: OPIC Opportunity Bank Company Profile.

Form Number: OPIC–82.

Frequency of Use: Other—once per investor.

Type of Respondent: Business or other institutions (except farms).

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. Companies.

Number of Responses: 500.

Reporting Hours: ¼ hour per response.

Federal Cost: $2,647.50.

Authority for Information Collection: Section 234(d) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): OPIC–82 will provide the OPIC Opportunity Bank with detailed and current data on U.S. companies seeking investment opportunities overseas. It will be made available in an effort to promote and encourage U.S. investment overseas.

Dated: February 16, 1983.

Leo H. Phillips, Jr.,

Office of the General Counsel.

[FR Doc. 83-5334 Filed 3-2-83; 8:45 am]

BILLING CODE 3210-01-M

POSTAL RATE COMMISSION

Visit; Laurel, Maryland

February 23, 1983.

Notice is hereby given that Chairman Steiger, Commissioners Bright and Crutcher, and a number of staff members will receive a guided tour by United Parcel Service staff at the UPS facility in Laurel, Maryland, on Thursday, February 24, 1983. A report will be on file in the Commission's Docket Room.

David F. Harris,

Secretary.

[FR Doc. 83-5336 Filed 3-2-83; 8:45 am]

BILLING CODE 7715-01-M

[Docket No. A83-16; Order No. 486]

Cantil, Calif., Filing of Appeal

February 24, 1983.

In the matter of Cantil, California 93519, Ross R. Rogers, Petitioner; Docket No. A83–16; Notice and Order of Filing of Appeal.

On February 10, 1983, the Commission received an appeal letter from Mr. Ross R. Rogers ("Petitioner") concerning the United States Postal Service's decision to consolidate the Cantil, California, post office. Mr. Rogers' letter effectively requests the review provided by section 404(b) of the Postal Reorganziation Act (39 U.S.C. 404(b)).[1]

The petition sets out the Postal Service action complained of in sufficient detail to warrant further inquiry to determine whether the Postal Service complied with the applicable law and its regulations for the consolidation of post office.[2]

Upon preliminary inspection, the Petitioner's letter appears to present the following issues of law:

1. The effect of such consolidation on the community served by such post office (39 U.S.C. 404(b)(2)(A)); the Petitioner states that: "[t]he United States Post Office, is important for the survival of this Cantil area farming community."

2. Whether such consolidation is consistent with the policy of the Government, as stated in section 101(b) of this title, that the Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining (39 U.S.C. 404(b)(2)(C))]; the Petitioner questions the qualifications of candidates being considered to operate the planned community post office (CPO).

Other issues of law may become apparent when the Commission has had

[1] 39 U.S.C. 404(b) was added to title 39 by Pub. L. 94–421 (September 24, 1976), 90 Stat. 1310–11. Our rules of practice governing these cases appear at 39 CFR 3001.110 *et seq.*

[2] 42 FR 59079–85 (November 17, 1977). The Commission's standard of review is set forth at 39 U.S.C. 404(b)(5).

the opportunity to examine the record made by the Postal Service. The record may be found to resolve adequately one or more of the issues presented by the Petitioner's letter.

In view of the above, and in the interest of expediting this proceeding under the 120-day decisional deadline imposed by section 404(b)(5), the Postal Service is advised that the Commission reserves the right to request a legal memorandum from the Service on the issues described above and/or any further issues of law disclosed by the record in this case. In the event that the Commission finds such a memorandum necessary to explain or clarify the Service's legal position or interpretation on any such issue, it will make the request therefor by order, specifying the issues to be addressed.

When such a request is issued, the memorandum shall be filed within 20 days of the issuance, and a copy of the memorandum shall be served on the Petitioner by the Service.

In briefing the case or in filing any motion to dismiss for want of prosecution, in appropriate circumstances the Service may incorporate by reference all or any portion of a legal memorandum filed pursuant to such an order.

The Commission orders that:

(A) The appeal letter from Mr. Ross R. Rogers be accepted as a petition for review pursuant to secton 404(b) of the Act (39 U.S.C. 404(b)).

(B) The Secretary of the Commission shall publish this Notice and Order in the **Federal Register.**

By the Commission.

David F. Harris,

Secretary.

Appendix

February 10, 1983—Filing of Petition.
February 24, 1983—Notice and Order of Filing of Appeal.
February 25, 1983—Filing of Record by Postal Service (*see* 39 CFR 3001.113(a)).
March 2, 1983—Last day for filing of petitions to intervene (*see* 39 CFR 3001.111(b)).
March 14, 1983—Petitioner's Initial Brief (*see* 39 CFR 3001.115(a)).
March 29, 1983—Postal Service Answering Brief (*see* 39 CFR 3001.115(b)).
April 13, 1983—(1) Petitioner's Reply Brief should Petitioner choose to file one (*see* 39 CFR 3001.115(c)); (2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument.
June 10, 1983—Expiration of 120-day decisional schedule (*see* 39 U.S.C. 404(b)(5)).

[FR Doc. 83-5337 Filed 3-2-83; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-19528]

Advisory Committee on Tender Offers; Establishment and Meeting

AGENCY: Securities and Exchange Commission.

ACTION: Notice of establishment of the Securities and Exchange Commission Advisory Committee on Tender Offers.

SUMMARY: The Chairman of the Commission, with the concurrence of the other members of the Commission, has established the Securities and Exchange Commission Advisory Committee on Tender Offers, which is to conduct an examination of tender offers and other related regulations and practices and to recommend to the Commission any legislative and/or regulatory changes the Committee may consider to be in the best interest of all shareholders (i.e., shareholders of all corporations, whether potential bidders, target companies or by-standers).

DATE: February 25, 1983.

FOR FURTHER INFORMATION CONTACT: Linda C. Quinn, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549; (202) 272-2579.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. I, and the regulations thereunder, the Commission has ordered publication of this notice that Chairman John S. R. Shad, with the concurrence of the other members of the Commission, has established an advisory committee, under the Federal Advisory Committee Act, which is designated the Securities and Exchange Commission Advisory Committee on Tender Offers. Chairman Shad certifies that he has considered carefully the establishment of this Committee and, with the concurrence of the other members of the Commission, has found the creation of this Committee to be in the public interest in that it will assist the Commission in the performance of its responsibilities under the federal securities laws.

The Advisory Committee is authorized to examine tender offer and other regulations and practices. Issues that may be considered by the Advisory Committee include: (1) The economic implications of tender offers and other acquisition techniques on the economy in general and specifically with respect to bidders, subject companies, investors and the securities markets; (2) the need for, and the nature and objectives of, regulation of such activities; (3) the regulatory means to accomplish these objectives, weighing the costs against the benefits of such a regulatory response; and (4) possible recommendations to the Commission with respect to legislative and/or regulatory amendments to the current laws to effect such regulatory response.

The Advisory Committee shall conduct its operations in accordance with the provisions of the Federal Advisory Committee Act.

The duties of the Committee shall be solely advisory and shall extend to submitting reports and recommendations to the Commission.

The Securities and Exchange Commission shall provide any necessary support services required by the Advisory Committee.

The Advisory Committee shall meet at such intervals as are necessary to carry out its functions. It is estimated that the meetings of the full committee generally will occur no more frequently than at four week intervals.

The Advisory Committee shall terminate at the end of ten months from the date of its establishment unless, prior to such time, its charter is renewed in accordance with the Federal Advisory Committee Act, or unless the Chairman, with the concurrence of the other members of the Commission, determines that continuance of the Advisory Committee no longer is in the public interest.

A copy of the Charter of the Committee has been filed with the Chairman of the Commission, the Senate Committee on Banking, Housing, and Urban Affairs, and the House of Representatives Committee on Energy and Commerce. A copy of the Charter also has been furnished to the Library of Congress and placed in the Commission's Public Reference Room for public inspection.

By the Commission.

Dated: February 24, 1983.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-5455 Filed 3-2-83; 8:45 am]

BILLING CODE 8010-01-M

Advisory Committee on Tender Offers; Meeting

This is to give public notice, pursuant to Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. I, 10(a), that the Securities and Exchange Commission Advisory Committee on Tender Offers will conduct a meeting on March 18, 1983, at the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C., beginning at

10:00 a.m. This meeting will be open to the public.

This will be the first meeting of the Advisory Committee. The purpose of the meeting is to review the objectives and responsibilities of the Advisory Committee and to establish plans for the orderly progression of the Committee's work.

Further information on this matter may be obtained by writing: Mr. George A. Fitzsimmons, Secretary, Securities and Exchange Commission, United States Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

Dated: February 25, 1983.

George A. Fitzsimmons,

Advisory Committee, Management Officer.

[FR Doc. 83-5456 Filed 3-2-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22860; 70-6844]

New England Electric System et al.; Short-Term Notes

February 23, 1983.

In the matter of: New England Electric System, Granite State Electric Company, Manchester Electric Company, Massachusetts Electric Company, The Narragansett Electric Company, New England Power Company, New England Power Service Company, 25 Research Drive, Westborough, Massachusetts 01581; Notice of proposed issuance and sale of short-term notes to banks and commercial paper, open account advances from the system money pool, and exception from competitive bidding.

New England Electric System ("NEES"), a registered holding company, and six of its subsidiaries, Granite State Electric Company ("Granite"), Manchester Electric Company ("Manchester"), Massachusetts Electric Company ("Mass Electric"), The Narragansett Electric Company ("Narragansett"), New England Power Company ("NEP"), and New England Power Service Company ("NEPSCO"), have filed an application-declaration with this Commission pursuant to Sections 6(a), 7, 9(a), 10, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45 and 50(a)(5) thereunder.

The above-named subsidiaries propose, through March 31, 1984, to borrow from the system money pool and/or the banks listed below, and/or, in the case of Mass Electric and NEP, to issue commercial paper up to the following maximum outstanding amounts: Granite—$6,000,000; Manchester—$300,000; Mass Electric $18,500,000; Narragansett—$20,000,000; NEP—$195,000,000; and NEPSCO—$5,000,000. The authorization limit for NEP includes outstanding short-term bonds issued to finance pollution control facilities (HCAR No. 22775 (December 14, 1982)). The proceeds of the proposed borrowings are to be used: (i) To pay then outstanding notes initially issued to banks, NEES, and/or dealers in commercial paper and/or borrowings from the money pool; (ii) to provide new money for capitalizable expenditures (or to reimburse the treasury therefor); (iii) to refund bonds, pending permanent refinancing, and (iv) other corporate purposes.

Although the borrowing companies have no formal credit agreements with banks, they have made informal arrangements for lines of credit for various purposes, including support of commercial paper. The bank borrowings will be from a group of 48 banks, evidenced by notes maturing in less than one year from the date of issuance. The effective interest cost of such borrowings will be not greater than the effective interest cost of borrowings at the bank's base or prime lending rate with compensating balance requirements of 10% of the line of credit and 10% of the borrowings thereunder. It is stated that based on compensating balance requirements of about 10% to 20%, or fees equivalent thereto, the effective interest cost of bank borrowing would be approximately 12.2% to 13.8% per annum, assuming a base lending rate of 11%.

Mass Electric and NEP propose to issue and sell commercial paper during the period through March 31, 1984, directly to one or two dealers in commercial paper. The dealers, as principals, will reoffer such commercial paper to not more than 100 of their respective customers. The commercial paper issued and sold will be in the form of unsecured promissory notes having varying maturities of not in excess of 270 days. Actual maturities will be determined by market conditions, the effective interest cost to the issuer, and the issuer's cash requirements at the time of issuance. The terms of the commercial paper will not provide for prepayment prior to maturity. The commercial paper will be purchased by the dealer from the issuer at a discount which will not be in excess of the discount then prevailing for commercial paper of comparable quality and maturity. The dealer will initially reoffer the commercial paper at a discount rate of not more than ⅛ of 1% per annum less than the prevailing discount rate to the issuer.

The borrowing companies propose to reduce their need for outside borrowing through the continued use of the system money pool. Under the money pool, surplus funds that may be available from day to day in the treasuries of certain of the NEES System subsidiaries are used to make loans to subsidiaries in need of short-term funds. Each member determines each day, on the basis of cash flow projections, the amount of surplus funds it has available for contribution to the pool. The surplus funds are transferred to NEPSCO which administers the pool as agent for the member companies. Loans from the pool are made pursuant to open account advances. Borrowing companies pay a monthly rate based upon the rate the borrower would otherwise have to pay an outside lender. Those companies able to issue commercial paper will pay the weighted monthly average of the rates on outstanding commercial paper of all subsidiaries. During any month when no such commercial paper is outstanding, the rate is the monthly average of the rate for high grade 30-day commercial paper sold through dealers by major corporations as published in the *Wall Street Journal*. Borrowing members without the ability to issue commercial paper will pay interest at a rate of 125 basis points above the rate paid by members who do have the ability to issue commercial paper but in no event greater than the monthly average of the base lending rate of the First National Bank of Boston. The terms of the money pool are being amended to add Manchester, a new subsidiary, to permit NEES to lend to the pool, and to increase the investments currently permitted for excess funds.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 21, 1983, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-5457 Filed 3-2-83; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-12280]

Pan American World Airways, Inc.; Application and Opportunity for Hearing

February 25, 1983.

Notice is hereby given that Pan American World Airways, Inc. (the "Applicant") has filed an application under clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Commission that the trusteeship of NCNB National Bank of North Carolina ("NCNB") under a proposed indenture which is to be qualified under the Act is not so likely to involve a material conflict of interest with the trusteeships of NCNB under two indentures previously qualified under the Act as to make it necessary in the public interest or for the protection of investors to disqualify NCNB from acting as trustee under any one or more of the three indentures.

Section 310(b) of the Act provides, *inter alia*, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the Section) it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of Section 310(b) provides, with certain exceptions, that a trustee is deemed to have a conflicting interest if it is acting as trustee under another indenture of the same obligor. However, pursuant to clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture or other indentures under which other securities of such obligor are outstanding if the issuer shall have sustained the burden of proving, on application to the Commission, and after opportunity for hearing thereon, that trusteeship under the qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under any of such indentures.

The Applicant alleges that:

1. A single Registration Statement was filed on February 28, 1977 (Registration No. 2-58297) covering $26,500,000 principal amount of 11½% Secured Equipment Certificates, Series A, due May 15, 1994 and $26,500,000 principal amount of 11½% Secured Equipment Certificates, Series B, due May 15, 1994 (collectively, the "Series A and Series B Secured Equipment Certificates").

2. A Registration Statement was filed on January 25, 1983 (Registration No. 2-81488), covering $100,000,000 principal amount of % Convertible Secured Trust Notes Due 1998 (the "Trust Notes").

3. The Series A and Series B Secured Equipment Certificates were issued pursuant to two separate trust indentures qualified under the Act between the Applicant and NCNB as Trustee.

4. The Trust Notes will be issued pursuant to a trust indenture to be qualified under the Act between the Applicant and an indenture trustee. The Applicant desires to appoint NCNB as Trustee under such proposed indenture (the "Trust Notes Indenture").

5. The proceeds from the sale of the Series A and Series B Secured Equipment Certificates were used to provide long-term financing for approximately 70% of the purchase price of two Boeing 747SP aircraft—one aircraft in each of the two trusts. The balance of the purchase price was provided by independent equity investors pursuant to leveraged lease arrangements. The indentures under which the Series A and Series B Secured Equipment Certificates were issued were each amended to reflect the leveraged lease arrangements (the indentures so amended being collectively, the "Previous Indentures"). The principal and interest on the Series A and Series B Secured Equipment Certificates is payable out of rentals owed by the Applicant on the related aircraft. With respect to the Trust Notes, the proceeds will be used to finance the purchase by the Trustee from the Applicant of aircraft now owned by the Applicant, following which the Trustee will lease such aircraft back to the Applicant. The indenture trustee will retain legal title to the aircraft until such time as all principal and interest due on the Trust Notes has been paid or duly provided for, at which time title to the aircraft shall vest in the Applicant.

6. With respect to the aircraft financed through the proceeds of the Series A and Series B Secured Equipment Certificates, pending delivery of each aircraft, NCNB held the proceeds in segregated accounts as security for the Series A and Series B Secured Equipment Certificates issued with respect to such aircraft. The Series A and Series B Secured Equipment Certificates are secured by a security interest in the related aircraft and the right of NCNB to receive rentals on the aircraft payable by the Applicant.

Since the aircraft securing the Series A and Series B Secured Equipment Certificates are not owned by the Applicant, they are not among the aircraft that will be purchased by the Trustee from the Applicant under the Trust Notes Indenture, nor could such aircraft be substituted therefor. Should NCNB have occasion to proceed against the security under one of the three indentures (assuming it is appointed Trustee under the Trust Notes), such action would not affect the security, or the use of any security, under either of the other two indentures.

7. The difference in the provisions of the Previous Indentures and the Trust Notes Indenture are not likely to involve NCNB in a material conflict of interest so as to make it necessary in the public interest or for the protection of investors to disqualify NCNB from acting as trustee under one or more of the three indentures.

The Applicant waives notice of hearing and waives hearing and waives any and all rights to specify procedures under Rule 8(b) of the Commission's Rules or Practice with respect to the application.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application which is a public document on file in the offices of the Commission at the Public Reference Room, 450 Fifth Street, NW., Washington, D.C.

Notice is further given that any interested person may, not later than March 22, 1983, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by such application which he desires to controvert or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest, or in the interest of investors, unless a hearing is ordered by the Commission.

For the Commission by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-5458 Filed 3-2-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-19544; File No. SR-CBOE-83-1]

Self-Regulatory Organizations; Proposed Rule Change By Chicago Board Options Exchange, Inc.; Relating to Position and Exercise Limits

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 18, 1983, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

Additions are italicized; deletions are bracketed.

Position Limits

Rule 4.11. Except with the prior written permission of the President or his designee, no member shall make, for any account in which it has an interest or for the account of any customer, an opening transaction on any exchange in any option contract dealt in on the Exchange if the member has reason to believe that as a result of such transaction the member or its customer would, acting alone or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate position in excess of 2,[0]*500 or 4,000* option contracts (whether long or short) of the put class and the call class on the same side of the market [covering] *respecting* the same underlying security, combining for purposes of this position limit long position in put options with short positions in call options, and short positions in put options with long positions in call options, or such other number of option contracts as may be fixed from time to time by the Board as the position limit for one or more classes or series of options. Reasonable notice shall be given of each new position limit fixed by the Board, by posting notice thereof on the bulletin board of the Exchange. *Whether a limit is 2500 or 4000 option contracts shall be determined in the manner described in Interpretation .02 below.*

* * * Interpretations and Policies:

.01 The following examples illustrate the operation of position limits established by Rule 4.11:

(a) Customer A, who is long [2]*4,000* XYZ calls, may at the same time be short [2]*4,000* XYZ calls, since long and short positions in the same class of options (i.e., in calls only, or in puts only) are on opposite sides of the market and are not aggregated for purposes of Rule 4.11.

(b) Customer B, who is long [2]*4,000* XYZ calls, may at the same time be long [2]*4,000* XYZ puts. Rule 4.11 does not require the aggregation of long call and long put (or short call and short put) positions, since they are on opposite sides of the market.

(c) Customer C, who is long [1]*3,500* XYZ calls, may not at the same time be short more than 500 XYZ puts, since the [2]*4,000* contract limit applies to the aggregation of long call and short put positions in options covering the same underlying security. Similarly, if Customer C is also short [1]*3,200* XYZ calls, he may not at the same time be long more than 800 puts, since the [2]*4,000* contract limit applies separately to the aggregation of short call and long put positions in options covering the same underlying security.

.02 The 2500 option contract limit applies to those options having an underlying security that does not meet the requirement for the 4000 option contract limit. To be eligible for the 4000-contract limit, either the most recent six-month trading volume of the underlying security must have totalled at least 20,000,000 shares; or the most recent six-month trading volume of the underlying security must have totalled at least 15,000,000 shares and the underlying security must have at least 60,000,000 shares currently outstanding. Every six months, the Exchange will review the status of underlying securities to determine which limit should apply. The 4000 limit will be effective on the date set by the Exchange, while any change from a 4000 to a 2500 limit will take effect after the last expiration then trading, unless the requirement for a 4000 limit is met at the time of the intervening six-month review.

Exercise Limits

Rule 4.12. Except with the prior written permission of the President or his designee, no member shall exercise, for any account in which it has an interest or for the account of any customer, a long position in any option contract of a class of options dealt in on the Exchange where such member or customer, acting alone or in concert with others, directly or indirectly, has or will have exercised within any five consecutive business days aggregate long positions in excess of 2,[0]*500 or 4,000* option contracts of that class of options or such other number of option contracts as may be fixed from time to time by the Board as the exercise limit for that class of options. Reasonable notice shall be given of each new exercise limit fixed by the Board by posting notice thereof on the bulletin board of the Exchange. *Whether a limit is 2500 or 4000 option contracts shall be determined in the manner described in Interpretation .02 to Rule 4.11.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to expand position and exercise limits in order to add to market depth and liquidity.

In 1978 the Special Study of the Options Markets recommended that existing Exchange rules, which limited the size of options positions held by market participants, be reviewed and that their relaxation or elimination be considered. As a result of re-examination of position limits, as suggested in that Study, the Exchange proposed rule changes which were adopted in October of 1980 to raise position and exercise limits from 1,000 to 2,000 contracts. In view of the increased use of the options markets and the experience gained during the two years since the position limits were increased in 1980, the Exchange believes that it is appropriate at this time to increase the position and exercise limits.

The Commission made the following statements in its release approving the position and exercise limit increase in 1980. (Release No. 34-17237) The Exchange believes that these statements also apply to this proposed increase.

* * * there is substantial reason to believe that the current ceiling serves to constrict significantly the options activities of certain market professionals and institutions, possibly to the detriment of market depth and liquidity. In addition, the Commission believes that the surveillance capabilities of the options exchanges with respect to large options positions should minimize the possibility of manipulation. Finally, the Commission believes that the information and experience gained from approval of the proposed modification will enhance the ability of the options exchanges and the Commission to responsibly propose and effectively evaluate possible further modifications * * *.

It should be noted that position limits cannot be justified as a protection against financial exposure. While unhedged larger positions do entail larger financial risks, position limits are cumbersome and ineffective mechanisms for limiting those risks. Rather, those rules which have been designed specifically to limit risk exposure should be used for this purpose, namely, suitability, margin, and net capital rules.

The change from 2000 to 2500 option contracts is minimal, especially in view of the Exchange's experience to date with the 2000-contract limit. The change from 2000 to 4000 option contracts involves standards that are a protection against possible manipulation. These standards insure that only option contracts having an underlying security that has either very high trading volume or high trading volume and a high number of shares outstanding will receive the higher limit. The standards mean that the options and stocks involved are significantly less susceptible to manipulation. To be eligible for the 4000-contract limit, either the most recent six-month trading volume of the underlying security must have totalled at least 20,000,000 shares; or the most recent six-month trading volume of the underlying security must have totalled at least 15,000,000 shares and the underlying security must have at least 60,000,000 shares currently outstanding.

Every six months, the Exchange will review the status of underlying securities to determine which limit should apply. Two new lists shall be published in the Exchange Bulletin. The 4000 limit will be effective on the date set by the Exchange, which date will allow time for appropriate notice to be given. Any change from a 4000 to a 2500 limit will take effect after the last expiration then trading, unless the requirement for a 4000 limit is met at the time of the intervening six-month review.

The basis for this proposed rule change in section 6(b)(5), in that the change would increase market depth and liquidity, which is in the public interest, while continuing to protect investors from manipulative activity.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 25, 1983.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-5459 Filed 3-2-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-19536; File No. SR-MSE-83-2]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Stock Exchange, Inc.; Relating to a Change in MSE's Transaction Fee Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 15, 1983, the Midwest Stock Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A is the proposed revision to the transaction fee schedule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

MSE's trading floor support systems that have been developed and installed on Midwest have dramatically increased MSE's capacity and efficiency. The new fee schedule reflects the diminished incremental cost to MSE as volume increases in processing trades. The new price schedule will provide price

incentives to firms encouraging an increase in order flow to the Midwest in all trade size categories.

The proposed fee revision, effective March 1, 1983, affects only agency transactions. The range for both item charges and value charges have been greatly expanded. The previous item charge rate for round lots which started at $0.45 has been reduced. The new rates start at $0.25 and as daily trade volume increases the charge per trade decreases.

The proposed change in fees is consistent with Section 6(b)(4) of the Securities Exchange Act of 1934, in that it provides for the equitable allocation of reasonable dues, fees and other charges among MSE's members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 24, 1983.

George A. Fitzsimmons,

Secretary.

Exhibit A

CURRENT MSE AGENCY TRANSACTION FEES

Items/month	Rate	Value charge	Rate
0 to 1,000	0.45	0.0 to 7.5	0.12
1,001 to 2,000	.35	7.5 to 25.0	.10
2,001 and over	.25	25.0 and over	.08

PROPOSED MSE AGENCY TRANSACTION FEE SCHEDULE

Item charge		Value charge	
Items/month	Rate	Accum value/month [1]	Rate [2]
0 to 400	0.25	0.0 to 5.0	0.14
401 to 800	.20	5.0 to 10.0	.13
801 to 1,200	.15	10.0 to 15.0	.12
1,201 to 1,600	.10	15.0 to 20.0	.11
1,601 to 2,000	.05	20.0 to 25.0	.10
2,001 to 2,400	.00	25.0 to 50.0	.09
2,401 to 2,800	−.05	50.0 to 150.0	.085
2,801 to 3,200	−.10	150.0 to 300.0	.08
3,201 to 3,600	−.15	300.0 to 450.0	.075
3,601 to 4,000	−.20	450.0 to 550.0	.07
4,001 and over	−.25	550.0 to 650.0	.065
		650.0 and over	.06

[1] In millions.
[2] Per $1,000.

[FR Doc. 83-5454 Filed 3-2-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-19537; File No. SR-MSE-83-1]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Stock Exchange, Inc.; Relating to Claims for Reports.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 7, 1983, the Midwest Stock Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Article XXX, Rule 15 of the Rules of the Midwest Stock Exchange, Incorporated is hereby amended as follows:

Additions italicized—[Deletions Bracketed]

Article XXX

Claims for Reports

Rule 15. All claims for reports must be made timely as follows:

(a) All claims which involve erroneous comparisons must be made within [10] *five* business days of the original trade date.

(b) All claims relative to the omission of a report which was properly due must be made within [10] *five* business days of the date the order should have been executed.

(c) No change in text.

(d) No change in text.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Satement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed five day limit on making claims regarding comparisons is in accordance with all other principal exchanges and the NASD. The proposed change will help resolve uncompared trades on a more timely basis.

The proposed rule change is consistent with Section 6(b)(5) of the Securities Exchange Act of 1934 in that it is designed to facilitate the settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 24, 1983.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-5453 Filed 3-2-83; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/607]

Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group A of the U.S. Orgainzation for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on March 18, 1983, 10:00 a.m. in Room 856 of the Federal Communications Commission, 1919 M Street, NW., Washington, D.C. This Study Group deals with U.S. Government aspects of international telegram and telephone operations and tariffs.

The Study Group will discuss international telecommunications questions relating to telegraph, telex, new record services, maritime, and leased channel services in order to develop U.S. positions to be taken at upcoming international Study Groups I, III, and SMM (Mobile Maritime Service) meetings.

Members of the general public may attend the meeting subject to the instruction of the Chairman. Admittance of public members will be limited to the seating available. Requests for further information should be directed to Earl S. Barbely, Conference Staff, Federal Communications Commission, Washington, D.C. 20554, telephone (202) 632-3214.

Dated: February 24, 1983.

William J. Lowell,

Chairman, International Telegraph and Telephone Consultative Committee.

[FR Doc 83-5446 Filed 3-2-83; 8:45 am]

BILLING CODE 4710-07-M

TENNESSEE VALLEY AUTHORITY

Tennessee Valley Authority Act of 1933 and Public Utility Regulatory Policies Act of 1978; Proposed Modification of Guidlines on Dispersed Power Production

AGENCY: Tennessee Valley Authority TVA).

ACTION: Notice of proposed modification of TVA's guidelines on dispersed power production.

SUMMARY: On April 20, 1981 TVA adopted a policy to encourage dispersed power production in the Tennessee Valley region and an interim program and guidlines to assist TVA and the distributors of TVA power in implementation of the policy. The policy, program, and guidelines encompass congeneration and small power production facilities included under sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (Pub. L. No., 95-617) (PURPA). On September 22, 1982 TVA approved a revised purchase price schedule to be available until October 1, 1983, and extended its Experimental Cogeneration Program until October 1, 1983. TVA is now considering a modification in the guidelines.

DATE: Comments in writing must be received by 5 p.m., March 21, 1983, to be assured of being considered.

ADDRESS: Written comments should be sent to R. C. Crawford, Director, Division of Energy Use and Distributor Relations, Tennessee Valley Authority, 840 Power Building, Market Street, Chattanooga, Tennessee 37401.

FOR FURTHER INFORMATION CONTACT: Dawn S. Ford, Tennessee Valley Authority, 400 West Summit Hill Drive, EPB5, Knoxville, Tennessee 37902, (615) 632-44402.

SUPPLEMENTARY INFORMATION: TVA's current guidelines on dispered power production were printed in the **Federal Register** on October 25, 1982 (47 FR. 47355).

TVA is considering a proposed modification of these guidelines with regard to purchases of power from qualifiying facilities located outside the area in which TVA or its distributors are a source of power supply under provisions of the TVA Act. The proposed modification provides for (1) Negotiated prices for energy purchases from these facilities with such prices not to exceed TVA's costs that would be avoided by such purchases and (2) metering costs for these qualified facilities to be the responsibility of the owners of the facilities.

The proposed modification to the guidelines is shown below.

Dated: February 23, 1983.

W. F. Willis,

General Manager.

Proposed Modification to Guidelines

A.3.a. Until October 1, 1983, qualified producers, with facilities located within the area in which TVA or the distributors of TVA power are a source of power supply under provisions of the TVA Act, will have the option of (1) Receiving payments for the output of their facilities billed under the experimental pricing schedule (see Experimental Price Schedule DPP-XR) or (2) any alternative pricing schedule that TVA may publish for use by itself and the distributors of TVA power prior to that date.

Qualified producers, with facilities located outside the area in which TVA or the distributors of TVA power are a source of power supply and that are able to make arrangements with connecting utility systems to supply their output to TVA's power system, will receive payments for energy based upon a negotiated price. The price agreed upon is not to exceed the avoided cost of energy to the TVA system. The amount of capacity payments will be based upon a negotiated price with the price agreed upon not to exceed the value of such capacity in offsetting TVA's capacity needs over the term of the contract.

A.6.a. Owners of qualified facilities will be required to pay for any additional transmission or distribution costs (including the costs of metering, system protection and safety equipment) to the extent that such costs are in excess of those that the distributors of TVA power and TVA would have incurred if the qualified producers' output had not been purchased. Until October 1, 1983, under the provisions of the Experimental Cogeneration Program, TVA will continue to pay the cost of cogeneration metering installations for facilities qualifying thereunder that are located within the area in which TVA or its distributors are a source of power supply. Owners of qualified cogeneration facilities located outside this area will be wholly responsible for metering installations, including costs.

[FR Doc. 83-5338 Filed 3-3-83; 8:45 am]
BILLING CODE 6120-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Automotive Gasoline (AUTOGAS) in General Aviation Aircraft; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Public Meeting.

SUMMARY: This notice announces the schedule, location procedures, and dates of a public meeting to solicit and review information on the use of automotive gasoline (AUTOGAS) in general aviation aircraft.

DATE: The meeting will be held on April 5 and 6, 1983, beginning at 8:00 a.m. and planned adjournment of 5:00 p.m.

ADDRESS: The meeting will be held at the Federal Aviation Administration, National Headquarters, Auditorium third floor, 800 Independence Ave, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: The FAA, Aircraft Certification Division, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone: (617) 273-7330.

SUPPLEMENTARY INFORMATION: Since the recent Supplemental Type Certificate (STC) approval was granted to the Experimental Aircraft Association (EAA) for use of AUTOGAS (to ASTM Specification D-439) to the Cessna 150 aircraft, additional applications have been received for use of AUTOGAS in other aircraft.

The objective of the meeting is:

1. To advise the public on criteria used for the initial AUTOGAS approval, and explore if there are means of simplifying future approvals.

2. Solicit discussions on the distribution system of AUTOGAS versus aviation gasoline, and how this impacts the current requirement that the pilot-in-command insure use of fuel to ASTM Specification D-439.

3. The potential impact of future change to ASTM Specification D-439 on current approval or subsequent approvals.

4. Gather input on concerns related to potential use in aircraft systems more complex than the Cessna 150.

The above agenda items should not be construed as a limitation on what may be discussed at the meeting. Participants are free to propose any other items of concern to the subject. A copy of the finalized agenda will be available at the registration desk. Additional agenda items should be presented at the registration desk. If approved, they will be added to the agenda as time permits.

Request To Make Presentation

Persons planning to present data and/or position papers at the meeting are requested to provide the FAA New England Region, ANE-100, Burlington, Massachusetts 01803, an outline of the presentation by March 25, 1983. The outline should contain an estimate of the time needed to make the presentation and any audio visual equipment required. Presentations will be scheduled on a first-come first-served basis as time permits within the meeting schedule.

Meeting Procedures:

Persons planning to attend the conference should be aware of the following procedures which are established to facilitate the workings of the meeting:

1. As space is limited, advance reservations are suggested. Please contact Mr. George Mulcahy at (617) 273-7351 to indicate your intent to attend the meeting.

2. Sessions will begin at 8:00 a.m. (local time) on both Tuesday and Wednesday. All meetings will be open to all persons on a space available basis. If necessary to complete the agenda, sessions may be extended to evenings. If practicable, the meeting may be accelerated to enable adjournment in less than the time scheduled.

3. Statements made by the FAA participants at the meeting will be made to facilitate discussion and should not be taken as expressing a final FAA position.

Issued in Burlington, Massachusetts, on February 18, 1983.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 83-5289 Filed 3-2-83; 8:45 am]
BILLING CODE 4910-13-M

[Summary Notice No. PE-83-5]

Petitions for Exemption; Summary of Petitions Received Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice not the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before March 23, 1983.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No.———, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916,

FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on February 25, 1983.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
23546	Owensboro Aviation	14 CFR 93.113	To permit petitioner to conduct fixed wing Special VFR within the Louisville (Standiford) Airport Traffic Control Zone. Petitioner's operations are pipeline patrol.
19113	Capitol Air, Inc. formerly Capitol Int'l. Airways, Inc.	14 CFR portions of Part 121	To extend Exemption 2746 to permit petitioner to continue to conduct scheduled passenger service over routes authorized by the Civil Aeronautics Board (CAB) utilizing the flight control dispatch procedures and communication procedures of Part 121 that are applicable to supplemental air carriers.
16299	Kenmore Air Harbor, Inc.	14 CFR 141.37(e), and para. 3(b)(4) of Appendix D of Part 141.	To extend Exemption 2376B which permits petitioner to use a seadrome without permanent runway lights for night training flights involving seaplanes. In addition, it permits credit toward flight instruction for cross-country night flights in seaplanes with a landing in a body of water less then 100 miles from the point of departure, provided that those flights include a landing at a point other than the point of departure and the flights are round-trip cross-country flights to a point more than 100 miles from the point of departure.
21350	The Coastal Corp.	14 CFR 61.58(c)	Extension and amendment to Exemption 3249 to permit the petitioner's flightcrews to complete their entire 24-month pilot-in-command check in an FAA-approved simulator, subject to certain conditions and limitations. The amendment would delete the B-707 aircraft from the exemption because it is currently operating under a Part 121 certificate.
23438	AirLifeLine of Texas, Inc.	14 CFR 61.118(a)	To amend Exemption 3678 which permits petitioner's volunteer pilots who hold private pilot certificates to be reimbursed for fuel, oil, and maintenance expenses while serving on petitioner's official missions. The amendment would also allow instrument flight rule (IFR) and visual flight rule (VFR) operations at night provided the aircraft are properly equipped and the pilots meet current requirements. The amendment would also permit operation of the aircraft in accordance with inspection requirements of § 91.169(a) (1) and (2).
18238	Flying Tiger Line, Inc. (FT)	14 CFR Parts 21, 43, 61, 63, 91 and 121	To extend Exemption 2602 to permit petitioner to temporarily substitute DC-8-63F aircraft under lease with Flugleider H.F. (FHF), and to permit FT to use the DC-8 aircraft even though it does not have exclusive use of such aircraft.
15194	Compania Mexicana de Aviacion, S.A.	14 CFR Parts 61 and 63	To extend Exemption 2195, as amended to permit petitioner, to operate four leased U.S.-registered aircraft using an FAA-approved continuous airworthiness maintenance program and the B-727 master minimum equipment list.
22560	Alaska Int'l. Air	14 CFR 121.211(e)(2)	To permit petitioner to operate its five L-382 aircraft without each flight deck station being equipped with a combined safety belt and shoulder harness that meets the applicable requirements of § 25.785.
20048	Chalk Int'l. Airlines	14 CFR 135.175(a)	To renew Exemption 3007A to permit petitioner to operate its Grumman Mallard G-73 aircraft in direct day visual flight rule (VFR) flights in large multiengine aircraft between certain points, without having approved airborne weather radar equipment installed in the aircraft.
23491	San Juan Airlines	14 CFR 135.261	To permit petitioner to conduct medical evacuation flights from the islands to an appropriate medical facility without complying with the flight and duty time requirements of § 135.261.
23521	Singapore Airlines (SIA)	14 CFR portions of Part 21	To permit petitioner, a foreign air carrier which holds operations specification under Part 129, to operate and maintain two U.S.-registered Boeing 747-300 aircraft using an FAA-approved minimum equipment list (MEL).

DISPOSITIONS OF PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
23389	American Int'l. Airways	14 CFR portions of Part 121	To permit petitioner to engage in scheduled domestic or flag air carrier operations utilizing flight release authority in lieu of dispatching authority. *Withdrawn 12/28/82.*
23342	Israel Aircraft Industries, Ltd.	14 CFR 25.832	To permit petitioner to operate the Westwind Model 1125 above flight level 180 for nonrevenue operations without complying with the cabin ozone concentration requirements. *Denied 2/9/83.*
23362	Arabian American Oil Company	14 CFR 91.200(b)	To permit petitioner to operate its F-27 airplanes for an indefinite period without a combined safety belt and shoulder harness at the flight-deck station that would normally accommodate an observer. *Granted 2/18/83.*
23443	Royale Airlines	14 CFR 43.3 and 43.7	To permit petitioner to acquire aircraft parts which were overhauled in Canada. *Granted 2/10/83.*
23502	Air One, Inc.	§ 121.311(f)	To permit petitioner to operate its B-727-100 aircraft during takeoff and landing without each flight attendant having a seat in the passenger compartment that meets the seat standard requirements. *Granted 2/10/83.*
23293	Air National, Inc.	14 CFR 121.311(F)	To permit petitioner to operate its DC-9 aircraft without each flight attendant having a seat for takeoff and landing that meets the requirements of § 25.785. *Granted 2/17/83.*
23394	Ports of Call Travel Club	14 CFR 91.303	To allow petitioner to operate up to nine noncomplying Boeing 707 aircraft from 1/1/85 until 1/1/88 without meeting the noise compliance requirements. *Denied 1/4/83.*
23452	Douglas Aircraft Co. obo Alitalia Airlines (Alitalia)	14 CFR 11.53 and 603 of the Act	To amend Exemption 3675 to include two additional subsidiary carriers of Alitalia under that exemption which allows the operation of 9 leased, U.S.-registered Douglas DC-9-30 aircraft, utilizing FAA-approved minimum equipment list (MEL). *Granted 2/24/83.*
23507	Peachtree Dekalb Flight Academy, Inc.	14 CFR 61.109 and 61.129	To allow aviation students, of Peachtree Dekalb Flight Academy, Inc., to use certain private or commercial cross-country experience gained prior to 7/1/83, under the old rules, to meet the current requirements. *Granted 2/23/83.*

[FR Doc. 83-5288 Filed 3-2-83; 8:45 am]

BILLING CODE 4910-13-M

National Airspace Review Advisory Committee; Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: 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 Task Group 1-7 of the Federal Aviation Administration (FAA) National Airspace Review Advisory Committee. The agenda for this meeting is as follows: develop and review a base for application of proposed U.S. Airspace Classification.

DATE: Beginning March 21, 1983, at 11 a.m., continuing daily, except Saturdays, Sundays, and holidays, not to exceed three weeks.

ADDRESS: The meeting will be held at the Federal Aviation Administration, conference room 7 A/B, 800 Independence Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: National Airspace Review Program Management Staff, room 1005, Federal Aviation administration, 800 Independence Avenue, SW., Washington, D.C. 20591, (202) 426-3560. Attendance is open to the interested public, but limited to the space available. To insure consideration, persons desiring to make statements at the meeting should submit them in writing to the Executive Director, National Airspace Review Advisory Committee, Air Traffic Service, AAT-1, 800 Independence Avenue, SW., Washington, D.C. 20591, By March 18, 1983. Time permitting and subject to the approval of the chairman, these individuals may make oral presentations of their previously submitted statements.

Issued in Washington, D.C. on February 24, 1983.

Anthony Borden,

Acting Manager, Special Projects Staff.

[FR Doc. 83-5195 Filed 3-2-83; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

National Motor Carrier Advisory Committee; Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces that the National Motor Carrier Advisory Committee will hold a meeting on March 17 and 18, 1983, beginning at 9:00 a.m. both days, in Washington, D.C., at the Department of Transportation's Headquarters Building, 400 Seventh Street, SW., Washington, D.C., Room 2230. The meeting is open to the public.

The first day of this meeting, March 17, will be devoted to a discussion of the statement of FHWA interpretation and policy published in the **Federal Register** February 3, 1983 (48 FR 5210), addressing truck size and weight provisions contained in the Surface Transportation Assistance Act of 1982 and the DOT Appropriations Act of 1982.

The agenda for March 18 will include: Standardization of the heavy duty vehicle inspection process for issuance of safety inspection stickers; presentation by the Dump Transport Industries Association on special bridge formula weight problems of end dump semi-trailer combinations; discussion of the future role of the Advisory Committee with regard to achieving uniformity in State motor carrier regulations; and briefings on the study of alternatives to tax on use of heavy trucks, and the study regarding longer combination vehicles. A meeting of the Subcommittee on the Heavy Truck Accident Causation and Safety Study is also scheduled for March 18.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Stapleton, Acting Executive Director, National Motor Carrier Advisory Committee, Federal Highway Administration, HCC-20, Room 4224, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426-0834. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

Issued on: February 23, 1983.

L. P. Lamm,

Deputy Administrator, Federal Highway Administration.

[FR Doc. 83-5192 Filed 3-2-83; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

[FRA Waiver Petition Docket Nos. LI-82-3, LI-82-5, LI-82-9]

Petitions for Exemptions; Southern Pacific Transportation Co., et al.

Notice is hereby given that six petitioners have submitted requests for temporary or permanent waivers of compliance with the Locomotive Safety Standards (49 CFR Part 229).

The individual petitions for waiver of compliance with these standards are described below. The description of each petition indicates the nature and extent of the relief requested as well as the information that has been submitted in support of that petition.

Interested persons are invited to participate in these proceedings by submitting written data, views, or comments. FRA does not anticipate scheduling an opportunity for oral comment since the facts do not appear to warrant it. All communications concerning these petitions must identify the appropriate Docket Number (e.g. FRA Waiver Petition Docket Number LI-82-3) and should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Communications received before March 31, 1983, will be considered before final action is taken. All comments will be available both before and after the closing date for comments, during regular business hours (8:30 a.m.-5:00 p.m.), in room 7321A, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

Southern Pacific Transportation Company

[FRA Waiver Petition Docket No. LI-82-3]

The Southern Pacific Transportation Company (SP) seeks a permanent waiver of compliance for 119 of its locomotives with the requirement in § 229.55(c) of the Locomotive Safety Standards (49 CFR 229.55(c) that the minimum brake cylinder pressure shall be 30 pounds per square inch. To forestall thermal damage to wheels on eleven locomotives used in commuter service, SP has reduced the brake cylinder pressure produced by the automatic brake valve to 28 pounds. To obtain the proper braking ratios and permit retention of the clasp brake shoe arrangement on approximately 100 road locomotives that have been converted from cast iron brake shoes to composition brake shoes, SP has installed a J-84-B relay valve; as a result, the automatic brake valve on these locomotives produces only 28 pounds of brake cylinder pressure. To make the braking force on four slug locomotives used in hump yard service compatible with the braking force of their MP 15 control locomotives and

prevent slid flat wheels on the slug locomotives, SP has equipped four MP 15 AC control locomotives with 6-N-6 distributing valves, which produce 27 pounds of brake cylinder pressure. SP contends that none of these reductions in brake cylinder pressure have created a hazard or resulted in a decrease in safety and that adjustment of the brake cylinder pressures to 30 pounds or higher would result in exceeding the recommended braking ratios for these locomotives.

Chevron U.S.A. Inc.

[FRA Waiver Petition Docket No. LI-82-5]

Chevron U.S.A. seeks a permanent waiver of compliance with the requirement in § 229.23(a) of the Locomotive Safety Standards that its locomotive, as part of each periodic inspection, be positioned so that its entire underneath portion may be safely inspected. The locomotive operates on track within and near its refinery at Pascagoula, Mississippi. Inspections of the traction motors and undercarriage of its single locomotive have been safely performed at the refinery by the Railway Supply Company since 1974. In view of the safe, frequent and thorough inspections that have been performed using existing facilities, Chevron believes that the cost of building an inspection pit is not justified.

The Mary Lee Railroad

[FRA Waiver Petition Docket No. LI-82-6]

The Mary Lee Railroad, operated by Jim Walter Resources, Inc. of Birmingham, Alabama, seeks a permanent waiver of compliance with the requirement in § 229.117 of the Locomotive Safety Standards that its four locomotives be equipped with speed indicators. These locomotives operate primarily on track within a Jim Walter Resources installation but also operate over 13 miles of L & N Railroad track. Although the maximum authorized speed on the L & N track is 25 mph, the average speed of these locomotives is less than 15 mph during Mary Lee operations

The Massena Terminal Railroad Company

[FRA Waiver Petition Docket No. LI-82-7]

The Massena Terminal Railroad Company of Massena, New York, seeks a permanent waiver of compliance with the requirement of § 229.123 of the Locomotive Safety Standards that locomotives be equipped with an end plate, a pilot or a snowplow. Its two locomotives are operated primarily in switching service within an Aluminum Company of America installation and also on 2.5 miles of mainline track. It believes that bringing its locomotives into compliance with this requirement would serve no safety purpose.

Indiana & Ohio Railroad

[FRA Waiver Petition Docket No. LI-82-8]

The Indiana & Ohio Railroad Company seek a permanent waiver of compliance with the requirement of § 229.123 that its one locomotive be equipped with an end plate, a pilot or a snowplow. It has experienced no acts of vandalism involving the placing of objects on track since it began operations in June 1979. Moreover, since its trains do not exceed a speed of 10 mph, they would have sufficient time to stop if such an incident should occur. Accordingly, it believes that complying with this requirement would be an unwarranted expense and would not improve safety.

Roblin Steel Company

[FRA Waiver Petition Docket No. LI-82-9]

The Roblin Steel Company of North Tonawanda, New York, seeks a permanent waiver of compliance with the requirement of § 229.123 that its two locomotives be equipped with an end plate, a pilot or a snow plow. Except for weekly switching on about one-quarter of a mile of Conrail track, these locomotives are used exclusively in a Roblin facility that is completely fenced and patrolled by a security force. Since it has not experienced any pertinent incidents or accidents in its operations, Roblin believes that modifying its locomotives to comply with this requirement is economically infeasible and would not enhance the safety of its operation.

(Secs. 1, 2, 5, 9, 36 Stat. 913, 914, 45 U.S.C. 22, 23, 28, 34; sec. 6 (e) and (f), 80 Stat. 939, 940, 49 U.S.C. 1655 (e) and (f); § 1.49(c) of the regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(c))

Issued in Washington, D.C., February 17, 1983.

Joseph W. Walsh,

Associate Administrator for Safety.

[FR Doc. 83-5086 Filed 3-2-83; 8:45 am]

BILLING CODE 4910-06-M

Maritime Administration

Approval of Applicant as Trustee

Notice is hereby given that The Connecticut Bank and Trust Company, N.A., with offices at One Connecticut Plaza, Hartford, Connecticut 06115, has been approved as Trustee pursuant to Pub. L. 89-346 and 46 CFR 221.21-221.30.

Dated: February 23, 1983.

By Order of the Maritime Administrator.

Georgia P. Stamas,

Assistant Secretary.

[FR Doc. 83-5143 Filed 3-2-83; 8:45 am]

BILLING CODE 4910-81-M

Removal From Roster of Approved Trustees

Notice is hereby given that the Connecticut Bank and Trust Company, with offices at Hartford, Connecticut, an approved Trustee, was merged into The State National Bank of Connecticut as of December 31, 1982. The surviving bank continues under the charter of The State National Bank of Connecticut and has been renamed The Connecticut Bank and Trust Company, N.A.

The Connecticut Bank and Trust Company, N.A. is an approved Trustee pursuant to Pub. L. 89-346 and 46 CFR 221.21-221.30, and has assumed all of the Vessel or Shipyard Financing Trusts of the Connecticut Bank and Trust Company.

Therefore, pursuant to Pub. L. 89-346 and 46 CFR 221.21-221.30 The Connecticut Bank and Trust Company is removed from the Roster of Approved Trustees.

This notice is effective as of December 31, 1982.

Dated: February 23, 1983.

By Order of the Maritime Administrator.

Georgia P. Stamas,

Assistant Secretary.

[FR Doc. 83-5144 Filed 3-2-83; 8:45 am]

BILLING CODE 4910-81-M

[Docket No. S-734]

Participation By Vessels Built With Construction-Differential Subsidy in the Carriage of Crude Oil in the Domestic Trade; Application; Archon Shipping, Inc.

Notice is hereby given that by application of February 25, 1983, Archon Shipping, Inc. (Archon) requested permission under section 506 of the Merchant Marine Act, 1936, as amended, and Part 250 of Title 46 of the Code of Federal Regulations, for its bareboat chartered vessel, TT *Brooklyn* to operate for six months in the Alaskan oil trade. The 225,000 deadweight ton *Brooklyn*, which was built with construction-differential subsidy (CDS), would carry crude oil from Valdez, Alaska, to Panama. The vessel would operate under sub-time charter from American Petrofina, Incorporated to Exxon Shipping Company (Exxon)

during the six-month period and would commence Alaskan service on or about May 27 to June 5, 1983.

Archon advised that, to its knowledge, no suitable Jones Act tonnage is available which can provide the full shipping capacity requested by Exxon in the Alaskan oil trade.

Interested parties may inspect the application in the Office of the Secretary, Maritime Administration Room 7300A, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590.

Any person, firm, or corporation who is a "competitor," as defined in § 250.2 of the regulations as set forth in 46 CFR Part 250, published in the **Federal Register** issue of June 29, 1977 (42 FR 33035), and desires to protest such application as it pertains to the carriage of oil in the domestic trade from Alaska to Panama should submit such protest in writing, in triplicate, to the Secretary, Martitime Administration, Washington, D.C. 20590.

Protests must be received within five working days after the date of publication of this Notice in the **Federal Register.** If a protest is received, the applicant will be advised of such protest by telephone or telegram and will be allowed three working days to respond in a manner acceptable to the Maritime Administrator. Within five working days after the due date for the applicant's response, the Maritime Administrator will advise the applicant, as well as those submitting protests, of the action taken, with a concise written explanation of such action. If no protest is received concerning the application, the Maritime Administrator will take such action as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.800 Construction-Differential Subsidy (CDS))

Dated: February 28, 1983.

By Order of the Maritime Administrator.

Georgia P. Stamas,

Acting Secretary.

[FR Doc. 83-5294 Filed 3-2-83; 8:45 am]

BILLING CODE 4910-81-M

[Docket No. S-733]

Participation By Vessels Built With Construction-Differential Subsidy in the Carriage of Crude Oil in the Domestic Trade; Application—New York Tankers, Inc.

Notice is hereby given that by application of February 18, 1983, New York Tankers, Inc. requested permission under section 506 of the Merchant Marine Act, 1936, as amended, and Part 250 of Title 46 of the Code of Federal Regulations, for its chartered vessel, *New York*, to operate for six months in the Alaskan oil trade. The 264,100 deadweight ton *New York*, which was built with construction-differential subsidy (CDS), would carry crude oil from Valdez, Alaska, to Panama and/or the U.S. Gulf/Caribbean for oncarriage only to a U.S. port. The vessel would be under time charter to Pierce Tanker Corporation which would charter the vessel to SPC Shipping, Inc., a subsidiary of SOHIO, during the six-month period and would commence Alaskan service on or about May 9, 1983.

The applicant advised that it has been informed that no other suitable vessels are available to fill the transportation requirements to be met by the *New York*.

Interested parties may inspect the application in the Office of the Secretary, Maritime Administration, Room 7300A, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

Any person, firm, or corporation who is a "competitor," as defined in § 250.2 of the regulations as set forth in 46 CFR Part 250, published in the **Federal Register** issue of June 29, 1977 (42 FR 33035), and desires to protest such application as it pertains to the carriage of oil in the domestic trade from Alaska to Panama, should submit such protest in writing, in triplicate, to the Secretary, Maritime Administration, Washington, D.C. 20590.

Any person, firm, or corporation who desires to protest the application as it pertains to the carriage of oil in the domestic trade from Alaska directly to the U.S. Gulf/Caribbean should submit the protest in writing, in triplicate, to the Secretary, Maritime Administration, Washington, D.C. 20590.

Protests must be received within five working days after the date of publication of this Notice in the **Federal Register.** If a protest is received, the applicant will be advised of such protest by telephone or telegram and will be allowed three working days to respond in a manner acceptable to the Maritime Administrator. Within five working days after the due date for the applicant's response, the Maritime Administrator will advise the applicant, as well as those submitting protests, of the action taken, with a concise written explanation of such action. If no protest is received concerning the application, the Maritime Administrator will take such action as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.800 Construction-Differential Subsidy (CDS))

Dated: February 25, 1983.

By Order of the Maritime Administrator.

Georgia P. Stamas,

Acting Secretary.

[FR Doc. 83-5410 Filed 3-2-83; 8:45 am]

BILLING CODE 4910-81-M

[Docket No. S-732]

United States, Lines, Inc. and Farrell Lines Inc.; Application

Notice is hereby given that, by application dated January 26, 1983, United States Lines, Inc. (USL) and Farrell Lines Incorporated (Farrell) have jointly requested the necessary Maritime Administration approvals for USL or its designee to acquire four 1712 TEU C8 container vessels from Farrell, together with Farrell's service rights on Trade Route (TR) 16 (U.S. Atlantic and Gulf/Australia and New Zealand) and that portion of Farrell's Operating-Differential Subsidy Agreement, Contract No. MA/MSB-352, relating to TR 16. The four vessels to be acquired by USL are the *Austral Pioneer, Austral Puritan, Austral Envoy, and Austral Entente.*

USL intends to transfer the four container vessels acquired from Farrell to TR 5-7-8-9/11 (U.S. Atlantic/Western Europe), substituting them for eight C6 Leader class vessels of approximately 1013 TEU now employed on the transatlantic route. The C8 vessels are expected to be modified and will have a TEU capacity of approximately 2200 TEU after modification. USL is currently authorized to provide a minimum of 52 and a maximum of 105 subsidized sailings per year on the TR 5-7-8-9/11 service. USL is also authorized to provide a maximum of 110 non-subsidized sailings per year on TR 5-7-8-9/11 (minus the number of subsidized sailings actually made). The minimum and maximum sailing limitations on the route will remain the same after deployment of the four C8 vessels. However, due to the significantly greater TEU capacity of these vessels, each complete voyage of a C8 vessel will count as two voyages toward the minimum and maximum sailing limitations, both subsidized and non-subsidized.

With regard to TR 16, any service provided by USL on the route during the first 12 months after the close of the transaction will be on an unsubsidized basis. Thereafter, USL will be entitled to subsidy for such service on TR 16. Any service provided by USL on TR 16,

whether subsidized or unsubsidized, will not exceed Farrell's present maximum sailing limitation on the route.

Interested parties may inspect the foregoing application during normal business hours in the Office of the Secretary, Maritime Subsidy Board, Room 7300–B, Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590. Interested parties who desire to comment on the application may submit their views to the Secretary, Maritime Subsidy Board, in triplicate, on or before 5:00 p.m. on March 11, 1983.

(Catalog of Domestic Assistance Program No. 11.504, Operating-Differential Subsidy (ODS))

Dated: February 28, 1983.

By order of the Maritime Subsidy Board.

Georgia P. Stamas,

Acting Secretary.

[FR Doc. 83-5409 Filed 3-2-83; 8:45 am]

BILLING CODE 4910-81-M

Office of the Secretary

Minority Business Resource Center Advisory Committee; 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 Minority Business Resource Center Advisory Committee to be held March 21, 1983, at 10:00 a.m. until 1:00 p.m. in Room 2230–32 at the Department of Transportation, 400 7th Street, SW, Washington, D.C. 20590. The agenda for the meeting is as follows:

—Report on Program Management Center program
—MBE objectives

Attendance is open to the interested public but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to attend and persons wishing to present oral statements should notify the Minority Business Resource Center not later than the day before the meeting. Information pertaining to the meeting may be obtained from Ms. Betty Chandler, Minority Business Resource Center, 400 7th Street, SW, Washington, D.C. 20590, telephone (202) 426–2852. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, D.C. on February 22, 1983.

Melvin Humphrey,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 83-5184 Filed 3-2-83; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF TREASURY

Public Information Collection Requirements Submitted to OMB for Review

During the period February 18 through February 24, 1983 the Department of Treasury submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 634–2179. Comments regarding these information collections should be addressed to the OMB review listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 309, 1625 "I" Street, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545–0027
Form Number: 927
Title: Proof of Worthlessness of Mineral Rights or Geothermal Deposits

OMB Number: 1545–0511
Form Number: RC MW 3–564
Title: Records Request

OMB Number: 1545–0115
Form Number: 1099–MISC
Title: Statement for Recipients of Miscellaneous Income
OMB Reviewer: Norman Frumkin (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Alcohol, Tobacco and Firearms

OMB Number: 1512–0103
Form Number: ATF F 2035 (5130.14)
Title: Notice of Transfer of Untaxpaid Beer

OMB Number: 1512–0141
Form Number: ATF F 2635 (5620.8)
Title: Claim—Alcohol and Tobacco Taxes

OMB Number: 1512–0138
Form Number: ATF F 2605 (5120.20)
Title: Certification of Tax Determination—Wine

OMB Number: 1512–0045
Form Number: ATF F 27–C (5130.10)
Title: Brewers Notice

OMB Number: 1512–0083
Form Number: ATF F 1582–B (5130.6)
Title: Draw-back on Beer Exported

OMB Number: 1512–0119
Form Number: ATF F 2149/2150 (5200.14)
Title: Notice of Removal of Cigars, Cigarettes, or Cigarette Papers or Tubes

OMB Number: 1512–0035
Form Number: ATF F 5000.21
Title: Referral of Information
OMB Reviewer: Judy McIntosh (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

OMB Number: 1557–0081
Form Number: None
Title: Interagency Call Report
OMB Reviewer: Richard Sheppard (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Floyd Sandlin,

Chief, Information Resources Management Branch.

[FR Doc. 83-5452 Filed 3-2-83; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 43
Thursday, March 3, 1983

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).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:20 p.m. on Friday, February 25, 1983, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider the application of ComBank/Apopka, Apopka, Florida; ComBank/Fairvilla, Fairvilla, Florida; ComBank/Pine Castle, Pine Castle, Florida; ComBank/Union Park, Union Park, Florida; ComBank/Winter Park, Winter Park, Florida; and ComBank/Seminole County, Casselberry, Florida, insured State nonmember banks for consent to merge with Freedom Savings and Loan Association, Tampa, Florida, a State chartered stock savings and loan association, under the charter and title of Freedom Savings and Loan Association.

At that same meeting, the Board of Directors considered a recommendation with respect to the initiation and conduct of cease-and-desist proceedings against insured banks (names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)); and discussed the potential for arranging a purchase of certain assets of and an assumption of the liability to pay deposits made in American City Bank, Los Angeles, California, which was closed by the Acting Superintendent of Banks for the State of California on February 25, 1983.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: February 28, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S–298–83 Filed 3–1–83; 2:57 pm]

BILLING CODE 6714–01–M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 8:45 p.m. on Sunday, February 27, 1983, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in American City Bank, Los Angeles, California, which was closed by the Acting Superintendent of Banks for the State of California on February 25, 1983; (2) accept the bid for the transaction submitted by Central Bank, Oakland, California; (3) approve the application of Cental Bank, Oakland, California, for consent to purchase the assets of and assume the liability to pay deposits made in American City Bank, Los Angeles, California, and to establish the seven offices of American City Bank as branches of Central Bank; (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to effect the purchase and assumption transaction; (5) approve the application of American Asian Bank, San Francisco, California, for consent to purchase the assets of and to assume the liability to pay deposits made in the South Bay office of Central Bank, Oakland, California, and to establish that office as a branch; (6) approve the application of Valley State Bank, Los Angeles (Van Nuys), California, for consent to purchase the assets of and assume the liability to pay deposits made in the San Fernando Valley office of Central Bank, Oakland, California, and to establish that office as a branch; (7) approve the application of Bank of San Pedro, Los Angeles (San Pedro), California, for consent to purchase the assets of and assume the liability to pay deposits made in the Long Beach office of Central Bank, Oakland, California, and to establish that office as a branch; and (8) approve the application of Bank of Los Angeles, Los Angeles, California, for consent to purchase the assets of and assume the liability to pay deposits made in the Beverly Hills office of Central bank, Oakland, California, and to establish that office as a branch.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: February 28, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S–299–83 Filed 3–1–83; 2:57 pm]

BILLING CODE 6714–01–M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2 p.m. on Monday, February 28, 1983, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Applications of Arlington Five Cents Savings Bank, Arlington, Massachusetts, for Federal deposit insurance, and for consent to purchase the assets of and assume the liability to pay deposits made in Tanners National Bank of Woburn, Woburn, Massachusetts, and to establish the three offices of Tanners National Bank of Woburn as branches of Arlington Five Cents Savings Bank.

Application of The Savings & Trust Company of Pennsylvania, Indiana, Pennsylvania, for consent to merge, under its charter and title, with UniBank, Brookville, Pennsylvania, and to establish the four offices of UniBank as branches of the resultant bank.

Recommendation with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities: Edwards, Roberts & Winterstein, Oklahoma City, Oklahoma, in connection with the receivership of Penn Square Bank, National Association, Oklahoma City, Oklahoma.

By the same majority vote, the Board further determined that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: February 28, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-300-83 Filed 3-1-83; 2:57 pm]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, February 28, 1983, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director C. T. Conover (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Notice of Acquisition of Control: Southeast Mississippi Bank, Quitman, Mississippi.

By the same majority vote, the Board further determined that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: February 28, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-301-83 Filed 3-1-83; 2:57 pm]

BILLING CODE 6714-01-M

5

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, March 8, 1983, 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance. Personnel. Litigation. Audits.

* * * * *

DATE AND TIME: Thursday, March 10, 1983, 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C. (fifth floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates for future meetings
Correction and approval of minutes
Advisory opinions:
Draft AO 1983-5: Ronnie G. Flippo, Member of Congress
Draft AO 1983-6: Thomas O. Miller, General Manager, Jacksonville Hilton
Proposed notice of rulemaking for General Election Regulations
Legislative recommendations
Management Report—December 1982, first quarter 1983
Budget execution report for January 1983
Routine Administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, telephone 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[S-302-83 Filed 3-1-83; 3:37 pm]

BILLING CODE 6715-01-M

6

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 48 FR 8390, Monday, February 28, 1983.

PLACE: Board room, sixth floor, 1700 G Street NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Lockwood (202-377-6679).

CHANGES IN THE MEETING: The following items have been added to the open portion of the Bank Board meeting scheduled Thursday, March 3, 1983 at 10 a.m.:

Atlantic Federal Savings and Loan Association ("Atlantic Federal"), Fort Lauderdale, Florida
First American Federal Savings and Loan Association ("First American"), Asheboro, North Carolina
Fortune Federal Savings and Loan Association ("Fortune"), Clearwater, Florida
Glendale Federal Savings and Loan Association ("Glendale"), Glendale, California
Home Savings of America, a Federal Savings and Loan Association ("Home"), Los Angeles, California
Poughkeepsie Savings Bank, FSB ("Poughkeepsie"), Poughkeepsie, New York

[No. 20, February 28, 1983]

[S-293-83 Filed 2-28-83; 5:04 pm]

BILLING CODE 6720-01-M

7

FEDERAL MARITIME COMMISSION:

TIME AND DATE: 9 a.m., March 1983.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTER TO BE CONSIDERED: Portion open to the public:

1. Agreement No. 5700-29: Modification of the New York Freight Bureau to provide for intermodal ratemaking—Request for further hearing.

Portion closed to the public:

1. Docket No. 81-64: Midland Pacific Shipping Company, Inc.—Independent Ocean Freight Forwarder License No. 1299; Leyden Shipping Corporation—Independent Ocean Freight Forwarder License No. 829; Person & Weidhorn, Inc.—Independent Ocean Freight Forwarder License No. 122—Consideration of request for oral argument and possible consideration of the record.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523-5725.

[S-295-83 Filed 3-1-83; 8:45 am]

BILLING CODE 6730-01-M

8

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 48 FR 7848, February 24, 1983.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9 a.m., March 2, 1983.
CHANGE IN THE MEETING: Addition of the following item to the closed session:

1. Request of Coordinated Caribbean Transport, Inc. for Acceptance as a Signatory to Agreement No. 10041 (U.S. Atlantic Peru Trade).

[S-296-83 Filed 3-1-83; 12:32 pm]
BILLING CODE 6730-01-M

9

FEDERAL RESERVE SYSTEM
(Board of Governors)
TIME AND DATE: Approximately 11 a.m., Wednesday, March 9, 1983, following a recess at the conclusion of the open meeting.
PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.
STATUS: Closed.
MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: March 1, 1983.

James McAfee,
Associate Secretary of the Board.

[S-304-83 Filed 3-1-83; 3:47 pm]
BILLING CODE 6210-01-M

10

FEDERAL RESERVE SYSTEM
Board of Governors
TIME AND DATE: 10 a.m., Wednesday, March 9, 1983.
PLACE: Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.
STATUS: Open.
MATTERS TO BE CONSIDERED:

1. Proposal to reduce requirements for reporting of deposits by small depository institutions.
2. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassetts will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassett by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: March 1, 1983.

James McAfee,
Associate Secretary of the Board.

[S-305-83 Filed 3-1-83; 3:49pm]
BILLING CODE 6210-01-M

11

INTERNATIONAL TRADE COMMISSION
TIME AND DATE: 2:30 p.m., Tuesday, March 8, 1983.
PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.
STATUS: Open to the public.
MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Investigation 731-TA-123 (Preliminary) (Certain Flat-Rolled Carbon Steel Products from Brazil)—briefing and vote.
6. Investigation 104-TAA-13 (Rayon Staple Fiber from Sweden)—briefing and vote.
7. Investigations 731-TA-120, -121, and -122 (Certain Tapered Roller Bearings and Parts Thereof from Japan, The Federal Republic of Germany, and Italy)—briefing and vote.
8. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-294-83 Filed 2-28-83; 5:08 pm]
BILLING CODE 7020-02-M

12

SECURITIES AND EXCHANGE COMMISSION
"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (To be published).
STATUS: Closed meetings.
PLACE: 450 5th Street NW., Wasington, D.C.
DATE PREVIOUSLY ANNOUNCED: Friday, February 18, 1983.
CHANGES IN THE MEETING: Additional items. The following additional item will be considered at a closed meeting scheduled for Tuesday, March 1, 1983, at 10 a.m.

Regulatory matter bearing enforcement implication.
Regulatory matter regarding financial institution.

The following additional item will be considered at a closed meeting scheduled for Thursday, March 3, 1983, following the 10 a.m. open meeting.

Consideration of amicus participation.

Chairman Shad and Commissioners Evans, Longstreth and Treadway determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any matters have been added, deleted or postponed, please contact: Bob Zutz at (202) 272-2091.

February 28, 1983.

[S-297-83 Filed 3-1-83; 2:14 pm]
BILLING CODE 8010-01-M

13

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES
Meeting
TIME AND DATE: 8 a.m., March 14, 1983.
PLACE: Uniformed Services University of the Health Sciences, Room D3-001, 4301 Jones Bridge Road, Bethesda, Maryland 20814.
STATUS: Open.
MATTERS TO BE CONSIDERED: 8 o'clock Meeting—Board of Regents:

(1) Approval of Minutes, 17 January 1983; (2) Faculty Appointments; (3) Report—Admissions; (4) Report—Associate Dean for Operations—Budget; (5) Report—President, USUHS—(a) National Institutes of Health Overhead, (b) Certification of Award of Ph.D. Degree, (c) Graduate Education, (d) Continuing Education, (e) Disaster Research Institute, (f) Proposal for Foundation for Advancement of Military Medicine, (g) Response to Lambird Letter, (h) Revision of Sabbatical Policy, (i) Benefits for Non-resident Aliens; (6) Comments by the Chairman of the Board—Committee Structure—Changes in General Procedures and Delegations of the Board of Regents
New Business.

SCHEDULED MEETINGS: May 21, 1983.
CONTACT PERSON FOR MORE INFORMATION: Frank Reynolds, Executive Secretary of the Board 202/695-1052.

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

March 1, 1983.

[S-303-83 Filed 3-1-83; 3:38 pm]
BILLING CODE 3810-01-M

federal register

Thursday
March 3, 1983

Part II

Department of Defense

Defense Acquisition Regulation

DEPARTMENT OF DEFENSE

32 CFR Parts 1-39

[DAC 76-41]

Defense Acquisition Regulation

AGENCY: Defense Department.

ACTION: Final rule.

SUMMARY: This document publishes changes to the Defense Acquisition Regulation contained in the Code of Federal Regulations. The changes are the same as those in Defense Acquisition Circular 76-41. Some of the changes include ratification of irregular procurements; debarment and suspension; deletion of DAR 3-709, Lobbying Costs; increased thresholds for cost or pricing data; reimbursement of fees paid to the SBA under the Surety Bond Guarantee Program; facilities; compensation for personal services; ports of embarkation used in bid evaluations; distribution of contract modifications, change in payment office; reporting of sales of industrial plant equipment to small business; and editorial corrections. Also included in this document are certain blanket deviations, approved by the Military Services and appropriate Defense agencies, covering nonprofit organizations and the Canadian Commercial Corporation with respect to cost and pricing data and certification thereof.

EFFECTIVE DATE: December 27, 1982.

FOR FURTHER INFORMATION CONTACT: J. Brannan, Director, Defense Acquisition Regulatory Council, Room 3C257, Pentagon, Washington, D.C. 20301, telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION:

Background

The Defense Acquisition Regulation (DAR) is codified in Title 32, Parts 1-39, Volumes I, II, and III, of the Code of Federal Regulations (CFR). The August 1, 1981 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1976 edition of the DAR made by Defense Acquisition Circulars 76-1 through 76-27.

The Department of Defense announced the promulgation of the 1979 CFR edition in the **Federal Register** of December 31, 1979 (44 FR 77158), and also announced at that time that subsequent amendments to the DAR would be published in the **Federal Register.**

Defense Acquisition Circular 76-41

This document contains amendments to the Defense Acquisition Regulation in the form of replacement pages which were included in DAC 76-41, issued December 27, 1982. The following is a summary of the amendments:

Ratification of Irregular Procurements. The DAR Council has developed coverage which establishes procedures on ratification of unauthorized commitments.

Debarment and Suspension. DAR Section I, Part 6, has been revised to implement Section 914, Pub. L. 97-86 in consonance with OFPP Policy Letter 82-1. This change completes the revision announced by Item III of DAC 76-36. Essentially, Section 914 prohibits a Military Department from soliciting offers from, awarding contracts to, extending an existing contract with, or approving a subcontract award under the consent-to-subcontract provisions of a prime contract for, any concern or individual known to have been debarred or suspended by another Federal agency, unless a compelling reason exists for such action. The policy letter applies similar restrictions to other executive branch agencies, tasks the General Services Administration with establishing a Government-wide consolidated list of debarred, suspended and ineligible contractors, and prescribes policies and procedures for imposing debarment and suspension. Among other things, the revision specifically defines "contractor," "conviction," and "legal proceedings," broadens the causes for which debarment or suspension may be imposed by an official below the Secretarial level, provides procedural guidance on imposing debarment and suspension, and expressly states that DOD actions will be effective throughout the executive branch.

Deletion of DAR 3-709, Lobbying Costs. In light of recent changes to DAR 15-205.51, Lobbying Costs, it has been determined that coverage in DAR 3-709 is not required; therefore, 3-709 is deleted.

Increased Thresholds for Cost or Pricing Data, Pub. L. 97-86. When Pub. L. 97-86 raised the threshold for cost or pricing data, various sections of the DAR were revised by Departmental instructions. Because of the urgency to effect those changes which had the most immediate impact on Department of Defense procurement, the changes published by Departmental instructions did not represent a complete list of every citation where the threshold figure should be increased. With this DAC, changes are made in Sections III, VII, VIII, and XXIII, consistent with Pub. L. 97-86. It should be noted that those portions of the above-referenced Departmental instructions which deal with the threshold increase are superseded by the replacement pages furnished with this DAC.

Reimbursement of Fees Paid to the SBA Under the Surety Bond Guarantee Program. DAR 7-602.7(e) is modified to provide for reimbursement to small business contractors for guarantee fees paid to the SBA under its Bond Guarantee Assistance Program.

Facilities. DAR 7-1601.8 is revised to include in the Facilities clause the requirement for a fire detection and reporting system, to comply with policy as stated in the Personal Property Traffic Management Regulation (PPTMR), DOD 4500.34R.

Compensation for Personal Services. DAR 15-205.6(f), Deferred Compensation, has been revised to include coverage for Employee Stock Option Plans (ESOPs). Subject to certain conditions, contributions to ESOPs are allowable, except that amounts contributed to an ESOP arising from either: (i) An additional investment tax credit (see 1975 Tax Reduction Act—TRASOPs); or (ii) a payroll based tax credit (see Economic Recovery Act of 1981—PAYSOPs) are unallowable.

Ports of Embarkation Used in Bid Evaluations. DAR 19-213.1(b) is revised to grant authority to the contracting officer to limit ports in connection with shipments of less than 10,000 pounds.

Distribution of Contract Modifications, Change in Payment Office. DAR 20-401(e) is revised to provide that contract modifications be furnished the original or losing payment office as well as the added/new payment office.

Reporting of Sales of Industrial Plant Equipment (IPE) to Small Business. It has been determined that the requirement of reporting of small business data shown in DAR 24-206.1(k) is no longer necessary. As a result, the coverage cited above is deleted.

Editorial Corrections. Corrections are made to Annex II to DAR (ASPR) Supplement No. 3. Corrections to typographical errors, administrative oversight, or other editorial changes are included. (It is noted that Supplements are not included in the CFR.)

Because the Defense Acquisition Regulation concerns agency management, public property, and contracts, it is not necessary to issue proposed rules for public comment. Neither is it necessary to delay the effective date until 30 days after the date of publication of these rules, 5 U.S.C. 533 (a) and (d). The amendments became effective on December 27, 1982.

How to Use Replacement Pages

Reproduced at the end of this document are replacement pages from DAC 76–41. The number at the top of each page (for example, 1:82–A) identifies the page from the Regulation which is being replaced. The number at the bottom of the page is a reference to the last appearing numbered paragraph on that page, or if none shows, on a preceding page. The vertical line in the right margin indicates where the amendment is located.

List of Subjects in 32 CFR Parts 1 Through 39

Government procurement.

Adoption of Amendments

Therefore, the Defense Acquisition Regulation contained in the August 1, 1981 edition of 32 CFR Parts 1–39, Volumes I, II, and III, is amended in the DAR paragraphs indicated by substitution of the replacement pages listed in the table.

DAR paragraph	Replacement pages
Volume I	
1-407	1:83, 1:84
1-600	1:90
1-601	1:90
1-602	1:90, 1:91, 1:92
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1-603.1	1:92
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1-605.4	1:96-B
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1-606.3	1:97-A, 1:97-B, 1:97-C
1-606.4	1:97-C
1-606.5	1:97-C
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3-807.3	3:123, 3:124
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3-808.2	3:143
3-811	3:157-A
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7-104.23	7:59
7-104.29	7:71, 7:72
7-104.41	7:91
7-104.42	7:92, 7:93
7-104.89	7:133
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7-602.7	7:276
7-1601.8	7:427
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7-1909.2	7:460
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8-213.2	8:21
15-205.6	15:19, 15:21-A, 15:21-B
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19-213.1	19:12
20-308.2	20:23
20-401	20:26
23-201.1	23:9
24-206.1 ((k) deleted)	24:24

Changes to DAR Supplement No. 3—not in CFR:

Annex II, page S3:29

M. S. Healy,

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

February 23, 1983.

BILLING CODE 3810-01-M

(xlvii) perform quality assurance;
(xlviii) maintain surveillance of flight operations;
(xlix) assure contractor compliance with applicable safety requirements;
(l) Reserved;
(li) in connection with classified contracts, administer those portions of the Industrial Security Program designated as ACO responsibilities in the ISR and ISM (See Appendix C, Industrial Security Regulation, DoD 5220.22-R, for partial listing of primary responsibilities (also see 1-320).);
(lii) make payments on assigned contracts (but see 20-706);
(liii) assign and perform supporting administration;
(liv) assure timely submission of required reports;
(lv) will advise and assist defense contractors regarding their priorities and allocations responsibilities and assist defense purchasing activities in processing requests for special assistance and for priority ratings for privately-owned capital equipment;
(lvi) process and execute novation and change of name agreements in accordance with Section XXVI, Part 4;
(lvii) when authorized by the purchasing office, negotiate or negotiate and execute supplemental agreements accelerating or decelerating contract delivery schedules;
(lviii) when authorized by the purchasing office, negotiate or negotiate and execute supplemental agreements providing for the de-obligation of unexpended dollar balances considered excess to known contract requirements;
(lix) determine adequacy of prime contractor's Disclosure Statements;
(lx) determine whether prime contractor's Disclosure Statements are in compliance with Section XV and Cost Accounting Standards; except that the Tri-Service Contracting Officer shall have full authority for determinations related to CAS 420 for those contractors with which the Tri-Service Contracting Officer negotiates advance agreements pursuant to 15-205.3 and 15-205.35.
(lxi) determine contractor compliance with Cost Accounting Standards and Disclosure Statements, if applicable; except that the Tri-Service Contracting Officer shall have full authority for determinations related to CAS 420 for those contractors with which the Tri-Service Contracting Officer negotiates advance agreements pursuant to 15-205.3 and 15-205.35.
(lxii) negotiate price adjustments and execute supplemental agreements pursuant to the Cost Accounting Standards clauses in 7-104.83;
(lxiii) perform post award surveillance of contractor progress toward demonstration of Cost/Schedule Control Systems to meet the Cost/Schedule Control Systems Criteria (see 7-104.87), provide assistance in the review and acceptance of contractors' Cost/Schedule Control Systems, and perform post acceptance surveillance to insure continuing operation of contractors' accepted systems;

(lxiv) when authorized by the purchasing office, issue amended shipping instructions and, when necessary, negotiate and execute supplemental agreements incorporating contractor proposals resulting from the amended shipping instructions;
(lxv) when authorized by the purchasing office, issue change orders and negotiate and execute resultant supplemental agreements under contracts for ship construction, conversion and repair;
(lxvi) issue contract modifications requiring the contractor to provide packing, crating and handling services on excess Government property. When the ACO determines it to be in the Government's best interests, he may secure such services from other than the contractor in possession of the property;
(lxvii) approve contractor acquisition/fabrication of special test equipment as provided in paragraph (b) of the clause in 7-104.26;
(lxviii) negotiate and execute contractual documents for settlement of cancellation charges under multi-year contracts;
(lxix) evaluate and monitor contractor's procedures for complying with the Restrictive Markings on Technical Data clause in 7-104.9(p);
(lxx) monitor the contractor's costs as set forth in 20-1000;
(lxxi) issue Notice of Intent to Disallow or Not Recognize Costs (see 15-206);
(lxxii) negotiate forward pricing rate agreements;
(lxxiii) analyze quarterly limitation on payments statements and recover overpayments from the contractor;
(lxxiv) when authorized by the contracting office, negotiate changes to interim billing prices;
(lxxv) when authorized by the contracting office, negotiate and definitize adjustments to contract prices resulting from exercise of an Economic Price Adjustment clause; and
(lxxvi) with the exception of changes in accounting and appropriation data which must be issued by the procuring activity, issue administrative changes (DAR 26-101(a)(i)).

Contracting functions not designated as contract administration functions shall remain the responsibility of the contracting office.

1-407 Ratification of Unauthorized Commitments.

(a) *Authority.* Only contracting officers acting within the scope of their authority (see 1-402) may enter into contracts on behalf of the Government. Subject to the limitations in (d) below, the Head of the Contracting Activity may ratify an unauthorized commitment, *Provided:*
(i) the Government has obtained a benefit resulting from

the unauthorized commitment; (ii) the Head of the Contracting Activity could have granted authority to enter into the commitment at the time it was made and still has the power to do so; and (iii) the resulting contract would otherwise have been proper if made by an authorized contracting officer.

(b) *Policy.*

(1) The authority of (a) above may be delegated in accordance with Departmental procedures, *Provided*, that in no case shall this authority be delegated below the Chief of the Contracting Office.

(2) DoD components shall process unauthorized commitments using the ratification authority set forth herein in lieu of referral of such actions to the General Accounting Office for resolution as *quantum meruit/quantum valebat* claims.

(c) *Definitions.*

(1) *Ratification*, as used in this paragraph 1-407, means the act of approving an unauthorized commitment, by an official who has the authority to do so, for the purpose of paying for supplies or services provided to the Government as a result of the unauthorized commitment.

(2) *Unauthorized commitment*, as used in this paragraph 1-407, means an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into a contract on behalf of the Government.

(d) *Limitations Upon Exercise of Authority.* The authority in (a) above may be exercised only where—

(1) supplies or services have been provided to and accepted by the Government;

(2) the contracting officer determines the price to be fair and reasonable;

(3) the contracting officer recommends payment and legal counsel concurs in the recommendation;

(4) funds are available and were available at the time the unauthorized commitment was made;

(5) administrative settlement of the unauthorized commitment would not involve a claim subject to resolution under the Contract Disputes Act of 1978.

(e) Cases that are not ratifiable under this paragraph 1-407 may be subject to resolution as recommended by the General Accounting Office under its claim procedure (4 GAO 5.1), or as authorized by DAR Section XVII. Legal advice should be obtained in these cases.

propriety, the Chief of the Purchasing Office shall take one or more of the following actions, or other action, as may be appropriate:

(i) if an award has not been made or bid or offer has not been accepted, determine whether the bid or offer should be rejected;

(ii) if an award has been made or bid or offer has been accepted, take action to enforce the covenant in accordance with its terms; i.e., as the best interest of the Government may appear, annul the contract without liability or recover the amount of the fee involved;

(iii) consider the bidder's or offeror's future eligibility as a contractor; or

(iv) consider referring the case to the Department of Justice.

1-508.4 *Reports.* A report shall be made in accordance with 1-608 when the Chief of the Purchasing Office recommends referral to the Department of Justice under 1-508.3(iv).

1-509 Preservation of Records.

(a) Each Department shall preserve as a permanent record for enforcement or report purposes the original executed copy of any representation and completed Standard Form 119, or statement in lieu of form, together with a record of any other pertinent data, including data as to action taken. There shall be no regular retirement of any Standard Form 119 maintained in this record by any procuring activity. However, in any case where the receipt of a new Standard Form 119 makes previously received information obsolete, the obsolete information may be destroyed.

(b) The second copy of Standard Form 119, or statement in lieu of form, shall be filed with and shall remain a part of the contract file.

Part 6—Debarment, Suspension, and Ineligibility

1-600 Scope of Part.

(a) This Part:

(1) prescribes policies and procedures governing the debarment and suspension of contractors for the causes given in 1-605 and 1-606;

(2) provides for the listing of debarred and suspended contractors, and of contractors declared ineligible (see the definition of "ineligible" in 1-602(j)); and

(3) sets forth the treatment to be accorded to contractors listed as debarred or suspended, as well as those listed as having been declared ineligible.

(b) This Part does not govern or otherwise apply to the exclusion of contractors from Federal grant or assistance programs, or prescribe policies or procedures governing declarations of ineligibility.

(c) For the purpose of this Part, the authorized representatives of the Secretaries are:

(1) in the Army, an Assistant Judge Advocate General;

(2) in the Navy, the Chief of Naval Material;

(3) in the Air Force, the Deputy Chief of Staff, Research, Development and Acquisition;

(4) in the Defense Logistics Agency, the General Counsel;

(5) in the National Security Agency, The Director;

(6) in the Defense Communications Agency, the General Counsel;

(7) in the Defense Nuclear Agency, the Director; and

(8) in the Defense Mapping Agency, the General Counsel.

1-601 Policy.

(a) Departments shall solicit bids and proposals from, award contracts to, renew or otherwise extend the duration of an existing contract, and approve or consent to subcontracts, with responsible contractors only. Debarment and suspension are discretionary actions which, taken in accordance with this Part, are appropriate means to effectuate this policy.

(b) The serious nature of debarment and suspension requires that they be imposed only in the public interest, for the Government's protection and not for purposes of punishment. Debarment and suspension shall be imposed to protect the Government's interest, and only for the causes and in accordance with the procedures set forth in this Part.

1-602 Definitions.

(a) *Adequate evidence* means information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) *Affiliates.* Business concerns or individuals are affiliates if, directly or indirectly, (1) either one controls or can control the other; or (2) a third controls or can control both.

(c) *Authorized representative* means an official who has been designated by and authorized to act on behalf of the Secretary concerned for the purposes of this Part (see 1-600(c)), including, but not limited to, acting as a debarring or suspending official.

(d) *Consolidated List of Debarred, Suspended and Ineligible Contractors* means a list compiled, maintained and distributed by the General Services Administration, containing the names of contractors that have been debarred or suspended by a department or agency of the Government, as well as contractors that have been declared ineligible pursuant to other regulatory, or statutory, authority.

(e) *Contractor* means any individual or other legal entity that: (1) submits bids or proposals for or is awarded, or reasonably may be expected to submit bids or proposals for or be awarded, a Government contract or a subcontract under a Government contract; or (2) conducts business with the Government as an agent or representative of another contractor.

(f) *Conviction* means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, and includes a conviction entered upon a plea of nolo contendere.

(g) *Debarment* means action taken by a debarring official under 1-605 to exclude a contractor from Government contracting and Government-approved subcontracting for a reasonable, specified period; a contractor so excluded is *debarred*.

(h) *Debarring Official* means the Secretary concerned or an official authorized to impose debarment.

(i) *Indictment* means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(j) *Ineligible*, as used in this Part, means excluded from Government contracting (and subcontracting, if appropriate) pursuant to statutory, Executive Order, or regulatory authority other than this Part or Subpart 1-1.6 of the Federal Procurement Regulations. For example, contractors excluded pursuant to the Davis-Bacon Act and its related statutes and implementing regulations, the

Service Contract Act, the Equal Employment Opportunity Acts and Executive Orders, the Walsh-Healey Public Contracts Act, the Buy American Act, and the Environmental Protection Acts and Executive Orders are *ineligible*.

(k) *Legal proceedings* mean any civil judicial proceeding to which the Government is a party or any criminal proceeding. The term also includes appeals from such proceedings.

(l) *Preponderance of the evidence* means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(m) *Suspending Official* means the Secretary concerned or an official authorized to impose suspension.

(n) *Suspension* means action taken by a suspending official under 1-605 to disqualify a contractor temporarily from Government contracting and Government-approved subcontracting; a contractor so disqualified is *suspended*.

1-603 Establishment and Maintenance of Records and Lists of Debarred, Suspended and Ineligible Contractors.

1-603.1 *Consolidated List of Debarred, Suspended and Ineligible Contractors.*

(a) The General Services Administration (GSA) is responsible for--

(1) compiling and maintaining a current, consolidated list of contractors debarred, suspended or declared ineligible by Federal agencies or by the General Accounting Office;

(2) revising and distributing the list quarterly and issuing monthly supplements to Federal agencies and the General Accounting Office; and

(3) providing in the list the name and telephone number of the official responsible for maintenance and distribution of the list.

(b) Each Department shall—

(1) notify GSA, within 5 working days after debarring or suspending a contractor or modifying or rescinding such an action, of the information set forth in 1-603.2;

(2) notify GSA of the names and addresses of the organizations within the Department that are to receive the consolidated list and the number of copies to be furnished to each; and

(3) direct inquiries concerning listed contractors to the agency or other Governmental authority that took the action.

1-603.2 *Departmental Records.* At a minimum, each Department shall maintain records relating to each contractor it has debarred or suspended that contain the following information:

(a) the contractor's name and address;

(b) the cause for the action (see 1-605 and 1-606);

(c) the effective date of the action and, in the case of debarments, the termination date for each listing; and

(d) the name and telephone number of the Department's point of contact for the action.

1-604 Effect of Listing.

1-604.1 *General.*

(a) Departments shall not solicit bids or proposals from, award contracts to, renew or otherwise extend the duration of an existing contract with, or approve or consent to subcontracts (when such approval or consent is required) with a contractor known to have been debarred or suspended by any Military Department or Federal agency, unless the Secretary concerned or his authorized representative grants an exception pursuant to (1) and (2) below. For the purpose of this Part, knowledge of the debarment or suspension of a contractor exists if there is actual knowledge of such status, as for example when such status is ascertained from the consolidated list.

(1) Prior to initiating a pre-award survey or any of the procurement actions set forth in (a) above, the consolidated list shall be reviewed. Bids received from any listed contractor in response to an Invitation for Bids shall be opened (see DAR 2-402), entered on the Abstract of Bids (see DAR 2-403), and rejected (see DAR 2-404) unless the Secretary concerned or his authorized representative determines in writing that there is a compelling reason to make an exception. Proposals, quotations or offers received from any listed contractor shall not be evaluated for award or included in the competitive range, and discussions shall not be conducted with such offeror, unless the Secretary concerned or his authorized representative determines in writing that there is a compelling reason to make an exception.

(2) When a Department makes an exception, a notice describing the exception shall be forwarded to the GSA Office of Acquisition Policy. Some examples of circumstances that may constitute a compelling reason include: (i) the property or services to be acquired are available only from the listed contractor; (ii) the urgency of the requirement dictates that the Department deal with the

contractor; (iii) the contractor and the Department have entered an agreement covering the same events which resulted in the listing and the agreement includes a decision by the Department not to debar or suspend the contractor; and (iv) for such other reasons related to the national defense which require continued business dealings with the listed contractor.

(b) Ineligible contractors are excluded from receiving contracts and, if applicable, subcontracts, under the conditions and for the period set forth in the applicable statute, Executive Order, or regulation. Departments shall not solicit bids or proposals from, award contracts to, renew or otherwise extend an existing contract with, or approve or consent to subcontracts (when such approval or consent is required) with a contractor known to be ineligible, for the period of the ineligibility, to the extent the particular procurement action is prohibited by the terms of the declaration.

1-604.2 *Continuation of Current Contracts.* Notwithstanding the listing of a contractor for the causes set forth in this Part, Departments may continue contracts or subcontracts in existence at the time the contractor was debarred or suspended, unless the Secretary concerned or his authorized representative directs otherwise. A decision as to the type of termination action, if any, to be taken should be made only after review by Departmental contracting and technical personnel and by counsel to assure the propriety of the proposed action.

1-604.3 *Restrictions on Subcontracting.* When a debarred or suspended contractor is proposed as a subcontractor for any subcontract subject to Government consent (see 7-104.23 and 7-203.8), consent shall not be given unless the Secretary concerned or his authorized representative states in writing the compelling reasons for the consent.

1-605 Debarment.

1-605.1 *General.*

(a) The debarring official may, in the public interest, debar a contractor for any of the causes contained in 1-605.2, using the procedures in 1-605.3. The existence of a cause for debarment under 1-605.2, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any mitigating factors should be considered in making any debarment decision.

(b) Debarment of a contractor constitutes debarment of all divisions or other organizational elements of the

contractor, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities. Debarment extends to affiliates of the contractor, only if they are (1) specifically named and (2) given written notice of the proposed debarment and an opportunity to respond (see 1-605.3(c)).

(c) A contractor's debarment shall be effective throughout the executive branch of the Government, unless the Secretary of the Military Department or other Federal agency taking the procurement action, or his authorized representative, states in writing the compelling reason for continued business dealings between that Department or agency and the contractor.

(d) If no suspension is in effect under 1-606 at the time debarment is proposed by a Department, bids or proposals shall not be solicited from, contracts shall not be awarded to, existing contracts shall not be renewed or otherwise extended with, and subcontracts shall not be consented to or approved for the contractor by any DoD component pending a debarment decision unless the Secretary concerned or his authorized representative states in writing the compelling reason to do so.

1-605.2 *Causes for Debarment.* The debarring official may debar a contractor for any of the causes listed in (a) through (c) following:

(a) conviction of or civil judgment for—

(1) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract;

(2) violation of Federal or State antitrust statutes relating to the submission of bids or proposals; or

(3) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

(4) commission of any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a Government contractor or subcontractor.

(b) violation of the terms of a Government contract or subcontract so serious as to justify debarment, such as—

(1) willful failure to perform in accordance with the terms of one or more contracts; or

(2) a history of failure to perform, or of unsatisfactory performance of, one or more contracts.

(c) Any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

1-605.3 *Procedures.*

(a) *Investigation and Referral.* Matters appropriate for the debarring official's consideration shall be reported promptly to that official in accordance with the provisions of 1-608.

(b) *Decisionmaking Process.*

(1) Any Departmental procedures that may be established to implement the debarment decisionmaking process of this Part shall be as informal as practicable.

(2) The contractor (and any specifically named affiliates) shall be given an opportunity to submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(3) In actions not based upon a conviction or judgment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the proposed debarment, factfinding shall be conducted. The official conducting the factfinding shall—

(i) afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the Department presents; and

(ii) ensure that a record of the factfinding is transcribed and made available at cost to the contractor upon request, unless the contractor and the Department, by mutual agreement, waive the requirement for a transcript.

(c) *Notice of Proposal to Debar.* The contractor and any specifically named affiliates shall be advised, by certified mail, return receipt requested—

(1) that debarment is being considered;

(2) of the reasons for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based;

(3) of the cause(s) relied upon under 1-605.2 for proposing debarment;

(4) that, within 30 days after the receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts;

(5) that the Department's procedures governing debarment decisionmaking are contained in Section I, Part 6 of the Defense Acquisition Regulation;

(6) of the potential effect of the proposed debarment; and

(7) if no suspension is in effect under 1-606, that bids or proposals shall not be solicited from, contracts shall not be awarded to, existing contracts shall not be renewed or otherwise extended, and subcontracts shall not be consented to or approved for the contractor by any Department pending a debarment decision unless the Secretary concerned or his authorized representative states in writing the compelling reason to do so.

(d) *Debarring Official's Decision.*

(1) In actions based upon a conviction or judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the contractor. If no suspension is in effect under 1-606, the decision shall be made within 30 working days after receipt of any information and argument submitted by the contractor, unless the debarring official extends this period for good cause.

(2) In actions in which factfinding is conducted as to disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.

(i) The debarring official may refer matters involving disputed material facts to another official for findings of fact. The debarring official shall accept any such findings unless he specifically determines them to be arbitrary and capricious or clearly erroneous.

(ii) The debarring official's decision shall be made after the conclusion of factfinding with respect to disputed facts.

(3) In any action in which the proposed debarment is not based upon a conviction or civil judgment, the facts establishing the cause for debarment must be proved by a preponderance of the evidence.

(e) *Notice of Debarring Official's Decision.*

(1) If the debarring official decides to impose debarment, the contractor and any affiliates involved shall be given prompt notice by certified mail, return receipt requested—

(i) referring to the notice of proposed debarment;

(ii) specifying the reasons for debarment;

(iii) stating the period of debarment, including effective dates (see 1-605.4); and

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(iv) advising that the debarment is effective throughout the executive branch of the Government unless the Secretary of the Military Department or other Federal agency taking the procurement action, or his authorized representative, states in writing the compelling reason for continued business dealings between that Department or agency and the contractor.

(2) If debarment is not imposed, the debarring official shall promptly notify the contractor and any affiliates involved of that decision, by certified mail, return receipt requested.

1-605.4 *Period of Debarment.*

(a) Debarments shall be for a period sufficient to protect the Government's interest. Generally, a debarment should not exceed 3 years. If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(b) The debarring official may extend the debarment for an additional period, if that official determines that an extension is necessary to protect the Government's interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of 1-605.3 above shall be followed to extend the debarment.

(c) The debarring official may reduce the period or extent of debarment, upon the contractor's request, supported by documentation, for reasons such as—

(1) newly discovered material evidence;

(2) reversal of the conviction or judgment upon which the debarment was based;

(3) bona fide change in ownership or management; or

(4) elimination of other causes for which the debarment was imposed.

1-605.5 *Scope of Debarment.*

(a) The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(b) The fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of, the contractor's conduct.

(c) The fraudulent, criminal, or other seriously improper conduct of one contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval, or acquiesence of these contractors. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

1-606 Suspension.

1-606.1 *General.*

(a) The suspending official may, in the public interest, suspend a contractor for any of the causes in 1-606.2, using the procedures in 1-606.3.

(b) Suspension is a serious action to be imposed on the basis of adequate evidence, pending the completion of an investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the Government's interest. In assessing the adequacy of the evidence, consideration should be given to how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as contracts, inspection reports, and correspondence.

(c) Suspension constitutes suspension of all divisions or other organizational elements of the contractor, unless the suspension decision is limited by its terms to specific divisions, organizational elements, or commodities. The suspending official may extend the suspension decision to include any affiliates of the contractor if they are (1) specifically named and (2) given written notice of the suspension and an opportunity to respond (see 1-606.3(c)).

(d) A contractor's suspension shall be effective throughout the Executive branch of the Government, unless the Secretary of the Military Department or other Federal agency taking the procurement action, or his authorized representative, states in writing the compelling reason for continued business dealings between that Department or agency and the contractor.

1-606.2 *Causes for Suspension.*

(a) The suspending official may suspend a contractor suspected, upon adequate evidence, of—

(1) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract;

(2) violation of Federal or State antitrust statutes relating to the submission of bids or proposals;

(3) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

(4) commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

(b) Indictment for any of the causes in paragraph (a) above constitutes adequate evidence for suspension.

(c) The suspending official may upon adequate evidence also suspend a contractor for any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

1-606.3 *Procedures.*

(a) *Investigation and Referral.* Matters appropriate for the suspending official's consideration shall be reported promptly to that official in accordance with the provisions of 1-608.

(b) *Decisionmaking Process.*

(1) Any Departmental procedures that may be established to implement the suspension decisionmaking process shall be as informal as practicable. These procedures shall afford the contractor (and any specifically named affiliates) an opportunity, following the imposition of suspension, to submit, in person, in writing or through a representative, information and argument in opposition to the suspension.

(2) In actions not based on an indictment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the suspension and if no determination has been made, on the basis of Department of Justice advice, that substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced, factfinding shall be conducted. The official conducting factfinding shall—

(i) afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses and confront any person the Department presents; and

(ii) ensure that a record of the factfinding is transcribed and made available at cost to the contractor upon request, unless the contractor and the Department, by mutual agreement, waive the requirement for a transcript.

(c) *Notice of Suspension.* When a contractor and any specifically named affiliates are suspended, they shall be immediately advised by certified mail, return receipt requested—

(1) that they have been suspended and that the suspension is based on an indictment or other adequate evidence that the contractor has committed irregularities (i) of a serious nature in business dealings with the Government, or (ii) seriously reflecting on the propriety of further Government dealings with the contractor; any such irregularities shall be described in terms sufficient to place the contractor on notice without disclosing the Government's evidence;

(2) that the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue;

(3) of the cause(s) relied upon under 1-606.2 for imposing suspension;

(4) of the effect of the suspension (see 1-606.1(d));

(5) that, within 30 days after receipt of the notice, the contractor may submit, in person, in writing or through a representative, information and argument in opposition to the suspension, including any additional specific information that raises a genuine dispute over material facts; and

(6) that factfindings to determine disputed material facts will be conducted unless (i) the action is based on an indictment or (ii) a determination is made, on the basis of Department of Justice advice, that the substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(d) *Suspending Official's Decision.*

(1) In actions (i) based on an indictment, (ii) in which the contractor's submission does not raise a genuine dispute over material facts; or (iii) in which factfinding to determine disputed material facts has been denied on the basis of Department of Justice advice, the suspending official's decision shall be based on all the information in the administrative record, including any submission made by the contractor.

(2) In actions in which factfinding is conducted as to disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.

(i) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official shall accept any such findings, unless he specifically determines them to be arbitrary and capricious or clearly erroneous.

(ii) The suspending official's decision shall be made after the conclusion of factfinding with respect to disputed facts.

(3) The suspending official may modify or terminate the suspension or leave it in force (for sample reasons, see 1-605.4(c)). However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other Department or the imposition of debarment by any Department.

(4) Prompt written notice of the suspending official's decision shall be sent to the contractor by certified mail, return receipt requested.

1-606.4 *Period of Suspension.*

(a) Suspension shall be for a temporary period pending the completion of investigation and any ensuing legal proceedings, unless sooner terminated by the suspending official or as provided in this paragraph 1-606.4.

(b) If legal proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General requests its extension, in which case it may be extended for an additional 6 months. In no event may a suspension extend beyond 18 months, unless legal proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of the proposed termination of the suspension at least 30 days before the 12-month period expires to give it an opportunity to request an extension.

1-606.5 *Scope of Suspension.*

The scope of suspension shall be the same as that for debarment (see 1-605.5), except that the procedures of 1-606.3 shall be used in imposing the suspension.

1-607 Interchange of Information. Debarment or suspension of a contractor by one Department can have an adverse impact on the missions of other Departments with which the contractor does business. Accordingly, if it appears that there is the potential for such an adverse impact, the cognizant debarring or suspending official should solicit the comments of those Departments that he believes could be affected before taking action. A Department that believes it could be affected by the proposed action should comment directly to the cognizant debarring or suspending official. If several Departments independently are contemplating a debarment or suspension action against the same contractor, consideration should be given to designating one Department as the lead agency for making the decision.

1-608 Reporting.

1-608.1 *Situations Where Reports Are Required.* A report incorporating the information required by 1-608.2 shall be prepared by the contracting officer when:

(i) a contractor has committed, or is suspected of having committed, any of the acts described in 1-605.2 and 1-606.2;

(ii) a report is required by 1-111.1 (this does not concern reports required to be submitted to the Department of Justice on identical bids under Executive Order 10936, dated 24 April 1961 (see 1-114));

(iii) a report is required by 1-508.4 (contingent fees);

(iv) a report is required by 8-207 (termination settlements);

(v) Buy American Act violations are suspected (see 18-510); or

(vi) a contractor is suspected of attempting to evade the prohibitions or debarments or suspensions imposed under this Regulation by changes of address, multiple addresses, formation of new companies, or by other devices.

1-608.2 *Contents of Reports.* Each report prepared pursuant to 1-608 shall contain the name and telephone number of the individual assigned to the case as the point of contact for the activity making the report, and shall include substantially the following information, where available:

(i) name and address of the contractor;

(ii) names of the principal officers, partners, owners, or managers;

(iii) all known affiliates, subsidiaries, or parent firms, and the nature of the affiliation;

(iv) description of the contract or contracts concerned, including the contract number, and all office identifying numbers or symbols, the amount of each contract, the degree of completion, the amount paid the contractor and the amount still due, and the percentage of work to be completed;
(v) the status of vouchers;
(vi) whether the contract has been assigned pursuant to the Assignment of Claims Act, and if so assigned, the name and address of the assignee and a copy of the assignment;
(vii) whether any other contracts are outstanding with the contractor or any of his affiliates, and if so, the amount of such contracts, whether they are assigned pursuant to the Assignment of Claims Act, and the amounts paid or due on such contracts;
(viii) a complete summary of all pertinent evidence;
(ix) a recommendation as to the continuation of all current contracts with a full explanation of the reason for such recommendation, or if no recommendation is made, the reason therefor;
(x) an estimate of damages, if any, sustained by the Government as a result of the action of the contractor, including an explanation of the method used in making the estimate;
(xi) the comments and recommendations of the contracting officer and of each successive echelon as to (A) whether the contractor should be suspended or debarred, (B) whether any limitations should be applied to such action, and (C) the period of any debarment; and
(xii) as an inclosure, a copy of the contract (or contracts) or pertinent excerpts therefrom, appropriate exhibits, testimony or statements of witnesses, copies of assignments, and other relevant documentation, such as affidavits, copies of investigative reports and certified copies of indictments and judgments.

1-608.3 *Addresses and Copies of Reports.* Reports shall be submitted in three complete copies, including inclosures, to the authorized representatives of the Secretaries concerned (see 1-600(c)), unless otherwise provided by Departmental procedures. Additional copies without inclosures may be required by Departmental procedures for other addressees.

1-609 Procurement Outside United States.

1-609.1 *General.* The foregoing provisions of this Part shall be applied by overseas commanders to procurement outside the United States and its possessions, whenever possible, and as modified by the following provisions, with due consideration to laws or customs of the foreign countries concerned.

1-609.2 *Responsibilities and Area Coverage.* The Commander in Chief, United States European Command (CINCEUR), the Commander in Chief, Pacific (CINCPAC) and the Commander in Chief, Southern Command (USCINCSO), or the Commanders of a component command which each of these unified commanders may designate, shall establish and maintain a consolidated list of offshore suppliers to whom contracts will not be awarded and from whom bids or proposals will not be solicited. The CINCEUR consolidated list will include names in the North Atlantic and Mediterranean areas, including all of Europe, North Africa, and the Middle East. The CINCPAC consolidated list

will include names in the Far East and Pacific Ocean areas, excluding the United States and its possessions. The USCINCSO consolidated list will include names in Central and South America, excluding possessions. All other overseas commanders shall utilize and contribute to such lists as appropriate to their geographical location or areas in which they award contracts. Lists shall not be established or maintained except as provided above.

1-609.3 *Information Contained on Overseas Lists.* The list shall show as a minimum the following information:

(i) names and addresses of those contractors to whom contracts shall not be awarded and from whom bids or proposals shall not be solicited (Names will be set forth alphabetically with appropriate cross reference where more than one name is involved in a single action or where a parent contractor in one country is known to control subsidiaries, branches, or agencies in the same or other countries.);
(ii) basis or authority for each action;
(iii) extent of restrictions imposed;
(iv) termination date for each debarred listing; and
(v) originating activity, component, or agency.

1-609.4 *Maintenance and Distribution of Lists.* The lists shall be kept current by issuance of notices of additions or deletions and by periodic reprinting. Copies of the lists shall be distributed to contracting officers as the unified commanders and their component commanders direct. CINCEUR, CINCPAC, and CINCSOUTH shall exchange lists directly. Copies shall also be furnished the Deputy Under Secretary of Defense (Acquisition Management), OUSD(R&E), the Assistant Secretary of Defense (International Security Affairs), and the authorized representative of the Secretaries (see 1-600(c)).

1-609.5 *Basis of Addition of Contractors to Lists.* In addition to the names of offshore contractors which may be included on the lists as falling into the categories outlined in 1-604, the names of contractors abroad shall be included on the list in the following additional categories:

(i) those who are "designated nationals" under the Foreign Assets Control Regulations;
(ii) those found by the Assistant Secretary of Defense (International Security Affairs) or his authorized representative to have engaged in improper East-West trade activity;
(iii) those found by the Assistant Secretary of Defense (International Security Affairs) or his authorized representative to be ineligible because they do not meet the political or security criteria;
(iv) those found by the United States Diplomatic Mission or a Country Team (consisting of members of the United States Diplomatic Mission in the country or countries in which the contractors are located) to be ineligible because they do not meet the labor-political criteria; and
(v) those who for other causes of a serious and compelling nature are so designated by the unified commander.

1-609.6 *Treatment To Be Accorded Contractors in Debarred or Ineligible Status.* The provisions of 1-604 shall be complied with, if applicable. In addition, contracts shall not be awarded to, nor shall bids or proposals be solicited from or furnished to contractors abroad which come within the categories in 1-609.5. With respect to 1-609.5(i), an exception may be made only by the Secretary of the Treasury. With respect to 1-609.5(ii), (iii), and (iv), an exception may be made by the Assistant Secretary of Defense (International Security Affairs) or his authorized representative.

1-609.7 *Causes and Conditions For Which Unified Commanders May Place Names on the Consolidated List.* CINCEUR, CINCPAC, and CINCSOUTH, or their designated component commanders are authorized to place on the list names of contractors doing business within the areas for which they are responsible, for any of the causes and under the conditions set forth in 1-609.5 and 1-609.6. Overseas commanders or unified commanders overseas other than CINCEUR, CINCPAC, and CINCSOUTH, are similarly authorized to designate contractors in their command areas and shall promptly notify CINCEUR, CINCPAC, or CINCSOUTH, as appropriate, of such action, furnishing the information required by 1-609.3. CINCEUR, CINCPAC, or CINCSOUTH shall add the names to his consolidated list. The listing shall operate to deny contracts and subcontracts (when Government approval is required) to such contractors throughout the Department of Defense. Unified commanders shall be notified of the action based on causes and under conditions set forth in 1-609.5 and 1-609.6 through the "Economic Defense List," transmitted by the Department of Commerce through State Department channels, which contains the names of contractors affected or by direct communication from the Office of the Assistant Secretary of Defense (International Security Affairs).

1-609.8 *Liaison With United States Diplomatic Missions.* The Chief of the United States Diplomatic Mission, or such attache or other officer as he directs, in the country where the contractor concerned is located, shall be notified of actions contemplated under the foregoing paragraphs which may have important political significance. In cases of contemplated action against a branch or subsidiary in one or more countries, the Chief of the United States Diplomatic Mission in each country, including that in which the parent or principal is located, will be notified.

1-610 Use of Lists.

(a) Due to the length of the lists, the numerous revisions, and the distances involved, as well as the infrequent contracting by offices with suppliers outside their respective areas, the United States, CINCEUR, CINCPAC, and CINCSOUTH consolidated lists shall not be distributed to contracting officers outside the area covered by the respective lists. However, no contracts shall be awarded by contracting officers to suppliers without ascertaining that the names of the contractors involved do not appear on the consolidated list for the geographical area in which the contractor is located. All lists shall be held for reference in each of the Departments, and in offices designated by CINCEUR, CINCPAC, and CINCSOUTH, and shall be utilized in accordance with procedures established by them.

(b) When a contracting officer becomes aware that a prospective contractor proposes to furnish products of a concern that has been placed on an overseas list in accordance with 1-609.5(i), (iii), or (v), the matter shall be referred to the authorized representatives of the Secretaries concerned.

1-903.4 *Ability to Meet Certain Minimum Standards.* Except to the extent that a prospective contractor proposes to perform the contract by subcontracting (see 1-906), acceptable evidence of his "ability to obtain" such things as resources, equipment, facilities, and personnel (see 1-903.1(i) and 1-903.2) shall normally be a commitment or explicit arrangement, which will be in existence at the time the contract is to be awarded, for the rental, purchase or other acquisition of such resources, equipment, facilities, or personnel.

1-904 Determinations of Responsibility and Nonresponsibility.

1-904.1 *Requirement.* No purchase shall be made from, and no contract shall be awarded to, any person or firm unless the contracting officer first makes an affirmative determination that the prospective contractor is responsible within the meaning of 1-902. The signing of the contract by the contracting officer constitutes such a determination; therefore, he must assure himself that the applicable requirements of 1-903 are met before signing the contract or order. When a certificate of competency has been issued, the factors covered by the certificate of competency may be accepted by the contracting officer without further inquiry. When a bid or offer on which an award would otherwise be made is rejected because the prospective contractor is found to be nonresponsible, a determination of nonresponsibility shall be made, signed, and placed in the file. The determination of nonresponsibility shall set forth the basis of the determination. In making a determination of responsibility or nonresponsibility for purchase or contract awards of $100,000 and over, performance data should be acquired and considered when the contracting officer deems it necessary. Supporting documents or reports, including any pre-award survey reports (see 1-905.4) and SBA certificate of competency (see 1-705.4), shall be included in the contract file.

1-904.2 *Affiliated Concerns.*

(a) Affiliated concerns (see 2-201(a)B(ii) and (b)(xvii) shall be considered as separate entities in determining whether the one of them which is to perform the contract meets the applicable standards for a responsible prospective contractor (but see 1-701.1 with respect to status as a small business concern).

(b) Notwithstanding the above, the record of performance and integrity of affiliated concern which may adversely affect the responsibility of the prospective contractor shall be considered by the contracting officer when making a determination of responsibility.

1-904.3 *Acquisitions From Concerns in Qualifying Countries.* Awards to concerns in qualifying countries are subject to this Part 9 (see 6-1403.1(b)). A Canadian firm proposed by the Canadian Commercial Corporation (CCC) as its subcontractor generally shall be accepted by the contracting officer under the provisions of 1-906 as the basis for his determination under 1-904.1. In cases where the firm proposed by CCC is so accepted, pre-award survey forms need not be completed. When the CCC proposal is not consistent with other information which may be available to the contracting officer, he shall request from CCC and any other sources whatever additional information or plant surveys he may deem necessary to make the determination of responsibility of sources proposed by CCC. Such additional data may be requested on the pre-award survey forms or on any other forms. Upon request, CCC shall be furnished an explanation of the reasons for rejection of its proposed firm.

1-905 Procedures for Determining Responsibility of Prospective Contractors.

1-905.1 *General.*

(a) Before making a determination of responsibility (see 1-904), the contracting officer shall have in his possession or obtain information sufficient to satisfy himself that a prospective contractor currently meets the minimum standards set forth in 1-903, to the extent that such standards are applicable to a specific procurement.

(b) Maximum practicable use shall be made of currently valid information on file or within the knowledge of personnel in the Department of Defense. Each Department, shall at such level and manner as it deems appropriate, maintain useful records and experience data for the guidance of contracting officers in the placement of new procurement, and shall inform its contracting officers and the other Departments of the means of access thereto. Notwithstanding this direction contract administration offices shall maintain files of information reflecting upon the ability of contractors to perform Government contracts successfully.

(c) Any purchasing office becoming aware of circumstances which, for any reason, casts doubt upon the ability of a contractor to perform contracts successfully, shall immediately advise the cognizant contract administration office. A contract administration office, upon being notified by a purchasing office of unfavorable information affecting a contractor under its cognizance, or upon developing unfavorable information during the course of contract administration activities, shall advise the purchasing offices of the other Departments. When a contract administration office is requested to perform a pre-award survey and it has been notified of the existence of unfavorable information relative to the contractor, it shall obtain the details including full supporting information. Careful and full consideration shall be given such information. If a contract administration office becomes aware of a prospective contract award to a contractor about whom unfavorable information exists and no pre-award survey has been requested, it shall (i) immediately notify the purchasing office concerned, and (ii) secure the details of such unfavorable information as if it were performing a pre-award survey and advise the purchasing office concerned. The purchasing office shall give full consideration to such advice in determining whether an award should be made.

(d) Generally, information necessary to make determinations of responsibility shall be obtained only concerning prospective contractors within range for an award.

1-905.2 *When Information Will Be Obtained.* Generally, information regarding the responsibility of a prospective contractor (including pre-award surveys (see 1-905.4) when deemed necessary) shall be obtained promptly after bid opening or receipt of proposals. However, in negotiated procurements, especially those involving research and development, such information may be obtained before the issuance of requests for proposals. Notwithstanding the foregoing, information regarding financial resources (see 1-903.1(i)) and performance capability (see 1-903.1 (ii)) shall be obtained on as current a basis as feasible with relation to the date of contract award.

1-905.3 *Sources of Information.* Information regarding the responsibility of prospective contractors shall be sought among the following sources:

(i) The Consolidated List of Debarred, Suspended and Ineligible Contractors (see 1-604.1(a)).

1-906 Subcontractor Responsibility.

(a) To the extent that a prospective contractor proposes to perform the contract by subcontracting, determinations of prospective subcontractors' responsibility may be necessary in order to determine the responsibility of the prospective prime contractor. Determinations concerning prospective subcontractor's responsibility shall generally be a function performed by the prospective prime contractor. (But see 1-604.3.) A prospective prime contractor may be required to (i) indicate, in writing, the responsibility of proposed subcontractors, or (ii) show evidence of an acceptable and effective purchasing and subcontracting system which encompasses a method for determining subcontractor capability.

(b) Notwithstanding the general responsibility of a prospective contractor to demonstrate the responsibility of his prospective subcontractors, it may be in the Government's best interest to make a direct determination of the responsibility of one or more prospective subcontractors prior to award of the prime contract. Examples of when this may be particularly suitable are the procurements of (i) medical items, (ii) supplies or services which are so urgently needed that it is necessary for the Government to go beyond the normal process in determining contractor responsibility, and (iii) supplies or services, a substantial portion of which will be subcontracted. The determination of responsibility of a proposed subcontractor by the Government shall be based on the same factors as are applicable in a determination of responsibility of a prospective prime contractor.

1-907 Disclosure of Pre-Award Data. Except as provided in 1-329, data including information obtained from a pre-award survey, accumulated for purposes of determining the responsibility of a prospective contractor shall not be released outside the Government and shall not be made available for inspection by individuals, firms, or trade organizations (see 1-329.3(c)(5)). Such data may be disclosed to, or summarized for, other elements within the Government on their request, and shall be made available to Department of Defense procurement personnel upon request in accordance with 1-905.1. Prior to making a determination of responsibility, such data may be discussed with the prospective contractor as determined necessary by the purchasing office. After an award, the findings of the pre-award survey may be discussed by the contracting officer with the company surveyed as provided in 2-408 and 3-508, or if appropriate, by the head of the contract administration office or his designee.

Part 10—Publicizing Procurement Actions

1-1001 General Policy. It is Department of Defense policy to increase competition by publicizing procurements which offer competitive opportunities for prospective prime contractors or subcontractors, thus assisting small business and labor surplus area concerns and broadening industry participation in Defense procurement programs.

1-1002 Dissemination of Information Relating to Invitations for Bids and Requests for Proposals.

1-1002.1 *Availability of Invitations for Bids and Requests for Proposals at the Contracting Office.* A reasonable number of copies of invitations for bids and requests for proposals, which are required to be publicized in the *Commerce Business Daily*, including specifications and other pertinent information, shall be maintained at the contracting office. Upon request, prospective contractors not initially solicited may be mailed or otherwise provided copies of such invitations for bids or requests for proposals to the extent they are available. However, for any contract to be let by any department, it shall provide to any small business concern upon its request: (i) a copy of bid sets and specifications with respect to such contract; (ii) the name and telephone number of an employee of such department to answer questions with respect to such contract; and (iii) adequate citations to each major Federal law or departmental rule with which such business concern must comply in performing such contract. When a solicitation for proposals has been limited as a result of a determination that only a specified firm or firms possess the capability to meet the requirements of an acquisition, requests for proposals shall be mailed or otherwise provided upon request for firms not solicited, but only after advice has been given to the firm making the request as to the reasons for the limited solicitation and the unlikelihood of any other firm being able to qualify for a contract award under the circumstances; but see 4-106.2. In addition, to the extent that invitations for bids or requests for proposals are available, they shall be provided on a "first-come-first-served" basis, for pick up at the contracting office, to publishers, trade associations, contracting information services, and other members of the public having a legitimate interest therein (for construction, see 18-205(c)); otherwise the contracting office will make copies available to members of the public pursuant to Appendix L. In determining the "reasonable number" of copies to be maintained, the contracting officer shall consider, among other things, the extent of initial solicitation, reproduction costs, the nature of the acquisition, whether access to classified matter is involved, the anticipated requests for copies based upon responses to synopses and other means of publication in previous similar situations, and the fact that publishers and others who disseminate information regarding proposed acquisitions normally

SECTION III

PROCUREMENT BY NEGOTIATION

Part 1—Use of Negotiation

3–100 Scope of Part. This Part deals with the nature and use of negotiation as distinguished from formal advertising, and with limitations upon that use.

3–101 General.

(a) Pursuant to the authority of 10 U.S.C. 2304(a), procurement may be effected by negotiation under any one of the exceptions (1) through (17) set forth in Part 2 of this Section. However, procurement shall be made by formal advertising when such method is feasible and practicable, even though existing conditions and circumstances would otherwise satisfy the requirements of Part 2 of this Section.

(b) When supplies or services are to be procured by negotiation, offers shall be solicited from the maximum number of qualified sources consistent with the nature and requirements of the supplies or services to be procured.

(c) No contract shall be entered into as a result of negotiation unless a business clearance or approval as is prescribed by applicable Departmental procedures has been obtained.

(d) Negotiated procurements shall be on a competitive basis to the maximum practical extent. When a proposed procurement appears to be necessarily noncompetitive, the contracting officer is responsible not only for assuring that competitive procurement is not feasible, but also for acting whenever possible to avoid the need for subsequent noncompetitive procurements. This action should include both examination of the reasons for the procurement being noncompetitive and steps to foster competitive conditions for subsequent procurements, particularly as to the availability of complete and accurate data, reasonableness of delivery requirements (1–305.2(a)), and possible breakout of components for competitive procurement. Except for procurement of electric power or energy, gas (natural or manufactured), water, or other utility services, and procurement of educational services from nonprofit institutions, contracts in excess of $25,000 shall not be negotiated on a noncompetitive basis without prior review at a level higher than the contracting officer to assure compliance with this subparagraph.

3–102 Reserved.

3–103 Records and Reports of Negotiated Contracts. In addition to the records and reports described in 1–308, 3–211.4, and 3–216.4, each Department is required to maintain a record of the total value of all contracts negotiated by it during each fiscal year under each of the circumstances permitting negotiation enumerated in Section III, Part 2. These records, and reports based thereon, are maintained through the Department of Defense Procurement reporting system described in 1–110 and Section XXI, Part 1.

3–104 Aid to Small Business and Minority Concerns in Negotiated Procurements. When negotiation is conducted, consideration shall be given to the size

and minority status of the business concerns, and when subcontracting is consistent with the best interests of the Government, the extensive use of subcontractors shall be a favorable factor. See Section I, Part 7, and 1–322.

3–105 Aid to Labor Surplus Area Concerns in Negotiated Procurements. When negotiation is conducted, consideration shall be given as to whether the prospective supplier is a labor surplus area concern. See Section I, Part 8.

3–106 Presolicitation Notices and Conferences.

3–106.1 *General.* This Part describes a procedure which may be used as a preliminary step to negotiated procurements where the cost of preparing a formal solicitation and response would be substantial for both the Government and industry. This procedure is designed to develop sources for procurement; permit the Government to solicit for preliminary information based on a general description of the supplies or services involved; permit prospective offerors to submit proposals without undue expenditure of effort, time, and money; and to explain complicated specifications and requirements to interested firms. The presolicitation conference shall not be used as a method for prequalification of offerors, and may be used only when approved at a level higher than the contracting officer.

3–106.2 *Presolicitation Procedure.*

(a) When a presolicitation notice is used it shall be prepared by the contracting officer and forwarded to all known potential offerors. It shall at least request an expression of interest in the contemplated procurement and shall designate a time for submission of responses. In cases of complex procurement, it may also request information pertaining to management, engineering, and production capabilities. Each notice shall define as explicitly as possible the information to be furnished by the offeror and shall indicate whether it is contemplated that the presolicitation notice will be followed by a conference and a formal solicitation. Detailed drawings, specifications, or plans shall not normally be included in a presolicitation notice. The presolicitation notice shall be synopsized in accordance with 1–1003. See 1–309 for solicitations for informational or planning purposes; 2–205.6 for pre-invitation notices in formally advertised procurements; and 2–207 and 3–504 for pre-bid and pre-proposal conferences, respectively.

(b) All of those responding to the presolicitation notice shall be advised of the details of any pending presolicitation conference. The presolicitation conference shall be conducted by procurement personnel, and attended by technical and legal personnel as appropriate. All prospective offerors attending the conference shall be furnished copies of the solicitation, unless they decline to participate in the procurement. If it is determined to proceed with the procurement without a conference, those responding to the presolicitation notice shall be furnished a formal solicitation, except those who decline to participate. In addition, a copy of the solicitation shall be furnished to any prospective offeror who requests one (but see 1–604 and 1–609.6).

(c) All prospective contractors shall be furnished identical information in connection with the proposed procurement. Care shall be taken to safeguard any information received in confidence. (See 1–1004.)

3–107 Offeror Response Time. The guidance in 2–202.1 shall be applied to negotiated procurements.

sidered final for the affected contract closed prior to the final overhead settlement. No adjustment shall be made against, or the affect of any quick closeout allowed to impact, other contracts for any over or under recovery disclosed at the time of final overhead rate determination.

Part 8—Price Negotiation Policies and Techniques

3-800 Scope of Part. This Part sets forth the price negotiation policies and techniques applicable to negotiated prime contracts and those subcontracts which are subject to consent by the Government. The principles in this Part apply to negotiation of prices on all types of contracts and to revised prices as well as initial prices.

3-801 Basic Policy.

3-801.1 *General.* It is the policy of the Department of Defense to procure supplies and services from responsible sources at fair and reasonable prices calculated to result in the lowest ultimate overall cost to the Government. Good pricing depends primarily upon the exercise of sound judgment by all personnel concerned with the procurement.

3-801.2 *Responsibility of Contracting Officers.*

(a) Contracting officers, or their authorized representatives acting within the scope of their authority, are the exclusive agents of their respective Departments to enter into and administer contracts on behalf of the Government in accordance with ASPR and Departmental procedures. Each contracting officer is responsible for performing or having performed all administrative actions necessary for effective contracting. The contracting officer shall avail himself of all appropriate organizational tools such as the advice of specialists in the fields of contracting, finance, law, contract audit, packaging, engineering, traffic management, and price analysis.

(b) To the extent services of specialists are utilized in the negotiation of contracts, the contracting officer must coordinate a team of experts, requesting advice from them, evaluating their counsel, and availing himself of their skills. He shall not, however, transfer his own responsibilities to them. Thus, determination of the suitability of the contract price to the Government always remains the responsibility of the contracting officer. For certain acquisitions, it may be necessary to convene a formal "Should Cost" (see 1-337) team of specialists to evaluate the contractor's cost projections, supporting standards, and other in-plant management, operational, and performance practices, on which cost projections are based.

(c) When the contractor insists on a price or demands a profit or fee which the contracting officer considers unreasonable, the contracting officer shall (i) determine the feasibility of developing an alternate source of supply, or (ii) take any other action within his authority. If, after exhausting the above course of action, a satisfactory solution has not been obtained, the contracting officer shall refer the prospective procurement to higher authority. Such referral shall include a complete statement of the attempt made to resolve the matter. With regard to a contractor's refusal to provide cost or pricing data, see 3-807.5.

(d) Pricing based on cost analysis involves, among other things, an appraisal of estimates of costs expected to be incurred in the future. The accounting projection of trends based on cost or pricing data, together with any known changes therein, is only one method of conducting this appraisal, others being:

(i) an engineering appraisal of the need for the estimated labor and material costs and of tooling and facilities, and the reasonableness of scrap and spoilage factors, and

(ii) the preparation of independent estimates by competent technical personnel.

Occasionally, differences of opinion will exist not only on the reasonableness of cost projections but also on the accounting techniques on which they are based. In addition, it is normally not possible to negotiate a pricing result which is in strict accord with all of the opinions of all of the specialists, or even with the Government's pricing objective. Reasonable compromises are normally necessary and this fact must be understood by all members of the team. For all of these reasons audit reports or pricing recommendations by others must be considered to be advisory only. The contracting officer is responsible for the exercise of the requisite judgments and is solely responsible for the final pricing decision. When the contracting officer does not adopt audit or other specialist recommendations that have particular significance on the contract price, comments should be included in the record of the negotiation.

(e) Whenever it becomes apparent to the contracting officer that the negotiations will require the resolution of complex problems which involve items significant in amount, he shall request attendance by audit or other representatives at the negotiation meeting.

(f) Contracting offices shall cover the disposition of each audit report as follows:

(i) For the audit report where the procurement action was finalized, the cognizant auditor shall be notified in accordance with the requirement of 3-811.

(ii) For those situations where the audit report is related to a cancelled or unsuccessful procurement action, the cognizant auditor shall be notified in writing.

3-801.3 *Responsibility of Requirements and Other Logistics Personnel in Purchasing Offices.* Personnel other than the contracting officer, who determine type, quality, quantity, and delivery requirements for items to be purchased, can influence the degree of competition obtainable and exert a material effect upon prices. Failure to determine requirements in sufficient time to allow:

(i) a reasonable period for preparation of requests for proposals;

(ii) preparation of quotations by offerors;

(iii) contract negotiation and preparation; or

(iv) adequate manufacturing lead time,

causes delays in deliveries and uneconomical prices. Requirements issued on an urgent basis or with unrealistic delivery schedules should be avoided since they generally increase prices or restrict desired competition.

3-801.4 *Responsibility of Pricing Personnel in Purchasing Office.*

(a) The contract pricing team available to support the PCO in the review and analysis of pricing proposals includes the price analyst, negotiator, buyer, project engineer, and liaison auditor at the purchasing office.

(b) The price analyst or negotiator supporting the contracting officer may be designated to develop a Government pricing objective prior to the negotiation. This includes the responsibility for determining the extent of advice required from other specialists, requesting, obtaining, and considering such advice, and for consolidating pricing data, including cost and price analyses, historical cost or pricing data, independent government cost estimates, economic analyses and the like. The advice and assistance of the price analyst/negotiator should always be obtained when complex pricing techniques are indicated, including the use of con-

tract types involving the skillful balancing of price, cost and performance incentive arrangements. In many instances, he will be in the best position to conduct the price negotiation.

3-801.5 *Responsibility of Field Pricing Support Personnel.*

(a) *Field Pricing Support.* Field pricing support involves analysis of the contractor's price proposal by any or all of the field technical and professional specialists including, but not limited to, the Plant Rep/ACO; contract auditor; price analyst; quality assurance personnel, engineers; and legal and small business specialists. The Plant Rep/ACO is the team manager for all PCO requests for field pricing support. Therefore the PCO shall send all requests for field pricing support to the cognizant field contract administration activity; generally, the Plant Representative (Plant Rep) for the Services and the Administrative Contracting Officer (ACO) for DCAS(DLA). However, there shall be no constraints on the lines of communication with the PCO/ACO and contract auditor interface.

(b) *Field Pricing Reports on Contract Price Proposals.*

(i) Prior to negotiation of a contract or modification resulting from a proposal in excess of $500,000, when the price is based on cost or pricing data (3-807.3) submitted by the contractor, the contracting officer (PCO or ACO) or authorized representative shall request a field pricing report (which usually includes an audit review by the contract audit activity), unless information available to the contracting officer is considered adequate to determine the reasonableness of the proposed cost or price. Whenever available data is considered adequate for a reasonableness determination, the contracting officer shall document the contract file to reflect the basis of the determination. Information of the type described in (i) through (vi) below, which is often available to the contracting officer from the Plant Rep/ACO or from the Procurement Liaison Auditor (PLA), should be useful in determining the extent of any field pricing support that is needed.

(i) In-house engineering determination of level of effort required in connection with research and development or study contracts.

(ii) Audited cost information from contract awards in process, or recently negotiated contracts.

(iii) Adequately reviewed data on proposed subcontracts items which constitute the major portion of the prime contract price proposal.

(iv) Prices of standard commercial items which constitute the major portion of the prime contract price proposal.

(v) Special forward pricing formulas or rates such as for support items, or forecast overhead rates, prescribed in an existing advance agreement.

(i) actual costs previously incurred by the contractor or offeror;
(ii) either his last prior cost estimate or a series of prior estimates for the same or similar items;
(iii) current cost estimates from other possible sources;
(iv) prior estimates or historical costs of other contractors manufacturing the same or similar items; and
(v) forecasts or planned expenditures.

(4) Forecasting future trends in costs from historical cost experience is of importance, but care must be taken to assure that the effect of past inefficient or uneconomical practices are not projected into the future. An adequate cost analysis must include an evaluation of trends and changes in circumstances, if any, and their effect on future costs.

3-807.3 *Requirement for Cost or Pricing Data.*

(a) When appropriate, the contracting officer shall require the contractor to submit, either actually or by specific identification in writing, cost or pricing data in support of his proposal. The contracting officer also shall require the contractor, in circumstances specified in (b) below, to certify, using the certificate set forth in 3-807.6, that the cost or pricing data submitted are accurate, complete, and current. Cost or pricing data shall not be required merely in anticipation of post-award review of the contract.

(b) Cost or pricing data are required as part of a proposal leading to, and certification is required prior to:

(i) the award of any negotiated contract (except for unpriced actions such as letter contracts) expected to exceed $500,000 in amount;
(ii) the pricing of any modification to any formally advertised or negotiated contract whether or not cost or pricing data were required in connection with the initial pricing of the contract when the modification involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed $500,000. (For example, the requirement applies to a $150,000 modification resulting from a reduction of $350,000 and an increase of $200,000, or as another example, when the modification results in no change in contract price because there is an increase of $1 million and a reduction of $1 million. However, this requirement shall not apply when unrelated and separately priced changes for which cost or pricing data would not be required are included in the same modification for administrative convenience.);
(iii) the award of any negotiated contract not expected to exceed $500,000 in amount, or any contract modification not expected to exceed $500,000 in amount to any contract whether or not cost or pricing data were required in connection with the initial pricing of the contract, provided the contracting officer considers that the circumstances warrant such action;

unless the price negotiated is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. The requirements under (i) and (ii) above may be waived in exceptional cases when the Secretary (or, in the case

of a contract with a foreign government or agency thereof, the Head of a Contracting Activity) authorizes such waiver and states in writing his reasons for such determination. A copy of each waiver shall be sent to the Assistant Deputy Under Secretary of Defense for Acquisition (ADUSD(A)), OUSD(R&E).

(c) Unless required to be submitted on one of the termination forms set forth in 16-700, data will be submitted on the DD Form 633. The requirement for submission of cost or pricing data is met when all cost or pricing data reasonably available to the contractor have been submitted or identified in writing at the time of agreement on price. The data shall be submitted to the contracting officer or his representative. There is a clear distinction to be made between "submitting" cost or pricing data and merely "making available" books, records and other documents without identification. The latter does not constitute submission of cost or pricing data.

(d) Certified cost or pricing data shall not be requested prior to the award of any contract anticipated to be for $25,000 or less (but see 22-1007) and generally should not be requested for modifications in those amounts. There should be relatively few instances where certified cost or pricing data and the inclusion of defective pricing clauses would be justified in awards between $25,000 and $500,000. In most such awards, the administrative costs will outweigh the benefits which might otherwise accrue from receipt of certified cost or pricing data; hence all other means of determining reasonableness of price should be utilized. When less than complete cost analysis (*e.g.*, analysis of only specific factors) will provide a reasonable pricing result on awards under $500,000 without the submission of complete cost or pricing data, the contracting officer shall request only that data which he considers adequate to support the limited extent of the cost analysis required and he will not require certification.

(e) When it is anticipated from the outset that there will be adequate price competition, cost or pricing data shall not be requested regardless of the dollar amount involved. If, after cost or pricing data were initially requested and received, it is determined that adequate price competition does exist, the data need not be certified. As a general rule, cost or pricing data should not be requested when it has been determined that proposed prices are, or are based on, established catalog or market prices of commercial items sold in substantial quantities to the general public or are prices set by law or regulation. When, however, despite the existence of an established catalog or market price of commercial items sold in substantial quantities to the general public, the contracting officer finds that the price is not reasonable and supports such finding by an enumeration of the facts upon which it is based, cost or pricing data may be requested if necessary to establish a reasonable price; *provided*, that such finding is approved by the Chief of the Purchasing Office.

(f) When economic price adjustment provisions are included in competitive procurements, see 3-404.3(e).

3-807.4 *Subcontractor Cost or Pricing Data.*

(a) Any contractor who is required to submit and certify cost or pricing data shall be required to submit accurate, complete and current cost or pricing data from prospective subcontractors in support of each subcontract cost estimate included in the contractor's submission. This submission shall be required whenever the contracting officer considers such subcontractor data necessary for pricing the prime contract, or, in any event, whenever such subcontractor cost estimate is either (i) $1,000,000 or more, or (ii) both more than $500,000 and more than 10 percent of the prime contractor's proposed contract price. This submission is not required if the contractor demonstrates to the satisfaction of the contracting officer that a prospective subcontract will be based on adequate price competition, or that a prospective subcontract estimate is based on an established catalog or market price of a commercial item sold in substantial quantities to the general public, or a price set by law or regulation. Except for subcontracts within (i) or (ii) above, any such requirement for subcontractor cost or pricing data may be limited by the contracting officer to particular subcontract items or classes of items. However, in the case of subcontracts of $500,000 or less, any such requirement shall be subject to the limitations for contracts of $500,000 or less as set forth in 3-807.3(d). Submission of subcontractor cost or pricing data from more than one subcontractor for each subcontract item shall not ordinarily be required, provided that the contractor's subcontract cost estimate is based upon the cost or pricing data of the subcontractor who is most likely to get the subcontract. Notwithstanding the foregoing, the contractor shall submit other data pertaining to subcontract costs, including other subcontractor quotations.

(b) Prospective subcontractor cost or pricing data shall be accurate, complete and current as of the same date specified in the contractor's certificate. The contractor shall be responsible for updating a prospective subcontractor's data to the above date from the time of original submission by the subcontractor. Failure by the contractor to submit subcontract cost or pricing data may be cause for disqualification of the contractor from further consideration for award of the proposed contract. When the contractor has generally complied with such subcontract cost or pricing data requirements, his failure to do so for particular subcontracts in exceptional cases may be excused by the contracting officer. Such excuse, except when limited to an allowance of additional time, shall be approved by the Chief of the Purchasing Office. For each prospective subcontract so excused, the contracting officer shall either (i) allow additional time for submission of subcontract cost or pricing data up to the date of agreement upon the prime contract price; (ii) withdraw the requirement for subcontract cost or pricing data if he deems that cost or pricing data submitted by the contractor is adequate to support the subcontract estimate; (iii) reserve such subcontract item for future pricing; (iv) consider another contract type; or (v) make other arrangements to provide an adequate basis for agreement upon contract price. Also, for each subcontract so excused, the contractor shall remain obligated to obtain subcontractor cost or pricing data.

(c) These requirements, modified as appropriate to relate to a higher tier subcontractor rather than the prime contractor, shall apply to lower tier subcontracts under subcontracts for which subcontractor cost or pricing data are required.

(d) The contractor shall be required to support subcontract cost estimates below the minimum set forth in (a)(i) and (ii) above, by any data or information needed to establish a reasonable contract price.

(e) Any contractor who has been required to submit and certify cost or pricing data also shall be required to obtain cost or pricing data from his subcontractors under the circumstances set forth in the appropriate clause in 7-104.42, notwithstanding any prior submission from subcontractors. The requirements for submission of subcontractor cost or pricing data for subcontracts may be waived in exceptional cases when the Secretary (or his designee in cases when the subcontract is with a foreign government or agency thereof or is for less than $1 million) authorizes such waiver and states in writing his reasons for such determinations. A copy of each waiver shall be sent to the Assistant Deputy Under Secretary of Defense for Acquisition, Office of the Under Secretary of Defense, Research and Engineering.

(f) Cost or pricing data furnished by a subcontractor or a prospective subcontractor must be submitted to the prime contractor or higher-tier subcontractor. It is the responsibility of the prime contractor and higher-tier subcontractor to review and evaluate the subcontract proposal and supporting cost or pricing data and furnish the results of such review and evaluation to the Government as part of their cost or pricing data submission.

3-807.5 *Refusal to Provide Cost or Pricing Data.* If cost or pricing data from the contractor are required to permit adequate analysis of the contractor's proposal and the contractor has refused to provide such data, the contracting officer shall use those means available to him in attempting to secure such data. If the contractor persists in his refusal to provide necessary data, the contracting officer shall withhold making the award or price adjustment. In such event, he shall refer the procurement action to higher echelons of the Department. Such referral shall include a complete statement of the attempts made to resolve the matter, including (i) steps taken to secure essential cost or pricing data, (ii) efforts to secure the contractor's cooperation in the establishment of a satisfactory business relationship, (iii) any assurances offered, such as agreements to adequately safeguard information furnished, and (iv) a statement concerning the practicability of obtaining the supplies or services from another source.

3-807.6 *Certificate of Current Cost or Pricing Data.*

(a) When a Certificate of Current Cost or Pricing Data is required, the certificate set forth below shall be included in the contract file along with the memorandum of the negotiation, see 3-811. The contractor shall be required to submit only one certificate which shall be submitted as soon as practicable after agreement is reached on the contract or modification price.

CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, cost or pricing data as defined in ASPR 3-807.1(a)(1) submitted, either actually or by specific identification in writing (see ASPR 3-807.3(a)(1)) to the Contracting Officer or his representative in support of _____ * are accurate, complete, and current as of (day) (month) (year) **.

This certification includes the cost or pricing data supporting any advance agreement(s) and forward pricing rate agreements between

the offeror and the Government which are part of the proposal.

Firm _____
Name _____
Title _____
Date of Execution _____ ***

(End of certificate)

* Describe the proposal, quotation, request for price adjustment or other submission involved, giving appropriate identifying number (*e.g.*, RFP No. . . . . .)

** The effective date shall be the date when price negotiations were concluded and the contract price was agreed to. The responsibility of the contractor is not limited by the personal knowledge of the contractor's negotiator if the contractor had information reasonably available at the time of agreement, showing that the negotiated price is not based on accurate, complete and current data.

*** This date should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

(b) Because the certificate pertains to "cost or pricing data," it does not make representations as to the accuracy of the contractor's judgment on the estimated portion of future costs or projections. It does, however, apply to the data upon which the contractor's judgment is based. This distinction between fact and judgment should be clearly understood.

(c) Whenever a Certificate of Current Cost or Pricing Data is required, the applicable clause in 7-104.29 shall be included in the contract.

(d) Although Cost or Pricing Data were requested in the solicitation, a Certificate of Current Cost or Pricing Data shall not be requested in connection with the award of any contract of any dollar value where the price negotiated is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(e) The exercise of an option at the price established in the initial negotiation in which certified cost or pricing data were used, does not require re-certification.

(f) Negotiated final pricing actions such as total final price agreements under fixed price incentive and redeterminable contracts, final overhead rate settlements under cost type contracts, or partial termination settlement agreements under any type of contract are contract modifications for which certified cost or pricing data are required. A certificate shall be submitted as soon as practicable after agreement is reached on the amount of the modification. That certificate is required when the amount of the total final price agreement exceeds $500,000 or partial termination settlement agreement plus the estimate to complete exceeds $500,000.

(g) A Certificate of Current Cost or Pricing Data is not a substitute for examination and analysis of the contractor's proposal.

(h) Data supplied during negotiation of an advance agreement and FPRA's (see 15-107 and 3-807.8) will not be certified at the time of agreement. When an advance agreement is used in partial support of a later contractual action which does require certification, the price proposal certificate will cover both the data

originally supplied to support the advance agreement referenced on the DD Form 633 and all data required to update the specific price proposal data to the time of agreement on the contract price.

3-807.7 *Adequate Price Competition, Catalog or Market Prices and Prices Set by Law or Regulation.* For the purpose of paragraphs 3-807 and 15-205.22(e), the terms "adequate price competition", "established catalog or market prices of commercial items sold in substantial quantities to the general public", and "prices set by law or regulations" shall be construed in accordance with the following general guidelines.

(a) *Adequate Price Competition.*

(1) Price competition exists if offers are solicited and (i) at least two responsible offerors, (ii) who can satisfy the requirements, (iii) independently contend for a contract to be awarded to the responsive and responsible offeror submitting the lowest evaluated price, (iv) by submitting priced offers responsive to the expressed requirements of the solicitation. Whether there is price competition for a given procurement is a matter of judgment to be based on evaluation of whether each of the foregoing conditions is satisfied. Generally, in making this judgment, the smaller the number of offerors, the greater the need for close evaluation.

(2) If the foregoing conditions (i) through (iv) are met, price competition shall be presumed to be "adequate" unless it is determined that:

(i) the solicitation was made under conditions that unreasonably deny to one or more known and qualified offerors an opportunity to compete;

(ii) the low competitor has such a determinative advantage over the other competitors that he is practically immune to the stimulus of competition in proposing a price (*e.g.*, a determinative advantage because substantial costs, such as start up or other nonrecurring expenses, have already been absorbed in connection with previous sales, thus placing the competitor in a preferential position); or

(iii) the lowest final price is not reasonable and this finding is supported by an enumeration of the facts upon which it is based; *provided*, that such finding is approved at a level above the contracting officer.

(3) A price is "based on" adequate price competition if it results directly from such competition or, if price analysis (not cost analysis) shows clearly that the price is reasonable in comparison with current or recent prices for the same or substantially the same items procured in comparable quantities under contracts awarded as a result of adequate price competition (*e.g.*, (i) exercise of an option in a contract for which there was adequate price competition if the option price has been determined to be reasonable in accordance with 1-1505(d) and (ii) an item normally is procured competitively but in a particular situation only one offer is solicited or received, and the price clearly is reasonable in comparison with recent purchases of comparable quantities for which there was adequate price competition).

(4) Prices based on adequate price competition exempt offerors from the requirements for submission and certification of cost or pricing data. (*But see 3-1200 for CAS requirements.*)

(i) Architect-engineering contracts;
(ii) Management contracts for operation and/or maintenance of Government facilities;
(iii) Construction contracts;
(iv) Contracts primarily requiring delivery of material supplied by subcontractors;
(v) Termination settlements;
(vi) Cost-plus-award-fee contracts;
(vii) Contracts not expected to exceed $500,000; and
(viii) Unusual pricing situations where the weighted guidelines method has been determined to be unsuitable. Such exceptions shall be justified in writing and shall be authorized by the head of the contracting activity.

(2) If the contracting officer makes a written determination that the pricing situation meets any of the circumstances set forth above and that application of the manufacturing weighted guidelines will result in an inequitable profit objective, other methods for establishing the profit objective may be used. These methods shall be supported in a manner similar to that used in the weighted guidelines (profit factor breakdown and documentation of profit objectives); however, investment or other factors that would not be applicable to the contract shall be excluded from the profit objective determination. It is intended that the methods will result in profit objectives for noncapital intensive contracts that are below those generally developed for capital intensive contracts.

(c) *Application to Subcontracts.* The prime contractor may use the weighted guidelines or a structured approach that discriminates among different levels of investment if the acquisition would be subject to the weighted guidelines under a prime contract. (For applicability see 3-1300.1(c).) If the acquisition falls into one of the exceptions to the weighted guidelines in 3-808.2(b)(1), the prime contractor may use another method to establish profit objectives. In the absence of a structured approach that discriminates among different levels of investment, similar to the weighted guidelines, the profit objective will be reduced by the amount of facilities capital cost of money allowed in accordance with 15-205.50.

(d) *Limitation.* In the event this or any other method would result in establishing a fee objective in violation of limitations established by statute or this regulation, the maximum fee objective shall be the percentage allowed pursuant to such limitations. (See 3-405.) No local administrative ceilings on profit shall be permitted.

3-808.3 *Profit Objective.*

(a) A profit objective is that part of the estimated contract price objective or value which, in the judgment of the contracting officer, is appropriate for the acquisition being considered, covering the profit or fee element of the price objective. This objective should realistically reflect the total overall task to be performed and the requirements placed on the contractor. Prior to the negotiation of a contract, change order, or contract modification where cost analysis is undertaken, the negotiator shall develop a profit objective. The weighted

guidelines method, if applicable, shall be used for developing this profit objective. If a change or modification is of a relatively small dollar amount and is basically the same type of work as required in the basic contract, the application of the weighted guidelines method will generally result in a profit objective similar to the profit objective in the basic contract and, therefore, this basic rate may be applied to the contract change or modification. In cases where the change or modification calls for substantially different work, then the basic contract profit and the contractor's effort may be radically changed and a detailed analysis is necessary. Also, if the dollar amount of the change or contract modification is very significant in comparison to the contract dollar amount, a detailed analysis shall be made.

(b) Development of a profit objective should not begin until after a thorough—

(i) review of proposed contract work;
(ii) review of all available knowledge regarding the contractor, pursuant to Section I, Part 9, including capability reports, audit data, preaward survey reports and financial statements, as appropriate; and
(iii) analysis of the contractor's cost estimate and comparison with the Government's estimate or projection of cost.

3-808.4 *Profit Factors.*

(a) The following factors shall be considered in all cases in which profit is to be specifically negotiated. The weight ranges listed after each factor shall be used in all instances where the weighted guidelines method is used.

(iii) a contractor's or subcontractor's failure to comply with applicable Cost Accounting Standards or to follow consistently his disclosed cost accounting practices has resulted, or may result in, any increased cost paid by the Government; and

(iv) a contractor's or subcontractor's proposed price changes, submitted as a result of changes made to previously disclosed or established cost accounting practices, are fair and reasonable.

(6) Procedures for Identifying Contractors' Unallowable sts.

(i) The establishment, maintenance, and consistent use of procedures for identifying and segregating unallowable costs, which will assure compliance with CAS 405 and 15-201.6, will benefit both the Government and contractors. Such procedures may vary between plants or divisions of a contractor due to size, mix of business and complexity of organization. Some of the advantages of sound procedures are that:

(A) a greater degree of confidence can be placed on the accuracy and reliability of contractors' proposals, billings and claims;

(B) they expedite the negotiation process; and

(C) they may reduce the scope of reviews performed by audit and other technical and procurement personnel.

(ii) The responsible Federal Contract Audit organization shall review contractors' procedures and practices in conjunction with other contract audit activities. Deficiencies shall be reported to the cognizant ACO, and, as appropriate, PCOs having substantial business with the contractor. Among the matters to be considered in determining the adequacy of a contractor's procedures are its policy, practices and techniques for:

(A) assignment of responsibilities within the contractor's organization for reviewing and approving claims against the Government;

(B) identification of unallowable costs (expressly unallowable, mutually agreed to be unallowable or specifically designated as unallowable by written decision of the contracting officer) together with the individual employees incurring such costs;

(C) identification and computation of directly associated costs;

(D) assurance that unallowable and directly associated costs are not included in estimated costs proposed, or incurred amounts claimed by the contractor;

(E) coordination and communication between the elements of the contractor's organization that prepare proposals and claims and those responsible for identifying unallowable and directly associated costs; and

(F) assuring the adequacy of the documentation maintained by the contractor identifying the unallowable costs together with directly associated costs.

(iii) Documentation in support of the contractor's procedures shall be made available to authorized Government personnel. (See 3-801.5(b)(7).)

3-810 Exchange of Information. In appropriate cases it is desirable to exchange and coordinate specialized information regarding a contractor between Departments, bureaus, technical services, and other procuring activities since it will provide uniformity of treatment of major issues and it may aid in the resolution of particularly difficult or controversial issues.

3-811 Record of Price Negotiation.

(a) At the conclusion of each negotiation of an initial or a revised price, the contracting officer shall promptly prepare or cause to be prepared, a memorandum, setting forth the principal elements of the price negotiation, for inclusion in the contract file and for the use of any reviewing authorities. The memorandum shall be in sufficient detail to reflect the most significant considerations controlling the establishment of the initial or revised price, including the current status of the contractor's procurement system. The memorandum should include an explanation of why cost or pricing data was, or was not, required (see 3-807) and, if it was not required in the case of any price negotiation in excess of $500,000, a statement of the basis for determining that the price resulted from or was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. If cost or pricing data was submitted and a certificate of cost or pricing data was required (3-807.6), the memorandum shall reflect the extent to which reliance was not placed upon the factual cost or pricing data submitted and the extent to which this data was not used by the contracting officer in determining his total price objective and in negotiating the final price. The memorandum shall also reflect the extent to which the contracting officer recognized in the negotiation that any cost or pricing data submitted by the contractor was inaccurate, incomplete, or non-current; the action taken by the contracting officer and the contractor as a result; and the effect, if any, of such defective data on the

7-103.2 *Changes.*

CHANGES (1958 JAN)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this contract, in any one or more of the following: (i) Drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the Government in accordance therewith; (ii) method of shipment or packing; and (iii) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change, *provided*, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Where the cost of property made obsolete or excess as result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

In the foregoing clause, the period of "30 days" within which any claim for adjustment must be asserted may be varied in accordance with Departmental procedures. In accordance with 10 U.S.C. 2306(f), prior to the pricing of any change order that is expected to exceed $500,000, except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the contracting officer shall require the contractor to furnish a Certificate of Current Cost or Pricing Data (see 3-807.6) and shall assure that the contract includes or is modified to include a defective pricing data clause (see 7-104.29) and the audit clause required by 7-104.41.

7-103.3 *Extras.*

EXTRAS (1949 JUL)

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the Contracting Officer.

(End of clause)

7-103.4 *Variation in Quantity.*

(a) Insert the following clause.

VARIATION IN QUANTITY (1949 JUL)

No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract.

(End of clause)

(b) In accordance with 1-325, insert the following clause.

EXTENT OF QUANTITY VARIATION (1965 APR)

The permissible variation under the clause of the General Provisions entitled "Variation in Quantity" shall be limited to:

Increase (Insert:_____% or None)

Decrease (Insert:_____% or None)

This increase or decrease shall apply to_____*

(End of clause)

* Insert in the blank the designation(s) to which the percentages apply, such as: (1) the total contract quantity; (2) item 1 only; (3) each quantity specified in the delivery schedule of the "Time of Delivery" clause; (4) the total item quantity for each destination; (5) the total quantity of each item without regard to destination.

7-103.5 *Inspection.*

(a) The following clause shall be inserted in all fixed-price supply contracts, except as provided in (b) and (c) below.

INSPECTION (1982 NOV)

(a) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the supplies hereunder and shall tender to the Government, for acceptance, only supplies that have been inspected in accordance with said inspection system and have been found by the Contractor to be in conformity with contract requirements. As part of such system, the Contractor shall prepare records evidencing all inspections made pursuant thereto and the outcome thereof. Such records shall be kept complete and available to the Government during the performance of this contract and for such longer period as may be specified elsewhere in this contract. The Government may perform such reviews and evaluations as are reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract work. The right of review, whether exercised or not, does not relieve the Contractor of the obligations under the contract.

(b) All supplies (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and test by the Government, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance. However, the Government assumes no contract obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in this contract.

(c) In case any supplies or lots of supplies are defective in material or workmanship or otherwise not in conformity with the requirements of this contract, the Government shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed or, if permitted or required by the Contracting Officer, corrected in place by and at the expense of the Contractor promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If the Contractor fails promptly to remove such supplies or lots of supplies which are required to be removed or promptly to replace or correct such supplies or lots of supplies, the Government either (i) may by contract or otherwise replace or correct such supplies and charge to the Contractor the cost occasioned the Government thereby; or (ii) may terminate this contract for default as provided in the clause of this contract entitled "Default." Unless the Contractor corrects or replaces such supplies within the delivery schedule, the Contracting Officer may require the delivery of such supplies at a reduction in price which is equitable under the circumstances. Failure to agree to such reduction of price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes".

EQUAL OPPORTUNITY PRE-AWARD CLEARANCE OF SUBCONTRACTS (1971 OCT)

Notwithstanding the clause of this contract entitled "Subcontracts," the Contractor shall not enter into a first-tier subcontract for an estimated or actual amount of $1,000,000 or more without obtaining in writing from the Contracting Officer a clearance that the proposed subcontractor is in compliance with equal opportunity requirements and therefore is eligible for award.

(End of clause)

7-104.23 *Subcontracts.*

(a) The following clause shall be inserted in all fixed-price type contracts, in accordance with 23-201.

SUBCONTRACTS (1982 DEC)

(The provisions of this clause do not apply to firm fixed-price contracts and fixed price contracts with economic price adjustment provisions. However, the clause does apply to unpriced modifications under such contracts.)

(a) As used in this clause, the term "subcontract" includes but is not limited to purchase orders, changes and/or modifications thereto.

(b) The Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract if the Contractor's procurement system has not been approved by the Contracting Officer and if the subcontract:

(i) is to be a cost-reimbursement, time and materials, or labor-hour contract which it is estimated will involve an amount in excess of twenty-five thousand dollars ($25,000) including any fee;

(ii) is proposed to exceed one hundred thousand dollars ($100,000); or

(iii) is one of a number of subcontracts, under this contract, with a single subcontractor for the same or related supplies or services which, in the aggregate, are expected to exceed one hundred thousand dollars ($100,000).

(c) The advance notification required by paragraph (b) above shall include:

(i) a description of the supplies or services to be called for by the subcontract;

(ii) identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the competition obtained;

(iii) the proposed subcontract price, together with the Contractor's cost or price analysis thereof;

(iv) the subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, when such data and certificates are required by other provisions of this contract to be obtained from the subcontractor;

(v) identification of the type of subcontract to be used;

(vi) a memorandum of negotiation which sets forth the principal elements of the subcontract price negotiations. A copy of this memorandum shall be retained in the contractor's file for the use of Government reviewing authorities. The memorandum shall be in sufficient detail to reflect the most significant considerations controlling the establishment of initial or revised prices. The memorandum should include an explanation of why cost or pricing data was, or was not required, and, if it was not required in the case of any price negotiation in excess of $500,000, a statement of the basis for determining that the price resulted from or was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. If cost or pricing data was submitted and a certificate of cost or pricing data was required, the memorandum shall reflect the extent to which reliance was not placed upon the factual cost or pricing data submitted and the extent to which this data was not used by the contractor in determining the total price objective and in negotiating the final price. The memorandum shall also reflect the extent to which it was recognized in the negotiation that any cost or pricing data submitted by the subcontractor was not accurate, complete, or current; the action taken by the contractor and the subcontractor as a result; and the effect, if any, of such defective data on the total price negotiated. Where the total price negotiated differs significantly from the contractor's total price objective, the memorandum shall explain this difference;

(vii) when incentives are used, the memorandum of negotiation shall contain an explanation of the incentive fee profit plan identifying each critical performance element, management decisions used to quantify each incentive element, reasons for incentives on particular performance characteristics, and a brief summary of trade-off possibilities considered as to cost, performance, and time; and

(viii) the Subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract to be obtained from the subcontractor.

(d) The Contractor shall not enter into any subcontract for which advance notification to the Contracting Officer is required by this clause, without the prior written consent of the Contracting Officer, *provided* that the Contracting Officer, in his discretion, may ratify in writing any subcontract. Such ratification shall constitute the consent of the Contracting Officer required by this paragraph.

(e) Neither consent by the Contracting Officer to any subcontract or any provisions thereof nor approval of the Contractor's procurement system shall be construed to be a determination; (i) of the acceptability of any subcontract terms or condition, (ii) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (iii) to relieve the Contractor of any responsibility for performing this contract; unless such approval or consent specifically provides otherwise.

(f) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(g) The Government reserves the right to perform contractor procurement system reviews as set forth in ASPR Section XXIII.

(End of clause)

(b) Insert the following additional subparagraph to the clause in (a) above in accordance with 23-201.1(b)(iii).

(h) Notwithstanding approval of the Contractor's procurement system, the Contractor shall not enter into certain subcontracts or classes of subcontracts set forth elsewhere in this contract without the prior written consent of the Contracting Officer. With respect to subcontracts so identified, the advance notification requirements of paragraph (b) above shall be fully applicable even though the Contractor's system has been approved and those subcontracts are within the scope of the approval.

7-104.24 *Government Property.*

(a) *Government Property Clause.* Except as provided in (b) through (d) and (f) below, insert the following clause when a Department is to furnish to the contractor, or the contractor is to acquire Government property.

GOVERNMENT PROPERTY (FIXED PRICE) (1968 SEP)

(a) *Government-Furnished Property.* The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described as Government-furnished property in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of

7-104.28 *Quality Program.* In accordance with 14-304, insert the following clause.

QUALITY PROGRAM (1967 AUG)

The Contractor shall provide and maintain a quality program acceptable to the Government for supplies and services covered by this contract. The quality program shall be in accordance with the edition of Military Specification MIL-Q-9858 in effect on the date of this contract.

(End of clause)

7-104.29 *Price Reduction for Defective Cost or Pricing Data.*

(a) The following clause shall be inserted in negotiated contracts which when entered into exceed $500,000, except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. In addition the contracting officer shall include this clause in other negotiated contracts for which he has obtained a Certificate of Current Cost or Pricing Data in accordance with 3-807.3(b)(iii) in connection with the initial pricing of the contract, or for which he has obtained partial cost or pricing data in accordance with 3-807.3(d).

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (1970 JAN)

If any price, including profit or fee, negotiated in connection with this contract or any cost reimbursable under this contract was increased by any significant sums because:

(i) the Contractor furnished cost or pricing data which was not complete, accurate and current as certified in the Contractor's Certificate of Current Cost or Pricing Data;

(ii) a subcontractor, pursuant to the clause of this contract entitled "Subcontractor Cost or Pricing Data" or "Subcontractor Cost or Pricing Data—Price Adjustments" or any subcontract clause therein required, furnished cost or pricing data which was not complete, accurate and current as certified in the subcontractor's Certificate of Current Cost or Pricing Data;

(iii) a subcontractor or prospective subcontractor furnished cost or pricing data which was required to be complete, accurate and current and to be submitted to support a subcontract cost estimate furnished by the Contractor but which was not complete, accurate and current as of the date certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(iv) the Contractor or a subcontractor or prospective subcontractor furnished any data, not within (i), (ii) or (iii) above, which was not accurate as submitted;

the price or cost shall be reduced accordingly and the contract shall be modified in writing as may be necessary to reflect such reduction. However, any reduction in the contract price due to defective subcontract data of a prospective subcontractor when the subcontract was not subsequently awarded to such subcontractor, will be limited to the amount (plus applicable overhead and profit markup) by which the actual subcontract, or actual cost to the Contractor if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor, *provided* the actual subcontract price was not affected by defective cost or pricing data.

Note: Since the contract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, it is expected that the contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the contractor. However, the inclusion of such a clause and the terms thereof are matters for negotiation and agreement between the contractor and the subcontractor, *provided* that they are consistent with ASPR 23-203 relating to Disputes provisions in subcontracts. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by his lower tier subcontractors.

(End of clause)

(b) Insert the following clause in all contracts, both formally advertised and negotiated, which when entered into exceed $500,000 except those containing the clause in (a) above.

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA—PRICE ADJUSTMENTS (1982 DEC)

(a) This clause shall become operative only with respect to any modification of this contract which involves aggregate increases and/or decreases in costs plus applicable profits in excess of $500,000 unless the modification is priced on the basis of adequate competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. The right to price reduction under this clause is limited to defects in data relating to such modification.

(b) If any price, including profit, or fee, negotiated in connection with any price adjustment under this contract was increased by any significant sums because:

(i) the Contractor furnished cost or pricing data which was not complete, accurate and current as certified in the Contractor's Certificate of Current Cost or Pricing Data;

(ii) a subcontractor, pursuant to the clause of this contract entitled "Subcontractor Cost or Pricing Data" or "Subcontractor Cost or Pricing Data—Price Adjustments" or any subcontract clause therein required, furnished cost or pricing data which was not complete, accurate and current as certified in the subcontractor's Certificate of Current Cost or Pricing Data;

(iii) a subcontractor or prospective subcontractor furnished cost or pricing data which was required to be complete, accurate and current and to be submitted to support a subcontract cost estimate furnished by the Contractor but which was not complete, accurate and current as of the date certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(iv) the Contractor or a subcontractor or prospective subcontractor furnished any data, not within (i), (ii) or (iii) above, which was not accurate, as submitted;

the price shall be reduced accordingly and the contract shall be modified in writing as may be necessary to reflect such reduction. However, any reduction in the contract price due to defective subcontract data of a prospective subcontractor, when the subcontract was not subsequently awarded to such subcontractor, will be limited to the amount (plus applicable overhead and profit markup) by which the actual subcontract, or actual cost to the Contractor if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor, *provided* the actual subcontract price was not affected by defective cost or pricing data.

Note: Since the contract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, it is expected that the contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the contractor. However, the inclusion of such a clause and the terms thereof are matters for negotiation and agreement between the contractor and the subcontractor, *provided* that they are consistent with ASPR 23-203 relating to Disputes provisions in subcontracts. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by his lower tier subcontractors.

(End of clause)

(c) The requirement for inclusion of the above clauses in contracts with foreign governments or agencies thereof may be waived in exceptional cases by the Head of a Procuring Activity, stating in writing his reasons for such determination.

sistent with this contract, including demand consequent upon default termination; (iii) the date of transmittal by the Government to the Contractor of a proposed supplemental agreement to confirm completed negotiations fixing the amount; or (iv) if this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or in connection with a negotiated pricing agreement not confirmed by contract supplement.

(End of clause)

The interest rates established by the Secretary of the Treasury will be published in the Federal Register every six months. The current rate may also be obtained from the Departmental Contract Finance Office representative.

7-104.40 *Competition in Subcontracting.* The following clause shall be included in all negotiated contracts over $10,000, except in firm fixed-price contracts where award is on the basis of effective price competition or where prices are established by law or regulation, and except in small purchases made pursuant to 3-600.

COMPETITION IN SUBCONTRACTING (1962 APR)

The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(End of clause)

7-104.41 *Audit by Department of Defense.*

(a) Insert the following clause in all contracts (except those entered into by formal advertising which are not expected to exceed $100,000, and except small purchases made pursuant to 3-600).

AUDIT BY DEPARTMENT OF DEFENSE (1982 DEC)

(a) *General.* The Contracting Officer or his representatives shall have the audit and inspection rights described in the applicable paragraphs (b), (c) and (d) below.

(b) *Examination of Costs.* If this is a cost reimbursement type, incentive, time and materials, labor hour, or price redeterminable contract, or any combination thereof, the Contractor shall maintain, and the Contracting Officer or his representatives shall have the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. Such right of examination shall include inspection at all reasonable times of the Contractor's plants, or such parts thereof, as may be engaged in the performance of this contract.

(c) *Cost or Pricing Data.* If the Contractor submitted cost or pricing data in connection with the pricing of this contract or any change or modification thereto, unless such pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the Contracting Officer or his representatives who are employees of the United States Government shall have the right to examine all books, records, documents and other data of the Contractor related to the negotiation, pricing or performance of such contract, change or modification, for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. Additionally, in the case of pricing any change or modification to formally advertised contracts, the Comptroller General of the United States or his representatives who are employees of the United States Government shall have such rights. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

(d) *Reports.* If the Contractor is required to furnish Contractor Cost Data Reports (CCDR), Contract Fund Status Reports (CFSR), or Cost Performance Reports (CPR) the Contracting Officer or his representatives shall have the right to examine books, records, other documents, and supporting materials, for the purpose of evaluating (i) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports, and (ii) the data reported.

(e) *Availability.* The materials described in (b), (c) and (d) above shall be made available at the office of the Contractor, at all reasonable times, for inspection, audit, or reproduction, until the expiration of three (3) years from the date of final payment under this contract or such lesser time specified in Appendix M of the Armed Services Procurement Regulation, and for such longer period, if any, as is required by applicable statute, or by other clauses of this contract, or by (1) and (2) below:

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for a period of three (3) years from the date of any resulting final settlement.

(2) Records which relate to appeals under the "*Disputes*" clause of this contract, or litigation, or the settlement of claims arising out of the performance of this contract, shall be made available until such appeals, litigation, or claims have been disposed of.

(f) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (f), in all subcontracts exceeding $10,000 hereunder, except altered as necessary for proper identification of the contracting parties and the Contracting Officer under the Government prime contract.

(End of clause)

(b) In the case of consolidated facilities contracts, facilities acquisition contracts and facilities use contracts, paragraph (b) of the clause should be amended to read:

(b) *Examination of Costs.* The Contractor shall maintain, and the Contracting Officer and his representatives shall have the right to examine, books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly (1) all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract and (2) the use of, and charges for the use of, the facilities. Such right of examination shall include inspection at all reasonable times of the Contractor's plants, or such parts thereof, as may be engaged in the performance of this contract.

7-104.42 *Subcontractor Cost or Pricing Data.*

(a) The following clause shall be inserted in all negotiated contracts expected to exceed $500,000, except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. The contracting officer may include this clause, with appropriate reduction in the dollar amounts included therein, in other negotiated contracts where a Certificate of Current Cost or Pricing Data is required (see 3-807.3(b)(iii)) in connection with initial pricing of the contract.

SUBCONTRACTOR COST OR PRICING DATA (1982 DEC)

(a) The Contractor shall require subcontractors hereunder to submit, actually or by specific identification in writing, cost or pricing data under the following circumstances: (i) prior to the award of any subcontract the amount of which is expected to exceed $500,000 when entered into; (ii) prior to the pricing of any subcontract modification which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed $500,000; except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(b) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the certificate by the Prime Contractor to the Government, that to the best of their

knowledge and belief, the cost and pricing data submitted under (a) above is accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract change or modification.

(c) The Contractor shall insert the substance of this clause including this paragraph (c) in each subcontract hereunder which exceeds $500,000 when entered into except where the price thereof is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. In each such excepted subcontract hereunder in excess of $500,000, the Contractor shall insert the substance of the following clause:

SUBCONTRACTOR COST OR PRICING DATA—PRICE ADJUSTMENTS

(a) Paragraphs (b) and (c) of this clause shall become operative only with respect to any modification made pursuant to one or more provisions of this contract which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed $500,000. The requirements of this clause shall be limited to such contract modifications.

(b) The Contractor shall require subcontractors hereunder to submit, actually or by specific identification in writing, cost or pricing data under the following circumstances: (i) prior to award of any subcontract, the amount of which is expected to exceed $500,000 when entered into; (ii) prior to the pricing of any subcontract modification which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed $500,000; except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(c) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the certificate by the Prime Contractor to the Government, that to the best of their knowledge and belief the cost and pricing data submitted under (b) above is accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract change or modification.

(d) The Contractor shall insert the substance of this clause including this paragraph (d) in each subcontract hereunder which exceeds $500,000 when entered into.

(End of clause)

(b) Insert the following clause in all contracts, both formally advertised and negotiated, which exceed $500,000 other than those described in (a) above:

SUBCONTRACTOR COST OR PRICING DATA—PRICE ADJUSTMENTS (1982 DEC)

(a) Paragraphs (b) and (c) of this clause shall become operative only with respect to any modification made pursuant to one or more provisions of this contract which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed $500,000. The requirements of this clause shall be limited to such modifications.

(b) The Contractor shall require subcontractors hereunder to submit cost or pricing data under the following circumstances: (i) prior to the award of any subcontract the amount of which is expected to exceed $500,000 when entered into; (ii) prior to the pricing of any subcontract modification which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed $500,000; except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(c) The Contractor shall require subcontractors to certify that to the best of their knowledge and belief the cost and pricing data submitted under (b) above is accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract change or modification.

(d) The Contractor shall insert the substance of this clause including this paragraph (d) in each subcontract which exceeds $500,000.

(End of clause)

(c) The requirement for inclusion of the above clauses in contracts with foreign governments or agencies thereof may be waived in exceptional cases by the Head of a Procuring Activity, stating in writing his reasons for such determination.

7-104.43 *Reserved.*

7-104.44 *Value Engineering (VE).*

(a) In accordance with 1-1704, insert the following clause:

VALUE ENGINEERING (1982 OCT)

(a) *Applicability.* This clause applies to any Value Engineering Change Proposal (VECP) developed, prepared, and submitted by the Contractor.

(b) *Definitions.*

(1) "Acquisition savings" means savings resulting from the application of VECPs to contracts awarded by the same contracting office or its successor for essentially the same unit. Acquisition savings include:

(i) instant contract savings, which are the net cost reductions on this, the instant contract, and which are equal to the unit cost reduction multiplied by the number of units affected by the VECP, less the Contractor's allowable development and implementation costs (on service contracts, the unit cost reduction is multiplied by the labor-hour rate agreed upon for the tasks involved; then the Contractor's allowable development and implementation costs are subtracted from the total);

(ii) concurrent contract savings, which are measurable net reductions in the prices of other contracts of the contracting office in existence at the time the VECP was accepted; and

(iii) future contract savings, which are the product of the unit cost reduction under the instant contract, adjusted to consider the effects of learning, quantities, or other similar factors, multiplied by

derstanding, the Contracting Officer may waive all or part of the provisions hereof concerning demonstration and review.

(End of clause)

7-104.88 *Advertising and Coupon Redemption for Military Resale Activities.* To preclude any implied endorsement by military resale activities of commercially advertised products, insert the following clause in all solicitations and resulting contracts for supplies purchased for resale.

ADVERTISING AND COUPON REDEMPTION FOR MILITARY RESALE ACTIVITIES (1974 APR)

The Contractor will not represent in any manner, expressed or implied, that the products purchased hereunder are approved or endorsed by any element of the United States Government. Any advertisement by the Contractor, including price-off coupons, which refers to a military resale activity shall contain the following statement:

"This advertisement is neither paid for nor sponsored, in whole or in part, by any element of the United States Government."

(End of clause)

7-104.89 *Engineering Change Proposals (ECP's).* In accordance with 26-205, the following is a sample clause:

ENGINEERING CHANGE PROPOSALS

(a) The Contracting Officer may at any time, in writing, request the Contractor to prepare and submit an Engineering Change Proposal (ECP) as that term is defined in MIL-STD-480, within the scope of this contract, as hereafter set forth. Upon receipt of such request, the Contractor shall submit to the Contracting Officer the information specified by, and in the format required by paragraph 4 of, MIL-STD-480.

(b) Any Contractor ECP shall set forth a "not to exceed" price* and delivery adjustment or a "not less than" price* and delivery adjustment, acceptable to the Contractor if the Government subsequently orders such ECP. If ordered, the equitable increase shall not exceed, nor shall the equitable decrease be less than, such "not to exceed" or "not less than" amounts.** This paragraph does not preclude any revision(s) or correction(s) of an ECP in accordance with paragraph 4.10 and 4.11 of MIL-STD-480. Concurrently with the submission of any ECP under this contract in which the proposed aggregate cost is $500,000 or greater, the Contractor shall submit to the Contracting Officer a completed DD Form 633 . At the time of agreement upon the price of the ECP, the Contractor shall submit a signed Certificate of Current Cost or Pricing Data.

(End of clause)

The Contracting Officer may include, in the circumstances in 26-205(b), the following paragraph.

(c) If the price * adjustment proposed for any Contractor-originated ECP (excluding any Government-requested ECP or Value Engineering Change Proposal) is *** (percent of the contract price *) (or $ ***) or less, such change shall be made at no adjustment of the contract price * .

* Use term suitable to type of contract.

** In cost-reimbursement type contracts, replace this sentence with the following sentence:

Change orders issued pursuant to the Changes clause of this contract shall not be considered an authorization to the Contractor to exceed the estimated cost set forth in the Schedule in the absence of a statement in the change order, or other contract modification, increasing the estimated cost.

*** To be negotiated.

7-104.90 *Change Order Accounting.* In accordance with 26-205, the following is a sample clause:

CHANGE ORDER ACCOUNTING

When the Contracting Officer estimates that the cost of a change or series of related changes will exceed $100,000, he may require change order accounting. The Contractor, for each such change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits), of work, both changed and not changed, allocable to the change. Such accounts shall be maintained until the parties agree to an equitable adjustment for the change order.

(End of clause)

7-104.91 *Contracts Conditioned Upon the Availability of Funds.* In accordance with 1-318, insert one of the following clauses:

(a) *Availability of Funds.*

AVAILABILITY OF FUNDS (1962 SEP)

Funds are not presently available for this procurement. The Government's obligation hereunder is contingent upon the availability of appropriated funds from which payment for the contract purposes can be made. No legal liability on the part of the Government for payment of any money shall arise unless and until funds are made available to the Contracting Officer for this procurement and notice of such availability, to be confirmed in writing by the Contracting Officer, is given to the Contractor.

(End of clause)

(b) *Availability of Funds for Next Fiscal Year.*

AVAILABILITY OF FUNDS FOR NEXT FISCAL YEAR (1975 JUN)

Funds are not presently available for performance under this contract beyond _____. The Government's obligation for performance of this contract beyond this date is contingent upon the availability of appropriated funds from which payment for the contract purposes can be made. No legal liability on the part of the Government for payment of any money for performance under this contract beyond _____ shall arise unless and until funds are made available to the Contracting Officer for such performance and notice of such availability, to be confirmed in writing by the Contracting Officer, is given to the Contractor.

(End of clause)

7-104.92 *Time of Delivery.*

(a) Policy and procedures regarding time of delivery are set forth in 1-305. Examples of time of delivery clauses for invitations for bids are set forth below. They may be modified or other clauses may be used to state particular delivery requirements or any special procedures to be used in the evaluation, rejection or award process as regards time of delivery. These clauses also may be suitably modified for use in negotiated procurements when appropriate.

In the foregoing clause, the period of "thirty (30) days" within which any claim for adjustment must be asserted may be varied in accordance with Departmental procedures. In accordance with 10 U.S.C. 2306(f), prior to the pricing of any change order that is expected to exceed $500,000, except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the contracting officer shall require the contractor to furnish a Certificate of Current Cost or Pricing Data (see 3-807.6) and shall assure that the contract includes or is modified to include a defective pricing data clause (see 7-104.29).

7-203.3 *Limitation of Cost or Funds.*

(a) The following clause shall be inserted in all fully funded cost-reimbursement type supply contracts.

LIMITATION OF COST (1966 OCT)

(a) It is estimated that the total cost to the Government for the performance of this contract, exclusive of any fee, will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost. If, at any time, the Contractor has reason to believe that the costs which he expects to incur in the performance of this contract in the next succeeding sixty (60) days, when added to all costs previously incurred, will exceed seventy-five percent (75%) of the estimated cost then set forth in the Schedule, or if, at any time, the Contractor has reason to believe that the total cost to the Government for the performance of this contract, exclusive of any fee, will be greater or substantially less than the then estimated cost hereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving his revised estimate of such total cost for the performance of this contract.

(b) Except as required by other provisions of this contract specifically citing and stated to be an exception from this clause, the Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated cost set forth in the Schedule, and the Contractor shall not be obligated to continue performance under the contract (including actions under the Termination clause) or otherwise to incur costs in excess of the estimated cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of this contract. No notice, communication or representation in any other form or from any person other than the Contracting Officer shall affect the estimated cost of this contract. In the absence of the specified notice, the Government shall not be obligated to reimburse the Contractor for any costs in excess of the estimated cost set forth in the Schedule, whether those excess costs were incurred during the course of the contract or as a result of termination. When and to the extent that the estimated cost set forth in the Schedule has been increased, any costs incurred by the Contractor in excess of the estimated cost prior to such increase shall be allowable to the same extent as if such costs had been incurred after the increase; unless the Contracting Officer issues a termination or other notice and directs that the increase is solely for the purpose of covering termination or other specified expenses.

(c) Change orders issued pursuant to the Changes clause of this contract shall not be considered an authorization to the Contractor to exceed the estimated cost set forth in the Schedule in the absence of a statement in the change order, or other contract modification, increasing the estimated cost.

(d) In the event this contract is terminated or the estimated cost not increased, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract based upon the share of costs incurred by each.

(End of clause)

(b) The following clause shall be used in all cost-reimbursement type supply contracts which are to be incrementally funded.

LIMITATION OF FUNDS (1966 OCT)

(a) It is estimated that the cost to the Government for the performance of this contract will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost.

(b) The amount presently available for payment and allotted to this contract, the items covered thereby, and the period of performance which it is estimated the allotted amount will cover, are specified in the Schedule. It is contemplated that from time to time additional funds will be allotted to this contract up to the full estimated cost set forth in the Schedule, exclusive of any fee. The Contractor agrees to perform or have performed work on this contract up to the point at which the total amount paid and payable by the Government pursuant to the terms of this contract approximates but does not exceed the total actually allotted to the contract.

(c) If at any time the Contractor has reason to believe that the costs which he expects to incur in the performance of this contract in the next succeeding sixty (60) days, when added to all costs previously incurred, will exceed seventy-five percent (75%) of the total amount then allotted to the contract, the Contractor shall notify the Contracting Officer in writing to that effect. The notice shall state the estimated amount of additional funds required to continue performance for the period set forth in the Schedule. Sixty (60) days prior to the end of the period specified in the Schedule, the Contractor will advise the Contracting Officer in writing as to the estimated amount of additional funds, if any, that will be required for the timely performance of the work under the contract or for such further period as may be specified in the Schedule or otherwise agreed to by the parties. If, after such notification additional funds are not allotted by the end of the period set forth in the Schedule or an agreed date substituted therefor, the Contracting Officer will, upon written request by the Contractor, terminate this contract pursuant to the provisions of the Termination clause on such date. If the Contractor, in the exercise of his reasonable judgment, estimates that the funds available will allow him to continue to discharge his obligations hereunder for a period extending beyond such date, he shall specify the later date in his request, and the Contracting Officer, in his discretion, may terminate this contract on that later date.

(d) Except as required by other provisions of this contract specifically citing and stated to be an exception from this clause, the Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the total amount from time to time allotted to the contract, and the Contractor shall not be obligated to continue performance under the contract (including actions under the Termination clause) or otherwise to incur costs in excess of the amount allotted to the contract, unless and until the Contracting Officer has notified the Contractor in writing that such allotment amount has been increased and has specified in such notice an increased amount constituting the total amount then allotted to the contract. To the extent the amount allotted exceeds the estimated cost set forth in the Schedule, such estimated cost shall be correspondingly increased. No notice, communication or representation in any other form or from any person other than the Contracting Officer shall affect the amount allotted to this contract. In the absence of the specified notice, the Government shall not be obligated to reimburse the Contractor for any costs in excess of the total amount then allotted to the contract, whether those excess costs were incurred during the course of the contract or as a result of termination. When and to the extent that the amount allotted to the contract has been increased, any costs incurred by the Contractor in excess of the amount previously allotted shall be allowable to the same extent as if such costs had been incurred after such increase in the amount allotted; unless the Contracting Officer issues a termination or other notice and directs that the increase is solely for the purpose of covering termination or other specified expenses.

(e) Change orders issued pursuant to the Changes clause of this contract shall not be considered an authorization to the Contractor to exceed the amount allotted in the Schedule in the absence of a statement in the change order, or other contractual modification, increasing the amount allotted.

SUBCONTRACTS (1982 DEC)

(a) The Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract (as used in this clause, the term "subcontract" includes, but is not limited to, purchase orders, changes, and/or modifications thereto) which (i) is cost-reimbursement type, time and materials or labor-hour, or (ii) is fixed-price type and exceeds in dollar amount either $25,000 or five percent (5%) of the total estimated cost of this contract, or (iii) provides for the fabrication, purchase, rental, installation, or other acquisition of special test equipment having a value in excess of $10,000 or of any items of industrial facilities.

(b) In the case of a proposed subcontract which (i) is cost-reimbursement type, time and materials, or labor-hour, and would involve an estimated amount in excess of $10,000, including any fee, or (ii) is proposed to exceed $100,000, or (iii) is one of a number of subcontracts under this contract with a single subcontractor for the same or related supplies or services which, in the aggregate are expected to exceed $100,000; the advance notification required by (a) above shall include:

(1) a description of the supplies or services to be called for by the subcontract;

(2) identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the degree of competition obtained;

(3) the proposed subcontract price, together with the Contractor's cost or price analysis thereof;

(4) the subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, when such data and certificate are required, by other provisions of this contract, to be obtained from the subcontractor;

(5) identification of the type of subcontract to be used;

(6) a memorandum of negotiation which sets forth the principal elements of the subcontract price negotiations. A copy of this memorandum shall be retained in the contractor's file for the use of Government reviewing authorities. The memorandum shall be in sufficient detail to reflect the most significant considerations controlling the establishment of initial or revised prices. The memorandum should include an explanation of why cost or pricing data was, or was not required, and, if it was not required in the case of any price negotiation in excess of $500,000, a statement of the basis for determining that the price resulted from or was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. If cost or pricing data was submitted and a certificate of cost or pricing data was required, the memorandum shall reflect the extent to which reliance was not placed upon the factual cost or pricing data submitted and the extent to which this data was not used by the contractor in determining the total price objective and in negotiating the final price. The memorandum shall also reflect the extent to which it was recognized in the negotiation that any cost or pricing data submitted by the subcontractor was not accurate, complete, or current; the action taken by the contractor and the subcontractor as a result; and the effect, if any, of such defective data on the total price negotiated. Where the total price negotiated differs significantly from the Contractor's total price objective, the memorandum shall explain this difference;

Secretary and approved by the Contracting Officer, (or in contracts with the Department of the Navy, *The Department*). When the Government has assumed liability for subcontracts, the term "*Contractor*" in this paragraph (b) shall include subcontractors.

(c) No payment shall be made by the Government under this clause unless the amount thereof shall first have been certified to be just and reasonable by the Secretary or his representative designated for such purpose. The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract. The Government may discharge its liability under this paragraph by making payments to the Contractor or directly to parties to whom the Contractor may be liable.

(d) With the prior written approval of the Contracting Officer, the Contractor may include in any subcontract under this contract, the same provisions as those in this clause, whereby the Contractor shall indemnify the subcontractor against any risk defined in this contract to be unusually hazardous or nuclear in nature. Such a subcontract shall provide the same rights and duties, and the same provisions for notice, furnishing of evidence or proof, and the like, between the Contractor and the subcontractor as are established by this clause. The Contracting Officer may also approve similar indemnification of subcontractors at any tier upon the same terms and conditions. Subcontracts providing for indemnification within the purview of this clause shall provide for the prompt notification to the Contracting Officer of any claim or action against, or of any loss by, the subcontractor which is covered by this clause, and shall entitle the Government at its election, to control or assist in the settlement or defense of any such claim or action. The Government shall indemnify the Contractor with respect to his obligations to subcontractors under subcontract provisions thus approved by the Contracting Officer. The Government may discharge its obligations under this paragraph by making payments directly to subcontractors or to parties to whom the subcontractor may be liable.

(e) If insurance coverage or other financial protection program approved by the Secretary is reduced, the liability of the Government under this clause shall not be increased by reason of such reduction.

(f) The Contractor shall (i) promptly notify the Contracting Officer of any claim or action against, or of any loss by, the Contractor or any subcontractor which reasonably may be expected to involve indemnification under this clause, (ii) furnish evidence or proof of any claim, loss or damage covered by this clause in the manner and form required by the Government, and (iii) immediately furnish to the Government copies of all pertinent papers received by the Contractor. The Government may direct, control or assist in the settlement or defense of any such claim or action. The Contractor shall comply with the Government's directions, and execute any authorizations required in regard to such settlement or defense.

(End of clause)

7-303.63 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95

7-303.64 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-303.65 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-303.66 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-303.67 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-303.68 *Overseas Distribution of Defense Subcontracts.* In accordance with 1-340, insert the clause in 7-104.78.

7-303.69 *Reserved.*

7-303.70 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-304 Additional Clauses. The following clauses shall be inserted in fixed-price research and development contracts in accordance with Departmental procedures when it is desired to cover the subject matter thereof.

7-304.1 *Changes.*

CHANGES (1965 JUN)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipment or packing; and (iii) place of inspection, delivery, or acceptance. If any such change causes an increase or decrease in the cost of, or the time required for performance of, this contract, or otherwise affects any other provisions of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made (i) in the contract price or time of performance, or both, and (ii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; *provided*, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

In the foregoing clause, the period of "thirty (30) days" within which any claim for adjustment must be asserted, may be varied in accordance with Departmental procedures. In accordance with 10 U.S.C. 2306(f), prior to the pricing of any change order that is expected to exceed $500,000, except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the contracting officer shall require the contractor to furnish a Certificate of Current Cost or Pricing Data (see 3-807.6) and shall assure the contract includes or is modified to include a defective pricing data clause (see 7-104.29).

7-304.2 *Alterations in Contract.* The clause in 7-105.1(a) may be inserted.

7-304.3 *Approval of Contract.* The clause in 7-105.2 may be inserted.

7-304.4 *Bill of Materials.* In accordance with 7-105.6, the clause set forth therein may be inserted.

7-304.5 *Notice of Shipments.* The clause in 7-105.4 may be inserted.

7-304.6 *Reports of Work.* In accordance with 7-404.6, the clause set forth therein may be inserted.

7-304.7 *Liquidated Damages.* In accordance with 1-310, the clause in 7-105.5 may be inserted.

7-304.8 *Reserved.*

7-304.9 *Reserved.*

7-304.10 *Warranties.* In accordance with 1-324, an appropriate warranty may be inserted.

7-304.11 *Stop Work Orders.* In accordance with 7-105.3, the clause set forth therein may be inserted.

7-304.12 *Term of Performance or Delivery Date.* Insert a clause in accordance with 1-305.5. Clauses in 7-104.92 shall be used as a guide.

of time specified in the preceding sentence except as provided in (d) below. Except as provided in paragraph (c) below, the allowability of the cost of any such replacement or correction shall be as provided in the clause of this contract entitled "Allowable Cost and Payment." Corrected articles shall not be tendered again for acceptance unless the former tender and the requirement of correction is disclosed. If the Contractor fails to proceed with reasonable promptness to perform such replacement or correction, the Government (i) may by contract or otherwise perform such replacement or correction and charge to the Contractor any increased cost occasioned the Government thereby, or (ii) in the case of articles not delivered, may require the delivery of such articles, or (iii) may terminate this contract for default. Failure to agree to the amount of any such increased cost to be charged to the Contractor shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(b) The following clause shall be inserted in all contracts subject to this Part when the clause in (a)(1) above is not used.

INSPECTION (1959 FEB)

The Government, through any authorized representatives, has the right at all reasonable times, to inspect, or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection, or evaluation is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require his subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

(End of clause)

(c) When it is desired to require contractors to maintain an inspection system in accordance with Military Specification MIL-I-45208 (see 14-303), the clause set forth in (a) above shall be included in the contract except that the following shall be added as the third sentence of paragraph (a):

The inspection system shall be in accordance with the edition of Military Specification MIL-I-45208 in effect on the date of this contract. (1967 AUG)

7-402.6 *Assignment of Claims.* In accordance with 7-103.8, insert the clause therein.

7-402.7 *Examination of Records.* In accordance with 7-104.15, insert the clause therein. In the case of research and development contracts with nonprofit institutions and subcontracts thereunder, and pursuant to procedures approved by the Comptroller General, original documentary evidence in support of costs of the transportation of things will not be required pursuant to said clause.

7-402.8 *Subcontracts.*

(a) In accordance with the requirements in 23-201.2, and subject to the instructions in (b) and (c) below, insert the following clause.

SUBCONTRACTS (1982 DEC)

(a) The Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract (as used in this clause, the term "subcontract" includes, but is not limited to, purchase orders, changes, and/or modifications thereto) which (i) is cost-reimbursement type, time and materials or labor-hour, or (ii) is fixed-price-

type and exceeds in dollar amount either $25,000 or five percent (5%) of the total established cost of this contract, (iii) provides for the fabrication, purchase, rental, installation, or other acquisition of special test equipment having a value in excess of $10,000 or of any items of industrial facilities; or (iv) has experimental, developmental, or research work as one of its purposes.

(b) In the case of a proposed subcontract which (i) is cost-reimbursement, time and materials, or labor-hour which would involve an estimated amount in excess of $25,000, including any fee, (ii) is proposed to exceed $100,000, or (iii) is one of a number of subcontracts under this contract with a single subcontractor for the same or related supplies or services which, in the aggregate are expected to exceed $100,000, the advance notification required by (a) above shall include:

(1) a description of the supplies or services to be called for by the subcontract;

(2) identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the degree of competition obtained;

(3) the proposed subcontract price, together with the Contractor's cost or price analysis thereof;

(4) the subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data when such data and certificate are required by other provisions of this contract to be obtained from the subcontractor;

(5) identification of the type of subcontract to be used;

(6) a memorandum of negotiation which sets forth the principal elements of the subcontract price negotiations. A copy of this memorandum shall be retained in the Contractor's file for the use of Government reviewing authorities. The memorandum shall be in sufficient detail to reflect the most significant considerations controlling the establishment of initial or revised prices. The memorandum should include an explanation of why cost or pricing data was, or was not required, and, if it was not required in the case of any price negotiation in excess of $ 500,000, a statement of the basis for determining that the price resulted from or was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. If cost or pricing data was submitted and a certificate of cost or pricing data was required, the memorandum shall reflect the extent to which reliance was not placed upon the factual cost or pricing data submitted and the extent to which this data was not used by the Contractor in determining the total price objective and in negotiating the final price. The memorandum shall also reflect the extent to which it was recognized in the negotiation that any cost or pricing data submitted by the subcontractor was not accurate, complete, or current; the action taken by the Contractor and the subcontractor as a result; and the effect, if any, of such defective data on the total price negotiated. Where the total price negotiated differs significantly from the Contractor's total price objective, the memorandum shall explain this difference;

(7) when incentives are used, the memorandum of negotiation shall contain an explanation of the incentive fee/profit plan identifying each critical performance element, management decisions used to quantify each incentive element, reasons for incentives on particular performance characteristics, and a brief summary of trade-off possibilities considered as to cost, performance, and time; and

(8) the subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract to be obtained from the subcontractor.

Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; *provided*, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, except as provided in paragraph (c) below, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(c) Notwithstanding the provisions of paragraphs (a) and (b) above, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance thereof, shall not be increased or deemed to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until such modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the clause of this contract entitled "Limitation of Cost" or "Limitation of Funds."

(End of clause)

In the foregoing clause, the period of "thirty (30) days" within which any claim for adjustment must be asserted, may be varied in accordance with Departmental procedures. In accordance with 10 U.S.C. 2306(f), prior to the pricing of any change order that is expected to exceed $500,000, except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the contracting officer shall require the contractor to furnish a Certificate of Current Cost or Pricing Data (see 3-807.6) and shall assure that the contract includes or is modified to include a defective pricing data clause (see 7-104.29).

7-404.2 *Alterations in Contract.* In accordance with 7-105.1(a), insert the clause therein.

7-404.3 *Approval of Contract.* In accordance with 7-105.2, insert the clause therein.

7-404.4 *Bill of Materials.* In accordance with 7-105.6, insert the clause therein.

7-404.5 *Stop Work Orders.* The clause in 7-105.3, if modified as prescribed in 7-205.6, is authorized for use under the criteria and in accordance with the instructions in 7-105.3.

7-404.6 *Reports of Work.*

REPORTS OF WORK (1960 JUL)

(a) The Contractor shall submit reports making full disclosure of all work done and the results thereof, in the manner, at the times, and to the extent set forth in the Schedule; *provided* that, unless otherwise specified in the Schedule, the Contractor shall submit such reports in triplicate from time to time as requested and upon completion (or earlier termination) of the work. Except as may be otherwise specified in the Schedule, or unless the Contractor is otherwise instructed, the Contractor shall, upon completion (or earlier termination) of the work, deliver any working drawings and specifications of any prototypes as may have been developed.

(b) If the Contractor becomes unable to complete the contract work and so deliver at the time specified in the Schedule because of technical difficulties, notwithstanding the exercise of good faith and diligent efforts in performance of the work, he shall give the Contracting Officer written notice of the anticipated delays with reasons therefor not less than forty-five (45) days before the completion date specified in the Schedule or within such time as the Contracting Officer deems sufficient. When notice is so required, the Contracting Officer may, in his discretion, extend the time specified in the Schedule for such period as he deems advisable.

(End of clause)

In the above clause, the words "Task Order" or other appropriate designation may be substituted for the word "Schedule," as appropriate. Subparagraph (a) may be used without subparagraph (b). The last sentence of subparagraph (b) may be omitted.

7–404.7 *Title and Risk of Loss.* In accordance with 7–103.6, insert the clause therein.

7–404.8 *Term of Performance or Delivery Date.* Insert a clause in accordance with 1–305.5. Clauses in 7–104.92 shall be used as a guide.

7–404.9 *Warranty of Technical Data.* In accordance with 1–324.6, insert the clause in 7–104.9(o).

(i) in the specifications (including drawings and designs);
(ii) in the method or manner of performance of the work;
(iii) in the Government-furnished facilities, equipment, materials, services, or site; or
(iv) directing acceleration in the performance of the work.

(b) Any other written order or an oral order (which terms as used in this paragraph (b) shall include direction, instruction, interpretation or determination) from the Contracting Officer, which causes any such change, shall be treated as a change order under this clause, *provided* that the Contractor gives the Contracting Officer written notice stating the date, circumstances, and source of the order and that the Contractor regards the order as a change order.

(c) Except as herein provided, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment hereunder.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any order, an equitable adjustment shall be made and the contract modified in writing accordingly: *Provided, however*, That except for claims based on defective specifications, no claim for any change under (b) above shall be allowed for any costs incurred more than 20 days before the Contractor gives written notice as therein required: *And provided further*, That in the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with such defective specifications.

(e) If the Contractor intends to assert a claim for an equitable adjustment under this clause, he must, within 30 days after receipt of a written change order under (a) above or the furnishing of a written notice under (b) above, submit to the Contracting Officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the Government. The statement of claim hereunder may be included in the notice under (b) above.

(f) No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

(End of clause)

In the foregoing clause, the period of "30 days" within which any claim for adjustment must be asserted may be varied in accordance with Departmental procedures. In accordance with 10 U.S.C. 2306(f), prior to the pricing of any change order that is expected to exceed $500,000, except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the contracting officer shall require the contractor to furnish a Certificate of Current Cost or Pricing Data (see 3–807.6) and shall assure that the contract includes or is modified to include a defective pricing data clause (see 7–104.29).

7–602.4 *Differing Site Conditions.*

DIFFERING SITE CONDITIONS (1968 FEB)

(a) The Contractor shall promptly, and before such conditions are disturbed, notify the Contracting Officer in writing of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this contract. The Contracting Officer shall promptly investigate the conditions, and if he finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the contract modified in writing accordingly.

(b) No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required in (a) above; *provided*, however, the time prescribed therefor may be extended by the Government.

(c) No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

(End of clause)

In accordance with 10 U.S.C. 2306(f), prior to the pricing of any modification pursuant to the "Differing Site Conditions" clause that is expected to exceed $500,000, except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the contracting officer shall require the contractor to furnish a Certificate of Current Cost or Pricing Data (see 3-807.6) and shall assure that the contract includes or is modified to include a defective pricing data clause (see 7-104.29).

7-602.5 *Termination for Default—Damages for Delay—Time Extensions.* In accordance with 8-709, insert the following clause.

TERMINATION FOR DEFAULT—DAMAGES FOR DELAY—TIME EXTENSIONS (1969 AUG)

(a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within such time, the Government may, by written notice to the Contractor, terminate his right to proceed with the work or such part of the work as to which there has been delay. In such event the Government may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to the Government resulting from his refusal or failure to complete the work within the specified time.

(b) If fixed and agreed liquidated damages are provided in the contract and if the Government so terminates the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the Government in completing the work.

(c) If fixed and agreed liquidated damages are provided in the contract and if the Government does not so terminate the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.

(d) The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:

(1) The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the Government in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any such delay (unless the Contracting Officer grants a further period of time before the date of final payment under the contract), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in the "Disputes" clause of this contract.

(e) If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the Government, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the Government, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes".

(f) The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(g) As used in paragraph (d)(1) of this clause, the term "subcontractors or suppliers" means subcontractors or suppliers at any tier.

(End of clause)

During a period of national emergency, paragraph (d) of the above clause may be changed by deleting the word "unforeseeable" and inserting the phrase "other than normal weather", after the word "causes" wherever it appears. When Standard Form 23A is used, the words "Disputes clause of this contract" in the above clause need not be substituted for "Clause 6 of these General Provisions".

7-602.6 *Disputes.*

(a) Except as provided in (b) below, insert the following clause:

DISPUTES (1964 JUN)

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the head of the agency involved. The decision of the head of the agency or his duly authorized representative for the determination of such appeals shall be final and conclusive. This provision shall not be pleaded in any suit involving a question of fact arising under this contract as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged: *Provided, however*, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of questions of law in connection with decisions provided for in paragraph (a) above. Nothing in this contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

(End of clause)

In accordance with Departmental procedures, the foregoing clause may be modified to provide for intermediate appeal in overseas areas. The decision shall, if mailed, be sent by certified mail, return receipt requested.

(b) In procurements to be performed outside the United States, its possessions and Puerto Rico, when it is anticipated that the contractor will be a foreign firm, one of the clauses provided for in 7-103.12(b) will be inserted in accordance with the instructions therein.

(c) The form in which the contracting officer shall notify the contractor of his decision under the Disputes clause is set forth in 1-314.

7-602.7 *Payments to Contractor.* Insert the following clause:

PAYMENTS TO CONTRACTOR (1982 DEC)

(a) The Government will pay the contract price as hereinafter provided.

(b) The Government will make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates approved by the Contracting Officer. If requested by the Contracting Officer, the Contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates the Contracting Officer, at his discretion, may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration (1) if such consideration is specifically authorized by the contract and (2) if the Contractor furnishes satisfactory evidence that he has acquired title to such material and that it will be utilized on the work covered by this contract.

(c) In making such progress payments, there shall be retained 10 percent (10%) of the estimated amount until final completion and acceptance of the contract work. However, if the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, he may authorize such payment to be made in full without retention of a percentage. Also, whenever the work is substantially complete, the Contracting Officer shall retain an amount he considers adequate for the protection of the Government and, at his discretion, may release to the Contractor all or a portion of any excess amount. Furthermore, on completion and acceptance of each separate building, public work, or other division of the contract, on which the price is stated separately in the contract, payment may be made therefor without retention of a percentage.

(d) All material and work covered by progress payments made shall thereupon become the sole property of the Government, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work, or as waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(e) The Contractor shall, upon request, be reimbursed for the entire amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) and for any fees paid to the Small Business Administration under the Surety Bond Guarantee Program, after furnishing evidence of full payment.

(f) Upon completion and acceptance of all work, the amount due the Contractor under this contract shall be paid upon the presentation of a properly executed voucher and after the Contractor shall have furnished the Government with a release of all claims against the Government arising by virtue of this contract, other than claims in stated amounts as may be specifically excepted by the Contractor from the operation of the release. If the Contractor's claim to amounts payable under the contract has been assigned under the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), a release may also be required of the assignee.

(End of clause)

7-602.8 *Assignment of Claims.*

ASSIGNMENT OF CLAIMS (1976 OCT)

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this contract provides for payments aggregating $1,000 or more, claims for moneys due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this contract, payments to assignee of any moneys due or to become due under this contract shall not, to the extent provided in said

	Government's Est Maximum Daily Requirement	Government's Minimum Acceptable Daily Capability	Bidder's Guaranteed Daily Capability
Outbound (Schedule I)			
Area _____	GCWT _____	GCWT _____	GCWT _____
Inbound (Schedule II)			
Area _____	GCWT _____	GCWT _____	GCWT _____
Intra-City Area (Schedule III)			
Area _____	NCWT _____	NCWT _____	NCWT _____
(Repeat for each area listed)			

(End of clause)

7-1601.8 *Facilities.*

FACILITIES (1982 DEC)

(a) As the minimum standard for qualifications of a Contractor's warehouse, it must have either (i) an acceptable automatic sprinkler system, or (ii) a supervised fire detection and reporting system. Installed fire protective systems must be accredited by the cognizant fire insurance rating organization for insurance rate credit. Additionally, the facility will be protected by an adequate water supply for fire fighting and a fire department which is responsive 24 hours a day. Statements from the cognizant fire insurance rating organization, municipal fire department, or local authority, having jurisdiction, will be used as a basis for determining the sufficiency or adequacy of a fire fighting water supply and the responsiveness of a fire department to protect a facility.

(b) The following information shall be furnished by the Contractor upon receipt of award:

Evidence of the following kinds and minimum amounts of insurance covering work herein to be performed by the Contractor. The Contractor shall maintain at least the minimum coverage stated below* throughout the contract period. Each policy shall contain an indorsement that cancellation or material change in the policy shall not be effective until after a 30-day written notice is furnished to the Contracting Officer.

(1) Workmen's Compensation Insurance $*_____

(2) Comprehensive General Liability Insurance $*_____

(3) Automobile Liability Insurance $*_____

(End of clause)

*The insurance coverage specified in 10-501 is the minimum insurance required. Additional coverage and higher limits may be required by the Contracting Officer.

7-1601.9 *Performance.*

PERFORMANCE (1977 APR)

(a) The services called for hereunder shall be performed in conformance with the latest issue of MIL-STD 212, "Preparation of Household Goods for Shipment or Storage and Related Services," in effect on date of the solicitation, for Schedules I and II, unless otherwise directed by the Contracting Officer. The following are desired minimum stowage factor standards in stuffing of shipping containers:

(1) For Federal Specification PPP-B-580 containers — 5.7 net lbs. per gross cubic foot of container cube.

(2) For air cargo containers — 8.9 net lbs. per gross cubic foot of container cube.

Failure to meet the above standards may be cause for rejection of the services performed unless the Contractor can demonstrate the standards cannot be met. (The term "stuffing" as related to containers means loading of personal property into shipping containers.)

(b) Labor employed to perform pickup and delivery, inventorying, packing, crating, weighing, marking, loading, drayage, unpacking, blocking, bracing, and other services described herein shall be competent in the performance of such services.

(c) Inventory of shipment shall be accomplished pursuant to provisions of the latest issue of MIL-STD 212 in effect on date of solicitation.

(d) All services shall be performed in accordance with the priority order established by the Contracting Officer.

(e) MIL-STD 212, "Military Standard-Preparation of Household Goods for Shipment and Storage and Related Services," and applicable specifications referred to therein are available for reference in the local procurement or transportation offices.

(f) When pickup of shipments is part of line-haul service, the Contractor shall perform loading on freight carrier's equipment at Contractor's facility.

(End of clause)

7–1601.10 *Time Requirements.*

TIME REQUIREMENTS (1970 MAY)

(a) The Contractor shall commence containerization of household goods or unaccompanied baggage at owner's residence or Contractor's facility on the date specified by the Contracting Officer. If containerization is ordered at Contractor's facility, the household goods or unaccompanied baggage shall be picked up on the date and within the hours specified. Unless a longer period is authorized by the Contracting Officer, the maximum containerization time allowed at the Contractor's facility shall be three (3) working days following specified pickup date for household goods and two (2) working days following specified pickup date for unaccompanied baggage.

(b) The Contracting Officer or his designated representative shall normally give the Contractor notice to commence containerization or to pick up household goods or baggage shipments at least twenty-four (24) hours prior to the date specified.

(c) Delivery or removal of household goods or unaccompanied baggage to or from owner's residence, or containerization of household goods or unaccompanied baggage at owner's residence, shall commence between the hours of 8:00 a.m.–12m. (noon) or 12m. (noon) - 5:00p.m. as specified, Monday through Friday, officially declared National, State or local holidays excluded. The Contracting Officer may authorize performance of services at other times when agreed to by the owner or his authorized agent and the Contractor.

(d) The Contractor shall accept and pick up inbound shipments of household goods, or unaccompanied baggage, effect delivery thereof to the destination, and shall unload and unpack the same on the date and within the hours specified by the Contracting Officer during the working hours set forth above. The Contractor will notify the Contracting Officer upon arrival of a shipment but no later than the morning of the next workday. Delivery shall be effected within two (2) working days following date of receipt or notification of arrival unless otherwise specified.

(End of clause)

7–1601.11 *Demurrage.*

DEMURRAGE (1970 MAY)

The Contractor shall be liable for all demurrage, detention, or other charges accruing as a result of his failure to load or unload trucks, freight cars, freight terminals, vessel piers, or warehouses within the free time allowed under applicable rules and tariffs.

(End of clause)

Part 19—Service Contracts

7–1900 Scope of Part. This Part sets forth uniform contract clauses for service contracts as defined in 7–1901.

7–1901 Applicability.

(a) As used throughout this Part, the term "*service contract*" means any contract entered into either by formal advertising or negotiation which calls directly for a contractor's time and effort rather than for a concrete end product. See 22–101(a).

(b) Service contracts are generally found in areas involving the following:

(i) maintenance, overhaul, repair, servicing, rehabilitation, salvage, and modernization or modification of supplies, systems and equipment;
(ii) maintenance, repair, rehabilitation, and modification of real property;
(iii) installation of equipment obtained under separate contract;
(iv) operation of Government-owned equipment, facilities, and systems;
(v) engineering and technical services;
(vi) housekeeping and base services;
(vii) transportation and related services;
(viii) training and education;
(ix) photographic, printing and publication services;
(x) mortuary services;
(xi) test services;
(xii) data processing;
(xiii) warehousing; and
(xiv) stevedoring.

(c) Clauses applicable to service contracts in general appear in this part. Additional clauses for special types of service contracts appear in other parts of this section. "*Service contracts*," as used herein, does not include purchase orders (but see 7–1903.12 and 7–1903.13), short form negotiated supply and service contracts (see 16–102.2(c)), letter contracts (but see 7–802 and 3–408(a)), notices of award, or supplemental agreements which do not effect new procurement. This term does not include contracts for construction of buildings, bridges, roads, or other kinds of real property, contracts for architect or engineer services, contracts for experimental, developmental or research work, contracts for facilities provided by the Government under facilities contracts as defined in 7–701 and Section XIII, or any other contracts for which these clauses are not appropriate. However, there are service contracts in which performance involves construction, research and development, or other specified factors. In such cases, see the particular parts of this section containing additional applicable clauses. When a contract is partly a firm fixed price contract and partly a fixed price incentive contract, the clauses required for both types of contracts shall be included. When any provision is applicable only to firm fixed price items, or only to items subject to incentive price revision, such provision shall be so labeled.

7–1902 Required Clauses for Fixed Price Service Contracts. The following clauses shall be inserted in all fixed price service contracts, unless otherwise provided elsewhere in this section for specific types of services.

7–1902.1 *Definitions.* In accordance with 7–103.1, insert the clause therein.

7-1902.2 *Changes.* Insert the following clause in all fixed price service contracts except stevedoring contracts. (See Part 10.)

CHANGES (1971 NOV)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this contract, in the definition of services to be performed, and the time (*i.e.*, hours of the day, days of the week, etc.) and place of performance thereof. If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change, *provided*, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Where the cost of property made obsolete or excess as result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

In the foregoing clause, the period of "30 days" within which any claim for adjustment must be asserted may be varied in accordance with Departmental procedures. In accordance with 10 U.S.C. 2306(f), prior to the pricing of any change order that is expected to exceed $500,000, except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the contracting officer shall require the contractor to furnish a Certificate of Current Cost or Pricing Data (see 3-807.6) and shall assure that the contract includes or is modified to include a defective pricing data clause (see 7-104.29) and the audit clause required by 7-104.41.

7-1902.3 *Extras.* Insert the clause in 7-103.3.

7-1902.4 *Inspection of Services.*

INSPECTION OF SERVICES (1971 NOV)

(a) All services (which term throughout this clause includes services performed, material furnished or utilized in the performance of services, and workmanship in the performance of services) shall be subject to inspection and test by the Government, to the extent practicable at all times and places during the term of the contract. All inspections by the Government shall be made in such a manner as not to unduly delay the work.

(b) If any services performed hereunder are not in conformity with the requirements of this contract, the Government shall have the right to require the Contractor to perform the services again in conformity with the requirements of the contract, at no additional increase in total contract amount. When the services to be performed are of such a nature that the defect cannot be corrected by reperformance of the services, the Government shall have the right to (i) require the Contractor to immediately take all necessary steps to ensure future performance of the services in conformity with the requirements of the contract; and (ii) reduce the contract price to reflect the reduced value of the services performed. In the event the Contractor fails promptly to perform the services again or to take necessary steps to insure future performance of the services in conformity with the requirements of the contract, the Government shall have the right to either (i) by contract or otherwise have the services performed in conformity with the contract requirements

(c) The Contractor shall notify the Contracting Officer of any increases claimed under this clause within thirty (30) days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. In the case of any decrease under this clause, the Contractor shall promptly notify the Contracting Officer of such decrease but nothing herein shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any other relevant data in support thereof, which may reasonably be required by the Contracting Officer. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. Pending agreement on or determination of, any such adjustment and its effective date, the Contractor shall continue performance.

(d) The Contracting Officer or his authorized representative shall, until the expiration of three (3) years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor.

(End of clause)

7-1906 Incentive Price Revision Clauses. When it is determined in accordance with Section III, Part 4, to provide for incentive price revision, the applicable clause in 7-108 may be included.

7-1907 Price Redetermination Clauses. When it is determined in accordance with 3-404.5 or 3-404.6 to use a fixed price contract providing for redetermination of price, the applicable clause in 7-109 may be included.

7-1908 Clauses for Contracts Involving Furnishing of Supplies. In service contracts which involve the furnishing of supplies, the following clauses shall be included in addition to those prescribed in 7-1902. In addition, applicable clauses in 7-104, 7-105 and 7-106 shall be included. Any clause applicable only to services or only to supplies shall be so labeled.

Changes clause in 7-103.2;
Variation of Quantity clause in 7-103.4;
Inspection clause in 7-103.5;
Title and Risk of Loss clause in 7-103.6;
Discounts clause in 7-103.14;
Walsh-Healey Public Contracts Act clause in 7-103.17.

7-1909 Required Clauses for Cost Reimbursement Type Service Contracts. The following clauses shall be included in all cost reimbursement type service contracts unless otherwise provided elsewhere in this section for specific types of services.

7-1909.1 *Definitions.* In accordance with 7-103.1, insert the clause therein.

7-1909.2 *Changes.*

CHANGES (1971 NOV)

(a) The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in the definition of services and tasks to be performed, and the time (*i.e.*, hours of the day, days of the week, etc.) and place of performance thereof.

(b) If any such changes cause an increase or decrease in the estimated cost of, or the time required for, the performance of any part of the work under this contract, whether changed or not changed by any such order, or otherwise affects any other provision of this contract, an equitable adjustment shall be made:

(i) in the estimated cost or delivery schedule, or both;
(ii) in the amount of any fixed fee to be paid to the Contractor; and
(iii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly.

Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; *provided*, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, except as provided in paragraph (c) below, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(c) Notwithstanding the provisions of paragraphs (a) and (b) above, the estimated cost of this contract and, if this contract is incrementially funded, the funds allotted for the performance thereof, shall not be increased or deemed to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until such modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the clause of this contract entitled "Limitation of Cost" or "Limitation of Funds."

(End of clause)

In the foregoing clause, the period of "thirty (30) days" within which any claim for adjustment must be asserted may be varied in accordance with Departmental procedures. In accordance with 10 U.S.C. 2306(f), prior to the pricing of any change order that is expected to exceed $500,000, except when the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the contracting officer shall require the contractor to furnish a Certificate of Current Cost or Pricing Data (see 3-807.6) and shall assure that the contract includes or is modified to include a defective pricing data clause (see 7-104.29).

7-1909.3 *Limitation of Cost or Funds.* In accordance with 7-203.3, insert the appropriate clause therein.

7-1909.4 *Allowable Cost, Fee and Payment.*

(a) Except as provided in (b) below, insert the clause in 7-203.4(a). See additional instructions in 7-203.4(c).

(b) When, pursuant to 3-405.4, incentive revision of the fee in a cost reimbursement service contract is to be provided, insert the clause in 7-203.4(b). See additional instructions in 7-203.4(c).

7-1909.5 *Inspection of Services (Cost Reimbursement).*

INSPECTION OF SERVICES—COST REIMBURSEMENT (1971 NOV)

(a) All services (which term throughout this clause includes services performed, material furnished or utilized in the performance of services, and workmanship in the performance of services) shall be subject to inspection and test by the Government, to the extent practicable at all times and places during the term of the contract. All inspections by the Government shall be made in such a manner as not to unduly delay the work.

(b) If any services performed hereunder are not in conformity with the requirements of this contract, the Government shall have the right to require the Contractor to perform the services again, in conformity with the requirements of the contract, without payment of additional fee. When the services to be performed are of such a nature that the defect cannot be corrected by re-performance of the services, the Government shall have the right to (i) require the Contractor to immediately take all necessary steps to ensure future performance of the services in conformity with the requirements of the contract, and (ii) reduce any fee payable under the contract to reflect the reduced value of the services performed. In the event the Contractor fails promptly to perform the services again or to take the necessary steps to ensure future performance of the services in conformity with the requirements of the contract, the Government shall have the right

(ii) extent of the termination, point at which work is stopped, and status of any plans, drawings, and information which would have been delivered had the contract been completed;
(iii) status of any continuing work;
(iv) obligation of the contractor to terminate subcontracts and general principles to be followed in settlement of subcontractor claims;
(v) names of subcontractors involved and the respective dates termination notices were issued to them;
(vi) contractor personnel handling, and methods for, review and settlement of subcontractor claims;
(vii) arrangements for transfer of title and delivery to the Government of any materials required by the Government;
(viii) general principles and procedures to be followed in the protection, preservation, and disposition of contractor's and subcontractor's termination inventory, including the preparation of termination inventory schedules;
(ix) contractor accounting practices and preparation of DD Form 546 (Schedule of Accounting Information) (8-802.9);
(x) form in which settlement proposals shall be submitted;
(xi) accounting review of settlement proposals;
(xii) any requirement for interim financing in the nature of partial payments;
(xiii) tentative time schedule for negotiation of the settlement, including submission of settlement proposals, termination inventory schedules, and accounting information schedules by the contractor and subcontractors; and
(xiv) actions taken by the contractor to minimize impact upon employees affected adversely by the termination (see paragraph 7 of the letter notice in 8-801.2).
(xv) obligation of the contractor to furnish accurate, complete and current cost or pricing data and to certify to that effect in accordance with 3-807.6(f) prior to execution of the termination settlement agreement in excess of $500,000.

8-206.1 *Termination Status Report.* Upon receipt of the termination notice, it is the responsibility of the contract administration office to prepare DD Form 1598, Contract Termination Status Report, and transmit two copies to the purchasing office and one copy to the headquarters office to which the contract administration office is directly responsible. In addition, these reports shall be furnished on a quarterly basis for the quarters ending March, June, September, and December, within 30 days after the end of the respective quarter, and upon closing of the termination case. This reporting requirement is assigned Report Control Symbol: DD (I&L) (Q&AR) 1411.

8-206.2 *Release of Excess Funds.* An estimate of funds required to settle the termination claim will be made by the TCO at the earliest practicable date. Except in cases where (i) the contract price of items terminated is $1,000 or less, or (ii) the estimated amount of excess funds available is $1,000 or less, funds obligated under the contract in excess of an estimated amount required for settlement will be released to the purchasing office within 30 days after receipt of the

termination notice by the TCO. Amounts of less than $1,000 shall be released upon request from the purchasing office. Continuous surveillance of required funds will be maintained by the TCO to permit timely release of any additional excess funds. In all cases, funds will be released within 10 days after the amount required for settlement has been determined by the TCO. A recommended format for release of excess funds is in 8–807. If it appears that the previous releases of excess funds have resulted in a shortage of the amount which will be required for settlement, the TCO will inform the purchasing office and request by letter the reinstatement of funds, which will be provided within 30 days thereafter.

8–206.3 *Termination Case File.* A separate termination case file shall be established and maintained for each individual termination by the TCO responsible for negotiating final settlement. Such file shall include records of all actions relative to the settlement. (See 1–308.)

8–207 Fraud or Other Criminal Conduct. Whenever the TCO has reason to suspect fraud or other criminal conduct in connection with the settlement of a terminated contract, he shall discontinue all negotiations with the contractor and shall report the facts in accordance with 1–111.

8–208 Audit of Prime Contract Settlement Proposals and of Subcontract Settlements.

(a) Each settlement proposal of $10,000 or over submitted by a prime contractor shall be referred by the TCO to the Defense Contract Audit Agency for appropriate examination and recommendation. The TCO may, when circumstances indicate the necessity therefor, refer settlement proposals of less than $10,000 to such agency. The TCO's referral shall be in writing, indicate any specific information or data which the TCO desires to have developed, and include any facts or circumstances within the knowledge of the TCO which will assist the Defense Contract Audit Agency in the accomplishment of its function. The auditor shall develop such information and may make such further accounting review as he deems appropriate. The Defense Contract Audit Agency shall submit written comments and recommendations to the TCO. In claims of less than $10,000 where a formal examination of the settlement proposal is not warranted, a desk review will be performed by the TCO or a qualified member of his staff. A written summary of the review will be incorporated in the termination case file.

(b) Subcontract settlements submitted by a contractor to the TCO for approval or ratification in accordance with 8–209 shall be referred to the Defense Contract Audit Agency for review and recommendations if (i) the settlement involves $25,000 or more unless an accounting review of the settlement proposal has been performed by the Defense Contract Audit Agency; or (ii) the TCO considers an accounting review in whole or in part, desirable. The requirement for review under (i) or (ii) does not relieve the prime contractor or higher tier subcontractor of the responsibility for performing an accounting review. The Defense Contract Audit Agency shall submit written comments and recommendations to the TCO.

(c) The responsibility of the contractor set forth in 8–209.1 for settlement of immediate subcontractors' settlement proposals applies equally to prime contractors and subcontractors and includes responsibility for performing accounting

The invoice or voucher, if proper, shall be approved by the TCO by noting thereon the following:

Payment in the amount of $_____approved.

8–213.2 *Final Payment.*

(a) *Negotiated Settlement.* Upon execution of a settlement agreement, a voucher or invoice showing the amount agreed upon, less any portion previously paid, shall be prepared and presented to the disbursing officer for payment. A copy of the settlement agreement shall be attached to the voucher or invoice.

(b) *Settlement by Determination.* In the event of a settlement by determination:

(i) if the contractor has not appealed the determination a voucher or invoice showing the amount so determined to be due, less any portion previously paid, shall be prepared and presented to the disbursing officer for payment; or

(ii) if the contractor has appealed the determination, a voucher or invoice showing the amount finally determined on such appeal to be due, less any portion previously paid, shall be prepared and presented to the disbursing officer for payment. Pending determination of any appeal, an invoice or voucher pursuant to (i) above may be presented to the disbursing officer for payment, without prejudice to the rights of either party on the appeal.

(c) *Interest.* No interest shall be paid by the Government on the amount due under a settlement agreement or a settlement by determination.

8–214 Cost Principles. The cost principles and procedures set forth in the applicable Part of Section XV shall, subject to the general policies set forth in 8–301, (i) be used in claiming, negotiating, or determining costs relevant to termination settlements under fixed price and cost reimbursement type contracts with other than educational institutions; and (ii) be a guide for the negotiation of settlements under fixed price or cost reimbursement type contracts for experimental, developmental or research work with educational institutions (but see 15–103(iii)).

8–215 Settlement of Unadjusted Contract Changes.

(a) Prior to settlement of a completely terminated contract, the TCO shall obtain from the purchasing office a list of all unadjusted contract changes pertaining thereto. The TCO shall settle, as part of final settlement, all unadjusted contract changes after obtaining the recommendations of the purchasing office concerning such changes.

(b) When the contract has been partially terminated, any outstanding unadjusted contract changes will be handled by the purchasing office. However, delegation may be made by the PCO to the TCO.

8-216 Terminated Contracts With Canadian Commercial Corporation.

(a) The termination and settlement of contracts with the Canadian Commercial Corporation shall be effected in accordance with the provisions of (i) the Letter of Agreement between the Department of Defence Production (Canada) and the United States Department of Defense (6-1401(a)); (ii) policies in Section VI, Part 5, and Section VIII; and (iii) the Manual of Procedure on Termination of Contracts, Department of Defence Production (Canada).

(b) The termination claim of Canadian Commercial Corporation shall be submitted in the form prescribed in 8-802, and shall reflect the amount of settlements with subcontractors. The letter transmitting the claim shall certify that (i) subcontract settlements with Canadian subcontractors have been approved by the Contracts Settlement Committee of the Department of Defence Production (Canada), if required pursuant to the Manual of Procedure on Termination of Contracts, Department of Defence Production (Canada), and (ii) that disposition of inventory has been completed. The TCO shall prepare an appropriate settlement agreement pursuant to the provisions of 8-210 and 8-805.

(c) All Canadian subcontracts shall be settled by the Canadian Commercial Corporation pursuant to 6-504.3. Schedules listing serviceable or usable contractor inventory shall be submitted by the Canadian Commercial Corporation to the TCO for screening in accordance with the provisions of 24-205. Transfer instructions resulting from screening procedures shall be submitted to the Canadian Commercial Corporation for action. At the expiration of the screening period, the TCO shall advise the Canadian Commercial Corporation to proceed with disposition of contractor inventory determined to be surplus to the requirements of the Government. The settlement of Canadian subcontracts shall not be subject to approval or ratification by the TCO, except that in cases that result in a proposed negotiated settlement in excess of the total contract price of the prime contract, ratification of the proposed settlement by the United States PCO, evidenced by a contract modification increasing the contract price and obligating required additional funds shall be obtained by the TCO prior to final settlement.

(d) Termination claims submitted by United States subcontractors and suppliers normally should be referred by the Canadian Commercial Corporation to the TCO (normally DCASR, Cleveland) for settlement in accordance with this Section and Section XXIV. Upon completion of all settlement action, the TCO shall advise the Canadian Commercial Corporation of the amount of the net settlement agreed upon, which shall be included in the termination claim submitted pursuant to (b) above. Execution of a settlement agreement with the subcontractor shall be the responsibility of the Canadian Commercial Corporation.

8-217 Settlement of Terminated Contracts With Incentive Provisions.

(a) *FPI Contracts.* The settlement of terminated contracts containing an incentive clause shall be in accordance with the provisions of paragraph (i) of the clause in 7-108.1.

(1) *Partial Termination.* Under a partial termination of a FPI contract, the TCO shall negotiate a settlement pursuant to the termination for convenience clause, as provided in paragraph (i) of the clause in 7-108.1 and paragraph (k) of the clause in 7-108.2. The application of the incentive price revision provisions to completed items accepted by the Government, including any for which reimbur-

(i) valuation placed on the stock transferred shall be the fair market value at the time of transfer, determined upon the most objective basis available; and

(ii) accruals for the cost of stock prior to the issuance of such stock to the employees shall be subject to adjustment according to the possibilities that the employees will not receive such stock and their interest in the accruals will be forfeited.

(e) *Stock Options.* (CWAS-NA) The cost of options to employees to purchase stock of the contractor or of an affiliate is unallowable.

(f) *Deferred Compensation.* (CWAS-NA)

(1) As used herein, deferred compensation includes all remuneration, in whatever form, for which the employee is not paid until after the lapse of a stated period of years or the occurrence of other events as provided in the plans, except that it does not include normal end of accounting period accruals. It includes (i) contributions to pension (including early retirement), annuity, stock bonus, and profit sharing plans, (ii) contributions to disability, withdrawal, insurance, survivorship, and similar benefit plans, and (iii) other deferred compensation, whether paid in cash or in stock.

(2) Deferred compensation is allowable only to the extent that:

(i) it is, together with all other compensation paid to the employee, reasonable in amount; and

(ii) it is paid pursuant to an agreement entered into in good faith between the contractor and employees before the services are rendered, or pursuant to a plan established and consistently applied thereafter by the contractor. Pension plans and other types of deferred compensation not covered by Part 415, Appendix O, are also subject to the provisions of (A), (B), and (C) below. Deferred compensation covered by Part 415, Appendix O, is not subject to the limitations of the Internal Revenue Code and regulations thereunder, but is subject to the provisions of (D) and (E) below. Employee Stock Ownership Plans (ESOP) are considered pension plans and are covered by the funding and forfeiture provisions of (A) below (subparagraphs *a*, *c*, and *d*), and the provisions of (F) below.

(A) it is deductible for the same fiscal year for Federal income tax purposes under Section 404 (excluding subsection (a)(5)) of the Internal Revenue Code of 1954 as amended and the regulations of the Internal Revenue Service, *provided*, that

a. normal costs of pension plans incurred subsequent to the effective date of this paragraph, not funded in the year incurred, and pension costs or adjustments of previous years (past service) allocable to the current accounting period but not funded in such period shall not be allowable in subsequent years (except that a payment made to a fund by the time set for filing of the Federal income tax return for any taxable year shall be deemed to have been made during such taxable year). However, any portion of pension cost computed for a cost accounting period that is deferred pursuant to a waiver granted under the provisions of ERISA as set forth in CAS 412.50(C)(3) will be allowable in the future accounting period(s) in which the funding takes place.

The allowability of such deferred contributions will be limited to the amounts that would have been allowed, had the funding been made in the year the costs were incurred;

b. the determination of allowable costs shall take into consideration the method of valuing pension fund assets as provided for in CAS 413.50(b). Any significant adjustment resulting from the actuarial valuation falling outside of the market value corridors will be amortized (i) in equal amounts over a 15-year period when the immediate gain actuarial cost method is used, or (ii) over the remaining average lives of the workforce if the spread gain actuarial cost method is used;

c. under contracts not subject to Cost Accounting Standards, abnormal forfeitures due to significant reduction in the contractor's level of employment, which are foreseeable and which can be currently evaluated with reasonable accuracy, by actuarial or other sound computation, shall be reflected by an adjustment of costs otherwise allowable; where abnormal forfeitures were not taken into account previously, appropriate credit shall be given to the Government pursuant to 15-201.5;

d. any amount paid or funded and deductible in any year under Section 404 (excluding Section 404(a)(5)) of the Internal Revenue Code of 1954 as amended prior to the time it becomes allowable under this paragraph (A) shall be applied to future years, in order of time, as if actually paid and deductible in such years;

e. increased normal and past service costs caused by delay in funding the actuarial liability beyond 30 days after each quarter of the year to which such costs are assignable, are unallowable. If a composite rate is used to allocate pension liability between the segments of a company and if, because of differences in the timing of the funding by segments, an inequity exists, allowable normal cost and past service costs will be limited to that particular segment's calculation of pension costs as provided in CAS 413.50(c)(5). Determination of unallowable costs shall be made in accordance with the actuarial method used in calculating the normal and past service costs;

f. the allowability of the cost of indemnification of the Pension Benefit Guaranty Corporation (PBGC), pursuant to Section 4062 or 4064 of the Employee Retirement Income Security Act of 1974 (ERISA), because of the termination of an employee deferred compensation plan will be considered on a case-by-case basis; *providing* that if insurance was required by the PBGC pursuant to Section 4023 of ERISA, it was so obtained, and the indemnification payment is not recoverable thereunder. Consideration under the foregoing circumstances will be primarily for the purpose of appraising the extent to which the indemnification payment is allocable to Government work; and if a beneficial or other equitable relationship exists, the Government will participate, provisions of 15-205.16(a)(3) and 15-205.16(b) notwithstanding, in the indemnification payment to the extent of its fair share.

or

(B) It is deductible in the same fiscal year for Federal income tax purposes under Section 404(a)(5) of the Internal Revenue Code of 1954 as amended and the regulations of the Internal Revenue Service, except that the costs of unfunded pension and retirement benefits paid directly to, or on behalf of, former employees shall be allowable only to the extent the contractor demonstrates that such costs, together with any pension and retirement costs allowed pursuant to (A) above, do not exceed the amount that would be allowable under (A) above if the contractor were providing for equivalent benefits on an actuarial basis in the current period. Amounts paid to employees under pay-as-you-go plans as an inducement for early retirement should be treated as supplemental pension plans under this provision. To be allowable, these costs must be incurred under a well defined plan which the contractor consistently follows thereafter. The scale of payments to the retired employees should be reasonable, the costs should be computed in accordance with this provision, and the costs should be allocated according to the contractor's system of accounting for pension costs.

(C) It complies with the provisions of Part 412 and Part 413, Appendix O, which are incorporated here in their entirety; and when any of the contractor's contracts are subject to Cost Accounting Standards, these provisions will apply, commencing with the contractor's fiscal year as prescribed by Part 412.80 and Part 413.80, Appendix O. The amount of deferred compensation costs which may be allowed shall not, however, exceed the amount determined under the provisions of the standard, subject to the cost limitations and exclusions set forth in subparagraphs (A) and (B) above.

(D) It complies with the provisions of Part 415, Appendix O, which are incorporated herein in their entirety, and when any of the contractor's contracts are subject to Cost Accounting Standards Board standards, these provisions will be applicable commencing with the contractor's fiscal year as prescribed by the terms of Part 415.80, Appendix O. The amount of deferred compensation cost which may be allowed shall not, however, exceed the amount determined under the provisions of Part 415, Appendix O, except that the cost of options to employees to purchase stock of the contractor or of an affiliate is unallowable.

(E) Deferred compensation payments to employees under awards made prior to the effective date of Part 415, Appendix O, are allowable to the extent they would have been allowable under 15-205.6, dated 1 July 1976.

(F) An ESOP is an individual stock bonus plan designed specifically to invest in the stock of the employer corporation. The contractor's contributions to an Employee Stock Ownership Trust (ESOT) may be in the form of cash, stock, or property.

a. Costs of an ESOP are allowable subject to the following conditions:

(i) Contributions (by the contractor) in any one year may not exceed 15 percent (25 percent when a money purchase plan is included) of salaries and wages of employees participating in the plan in any particular year.

(ii) The contribution rate (ratio of contribution to salaries and wages of participating employees) may not exceed the last approved contribution rate except when approved by the contracting officer based upon justification provided by the contractor. When no contribution was made in the previous year for an existing ESOP or when a new ESOP is first established, and the contractor proposes to make a contribution in the current year, the contribution shall be subject to the approval of the contracting officer.

(iii) When a plan or agreement exists wherein the liability for the contribution can be compelled for a specific year, the expense associated with such liability is assignable only to that period. Any portion of the contribution not funded by the time set for filing of the Federal income tax return for that year or any extension thereof shall not be allowable in subsequent years.

(iv) When a plan or agreement exists wherein the liability for the contribution cannot be compelled, the amount contributed for any year is assignable to that year, provided the amount is funded by the time set for filing of the Federal income tax return for that year.

(v) When the contribution is in the form of stock, the value of the stock contribution shall be limited to the fair market value of the stock on the date that title is effectively transferred to the trust. Cash contributions shall be allowable only when the contractor furnishes evidence satisfactory to the contracting officer demonstrating that stock purchases by the ESOT are or will be at a fair market price; e.g., makes arrangements with the trust permitting the contracting officer to examine purchases of stock by the trust so he may determine that prices paid are at fair market value. When excessive prices are paid, the amount of the excess will be credited to the same indirect cost pools that were charged for the ESOP contributions in the year in which the stock purchase occurs. However, when the trust purchases the stock with borrowed funds which will be repaid over a period of years by cash contributions from the contractor to the trust, the excess price over fair market value shall be credited to the indirect cost pools pro rata over the period of years during which the contractor contributes the cash used by the trust to repay the loan. When the fair market value of unissued stock or stock of a closely held corporation is not readily determinable, the valuation will be made on a case-by-case basis taking into consideration the guidelines for valuation used by the IRS.

b. Amounts contributed to an ESOP arising from either (i) an additional investment tax credit (see 1975 Tax Reduction Act - TRASOPs); or (ii) a payroll based tax credit (see Economic Recovery Act of 1981 - PAYSOPs) are unallowable.

(g) *Fringe Benefits.* (CWAS) Fringe benefits are allowances and services provided by the contractor to its employees as compensation in addition to regular wages and salaries. The cost of fringe benefits, including, but not limited to, the cost of vacations, sick leave, holidays, military leave, employee insurance, and supplemental unemployment benefit plans, is allowable, if reasonable and consistent with the following.

(1) On contracts subject to CAS, the costs of compensated personal absence must be measured and allocated in accordance with Part 408 of Appendix O (CAS 408, Accounting for the Cost of Compensated Personal Absence). For all fringe benefits not addressed by the provisions of CAS 408, the criteria in (2) below apply.

(2) On contracts not subject to CAS, the cost of all fringe benefits are allowable to the extent that they are required by law, employer-employee agreement, or an established policy of the contractor.

(h) *Severance Pay.* (CWAS) See 15-205.39.

(i) *Training and Education Expenses.* (CWAS) *See 15-205.44.*

(j) Costs which are unallowable under other paragraphs of this Part 2 of Section XV shall not be allowable under 15-205.6 solely on the basis that they constitute personal compensation.

(k) *Backpay Resulting from Violations of Federal Labor Laws.* (CWAS-NA) Backpay may result from a negotiated settlement, order or court decree which resolves a violation of Federal labor laws. Such backpay falls into two categories; one requiring the contractor to pay employees additional compensation for work performed for which they were underpaid, and the other resulting from other violations such as when the employee was improperly discharged, discriminated against or other circumstances for which the backpay was not additional compensation for work performed. Backpay resulting from underpaid work is compensation for the work performed and is allowable. All other backpay is unallowable.

15-205.7 *Contingencies.* (CWAS-NA)

(a) A contingency is a possible future event or condition arising from presently known or unknown causes, the outcome of which is indeterminable at a present time.

(b) In historical costing, contingencies are not normally present since such costing deals with costs which have been incurred and recorded on the contractor's books. Accordingly, contingencies are generally unallowable for historical costing purposes. However, in some cases, as for example, terminations, a contingency factor may be recognized which is applicable to a past period to give recognition to minor unsettled factors in the interest of expeditious settlement.

(c) In connection with estimates of future costs, contingencies fall into two categories:

(i) Those which may arise from presently known and existing conditions, the effects of which are foreseeable within reasonable limits of accuracy; *e.g.*, anticipated costs of rejects and defective work; in such situations where they exist, contingencies of this category are to be included in the estimates of future cost so as to provide the best estimate of performance costs; and

(ii) those which may arise from presently known or unknown conditions, the effect of which cannot be measured so precisely as to provide equitable results to the contractor and to the Government; *e.g.*, results of pending litigation, and other general business risks. Contingencies of this category are to be excluded from cost estimates under the several items of cost, but should be disclosed separately, including the basis upon which the contingency is computed in order to facilitate the negotiation of appropriate contractual coverage. (See, for example, 15-205.16, 15-205.20, and 15-205.39.)

15-205.8 *Contributions and Donations.* (CWAS-NA) Contributions and donations are unallowable.

15-205.9 *Depreciation.* (CWAS-NA)

(a) Depreciation is a charge to current operations which distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner. It does not involve a process of valuation. Useful life has reference to the prospective period of economic usefulness in the particular contractor's operations as distinguished from physical life and shall be evidenced by the actual or estimated retirement and replacement practice of the contractor.

(b) Contractors having contracts subject to Cost Accounting Standard 409 of Appendix O (CAS 409, Depreciation of Tangible Capital Assets) must adhere to the provisions of that Standard for all CAS covered contracts, and may elect to adopt the Standard for all uncovered contracts. All provisions of CAS 409 are applicable if the election is made. When CAS 409 is applicable, its provisions supersede any conflicting provisions of this cost principle. Once electing to adopt CAS 409 for uncovered contracts, contractors must continue to follow its provisions until notification is received of final acceptance of all deliverable items on all open DoD negotiated contracts. The principles which follow are applicable to those contracts to which CAS 409 is not applied.

(c) Normal depreciation on a contractor's plant, equipment, and other capital facilities is an allowable element of contract cost *provided* the contractor is able to demonstrate that such costs are reasonable and allocable to the contract. Subject to (f) and (g) below:

(i) Depreciation will ordinarily be considered reasonable if the contractor follows depreciation policies and procedures which:

(A) are consistent with the policies and procedures he follows in the same cost center in connection with his business other than Government business;

(B) are reflected in his books of accounts and financial statements; and

(C) are used by him for Federal income tax purposes, and are acceptable for such purposes;

(ii) Where the depreciation reflected on a contractor's books of account and financial statements differs from that used and acceptable for Federal income tax purposes, reimbursement shall be based upon the cost of the asset to the contractor amortized over the estimated useful life of the property using depreciation methods (straight line, sum of the years' digits, etc.) acceptable for income tax purposes. Allowable depreciation shall not exceed the amounts used for book and statement purposes and shall be determined in a manner consistent with the depreciation policies and procedures followed in the same cost center in connection with his business other than Government business.

(iii) Depreciation for reimbursement purposes in the case of tax-exempt organizations shall be determined on the basis outlined in (ii) above.

(d) Special considerations are required for assets acquired prior to the effective date of this principle where, on the effective date of this principle, the undepreciated balance of such assets resulting from depreciation policies and procedures used previously for Government contracts and subcontracts is different from the undepreciated balance of such assets on the books and financial statements. Generally, the undepreciated balance for contract cost purposes shall be depreciated over the remaining life using the methods and lives followed for book purposes. The aggregate depreciation on any asset allowable after the effective date of this 15-205.9 shall not exceed the cost basis of the asset less any depreciation allowed or allowable under prior procurement regulations.

(e) Depreciation should usually be allocated to the contract and other work as an indirect cost. The amount of depreciation allowed in any accounting period may, consistent with the basic objectives set forth in (a) above, vary with volume of production or use of multishift operations.

(f) In the case of emergency facilities covered by certificates of necessity, a contractor may elect to use normal depreciation without requesting a determination of "true depreciation", or may elect to use either normal or "true depreciation" after a determination of "true depreciation" has been made by an Emergency Facilities Depreciation Board. The method elected must be followed consistently throughout the life of the emergency facility. When an election is made to use normal depreciation, the criteria in (c) above shall apply for both the emergency period and the post-emergency period. When an election is made to use "true depreciation", the amount allowable as depreciation:

(i) with respect to the emergency period (five years), shall be computed in accordance with the determination of the Emergency Facilities Depreciation Board and allocated rateably over the full five year emergency period; *provided* no other allowance is made which would duplicate the factors, such as extraordinary obsolescence, covered by the Board's determination; and

(ii) after the end of the emergency period, shall be computed by distributing the remaining undepreciated portion of the cost of the emergency facility over the balance of its useful life *provided* the remaining undepreciated portion of such cost shall not include any amount of unrecovered "true depreciation."

(g) No depreciation, rental, or use charge shall be allowed on property acquired at no cost from the Government by the contractor or by any division, subsidiary or affiliate of the contractor under a common control.

(h) The depreciation on any item which meets the criteria for allowance at a "price" in accordance with 15-205.22(e) may be based on such price, *provided* the same depreciation policies and procedures are used for costing purposes for all business of the using division, subsidiary or organization under common control.

(i) No depreciation or rental shall be allowed on property fully depreciated by the contractor or by any division, subsidiary or affiliate of the contractor under a common control; however, a reasonable charge for the use of fully depreciated

19-208.3 *FOB Destination.*

(a) When the supplies will or may be purchased f.o.b. destination (see 19-104.2(d)), the clause in 7-104.71 shall be included in the contract. When only f.o.b. destination bids or proposals are desired, the solicitation shall specify that bids or offers submitted on a basis other than f.o.b. destination will be rejected as nonresponsive. When the supplies will or may be purchased f.o.b. destination and inspection and acceptance will be at origin, the contract shall also include the clause in 7-104.76.

(b) When procurement is on an f.o.b. destination basis, special care shall be taken to observe the requirements of 14-305.3 as to place of inspection; also see 14-306 and 14-307 as to place of acceptance.

19-208.4 *Destination Unknown.*

(a) When the exact destination of the supplies to be purchased is not known, but the general location of the expected users can be reasonably established, the purchase request shall designate a place or places as the tentative point(s) to which transportation costs will be computed, stating estimated quantities for each tentative destination. The solicitation shall provide that bids or proposals shall be submitted f.o.b. origin only (see 19-104.2(c)(1)(ii)) and that shipment shall be made on Government bills of lading. The clause contained in 7-104.70 and the "*Destination Unknown*" and the "*F.O.B. Origin — Carload and Truckload Shipments*" provisions in 7-2003.24(a) and (b) shall be included to:

(i) establish that destinations are tentative and only for the purpose of evaluating bids or proposals;

(ii) establish that bids (offers) will be solicited on basis of f.o.b. origin only; and

(iii) control subsequent shipping weights.

(b) When the purchasing office and the requesting activity determine that it is impracticable to estimate any tentative or general delivery points for the purpose of evaluating transportation costs, proposals shall be solicited f.o.b. origin only (see 19-104.2(c)(1)(ii)) and evaluation will be made without regard for transportation costs. In such cases, insert the provision in 7-2003.70 in the solicitation.

The contract file shall be documented with justification for such solicitation provision and this paragraph shall be cited. The clauses in 7-104.70 and 7-104.72 shall be included in the contract.

19-209 Required Shipping Weights. Solicitations which may result in f.o.b. origin contracts shall include the "*F.O.B. Origin — Carload and truckload Shipments*" provision in 7-2003.24(b). This will provide agreement as to appropriate freight costs for evaluation of bids or proposals, and assure that contractors produce economical shipments of agreed size (see 19-208.2(a)).

19-210 Guaranteed Shipping Weights and Dimensions. When shipping weights and dimensions are required to evaluate offers as to transportation costs, the "*Guaranteed Maximum Shipping Weights and Dimensions*" provision in 7-2003.16 shall be included in the solicitation.

19-211 Transportation Responsibilities of Contractors.

(a) The clause in 7-104.73 shall be included in contracts for supplies which may be shipped in carload lots by rail. The clause specifies that carload shipments shall be loaded, blocked and braced by the contractor in accordance with standards published by the Association of American Railroads.

(b) If the nature of the supplies or safety, environmental, or transportability factors require special methods for securing the supplies on the carrier's equipment, or only a special mode of transportation or type vehicle is appropriate (see 19-103), the solicitation shall set forth such detailed methods.

19-212 Shipping Point(s) Used in Evaluation of FOB Origin Bids. The "*Shipping Point(s) Used in Evaluation of F.O.B. Origin Bids (Or Proposals)*" provision in 7-2003.24(c) shall be included in solicitations which may result in f.o.b. origin contracts to assure application of appropriate freight costs in evaluating bids or proposals. This provision should be supported by an additional provision as part of the solicitation, to require prospective contractors to specify the location of their actual shipping point(s) (street address, city, state, and zip code) from which supplies will be delivered to the Government in accordance with the contract's f.o.b. origin terms. To assure appropriate rail routing for shipments from or to the contractor's shipping point, each prospective contractor shall also be required to specify whether his shipping point has a private railroad siding and the name of the rail carrier serving it. When the shipping point does not have a private siding, the name and address of the nearest public rail siding and carrier serving it shall be specified.

19-213 Shipments to Ports.

19-213.1 *Solicitation/Contract Provisions.*

(a) When supplies are for known destinations outside the continental United States, the CONUS port of loading or point of exit (aerial or water) and the Water Port of Debarkation which serves the overseas destination shall be listed in the solicitation for transportation evaluation purposes.

(b) When a contract will not generate any shipment for which an Export Release is required (less than 10,000 lbs., etc.; see paragraph 202024 of the Military Traffic Management Regulation (AR 55-355, NAVSUP 4600.70, MCO 4600.14A, AFM 75-2, DLAR 4500.3), only the CONUS ports which serve the overseas destination shall be listed in the solicitation (see DoD Regulation 4500.32-R, Appendix N), except that the responsible contracting officer may limit the water ports listed when such limitation is considered necessary to meet delivery or other requirements.

(c) Except for contracts to which (b) above applies, other CONUS ports which meet the eligibility criteria compatible with the nature and quantity of the supplies, their destination, type of carrier required, and specified overseas delivery dates also may be listed in the solicitation for evaluation purposes. This will permit bidders or offerors, who are geographically remote from the port which normally serves the overseas destination, to be competitive as far as transportation costs are concerned. Ports of loading to be included in the solicitation may be determined through coordination with the headquarters of the Military Traffic Management Command serving the area in which the purchasing office is located.

(d) Unless logistics requirements limit the ports of loading to those ports listed in the solicitation, the solicitation shall provide that the bidder or offeror may nominate additional ports (including ports in Alaska and Hawaii) more favorably located to his shipping point, and that these ports shall be considered in the evaluation of bids or proposals; *provided*, however, that these ports must possess all requisite capabilities of the listed ports in relation to the supplies being procured. Under these circumstances, the "*Evaluation of Export Bids (Or*

20-308.2 *Criteria for Establishing.* This two position alpha/numeric control code is required for Military Standard Contract Administration Procedures (MILSCAP) processing and may also be used in contracts administered by each Service/Agency. Under MILSCAP, the ACRN is required to associate the Accounting Classification Trailer Record, the Supplies Schedules Data Record and the Services Line Item Data Record with the long line accounting classification. The reference number is also used to associate the various record formats of the Contract Payment Notice as described in Chapter 9 of the MILSCAP Manual, DoD 4105.63-M.

20-308.3 *Procedures for Using the Accounting Classification Reference Number (ACRN).*

(a) The ACRN will be any combination of a two position alpha/numeric code assigned discretely to each accounting classification within each contract. The letters "I" and "O" shall not be used.

(b) This code will be shown as a detached prefix to the long line accounting classification number in the Accounting and Appropriation Data block and/or Section K (Contract Administration Data) of the contract, except that accounting classification numbers included in the contract only for the information of the Transportation Officer for citation on Government bills of lading for shipment at Government expense of items on an f.o.b. origin contract need not be prefixed with an ACRN. In the case of modifications to contracts/orders which have been previously assigned a long line accounting classification number(s), only the ACRN(s) assigned to that number(s) need be shown in the Accounting and Appropriations Data block and/or Continuation Sheet(s) of the modification.

(c) If more than one ACRN is assigned in the contract, the ACRN shall also be shown in the contract Schedule as follows:

(i) The ACRN shall be shown adjacent to the identity code of each "Ship To/Mark For," unless the procedure in (ii) or (iii) below is used. Only one ACRN may be assigned to the same "Ship To/Mark For" within the same contract line or subline item number, except in rare cases when multiple accounting classifications apply to a single unit so the quantity cannot be subdivided to relate to a single accounting classification. In such case, the contract shall provide sufficient information under the heading "Payment Instructions for Multiple Fund Accounting Citations" to permit proper payment and fund accounting;

(ii) If only one accounting classification applies to a subline item, the ACRN may be shown in the Supplies/Services column near the subline item description;

(iii) If only one accounting classification applies to a line item, the ACRN may be shown in the Supplies/Services column near the line item description; and

(iv) The ACRN shall be shown in the contract Schedule in the following manner:

ACR:1D

(v) For cost reimbursement type contracts the provisions of this paragraph (c) do not apply.

(d) The purchasing office executing a contract, basic ordering agreement, or blanket purchase agreement is responsible for control of assignment of ACRNs pertaining thereto. Contract or agreement provisions which provide for the issuance of contract modifications (including provisioned item order modifications), calls, orders, or work requests by organizations other than the purchasing office executing the contract or agreement will contain instructions for ACRN assignment. This may be accomplished by individual assignments as funds are cited, by assignment of blocks of ACRNs to offices authorized to issue contract modifications, calls, orders or work requests or by some other appropriate method. In no case, however, will an ACRN apply to more than one long line accounting classification in a contract. The authority to control ACRN assignment shall not be delegated to another office by the purchasing office issuing the contract or agreement.

20–309 Indefinite Delivery Type Contracts.

(a) When an indefinite delivery type contract includes provisions wherein the price of an item is determined at the time a delivery order is issued based on such factors as the quantity to be ordered, (*e.g.*, 10–99 at $1.00, 100–249 at $.98, and 250 or more at $.95), the FOB provision, the destination, or the type pack required in the delivery order, it shall not be necessary to assign a separate line item number in the indefinite delivery type contract to each price for the same item. Each line or subline item in the individual delivery order, however, shall cite only one of the unit prices in the indefinite delivery type contract.

(b) Except as noted in (a) above, criteria for contract line item assignment (see 20–303) shall be applicable to indefinite delivery type contracts.

Part 4—Distribution of Procurement Documents

20–401 Distribution of Procurement Documents.

(a) The basic contract shall be distributed in accordance with (d) below. In the interest of limiting distribution of modifications to only those offices which have an interest therein, the contract distribution list accompanying the contract shall be annotated by the purchasing office to indicate those offices which should receive copies of contract modifications.

(b) The contracting officer executing a contract or modification is responsible for complete distribution of the document within ten working days after execution. The purchasing office shall, upon assignment of the contract, furnish the contract administration office the contract distribution list and shall provide changes to the list as they occur.

(c) Except as provided in this paragraph and in (d)(i)(C) below, the procuring contracting officer shall maintain the original executed procurement document in the official contract file. The original of each modification executed by the ACO or TCO shall be provided to the PCO. Unless otherwise directed by the Department concerned, the original executed copies of orders under Basic Ordering Agreements (3–410.2) and the original executed provisioning orders (4–302.2) shall be maintained by the office issuing the orders.

(d) Copies of contracts (including agreements) shall be distributed as specified below:

(i) one signed copy or one reproduced copy of the signed contract and each modification thereto to:
  (A) the contractor (this copy shall be stamped "Duplicate Original");
  (B) the contract administration office;
  (C) the payment office, except the original executed order and, as required by Departmental regulations, additional copies of a purchase order for open market purchases of $10,000 or less, delivery order(s), and Federal Supply Schedule orders, and each modification thereto shall be distributed to the payment office. For those assigned to DCAS, only the original executed order is required which shall be sent directly to the DCAS payment office (not with the CAO copies);
  (D) each accounting and finance office (funding office) whose funds are cited in the contract;

(ii) in addition to the distribution in (i) above, additional copies shall be distributed as follows:
  (A) four copies to the contract administration office (distribution shall be effected simultaneously with the copy furnished in (d)(i)(B) above;
  (B) one copy to each consignee indicated in the contract (a transshipping terminal is not a consignee);
  (C) one copy to the appropriate transportation office when required by 19–402 and additional copies as required by Departmental regulations;
  (D) ten copies to the MIPR initiating activity in the case of coordinated procurement;

(E) two copies directly to the contract administration office cognizant of each manufacturing location where contract administration services will be required (see DoD Directory of Contract Administration Services Components 4105.59H), when administration of the contract is performed at other than the place of manufacture;

(F) one copy of each of the following type contracts and of each modification thereto to the appropriate Defense Contract Audit Agency (DCAA) field audit office (listed in the DCAA Directory—Headquarters and Field Offices):

(I) cost reimbursement; time and materials, or labor-hour contract;

(II) fixed price contract with redetermination, incentive, economic price adjustment or cost allowability provisions;

(III) any other contract which requires audit service

(if there is a question as to the appropriate DCAA field audit office, contracting officers may request the assistance of the DCAA procurement liaison auditor or the nearest DCAA field audit office); and

(G) one copy to the CAO ADP point, except when the DODAAD code (see DoD Directory 4105.59H) is the same as that of either the CAO or payment office.

(e) When a payment office is added to, or changed under, an existing contract by modification, a copy of the basic contract and all modifications thereto shall be furnished to the added/new payment office. A copy of the modification affecting such addition or change shall also be furnished to the original or losing payment office. When a contract administration office, an accounting and finance office (funding office), a consignee or other activity is added by a modification, the contracting officer shall determine the extent to which each activity is concerned with the basic contract and modifications and make distribution accordingly.

(f) Distribution of modifications issued pursuant to 20-204.3(a)(ii)(B) and 20-204.4(b)(ii) may be limited to the following:

(i) Contractor;

(ii) Receiving Activity;

(iii) Contract Administration Office;

(iv) Payment Office;

(v) CAO ADP point in accordance with (d)(ii)(G) above.

(g) Distribution of overhead rate agreements issued pursuant to 3-705 may be limited to the contractor and the executing contracting officer.

(h) When the purchasing office retains responsibility for administration of a contract containing the Cost Accounting Standards clause (7-104.83(a)), one copy of the contract shall be forwarded to the Contract Administration Office (Attn: ACO) cognizant of the contractor's facility (see DoD Directory 4105.59H). The following notation will be inserted in bold print on the face of the contract: **"FOR COST ACCOUNTING STANDARDS ADMINISTRATION ONLY".** (See 3-1208(c) for contracts at facilities under the cognizance of a non-DoD organization.)

(i) Distribution of contract modifications generated by mechanical means (computer program) may be limited to the following: (1) Contractor, one copy; (2) CAO, one copy; New Payment Office, one copy; (4) PCO, one copy; (5) Funding Activities, one copy to each.

Part 2—Requirement for Consent to Subcontracts

23-200 Scope of Part. This Part sets forth the requirements for consent to subcontracts which includes but is not limited to purchase orders, changes and/or modifications thereto.

23-201 Subcontract Clauses.

23-201.1 *Clause Entitled "Subcontracts" for Fixed-Price Contracts.*

(a) The clause set forth in 7-104.23 shall be inserted in all fixed-price type contracts.

(b) The clause may be modified to:

(i) lower the $500,000 threshold set forth in (ii) and (iii) of paragraph (b) of the clause when it is determined that closer surveillance of subcontracting is desirable because of such factors as the nature of the industry involved, the criticality of work which will probably be subcontracted, the absence of competition in placing the prime contract, uncertainties as to the adequacy of the contractor's procurement system, or the novelty of the supplies or services being procured;

(ii) delete the requirement for advance notification of, or consent to, any subcontracts which were evaluated during negotiations except in contracts for major system acquisition (as defined in 1-201.41) or subsystems or components thereof;

(iii) require extraordinary Government surveillance in exceptional cases of subcontracts or classes of subcontracts selected during negotiation. In this event, insert as paragraph (h) of the clause in 7-104.23(a), the additional paragraph in 7-104.23(b).

23-201.2 *Clause Entitled "Subcontracts" for Cost-Reimbursement and Letter Contracts.*

(a) The appropriate clause entitled "*Subcontracts*" from either 7-203.8 or 7-402.8 shall be included in all cost-reimbursement and letter contracts.

(b) (1) Under cost-reimbursement and letter contracts, other than facilities contracts, consent is required for:

(i) subcontracts for fabrication, purchase, rental, installation, or other acquisition of special test equipment having a value in excess of $1,000 or of any items of industrial facilities; and

(ii) subcontracts for research and development (where the clause in 7-402.8 is used).

(2) Consent is also required for the following additional subcontracts under cost-reimbursement and letter contracts, unless the contractor's procurement system has been approved except in contracts for major systems acquisition (as defined in 1-201.41) or subsystem or components thereof, notwithstanding procurement system approval, consent will be required:

(i) cost-reimbursement, time and materials or labor-hour subcontracts; and

(ii) fixed-price subcontracts exceeding either $25,000 or 5% of the total estimated prime contract price.

(3) See 7-702.33 or 7-703.25 for requirements for approval of subcontracts under facilities contracts.

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(c) Purchases by a contractor from General Services Administration supply sources, under a written authorization by the contracting officer (see 5-906), shall be treated as having been made with the consent of the contracting officer as required by the clause set forth in 7-204.28 or 7-403.23.

(d) In exceptional circumstances, certain subcontracts or classes of subcontracts may be selected during negotiation for extraordinary Government surveillance. In such circumstances, insert as subparagraph (k) of the clause in 7-203.8(a), the additional paragraph in 7-203.8(b), or as subparagraph (k) of the clause in 7-402.8(a), the provision set forth under 7-402.8(b).

23-201.3 *Subcontracts Clause for Time and Materials and Labor-Hour Contracts.* See 7-901.10 for requirements for approval of subcontracts under time and materials and labor-hour contracts.

23-201.4 *Clause Entitled "Equal Opportunity Pre-award Clearance of Subcontracts".* The clause in 7-104.22 shall be inserted in all contracts containing any of the "Subcontracts" clauses prescribed by this paragraph 23-201.

23-202 Consent to Subcontracts.

(a) Early surveillance and involvement in the prime contractor's procurement planning process including the development of the technical requirements for the subcontracts, particularly under major system acquisition (as defined in 1-201.41), is essential for more knowledgeable evaluation of proposed subcontracts submitted for consent. The contracting officer shall seek such assistance and advice necessary to fulfill this requirement. He shall consider the following in his review:

(i) the technical justification for selection of the particular supplies, equipment, or services;

(ii) whether the decision to enter into the proposed subcontract is consistent with the contractor's approved "make-or-buy" program, if any (see 3-902);

(iii) whether the proposed subcontract will require the use of Government-furnished facilities and, if so, whether proper consideration has been obtained;

(iv) the responsibility of the proposed subcontractor (see 1-906);

(v) the basis for selecting the proposed contractor, including the price competition obtained;

(vi) any cost or price analysis or price comparisons accomplished, with particular attention to whether cost or pricing data are accurate, complete, and current, and to whether any required certification has been obtained (see 3-807.3 and 7-104.42);

(vii) the effectiveness of subcontract management by the prime contractor;

(viii) the appropriateness of the type of subcontract used (see Section III, Part 4) to include whether and to what extent considerations have been given to provisions for economic price adjustment;

(ix) the estimated total extent of subcontracting, including procurement of parts and materials;

(x) the extent to which the prime contractor obtains assurance of the adequacy of the subcontractors' procurement system;

of its non-specific meaning to the trade, the term "salvage" risks downgrading of the property in the bidder's viewpoint and shall not be used.

(e) *Lotting* shall be in accordance with the following:

(i) unused items shall be lotted by make or manufacturer, except when quantities or dollar values are small;

(ii) commercially similar items shall be lotted together when practicable;

(iii) used and unused items shall be lotted separately, unless the quantity, value, or nature is such that it is uneconomical to sell separately;

(iv) within the bounds of economical considerations, the size of lots shall be influenced by an effort to encourage bidding by small businesses or individuals;

(v) no lot shall be so small that the administrative cost of selling will be disproportionate to the anticipated proceeds;

(vi) an alternate bid for groups of items or for the entire offering may be solicited by use of an additional item described as follows:

Item _____ (Alternate Bid)
This item consists of all property listed and described in Items _____ to _____, inclusive. Award under this item may be made only if the highest acceptable bid on this item is equal to, or greater than, the total of the highest acceptable bids on Items _____ to _____, inclusive.

(f) *Basis of Sale* shall be:

(i) *Unit Price Basis.* Items offered for sale shall require the bid price to be stated in terms of the quantity or weight generally applied by industry in the commercial sale of such items.

(ii) *Lot Price Basis.* When a sales offering is made on a lot price basis, bids shall be requested only for the entire lot. Use of the lot price basis shall be held to a minimum, since it precludes adjustments. The lot price basis shall be used only when property cannot be sold by unit measure or the potential monetary recovery is small.

(g) *Format of Invitation.* In large sales, a summary list of items offered shall be set forth and used as an item bid sheet, with detailed item descriptions on attached sheets.

(h) *Bidder's Lists.* The plant clearance officer shall assure that commodity bidder's lists sufficient to obtain adequate competition in the sale of contractor inventory are maintained. The plant clearance officer may obtain additional listings, as required, from the Defense Surplus Bidder's Control Office (DSBCO), 50 North Washington Street, Battle Creek, Michigan 49016. Use of listings maintained by DSBCO is encouraged when extremely large quantities of property, special commodities, or unusual geographic location is involved.

(i) *Auction, Spot Bid, and Retail Sales.* Auction, spot bid, and retail sales shall not be utilized for selling contractor inventory, unless approved on an individual case basis by the departmental headquarters of the administering activity.

(j) *Market Impact.* Contracting Officers or plant clearance officers shall submit data to DLSC relative to the proposed sale of machine tools of any one type on hand at any single location in minimum condition N3, E1, or O1 with a total acquisition cost exceeding $250,000. Sales data shall include the Plant Equipment

Code (PEC) number, noun description, quantity, location of property, and the proposed method of sale. DLSC shall advise the contracting officer or plant clearance officer within five working days whether or not sale proposal is approved. Priority for sales approval shall be given in those instances where plant clearance or other expedited actions are involved.

24-206.2 *Competitive Sales.*

(a) *General.* Surplus contractor inventory shall be offered for sale on a competitive basis except as provided in 24-206.3. To the extent feasible, subcontractors and suppliers should be solicited when additional competition is likely to result. The plant clearance officer shall provide the contractor with instructions relative to the method of soliciting bids and the basis for offering the property for sale (*i.e.*, serviceable or scrap). In determining the sales method to be used, the plant clearance officer shall consider the expected sales proceeds (based on previous experience and current market) versus the cost of conducting the sale. When he determines that an individual sale will be uneconomical, the material to be sold shall be (i) combined with other material offered for sale, (ii) disposed of through the contractor's approved production generated scrap disposal procedure (see 24-204.4), or (iii) abandoned. Case files will be documented to show the basis for the decision. The contractor's overall program, including all forms and procedures, shall be evaluated by the plant clearance officer and shall be subject to his surveillance. To the extent necessary, the plant clearance officer may reserve the right to approve individual sales offerings prior to distribution. Pursuant to 24-102(xvi) when the the plant clearance officer determines that sale services are required, such service will be arranged for by the plant clearance officer directly with the organization requested to provide the service. The plant clearance officer will justify and document this need. These documents shall be a part of the plant clearance case file. The agreement reached will provide for the Defense Surplus Sales Office or General Services Administration Regional Office to return total proceeds to the plant clearance officer for crediting in compliance with 24-206.4(c).

(b) *Solicitation of Bids.* Contractors shall solicit bids by formal invitations, unless informal bid procedures have been approved by the plant clearance officer as provided in (2) below:

(1) *Formal Bid Procedures.*

(i) bids shall be solicited a minimum of 15 calendar days in advance of the opening of bids to allow bidders an adequate opportunity to inspect the property and prepare and formally submit bids;

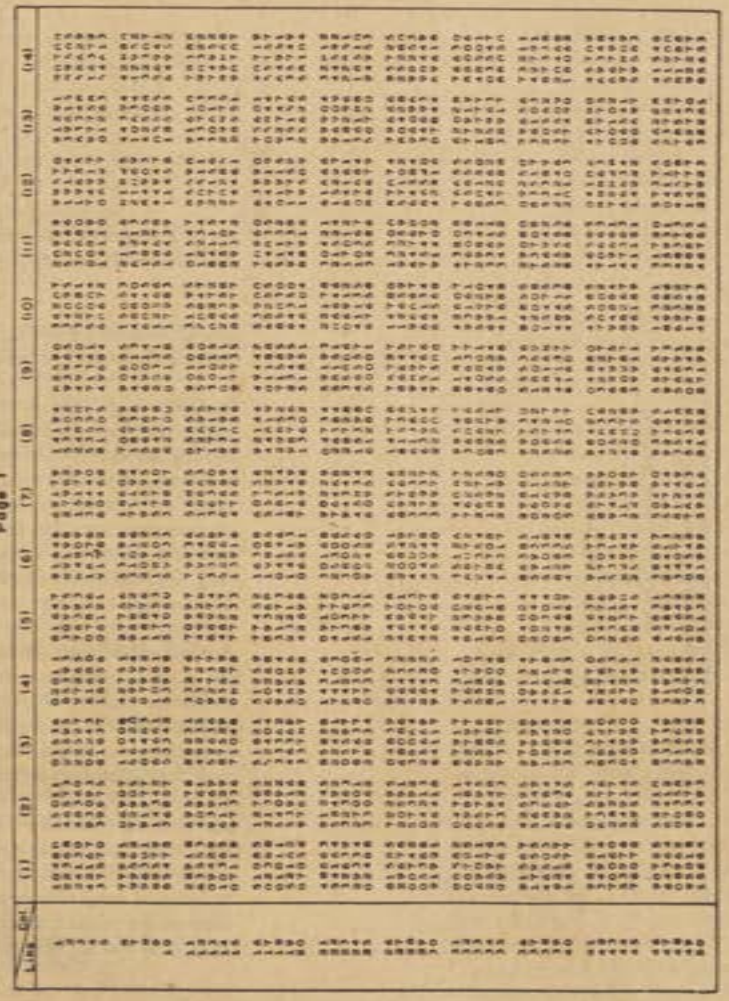
ANNEX II

DOUBLE SAMPLING PLAN

(90% Confidence of rejecting lots having 10% or more defectives)

Lot Range	Sample Size 1	Accept if Defects in Sample 1 Are	Reject if Defects in Sample 1 Are	Continue With Sample 2 if Defects in Sample 1 Are	Sample Size 2	Accept if Sum of Defects in Samples 1 and 2 Equals or is Less Than	Reject if Sum of Defects in Samples 1 and 2 Equals or Exceeds
1-18	All	0	1	-	-	-	-
19-50	18	0	1	-	-	-	-
51-90	21	0	2	1	21	1	2
91-150	25	0	3	1 or 2	25	2	3
151-400	32	0	4	1, 2 or 3	32	3	4
401-10,000	34	0	4	1, 2 or 3	34	3	4

ANNEX III—TABLE OF RANDOM NUMBERS



U.S. GOVERNMENT PRINTING OFFICE: 1983 381-333

ARMED SERVICES PROCUREMENT REGULATION

[FR Doc. 83-5285 Filed 3-3-83; 8:45 am]

federal register

Thursday
March 3, 1983

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Permanent Regulatory Program; Federal Enforcement During Oversight of Approved State Programs; Policy Statement

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 843

Surface Mining and Reclamation Operations; Permanent Regulatory Program; Federal Enforcement During Oversight of Approved State Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Statement of policy.

SUMMARY: Notice is given that the Department of the Interior has determined that the Surface Mining Control and Reclamation Act requires a federal inspector to issue a notice of violation to an operator if the state has been notified of the existence of a violation and has failed to take appropriate action or show good cause for such failure within ten days of notification (ten day notice).

FOR FURTHER INFORMATION CONTACT: William Schmidt, Assistant Director, Inspection and Enforcement, Office of Surface Mining, U.S. Department of the Interior, Washington, D.C. 20240; (202–343–4225).

SUPPLEMENTARY INFORMATION: On March 13, 1979, OSM published regulations (44 FR 14901 *et seq.*) implementing the permanent regulatory program of Title V of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. 95–87, 30 U.S.C. 1251–1279. One subsection of those regulations addressed a federal inspector's authority to issue notices of violation and "failure to abate" cessation orders under Section 521(a)(3) of SMCRA in situations in which the coal mine where the violation existed was located in a state with an approved state program. The relevant provision, 30 CFR 843.12(a)(2), which resolved this question states:

> When, on the basis of any Federal inspection other than one described in paragraph (a)(1) of this section, an authorized representative of the Secretary determines that there exists a violation of the Act, the State program, or any condition of a permit or an exploration approval required by the Act or the State program which does not create an imminent danger or harm for which a cessation order must be issued under 30 CFR 843.11, the authorized representative may give a written report of the violation to the State and the person responsible for the violation, so that appropriate enforcement action can be taken by the States. Where the State fails within ten days after notification to take appropriate action to cause the violation to be corrected, or to show good cause for such failure, the authorized representative may reinspect and, if the violation continues to exist, shall issue a notice of violation or cessation order, as appropriate. No additional notification to the State by the Office is required before the issuance of a notice of violation, if previous notification was given under 30 CFR 842.11(b)(1)(ii)(B).

On December 1, 1981, the Department indicated that it intended to reconsider the issue as part of its new rulemaking to revise the inspection and enforcement regulations for the permanent regulatory program. 46 FR 58464. However, as a result of a settlement agreement in *National Wildlife Federation v. Watt*, Civil Action No. 82–0320 (D.D.C.) the Department agreed to consider the issue in the Environmental Impact Statement (EIS) to be done in connection with the regulatory review currently underway at the Department of the Interior. Consequently, the Department deferred consideration of the issue in the inspection and enforcement final rule published on August 16, 1982. 47 FR 35620. The issue was analyzed in OSM's Final Environmental Impact Statement OSM EIS–1: Supplement. This notice serves as the record of decision based upon the EIS and is consistent with the preferred alternative published in Volume III of the EIS.

Statement of Policy

Upon examination of the issue, the Department has concluded that the regulation contained at 30 CFR 843.12(a)(2) was properly and lawfully promulgated; therefore there is no need to reconsider the issue.

It is the Department's opinion, as set forth in the original preamble to 30 CFR 843.12, that "Congress did (not) intend OSM to sit idly by while . . . violations ripen into imminent hazards." 44 FR 15302, March 13, 1979. Rather as the preamble stated, the legislative history indicates that when "an OSM inspector discovered a violation at the mine, he must report the violation to the operator and the state and give the state 10 days to take appropriate action to require the operator to correct the violation. If the State takes such action, OSM does nothing further." 44 FR 15303. However, if the state fails to take adequate action or show good cause for such failure, OSM under 30 CFR 843.12 shall issue a notice violation. As the preamble further stated, in situations where "the State had already been given an opportunity to take 'appropriate action' and had failed to do so in ten days, the OSM inspector could issue the notice on the spot without re-referring the case to the State." 44 FR 15303.[1]

Dated: February 28, 1983.

William P. Pendley,

Acting Assistant Secretary, Energy and Minerals.

[FR Doc. 83–5462 Filed 3–2–83; 8:45 am]

BILLING CODE 4310–05–M

[1] As the Office of Surface Mining has previously stated in papers filed with the Interior Board of Surface Mining and Reclamation Appeals, any OSM determination as to the adequacy or inadequacy of state action or whether an OSM inspection is required as a result of a citizen complaint is reviewable by the Office of Hearings and Appeals without regard to the existence, or invocation, of state administrative or judicial remedies. See Reply in Opposition, *Donald St. Clair, et al v. OSM*, IBSMA No. 82–33 at 11.

federal register

Thursday
March 3, 1983

Part IV

Department of Energy

Office of Conservation and Renewable Energy

Energy Conservation Program for Consumer Products Test Procedures for Dishwashers; Final Rule

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CE-RM-82-130]

Energy Conservation Program for Consumer Products; Test Procedures for Dishwashers

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Final rule.

SUMMARY: The Department of Energy hereby amends its test procedures for dishwashers in order to accurately determine the estimated annual operating cost and the energy factor for dishwashers that operate with 120°F inlet water and to revise the representative average-use cycle to reflect current consumer use. These test procedures are a part of the energy conservation program for consumer products established pursuant to the Energy Policy and Conservation Act. Among other program elements, the legislation requires that standard methods of testing be prescribed for covered products.

EFFECTIVE DATE: April 4, 1983.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station CE-113.1, 1000 Independence Avenue, S.W., Washington, D.C. 20585; (202) 252-9127; or

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC-33, 1000 Independence Avenue, S.W., Washington, D.C. 20585; (202) 252-9510.

SUPPLEMENTARY INFORMATION:

A. Background

On October 1, 1977, the Department of Energy (DOE) assumed the authority of the Federal Energy Administration (FEA) for the energy conservation program for consumer products, under Section 301 of the Department of Energy Organization Act (DOE Act) (Pub. L. 95-91). The energy conservation program for consumer products was established by FEA pursuant to Title III, Part B of the Energy Policy and Conservation Act (Act) (Pub. L. 94-163). Subsequently, the Act was amended by the National Energy Conservation Policy Act (NECPA) (Pub. L. 95-619). References in this notice to "the Act," or to sections of the Act, refer to the Energy Policy and Conservation Act as amended by NECPA.

Section 323 of the Act requires that standard methods of testing be prescribed for covered products. Test procedures appear at 10 CFR Part 430, Subpart B. Test procedures for dishwashers were prescribed on August 3, 1977 (42 FR 39964, August 8, 1977).

Dishwashers are generally designed to operate with 140°F inlet water. The 140°F inlet water is generally recommended by dishwasher detergent manufacturers to ensure good cleaning performance by their products. The test procedures prescribed by DOE are based on dishwashers using 140°F inlet water. Three manufacturers, who make "water heating" dishwashers, i.e., dishwashers that use 120°F inlet water, requested DOE to exclude these dishwashers from the prescribed test procedures. The Hobart Corporation (Hobart) filed an application for exception with the DOE Office of Hearings and Appeals (OHA) on September 5, 1979 for its Model KD-19 dishwasher. OHA granted an exception to Hobart on February 26, 1980. Norris Industries (Norris) applied to the Assistant Secretary for Conservation and Renewable Energy for a test waiver on November 5, 1980.[1] The Secretary granted the waiver for Norris' LER series dishwasher (46 FR 35719, July 10, 1981). The General Electric Company (GE) applied for a test waiver for its "T" series dishwasher which uses 120°F inlet water. The Secretary granted a waiver to GE for its "T" series dishwasher on May 28, 1982 (47 FR 23543).

As a result of the petitions from Hobart, Norris, and GE, DOE directed the National Bureau of Standards (NBS) to investigate the manufacturers' claims that the prescribed test procedures do not properly determine the energy consumption for water heating dishwashers which use 120°F inlet water. NBS has provided its recommendations to DOE. These recommendations are discussed later in this document.

In a separate action unrelated to the petitions discussed above, the Association of Home Appliance Manufacturers (AHAM) and the Procter and Gamble Company (P&G) presented data to DOE that showed an annual average use for dishwashers of 322 cycles per year. They requested that DOE change the representative annual use cycle for dishwashers from 416 cycles per year to 322 cycles per year. The representative annual use cycle is used to determine the estimated annual operating cost.

Amended test procedures were proposed for dishwashers by a notice issued on May 27, 1982 (47 FR 26143, June 17, 1982). A public hearing was held on July 21, 1982.

B. Discussion

1. *Representative Average-Use Cycle.* The Association of Home Appliance Manufacturers and eight other commenters agreed that the representative average-use cycle be changed to 322 cycles per year. No comments were received that disagreed with the proposed change. Today's final rule prescribes a representative average-use cycle of 322 cycles per year for determining the estimated annual operating cost for dishwashers.

2. *Warm Water Dishwashers.* GE commented that dishwashers that can operate satisfactorily on 120°F inlet water do so because the 120°F inlet water is heated internally by the dishwasher to a level sufficient to achieve excellent washing and drying results. GE further stated that "water heating dishwashers" may be a more appropriate term for these dishwashers instead of "warm water dishwashers" as was used in the proposed rule. Water at 120°F is generally perceived to be hot—not warm.

Hobart, Design and Manufacturing Corporation (D&M), Sears, Roebuck and Co. (Sears), and Whirlpool Corporation (Whirlpool) stated that it is important to identify that heating must take place during the normal cycle washing phase(s) for proper washing performance, although it is not necessary that all of the water used during the normal cycle be heated. These commenters stated that at least one wash phase and at least one rinse phase be thermostatically-controlled. These thermostatically-controlled wash and rinse phases will delay the normal cycle until the wash or rinse water has been heated to its required temperature. Dishwashers that use 140°F water typically do not have thermostatically-controlled water heaters; these dishwashers generally heat the water continuously for all wash and rinse phases.

[1] DOE amended the energy conservation program for consumer products by notice issued September 18, 1980 (45 FR 64108, September 26, 1980) so that the Assistant Secretary for Conservation and Renewable Energy can temporarily waive test procedure requirements for a particular covered product. Waivers may be granted when design characteristics for the particular product either prevent testing of the product according to prescribed test procedures, or lead to results so unrepresentative of the product's true energy consumption characteristics as to provide materially inaccurate comparative data to consumers.

Accordingly, DOE has revised the proposed definition to reflect the commentor's concerns. That definition provides:

"Water heating dishwasher" means a dishwasher that can operate at nominal inlet water temperature of 120°F by providing thermostatically-controlled internal water heating in at least one wash phase and one rinse phase of the normal cycle.

D&M, Sears, and Whirlpool recommended that DOE delete the requirement of no consumer interaction to activate the internal water heater. These commenters believed that the consumer should decide whether he wants the internal water heater activated during the normal cycle. Furthermore, D&M and Sears mentioned that their water heating dishwashers have optional switches to override the thermostat to the internal water heater of the dishwasher during the normal cycle to give the consumer added flexibility in washing dishes. The internal water heater should be on continuously when the thermostat has been disengaged. These dishwashers might not qualify as water heating dishwashers. Therefore, today's final rule deletes all requirements concerning no consumer interaction in the definition for water heating dishwashers.

GE commented that any dishwasher that could provide any amount of heat during the normal cycle would qualify as a water heating dishwasher under the proposed definition. GE recommended that a minimum criteria regarding water heating capability be specified in order to resolve this problem. Hobart recommended a definition which included the phrase "which provides internal water heating during some portion of the washing period(s) of the normal cycle in order to raise the water temperature to that recommended by detergent manufacturers (currently 140°F)." this would specify that the water be heated to a specific temperature, which in this case would be 140°F. Norris commented that a specified temperature rise would be too restrictive. For example, some water heating dishwashers generate steam in order to heat dishes. The steam directly heats the dishes and indirectly heats water. A definition based on heating water to a specified temperature could exclude these steam dishwashers from the water heating dishwasher category. DOE agrees that a specified temperature rise would restrict manufacturers' designs. Therefore, today's final rule does not include a requirement of a specified temperature rise of heating the water used by a dishwasher.

3. *Water heating Dishwasher Credit.* The June 17, 1982 notice proposed a 50 percent credit for dishwashers that use 120°F inlet water. D&M, Sears, Whirlpool, and The Maytag Company (Maytag) agreed that a 50 percent credit be allowed. D&M and Sears commenters stated that their dishwashers employ internal water heating as an optional feature—the user can select to use the internal water heaters. These commenters agreed with the rationale in the proposed rule that proposed a 50 percent credit.

GE, Hobart, and Norris commented that the 50 percent credit would misinform consumers and advocated a 100 percent credit. They contended that consumers are likely to either leave the thermostat settings for their water heaters at 140°F or lower the settings to 120°F, but are not likely to repeatedly adjust the water heater thermostat setting. The proposed averaging formula, based on 50 percent, would therefore result in measures of energy usage that are not representative of the expected operating conditions for these dishwashers. Norris commented that if the user followed the manufacturer's directions, his energy use would be lower; and if he did not lower the water heater thermostat setting, his energy use would be higher. Determining the energy use by an averaging formula, or by a partial credit, would misrepresent the true energy use to all consumers.

DOE has reviewed the comments concerning whether a 50 percent credit should be allowed for water heating dishwashers. Hobart presented data from customers who purchased water heating dishwashers. The data show that 40 percent of the people turned their thermostat setting on the water heater down after they purchased the dishwashers; 20 percent already had lowered their thermostat setting on the water heater; and 40 percent left the thermostat setting on the water heater alone because of the slow recovery time of the water heater, the longer cycling time of the dishwasher, or the lack of information concerning the adjustability of water heater thermostat setting. Hobart commented that water heating dishwashers should not be penalized because of these problems. Furthermore, about 96 percent of people who lowered the water heater thermostat setting were satisfied with the performance of their dishwashers.

The basis for determining energy use should be that which is most representative for the majority of consumers. Manufacturers of water heating dishwashers generally recommend that the thermostat setting on the water heater be lowered to 120°F. Hobart's data show that the majority of consumers do operate water heating dishwashers at a reduced water heater thermostat setting. In order to determine measures of energy use that truly are representative for the majority of consumers, today's final rule prescribes a 100 percent credit for water heating dishwashers.

4. *Test Load.* Norris, Whirlpool, and Columbus Products Company (Columbus) commented that water heating dishwashers should be tested using a standard test load of dishes. These manufacturers believed that water heating dishwashers would use more energy when operated with a load of dishes than without. For example, tests for one water heating dishwasher conducted by NBS determined that, with a test load, the per cycle energy use increased by about 6.6 percent for 120°F inlet water. [*See* National Bureau of Standards, "Test Results for a Dishwasher with Reduced Inlet Water Temperature," February 1981.) Whirlpool commented that a test load is not burdensome, that the major dishwasher manufacturers have several sets of dishes in order to conduct the test as prescribed in AHAM Standard DW–1, and recommended that DOE prescribe this AHAM test load in the final rule.

Norris presented test data for its water heating dishwashers as shown in Table 1. The data only includes the electrical energy used by the dishwasher and does not include the energy used by the water heater in heating the water. Under a test load, the electrical energy use increased by about 21 percent when 120°F water was used. It was not necessary to include the energy used by the water heater because the difference in the per cycle energy use is due to the presence of a dishload. The dishwasher would use the same amount of per cycle water energy consumption for a cycle with and without a load of dishes.

Based upon this data, DOE believes that the energy use of water heating dishwashers is affected by the presence of a load of dishes. Today's final rule prescribes that water heating dishwashers shall be tested with a test load of dishes and that the test load shall be as specified in Section 6.1.1 of AHAM Standard DW–1.

However, today's final rule prescribes that dishwashers which use 140°F water be tested without a test load. Testing by NBS had determined that the per cycle energy use for these dishwashers is not affected by the presence of a load of dishes. Testing with and without a load of dishes result in an insignificant

difference in energy use. (*See* the National Bureau of Standards, "Test Results for a Dishwasher with Reduced Inlet Water Temperature," February 1981.)

TABLE 1.—ELECTRICAL ENERGY USE FOR WATER HEATING DISHWASHERS

Inlet water (degrees Fahrenheit)	Dishload	Electrical energy use (kilowatt/cycle)	
		Model A	Model B
120	No	0.634	0.637
120	Yes	0.767	0.773

5. *Water Temperature.* Hobart and Maytag commented that the tolerance of ±5°F for the nominal 120°F inlet water specification could result in a large potential error in determining the estimated annual operating cost for water heating dishwashers. Hobart also commented that a temperature range of 118°F to 122°F was granted in the GE test procedure waiver (47 FR 23543, May 28, 1982). In the GE waiver, it was determined that a tolerance of ±5°F could result in a 0.12 kWh per cycle variation in the total per-cycle energy consumption and in a 4.5 percent variation in the estimated annual operating cost. A tolerance of ±2°F was granted to Hobart in its waiver request for its Model KD–19 dishwasher (45 FR 31343, June 15, 1981). Both Hobart and GE concurred that a tolerance of ±2°F was acceptable and not burdensome. DOE also believes that a tolerance of ±2°F is not burdensome. The potential error for a tolerance of ±2°F would be less than 2 percent. Therefore, today's final rule specifies that the inlet water temperature be maintained between 118°F and 122°F for dishwashers to be tested at a nominal 120°F inlet water temperature.

Hobart and Maytag also commented that the tolerance of ±5°F for the nominal 140°F inlet water specification also be reduced. Dishwashers that operate with 140°F inlet water typically do not have thermostatically-controlled water heaters. The error introduced by the ±5°F tolerance is expected to be small because the energy usage during a cycle should be unaffected by variations in the inlet water temperature. However, DOE has determined that a change to the ±5°F tolerance is not warranted. Thus, today's final rule specifies that the inlet water temperature be maintained between 135°F and 145°F for dishwashers to be tested at a nominal 140°F inlet water temperature.

6. *Per Cycle Water Energy Consumption.* D&M commented that dishwashers generally use a rubber flow washer to control the amount of water used during a cycle. The washer is contoured to flex under changes in water pressure. The washer may flex differently for 120°F inlet water than for 140°F inlet water. This could possibly result in different flow rates and consequently different water consumption values for 120°F inlet water compared to 140°F inlet water. D&M recommended that the per cycle water energy consumption be based on the average of the two flow rates.

DOE has reviewed the comment. However, since today's final rule prescribes only the 120°F inlet water test for water heating dishwashers, there is no need to compute an average flow rate.

7. *Machine and Dishload Temperature.* Whirlpool commented that, at the end of a cycle, both the dishwasher and test load contain residual heat that will give dishwashers with thermostatically-controlled water heaters a "head start" if a new test is conducted immediately thereafter. Testing should be done done with the dishwasher and the test load initially at room temperature. Section 2.5 of the existing test procedure specifies that the dishwasher be at room ambient temperature at the start of each test cycle. In today's final rule, Section 2.5 has been expanded to include prescribing that the test load be at room ambient temperature at the start of each test cycle.

8. *Performance Test.* GE commented that the existing dishwasher test procedure does not measure dishwashing performance. The company stated that a performance test, which it believes is required under the Act, is mandatory in order to protect consumers from purchasing dishwashers with poor cleaning performance. GE further commented that such a performance test would be extremely difficult to develop and unduly burdensome to conduct. GE recommended that DOE rescind the existing dishwasher test procedure because it cannot measure dishwashing performance and, further, determine that no performance test can be developed which would not be unduly burdensome to conduct. This would result in no standardized testing procedure for dishwashers.

Section 323(a)(4) of the Act states that test procedures shall be prescribed to determine the estimated annual operating cost and at least one other measure of energy consumption that is likely to assist consumers in making purchasing decisions. The Act does not require DOE to evaluate performance characteristics of a product in developing test procedures. Testing by NBS, as well as by various manufacturers, has shown that the dishwasher test procedures do lead to results that are truly representative of the machine's energy use. Test procedures do provide materially appropriate comparative data to assist consumers in purchasing decisions. DOE has fulfilled the legislative requirements of the Act since the dishwasher test procedure does fairly and accurately test the energy use characteristics.

Other manufacturers strongly disagreed with GE's contention that DOE should develop a performance test. Performance tests rely heavily on judgement factors such as visual acuity, attentiveness, tactile sensitivity, and test scoring experience. Norris commented that dishwashing performance should best be left to the marketplace. DOE believes that it would be extremely difficult to quantify these subjective factors into one test that is easily repeatable (testing in one laboratory) and reproducible (testing among laboratories).

Hobart commented that dishwashing performance can be determined in many ways. For example, in order to fully determine dishwashing performance, Hobart uses the following in-house tests: (1) A redeposit test; (2) a test for soil removal from light to heavy soils; (3) three soak tests for encrusted foods; (4) a consumer panel test; (5) a test for spotting and filming for natural and artificial soils; and (6) a drying performance test. These tests generally develop comparative rankings and are not easily repeatable nor reproducible. Hobart recommended that these types of performance tests be excluded from the dishwasher test procedure.

In the past, test procedures have not included dishwashing performance. Hobart stated that dishwasher detergent manufacturers generally design their products for optimum cleaning performance for dishwashers that use 140°F inlet water. Therefore, DOE did not have to include a performance test for dishwashers that use 140°F inlet water because the dishwasher detergent manufacturers ensure that dishwashing performance with 140°F inlet water is clearly acceptable to consumers.

Manufacturers have generally commented that dishwashing performance should be excluded from the dishwasher test procedure. DOE believes in allowing manufacturers to determine, for themselves, whether the dishwashing performance for water heating dishwashers is acceptable. A similar precedent for this concept has already been established in the definition of a normal cycle. The

dishwasher test procedure allows manufacturers to decide which cycle should be considered as the normal cycle for their dishwasher. Section 1.3 of the test procedure states that the normal cycle means the cycle type recommended by the manufacturer for completely washing a full load of normally soiled dishes, including the power-dry feature.

9. *Commercial Standards.* Today's final rule prescribes that a load of dishes be used when testing water heating dishwashers. One section from a commercial standard, AHAM Standard DW–1, is used to specify the test load.

Under section 301 of the DOE Act, DOE is required to comply with section 32 of the Federal Energy Administration Act of 1974 (FEA Act) (Pub. L. 93–275), as amended by section 9 of the Federal Energy Administration Authorization Act of 1977 (Pub. L. 95–70).

Section 32 (a) and (b) of the FEA Act provide that:

(a) If any proposed rule by the Administrator contains any commercial standards, or specifically authorizes or requires the use of any such standards, then any general notice of the proposed rulemaking shall:

(1) Identify, by name, the organization which promulgated such standards; and

(2) State whether or not, in the judgment of the Administrator, such organization complied with the requirements of subsection (b) in the promulgation of such standards.

(b) An organization complies with the requirements of this subsection in promulgating any commercial standards if:

(1) It gives interested persons adequate notice of the proposed promulgation of the standards and an opportunity to participate in the promulgation process through the presentation of their views in hearings or meetings which are open to the public;

(2) The membership of the organization at the time of the promulgation of the standards is sufficiently balanced so as to allow for the effective representation of all interested persons;

(3) Before promulgating such standards, it makes available to the public any records or proceedings of the organization, and any documents, letters, memorandums, and materials relative to such standards; and

(4) It has procedures allowing interested persons to:

(A) Obtain a reconsideration of any action taken by the organization relating to the promulgation of such standards, and

(B) Obtain a review of the standards (including a review of the basis or adequacy of such standards).

The findings required of DOE by section 32 of the FEA Act serve to alert the public and DOE to the use and Background of commercial standards in a proposed rulemaking and, through the comment and hearing process, allow interested persons to make known their views regarding the appropriateness of the use of those particular commercial standards in that proposed rulemaking. Any negative finding does not reflect a determination by DOE of the advisability of using a particular standard for part of the test procedure regulation.

As noted above, the final rule contains elements of a commercial standard, AHAM Standard DW–1, promulgated by a nongovernmental organization, AHAM. DOE has reviewed AHAM Standard DW–1 and determined that the standard was developed in a manner that comports with the requirements of Section 32(b) of the FEA Act. Moreover, in accordance with section 32(c), DOE has consulted with the Attorney General and the Chairman of the Federal Trade Commission concerning the impact of this standard on competition before prescribing final test procedures. Both the Attorney General and the Chairman of the FTC have determined that this standard would have no adverse effect on competition.

10. *Miscellaneous.* After careful consideration of all comments and further consultation with NBS, DOE has incorporated into the final rule some editorial and minor technical changes that were not discussed above. For example, the word "Administrator" is replaced by the word "Secretary" throughout section 430.22. Another change is that the specific heat of water is changed from 8.1966 to 8.20 Btu's per gallon per degree Fahrenheit, in section 4.2.1.

C. Environmental, Regulatory Impact, and Small Entity Impact Reviews

1. *Environmental Review.* The Department has reviewed today's final rule in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.), the Council of Environmental Quality Regulations implementing the procedural provisions of NEPA (40 CFR Part 1500 et seq.), and the Department's own NEPA guidelines (45 FR 20694, March 28, 1980, as amended by 47 FR 7976, Feb. 23, 1982) to determine if an environmental impact statement (EIS) or an environmental assessment (EA) is required.

Today's final rule serves only to standardize the measurement of energy usage for dishwashers. The action of prescribing these revised test procedures will not result in any environmental impacts. Because it is clear that today's final rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, DOE has determined that neither an EA nor an EIS is required.

2. *Regulatory Impact Review.* The final rule has been reviewed in accordance with Executive Order 12291 which directs that all regulations achieve their intended goals without imposing unnecessary burdens on the economy, on individuals, on public or private organizations, or on State and local governments. The Executive Order also requires that regulatory impact analyses be prepared for "major rules." The Executive Order defines a major rule as any regulation that is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This final rule would only make minor changes in the test procedures for dishwashers. Therefore, DOE has determined that this final rule does not come within the definition of a major rule.

In accordance with Section 3(c)(3) of the Executive Order, which applies to rules other than major rules, the final rule was submitted to OMB for review without a regulatory impact analysis. OMB has concluded its review in accordance with Section 3(3)(2)(C) of the Executive Order.

3. *Small Entity Review.* The Regulatory Flexibility Act (Pub. L. 96–354) requires that an agency prepare a final regulatory analysis to be available at the time the final rule is published. This requirement does not apply if the agency "certifies that the final rule will not * * * have a significant economic impact on a substantial number of small entities."

This rule only affects manufacturers of dishwashers. There are not a substantial number of small entities that manufacture dishwashers. Moreover, the changes made would not have significant economic impacts, but rather

would reduce the testing burdens on all entities.

Therefore, pursuant to Section 605(b), DOE certifies that this final rule would not have a "significant economic impact on a substantial number of small entities."

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

In consideration of the foregoing, Part 430 of Chapter II of Title 10, Code of Federal Regulations, is amended as set forth below, effective April 4, 1983.

Issued in Washington, D.C., February 22, 1983.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

Provisions of 10 CFR Part 430, § 430.22 and Appendix C are amended as follows:

Authority: Sect. 323, Pub. L. 94–163, 89 Stat. 917 as amended by Pub. L. 95–619, 92 Stat. 3266 (42 U.S.C. 6293).

§ 430.22 [Amended]

1. Section 430.22 paragraph (c) is amended by removing the words "416 cycles per year" and inserting, in their place, the words "322 cycles per year" in the following places:

(a) Section 430.22(c)(1)(i);

(b) Section 430.22(c)(1)(ii);

(c) Section 430.22(c)(2)(i); and

(d) Section 430.22(c)(2)(ii).

2. Section 430.22 paragraphs (a) through (o) are amended by removing the word "Administrator" and inserting, in its place, the word "Secretary."

3. Appendix C to Subpart B of Part 430 is revised to read as follows:

Appendix C to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Dishwashers

1. *Definitions.*—1.1 "Cycle" means a sequence of operations of a dishwasher which performs a complete dishwashing operation, and may include variations or combinations of the functions of washing, rinsing and drying.

1.2 "Cycle type" means any complete sequence of operations capable of being preset on the dishwasher prior to the initiation of machine operation.

1.3 "Normal cycle" means the cycle type recommended by the manufacturer for completely washing a full load of normally soiled dishes including the power-dry feature.

1.4 "Power-dry feature" means that function in a cycle in which electrically generated heat is introduced into the washing chamber for the purpose of improving the drying performance of the dishwasher.

1.5 "Truncated normal cycle" means the normal cycle interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

1.6 "Water heating dishwasher" means a dishwasher that can operate at a nominal inlet water temperature of 120°F by providing thermostatically-controlled internal water heating in at least one wash phase and one rinse phase of the normal cycle.

2. *Testing conditions.*—2.1 *Installation.* Install the dishwasher in accordance with the manufacturer's instruction, except that undercounter dishwashers need not be installed under a counter.

2.2 *Electrical supply.* Maintain the electrical supply to the dishwasher within two percent of 115 volts and within one percent of its nameplate frequency as specified by the manufacturer.

2.3 *Water temperature.*

2.3.1 *Dishwashers to be tested at a nominal 140°F inlet water temperature.* Maintain the water supply temperature between 135°F and 145°F.

2.3.2 Dishwashers to be tested at a nominal 120°F inlet water temperature. Maintain the water supply temperature between 118°F and 122°F.

2.4 *Water pressure.* Maintain the pressure of the water supply between 32.5 and 37.5 pounds per square inch.

2.5 *Ambient and machine temperature.* Maintain the room ambient air temperature between 70°F and 85°F, and assure that the dishwasher and the test load are at room ambient temperature at the start of each test cycle.

2.6 *Load.*

2.6.1 *Dishwashers to be tested at a nominal 140°F inlet water temperature.* The dishwasher shall be tested on the normal cycle and the truncated normal cycle without a test load.

2.6.2 *Dishwashers to be tested at a nominal 120°F inlet water temperature.* The dishwasher shall be tested on the normal cycle and the truncated normal cycle with a test load as specified in section 6.1.1 of AHAM Standard DW–1.

3. *Test cycle and measurements.*

3.1 *Test cycle.* Perform a test cycle by establishing the testing conditions set forth in 2 of this Appendix, setting the dishwasher to the cycle type to be tested, initiating the cycle and allowing the cycle to proceed to completion.

3.2 *Machine electrical energy consumption.*

3.2.1 *Dishwashers that operate with a nominal 140°F inlet water temperature, only.* Measure the machine electrical energy consumption, M, specified as the number of kilowatt-hours of electrical energy consumed during the entire test cycle using a water supply temperature as set forth in 2.3.1 of this Appendix. Use a kilowatt-hour meter having a resolution no larger than 0.001 kilowatt hours and a maximum error no greater than one percent.

3.2.2 *Dishwashers that operate with a nominal inlet water temperature of 120°F.* Measure the machine electrical energy consumption, Me, specified as the number of kilowatt-hours of electrical energy consumed during the entire test cycle using a water supply temperature as set forth in 2.3.2 of this Appendix. Use a kilowatt-hour meter having a resolution no larger than 0.001 kilowatt-hours and a maximum error no greater than one percent.

3.3 *Water consumption.* Measure the water consumption specified as the number of gallons delivered to the dishwasher during the entire test cycle, using a water meter having a resolution no larger than 0.1 gallon and a maximum error no greater than 1.5 percent for all water flow rates from one to five gallons per minute and for all water temperatures encountered in the test cycle.

3.4 *Report values.* State the reported values of machine electrical energy consumption and water consumption as measured.

4. *Calculation of derived results from test measurements.*—4.1 *Per-cycle water energy consumption using electrically heated water.*

4.1.1 *Dishwashers that operate with a nominal 140°F inlet water temperature, only.* Calculate for the cycle type under test the per-cycle water energy consumption using electrically heated water, We, expressed in kilowatt-hours per cycle and defined as:

$$W_e = V \times T \times K,$$

where

V = reported water consumption in gallons per cycle for the cycle type under test.

T = nominal water heater temperature rise = 90°F.

K = specific heat of water in kilowatt-hours per gallon per degree Fahrenheit = 0.00240.

4.1.2 *Dishwashers that operate with a nominal inlet water temperature of 120°F.* Calculate for the cycle type under test the per cycle water energy consumption using electrically heated water, We, expressed in kilowatt-hours per cycle and defined as:

$$We = V \times T' \times K$$

where

V and K are defined in 4.1.1 of this Appendix and T' = nominal water heated temperature rise = 70°F.

4.2 *Per cycle water energy consumption using gas-heated or oil-heated water.* 4.2.1 *Dishwashers that operate with a nominal 140°F inlet water temperature, only.* Calculate for the cycle type under test the per cycle water energy consumption using gas-heated or oil-heated water, We, expressed in Btu's per cycle and defined as:

$$We = V \times T \times C/e.$$

where

V and T are defined in 4.1.1 of this Appendix, and

C = specific heat of water in Btu's per gallon per degree fahrenheit = 8.20

e = nominal gas or oil water heater recovery efficiency = 0.75.

4.2.2 *Dishwashers that operate with a nominal inlet water temperature of 120°F.* Calculate for the cycle type under test the per cycle water energy consumption using gas-

heated or oil-heated water, Wg, expressed in Btu's per cycle and defined as:

$W_g = V \times T' \times C/e$

where
V and T' are defined in 4.1.2 of this Appendix, and C and e are defined in 4.2.1 of this Appendix.

4.3 *Per-cycle machine electrical energy consumption.*

4.3.1 *Dishwashers that operate with a nominal 140°F inlet water temperature, only.* Use the measured value recorded in 3.2.1 as the per-cycle machine electrical energy consumption, *M*, expressed in kilowatt-hours per cycle.

4.3.2 *Dishwashers that operate with a nominal inlet water temperature of 120°F.* Use the measured value recorded in 3.2.2 as the per-cycle machine electrical energy consumption, m, expressed in kilowatt-hours per cycle.

4.4 *Total per-cycle energy consumption.* Calculate for the cycle type under test the total per-cycle energy consumption, *E*, expressed in kilowatt-hours per cycle, and defined as the sum of the per-cycle machine electrical energy consumption, *M*, plus the per-cycle water energy consumption of electrically-heated water, *W*, calculated for the cycle type, determined according to 4.3 and 4.1 respectively.

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