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Friday
March 30, 1984

Selected Subjects

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Selected Subjects

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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 102

Federally Licensed Grain Warehouses; Warehouse Bonds

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: An interim final rule was published in the **Federal Register**, on November 25, 1983, which made it possible for grain warehousemen licensed under provisions of the United States Warehouse Act, as amended (7 U.S.C. 241, *et seq.*), to provide, and for the Department to recognize, protection for depositors other than the usual bond furnished by a corporate surety. Governmental units have enacted or are considering indemnification plans which will offer as much protection for depositors as is presently required under warehouse regulations. Federally licensed warehousement will have the choice of participating in such a program without the added cost of furnishing the usual form of surety. This action finalizes the interim final rule with one minor change which would delete reference to indemnity or insurance funds established by the Federal Government or a combination of the Federal Government with a State.

EFFECTIVE DATE: April 30, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. Orval Kerchner, 202–447–3616.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and the Regulatory Flexibility Act Certification

This rule has been reviewed under the USDA procedure established in accordance with Executive Order 12291 and Secretary's Memorandum 1512–1 and has been classified "non-major" because the proposal does not meet the criteria contained therein for major regulatory actions.

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 because (i) this action imposes no additional economic costs on small entities; (ii) licensed warehousemen are not required to participate in any indemnity or insurance fund and may choose to provide bond as presently authorized; and (iii) the use of the service is voluntary.

Paperwork Reduction Act

Reporting and recordkeeping requirements have received OMB clearance under OMB No. 0581–0027.

Background

Governmental units have enacted or are considering programs to indemnify grain warehouse depositors for losses caused by the breach of the warehouseman's obligations. A properly drafted indemnification plan could provide as much protection for depositors as the traditional corporate surety bond. The Department has determined that federally licensed warehousemen should have the choice of furnishing such evidence of protection without the added cost of furnishing the usual form of surety bond. Therefore the interim final action, 48 FR 53085, effective November 25, 1983, and this final action with one minor change, amend the regulations for grain warehouses. These amendments enable the Department to accept as a bond either a corporate surety bond or a certificate of participation in and coverage by an indemnity or insurance fund, as approved by the Secretary, established and maintained by a State. The fund must be backed by the full faith and credit of the applicable State and must guarantee depositors of the licensed warehouse full indemnification for the breach of any obligation of a licensed warehouseman.

The U.S. Warehouse Act was passed by Congress in 1916. The Act provides for the licensing of such warehousemen as may apply to the Secretary of Agriculture, and (1) meet departmental standards, (2) agree to abide by the law and the regulations thereunder, and (3) who are, in his discretion, proper warehousemen within the intent of the law for the storage of agricultural products.

The primary objectives of the U.S. Warehouse Act are to: (1) Protect producers and others who store their property in public warehouses; (2) assure the integrity of warehouse receipts as documents of title to be used as collateral for loans, and to facilitate trading, interstate commerce of agricultural commodities; and (3) set and maintain a standard for sound warehouse operations.

A warehouse receipt is acceptable only when it has integrity. Integrity means that the original depositor or a subsequent holder of a receipt must have reasonable assurance that the product covered by the warehouse receipt will be returned upon surrender of the receipt and a valid request for delivery. Failing to receive return of the product, the depositor or holder of the receipt must have the further assurance that the warehouseman is able to pay him for this breach of contract.

Historically, the responsibility of a licensed warehouseman to fulfill his obligations to depositors has been backed by a corporate surety bond. Such bonds have not been for full coverage and depositors could suffer a loss should losses occur which exceed the amount of the bond. Before the interim final rule became effective, the regulations required a licensed warehouseman to maintain allowable net assets amounting to 20 cents a bushel for the maximum number of bushels that can be stored, with a minimum of $25,000 and to provide a bond, the amount of which is computed at a rate of 20 cents per bushel for the first 1,000,000 bushels of licensed capacity; 15 cents per bushel for the next 1,000,000 bushels of licensed capacity; and 10 cents per bushel for all licensed capacity over 2,000,000 bushels: provided, that in any case the amount of bond shall not be less than $20,000 nor more than $500,000, except in case of a deficiency in net assets above the $25,000 minimum required there shall be added to the amount of bond an amount equal to such deficiency.

Most, if not all, licensed warehousemen also operate a grain marketing business buying grain from producers through the same facilities used for the storage of grain. As grain is

received over the scale, the optimum situation would be that it is either deposited for storage with a warehouse receipt demanded and issued or sold with payment demanded and made. However, often the grain's status is not declared by the owner as delivered; or it is deposited for storage with no receipt demanded or issued; or it is sold and payment not demanded or made. The sale or other disposition of grain deposited in a licensed warehouse leads to a full marketing relationship between the depositor and the warehouseman.

Usual marketing relationships have been complicated by another kind of transaction commonly known as price later or deferred pricing or delayed price grain. Such a transaction may be described as a sales contract that constitutes a bona fide sale and change of ownership from the seller to buyer, but which permits the seller to fix the price of the grain at a later date at a pre-agreed formula for determining such price. The seller may continue to have some control of the pricing of his grain but has no physical claim. Generally, no advance payment is made to the seller. The buyer has only a grain payable position with the seller. The seller has only a money receivable position, a common creditor status.

The business of storing and marketing often becomes inseparable and likewise the funds available to the total business often cannot be segregated. These situations create continuous, dual and at times uncertain obligations leading to a commingling of grain assets and liabilities.

Consequently, there are risks for producers who sell deposited grain as well as for producers who store such grain. To date, the Secretary has not asserted his jurisdiction pursuant to the U.S. Warehouse Act, in the area of grain merchandising at licensed elevators. A number of States have and have sought to protect producers in such dealings both at State and federally licensed facilities. Historically, this has been by additional bonds for this purpose, a preventative action. Lately, a few States have turned to remedial actions such as indemnification or insurance funds.

The State of Illinois in legislation known as Senate Bill 800, "The Illinois Grain Insurance Act," signed into law August 16, 1983, has established in the State a Grain Insurance Fund ("Fund") to pay producers of grain for all of their financial losses caused by a failure of a grain warehouseman and 85 percent to a maximum of $100,000, of their financial losses cause by the failure of a grain dealer. The Fund would be financed by an assessment on each licensed grain dealer and grain warehouseman for a period of three years and then as needed to maintain a fund balance of 3 million dollars. State appropriations would also be used to pay claims, if the money in the Fund were insufficient. The Act requires every Illinois-licensed grain dealer and grain warehouseman to participate in the Fund. Those Illinois-licensed grain dealers and grain warehousemen participating in the Fund are exempted from the initial bond requirements of Illinois law. The Act allows federally licensed warehousemen to participate in the fund on a voluntary basis.

The Illinois Act provides as much or more protection for the depositors as was afforded by the bonding provisions of federal regulations in force before the interim final rule became effective. For this reason some federally licensed warehousemen in Illinois requested permission to participate in the Fund.

These licensees also requested that participation in the Fund be accepted in lieu of the corporate surety bond required by the federal regulations in force before the interim final rule became effective. The warehousemen pointed out that if a federally licensed warehouseman, wishing to do so, were permitted to participate in the Fund, the warehouseman would have to pay the assessments required by the Illinois Act and, under the federal regulations in force at that time, would also have to purchase a corporate surety bond. This arrangement would put the federally licensed warehouseman at an economic disadvantage as compared to Illinois-licensed warehousemen and would discourage the federal licensee from participating in the Fund.

Based on the foregoing, the Secretary has determined that it would further the objectives of the U.S. Warehouse Act to permit federally licensed warehousemen to participate in a State indemnity or insurance fund, provided that such participation: (1) Affords as much or more monetary protection to depositors as do the corporate surety bonding requirements of the regulations; (2) does not lessen the responsibilities or privileges of the warehouseman; (3) does not dilute the rights of a depositor; and (4) does not diminish the exclusive jurisdiction and authority of the Secretary with respect to the licensees.

In order not to discourage participation in such an indemnity or insurance fund, the interim final rule amended §§ 102.6 and 102.13 to require a federally licensed warehouseman to file either a corporate surety bond or a certificate of participation in an indemnity or insurance fund which the Secretary had approved. In either situation the warehouse must have and maintain a minimum of $25,000 in allowable net assets. The interim final rule invited comments which were to be received on or before December 27, 1983.

Based on a careful review of the Illinois Grain Insurance Act and all other pertinent information available at this time, the Secretary determined that participation by federally licensed warehousemen in the Illinois Grain Insurance Fund would comply with the above requirements and was approved. Therefore, those federally licensed warehousemen who choose to do so may, if accepted by Illinois, participate in the Fund and may file a certificate of participation in the Fund in lieu of a corporate surety bond.

Four letters of comment were received; one letter did not address the issue, another asked a question as to whether the writer's State would qualify, and two letters commented directly on the regulations. One of these stressed "over the shoulder" monitoring of a warehouseman's financial condition by sureties; the other, while voicing no objection to approving the Illinois arrangement, also stressed this function of sureties and argued that to do away with the function might place an increased regulatory burden on State and Federal agencies and could encourage irresponsible business management if the protection of the warehouseman's monetary accountability to producers were not maintained.

The Department has considered these possibilities but has determined that adequate administrative control is ensured by the requirements that the indemnity or insurance fund must: (1) Be approved by the Secretary; (2) be established by a State; (3) be backed by the full faith and credit of that State; and (4) guarantee depositors full indemnification.

The interim final rule also provided for the acceptance of participation in indemnity or insurance funds established and maintained by the Federal Government or a combination of the Federal Government and a State. One comment objected to this provision on the ground that the clause might possibly be construed as encouraging the establishment of a Federal indemnity or insurance fund. Because there are no such funds and the Department does not anticipate that such a fund will be established in the near future, this final action deletes that provision in § 102.13(b). No other changes to the interim final rule have been made by this final action.

List of Subjects in 7 CFR Part 102

Administrative practice and procedure, Grain, Surety bonds, Warehouses.

PART 102—GRAIN WAREHOUSES

Accordingly, 7 CFR Part 102 is amended as follows:

1. Section 102.6 is amended by adding a paragraph (h).

§ 102.6 Financial requirements.

* * * * *

(h) In case a warehouseman files a bond in the form of a certification of participation in an indemnity or insurance fund as provided for in § 102.13(b), the licensed warehouseman shall have and maintain a minimum of $25,000 in allowable net assets and any deficiency in assets above the $25,000 minimum shall be covered by an acceptable and valid certificate.

2. Section 102.13 is revised to read:

Warehouse Bonds

§ 102.13 Bond required; time of filing.

Each warehouseman applying for a warehouse license under the Act shall, before such license is granted, file with the Secretary or his designated representative a bond either:

(a) In the form of a bond containing the following conditions and such other terms as the Secretary or his designated representative may prescribe in the approved bond forms, with such changes as may be necessary to adapt the forms to the type of legal entity involved:

Now, therefore, if the said license(s) or any amendments thereto be granted and said principal, and its successors and assigns operating said warehouse(s), shall:

Faithfully perform during the period of one year commencing ——, or until the termination of said licenses(s) in the event of termination prior to the end of the one year period, all obligations of a licensed warehouseman under the terms of the Act and regulations thereunder relating to the above-named products; and

Faithfully perform during said one year period and thereafter, whether or not said warehouse(s) remain(s) licensed under the Act, such delivery obligations and further obligations as a warehouseman as exist at the beginning of said one year period or are assumed during said period and prior to termination of said licenses(s) under contracts with the respective depositors of such products in the warehouse(s);

Then this obligation shall be null and void and of no effect, otherwise to remain in full force. For purposes of this bond, the aforesaid obligations under the Act and regulations and contracts include obligations under any and all modifications of the Act, the regulations, and the contracts that may hereafter be made, notice of which modifications to the surety being hereby waived.

The bond shall be subject to §§ 102.14 through 102.17; or:

(b) In the form of a certificate of participation in and coverage by an indemnity or insurance fund as approved by the Secretary, established and maintained by a State, backed by the full faith and credit of the applicable State, and which guarantees depositors of the licensed warehouse full indemnification for the breach of any obligation of the licensed warehouseman under the the terms of the Act and regulations. A certificate of participation and coverage in such fund shall be furnished to the Secretary annually. If administration or application of the fund shall change after being approved by the Secretary, the Secretary may revoke his approval. Such revocation shall not affect a depositor's rights which have arisen prior to such revocation. Upon such revocation the licensed warehouseman then must comply with paragraph (a). Such certificate of participation shall not be subject to §§ 102.14 and 102.15.

(Sec. 28, 39 Stat. 490, 7 U.S.C. 268)

Done at Washington, D.C., March 26, 1984.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 84-8523 Filed 3-29-84; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 910

[Lemon Regs. 457 and 456, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 275,000 cartons during the period April 1–7, 1984, and increases the quantity of lemons that may be shipped to 295,000 cartons during the period March 25–31, 1984. Such action is needed to provide for orderly marketing of fresh lemons for the periods specified due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective April 1, 1984, and the amendment is effective for the period March 25–31, 1984.

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

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

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on March 27, 1984, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons is good.

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 and amendment are 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, and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. Section 910.757 is added as follows:

§ 910.757 Lemon Regulation 457.

The quantity of lemons grown in California and Arizona which may be handled during the period April 1, 1984,

through April 7, 1984, is established at 275,000 cartons.

2. Section 910.756 Lemon Regulation 456 (49 FR 10921) is revised to read as follows:

§ 910.756 Lemon Regulation 456.

The quantity of lemons grown in California and Arizona which may be handled during the period March 25, 1984, through March 31, 1984, is established at 295,000 cartons.

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

Dated: March 28, 1984.

Russell L. Hawes,

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

[FR Doc. 84-8714 Filed 3-29-84; 8:45 am]

BILLING CODE 3410-02-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 703

Investments and Deposits

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The NCUA Board adopts revised regulations concerning Federal credit union investments and deposits. The regulations authorize Federal credit unions to invest, under certain conditions, in bankers' acceptances, Eurodollars and Yankee Dollars. The regulations do not prohibit or restrict the use of brokers, as long as the transaction and underlying investment are legal. The regulations retain, but simplify and clarify, provisions of existing regulations prohibiting or restricting certain transactions because of their speculative nature. The regulations have been reorganized and rewritten in a manner that reduces their volume and makes them easier to understand and use.

EFFECTIVE DATE: May 21, 1984.

ADDRESS: National Credit Union Administration, 1776 G Street NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Robert M. Fenner, Director, or Steven R. Bisker, Senior Attorney, Department of Legal Services at the above address. Telephone (202) 357–1030.

SUPPLEMENTARY INFORMATION:

Background

On September 22, 1983, the National Credit Union Administration Board (Board) proposed a revised rule on Investments and Deposits for public comment. 48 FR 43182 (1983). The Board proposed various changes from its existing rules including: expanded authority for investment by Federal credit unions in Eurodollar and Yankee Dollar deposits; removal of outdated and ineffective rules restricting Federal credit unions' use of third parties when investing in certificates of deposit issued by other financial institutions; and, clarification and simplification of existing rules that restrict certain investment transactions because of their speculative nature. The Board specifically requested comment in three areas: (1) The use of brokers or money finders for investments in certificates of deposit; (2) whether Eurodollar deposits, if authorized as permissible investments, should be considered risk assets for purposes of the reserve requirements imposed by section 116 of the Federal Credit Union Act (12 U.S.C. 1762); and (3) whether, and to what extent, it would be appropriate to permit investments in futures contracts. In addition to these areas, the Board asked for comments concerning the entire proposed rule. A total of 60 comments were received—41 from natural person Federal credit unions, 15 from Corporate credit unions, and 4 from parties outside the credit union movement.

Based on the comments and its further review and analysis, the Board has adopted final rules. The Board has reorganized and simplified the previous rules in a manner that reduces their volume and makes them easier to understand and use. Specifically, the new rules begin with a Scope (§ 703.1) which explains that the statutory investment authority of Federal credit unions is limited, with certain exceptions, to government securities, shares of and loans to other credit unions, and deposit-type investments in other financial institutions. The Scope section explains that the investment rules do not apply to loans to members, which are governed by separate statutory and regulatory provisions. The Scope section is followed by a Definitions section (703.2) which defines the key terms used in the rules. The remaining two sections, §§ 703.3 and 703.4, set forth authorized and prohibited investment activities, respectively. The comments on these latter sections, and the changes from the present rules, are described in detail below in the *Analysis* portion of this discussion.

Among the more significant substantive changes reflected in the final rule are: (1) Authorization for Federal credit unions to invest in Eurodollars, Yankee Dollars and bankers' acceptances, on the condition that, in each case, the issuing institution is one in which a Federal credit union may legally make a deposit; (2) a determination not to regulate Federal credit union use of brokers or other third parties when investing in certificates of deposit issued by other financial institutions; (3) elimination of existing regulations concerning investments in loans to other credit unions; (4) a determination not to authorize Federal credit unions to invest in futures contracts; and (5) adoption of a provision prohibiting Federal credit union officials, employees and their family members from receiving compensation in connection with the making of an investment or deposit by the credit union.

Analysis

This section first addresses the two specific areas that the board has determined will not be subject to regulation and then the remainder of the rule:

Money Finders and Deposit Brokers

In the proposal, the Board suggested elimination of the previous rule which required that a Federal credit union, when investing in a certificate of deposit (CD), make payment "itself" to the institution issuing the CD. The Board requested comments, however, "concerning the extent of Federal credit union utilization of third parties in investing in deposits of other financial institutions, the negative aspects of such third party involvement with Federal credit union operations, the contribution that brokers may provide to the efficiency of Federal credit union operations, and the extent, if any, to which the National Credit Union Administration should regulate Federal credit union involvement in such activity."

A substantial majority of the credit union commenters stated that they have used services provided by money brokers. Many indicated that they use brokers for the bulk of their investments in CD's. A uniform criticism of broker use was that it can lead to dependence on advice of brokers and on $100,000 deposit insurance as the major bases of investment policy. Most commenters did, however, recognize that analysis of the soundness of the financial institutions issuing the CD's should not be solely dependent upon that provided by the brokers. These commenters recognized the potential conflict of interest of brokers recommending investments in financial institutions where the fee paid to the brokers for their service comes from those same

financial institutions. Almost all commenters who addressed the issue of brokers' effect on the efficiency of Federal credit union operations stated that the time saved by having a broker survey the market for the best CD rates is substantial.

In response to the issue of the extent, if any, to which NCUA should regulate the use of brokers for investments in financial institutions, the overwhelming majority of the commenters expressed the opinion that NCUA should not regulate. (One commenter argued that the current rules are inconsistent in that brokers may be used for purchases of GNMA's and other types of legal investments but cannot be used for CD investments.) The commenters did, however, recommend that NCUA stress the need for proper financial analysis of the issuing institutions and the soundness and integrity of the brokers through which they make investments. Numerous commenters recommended that NCUA require Federal credit unions to have written investment policies that include, among other things, the names of financial institutions and brokers that the Federal credit unions board has approved for its investment activity. Some commenters suggested that Federal credit unions only use the services of those brokers and investment advisers registered with the SEC. Others believed that NCUA should make a special effort to educate Federal credit unions regarding their use of brokers and should publish guidelines on the proper use of brokers when purchasing CD's.

Having reviewed all the comments, the Board continues to believe that the so-called "itself" requirement of the previous rule is unnecessary and ineffective. As discussed in the preamble to the proposed rule, this requirement did not prevent Federal credit unions from accepting the advice of "money finders" or other third parties, or even making payment through a broker or other third party by characterizing that party as the Federal credit union's agent. Further, after reviewing the comments and thoroughly reconsidering this issue, the Board has determined that it is neither necessary nor advisable for NCUA to issue new regulations concerning Federal credit union use of brokers in making investments.

Both the comment letters received by NCUA and recent developments in the marketplace regarding brokered deposits have shown that credit unions recognize the risks in relying on the advice of, and placing deposits through, money finders and deposit brokers. In response, many credit unions have turned to local institutions whose financial condition they are thoroughly familiar with, such as their corporate credit union or local banks, to place deposits. Others have minimized risk by placing deposits, through brokers or otherwise, in separately insured $100,000 increments in several different institutions. While the Board is not unmindful of the concerns that this latter practice presents to the Federal Deposit Insurance Corporation and Federal Savings and Loan Insurance Corporation, the Board defers to those agencies to address the issue of increased risk to their insurance funds.

Also, the Board urges Federal credit unions not to rely on deposit insurance alone, as that practice can, in the event of failure of the issuing institution, lead to loss of interest income and temporary loss of control of funds. Further, the lack of financial analysis that results from reliance solely on deposit insurance is not conducive to sound investment habits.

While the Board has chosen not to regulate in this area, the Board recognizes and stresses the need for written policies and it will instruct its examiners to particularly scrutinize those Federal credit unions where written investment policies do not exist in order to determine whether they are operating in a safe and sound manner. It is noted that section 6121 of NCUA's *Accounting Manual for Federal Credit Unions* contains detailed guidance concerning the nature and recommended content of investment policies. Also, the Board agrees that educational efforts are a high priority. In this connection, credit union associations have stepped up their efforts, resulting, for example, in the development of an educational videotape on investment practices. The Board firmly encourages these efforts.

Finally, the Board notes that there have been isolated instances of brokers channelling funds into Federal credit unions in a manner that contributes to supervisory problems. NCUA has been successful in early detection of and swift reaction to these problems, and the Board intends to continue to address any such situations through strong supervisory action.

Loans to Nonmember Credit Unions

The Board proposed to eliminate § 703.2 of the previous rule, concerning loans to nonmember credit unions. This section reiterated the statutory limitation that aggregate loans to nonmember credit unions may not exceed 25% of the lending credit union's unimpaired capital and surplus, and imposed loan documentation and maturity requirements that the Board considered a matter of business judgment that should not be controlled by regulation. The commenters agreed. Accordingly, that section of the previous rule has been eliminated as proposed. The 25% lending limit of the Federal Credit Union Act is, in the interest of clarity and comprehensiveness, referenced at § 703.3(c) of the final rule concerning loans, shares and deposits of other financial institutions.

Definitions

The definitions (§ 703.2 in both the proposed and final rule) have been alphabetized in the final rule. Also a definition has been added, at § 703.2(n), for the term "Section 107(8) institution." This term refers to institutions in which Federal credit unions may legally make deposits pursuant to section 107(8) of the Federal Credit Union Act (12 U.S.C. 1757(8)), i.e., any institution that either is insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation or is a State bank, trust company or mutual savings bank operating in accordance with the laws of a state in which the Federal credit union maintains a facility. The term (or its equivalent) appeared throughout the proposed rule but was not defined. The inclusion of the definition in the final rule eliminates the need to refer to a copy of the Federal Credit Union Act in order to understand the term.

Authorized Investments—§ 703.3 of the Rule

Cash Forward Agreements. A cash forward agreement is an agreement to purchase or sell a security at an agreed-upon price, but at a future date. As a carry-over from the previous rule, the proposal would allow cash forward agreements if delivery and acceptance are mandatory and take place within 120 days from the date of the agreement. One commenter expressed disapproval of the 120 day limitation. Although acknowledging the possibility of speculative use of cash forward agreements, the commenter believed that the 120 days limitation was somewhat arbitrary and did not serve a useful purpose.

Agency experience has not shown that the 120 day limitation has caused problems for Federal credit unions. Further, without a time limitation, cash forward agreements can be used for speculative futures trading, posing safety and soundness concerns. The Board has adopted the proposed rule (§ 703.3(b)) without amendment.

Loans, shares and deposits—other financial institutions. Section 703.3 of the proposed rule addressed the authority of Federal credit unions to make *deposits* in section 107(8) institutions. This section of the rule is necessary primarily to clarify that the authority is generally limited to institutions that are either federally insured or operating in accordance with the laws of a state where the credit union does business. As proposed, however, the section omitted reference to the authority of Federal credit unions to establish share accounts and similar accounts with other federally insured credit unions and with corporate credit unions pursuant to section 107(7) of the Act [12 U.S.C. 1757(7)]. Section 703.3 of the final rule has been revised to include reference to this authority.

Repurchase transactions. A repurchase transaction is a transaction in which a bank, broker or other third party sells securities to an investor (in this case a Federal credit union) with an agreement to "repurchase" the securities at an established time and fixed price. The transaction is functionally similar to a short term loan by the credit union that is collateralized by the securities, with the difference between the sales price and the repurchase price representing interest on the loan.

Since Federal credit unions may, with limited exceptions, make loans only to members, it has been necessary for a repurchase transaction to have the legal characteristics of an investment in the underlying security in order for a Federal credit union to participate. Thus, the previous rule distinguished between loan and investment type repurchase transactions, with only the latter being authorized for Federal credit unions.

The proposed rule carried over this distinction. The final rule carries it over with one significant exception: Since Federal fund transactions, which are essentially short term unsecured lending, have been authorized for Federal credit unions pursuant to the authority to make deposits in other financial institutions, it makes little sense to restrict repurchase transactions (which are secured) with those same institutions. Accordingly, the final rule has been amended to authorize Federal credit unions to engage in repurchase transactions with other financial institutions without regard to the distinction between loan-type and investment-type transactions. Of course, since the authorization is pursuant to the deposit authority, the financial institution must be a section 107(8) institution. (*See,* §§ 703.2(1), 703.3(d).)

Reverse repurchase transactions. A reverse repurchase transaction is a transaction whereby a Federal credit union borrows Funds for a fixed period and pledges securities (typically GNMA's or Treasury securities) owned by it as collateral. The borrowed funds are usually reinvested in other securities or in loans to members. The final rule, in a carry over from the previous rule and the proposal, requires that either the securities in which the borrowed funds are reinvested or the securities used as collateral have a maturity date not later than the repayment date on the reverse repurchase transaction. (*See,* § 703.3(e).) The purpose of the limitation is to avoid maturity mismatches that in past experience have resulted in serious losses during periods of interest rate swings. The commenters generally supported a continuation of this limitation. Some misunderstood the limitation, however, and believed that the rule would require that both the securities pledged as collateral and the securities in which the borrowed funds are reinvested would be required to have a maturity not later than the repayment date. The final rule has been revised to clarify that this is not the case.

Federal Funds. A Federal funds transaction is an overnight or short term loan to another financial institution. These transactions have been authorized, pursuant to NCUA Interpretive Ruling 81–2 (46 FR 14887), by interpretation of the deposit authority of section 107(8) of the Act. The proposed rule incorporated the Interpretive Ruling into the regulation, at § 703.3(f), in the interest of clarity and comprehensiveness. The commenters agreed with this proposal. Several commenters noted, however, that with the incorporation of the Interpretive Ruling, investment in "Term Federal Funds" (Federal funds having a maturity of more than one day), which had been authorized, had become restricted. This was unintended, and § 703.3(f) has been revised to allow both overnight and term Federal funds. With the inclusion of Federal funds in the final rule, IRPS 81–2 is unnecessary and is therefore repealed.

The Board takes this opportunity to alert Federal credit unions to at least one inherent risk of Federal funds investments that may not have been previously considered. There may be instances where under state law (e.g. West Virginia, Iowa, Oregon) if a Federal credit union sells Federal funds to a state bank (authorized as depositories under section 107(8) of the Act) and that bank is placed into liquidation, unlike other "depositors" who are given a priority in the payout under the state law, the Federal credit union would be paid after depositors along with other creditors. Under these circumstances a Federal credit union's risk of loss is greater than if it had purchased a CD from the state bank (even where the CD was in excess of the $100,000 deposit insurance limit), because of the priority given to depositors over other creditors. Therefore, the common perception that Federal funds have no greater risk associated with them than uninsured CD's is not accurate in all instances.

Yankee Dollars. A Yankee Dollar deposit is a dollar denominated deposit in a United States branch or subsidiary of a foreign bank. If the branch or subsidiary is federally insured or operating in accordance with the laws of a state in which the Federal credit union does business, then a Federal credit union deposit in the branch or subsidiary is authorized pursuant to section 107(8) the Act. Section 703.3(g) of the proposal set forth this authority. It has been carried over to the final rule without substantive change.

Eurodollars. A Eurodollar deposit is a dollar denominated deposit in either a foreign branch or subsidiary of a United States bank or in a foreign bank located outside the United States. The Board proposed authorizing such deposits, but only in foreign branches of parent U.S. banks and only if the parent U.S. bank is one in which a Federal credit union may make a deposit pursuant to section 107(8) of the Act. The Board also requested comment on whether such deposits should be treated as risk assets for purposes of the statutory reserve transfer requirements of section 116 of the Federal Credit Union Act (12 U.S.C. 1762).

The vast majority of commenters agreed that Eurodollar deposits in foreign branches of U.S. banks should be a permissible investment for Federal credit unions. However, the commenters were split on the issue of whether Eurodollars should be considered risk assets. While the commenters generally agreed that Eurodollars do involve credit risk, liquidity risk, sovereign risk, and general risk associated with increased operational complexity, their approach to the problem varied.

Those not in favor of treating Eurodollars as risk assets believe that with strong internal controls investment losses can be prevented. Commenters in favor of treating Eurodollar deposits as risk assets argued that classification as risk assets would help credit unions more accurately recognize the credit risk inherent in these investments.

The Board has determined to authorize Eurodollar deposits as

proposed, but not to treat them as risk assets at this time. Deposits and government securities generally have not been treated as risk assets for purposes of statutory reserve transfer requirements. Treatment of Eurodollar deposits as risk assets is a matter which may be more appropriately considered in the context of an overall review of statutory reserve transfer requirements and the regulatory definition of risk assets (*See*, 12 CFR 700.1(j)). Also, deposits in overseas branches of U.S. banks are generally considered to be legal liabilities of the domestic parent bank. There may, however, be instances where the foreign host government takes some action to freeze, stop, or delay payment of the deposits of the branch bank, and the U.S. parent bank may be relieved of its liability for the deposits of its overseas branch. Under these circumstances, the relied-on protection of the parent domestic bank against loss of the deposit may be of no avail. Therefore, the Board is alerting all Federal credit unions that Eurodollar deposits are not free of risk and that extreme care must be exercised in engaging in such investment activity.

Bankers' Acceptances. A bankers' acceptance is a time draft drawn on a U.S. bank and represents an irrevocable obligation of the bank. Bankers' acceptances arise in a variety of ways, but generally are used initially by a corporate customer of the bank to "pay" for goods or services, and are subsequently discounted and traded as money market instruments. The proposed rule included bankers' acceptances in the category of prohibited investments. A majority of those commenting on this issue recommended that Federal credit unions be permitted to invest in bankers' acceptances. These commenters argued that it is inconsistent to classify bankers' acceptances as prohibited investments when Federal funds, certificates of deposit, and Eurodollar deposits are held to be permissible investments. All of these investments (including bankers' acceptances) appear on the issuing bank's balance sheet as direct liabilities of the bank. Some commenters suggested that bankers' acceptances, which are obligations of both the accepting bank and its corporate customer, are less risky than Federal funds, Eurodollar deposits, and uninsured CD's.

The Board agrees and finds that bankers' acceptances may be authorized pursuant to the same rationale applied to Federal funds and repurchase transactions with financial institutions; i.e., by considering the acceptance to be a type of deposit liability. Also, it seems clear that bankers' acceptances present no greater risk than these other investments. Accordingly, the Board has incorporated into the final rule a new § 703.3(i) authorizing investments in bankers' acceptances issued by section 107(8) institutions.

Prohibited Investments—Section 703.4

Comments were received on three prohibited activities: standby commitments § 703.4(a)), futures contracts § 703.4(b)), and kickbacks (§ 703.4(e)).

Standby Commitments. A standby commitment is a commitment to purchase (or sell) a security at a set price at a future date, wherein the seller of the commitment receives a fee in exchange for agreeing to "stand by" to purchase (or sell) the security at the option of the buyer of the commitment. Several commenters suggested that the definition, now § 703.2(r), of standby commitment be reworded. They stated that the proposed definition was unclear as to who is the buyer and who is the seller of the commitment, and fails to include an additional element of the transaction—the predetermined price. The Board agrees and has revised the definition accordingly. In conformance with the amended definition, the Board has amended § 703.4(a) to clarify that a Federal credit union may not purchase or sell a standby commitment.

Some commenters recommended that the prohibition on standby commitments be amended to permit Federal credit unions to purchase standby commitments. They noted that the substantial risk in the transaction is always on the seller of the commitment, and that the buyer's loss can be restricted to the amount advanced to purchase the commitment, since the buyer has the option to either exercise the sale or purchase or do nothing. They suggested that standby commitments can be used as a hedging tool in asset/liability management.

The Board does not consider standby commitments an essential tool to reduce the potential risks that Federal credit unions may have because of maturity mismatches between their assets and liabilities. Because of their complexity and their inherently speculative nature, reliance on standby commitments to offset mismatching can only lead to confusion, uncertainty, and ultimately to safety and soundness problems. As explained below in the discussion of futures contracts, there are already a range of other business strategies available to Federal credit unions to manage their assets and liabilities.

Futures contracts. A futures contract is a standardized agreement offered on one of the futures exchanges to buy or sell an underlying investment at an established future date and at a specified price. While the proposed rule carried over the previous rule's prohibition on futures contracts, the Board requested comment on whether investment in futures contracts should be authorized as an asset/liability management tool.

The comments were mixed. Commenters in support believed that with increased competition, greater interest rate sensitivity of member shareholders, and recent fluctuation in interest rates, it is important that Federal credit unions have the flexibility to hedge interest rate risk through the use of interest rate futures.

Commenters in opposition to authorizing futures contracts believed that they are too complex and too often result in sizable losses. Further, they felt that with the relatively short maturities of credit union loans and the authority to make variable rate loans, Federal credit unions have adequate tools to protect against interest rate swings.

The Board has determined not to authorize investments in futures contracts at this time. To the extent that futures contracts are seen as tools to reduce the interest rate risk that results from a mismatch between asset and liability maturities, the Board believes that there are already a range of other business strategies available to FCU's. Such strategies include: (a) Not investing or lending at long term fixed rates; (b) using variable rate lending and floating rate investments; (c) using secondary markets to sell long-term loans to limit or manage the level of exposure; (d) using improved funds management strategies under deregulation to create a "basket" of share maturities which would compliment the duration of longer term assets; and (e) using reserves (established for this purpose) to temporarily cover losses should rising interest rates lead to short-term mismatches. Further, it is the opinion of the Board that as long as Federal credit unions take in short-term funds and elect to invest or lend in long-term instruments, there is a risk. No option, including futures or standby commitments, eliminates the risk; they may, at best, just reduce some of the potential costs.

Kickbacks. The commenters were nearly unanimous in approving of the proposed rule (now § 703.4(e)) prohibiting a Federal credit union's directors, officials, committee members, employees, and immediate family

members of such individuals from receiving pecuniary consideration in connection with the making of an investment or deposit by the Federal credit union.

The Board has approved § 703.4(e) without substantive change, but has added a new § 703.2(i) which defines what is meant by the term "immediate family member." By specifically defining the term, the Board expects to minimize any uncertainty as to who may fall within the "immediate family" for purposes of the rule.

Adjusted trading and short sales. Both the previous regulation and the proposal contained prohibitions against engaging in adjusted trading and short sales. Adjusted trading is the sale of a security at an inflated price above market with the simultaneous purchase of another security, also at an inflated price. The purpose is to hide or defer losses and avoid recording the losses in the accounting period in which they occur. It is a misrepresentation on the balance sheet and is not in accordance with "full and fair disclosure" required in 12 CFR 702.3.

A short sale is the sale of a security not owned at the time of the sale. The seller is speculating that the price of the security will fall prior to his purchase and thus enable him to sell it at a higher previously agreed to price pursuant to the short sale. The practice is considered to be unsafe and unsound.

No commenters objected to the prohibition against these two types of transactions and the prohibitions have been carried over to the final rule, § 703.4 (c) and (d).

IRPS 79-4—Investments

NCUA Interpretive Ruling and Policy Statement 79-4 was originally issued to elaborate on the requirements of Part 703 and to establish accounting procedures to be used in conjunction with certain authorized investment transactions. In light of the fact that the accounting procedures are now covered in NCUA's *Accounting Manual for Federal Credit Unions* and considering the changes and clarifications in the proposed rule, NCUA proposed to repeal IRPA 79-4. The commenters agreed. Accordingly, IRPS 79-4 is repealed.

Delayed Effective Date

This final rule has been issued with a delayed effective date (May 21, 1984) in order to provide Federal credit unions a full opportunity to study the changes in investment authority and responsibilities and develop an understanding of the new investment vehicles before committing funds to any particular type of investment.

Regulatory Procedures

The NCUA Board has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions because the rule would increase their management flexibility, enhance their competitive positions and reduce their paperwork burdens. A regulatory flexibility analysis is not required. 5 U.S.C. 603(a), 604(a).

List of Subjects in 12 CFR Part 703

Credit unions, Investments.

Dated: March 22, 1984.

Rosemary Brady,

Secretary of the Board.

1. 12 CFR Part 703, Investment and Deposit Activities, is revised to read as follows:

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

Sec.

Authority: 12 U.S.C. 1757(7), 1757(8), 1766(a), and 1789(a)(11).

§ 703.1 Scope.

Sections 107(7) and 107(8) of the Federal Credit Union Act (12 U.S.C. 1757(7), 1757(8)) set forth those securities, deposits, and other obligations in which Federal credit unions may invest. Included are securities issued or fully guaranteed by the United States Government or any of its agencies, shares of central credit unions and any federally insured credit union, accounts in other federally insured financial institutions, and other specified investments. This part interprets several of the provisions of sections 107(7) and 107(8) and places certain limits on the types of transactions that Federal credit unions may enter into in connection with the purchase and sale of authorized securities, deposits and obligations. This part does not apply to investments in loans to members, which are governed by § 701.21 (12 CFR 701.21). Also, other sections of NCUA's regulations affect certain specific investments. For example, investments in credit union service organizations are subject to § 701.27 (12 CFR 701.27), and investments in fixed assets are subject to § 701.36 (12 CFR 701.36).

§ 703.2 Definitions.

(a) *Adjusted trading* means any method or transaction used to defer a loss whereby a Federal credit union sells a security to a vendor at a price above its current market price and simultaneously purchases or commits to purchase from the vendor another security at a price above its current market price.

(b) *Bailment for hire contract* means a contract whereby a third party, bank or other financial institution, for a fee, agrees to exercise ordinary care in protecting the securities held in safekeeping for its customers.

(c) *Bankers' Acceptance* means a time draft that is drawn on and accepted by a bank, and that represents an irrevocable obligation of the bank.

(d) *Cash forward agreement* means an agreement to purchase or sell a security with delivery and acceptance being mandatory and at a future date in excess of thirty (30) days from the trade date.

(e) *Eurodollar deposit* means a deposit in a foreign branch of a United States depository institution.

(f) *Facility* means the home office of a Federal credit union or any suboffice thereof, including but not necessarily limited to a wire service, telephonic station, or mechanical teller station.

(g) *Federal funds transaction* means a short-term or open-ended transfer of funds to a Section 107(8) institution.

(h) *Futures contract* means a contract for the future delivery of commodities, including certain government securities, sold on commodities exchanges.

(i) *Immediate family member* means a spouse, or a child, parent, grandchild, grandparent, brother or sister, or the spouse of any such individual.

(j) *Market price* means the last established price at which a security is sold.

(k) *Maturity date* means the date on which a security matures, and shall not mean the call date or the average life of the security.

(l) *Repurchase transaction* means a transaction in which a Federal credit union agrees to purchase a security from a vendor and to resell the same or any identical security to that vendor at a later date. A repurchase transaction may be of three types:

(1) *Investment-type repurchase transaction* means a repurchase transaction where the Federal credit union purchasing the security takes physical possession of the security, or receives written confirmation of the purchase and a custodial or safekeeping receipt from a third party under a written bailment for hire contract, or is recorded as the owner of the security through the Federal Reserve Book-Entry System;

(2) *Financial institution-type repurchase transaction* means a

repurchase transaction with a Section 107(8) institution;

(3) *Loan-type repurchase transaction* means any repurchase transaction that does not qualify as an investment-type or financial institution-type repurchase transaction.

(m) *Reverse repurchase transaction* means a transaction whereby a Federal credit union agrees to sell a security to a purchaser and to repurchase the same or any identical security from that purchaser at a future date and at a specified price.

(n) *Section 107(8) institution* means an institution in which a Federal credit union is authorized to make deposits pursuant to section 107(8) of the Federal Credit Union Act (12 U.S.C. 1757(8)), i.e., an institution that either is insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or is a State bank, trust company or mutual savings bank operating in accordance with the laws of a state in which the Federal credit union maintains a facility.

(o) *Security* means any security, obligation, account, deposit, or other item authorized for investment by a Federal credit union pursuant to section 107(7) or 107(8) of the Federal Credit Union Act (12 U.S.C. 1757(7), 1757(8)), other than loans to members.

(p) *Settlement date* means the date originally agreed to by a Federal credit union and a vendor for settlement of the purchase or sale of a security.

(q) *Short sale* means the sale of a security not owned by the seller.

(r) *Standby commitment* means a commitment to either buy or sell a security, on or before a future date, at a predetermined price. The seller of the commitment is the party receiving payment for assuming the risk associated with committing either to purchase a security in the future at a predetermined price, or to sell a security in the future at a predetermined price. The seller of the commitment is required to either accept delivery of a security (in the case of a commitment to buy) or make delivery of a security (in the case of a commitment to sell), in either case at the option of the buyer of the commitment.

(s) *Trade date* means the date a Federal credit union originally agrees, whether orally or in writing, to enter into the purchase or sale of a security.

(t) *Yankee Dollar deposit* means a deposit in a United States branch of a foreign bank licensed to do business in the state in which it is located, or a deposit in a state chartered, foreign controlled bank.

§ 703.3 Authorized Activities.

(a) *General authority.* A Federal credit union may contract for the purchase or sale of a security provided that:

(1) The delivery of the security is to be made within thirty (30) days from the trade date; and

(2) The price of the security at the time of purchase is the market price.

(b) *Cash forward agreements.* A Federal credit union may enter into a cash forward agreement to purchase or sell a security, provided that:

(1) The period from the trade date to the settlement date does not exceed one hundred and twenty (120) days;

(2) If the credit union is the purchaser, it has written cash flow projections evidencing its ability to purchase the security;

(3) If the credit union is the seller, it owns the security on the trade date; and

(4) The cash forward agreement is settled on a cash basis at the settlement date.

(c) *Loans, shares and deposits—other financial institutions.* A Federal credit union may invest in the following accounts of other financial institutions as specified in section 107(7) and 107(8) of the Federal Credit Union Act (12 U.S.C. 1757(7), 1757(8)): loans to nonmember credit unions in an aggregate amount not exceeding 25 percent of the lending credit union's unimpaired capital and surplus; shares, share certificates or share deposits of federally insured credit unions; shares or deposits of any central credit union specifically authorized by the board of directors; and deposits of any Section 107(8) institution. Any such investment is subject to the other applicable provisions of this Part (703).

(d) *Repurchase transactions.* A Federal credit union may enter into an investment-type repurchase transaction or a financial institution-type repurchase transaction provided the purchase price of the security obtained in the transaction is at or below the market price. A repurchase transaction not qualifying as either an investment-type or financial institutions-type repurchase transaction will be considered a loan-type repurchase transaction subject to section 107 of the Federal Credit Union Act (12 U.S.C. 1757), which generally limits Federal credit unions to making loans only to members.

(e) *Reverse repurchase transactions.* A Federal credit union may enter into a reverse repurchase transaction, provided that either any securities purchased with the funds obtained from the transaction or the securities collateralizing the transaction have a maturity date not later than the settlement date for the reverse repurchase transaction. A reverse repurchase transaction is a borrowing transaction subject to section 107(9) of the Federal Credit Union Act (12 U.S.C. 1757(a)), which limits a Federal credit union's aggregate borrowing to 50 percent of its unimpaired capital and surplus.

(f) *Federal funds.* A Federal credit unions may sell Federal funds to a Section 107(8) institution, provided that the interest or other consideration received from the financial institution is at the market rate for Federal funds transaction and that the transaction has a maturity of one or more business days or the credit union is able to require repayment at any time.

(g) *Yankee Dollars.* A Federal credit union may invest in Yankee Dollar deposits in a Section 107(8) institution.

(h) *Eurodollars.* A Federal credit unions may invest in Eurodollar deposits in a branch of a Section 107(8) institution.

(i) *Bankers' acceptances.* A Federal credit unions may invest in bankers' acceptances issued by a Section 107(8) institution.

§ 703.4 Prohibited activities.

(a) A Federal credit union may not purchase or sell a standby commitment.

(b) A Federal credit union may not buy or sell a futures contract.

(c) A Federal credit union may not engage in adjusted trading.

(d) A Federal credit union may not engage in a short sale.

(e) A Federal credit union's directors, officials, committee members and employees, and immediate family members of such individuals, may not receive pecuniary consideration in connection with the making of an investment or deposit by the Federal credit union.

3. NCUA Interpretive Ruling and Policy Statement 79-4—Investments (August 31, 1979, 44 FR 51195), is repealed.

2. NCUA Interpretive Ruling and Policy Statement 81-2—Federal Funds (March 3, 1981, 46 FR 14887), is repealed.

[FR Doc. 84-8520 Filed 3-29-84; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-ASW-7; Amdt. 39-4831]

Airworthiness Directives; Hughes Helicopters, Inc., Model 369 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Hughes Helicopters, Inc., Model 369 helicopters by priority mail. The AD requires the inspection of the swashplate bearing assembly to determine if the ball bearing cage is installed and replacement of swashplate bearing assembly if the bearing cage is missing. The AD is needed to prevent possible loss of control of the rotor system in flight and subsequent loss of the helicopter.

DATE: Effective April 9, 1984, as to all persons except those persons to whom it was made immediately effective by priority mail AD 84-01-02, issued January 10, 1984, which contained this amendment.

Compliance required before further flight after the effective date of this AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from Hughes Helicopters, Inc., Centinela and Teale Avenues, Culver City, California 90230. Copies of the Mandatory Service Information Notices are contained in the Rules Docket at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Jerry Sullivan, Aerospace Engineer, Airframe Section, ANM-172W, Western Aircraft Certification Office, Northwest Mountain Region, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009, telephone number (213) 536-6166.

SUPPLEMENTARY INFORMATION: On January 10, 1984, a priority mail airworthiness directive was issued and made effective immediately upon receipt as to all known U.S. owners and operators of Hughes Helicopters, Inc., Model 369 helicopters. The AD required inspection of the swashplate bearing to determine if the ball bearing cage is installed and replacement of bearing assembly if the ball bearing cage is missing. The priority mail AD was issued because of a report of a swashplate bearing failure. After landing the pilot heard a loud bang, shut down the aircraft, and found the rotating star of the swashplate separated from the lower support. There was no control of the rotor system. Upon inspection it was determined that the swashplate bearing assembly was not manufactured in accordance with the design specification in that the ball bearing cage was not installed during assembly. Hughes Helicopters, Inc., has found 15 improperly assembled bearings since this situation has come to light. The failed bearing had been in service 2½ hours. Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual priority mail letters issued to all known U.S. owners of Hughes Helicopters, Inc., Model 369 (Army YOH-6A), 369A (Army OH-6A), D, E, H, HE, HM, and HS helicopters. After the AD was issued on January 10, 1984, the manufacturers submitted information which verified that the suspect swashplate bearings are limited to the post June 1, 1983, period. Therefore, the original AD has been amended to provide relief for helicopters with bearings installed prior to June 1, 1983. The AD published in the **Federal Register** is the same as the priority mail AD dated January 10, 1984, except for the relieving feature noted above. The conditions which led to the initial issuance still exist and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

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:

Hughes Helicopters, Inc. (Hughes Helicopters): Applies to Hughes Helicopters, Inc., Model 369 series including Army YOH-6A, and OH-6A helicopters certificated in all categories.

Compliance is required prior to further flight, unless already accomplished.

To prevent possible loss of control of rotor system in flight, accomplish the following:

For Hughes Helicopters, Inc., Model 369 (Army YOH-6A), 369A (Army OH-6A) D, E, H, HE, HM, and HS helicopters with swashplate bearing assembly P/N 369A7003-3 installed after June 1, 1983:

(a) Comply with paragraphs A through J of procedures section of Hughes Helicopters, Inc., Mandatory Service Information Notices DN-125, EN-12, and HN-191, as applicable, all dated December 23, 1983, or FAA approved equivalent. Model 369 series are to comply with Mandatory Service Information Notice HN-191 or FAA approved equivalent.

(b) Replace deficient swashplate bearing assembly with serviceable unit.

(c) Swashplate bearing assembly P/N 369A7003-3 with positively identified serial numbers 9000 through 9999 or with a ⅛-inch-diameter blue dot on the outer surface of the snap ring has been determined to contain the ball bearing cage and need not be reinspected.

(d) Only subject bearing assembly positively identified as being S/Ns 9000-9999 or bearing assemblies with blue dot on the outer surface of snap ring or FAA approved equivalent bearing assemblies approved by the Manager, Western Aircraft Certification Office may be used as replacement swashplate bearing assemblies.

Alternative inspections, modifications, or other actions which provide an equivalent level of safety may be used when approved by the Manager, Western Aircraft Certification Office, Hawthorne, California.

This amendment becomes effective April 9, 1984, as to all persons except those persons to whom it was made immediately effective by priority mail AD 84-01-02, issued January 10, 1984, which contained this amendment.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) [Revised, Pub. L. 97-449, January 12, 1983]; 14 CFR 11.89)

Note.—The FAA has detemined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Fort Worth, Texas on March 9, 1984.

C. R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 84-8494 Filed 3-29-84; 8:45 am]

BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

14 CFR Part 256

[Economic Reg. Enactment of Part 256 Docket 41686; Reg. ER-1377]

Display of Joint Operations in Carrier-Owned Computer Reservations Systems

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The Board is adopting an emergency rule that would prevent airlines owning computer reservations systems (CRS's) from denying access to their systems to carriers who coordinate their services under the same airline designator code. The rule also prohibits display discrimination against carriers who conduct such operations. The rule is intended to ensure that systems owners do not use their control of CRS's to limit the ways in which other carriers compete in marketing their services. The Board's action responds to petitions by several air carriers.

DATES: *Adopted:* March 27, 1984. *Effective:* March 30, 1984.

FOR FURTHER INFORMATION CONTACT: Samuel E. Whitehorn (202) 673-5450, Paul Samuel Smith (202) 673-5450, Barry L. Molar (202) 673-5205, George S. Baranko (202) 673-6011, or Robert D. Young (202) 673-6060, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUPPLEMENTARY INFORMATION:

The Proposed Rule

EDR-470, 49 FR 9430, March 13, 1984, proposed an emergency rule that would prevent air carriers owning computer reservations systems (CRS's) from eliminating other carriers' flight information from their CRS's when the other carriers' flights are operated under a single airline designator code, absent a determination by the Board that the other carriers' use of a common code constitutes a violation of section 411. We instituted this rulemaking in response to requests of Frontier Airlines and a group of other carriers that we declare such action to be an unfair and deceptive practice and an unfair method of competition. They made their requests in a concurrent rulemaking proceeding, covered by EDR-466C (49 FR 11644, March 27, 1984), where we proposed comprehensive rules on CRS-owning airline activities. We indicated that we are proceeding separately with this rule in order to respond to United's announced intention to remove carriers using common designator codes from its APOLLO system on April 1, 1984. The proposed rule would prevent such action pending a determination on the legality of carriers' use of common designator codes, a question that is currently before us in Docket 41875.

The proposed rule is based on essentially the same facts and conclusions that led us to propose EDR-466C, and we incorporated our proposed findings there into this proceeding. Our examination of the CRS industry led us to tentatively conclude that the CRS market is dominated by a few airline owners. Their CRS's are travel agents' primary information source. Agents, in turn, are the primary distributors of scheduled air transportation services. As a result, we found that CRS owners have gained substantial control over the agency distribution system, particularly on a regional level, and are in position to use that power to affect air transportation competition adversely.

This proceeding is concerned with the use of CRS power to inhibit air transportation competition through the use of cooperative service agreements. Generally these agreements provide for some integration of operations, such as the coordination of departure and arrival times and the common use of baggage, terminal and computer facilities. In some cases, the cooperating carriers share common or very similar trade-marks. Most importantly for the purposes of this proceeding, the cooperating carriers also use the same two-letter code to designate their services in the Official Airline Guide and elsewhere. The OAG treats flights having the same two-letter code as on-line connections.

CRS owners obtain their flight information from the OAG and afford commonly designated flights the same treatment, i.e., they are listed as on-line services. On-line connections are generally given higher display priority than inter-line connections and are more likely to be sold.

We found that such cooperative agreements appear to be an attractive method to compete in the marketplace. In exchange for support services, the use of some of its trademarks, and the coordination of schedules, a larger, established carrier can gain valuable feed traffic. Some of the feed traffic they gain is a consequence of the common use of designator codes. Pan American, among others, states that the service provided by these cooperative agreements is attractive to many travelers.

However, the few carriers owning CRS's are in a position to substantially reduce the attractiveness of such operations by denying carriers sharing a designator code access to their systems. United's notice that it would no longer list connecting flights operated by separate carriers under a common code in its APOLLO CRS after April 1, 1984, seemed to illustrate the possible exercise of CRS market power. Faced with the possibility of exclusion from a CRS, we concluded that carriers using common codes can either lose the traffic and other benefits they gain from such arrangements or lose their access to a substantial portion of the travel agent distribution system. In short, we found that United and the other CRS providers have the power to force competitors to abandon their competitive marketing strategy for reasons unrelated to its merits.

United has apparently attempted to justify its decision to delete carriers using common designator codes from APOLLO on the grounds that consumers are being deceived by the implicit representation that the carrier whose code is shared will be providing all the service purchased. When the consumer arrives at the gate of the second carrier, however, he or she finds the service will be provided by an independent airline, usually with small commuter-type aircraft and that the consumer protection rules normally associated with scheduled service are not available. United and certain other carriers believe this constitutes an unfair and deceptive practice under section 411 of the Act.

While we have not unconditionally sanctioned the unrestrained use of common designator codes, we have approved the practice in some circumstances. *See, e.g.,* Order 79-2-108. Some cooperative agreements may affirmatively benefit the public by ensuring service to particular communities. Moreover, travel agents can disclose to consumers the equipment to be used on a particular flight, which appears on the CRS display. We also note that if a certificated carrier owned and operated small aircraft directly, those operations would be exempt from certain consumer protection regulations. 14 CFR 298.90 *et. seq.* On the other hand, we recognized that there may well be circumstances under which the use of common designator codes would be deceptive. However, that was a question that the Board should properly determine. It is

not, in our view, to be resolved by the competitors of the carriers providing these services.

The rule we proposed foreclosed CRS carriers from deleting or discriminating against carriers that use the same designator code, absent our determination that the use of common designator codes by these carriers was a violation of the Act. Our intention was to preserve the *status quo* and retain for ourselves the responsibility to determine if carriers had violated section 411. We indicated that when a CRS carrier, or any other carrier, believed its competitors were using common designator codes to deceive the public, their recourse would be to file a complaint challenging the practice.

The Comments

Comments in support of our proposed rule have been filed by Alaska Airlines; Eastern Air Lines; Empire Airlines; Frontier Airlines, Frontier Horizon, and Combs Airways (the Frontier Group); Air Kentucky Airlines, Chautaugua Airlines, Crown Airways, Fischer Brothers Aviation, Henson Aviation, Pennsylvania Airlines, Piedmont Aviation, Pocano Airlines, Southern Jersey Airways, Suburban Airlines, and USAir, (the Joint Carriers); Metro Airlines; and Pan American World Airways. Crown Airways, Henson Aviation, Pennsylvania Airlines, and Suburban Airlines also filed separate comments in support of the proposed rule.

Opposing comments were filed by Excellair; the General Services Administration (GSA); and United Air Lines. In addition, Aspen Airways, Britt Airways, Command Airways, and San Juan Airlines filed letters indicating their opposition to the proposed rule. Generally, these commenters raise three arguments in opposition to the proposed rule. First, they argue that our conclusions with respect to CRS carrier power and the importance of access to particular CRS's are incorrect and unsupported by the record. Second, they argue that the use of common designator codes is, if not per se deceptive, misleading and anticompetitively deceptive in particular circumstances. Finally, they argue that the proposed rule will have a substantial adverse impact on independent commuter carriers that cannot or will not use the designator codes of a major carrier.

The Aviation Consumer Action Project (ACAP) and American Airlines Inc. comments take no specific position on the proposed rule. However, both suggest there are circumstances in which the sharing of designator codes injures the public. ACAP suggests that we address the features which must be present for a coordinated operation to be listed and advertised as an "on-line" connection. American asks that we expedite consideration of its complaint in Docket 41875 to establish guidelines for the use of such codes. American also questions the factual and legal analysis underlying EDR–470 and suggests that we withdraw that analysis "since it is not necessary to the adoption of the proposed rule." It also suggests that the proposed action should have been undertaken in an enforcement proceeding rather than a rulemaking proceeding.

Delta does not take a position on the proposed rule. It asks, however, that we affirm its understanding that its rights to comment in the broader rulemaking proceeding will not be prejudiced by its decision not to comment here. Its understanding is correct. Similarly People Express Airlines has only filed in order to make sure that our proposed rule is only applicable to computer reservations systems having multi-carrier listing and booking capabilities. In fact, our proposed rule only applies to carriers that own, control or operate CRS's for travel agents in the United States. The computer system People Express' personnel use to book reservations when agents contact People Express does not fall within this definition.

The Final Rule

For the reasons set out in EDR–470, as supported by our tentative findings in EDR–466C, we have decided to adopt the rule preventing airlines owning computer reservations systems from denying access or discriminating against carriers who coordinate their services under the same airline designator code. The specific objections of commenters, our responses, and some clarifying details are set out below.

This rule is based upon the facts we have gathered on CRS industry and common designator code practices. Parties in the comprehensive rulemaking proceeding will have the opportunity to present additional facts and present new argument on our conclusions here. Consequently, after we decide the issues presented in those proceedings, we may re-examine the rule we are adopting here.

Discussion

The first challenge to the proposed rule is the assertion that our analysis of competition in the CRS and air transport industries was incorrect and unsupported by the record. American promises that it will support its assertion to that effect when it submits its comments on EDR–466C. United restates its assertions, made more fully in comments submitted prior to the issuance of EDR–470, that its CRS is not an "essential facility" and that United has not market power in any market. We will not at this stage repeat the detailed analysis that mandates our action here. We simply note that no party has submitted any new evidence or argument relating to our analysis of the CRS industry since we issued EDR–470, and we have no basis for revising our conclusions on those issues at this time.

On the basis of the information we have and the arguments presented so far, we continue to believe that airline CRS vendors have a substantial degree of market power, that there is a danger of their wielding that power in ways that may cause substantial injury to air transport competition and to consumers, and that our responsibilities under section 411 together with the more specific strictures contained in section 102 and other sections of the Federal Aviation Act require that we take immediate action to safeguard the competitive structure of the air transport industry. We note that section 411 requires that we take a somewhat more functional approach than that contained in the case law developed under the Sherman Act. Moreover, if United had succeeded in forcing its competitors to agree to eliminate their common listing practices, those agreements could be construed as agreements in restraint of trade and as violations of section 1 of the Sherman Act. *See Home Placement Service* v. *Providence Journal Co.*, 682 F.2d 274, 279 (1st Cir. 1982). Preventing such developments in their incipiency is a large part of our responsibility under section 411.

Excellair argues that the sharing of a major carrier's designator code by a commuter carrier is anticompetitive because it undermines the competitive position of commuter carriers like Excellair who will not or cannot coordinate their operations with a major carrier and use the latter carrier's designator code. We found in Order 79–2–108 that USAir's agreements with two Allegheny commuters were franchising agreements which are not inherently anticompetitive. Our analysis there remains valid, for such agreements will not necessarily injure competition and may enhance it in some smaller markets.

The remaining arguments made by opponents to the rule relate to the merits of the use of common designator codes. The opponents generally claim that the practice is misleading to the public. Although we found in the case of

several Allegheny commuter agreements that the commuter carrier's analogous use of the carrier's trade name is neither inherently deceptive nor unfair, Order 79–2–108, these arguments appear to merit serious scrutiny in some cases, for example, GSA's complaint against Henson. However, the determination of whether, and to what extent, the use of common designator codes is deceptive is one for the Board to make. Clearly, if the practice were "inherently and unfailingly deceptive," we would have no basis for requiring CRS owners to participate in the practice. *Home Placement Service* v. *Providence Journal Co.*, 682 F.2d at 277. We believe that the question is close enough in some cases to warrant further investigation, either in the context of a rulemaking or enforcement proceedings. We will shortly decide which form is the most appropriate. Thus, in adopting this rule we seek to maintain the status quo. We are not giving our imprimatur to the unbridled use of common designator codes. What we are concluding here is that a CRS owner may not, consistent with section 411, use its market power to dictate the business practices of its competitors.

American contends that the action we take here would more appropriately be taken in the context of an enforcement proceeding. Its basis for that claim is the fact that only one CRS vendor—United—has threatened the action that this rule would prohibit. We are proceeding by rule instead of adjudication for two reasons. First, although United is the only carrier that has threatened action in this regard, the potential remains that other CRS vendors could take similar action. Second, the CRS industry has been, up to this point, completely unregulated. It is our judgment that the introduction of prospective ground rules for the industry should be accomplished as even-handedly as possible and in circumstances where all affected parties may have an opportunity to comment on our decision. Rulemaking is the ideal vehicle for achieving that result.

Several parties have requested that, if a rule is adopted, we make certain clarifying amendments or statements in connection with the rule. American has requested that we amend proposed § 256.4(b) to make it clear that the rules' prohibition on discrimination against common code usage only extends to the system vendor's CRS activities. Since that limitation was intended in the first place, we will make that clear by adding the words ". . . relating to providing the system" at the end of proposed § 256.4(b). United suggests that we should adopt a provision requiring participating carriers who use a common code to indemnify the CRS vendor for any claims arising from their use. We see no reason to adopt that suggestion since we do not interpret our rule or any other requirement as prohibiting vendors from obtaining indemnification if claims are made against the vendor because of the alleged inaccuracy of information supplied by another carrier.

Final Regulatory Flexibility Analysis

The discussion above constitutes the Board's final regulatory flexibility analysis of this rule pursuant to 5 U.S.C. 604. Copies of this document can be obtained from the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428, (202) 673–5432, by referring to the "ER" number at the top of the document.

Effective Date

The Board finds good cause to make this rule effective on publication in the **Federal Register.** United, one of the CRS owners, has stated that on April 1, 1984, it will eliminate from its CRS the schedules of carriers who share one designator code. United's plan will force other carriers to lose their access to United's CRS display or to change their method of conducting coordinated operations, a method followed by several carriers for over 15 years. The Board is adopting the rule to keep any airline CRS owner from so determining how its competitors conduct their operations. To prevent United from taking such action, the Board must make this rule effective immediately.

List of Subjects in 14 CFR Part 256

Advertising, Air carriers, Air transportation-foreign, Antitrust, Consumer protection, Essential air service, Travel agents.

Accordingly, the Civil Aeronautics Board adds a new Part 256 to Chapter II of Title 14, Code of Federal Regulations, to read:

PART 256—DISPLAY OF JOINT OPERATIONS IN CARRIER-OWNED COMPUTER RESERVATIONS SYSTEMS

Sec.

Authority: Secs. 102, 204, 404, 411, 412, 419, 1102 Pub. L. 85–726 as amended, 72 Stat. 740, 743, 760, 769, 770, 797; 92 Stat. 1732; 94 Stat. 42; 49 U.S.C. 1302, 1324, 1374, 1381, 1382, 1389, 1502.

§ 256.1 Purpose.

The purpose of this part is to set forth a requirement for operation by air carriers of computer reservation systems used by travel agents so as to prevent unfair, predatory, and anticompetitive practices in air transportation.

§ 265.2 Applicability.

This rule applies to air carriers or foreign air carriers that own, control, or operate computerized reservation systems for travel agent subscribers in the United States, and the sale in the United States of interstate, overseas, and foreign passenger air transportation through such systems.

§ 256.3 Definitions.

"Carrier" means any air carrier, any foreign air carrier, and any commuter air carrier, as defined in 49 U.S.C. 1301(3), 49 U.S.C 1301(22), and § 298.2(f) of this chapter, respectively that is engaged directly in the operation of aircraft in passenger air transportation.

"Display" means the system's presentation of carrier schedules, fares, rules or availability to a subscriber by means of computer terminal.

"Subscriber" means a ticket agent, as defined in 49 U.S.C. 1301(40) of the Act, that holds itself out as a neutral source of information about, or tickets for, the air transportation industry in general, and that has entered into an agreement for the use of a system.

"System" means a computerized airline reservation system offered by a carrier to subscribers, for use in the United States that contains information about schedules, fares, rules or availability of other carriers and that provides subscribers with the ability to issue tickets.

"System vendor" means a carrier that owns, controls or operates a system.

"Designator code" means the airline designations allotted and administered pursuant to Agreements CAB 24606 and 26056.

§ 256.4 Display of Information.

(a) A system vendor shall not deny access to its system to two or more carriers whose flights share a single designator code, absent a determination by the Board that the use of the code constitutes a violation of 49 U.S.C. 1381.

(b) A system vendor shall not discriminate against any carrier on the basis of that carrier's using the same designator code as another carrier, either by display bias, or any other means relating to providing the system.

By the Civil Aeronautics Board.

Phyllis T. Kaylor.

Secretary.

[FR Doc. 84-8570 Filed 3-29-84; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 370, 379, and 399

[Docket No. 40124-07]

Amendments to the Commodity Control List

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: This rule imposes licensing requirements under the national security provisions of the Export Administration Act of 1979, as amended (EAA) on export and reexport of certain commodities to all destinations. The changes result from a review of strategic controls maintained by the U.S. and certain allied countries through the Coordinating Committee (COCOM). In addition, this rule imposes licensing requirements on shipment of certain technical data to all destinations except Canada. It has been determined that these controls are necessary to protect U.S. national security interests in accordance with the criteria in sections 3(2)(A) and 5 of the EAA.

EFFECTIVE DATE: March 30, 1984. Comments must be received by the Department May 29, 1984.

ADDRESS: Written comments (six copies) should be sent to: Betty Ferrell, Exporters' Service Staff, Office of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: Vincent Greenwald, Exporters' Service Staff (Telephone: (202) 377-3856).

SUPPLEMENTARY INFORMATION: The United States controls exports for national security reasons under the authority of section 5 of the Export Administration Act of 1979, as amended. The Office of Export Administration maintains the Commodity Control List (CCL), which includes all commodities subject to Department of Commerce export controls.

National security concerns have necessitated changes to the CCL and other parts of the Export Administration Regulations, including expansion and clarification of export controls involving general industrial equipment; transportation equipment; electronics and precision instruments; metals, minerals, and their manufactures; chemicals, metalloids, and petroleum products; and rubber products. These changes result from the review of the system of strategic export controls maintained by the United States and certain allied countries through the Coordinating Committee (COCOM).

Changes to the Export Administration Regulations include the following:

1. Certain types of technical data are added to a list of data requiring a validated license for export to all destinations except Canada. These data include, among others, technology specific to the production of "superalloys," and inert gas and vacuum atomizing technology.

2. Certain types of commodities are added to the Commodity Control List (Supplement No. 1 to § 399.1). These commodities include, among others, equipment specially designed for the production of "superalloys"; equipment designed for the manufacture or testing of printed circuit boards; and various materials for the manufacture of high-temperature fine technical ceramic products.

3. An entry covering "rockets and missiles, guided or unguided" is removed from the Commodity Control List because such commodities are under the export licensing jurisdiction of the Office of Munitions Control, Department of State.

Saving Clause

Shipments of commodities or technical data that are removed from general license authorizations as a result of changes set forth in this rule, that were on dock for lading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export pursuant to actual orders for export prior to March 30, 1984, may be exported under the previous general license provision up to and including April 13, 1984. Any such commodity or technical data not actually exported before midnight April 13, 1984 require a validated export license.

Rulemaking Requirements and Invitation to Comment

In connection with various rulemaking requirements, the Office of Export Administration has determined that:

1. Under section 13(a) of the Export Administration Act of 1979 (Pub. L. 96-72, 50 U.S.C. app. 2401 *et seq.*) ("the Act"), this rule is exempt from the public participation in rulemaking procedures of the Administrative Procedure Act.

However, because of the importance of the issues raised by these regulations and the intent of Congress set forth in section 13(b) of the Act, these regulations are issued in interim form and comments will be considered in developing final regulations. These regulations may be revised before the end of the comment period. Accordingly, interested persons who desire to comment are encouraged to do so at the earliest possible time to permit the fullest consideration of their views.

2. This rule does not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

3. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

4. This rule is not a major rule within the meaning of section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981), "Federal Regulation."

The period for submission of comments will close May 29, 1984. All comments received before the close of the comment period will be considered by the Department in the development of final regulations. While comments received after the end of the comment period will be considered if possible, their consideration cannot be assured. Public comments that are accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason will not be accepted. Such comments and materials will be returned to the submitter and will not be considered in the development of final regulations.

All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, comments in written form are preferred. If oral comments are received, they must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 4001-B, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in

accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377-3031.

List of Subjects in 15 CFR Parts 370, 379 and 399

Administrative practice and procedure, Exports, Science and technology

PART 370—[AMENDED]

Accordingly, the Export Administration Regulations (15 CFR Parts 368-399) are amended as follows:

1. Supplement No. 2 to Part 370, "U.S. Munitions List," is amended by removing the phrase "(except meteorological sounding rockets)" from paragraph (a) of Category IV.

PART 379—[AMENDED]

2. Section 379.4 is amended by revising in the first sentence of paragraph (d) the phrase—"No technical data relating to the following commodities"—to read—"No technical data relating to the following commodities or processes"; and by removing the word "and" from paragraph (d)(9); by redesignating (d)(10) as (d)(13); and by adding a new (d) (10), (11) and (12), reading as follows:

§ 379.4 General License GTDR: Technical Data Under Restriction.

* * * * *

(d) *Restrictions applicable to all destinations except Canada.*

* * * * *

(10) Technical data specific to the production of "superalloys" (see ECCN 1301A of the Commodity Control List), regardless of the export controls on the equipment used with such technical data; melting, remelting and degassing techniques specific to the production of "superalloys"; and technical data specific to the production of "superalloys" in crude and semi-fabricated forms;

(11) Technical data (including processing conditions) and procedures for the regulation of temperature, pressure and/or atmosphere in autoclaves when used for the production of composites or partially processed composites using materials controlled by ECCN 1763A of the Commodity Control List:

(12) Inert gas and vacuum atomizing technology to achieve sphericity and uniform size of particles in metal powders, regardless of the type of metal and the export controls on the powder; and

* * * * *

3. Section 379.4 is amended by revising in paragraph (g) the sentence—"See ECCNs 1091A, 1355A and 1527A."—to read "See ECCNs 1091A, 1354A, 1355A, 1527A, and 1532A."

PART 399—[AMENDED]

4. In the Commodity Control List (Supplement No. 1 to § 399.1), Commodity Group 3, General Industrial Equipment, is amended by adding a new entry 1301A (in numerical order, disregarding the first digit) reading as follows:

1301A Equipment specially designed for the production of "superalloys."

Controls for ECCN 1301A

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $0 for all destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: None.

Notes.—1. Equipment controlled by this ECCN 1301A does *not* include:

(i) Electric arc and induction furnaces, basic oxygen furnaces, and remelting equipment using other techniques for the production of carbon steels, low-alloy steels and stainless steels;

(ii) Degassing equipment used for the production of carbon steels, low-alloy steels and stainless steels;

(iii) Hot and cold rolling mills, extrusion presses, and swaging and forging machines;

(iv) Decarburizing and annealing and pickling equipment;

(v) Surface finishing equipment; and

(vi) Slitting and cutting equipment.

2. Vacuum induction furnaces used in the production of superalloy powders *are* covered by this ECCN 1301A.

3. See ECCN 1203A for export controls on other electric vacuum furnaces.

4. Equipment specially designed for the production of "superalloys" in crude and semi-fabricated forms *is* controlled by this ECCN 1301A.

5. See other CCL entries for materials and manufacturing processes at later stages in the production process; for example, ECCNs 1431A and 1460A for gas turbine engines.

6. See § 379.4(d) for technical data requiring a validated license for export to all destinations except Canada.

Technical Note.—"Superalloys" are nickel-, cobalt-, and/or iron-base alloys having strengths superior to the AISI 300 series, (as of May 1, 1982) at temperatures over 922K (649°C) under severe environmental and operating conditions. *Excluded* are carbon steels, low-alloy steels and stainless steels having strengths inferior to the AISI 300 series (as of May 1, 1982). (The strengths of "superalloys" covered by this Technical Note are interpreted to mean 90,000 psi tensile strength or 70,000 psi 2% yield tensile strength at 1200°F, per ASTM Special Technical Publication 124.)

5. In the Commodity Control List (Supplement No. 1 to § 399.1), ECCN 2319A of Commodity Group 3, General Industrial Equipment, is amended by revising the heading to read as follows:

2319A Environmental chambers capable of pressures below 10^{-4} Torr, and specially designed components therefor.

* * * * *

6. In the Commodity Control List (Supplement No. 1 to § 399.1), Commodity Group 3, General Industrial Equipment, is amended by adding a new entry 1354A (in numerical order, disregarding the first digit) reading as follows:

1354A Equipment designed for the manufacture or testing of printed circuit boards, and specially designed components and accessories, and specially designed software for such equipment.

Controls for ECCN 1354A

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1000 for Country Groups T and V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE for paragraphs (c), (f) and (g); EE for all other paragraphs.

Reason for Control: National security.

Special Licenses Available: None.

List of Equipment Controlled by ECCN 1354A

(a) Equipment specially designed for removal of resists or printed circuit board materials by dry (*e.g.* plasma) methods;

(b) Computer-aided design (CAD) equipment for printed circuit boards, having any of the following functions:

(1) Generation of artwork design with an interactive capability;

(2) Generation of test string lists for multilayer boards;

(3) Generation of data or programs for "digitally controlled" printed circuit board drilling equipment;

(4) Generation of data or programs for "digitally controlled" printed circuit board shaping and profiling equipment;

(5) Generation of data for control of the sequencing of processes of the equipment for printed circuit board manufacture covered by paragraph (c);

(c) High-speed automated continuous panel processors for plating capable of delivering 860 A/m^2 (80 A/ft^2) or more plate current;

(d) "Digitally controlled" inspection equipment for the detection of defects in printed circuit boards using optical pattern comparison or other machine scanning techniques;

(e) "Digitally controlled" electrical test equipment for the identification of open and short circuits on bare printed circuit boards, capable of:

(1) Continuity testing (less than or equal to 4 ohm) at a rate of 2,500 or more measurements per second; or

(2) High voltage testing (greater than or equal to 50 volts) at a rate of 10,000 or more measurements per minute;

(f) "Digitally controlled" multispindle drills and routers which have any of the following characteristics:

(1) Absolute positioning accuracy of #10 micrometers (0.0004 inch) or better;

(2) Minimum time needed for drill bit changes less than or equal to 5 seconds;

(3) X and Y positioning speeds higher than or equal to 0.125 m/sec. (300 inch/min.) for drilling or for routing;

(g) "Digitally controlled" cyclic voltametric stripping equipment specially designed for printed circuit board plating bath monitoring and analysis.

Notes.—1. See ECCN 1522A(b) for the control of printed circuit board manufacturing equipment incorporating a laser.

2. This ECCN 1354A does *not* cover equipment with controls using the following:

(a) Cams and other purely mechanical means;

(b) Switches including thumbwheel switches;

(c) Plugboards;

(d) On-off and analog controllers;

(e) Diode matrices;

(f) Punched paper tape controllers without a capability to compute, manipulate, or store and rerun program data.

Technical Note.—The term "digitally controlled" refers to equipment, the functions of which are, partly or entirely, automatically controlled by stored and digitally coded electrical signals.

7. In the Commodity Control List (Supplement No. 1 to section 399.1), Commodity Group 3, General Industrial Equipment, ECCN 1357A is revised to read as follows:

1357A Equipment for the production of fibers covered by ECCN 1763A, or their composites, and specially designed components and accessories therefor.

Controls for ECCN 1357A.

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1000 for Country Groups T and V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE

Reason for Control: National security.

Special Licenses Available: None.

List of Equipment Controlled by ECCN 1357A:

(a) Filament winding machines of which the motions for positioning, wrapping and winding fibers are coordinated and programmed in three or more axes, specially designed to fabricate composite structures or laminates from fibrous and filamentary materials; coordinating and programming controls therefor;

(b) Tape-laying machines of which the motions for positioning and laying tape and sheets are coordinated and programmed in two or more axes, specially designed for the manufacture of composite airframes and missile structures;

(c) Interlacing machines, including adapters and modification kits, for weaving, interlacing or braiding fibers to fabricate composite structures, *except* textile machinery which has not been modified for the above end-uses;

(d) Specially designed or adapted equipment for the production of fibrous and filamentary materials covered by paragraphs (a) and (b) above, as follows:

(1) Equipment for converting polymeric fibers (such as polyacrylonitrile, rayon, or polycarbosilane) including special provision to strain the fiber during heating;

(2) Equipment for the vapor deposition of elements or compounds on heated filamentary substrates; and

(3) Equipment for the wet-spinning of refractory ceramics (such as aluminum oxide);

(e) Specially designed or adapted equipment for special fiber surface treatment or for producing prepregs and preforms covered by ECCN 1763A(c);

Notes.—1. Equipment covered by paragraph (e) above includes, but is not limited to, rollers, tension stretchers, coating equipment, cutting equipment and clicker dies.

2. Specially designed or adapted components and accessories for the machines covered by this ECCN 1357A include, but are not limited to, moulds, mandrels, dies, fixtures and tooling for the preform pressing, curing, casting, sintering or bonding of composite structures or laminates covered by paragraph (d) of the "LIST" in ECCN 1763A.

3. See section 379.4(d) for technical data requiring a validated license for export to all destinations except Canada.

8. In the Commodity Control List (Supplement No. 1 to § 399.1), Commodity Group 3, General Industrial Equipment, ECCN 1370A is amended by revising the heading, the introductory text of paragraph (a) and paragraph (a)(5), and paragraphs (b), (c) and (d) to read as follows:

§ 1370A Machine-tools for generating optical quality surfaces, specially designed components and accessories therefor, and specially designed software.

Controls for ECCN 1370A

* * * * *

List of Commodities Controlled by ECCN 1370A

(a) Turning machines using a single point cutting tool and having all of the following characteristics:

(1) ***

(2) ***

(3) ***

(4) ***

(5) Slide perpendicularity less than 0.001 mm per 300 mm of travel, TIR (peak-to-peak);

(b) Fly cutting machines having both of the following characteristics:

(1) Spindle run-out (radial and axial) less than 0.0004 mm TIR (peak-to-peak);

(2) Angular deviation of slide movement (yaw, pitch and roll) less (finer) than 2 seconds of arc (peak-to-peak) over full travel;

(c) Specially designed components, as follows:

(1) Spindle assemblies consisting of spindles and bearings as a minimal assembly, except those assemblies with axial and radial axis motion measured along the spindle axis in one revolution of the spindle equal to or greater (coarser) than 0.0008 mm TIR (peak-to-peak);

(2) Linear induction motors used as drives for slides, having all of the following characteristics:

(i) Stroke greater than 200 mm;

(ii) Nominal force rating greater than 45 N; and

(iii) Minimum controlled incremental movement less than 0.001 mm; or

(d) Specially designed accessories, *i.e.*, single point diamond cutting tool inserts having all of the following characteristics:

(1) Flawless and chipfree cutting edge when magnified 400 times in any direction;

(2) Cutting radius between 0.1 and 5 mm; and

(3) Cutting radius out-of-roundness less than 0.002 mm TIR (peak-to-peak).

Technical Note.—Machines will be evaluated under the conditions yielding the most accurate values, including but not limited to, the incorporation of control systems that permit mechanical, electronic and software compensation.

9. In the Commodity Control List (Supplement No. 1 to section 399.1), Commodity Group 3, General Industrial

Equipment, ECCN 1371A is amended by removing the phrase "(ABEC 5 in the case of hollow bearings)" from paragraph (b) of the "Definitive List of Commodities"; by redesignating paragraph (d) of the "Definitive List" as (e), and adding a new (d); and adding a paragraph (d) to the *Commodity Interpretation*, reading as follows:

1371A Anti-friction bearings.

Controls for ECCN 1371A

* * * * *

Definitive List of Commodities Controlled by ECCN 1371A

* * * * *

(d) Gas-lubricated foil bearings;

(e) Bearing parts usable only for bearings controlled by this ECCN 1371A, as follows: Outer rings, inner rings, retainers, balls, rollers, and subassemblies.

* * * * *

Commodity Interpretation

* * * * *

(d) Ceramic bearings controlled by ECCN 1371A consist of bearing elements (*e.g.*, balls, rollers and/or races) made from ceramic or hybrid (ceramic plus metal) materials and designed to operate at temperatures over 150°C and at DN values equal to or greater than 1.5×10^6.

Note.—DN is defined as the product of the bearing bore diameter in millimeters (mm) and the bearing rotational velocity in revolutions per minute (r.p.m.)

Note.—Hollow bearings are *not* controlled by this ECCN 1371A.

* * * * *

10. In the Commodity Control List (Supplement No. 1 to section 399.1), Commodity Group 4, Transportation Equipment, ECCN 2404A, "Rockets and missiles, guided or unguided," is removed.

11. In the Commodity Control List (Supplement No. 1 to section 399.1), Commodity Group 4, Transportation Equipment, ECCN 2406A is amended by revising the heading; by removing the "List of Vehicles Controlled by ECCN 2406A" with sub-paragraphs (a) through (d); by revising the word "parts" to read "components" wherever it appears in paragraph (b) and its title of the *Commodity Interpretation;* by designating the sub-paragraph under (b) as (1), and by adding a paragraph (b)(2). As amended, paragraph (b) under *Commodity Interpretation* reads as follows:

2406A Vehicles specially designed for military purposes and specially designed components therefor, excluding vehicles listed in Supp. No. 2 to Part 370.

* * * * *

Commodity Interpretation:

* * * * *

(b) Components for military automotive vehicles.

(1) Functional components are defined as those components making up the power train of the vehicles, the electrical system, the cooling system, the fuel system, and the control system (brake and steering mechanism), the front and rear axle assemblies including the wheels, the chassis frame, springs and shock absorbers. (Components specifically designed for military automotive vehicles on the Munitions List are licensed for export by the U.S. Department of State.)

(2) The following are examples of specially designed components for specially designed military vehicles:

(i) Pneumatic tire casings of a kind specially constructed to be bullet-proof or to run when deflated (excluding types for agricultural and garden tractors and farm implements); and

(ii) Engines for the propulsion of the vehicles described in this ECCN 2406A specially designed or essentially modified for military use, including specially designed components therefor.

12. In the Commodity Control List (Supplement No. 1 to section 399.1), Commmodity Group 5, Electronics and Precision Instruments, ECCN 1532A is amended by revising the heading, the title of the "List", and the Advisory Note to read as follows:

1532A Precision linear and angular measuring systems, and specially designed components and software therefor.

Controls for ECCN 1532A

* * * * *

List of Precision Linear and Angular Measuring Systems, and Specially Designed Components and Software therefor Controlled by ECCN 1532A

* * * * *

Advisory Note.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QSWY of equipment defined in paragraph (a) and (d) of the "List" in this ECCN 1532A to civil end-users not engaged in aerospace activities.

13. In the Commodity Control List (Supplement No. 1 to section 399.1), Commodity Group 5, Electronics and Precision Instruments, ECCN 1564A is amended by revising paragraph (a) of the "List of Electronic Component Assemblies, Subassemblies, Printed Circuit Boards, and Microcircuits Controlled by ECCN 1564A" to read as follows:

1564A Economic component assemblies, sub-assemblies, printed circuit boards, and microcircuits.

* * * * *

List of Electronic Component Assemblies, sub-assemblies, printed circuit boards, and microcircuits controlled by ECCN 1564A

(a) Substrates for printed circuits including ceramic substrates and coated metal substrates (single-sided, double-sided or multilayer), and thin copper foils therefor, *except:*

(1) Printed circuit boards manufactured from any of the following materials:

(i) Paper base phenolics;

(ii) Glass cloth melamine;

(iii) Glass epoxy resin uncoated or coated with copper foil of a thickness of 18 micrometers (0.00071 inch) or greater;

(iv) Polyethylene terephthalate; or

(v) Any other insulating material having all of the following characteristics;

(A) A maximum continuous rated operating temperature not exceeding 150°C;

(B) A dissipation factor equal to or greater than 0.009 at 1 MHz;

(C) A relative dielectric constant equal to or less than 8 at 1 MHz; and

(D) A coefficient of expansion equal to or greater than 10^{-5} per 0°C over a temperature range of 0 to 120°C;

(2) Ceramic substrates having not more than two layers of interconnection, including the ground plane; and

(3) Copper foil having a thickness of 18 micrometers (0.00071 inch) or greater.

14. In the Commodity Control List (Supplement No. 1 to section 399.1), Commodity Group 7, Chemicals, Metalloids, Petroleum Products and Related Materials, ECCN 1715A is amended by removing paragraphs (c)(4) and (5) from the "List of Boron Controlled by ECCN 1715A," and revising (c)(1), (2), and (3) to read as follows:

1715A Boron, as described in this entry.

* * * * *

List of Boron Controlled by ECCN 1715A

* * * * *

(c) * * *

(1) Non-ceramic boron-mitrogen compounds (*e.g.*, borozanes, borozines and boropyrazoyls);

(2) Boron hydrides (*e.g.*, boranes), *except* sodium boron hydride, potassium boron hydride, monoborane, diborane and triborane;

(3) Organoboron compounds, including metalloorganoboron compounds.

15. In the Commodity Control List (Supplement No. 1 to section 399.1),

Commodity Group 7, Chemicals, Metalloids, Petroleum Products and Related Materials, a new entry 1733A is added (in numerical order, disregarding the first digit) reading as follows:

1733A Base materials, non-composite ceramic materials, ceramic-ceramic composite materials and precursor materials for the manufacture of high-temperature fine technical ceramic products.

Controls for ECCN 1733A

Unit: Report in "lbs."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: CM.

Reason for Control: National security.

Special Licenses Available: See Part 373.

List of base materials, non-composite ceramic materials, ceramic-ceramic composite materials, and precursor materials for the manufacture of high temperature fine technical ceramic products controlled by ECCN 1733A:

(a) Base materials, *i.e.*, "high purity" "fine powders with uniform particle-size distribution," of the following description:

(1) Single or complex non-composite oxides, borides, carbides or nitrides of silicon, aluminium, boron, zirconium or tantalum, *except:*

(i) Single oxides of silicon, boron, aluminum or tantalum;

(ii) Single or complex borides of silicon; and

(iii) Single or complex borides or carbides of aluminium;

(b) Non-composite ceramic materials, in crude or semi-fabricated form, having compositions of the base materials covered by paragraph (a) above;

(c) Granular or fibrous ceramic-ceramic composite materials, containing finely dispersed particles or phases or any non-metallic fibrous or whiskerlike materials, whether externally introduced or grown in situ during processing, where the following materials form the host matrix:

(1) All oxides, including glasses;

(2) Carbides or nitrides of silicon or boron;

(3) Borides, carbides or nitrides of zirconium, hafnium tantalum;

(4) Carbon; or

(5) Any combination of the materials enumerated in (1) to

(4) above;

(d) Precursor materials, *i.e.* special-purpose polymeric or metallo-organic materials for producing any phase or phases of the materials covered by paragraphs (b) or (c) above, as follows:

(1) Polycarbosilanes and polydiorganosilanes (for producing silicon carbide);

(2) Polysilazanes (for producing silicon nitride); or

(3) Polycarbosilazanes (for producing ceramics with silicon, carbon and nitrogen components).

Notes.—1. For compounds of thorium or hafnium, see section 370.10(e) and ECCN 3608A, respectively.

2. For compounds of zirconium, see ECCN 3604A.

3. For compounds of tantalum, see ECCN 1760A.

Technical Notes.—1. For the purpose of this ECCN 1733A, "high purity" is defined as a total metallic impurity, excluding intentional or desired additions, of less than:

(a) 1,000 ppm for single oxides or single carbides;

(b) 5,000 ppm for complex compounds, single borides or single nitrides.

2. "Fine powders with uniform particle size distribution" are defined as powders with at least 90% of the particles being less than or equal to 10 micrometers, and the average particle size being less than or equal to 5 micrometers. (For zirconia, these limits are 5 micrometers and 1 micrometer, respectively.)

16. In the Commodity Control List (Supplement No. 1 to § 399.1), Commodity Group 7, Chemicals, Metalloids, Petroleum Products and Related Materials, ECCN 1746A is amended by removing paragraph (p) "polysilazanes"; and redesignating paragraphs (q), (r), (s) and (t) as (p), (q), (r) and (s) in the "List of Polymeric Substances and Manufactures Thereof Controlled by ECCN 1746A."

17. In the Commodity Control List (Supplement No. 1 to section 399.1), Commodity Group 7, Chemicals Metalloids, Petroleum Products and Related Materials, ECCN 1757A is amended by revising the "List of Compounds and Materials Controlled by ECCN 1757A" and the Advisory Notes to read as follows:

1757A Compounds and materials, as described in this entry.

* * * * *

List of Compounds and Materials Controlled by ECCN 1757A

Compounds and materials, as follows:

(a) Monocrystalline silicon, except metallurgical-grade monocrystalline silicon having a purity not better than 99.97%;

(b) Gallium of a purity equal to or greater than 99.9999% and gallium III/V compounds of any purity level, *except:*

(1) Gallium phosphide; or

(2) Other gallium III/V compounds having a dislocation density (etch pit density-EPD) greater than 500,000 per cm^2;

(c) Indium and indium compounds containing more than 1% indium;

(d) Hetero-epitaxial materials consisting of a monocrystalline insulating substrate epitaxially layered with silicon, compounds of gallium or compounds of indium;

(e) Elemental Cd and Te of purity levels equal to or greater than 99.999%, and CdTe compounds of a purity level equal to or greater than 99.99% or single crystals of CdTe of any purity level;

(f) Polycrystalline silicon, *except* polycrystalline silicon having a purity not better than 99.99% and containing at least 0.5 part in 10^6 each of iron, carbon, boron and phosphorus, plus other impurities;

(g) Compounds used in the synthesis of the materials covered by paragraph (f) above, having a purity level of 99.5% or better, including but not limited to SiH_4, $SiClH_3$, $SiCl_4$, $SiCl_3$, and $SiCl_2H_2$;

(h) Single crystal sapphire substrates;

(i) B_2O_3 with a purity of 99.9% or greater, containing 1,000 parts per million of H_2O) or less, in powder or cast form;

(j) Monocrystalline germanium with a resistivity greater than 100 ohm cm.;

(k) Resist materials with any of the following characteristics:

(1) Sensitive to X-rays or deep ultraviolet light (wavelength less than 436 nanometers) with a sensitivity of 500 millijoules/cm^2 or better;

(2) Sensitive to electrons or ion beams with a sensitivity of 100 microcoulombs/cm^2 or better;

(3) Specified or optimized for dry development; and

(l) Single-crystal forms of bismuth germanium oxide having piezoelectric properties and single-crystal forms of lithium niobate, of lithium tantalate and or aluminium phosphate.

Note.—The purity level of a mixture containing a silicon-bearing compound shall be taken to be the same as that of the silicon bearing compound.

Advisory Notes.—1. Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY and the People's Republic of China of monocrystalline silicon having a purity not better than 99.999% and containing at least 0.5 part in 10^6 each of iron, carbon, boron and phosphorus, plus other impurities.

2. Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY and the People's Republic of China of N type 1–1–1 silicon wafers or slices with a resistivity of 50 ohm cm. or less, based on volume of frequency of shipments.

3. Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY and the People's Republic of

China of gallium III/V compounds intended for light-emitting diodes and having all of the following characteristics:

(a) Dislocation density (etch pit density-EPD) greater than 10,000 per cm^2;

(b) Carrier concentration greater than 1×10^{17} per cm^3; and

(c) Carrier mobility less than 3,000 $cm^2/V.sec$.

18. In the Commodity Control List (Supplement No. 1 to section 399.1), Commodity Group 7, Chemicals, Metalloids, Petroleum Products and Related Materials, ECCN 4757B, "Single crystal sapphire substrates," is removed.

19. In the Commodity Control List (Supplement No. 1 to section 399.1), Commodity Group 7, Chemicals, Metalloids, Petroleum Products and Related Materials, ECCN 1760A is amended by adding a NOTE after the "List of Forms of Compounds of Tantalum and Niobium (Columbium) Controlled by ECCN 1760A" reading as follows:

1760A Compounds of tantalum and niobium (columbium).

* * * * *

List of Forms of Compounds of Tantalum and Niobium (Columbium) Controlled by ECCN 1760A

* * * * *

Note.—This ECCN 1760A does *not* cover single-crystal lithium niobate and single-crystal lithium tantalate. See paragraph (1) of the List of Compounds and Materials in ECCN 1757A.

20. In the Commodity Control List (Supplement No. 1 to section 399.1), Commodity Group 7, Chemicals, Metalloids, Petroleum Products and Related Materials, ECCN 1763A is amended by revising the heading, the "List of Fibrous and Filamentary Materials," the Technical Notes and Advisory Notes to read as follows:

1763A "Fibrous and filamentary materials" that may be used in composite structures or laminates, and such composite structures and laminates.

* * * * *

List of Materials Controlled by ECCN 1763A

(a) "Fibrous and filamentary materials" having both of the following characteristics:

(1) "Specific modulus" greater than 3.18×10^6 m (1.25×10^8 in.);

(2) "Specific tensile strength" greater than 7.62×10^4 m (3×10^6 in.);

(b) "Fibrous and filamentary materials" having both of the following characteristics:

(1) "Specific modulus" greater than 2.54×10^6m (1×10^8 in.);

(2) Melting or sublimation point higher than 1,922 K (1,649°C) (3,000°F) in an inert environment, *except*:

(i) Carbon fibers having a "specific modulus" less than 5.08×10^6 m (2×10^8 in.) and a "specific tensile strength" less than 2.54×10^4 m (1×10^6 in.);

(ii) Multi-phase polycrystalline alumina fibers having a "specific modulus" less than 3.56×10^6 m (1.4×10^8 in.);

(c) Resin-impregnated fibers (prepregs) and metal-coated fibers (preforms) made with materials covered by paragraphs (a) or (b) above;

(d) Composite structures, laminates and manufactures thereof made either with an organic matrix or a metal matrix utilizing materials covered by paragraphs (a) or (b) above.

Technical Notes.—1. "Fibrous and filamentary materials" includes:

(a) Continuous monofilaments,

(b) Continuous yarns and rovings,

(c) Tapes, woven fabrics and random mats,

(d) Chopper fibers, staple fibers and coherent fiber blanket, and

(e) Whiskers, either monocrystalline or polycrystalline, of any length.

2. "Specific modulus" is defined as Young's modulus in N/m^2 (lbs force/sq. in.) divided by specific weight in N/m^3 (lbs force/cu. in.), measured at a temperature of (296±2) K ((23±2)°C) ((73.4±3.6)°F) and a relative humidity of (50±5)%.

3. "Specific tensile strength" is defined as ultimate tensile strength in N/m^2 (lbs force/sq. in.) divided by specific weight in N/m^3 (lbs force/cu. in.) measured at a temperature of (296±2) K ((23±2)°C) ((73.4±3.6)°F) and a relative humidity of (50±5)%.

Advisory Note.—Licenses are likely to be approved for export to Country Groups QWY and the People's Republic of China for bona fide civil end-uses of carbon fibers covered by paragraphs (a) and (b) above and having both of the following characteristics:

(a) "Specific modulus" less than 11.43×10^6m (4.5×10^8 in.); and

(b) "Specific tensile strength" less than 10.16×10^4m (4×10^6 in.).

21. In the Commodity Control List (Supplement No. 1 to section 399.1), Commodity Group 7, Chemicals, Metalloids, Petroleum Products and Related Materials, ECCN 4799B is amended by revising the heading to read as follows:

4799B Chemical agents, including tear gas formulation containing 1 percent or less of orthochlorobenzalmalononitrile (CS), or 1 percent or less of chloroacetophenone (CN), except in individual containers with a net weight of 20 grams or less; smoke bombs; non-irritant smoke flares, cannisters, grenades and charges; other pyrotechnic articles having dual military and commercial use; and fingerprinting powders, dyes and inks.

* * * * *

22. In the Commodity Control List (Supplement No. 1 to section 399.1), Commodity Group 8, Rubber and Rubber Products, ECCN 1801A is amended by removing paragraph (a) from the "List of Types of Synthetic Rubber Controlled by ECCN 1801A," by redesignating paragraphs (b) and (c) as (a) and (b), and by removing the phrase "and polyisobutylene" from paragraph (d) and redesignating (d) as (c).

Authority: Secs. 5, 13 and 15, Pub. L. 96-72, 93 Stat. 503, as amended 50 U.S.C. app. 2401 *et seq.*, Executive Order No. 12214 (45 FR 29783, May 6, 1980); Executive Order No. 12451 of December 20, 1983 (48 FR 56563, December 22, 1983).

Dated: March 26, 1984.

John K. Boidock,

Director, Office of Export Administration, International Trade Administration.

[FR Doc. 84-8438 Filed 3-29-84; 8:45 am]

BILLING CODE 3510-DT-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 145, 146 and 147

Schedules of Fees for Requests for Commisson Records, Reports of the Commission, and Transcripts of Commission Meetings; Correction

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules; corrections.

SUMMARY: This document corrects certain authority citations and errors contained in final regulations implementing schedules of fees for requests for Commission records, reports, and transcripts which were published October 11, 1983 (48 FR 46010). In addition, this document redesignates certain sections of Part 145. The purpose of the redesignations is to make citations to appendices more consistent throughout the Commission's regulations.

EFFECTIVE DATE: March 30, 1984.

FOR FURTHER INFORMATION CONTACT: Stacy Dean, Counsel to the Executive Director, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, 202-254-7360.

List of Subjects

17 CFR Part 145

Freedom of Information, Commission records and information, Fees.

17 CFR Part 146

Privacy records maintained on individuals, Fees.

17 CFR Part 147

Sunshine Act, Open Commission meetings, Fees for transcripts and tapes.

1. Accordingly, the Commission makes the following correction: In FR Doc. 83-27403 appearing on page 46010 in the **Federal Register** issue of October 11, 1983, the first full paragraph in the middle column on page 46011 is revised to read as follows: "In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, 7 U.S.C. 4a(j) and in 7 U.S.C. 16a as amended by Pub. L. 97-444, 96 Stat. 2294 (1983), and in 5 U.S.C. 552, 5 U.S.C. 552a and 5 U.S.C. 552b, the Commission hereby amends Parts 145, 146 and 147 of Chapter 1 of Title 17 of the Code of Federal Regulations as follows:".

PART 145—COMMISSION RECORDS AND INFORMATION

2. Sections 145.9a 145.9b and 145.9c are redesignated as Appendix A, Appendix B and Appendix C to Part 145.

3. Headings of Appendix A, Appendix B and Appendix C to Part 145 are revised as follows:

Appendix A—Compilation of Commission Records Available to the Public

Appendix B—Schedule of Fees

Appendix C—Schedule of Fees for Reports

4. Section 145.3 is amended by removing the reference to "(17 CFR Part 145a)."

5. In § 145.7, paragraph (e) is amended by removing the reference to "(§ 145b)."

6. Section 145.8 is amended by removing the reference to "(17 CFR Part 145b)."

PART 146—RECORDS MAINTAINED ON INDIVIDUALS

7. In FR Doc. 83-27403 appearing on page 46010 in the **Federal Register** issue of October 11, 1983, item 4. under Part 146—RECORDS MAINTAINED ON INDIVIDUALS is corrected by changing "4. In Part 146, Appendix A is revised to read as follows:" to "4. In Part 146, subsections a. and b. of Appendix A are revised to read as follows:"

PART 147—OPEN COMMISSION MEETINGS

8. In § 147.9, paragraph (a) is amended by removing the reference to "17 CFR 145.9b" and inserting in lieu thereof "17 CFR Part 145, Appendix B."

* * * * *

Parts 145, 146 and 147 of Chapter 1 of Title 17 of the Code of Federal Regulations are amended pursuant to the authority contained in the Commodity Exchange Act and, in particular, 7 U.S.C. 4a(j) and in 7 U.S.C. 16a as amended by Pub. L. 97-444, 96 Stat. 2294 (1983), and in 5 U.S.C. 552, 5 U.S.C. 552a and 5 U.S.C. 552b.

Issued on March 23, 1984 in Washington, D.C.

Jane K. Stuckey,

Secretary to the Commission.

[FR Doc. 84-8391 Filed 3-29-84; 8:45 am]

BILLING CODE 6351-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 202

[Release Nos. 33-6521, 34-20788, 35-23260, 39-896, IC-13841, IA-904]

Organization and Address Changes

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules relating to organization and address changes. These changes are being made to reflect current functions and names of Commission offices and to update Commission addresses and telephone numbers.

EFFECTIVE DATE: March 30, 1984.

FOR FURTHER INFORMATION CONTACT: George G. Kundahl, Executive Director, SEC, 450 Fifth Street, NW., Washington, D.C. 20549-6004 (202) 272-2700.

SUPPLEMENTARY INFORMATION: The Commission finds, in accordance with the Administrative Procedure Act ("APA") (15 U.S.C. 533(b)(3)(B)) that this amendment relates solely to agency organization, procedures, or practices and that notice and procedures pursuant to the APA are therefore not necessary and that such amendment shall be adopted, effective immediately.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of Information, Privacy, Securities.

Text of Amendments

Part 200 of 17 CFR Chapter II is amended as follows:

PART 200—ORGANIZATION: CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

1. By revising the fourth sentence of the introductory text of § 200.1 and by revising paragraph (i) to read as follows:

§ 200.1 General statement and statutory authority.

* * * In addition, under the Bankruptcy Code, the Commission is a statutory party in cases arising under Chapters 9 and 11. * * *

* * * * *

(i) Protection of the interests of public investors involved in bankruptcy reorganization cases and in bankruptcy cases involving the adjustment of debts of a municipality.

* * * * *

2. By revising paragraph (g) under § 200.2, as follows:

§ 200.2 Statutory functions.

* * * * *

(g) *Chapters 9 and 11 of the Bankruptcy Code.* Chapters 9 and 11 of the Bankruptcy Code provides for Commission participation as a statutory party in reorganization cases in cases involving a judgment of debts of a municipality administered in the federal courts. Under 1109(a) of the Bankruptcy Code, the Commission "may raise and may appear and be heard on any issue in the case . . .".

3. By revising the addresses for Regions 5, 6, and 7 in paragraph (b) of § 200.11, as follows:

§ 200.11 Headquarters Office—Regional Office relationship.

* * * * *

(b) * * *

Region 5. Oklahoma, Arkansas, Texas, that part of Louisiana lying west of the Atchafalaya River, and Kansas—Regional Administrator, 8th Floor, 411 West 7th Street, Fort Worth, Texas 76102.

Region 6. Wyoming, Colorado, New Mexico, Nebraska, North Dakota, South Dakota, Utah—Regional Administrator, Two Park Central, Suite 700, 410 Seventeenth Street, Denver, Colorado 80202.

Region 7. California, Nevada, Arizona, Hawaii, Guam—Regional Administrator, 5757 Wilshire Boulevard, Suite 500 East, Los Angeles, California 90036-3648.

* * * * *

4. By revising the last sentence of the existing text to read as follows, by redesignating the existing text as introductory text, by adding paragraphs (a) through (d), and by adding a flush paragraph at the end of the section to read as follows:

§ 200.13 Executive Director.

* * * He or she also provides executive direction to and exercise administrative control over the Office of Consumer Affairs and Information Services, Office of Information Systems Management, Office of Personnel, Office of Public Affairs, and the Office of Applications and Reports Services. In addition, the Executive Director is responsible for the full range of program administration functions for the

purposes of implementing the following statutes, regulations, and Executive Orders, as well as others designated by the Chairman.

(a) Pub. L. 96–511—The Paperwork Reduction Program.

(b) 16 U.S.C. 644—The Small and Disadvantaged Business Utilization Program.

(c) Government Printing and Binding Regulations, U.S. Congress Joint Committee on Printing (1977).

(d) Executive Order 11807 and 29 CFR 1960—The Occupational Safety and Health Program.

These functions include, but are not limited to, the appointment of program officials; the review and approval of program policies, procedures and regulations; the authorization and transmittal of required reports; and the assurance of appropriate resource requirements to implement the programs.

(15 U.S.C. 78d–1, 78d–2)

5. By revising the section heading of § 200.20a to read as follows, by amending the introductory paragraph by changing "The Director of the Division of Corporate Regulation" to read "The Director of the Office of Public Utility Regulation", by removing paragraph (a) and the introductory text of paragraph (b), and by redesignating paragraphs (b)(1) through (b)(3) as paragraphs (a) through (c).

§ 200.20a Director of the Office of Public Utility Regulation.

* * * * *

6. By revising the section heading of § 200.20c to read as follows, by amending the first sentence by changing "The Office of Reports and Information Services" to read "The Office of Applications and Reports Services" and by removing the last sentence.

§ 200.20c Office of Applications and Reports Services.

* * * * *

7. By revising the second sentence of § 200.21 to read as follows:

§ 200.21 General Counsel.

* * * He or she is responsible for the representation of the Commission in judicial proceedings in which it is involved as a party or as amicus curiae, for directing and supervising all civil litigation involving the Commission in the United States District Courts, for directing and supervising the Commission's responsibilities under the Bankruptcy Code and all related litigation, and for representing the Commission in all cases in appellate courts.

8. By revising the section heading § 200.21a to read as follows and by amending paragraph (a) by changing "The Counsel for Professional Responsibility" to read "The Ethics Counsel".

§ 200.21a Ethics Counsel.

* * * * *

9. By adding a new § 200.23a, as follows:

§ 200.23a Office of the Chief Economist.

The Office of the Chief Economist is responsible to the Commission for providing an objective economic perspective to understand and evaluate the economic dimension of the agency's regulatory oversight. The Chief Economist provides the Commission with economic analyses of proposed rule changes, current or proposed policies, and capital market topics. Advice is designed to address such questions as whether proposed rules or policies accomplish their objectives, what benefits are produced by proposed rules or policies, and what costs accompany those benefits. Upon request, the Chief Economist provides professional advice and technical support to operating divisions.

10. By redesignating § 200.23 as § 200.23b and revising it to read as follows:

§ 200.23b Directorate of Economic and Policy Analysis.

The Directorate of Economic and Policy Analysis is responsible to the Commission, in coordination with its other divisions and offices, for the continuing analysis of the economic effects of existing and proposed Commission regulations and developments in the securities industry and markets. Based on its analysis, the Directorate is responsible for recommending to the Commission the adoption or modification or programs, policies and regulations under the statutes administered by the Commission. The Directorate also has the responsibility for coordinating and, together with the Office of the General Counsel, ensuring compliance with the requirements of the Regulatory Flexibility Act.

(15 U.S.C. 78d–1, 8d–2)

11. By revising § 200.24, as follows:

§ 200.24 Office of the Comptroller.

This Office, under the direction of the Comptroller, is responsible to the Executive Director, Chairman and Commission for the internal financial management and programming functions of the Securities and Exchange Commission. These functions include: budgeting, accounting, payroll and adminstrative audit. The Comptroller, and his designees, serves as liaison to the Commission before the Office of Management and Budget and Congressional Appropriations Committees on appropriation matters, and the Treasury Department and the General Accounting Office on financial and progamming matters.

12. By revising the section heading of § 200.24a to read as follows, by amending the first sentence by changing "The Office of Consumer Affairs" to read "The Office of Consumer Affairs and Information Services", and by adding a new sentence to read as follows:

§ 200.24a Office of Consumer Affairs and Information Services.

* * * This Office is also charged with managing the Commission's public reference facilities and with processing general inquiries under the Freedom of Information Act (Pub. L. 90–23, 81 Stat. 54) and the Privacy Act (Pub. L. 93–579, 88 Stat. 1896).

(15 U.S.C. 78d–1, 78d–2)

13. By revising the section heading of § 200.26a to read as follows, by amending the first phrase by changing "The Office of Data Processing" to read "The Office of Information Systems Management", by removing the word "and" before the last phrase, and by adding a new last phrase to read as follows:

§ 200.26a Office of Information Systems Management.

* * * and, development of microcomputer and office automation capabilities and support within the Commission.

14. By amending § 200.27 by removing the parenthetical phrase in the first sentence and by revising the last sentence to read as follows:

§ 200.27 The Regional Administrators.

* * * In addition, the New York Regional Administrator is responsible for the participation in cases under chapters 9 and 11 of the Bankruptcy Code in the New York and Boston Regions, and in the State of Pennsylvania; the Atlanta Regional Administrator in the Atlanta and Washington Regions, except the State of Pennsylvania; the Chicago Regional Administrator in Chicago, Fort Worth and Denver regions, except for the State of Utah; and the Los Angeles Regional Administrator in the Los Angeles and Seattle regions, plus the State of Utah.

15. By revising the section heading of § 200.30–2 to read as follows, by amending the introductory text by changing "Director of the Division of Corporate Regulation" to read "Director of the Office of Public Utility Regulation", and by revising paragraphs (a)(2), (a)(5) and (c) to read as follows:

§ 200.30–2 Delegation of Authority to Director of Office of Public Utility Regulation.

* * * * *

(a) * * *

* * * * *

(2) To authorize the issuance of orders where a notice has been issued and no request for a hearing has been received from any interested person within the period specified in the notice and the matter involved presents no issue that the director believes has not previously been settled by the Commission and it does not appear to the director to be necessary in the public interest or the interest of investors or consumers that a hearing be held; section 20(c) of the Act (15 U.S.C. 79t(c));

* * * * *

(5) To issue notices and grant applications by a holding company or any subsidiary company thereof, under section 3(c) of the Act (15 U.S.C. 79c(c)), for revocation of previously granted exemptions from registration, unless, upon examination, the application appears to the director to present issues not previously settled by the Commission or to raise questions of fact or policy indicating that the public interest of investors or consumers requires that a hearing be held;

* * * * *

(c) Notwithstanding anything in the foregoing in any case in which the Director of the Office of Public Utility Regulation believes it appropriate he may submit the matter to the Commission.

16. By revising the section heading of § 200.30–11 to read as follows, by amending the introductory text by changing "Director of the Office of Reports and Information Services" to read "Director of the Office of Applications and Reports Services" by removing paragraph (d), redesignating paragraph (e) as (d), and by amending newly designated (d) by changing "Director of the Office of Reports and Information Services" to read "Director of the Office of Applications and Reports Services".

§ 200.30–11 Delegation of authority to Director, Office of Applications and Reports Services.

* * * * *

17. By revising § 200.30–12, as follows:

§ 200.30–12 Delegation of authority to Director, Office of Consumer Affairs and Information Services.

Pursuant to the provisions of Pub. L. 87–592; 76 Stat. 394 (15 U.S.C. 78d–1, 78d–2), the Securities and Exchange Commission hereby delegates the following functions to the Director of the Office of Consumer Affairs and Information Services to be performed by him or under his direction by such person or persons as may be designated from time to time by the Chairman of the Commission:

(a) With respect to the Freedom of Information Act, 5 U.S.C. 552 and the Privacy Act, 5 U.S.C. 552a:

(1) To waive or reduce fees for searching and/or duplicating requested records under the Freedom of Information Act whenever it shall be determined that waiver or reduction of fee is in the public interest;

(2) To waive or reduce fees for reproduction under the Privacy Act whenever it shall be determined that good cause therefor exists.

(3) Notwithstanding anything in the foregoing, in any case in which the Director of the Office of Consumer Affairs and Information Services believes it appropriate, he or she may submit the matter to the Commission.

18. By amending paragraph (c)(1)(iii) of § 200.80 in Subpart D to revise the address of the Denver, Fort Worth and Los Angeles Regional Offices, by revising the office hours for the Seattle Regional Office, and by revising the telephone number of the Washington Regional Office, by amending paragraph (d)(7)(i) to add a sentence following the second sentence, as follows:

§ 200.80 Commission records and information.

* * * * *

(c) * * *

(1) * * *

(iii) * * *

Chicago Regional Office: * * * 315–353–7390.

Denver Regional Office, Two Park Central, Suite 700, 410 Seventeenth Street, Denver, Colorado 80202 (303–837–2071). Office Hours—8:00 a.m. to 4:30 p.m. m.s.t.

Fort Worth Regional Office, Eighth Floor, 411 West Seventh Street, Fort Worth, Texas 76102 (817–334–3821). Office Hours—8:30 a.m. to 5:00 p.m. c.s.t.

Los Angeles Regional Office, 5757 Wilshire Boulevard, Suite 500 East, Los Angeles, California 90036–3648 (213–473–3098). Office Hours—8:30 a.m. to 5:00 p.m. p.s.t.

* * * * *

Seattle Regional Office: * * * 8:00 a.m. to 4:30 p.m. p.s.t.

Washington Regional Office: * * * 703–235–3701.

* * * * *

(d) * * *

(7) * * *

(i) * * * Some records have been disposed of in accordance with the Commission's Records Control Schedule (17 CFR 200.80(f)). * * *

* * * * *

§ 200.80b [Amended]

19. By amending paragraph (b) in § 200.80b to change "*Statistical Bulletin*" to "SEC Monthly Statistical Review".

§ 200.80c [Amended]

20. By amending item 3 under paragraph (b) in § 200.80c to change "Statistical Bulletin" to "SEC Monthly Statistical Review".

§ 200.310 [Amended]

21. By amending paragraph (b) of § 200.310 by changing "Director of the Office of Reports and Information Services" to read "Director of the Office of Consumer Affairs and Information Services".

22. By adding paragraph (a) to § 200.503 to read as follows:

§ 200.503 Senior agency official.

* * * * *

(a) The Deputy Executive Director is the Senior Agency Official for purposes of the Paperwork Reduction Act of 1980. In this capacity, the Deputy Executive Director will carry out all responsibilities required by the Act (Pub. L. 96–511, 3506(b)), as well as serving as "Agency Clearance Officer" for purposes of the publication of notices in the Federal Register.

PART 202—INFORMAL AND OTHER PROCEDURES

§ 202.3 [Amended]

23. By amending paragraph (b) of § 202.3 by changing "Office of Reports and Information Services" to read "Office of Applications and Reports Services" in the first and eighth sentences.

(11 U.S.C. 901, 1109(a))

By the Commission.

George A. Fitzsimmons,

Secretary.

March 26, 1984.

[FR Doc. 84–8472 Filed 3–29–84; 8:45 am]

BILLING CODE 8010–01–M

17 CFR Part 230

[Release No. 33-6518 File No. S7-998]

Options Material Not Deemed a Prospectus

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission announces the adoption of amendments to Rule 134a under the Securities Act of 1933 relating to options material not deemed a prospectus. The amendments expand the scope of the rule to permit offerors of options products to include certain explanatory information in advertisements of those products and to modify certain of the conditions to the rule's availability. The purpose of the rule amendments is to permit a fuller explication of the nature of newly developed options products.

EFFECTIVE DATE: March 30, 1984.

FOR FURTHER INFORMATION CONTACT: Ann Glickman (202) 272-2573, Office of the Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Background

Rule 134a [17 CFR 230.134a] under the Securities Act of 1933 (the "Securities Act") (15 U.S.C. 77a et seq. (1976 & Supp. V 1981) as amended by Bus Regulatory Reform Act of 1982, and Pub. L. 97-261, section 19(d), 96 Stat. 1121 (1982)) was adopted in September 1982 as a part of a comprehensive new registration framework for standardized options (Release No. 33-6426 (September 16, 1982) (47 FR 41950) September 23, 1982). As adopted, the rule was intended to permit the dissemination of educational or instructional materials about standardized options without such communications being deemed a prospectus. Since its adoption, however, materials distributed in reliance upon the rule have included not only educational materials designed to explain to investors the nature of options trading, but advertisements promoting particular options products. Because of the rapidly evolving nature of options trading and the number of new and complex options products being offered to the public, and in recognition of the uniqueness of options trading and options products, the Commission proposed amendments to Rule 134a to formalize the availability of the rule for such advertisements (Release No. 33-6494 (October 27, 1983) (48 FR 51328) November 8, 1983).

As proposed, the amendments made clear that Rule 134a would apply to advertisements as well as other written materials, provided that all of its conditions are satisfied. The proposed amendments also sought to modify the conditions of the rule to permit the identification of certain options classes, such as broad-based stock index options and options on exempt securities, in Rule 134a communications.

II. Comments and Discussion

The only persons commenting on the proposal were three stock exchanges,[1] all of which supported the proposals but suggested further amendments or interpretations.

The commentators suggested that the Commission make clear that the amendments are not intended to circumscribe current industry advertising practices or to preclude industry advertising that satisfies the spirit, if not the letter, of Rule 134 (17 CFR 203.134). The Commission wishes to make clear that in amending Rule 134a it took into account the practices of the options exchanges, and that it was the Commission's intent that the amendments define the limits of appropriate options advertising. The Commission is of the view that options offerors cannot exceed the scope of Rule 134a through expansive interpretations of Rule 134.[2] Offerors who rely on Rule 134 must comply with all of its provisions, not simply their reading of its "spirit".[3]

The Commission has made three revisions to Rule 134a suggested by the commentators. First, the commentators suggested that the Commission delete from Rule 134a the requirement that advertisements contain a legend indicating the name and address of the person from whom a prospectus can be obtained, because the required legend detracts from the effectiveness and readibility of advertisements. Taking into account the specialized registration framework applicable to options trading,[4] including the fact that Rule 153(b) (17 CFR 230.153b) provides that the prospectus delivery requirements of the Securities Act is satisfied by the delivery of copies of an options prospectus to the options market, and to customers upon their request, the Commission believes it is unnecessary to continue Rule 134a's prospectus legend requirement and has modified the rule accordingly. As amended, the rule continues to require the identification of the source of an options disclosure document.

Secondly, the Commission has revised the rule to permit identification of the securities comprising an index.[5] The Commission believes that this is consistent with the purpose of the proposed revisions to the rule.

Finally, the Commission has amended Rule 134a to permit identification of foreign currency options ("fco's") in advertising materials. The Commission agrees with the commentators' view that fco's have features and risks that can be appreciated only if it is clear on which foreign currencies options may be traded. Accordingly, the amendments have been revised to make clear that particular currencies may be identified.

The Commission is making the amended rule available for options offerors immediately upon publication in the **Federal Register**. In accordance with 5 U.S.C. 553(d), the amendments are designed to relieve certain restrictions on options offerors, and the Commission is of the view that it is appropriate to permit such offerors to utilize the amendments promptly.

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[1] The Commission received submissions from the American Stock Exchange, the Chicago Board Options Exchange and the Philadelphia Stock Exchange. Copies of the comment letters are available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, D.C. 20549 (*see* File No. S7-998).

[2] Similarly, Rule 134 defines the limits of permissible advertising by issuers generally. The Commission notes that some issuers, including issuers of securities other than options, have exceeded these limits in recent months. In some cases, such issuers have justified their advertising practices by noting their similarity to registered investment companies, which are permitted by Rule 134 to include certain special categories of information in their advertisements. This view has no basis, since the Commission indicated in Release No. 33-5536 (November 4, 1974) (39 FR 39869) that the specialized provisions of Rule 134 are applicable only to companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.). The Commission is concerned about these advertising practices and may take further action in this regard in the near future.

[3] Part of the commentators' concern appears to be grounded in the view that Rule 134a mandates detailed or analytical communications, but it was not the intention of the Commission that the rule require a high level of detail or analysis. Therefore, as amended, the rule will provide the flexibility needed for the sort of options advertising that is appropriate and in the public interest.

[4] Rule 9b-1 (17 CFR 240.9b-1) under the Securities Exchange Act of 1934 (15 U.S.C. 78a-78kk (1976 & Supp. V 1981), as amended by Act of June 6, 1983, Pub. L. 98-38) requires the preparation of an options disclosure document for those options required to be registered under the Securities Act.

[5] Of course, any specific identification of the components of an index should not emphasize particular securities in such a way as to be misleading. The Commission believes that generally an entity wishing to identify some of the securities in an index would be required to identify all of them.

III. Statutory Authority

The revisions of Rule 134a are being adopted by the Commission pursuant to Sections 2, 7, 10 and 19(a) of the Securities Act of 1933. (Secs. 2, 7, 10, 19(a), 48 Stat. 74, 78, 81, 85; secs. 201, 205, 209, 210, 48 Stat. 905, 906, 908; secs. 1–4, 8, 68 Stat. 683, 685; sec. 12(a), 73 Stat. 143; sec. 7(a), 74 Stat. 412; sec. 27(a), 84 Stat. 1433; sec. 308(a)(2), 90 Stat. 57.)

IV. List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

V. Text of Amendments

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is hereby amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. By revising the introductory text and paragraphs (d) and (e) and removing paragraph (f) of § 230.134a (rule 134a) as follows:

§ 230.134a Options material not deemed a prospectus.

Written materials, including advertisements, relating to standardized options, as that term is defined in Rule 9b–1 under the Securities Exchange Act of 1934, shall not be deemed to be a prospectus for the purposes of Section 2(10) of the Securities Act of 1933; *Provided*, That such materials are limited to explanatory information describing the general nature of the standardized options markets or one or more strategies; *And, Provided further*, That:

* * * * *

(d) No specific security is identified, other than

(i) An option or other security exempt from registration under the Act, or

(ii) An index option, including the component securities of the index; and

(e) If there is a definitive options disclosure document, as defined in Rule 9b–1 under the Securities Exchange Act of 1934, the materials shall contain the name and address of a person or persons from whom a copy of such document may be obtained.

By the Commission.
Dated: March 22, 1984.

George A. Fitzsimmons,
Secretary.

[FR Doc. 84–8535 Filed 3–29–84; 8:45 am]
BILLING CODE 8010–01–M

17 CFR Parts 240 and 249

[Release No. 34–20784; File No. S7–997]

Suspension of Periodic Reporting Obligation

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission announces the adoption of revisions to Rule 12h–3 under the Securities Exchange Act of 1934 that permit immediate suspension of the Section 15(d) reporting obligation with respect to any class of securities held of record by less than 300 persons or, in the case of certain small businesses, 500 persons. The Commission also announces the adoption of a new simplified form for reporting such suspension. These changes are intended to eliminate an inconsistency in the provisions suspending the obligation of issuers to file periodic reports and to standardize and simplify the suspension process.

EFFECTIVE DATE: Effective March 30, 1984.

FOR FURTHER INFORMATION CONTACT: William E. Toomey (202) 272–2573, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Section 13 of the Securities Exchange Act of 1934 (the "Exchange Act")[1] establishes a periodic reporting obligation for every issuer of a class of securities registered under Section 12 of that Act. Section 15(d) of the Exchange Act imposes the same reporting obligation on every issuer which has filed a registration statement that has become effective under the Securities Act of 1933.[2] Pursuant to Rule 12g–4 (17 CFR 240.12g–4), a Section 12 issuer can effect immediate suspension of this obligation whenever it has fewer than three hundred security holders by filing a certification with the Commission. Under Section 15(d) of the Exchange Act and Rule 15d–6 (17 CFR 240.15d–6), a Section 15(d) issuer is entitled to a comparable suspension, but only if it has fewer than three hundred security holders at the beginning of a fiscal year. As a result, a Section 15(d) issuer may be required to continue to report in circumstances where a Section 12 issuer can effect an immediate cessation. Since this distinction does not appear to serve a useful function, the Commission published proposals in October 1983 to establish uniformity, to the extent practicable, in the treatment of Section 12 and 15(d) issuers, to simplify the suspension process and to assist small businesses consistent with investor protection.[3]

The proposals consisted of four parts. First, the proposed revisions to Rule 12h–3 were designed to permit immediate cessation of the periodic reporting requirement for Section 15(d) issuers whenever the number of record holders of a class of registered securities falls below 300 persons or, for certain businesses, below 500 persons. Second, proposed Form 15, a simplified form for reporting suspension under section 15(d) and termination of registration under Section 12(g), would replace form 12g–4/15d–6 (17 CFR 249.323 and 333). Third, conforming amendments to Rules 12g–4 and 15d–6 were proposed to provide uniformity. Fourth, Rule 12h–4 was proposed to be rescinded since its provisions would be included in proposed Rule 12h–3. The Commission received four comment letters which generally supported the proposals.[4]

The proposals are being adopted as proposed with two modifications to Rule 12h–3 and one revision to Rule 15d–6. With respect to Rule 12h–3, the Commission requested specific comment on whether a 90 or 120 day period should be permitted for the filing of an annual report on Form 10–K upon the discontinuance of a suspension. The Commission agrees with the commentators that 120 days, the same period allowed for the filing of Form 10 (17 CFR 249.210) is appropriate. In addition, the first sentence of paragraph (c) of proposed Rule 12h–3 has been clarified to limit its application to a registration statement relating to the class of securities for which suspension is sought. The Commission is of the view

[1] 15 U.S.C. 78a–78kk (1976 and Supp. V. 1981), *as amended by* Act of June 6, 1983, Pub. L. 98–38.

[2] 15 U.S.C. 77a–77aa (1976 and Supp. V. 1951), *as amended by* Bus. Regulatory Reform Act of 1982, Pub. L. 97–261, section 19(d), 96 Stat. 1121 (1982).

[3] Release No. 34–20263 (October 5, 1983) (48 FR 48245).

[4] The commentators consisted of two bar associations, one law firm and one corporation. The comment letters are availabe for inspection and copying at the Commission's Public Reference Room, File No. S7–997. One commentator suggested that proposed revised Rule 15d–6 be rescinded as superfluous. Rule 15d–6 is necessary as it continues to be possible for an issuer to effect a suspension under the basic suspension authority contained in Section 15(d) of the Exchange Act. Another commentator observed that the filing of Form 15 should not be required where a national securities exchange has filed a Form 25 with respect to a class of securities. Form 25 does not provide information relevent to the status of a reporting obligation under either Section 12(g) or Section 15d. Therefore, the Commission believes that the public files should clearly reflect the reporting status of a registrant and that the Form 15 will do this in the least burdensome way.

that this modification will enhance the purpose of the rule by broadening its application in situations where there should be no adverse impact on investors or the public. Finally, Rule 15d–6 has been revised to emphasize that an issuer that has already filed Form 15 with respect to a class of securities pursuant to the provisions of Rule 12h–3, need not make a duplicative filing for that class because of the provisions of Rule 15d–6.

I. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a final Regulatory Flexibility Analysis in accordance with 5 U.S.C. 604 regarding the revisions to Rule 12h–3. A summary of the corresponding Initial Regulatory Flexibility Analysis was included in the release proposing the changes to Rule 12h–3 at 48 FR 48245. Members of the public who wish to obtain a copy of the Final Regulatory Analysis should contact William E. Toomey in the manner specified above.

II. List of Subjects

List of Subjects in 17 CFR Parts 240 and 249

Forms, Reporting and recordkeeping requirements, Securities.

III. Text of Amendments

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. By revising § 240.12h–3, Rule 12h–3, to read as follows:

§ 240.12h–3 Suspension of duty to file reports under section 15(d).

(a) Subject to paragraphs (c) and (d) of this section, the duty under section 15(d) to file reports required by section 13(a) of the Act with respect to a class of securities specified in paragraph (b) of this section shall be suspended for such class of securities immediately upon filing with the Commission a certification on Form 15 (17 CFR 249.323) if the issuer of such class has filed all reports required by section 13(a), without regard to Rule 12b–25 [17 CFR 249.322], for the shorter of its most recent three fiscal years and the portion of the current year preceding the date of filing Form 15, or the period since the issuer became subject to such reporting obligation. If the certification on Form 15 is subsequently withdrawn or denied, the issuer shall, within 60 days, file with the Commission all reports which would have been required if such certification had not been filed.

(b) The classes of securities eligible for the suspension provided in paragraph (a) of this section are:

(1) Any class of securites held of record by: (i) Less than 300 persons; or (ii) by less then 500 persons, where the total assets of the issuer have not exceeded $3,000,000 on the last day of each of the issuer's three most recent fiscal years;

(2) Any class of securities of a foreign private issuer, as defined in Rule 3b–4 (§ 240.3b–4), held of record by: (i) Less than 300 persons resident in the United States or (ii) less than 500 persons resident in the United States where the total assets of the issuer have not exceeded $3,000,000 on the last day of each of the issuer's three most recent fiscal years. For purposes of this paragraph, the number of persons resident in the United States shall be determined in accordance with the provisions of Rule 12g3–2(a) (§ 240.12g3–2(a)); and

(3) Any class or securities deregistered pursuant to section 12(d) of the Act if such class would not thereupon be deemed registered under section 12(g) of the Act or the rules thereunder.

(c) This section shall not be available for any class of securities for a fiscal year in which a registration statement relating to that class becomes effective under the Securities Act of 1933, or is required to be updated pursuant to section 10(a)(3) of the Act, and, in the case of paragraphs (b)(1)(ii) and (b)(2)(ii), the two succeeding fiscal years; *Provided, however,* That this paragraph shall not apply to the duty to file reports which arises solely from a registration statement filed by an issuer with no significant assets, for the reorganization of a non-reporting issuer into a one subsidiary holding company in which equity security holders receive the same proportional interest in the holding company as they held in the non-reporting issuer, except for changes resulting from the exercise of dissenting shareholder rights under state law.

(d) The suspension provided by this rule relates only to the reporting obligation under section 15(d) with respect to a class of securities, does not affect any other duties imposed on that class of securities, and shall continue as long as criteria (i) and (ii) in either paragraph (b)(1) or (b)(2) is met on the first day of any subsequent fiscal year; *Provided, however,* That such criteria need not be met if the duty to file reports arises solely from a registration statement filed by an issuer with no significant assets in a reorganization of a non-reporting company into a one subsidiary holding company in which equity security holders receive the same proportional interest in the holding company as they held in the non-reporting issuer except for changes resulting from the exercise of dissenting shareholder rights under state law.

(e) If the suspension provided by this rule is discontinued because a class of securities does not meet the eligibility criteria of paragraph (b) on the first day of an issuer's fiscal year, then the issuer shall resume periodic reporting pursuant to section 15(d) by filing an annual report on Form 10–K for its preceding fiscal year, not later than 120 days after the end of such fiscal year.

§ 240.12g3–2 [Amended]

2. By revising Rule § 240.12g3–2, Rule 12g3–2, to delete paragraph (a)(2) and redesignate paragraph (a)(1) as (a).

3. By revising § 240.12g–4, Rule 12g–4, to read as follows:

§ 240.12g–4 Certification of termination of registration under section 12(g).

(a) Termination of registration of a class of securities shall take effect 90 days, or such shorter period as the Commission may determine, after the issuer certifies to the Commission on Form 15 that:

(1) Such class of securities is held of record by: (i) Less than 300 persons; or (ii) by less than 500 persons, where the total assets of the issuer have not exceeded $3,000,000 on the last day of each of the issuer's most recent three fiscal years; or

(2) Such class of securities of a foreign private issuer, as defined in Rule 3b–4 (§ 240.3b–4), is held of record by: (i) Less than 300 persons resident in the United States or (ii) less than 500 persons resident in the United States where the total assets of the issuer have not exceeded $3,000,000 on the last day of each of the issuer's most recent three fiscal years. For purposes of this paragraph, the number of persons resident in the United States shall be determined in accordance with the provisions of Rule 12g3–2(a) (§ 240.12g3–2(a)).

(b) The issuer's duty to file any reports required under section 13(a) shall be suspended immediately upon filing a certification on Form 15; *Provided, however,* That if the certification on Form 15 is subsequently withdrawn or denied, the issuer shall, within 60 days after the date of such withdrawal or denial, file with the Commission all reports which would have been required had the certification

on Form 15 not been filed. If the suspension resulted from the issuer's merger into, or consolidation with, another issuer or issuers, the certification shall be filed by the successor issuer.

§ 240.12h-4 [Amended]

4. By removing in its entirety § 240.12h-4, Rule 12h-4.

5. By revising § 240.15d-6, Rule 15d-6, to read as follows:

§ 240.15d-6 Suspension of duty to file reports.

If the duty of an issuer to file reports pursuant to section 15(d) of the Act as to any fiscal year is suspended as provided in section 15(d) of the Act, such issuer shall, within 30 days after the beginning of the first fiscal year, file a notice on Form 15 informing the Commission of such suspension unless Form 15 has already been filed pursuant to Rule 12h-3. If the suspension resulted from the issuer's merger into, or consolidation with, another issuer or issuers, the notice shall be filed by the successor issuer.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

1. By revising § 249.323 to read as follows:

§ 249.323 Form 15, certification of termination of registration of a class of security under section 12(g) or notice of suspension of duty to file reports pursuant to sections 13 and 15(d) of the Act.

(a) This form shall be filed by each issuer to certify that the number of holders of record of a class of security registered under section 12(g) of the Act is reduced to less than 300 persons, or that the number of holders of record of a class of security registered under section 12(g) of the Act is reduced to less than 500 persons and the total assets of the issuer have not exceeded $3,000,000 on the last day of each of the issuer's most recent three fiscal years. Registration terminates 90 days after the filing of the certificate or within such shorter time as the Commission may direct.

(b) This form shall also be filed by each issuer required to file reports pursuant to section 15(d) of the Act, as a notification that the duty to file such reports is suspended pursuant to section 15(d) of the Act because all securities of each class of such issuer registered under the Securities Act of 1933 are held of record by less than 300 persons at the beginning of its fiscal year, or otherwise pursuant to the provisions of Rule 12h-3 (17 CFR 240.12h-3).

§ 249.333 [Removed]

2. By deleting in its entirety § 249.333.

BILLING CODE 8010-01-M

OMB APPROVAL
OMB No. 3235-0167
Exp. October 30, 1986

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 15

Certification and Notice of Termination of Registration under Section 12(g) of the Securities Exchange Act of 1934 or Suspension of Duty to File Reports Under Sections 13 and 15(d) of the Securities Exchange Act of 1934.

Commission File Number _____

_____
(Exact name of registrant as specified in its charter)

_____
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

_____
(Title of each class of securities covered by this Form)

_____
(Titles of all other classes of securities for which a duty to file reports under section 13(a) or 15(d) remains)

Please place an X in the box(es) to designate the appropriate rule provision(s) relied upon to terminate or suspend the duty to file reports:

Rule 12g-4(a)(1)(i)	[ ]	Rule 12h-3(b)(1)(i)	[ ]
Rule 12g-4(a)(1)(ii)	[ ]	Rule 12h-3(b)(1)(ii)	[ ]
Rule 12g-4(a)(2)(i)	[ ]	Rule 12h-3(b)(2)(i)	[ ]
Rule 12g-4(a)(2)(ii)	[ ]	Rule 12h-3(b)(2)(ii)	[ ]
		Rule 15d-6	[ ]

Approximate number of holders of record as of the certification or notice date: _____

Pursuant to the requirements of the Securities Exchange Act of 1934 (Name of registrant as specified in charter) has caused this certification/notice to be signed on its behalf by the undersigned duly authorized person.

DATE: _____ BY: _____

Instruction: This form is required by Rules 12g-4, 12h-3 and 15d-6 of the General Rules and Regulations under the Securities Exchange Act of 1934. The registrant shall file with the Commission three copies of Form 15, one of which shall be manually signed. It may be signed by an officer of the registrant, by counsel or by any other duly authorized person. The name and title of the person signing the form shall be typed or printed under the signature.

SEC 2069 (3-84)

BILLING CODE 8010-01-C

IV. Statutory Authority

The amendments to Rule 12h–3 are adopted by the Commission pursuant to Sections 12(g)(4), 12(h), 13(a), 15(d), and 23(a) of the Exchange Act.

(Secs. 12(g)(4), 12(h), 13(a), 15(d), 23(a), 48 Stat. 892, 894, 895, 901; sec. 203(a), 49 Stat. 704; secs. 3, 8, 49 Stat. 1377, 1379; secs. 3, 4, 6, 78 Stat. 565–568, 569, 570–574; sec. 18, 89 Stat. 155; sec. 204, 91 Stat. 1500; 15 U.S.C. 78/(g)(4), 78/(h), 78m(a), 78o(d), 78w(a))

Dated: March 22, 1984.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–8534 Filed 3–29–84; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 389

[Docket No. RM84–11–000]

Commission Information Collection Requirements Under the Paperwork Reduction Act; OMB Control Numbers

March 26, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; notice of OMB Control Numbers.

SUMMARY: The Federal Energy Regulatory Commission is codifying the control numbers that have been issued by the Office of Management and Budget (OMB) for information collection requirements in Commission rules that are approved under the Paperwork Reduction Act. Control numbers will no longer appear as part of the section or part containing the information collection requirement, but will be centrally located in a table in new Part 389.

EFFECTIVE DATE: March 30, 1984.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Malloy, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, D.C. 20426, (202) 357–8033.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520 (1982) and the Office of Management and Budget's (OMB) regulations, 5 CFR Part 1320 (1983), requires that OMB review certain information collection requirements imposed by agency rules. Upon approval of the agency requirement, OMB issues a control number. The agency must display this control number in its regulations to inform the public that the agency's information collection requirements have been approved by OMB.

In the Commission's initial implementation of the Paperwork Reduction Act, control numbers were published in either of two fashions. For control numbers that applied only to specific sections of the Commission's regulations, the Commission inserted a parenthetical after the section, stating that the information collection requirement in that section was approved under a certain control number. For information collection requirements that cover an entire Part of Commission's regulations, the Commission inserted a similar parenthetical after the Table of Contents of that Part.

The Commission will no longer display its control numbers in this manner. Rather, the Commission is establishing a new Part 389 which will contain all the control numbers that have been issued for its regulations. The Commission believes that it will be easier for the Commission to update this table and that it will be easier for members of the public to determine which regulations have been approved by OMB. Accordingly, the Commission is removing any control numbers which appear as part of individual Parts and Sections and adding a new Part 389 that lists all control numbers in a single table.

List of Subjects in 18 CFR Part 389

Paperwork Reduction Act, OMB Control Numbers.

In consideration of the foregoing, a new Part 389 is added to Chapter 1, Title 18, Code of Federal Regulations, as set forth below.

Lois D. Cashell,

Acting Secretary.

1. The Authority Citation for Part 389 reads as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520(1982).

2. A new Part 389 is added to read as follows:

PART 389—OMB CONTROL NUMBERS FOR COMMISSION INFORMATION COLLECTION REQUIREMENTS

§ 389.101 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This part collects and displays control numbers assigned to information collection requirements of the Commission by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980. This Part fulfills the requirements of Section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) *Display.*

18 CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 1902–)
2.56a	0055
2.69	0060
2.75	0052
2.76	0056
2.77	0056
2.78	0066
2.79	0060
2.80	0128
2.82	0128
Part 4 Subpart D	0073
Part 4 Subpart E	0058
Part 4 Subpart F	0058
Part 4 Subpart G	0115
Part 4 Subpart H	0115
Part 4 Subpart J	0115
Part 4 Subpart L	0058
Part 4 Subpart L	0115
4.30	0073
4.31	0073
4.32	0073
4.33	0073
4.34	0073
4.80	0073
4.81	0073
4.82	0073
Part 6	0068
Part 9	0069
11.26	0087
11.31	0087
13.1	0087
24.1	0079
Part 33	0082
Part 34	0043
Part 35 Subpart A	0096
35.12	0096
35.13	0096
Part 45	0083
46.3	0114
46.6	0099
Part 101	0092
Part 104	0029
Part 116	0021
Part 125	0098
141.1	0021
141.2	0029
141.14	0106
141.61	0024
Part 152	0116
Part 153	0062
154.38	0070
154.61	0070
154.62	0070
154.63	0070
154.64	0070
154.65	0070
154.66	0070
154.67	0070
154.91	0052
154.92	0055
154.93	0055
154.94	0055
154.95	0055
154.96	0055
154.97	0055
154.98	0055
154.99	0055
154.100	0055
154.101	0055
154.102	0055
Part 156	0061
157.5	0060
157.6	0060
157.7	0060
157.8	0060
157.9	0060
157.10	0060
157.11	0060
157.12	0060

18 CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 1902-)
157.13	0060
157.14	0128
157.15	0060
157.16	0060
157.17	0060
157.18	0060
157.20	0060
157.21	0060
157.22	0060
157.23	0052
157.24	0052
157.25	0052
157.26	0052
157.27	0052
157.28	0052
157.29	0052
157.30	0051
157.40	0052
157.100	0060
157.201	0060
158.202	0060
157.203	0060
157.204	0060
157.205	0060
157.206	0060
157.207	0060
157.208	0060
157.209	0060
157.210	0060
157.211	0060
157.212	0060
157.213	0060
157.214	0060
157.215	0060
157.216	0060
157.217	0060
157.218	0060
Part 158	0098
159.1	0060
160.1	0098
Part 201	0092
Part 204	0030
Part 216	0028
Part 225	0098
250.5	0052
250.7	0051
250.9	0055
250.10	0052
250.13	0008
250.14	0036
260.1	0028
260.2	0030
260.4	0027
260.7	0037
260.8	0005
260.9	0004
260.11	0026
260.12	0025
260.15	0101
Part 270	0057
Part 271 Subpart K	0057
271.503	0124
271.603	0124
271.903	0124
Part 273	0111
273.302	0084
Part 274	0112
Part 274 Subpart B	0038
275.204	0093
276.108	0098
277.210	0098
Part 281	0066
Part 282	0110
282.502	0028
Part 284 Subpart A	0086
284.105	0066
284.106	0086
284.107	0060
284.125	0086
284.126	0086
284.127	0060
Part 284 Subpart D	0066
Part 284 Subpart E	0086
Part 284 Subpart F	0086
284.221	0060
284.222	0060
Part 284 Subpart H	0086
Part 290	0042

18 CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 1902-)
Part 292	0075
300.10	0088
300.11	0088
Part 340	0089
Part 341	0089
Part 342	0089
Part 343	0089
Part 344	0089
Part 345	0089
Part 346	0003
Part 347	0089
Part 351	0022
Part 352	0022
Part 356	0096
Part 360	0003
360.100	0015
360.101	0016
360.102	0017
360.103	0014
360.104	0013
361.100	0011
361.101	0018
361.102	0010
361.103	0009
Part 385 Subpart N	0089

[FR Doc. 84-8498 Filed 3-29-84; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 200, 201, 203, 204, 205, 207, 220, 221, 232, 234, 242, 244, and 250

[Docket No. R-84-1149; FR-1911]

Introduction; Mutual Mortgage Insurance and Rehabilitation Loans; Multifamily Housing Mortgage Insurance; Correction of Structural Defects—Eligibility for Assistance; Insurance of Loans and Mortgages in American Samoa; Nonoccupant Mortgagors—Maximum Mortgage Amounts; Payment of MIP; Occupancy Requirements—Manufactured Home Parks; Removal of Refinancing Limitations on Certain Multifamily Projects; Assignments of Certain Mortgages Under the National Housing Act

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

ACTION: Final rule.

SUMMARY: This final rule implements recent statutory amendments that change or clarify certain existing regulatory provisions respecting (1) the eligibility of mortgagors to make claims for structural defects in connection with one- to four-family dwellings that were approved for VA guaranty, insurance or direct loans before construction, but were ultimately insured by FHA; (2) eligibility of loans and mortgages for insurance in American Samoa along with an expanded definition of jurisdictional eligibility; (3) the maximum insurable amount on mortgages on one- to four-family dwellings that are executed by non-occupant mortgagors; (4) the relationship of the one-time mortgage insurance premium (MIP) to the determination of maximum insurable mortgage amounts; (5) the provision of mortgage insurance on manufactured home parks designed exclusively for the elderly; (6) the removal of refinancing limitations previously governing substantial rehabilitation of certain multifamily projects; and (7) elimination of the "buy-back" feature contained in Section 221(g)(4) of the National Housing Act and the procedures to be used by those with outstanding mortgages who choose to exercise the option to assign their mortgages to HUD.

EFFECTIVE DATE: May 10, 1984.

FOR FURTHER INFORMATION CONTACT: John Coonts, Director, Single Family Development Division, Room 9270, telephone number (202) 755-6720; or April LeClair, Director, Development Division, Office of Multifamily Housing Development, Room 6132, telephone number (202) 755-6500. (These are not toll-free numbers.) Written communications to the above-named persons should be sent to the Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: This final rule implements the following provisions of the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98-181, approved November 30, 1983 (the "1983 Act"):

1. Section 427 of the 1983 Act amends Section 518(a) of the National Housing Act (NHA) (12 U.S.C. 1735b(a)(B)). Section 518(a) authorizes the Secretary to make expenditures for, among other things, the correction of structural defects in one- to four-family dwellings that were approved for FHA mortgage insurance before construction. Section 203(b)(2) of the NHA provides that the mortgage on a one- to four-family dwelling approved for guaranty, insurance, or a direct loan by the Veterans Administration is eligible for FHA insurance. Before the 1983 Act's amendment, section 518(a) of the NHA provided that the Secretary's authority to make expenditures to correct structural defects existed only if the

housing had been approved for mortgage insurance before the beginning of construction. This provision created an ambiguity, since it was unclear whether a dwelling originally approved by VA, but ultimately insured by FHA, was eligible for the protection afforded by section 518(a).

Section 427 of the 1983 Act makes clear that expenditures and reimbursements may be made for correcting defects in FHA-insured dwellings even though they were approved for guaranty, insurance, or a direct loan by the Veterans Administration before construction, instead of having been given preconstruction approval by FHA. Accordingly, 24 CFR 200.507(b) is revised to reflect Section 427 of the 1983 Act.

2. Section 407 of the 1983 Act amends Sections 9, 201(d) and 207(a)(7) of the NHA (12 US.C. 1706d, 1707, 1713) to add American Samoa to the list of jurisdications to which the Department's loan and mortgage insurance authorities in titles I and II of the NHA are applicable. Amendments are included in this rule for definitions in 24 CFR Parts 201, 203, 204, 205, 232, 234, 242, 244, and 250 to reflect this change. The rule also spells out for the first time (in sections 201, 203, and 220) the names of all eligible jurisdictions in which HUD-approved or HUD-insured property may be located.

3. Section 425 of the 1983 Act amends section 203(b)(8) of the NHA (12 U.S.C. 1709(b)(8)) to provide that a mortgage on a dwelling owned by a non-occupant mortgagor is eligible for insurance if the principal obligation is no greater than the lesser of: (1) The amount prescribed under Section 203(b)(2) of the NHA (i.e., the insurable amount for an occupant mortgagor), or (2) 85 percent of the appraised value of the property on the date the mortgage is accepted for insurance. Previously, Section 203(b)(8) had provided that the principal obligation could not, under most circumstances, exceed 85 percent of the amount computed under Section 203(b)(2). This amendment, by increasing the insurable mortgage amount for investors, should heighten investor interest in single-family homes, thereby resulting in an increased supply of rental housing. The amendment is implemented by changes in 24 CFR 203.18(c).

4. Section 423 of the 1983 Act added a new subsection (d) to Section 203 of the NHA. This new subsection allows the maximum insurable mortgage amount determined under any provision of title II of the NHA for a mortgage secured by a one- to four-family dwelling to be increased "by the amount of the mortgage insurance premium (MIP) paid at the time the mortgage is insured."

The Department recently published a final rule that established a new system for collecting MIPs for certain single family mortgages that HUD insures under Section 203. See 48 FR 28794 (June 23, 1983). Under this system, the borrower pays a single MIP when the mortgage loan is closed, which represents the total premium obligation for the insured loan.

As part of implementing the new system, HUD proposed in 1982 to amend certain sections of the NHA to increase the otherwise applicable maximum mortgage amounts by the amount of the MIP, and to exclude the amount of the premium from "cost of acquisition" for purposes of determining minimum down payment requirements. Congress enacted these proposals as Section 201 of the Omnibus Budget Reconciliation Act of 1982, Pub. L. 97–253, approved September 8, 1982.

One of the purposes of the amendments was to permit the homebuyer to add the amount of the MIP to the amount of the insured loan, thereby enduring that implementation of the new system would not increase existing downpayment requirements. Because of their placement, however, the amendments did not completely fulfill this intent.

In addition to statutory provisions directly addressing downpayment requirements, the amount of the required downpayment is also affected by maximum loan-to-value ratios. For example, Section 203(b)(2) of the NHA generally provides that insured loans may not exceed an amount equal to the sum of 97 percent of the first $25,000 of the appraised value of the property and 95 percent of the appraised value in excess of $25,000. No amendment to this or other loan-to-value ratio requirements was included in the 1982 Reconciliation Act. The result is that, in the case of loans that are at the maximum loan-to-value ratio before consideration of the up-front premium, the required downpayment is increased by the percentage resulting from the applicable loan-to-value ratio (5 percent in the case of a loan covered by the ratio provision cited above where the value exceeds $25,000). Section 423 of the 1983 Act corrects this unintended result by providing in one place the general authority to increase, by the amount of the MIP, the otherwise applicable single family maximum mortgage amount—irrespective of whether the amount is arrived at as a result of the relevant dollar or loan-to-value limitation.

Accordingly, this rule adds a new § 203.18c to make clear that all of the one-time mortgage insurance premium amount may be added to the insured mortgage. The rule also removes § 203.18b(d), the provision included in HUD's final rule implementing procedures for one-time MIP payments (see 48 FR 28794, at 28804 June 23, 1983). § 203.18b(d) permitted maximum dollar limits to be increased by the amount of the financed one-time premium, but did not permit loan-to-value limitations to be affected by the addition of the premium to the mortgage amount. The new § 203.18c includes, and expands the reach of, the removed provision, as authorized under Section 423 of the 1983 Act. Affected mortgage insurance programs include HUD's basic home mortgage insurance program under Section 203(b) of the NHA (24 CFR 203.18, 203.18a, 203.18b, 203.29); mortgage insurance for disaster victims under Section 203(h) of the NHA (24 CFR 203.18(e)); mortgage insurance for single family homes in outlying areas under Section 203(i) (24 CFR 203.18(d)); mortgage insurance for single-unit cooperatives under Section 203(n) of the NHA (24 CFR 203.43c); mortgage insurance under title II of the NHA for qualifying manufactured homes (24 CFR 203.43f); and graduated payment mortgages under section 245 of the NHA (24 CFR 203.45, 203.46).

Section 423(c) of the 1983 Act provides that the amendments affecting the treatment of single family premiums may take effect only if the Secretary of Housing and Urban Development has determined that the program of payment of insurance premiums at the time of loan closing—with specific regard to Section 423's changes—is actuarially sound.

The one-time MIP concept was originally developed on the assumption that mortgagors would enjoy the option of including all of their MIP in the insured mortgage. As noted above, it was only a technical oversight in the authorizing legislation that obliged the Department to limit the amount of MIP financed as part of the mortgage by subjecting that amount to statutory loan-to-value limits. In submitting the original methodology paper to the Congress on January 25, 1983, the Secretary found that the option of including *all* of the MIP in the mortgage would be actuarially sound. There is no reason at this time to question or modify this finding with respect to implementing the amendments of Section 423 of the 1983 Act. The Secretary, in approving this rule for publication, has made the

determination required under Section 423(c).

5. Section 435 of the 1983 Act amended Section 207(b) of the NHA to permit the insurance of mortgages on manufactured home parks designed exclusively for occupancy by elderly persons. Formerly, Section 207(b) prohibited the provision of insurance under Section 207 unless the mortgagor certified under oath that there would be no discrimination "by reason of the fact that there are children in the family. . . ." Section 435 retains this basic rule, but provides language clarifying that exceptions may be made with regard to manufactured home parks designed exclusively for the elderly.

Accordingly, 24 CFR 207.20(a) is amended to provide that mortgagors must certify under oath that they will not discriminate against families with children, except in the case of mortgagors who own manufactured home parks designed exclusively for occupancy by the elderly.

6. Section 432 of the 1983 Act amends the mortgage limit provisions of Sections 220(d)(3), 221(d)(3), and 221(d)(4) of the NHA to facilitate refinancing to perform substantial rehabilitation. Before this amendment, the limits on mortgages for substantial rehabilitation of properties were based upon the sum of the cost of repair plus the value of the property before rehabilitation. However, where there was an existing mortgage and application to insure a new mortgage under one of these provisions was made, the mortgage limits were based upon the sum of the estimated cost of repair plus the existing indebtedness (rather than the value of the property before repair). Section 432 deletes the special mortgage limits provision, so that mortgage limits may be determined in the same manner for project refinancing as they are for new financing to carry out substantial rehabilitation.

Amendments to §§ 220.507, 220.508, 221.514, and 221.556 contained in this rule conform the regulations applicable to Sections 220(d)(3), 221(d)(3), and 221(d)(4) of the National Housing Act to reflect the 1983 statutory amendment. 24 CFR 221.515 has been removed as a result of the legislative amendment to these sections of the NHA. The amendment has rendered inapplicable the distinctions based on the status of the property contained in the now-deleted § 221.515.

7. Before it was amended by Section 409 of the 1983 Act, Section 221(g)(4) of the NHA permitted mortgagees holding mortgages insured under Section 221 to assign them to HUD and receive the benefits of insurance, if the mortgage was not in default at the expiration of 20 years from the date of endorsement for insurance. Section 409 terminates this 20-year "buy-back" provision for future insured mortgages. The 20-year "buy-back" continues to be available (under the terms of amended Section 221(g)(4)) for mortgages for which conditional or firm commitments were issued on or before November 30, 1983.

The Department issued a rule-related Notice on December 5, 1983 (48 FR 54571), explaining the effect of Section 409. Today's rule includes amendments to §§ 221.255(a) and 221.770 to conform HUD's regulations to the statutory change previously announced in the Notice. These amendments also provide for the implementation of Section 408 of the 1983 Act, which permits the Commissioner to direct mortgagees submitting claims under the buy-back provision to deliver the credit instrument and mortgage directly to GNMA, in lieu of assigning them to the Commissioner.

As a matter of policy, the Department submits most of its rulemakings to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that good cause exists for publishing this document as a final rule. Public procedure is believed to be unnecessary because each of the revisions to existing HUD regulations included in this document is being made solely for the purpose of implementing new statutory direction from the Congress where the revised law is self-executing (eligibility of American Samoa (Section 407), mortgage insurance for manufactured home parks for the elderly (Section 435), and termination of the Section 221(g)(4) buy-back (Section 409)); removes ambiguity (correction of defects (Section 427)); makes technical correction of a matter previously subjected to public comment rulemaking (amortization of the one-time MIP (Section 423)); liberalizes the terms and conditions under which a client group may participate in ongoing HUD programs (mortgage limits for non-occupant mortgagors (Section 425), amortization of the one-time MIP (Section 423), and maximum mortgage amounts for the substantial rehabilitation of multifamily projects involving refinancing (Section 432)); or involves an internal administration matter not affecting the rights of regulated groups (assignment of mortgages under the buy-back option to GNMA (Section 408)). Under these circumstances, immediate implementation of these several amendments would best serve the public interest.

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

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 that implement Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10278, 451 Seventh Street SW., Washington, D.C. 20410.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule merely implements statutory amendments and conforms regulatory provisions to statutory law, without imposing any new administrative or economic burdens on small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 17, 1983 (48 FR 47422) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.110, 14.117, 14.138, 14.157, 14.400, 14.402, 64.114, 64.118, and 64.119.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Loan programs: housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Minimum Property Standards, Incorporation by reference.

24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Manufactured homes, Manufactured homes and lots.

24 CFR Part 203

Home improvement, Loan programs: housing and community development, Mortgage insurance, Solar energy.

24 CFR Part 204

Mortgage insurance.

24 CFR Part 205

Community facilities, Mortgage insurance, Land development.

24 CFR Part 207

Mortgage insurance, Rental housing, Manufactured home parks.

24 CFR Part 220

Home improvement, Mortgage insurance, Urban renewal, Rental housing, Loan programs: housing and community development, Projects.

24 CFR Part 221

Condominiums, Low and moderate income housing, Mortgage insurance, Displaced families, Single family housing, Projects, Cooperatives.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs: health, Loan programs: housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

24 CFR Part 234

Condominiums, Mortgage insurance, Homeownership, Projects, Units.

24 CFR Part 242

Hospitals, Mortgage insurance.

24 CFR Part 244

Health facilities, Mortgage insurance.

24 CFR Part 250

Intergovernmental relations, Low and moderate income housing mortgage insurance.

Accordingly, the Department amends 24 CFR Parts 200, 201, 203, 204, 205, 207, 220, 221, 232, 234, 242, 244, and 250 as follows:

PART 200—INTRODUCTION

1. Section 200.507 is revised to read as follows:

§ 200.507 Eligibility requirements.

To be eligible for consideration by the Commissioner for receiving assistance in the correction of structural defects, the mortgagor must establish that:

(a) The mortgagor is the owner of a one- to four-family dwelling covered by an individual mortgage.

(b) The dwelling was approved for mortgage insurance by the Commissioner, or for guaranty, insurance or a direct loan under chapter 37 of Title 38 of the United States Code (38 U.S.C. 1801–1827) by the Administrator of Veterans Affairs, before the beginning of construction.

(c) The mortgagor has made reasonable efforts to obtain a correction of a structural defect in his or her property by the builder, seller, or other persons, and that the defect has not been corrected.

PART 201—PROPERTY IMPROVEMENT AND MOBILE HOME LOANS

2. In § 201.6, paragraph (a) is revised to read as follows:

§ 201.6 Eligible loans.

(a) *Property location.* The property to be improved shall be located within the United States, Puerto Rico, Guam, the Trust Territory of the Pacific Islands, American Samoa, or the Virgin Islands.

* * * * *

3. In § 201.525, paragraph (a) is revised to read as follows:

§ 201.525 Mobile home location standards.

(a) *In general.* The mobile home shall be located within the United States, Puerto Rico, Guam, the Trust Territory of the Pacific Islands, American Samoa, or the Virgin Islands. The mobile home shall be placed in a mobile home park approved by the Commissioner, on a site owned by the borrower which meets certain requirements prescribed by the Commissioner, or on a site leased from a municipality or other political subdivision, where the leased site otherwise meets the requirements of paragraph (c) of this section.

* * * * *

4. § 201.1110, paragraph (k) is revised to read as follows:

§ 201.1110 Definitions.

* * * * *

(k) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

* * * * *

5. Section 201.1503 is revised to read as follows:

§ 201.1503 Eligibility requirements.

Loans shall be made only for financing, in combination, the purchase of a mobile home and a developed or undeveloped mobile home lot, or a developed or undeveloped mobile home lot by an owner of a mobile home, which mobile home is the principal residence of that owner. Furniture may not be included in the loan, or financed with the proceeds of the loan. The mobile home shall be located within the United States, Puerto Rico, Guam, the Trust Territory of the Pacific Islands, American Samoa, or the Virgin Islands.

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

6. In § 203.18, paragraph (c) is revised to read as follows:

§ 203.18 Maximum mortgage amounts.

* * * * *

(c) *Nonoccupant mortgagors.* A mortgage executed by a mortgagor who is not the occupant of the property shall not exceed:

(1) The lesser of the amount computed under paragraph (a) of this section or 85 percent of the appraised value of the property as of the date the mortgage is accepted for insurance; or

(2) The amount computed under paragraph (a) of this section (even if it is greater than 85 percent of the appraised value of the property as of the date the mortgage is accepted for insurance), if the mortgage covers a one- to two-family residence and the Commissioner is furnished with certificates indicating that:

(i) The mortgagor will not rent (except for a rental term of not less than 30 days and not more than 60 days), sell (except where the insured mortgage is paid in full as an incident of the sale), or occupy the property before the 18th amortization payment of the mortgage except with the prior written approval of the Commissioner;

(ii) Not less than 15 percent of the original principal amount of the mortgage proceeds has been deposited in an escrow, trust, or special account;

(iii) The mortgagor agrees that, if the property is not sold before the due date of the 18th amortization payment of the mortgage to a purchaser, acceptable to the Commissioner, who will occupy the property, assume, and agree to pay the mortgage indebtedness, the amount held in escrow, trust, or special account will be applied in reduction of the outstanding principal amount of the mortgage as of the due date of the 18th amortization payment of the mortgage; and

(iv) The mortgagee agrees that any portion of the fund held in escrow, trust, or special account, not applied to the mortgage in accordance with the

provisions of this paragraph, shall be deducted from the amount of the insurance benefits to which the mortgagee would otherwise be entitled if a claim for insurance benefits is filed.

* * * * *

§ 203.18b [Amended]

7. Section 203.18b is amended by removing paragraph (d).

8. Part 203 is amended by adding a new § 203.18c, to read as follows:

§ 203.18c One-time mortgage insurance premium excluded from limitations on maximum mortgage amounts.

After determining any maximum insurable mortgage amount under the provisions of this subpart, the maximum insurable amount of any mortgage subject to the provisions of § 203.259a may be increased by the amount of any one-time mortgage insurance premium that will be financed as part of the mortgage.

9. Section 203.40 is revised to read as follows:

§ 203.40 Location of property.

The mortgaged property shall be located within the United States, Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, or American Samoa. The mortgaged property, if otherwise acceptable to the Commissioner, may be located in any community where the housing standards meet the requirements of the Commissioner.

10. In § 203.251, paragraph (s) is revised to read as follows:

§ 203.251 Definitions.

* * * * *

(s) "State" includes the several States, Puerto Ricoe, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

PART 204—COINSURANCE

11. In § 204.251, paragraph (p) is revised to read as follows:

§ 204.251 Definitions.

* * * * *

(p) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

PART 205—MORTGAGE INSURANCE FOR LAND DEVELOPMENT [TITLE X]

12. In § 205.1, paragraph (p) is removed, and paragraph (m) is revised to read as follows:

§ 205.1 Definitions.

* * * * *

(m) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

13. In § 207.20, the introductory text of paragraph (a) is revised to read as follows:

§ 207.20 Occupancy requirements.

(a) *Nondiscrimination against families with children.* Except in the case of a mortgage with respect to a manufactured home park designed exclusively for occupancy by elderly persons, the mortgagor shall certify under oath to the Commissioner that:

* * * * *

PART 220—URBAN RENEWAL MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS

14. In § 220.103, paragraph (a) is revised to read as follows:

§ 220.103 Type and location of property.

* * * * *

9(a) Constitute real property located within the United States, Puerto Rico, Guam, the Trust Territory of the Pacific Islands, American Samoa, or the Virgin Islands.

* * * * *

15. In § 220.507, the introductory text of paragraph (d)(2) and (d)(2)(ii) are revised to read as follows:

§ 220.507 Maximum mortgage amounts.

* * * * *

(d) * * *

(2) *Property subject to existing mortgage.* If the mortgagor owns the project subject to an outstanding indebtedness that is to be refinanced with part of the insured mortgage, the maximum mortgage amount shall not exceed 90 percent of:

(i) * * *

(ii) The Commissioner's estimate of the value of the property before repair or rehabilitation; or

* * * * *

§ 220.508 [Amended]

16. In § 220.508, paragraph (d) is removed and reserved.

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

17. In § 221.255, paragraph (a) is revised to read as follows:

§ 221.255 Assignment option.

(a) A mortgagee holding a mortgage insured pursuant to a conditional or firm commitment issued on or before November 30, 1983 has the option to assign, transfer and deliver to the Commissioner the original credit instrument and the mortgage securing it, provided the mortgage is not in default at the expiration of 20 years from the date of final endorsement of the credit instrument. In processing a mortgagee's claim for insurance benefits under this section, the Commissioner may direct the mortgagee to assign, transfer and deliver the original credit instrument, and the mortgage securing it, directly to the Government National Mortgage Association (GNMA). Upon such assignment, transfer and delivery, either to the Commissioner or to GNMA, as directed, the mortgage insurance contract shall terminate and the mortgagee shall be entitled to receive insurance benefits in accordance with this section.

* * * * *

18. In § 221.514, the introductory text of paragraph (a) and the introductory text of paragraph (a)(3) are revised as follows:

§ 221.514 Maximum mortgage amounts.

(a) The mortgage shall involve a principal obligation not in excess of the lesser of the following:

* * * * *

(3) *Repair or rehabilitation (including projects to be refinanced).*

* * * * *

§ 221.515 [Reserved]

19. Section 221.515 is removed and reserved.

20. Section 221.556 is revised to read as follows:

§ 221.556 Reduction in mortgage amount—rehabilitation.

(a) In the event the mortgage is to finance repair or rehabilitation, the mortgagor's actual cost of such repair or rehabilitation may include the items of expense permitted for new construction in accordance with § 221.550, and the applicable cost certification procedure described therein will be required.

(b) If the principal obligation of the mortgage exceeds in the case of:

(1) General or limited distribution mortgagors, 90 percent;

(2) All other mortgagors, when the mortgage is to be insured under section 221(d)(4), 90 percent; or

(3) All other mortgagors, when the mortgage is to be insured under section 221(d)(3), 100 percent.

of the actual cost of the repair or rehabilitation plus the Commissioner's estimate of the fair market value of the land and existing improvements, the mortgage shall be reduced by the amount of such excess before final endorsement for insurance.

(c) *Nonapplicability to rehabilitation sales mortgagors.* The provisions of paragraphs (a) and (b) of this section shall not be applicable to a project involving a rehabilitation sales mortgagor.

21. § 221.770 is revised to read as follows:

§ 221.770 Assignment option.

A mortgagee holding a mortgage insured pursuant to a conditional or firm commitment issued on or before November 30, 1983 (or, in the Direct Endorsement program described in 24 CFR 200.163, a property appraisal report signed by the mortgagee's approved underwriter on or before November 30, 1983) has the option to assign, transfer and deliver to the Commissioner the original credit instrument and the mortgage securing it, provided that the mortgage is not in default at the expiration of 20 years from the date of final endorsement of the credit instrument. In processing a mortgagee's claim for insurance benefits under this section, the Commissioner may direct the mortgagee to assign, transfer and deliver the original credit instrument, and the mortgage securing it, directly to the Government National Mortgage Association (GNMA). Upon such assignment, transfer and delivery either to the Commissioner or to GNMA, as directed, the mortgage insurance contract shall terminate and the mortgagee shall be entitled to receive insurance benefits in accordance with § 221.780.

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

22. In § 232.1, paragraph (h) is revised to read as follows:

§ 232.1 Definitions.

* * * * *

(h) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

* * * * *

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

23. In § 234.505, paragraph (i) is revised to read as follows:

§ 234.505 Definitions.

* * * * *

(i) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

24. In § 242.1, paragraph (g) is revised to read as follows:

§ 242.1 Definitions.

* * * * *

(g) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

PART 244—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES (TITLE XI)

25. In § 244.1, paragraph (g) is revised to read as follows:

§ 244.1 Definitions.

* * * * *

(g) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

PART 250—COINSURANCE FOR STATE HOUSING FINANCE AGENCIES

26. In § 250.101, paragraph (h) is revised to read as follows:

§ 250.101 Definitions.

* * * * *

(h) *"State Housing Agency (Agency)"*—Any public body, agency, or instrumentality created by a specific act of a State legislature and empowered to finance activities designed to provide housing and related facilities, through land acquisition, construction or rehabilitation, for persons and families of low and moderate income. The term "State" shall include the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

* * * * *

Authority: National Housing Act, Secs. 9, 201, 203, 207, 220, 221; 12 U.S.C. 1706d, 1707, 1709, 1713, 1715k, 1715*l*; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 23, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84-8421 Filed 3-29-84; 8:45 am]

BILLING CODE 4210-27-M

Office of Assistant Secretary for Public and Indian Housing

24 CFR Part 941

[Docket No. R-84-1063; FR-1665]

Public Housing Development; Approval of Projects With Dwelling Construction and Equipment Costs in Excess of Prototype Cost Limits

AGENCY: Office of Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations governing public housing development to require approval by the Assistant Secretary for Public and Indian Housing for any public housing project dwelling construction and equipment costs that will exceed 100 percent of the appropriate prototype cost limits for the area. The existing regulations permit the HUD Field Office to approve such projects.

EFFECTIVE DATE: May 10, 1984.

FOR FURTHER INFORMATION CONTACT: Raymond W. Hamilton, Director, Public Housing Development Division, Office of Public Housing, Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development, Washington, D.C. 20410, (202) 426-0938. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: This final rule amends (1) § 941.204(e) to require approval by the Assistant Secretary for Public and Indian Housing for all projects proposed to have dwelling construction and equipment costs (DC&E) in excess of 100 percent of the applicable project prototype cost limit published under Part 941; (2) deletes the list of factors specified in current regulations which may justify approval by Field Offices of requests to exceed prototype cost limits; and (3) conforms the regulations to the current HUD policy stated in a HUD Headquarter's memorandum to Field Offices dated October 22, 1981 and is applicable to all projects, whether funded before or after October 1, 1980. The current HUD policy permits the Deputy Assistant Secretary for Public and Indian Housing to approve DC&E costs for projects up to 110 percent of the prototype cost limits. Requests for

approval under this rule must be supported by a justification describing the circumstances involved for the particular project and demonstrating that approval is needed. Appropriate changes will be made to HUD Handbook 7417.1 and 7417.1 REV–1 after this rule becomes effective.

At present, HUD Field Offices are authorized under 24 CFR 941.204(e), which became effective on October 1, 1980, to approve any project which has DC&E costs up to 110 percent of the appropriate project prototype cost limit, but only under specified circumstances. Before October 1, 1980, Field Offices had the authority to approve projects with DC&E costs up to 105 percent of the project prototype cost limit and Regional Administrators could approve projects with costs up to 110 percent (24 CFR 841.115(b)(2); 42 FR 5883, January 31, 1977).

On June 24, 1983, the Department published a proposed rule in the **Federal Register** (48 FR 29003) to amend Field Offices' authority to approve public housing projects with DC&E in excess of 100 percent of the appropriate area prototype cost limits. Interested parties were invited to submit comments until August 23, 1983. Comments were received from six entities, including four public housing agencies, one housing commission, and one community development commission. The comments are summarized, together with HUD's response to them in the "Discussion of Comments" section which follows.

In a separate rulemaking (48 FR 55452, December 13, 1983), the Department moved all regulations affecting the programs administered by the Assistant Secretary for Public and Indian Housing to 24 CFR Chapter IX. This rule, originally proposed as an amendment to Part 841 (Chapter VIII of Title 24 of the Code of Federal Regulations) is now an amendment to Part 941—the redesignated location of regulations affecting Public Housing Development.

Discussion of Comments

The following is a summary of the concerns raised by the public and an explanation of the Department's position with respect to each.

1. Some commenters opposed the proposed rule on the ground that the staff in HUD Headquarters lacks sufficient knowledge of local conditions, including building material and labor costs and urged instead that the cost containment provisions in the current regulations and HUD handbooks relating to public housing development be used. Another commenter suggested that a lesser quality housing would result from the rule, and requirements of the Total Development Cost (TDC) cap and the February 23, 1982 policy memorandum on excessive amenities were adequate to contain costs. The Department considered these points in drafting the proposed rule, but concluded that quality projects could be built within the established prototype costs, which are based on the costs of material, labor, and equipment for the housing construction industry in a geographic area. It should be noted that it is the policy of the Department to contain costs to the maximum extent practicable. The Department found that project costs were not being contained satisfactorily under the existing handbooks and regulations. The TDC cap, the policies on excessive amenities and this rule, together, are intended to ensure that costs are contained. This rule recognizes that certain unique circumstances may warrant authorization to exceed 100 percent of project prototype cost limits, and provision has been made for consideration of such requests.

2. One commenter indicated that the rule would result in additional approval processing and cause an unnecessary hardship in the production of public housing units. It was suggested that the prototype cost limits are not realistic for the time period at which they appear in the **Federal Register**, and the subsequent time lag has only served to increase the difference between HUD prototype and mounting construction costs. In addition, it was stated that adequate provision has not been made for a realistic projection of construction costs at a time when inflationary trends have produced a critical condition in all phases of the construction industry.

It should be noted that HUD publishes the unit prototype cost schedules at least annually, and that the schedules may be revised based on public comments or other evidence that construction costs exceed the limits determined by HUD.

The Department believes that this rule will not result in additional or costly delays or inaccurate decisions, because the determinations will be made based on supportive justification from the Field. Furthermore, the Department finds that past inflationary trends are not being sustained and, for a number of areas, prototype cost limits have been reduced as a reflection of locally reduced construction costs.

3. One commenter expressed an opinion that public housing funds should be provided directly to public housing agencies and that their performance in the production of units should then be monitored by HUD, using a set of performance standards. The Department has considered several approaches to providing public housing funds directly to the public housing agencies; however, no final determinations have been made. The Department believes that it has a responsibility to ensure that funds provided by the Congress are used to assist the greatest number of eligible families possible.

Other Matters

This rule does not constitute a "major rule," as that term is defined in Section 1(b) of Executive Order 12291 issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10278, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410.

Under the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule may have some economic impact on builders or developers of public housing, some of whom may constitute small entities, but it is believed that neither the number of small entities affected, nor the degree of economic impact, will be substantial.

This rule is listed at 48 FR 47442 as item H–103–82 in the Department's Semiannual Agenda of Regulations, published on October 17, 1983, under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number and title is 14.146, Low-Income Housing-Assistance Program (Public Housing).

List of Subjects in 24 CFR Part 941

Loans programs, Housing and Community Development, Public Housing, Prototype costs, Cooperation Agreement, Turnkey.

The information collection requirements contained in 24 CFR 941.204(e) have been approved by the Office of Management and Budget (OMB). The approval OMB number is 2502–0153.

PART 941—[AMENDED]

Accordingly, the Department amends 24 CFR Part 941 by revising paragraph (e) of § 941.204 to read as follows:

§ 941.204 Prototype costs.

* * * * *

(e) *Project Prototype Cost Limit.* (1) The Field Office shall determine the project prototype cost limit by multiplying the base project prototype cost by the prototype cost adjustment factor. The amount approvable by the Field Office for dwelling construction and equipment may not exceed the project prototype cost limit. The limit may be exceeded (in accordance with Section 6(b) of the Act) by up to ten percent, with the approval of the Assistant Secretary for Public and Indian Housing. (Approval by the Assistant Secretary to exceed 100 percent prototype costs is also required for projects being processed under a Program Reservation issued before October 1, 1980.) (2) A request for approval to exceed 100 percent of the project prototype cost limit shall be supported by a justification describing the circumstances involved for the particular project and demonstrating that such approval is needed.

(Approved by the Office of Management and Budget under OMB Control Number 2502–0153)

Authority: (Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d); Section 6, U.S. Housing Act of 1937, 42 U.S.C. 1437(d)).

Dated: March 20, 1984.

James E. Baugh,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 84–8553 Filed 3–29–84; 8:45 am]

BILLING CODE 4210–33–M

NEIGHBORHOOD REINVESTMENT CORPORATION

24 CFR Parts 4100, 4101, 4102, 4103 and 4104

Central and Field Organization

AGENCY: Neighborhood Reinvestment Corporation.

ACTION: Final rule.

SUMMARY: This final rule replaces the earlier description of the central and field organization of Neighborhood Reinvestment, statements of the general course and method by which the functions of Neighborhood Reinvestment are channeled and determined, and public information regarding meetings of the board of directors. The purpose of this document is to simplify and update the current description and statements of organization.

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: Timothy S. McCarthy, Associate Director for Communications, 202–653–2705.

SUPPLEMENTARY INFORMATION:

List of Subjects

24 CFR Part 4100

Organization and functions (Government agencies).

24 CFR Part 4101

Community development, Grant programs—housing and community development, Housing.

24 CFR Part 4102

Sunshine Act.

24 CFR Part 4103

Freedom of information.

24 CFR Part 4104

Civil rights.

Carol J. McCabe,

Secretary/General Counsel.

24 CFR Parts 4101, 4102, 4103, and 4104 are removed, and 24 CFR Parts 4100 is revised to read as follows:

PART 4100—ORGANIZATION AND CHANNELING OF FUNCTIONS

Sec.

Authority: Title VI, Pub. L. 95–557, 92 Stat. 2115 (42 U.S.C. 8101 et seq.); as amended by Sec. 315, Pub. L. 96–399, 94 Stat. 1645; and Sec. 710, Pub. L. 97–320, 96 Stat. 1544.

§ 4100.1 Functions and activities.

(a) *General statement.* The Neighborhood Reinvestment Corporation (referred to in this Part as "the Corporation") was established by Congress in the Neighborhood Reinvestment Corporation Act (Title VI of the Housing and Community Development Amendments of 1978, Pub. L. 95–557, October 31, 1978). The Corporation is not a department, agency, or instrumentality of the Federal Government.

(b) The Corporation is authorized to receive and expend Federal appropriations and other public and private revenues to conduct a variety of programs designed to reverse decline in residential neighborhoods. These programs include:

(1) *Neighborhood Housing Services.* The major effort of the Corporation is to assist local communities in the development, expansion and provision of technical services to local Neighborhood Housing Services (NHS) programs. NHS programs are based upon partnerships of community residents, and representatives of local governments and financial institutions. Each local program is administered by an autonomous, private, non-profit corporation, and conducts a comprehensive revitalization effort in locally selected neighborhoods. Services to neighborhood residents include rehabilitation counseling, construction assistance, financial counseling, loan referrals and loans at flexible rates and terms to homeowners who do not meet private lending criteria. Programs and strategies to remove blighting influences, obtain improved public services and amenities, and improve the neighborhood's image and the functioning of its real estate market are also undertaken. To insure the continuing effectiveness of NHS programs, the Corporation provides grants, training, information and technical services to NHS programs.

(2) *Neighborhood Preservation Projects; Neighborhood Program Development:* The Corporation identifies, monitors, evaluates and supports through demonstration grants and technical assistance other promising neighborhood preservation strategies based on local, public-private partnerships. Those which show particular promise after the monitoring and evaluation stage are developed and replicated as complementary programs and stategies to treat specific problems in other neighborhoods.

(3) *Neighborhood Housing Services of America:* The Corporation also supports Neighborhood Housing Services of America (NHSA), an independent, private, non-profit corporation which provides a variety of services to local NHS programs, including a secondary market for NHS revolving loan fund loans, and the strengthening of private sector resources available to the network of local NHSs.

§ 4100.2 General organization.

(a) *The Board of Directors.* (1) The Corporation is under the direction of a Board of Directors composed of six members: the Chairman of the Federal Home Loan Board; the Secretary of Housing and Urban Development; a Member of the Federal Reserve Board designated by its Chairman; the Chairman of the Federal Deposit Insurance Corporation; the Comptroller of the Currency;' and the Chairman of the National Credit Union Administration. Members of the Board serve *ex officio* during their tenure in the offices mentioned without additional compensation. The Board elects from among its members a Chairman and Vice-Chairman. The Bylaws of the Corporation provide for the creation of an Audit Committee, and such other committees as the Board may from time to time establish.

(2) The Board holds an Annual Meeting each year during the month of May (or as the Bylaws or the Board may specify). The Board also holds regular meetings at least quarterly and special meetings as required. The meetings of the Board are conducted in accordance with provisions of the Neighborhood Reinvestment Corporation Act, the Government in the Sunshine Act (5 U.S.C. 552b), the Corporation's Bylaws, and when not inconsistent with the foregoing, with Robert's Rules of Order. Every portion of every meeting of the Board is open to public observation except as provided by the Government in the Sunshine Act. Interested members of the public may attend such meetings, but may not participate therein unless invited or permitted to do so by the Board.

(3) The Secretary of the Corporation, in consultation with the Corporation's General Counsel, is responsible for taking such steps as are required to ensure the Corporation's compliance with the Government in the Sunshine Act, as that Act may be amended from time to time. Consistent with this responsibility, the Secretary of the Corporation provides to the Communications Department at the principal office of the Corporation such records as the Act requires to be made available to the public for access during regular office hours on regular business days.

(b) *The Officers.* (1) The officers of the Corporation are the Executive Director, the Deputy Executive Director, the Secretary, the Treasurer, and such other officer positions as the Board may, in consultation with the Executive Director, create. The Board elects the officers of the Corporation annually.

(2) The Neighborhood Reinvestment Corporation Act provides that the Executive Director shall serve as the chief executive officer of the Corporation. Consistent with that authority, the Corporation's Bylaws provide that the Executive Director shall have the responsibility and authority for the day-to-day administration of the affairs of the Corporation under the general supervision of the Board. The Board periodically reviews the activities of the Executive Director and, from time to time, provides guidance and policy direction to the Executive Director in the exercise of his or her authority.

(3) The responsibilities and authorities of the other officers of the Corporation are set forth in the Corporation's Bylaws, resolutions and policies adopted by the Board, duties and authorities delegated to each officer, other statutes and this statement. (See, for example, the Government in the Sunshine Act and paragraph (a)(3) of this section for specific duties of the Secretary and General Counsel.)

(c) *Principal Office.* The Corporation maintains its principal office in the District of Columbia. Currently, the principal office is maintained at 1850 K Street NW., Suite 400, Washington, DC 20006.

§ 4100.3 Field activities.

The Corporation conducts its field activities from regional and field offices around the country. Regional offices provide coordination of field activities in support of local programs within the geographic limits of each region. Field offices within each region provide assistance in the development and support of local programs. A current directory of all regional and field offices can be obtained upon request from the Communications Department, Neighborhood Reinvestment Corporation, 1850 K Street NW., Suite 400, Washington, DC 20006.

§ 4100.4 Inquiries.

(a) *General.* All requests for information, forms, and records should be addressed to: Communications Department, Neighborhood Reinvestment Corporation, 1850 K Street NW., Suite 400, Washington, DC 20006.

(b) *Applications.* Applications for the Corporation's assistance in the development of NHS programs and complementary programs and strategies, or the support of other promising neighborhood strategies are accepted on an ongoing basis. Local governmental or nonprofit entities should submit completed applications (forms are available upon request), including supportive materials, to the Corporation at the address stated in paragraph (a) of this section. The Corporation reviews applications to determine their readiness for development or support. Promising applications are selected for field reviews. Subject to the availability of the Corporation's resources, the Corporation may enter into agreements with top ranking applicants to provide financial and technical assistance in the development or support of selected programs. The application form contains a list of the criteria used for determining the readiness and promise of applications.

(c) *Records.* (1) The Corporation maintains such records and information for public inspection and copying as are required by the Freedom of Information Act (5 U.S.C. 552), as that Act may be amended from time to time. Records are available for public inspection and copying during regular business hours on regular business days at the address stated in paragraph (a) of this section. Requests for records should be submitted in writing and state the full name and address of the person requesting the records and a description of the records or other information sought that is reasonably sufficient to permit their identification without undue difficulty. A request should be submitted sufficiently in advance of the date inspection or copying is desired, preferably by mail. Requests for information which can be produced only by processing through an information system program especially designed for that purpose are not regarded as requests for records that must be disclosed pursuant to the Freedom of Information Act.

(2) Although the Corporation finds that the publication of indexes of statements of policy and interpretations or administrative staff manuals and instructions would be unnecessary and impracticable, such information will be made available upon request.

(d) *Fees for providing copies of records.* (1) A person requesting access to or copies of particular records shall pay the cost of searching or copying such record at the rate of $10 per hour for searching and 10 cents per page for copying. Records may be furnished without charge or at a reduced charge where the Executive Director determines that waiver or reduction of fees is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Unless the person making the request states in his or her initial request that he or she will pay all costs regardless of amount, the Corporation will notify him or her as

soon as possible if there is reason to believe that the cost for obtaining access to and/or copies of such records will exceed $50. If such notice is given, the time limitations contained in the Freedom of Information Act shall not commence until the person making the initial request agrees in writing to pay such cost. The Associate Director of Communications is authorized to require an advance deposit whenever in his or her judgment such a deposit is necessary to insure that the Corporation will receive adequate reimbursement of its costs. If such a deposit is required, the time limitations contained in the Freedom of Information Act shall not commence until the deposit is paid.

(2) The Associate Director for Communications is authorized to waive payment in instances in which total charges are less than three dollars.

[FR Doc. 84-8541 Filed 3-29-84; 8:45 am]

BILLING CODE 0000-00-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 2, 5, and 33

Procedures and Practice, and Indian Education

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule; technical amendments.

SUMMARY: This document makes technical changes to the regulations regarding Procedures and Practice, and Indian education. The reason for the changes is to correct certain references to regulations of the Secretary of the Interior and the Office of Personnel Management.

EFFECTIVE DATE: March 30, 1984.

FOR FURTHER INFORMATION CONTACT: Sam Adams, Acting Chief, Division of Management Research and Evaluation, Bureau of Indian Affairs, 1951 Constitution Avenue NW., Washington, D.C. 20245, telephone number (202) 343-7684.

SUPPLEMENTARY INFORMATION: The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9). This final rule is published in exercise of rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The Bureau of Indian Affairs is publishing a final rule document that corrects references in various parts of 25 CFR Chapter I and corrects one paragraph designation. The corrections became necessary because previous references cited were changed and the paragraph designation is numbered incorrectly.

Since this document contains only administrative changes, advance notice and public comment would have no impact on the nature of the rule and they are hereby dispensed with in accordance with section (b)(B) of 5 U.S.C. 553 (1970). For the same reason, the 30-day deferred effective date is dispensed with under the exception provided in subsection (d)(3) of 5 U.S.C. 553 (1970). Accordingly, these amendments will become effective upon the date of publication of this document in the **Federal Register.**

This document does not impact upon any of the requirements of Executive Order 12291 and the Regulatory Flexibility Act since it is only administrative in content.

The List of Subjects normally required in rulemaking documents is not included in this document since the amendments contained herein are only administrative.

PART 2—[AMENDED]

References in various Parts of Chapter I of 25 CFR are hereby amended as follows:

§ 2.19 [Amended]

1. In paragraph (c)(2) of § 2.19, Action by Commissioner on appeal, the reference to 43 CFR 4.354 and 4.355 is removed and the reference 43 CFR 4.310 is added. The footnote to §§ 4.354 and 4.355 is removed.

PART 5—[AMENDED]

§ 5.2 [Amended]

2. In paragraph (b) of §5.2, Appointment actions, the reference to 5 CFR 213.3112(a)(7) is removed and the reference Exception Number 213.3112(a)(7) is added. The footnote to Section 213.3112(a)(7) of title 5 is removed.

PART 33—[AMENDED]

§ 33.7 [Amended]

3. In § 33.7, Implementing procedures, paragraph (b)(3) is hereby redesignated as paragraph (b)(2).

John W. Fritz,

Deputy Assistant Secretary—Indian Affairs (Operations).

[FR Doc. 84-8677 Filed 3-29-84; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 601

Statement of Procedural Rules; Miscellaneous Amendments

AGENCY: Internal Revenue Service; Treasury.

ACTION: Correction.

SUMMARY: This document contains a correction to the **Federal Register** publication beginning at 48 FR 15623 which set forth miscellaneous amendments to the statement of procedural rules, Part 601 of Title 26 of the Code of Federal Regulations.

EFFECTIVE DATE: The amendments that are subject of this correction were effective April 12, 1983. The correction is effective on the same date.

FOR FURTHER INFORMATION CONTACT: Michel A. Dazé of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attn: CC:LR:T. Telephone 202-566-3458 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On April 12, 1983, the **Federal Register** published miscellaneous amendments to the statement of procedural rules (48 FR 15623). The amendments were issued under the authority contained in 5 U.S.C. 301 and 552.

Need for a correction

Subparagraph 1 of paragraph 4 of the miscellaneous amendments revised paragraph (d)(5) of § 601.702. However, the revised text of paragraph (d)(5) incorrectly omitted the final sentence of that revised paragraph.

Correction of Publication

§ 601.702 Publication and public inspection.

Accordingly, the publication of the miscellaneous amendments to the statement of procedural rules that was the subject of FR Doc. 83-9620 is corrected by adding to the end of the revised text of paragraph (d)(5) of § 601.702 the sentence, "Information will not be disclosed, however, concerning any trade secrets, processes, operations, style of work, or apparatus, or

confidential data or any other matter within the prohibition of 18 U.S.C. 1905."

George H. Jelly,

Director, Legislation and Regulations Division.

[FR Doc. 84-8563 Filed 3-29-84; 8:45 am]

BILLING CODE 4830-01-M

Office of the Secretary

41 CFR Part 10-60

48 CFR Part 1033

Disputes and Appeals

AGENCY: Office of the Secretary, Treasury.

ACTION: Final rule.

SUMMARY: This rule explains the process for handling disputes and appeals arising between the Department of the Treasury and contractors as the result of changes made by the Federal Acquisition Regulations. This is in an effort to consolidate the acquisition regulations into a single Title and a single body of regulations.

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: Thomas P. O' Malley or Susan M. Hubbard, Office of Procurement, 1500 Pennsylvania Ave., NW., Washington, D.C. 20220, telephone (202) 566-2586.

SUPPLEMENTARY INFORMATION: This document changes, without substantive modification, the citations of the text previously codified at 41 CFR 10-60.100 through 10-60.204 to 48 CFR 1033.070 through 1033.075.

Background

The Federal Acquisition Regulations System is established for the codification and publication of uniform policies and procedures for acquisition by all executive agencies. The development of this System is in accordance with the requirements of the Office of Federal Procurement Policy Act of 1974 (P.L. 93-400), as amended by Pub. L. 96-83.

Under Federal Acquisition Regulation 1.301 and 1.303 which become effective April 1, 1984, each agency is to codify under the assigned chapter in Title 48, Code of Federal Regulations, any agency acquisition regulation that controls the relationship between the agency and contractors or prospective contractors. This is in an effort to consolidate the acquisition regulations into a single Title and a single body of regulations.

As explained herein, this rule merely recodifies material currently at 41 CFR Part 10-60 into 48 CFR Part 1033. The former citation refers to the rules of the General Services Administration's Board of Contract Appeals (GSBCA) pertaining to disputes and appeals published at 41 CFR Part 5-60; the new citation refers to such rules of the GSBCA now pending publication at 48 CFR Part 533. Although minor technical and stylistic changes have been made to the Treasury rule, no substantive modifications have been made. For these reasons, the Department of the Treasury has determined that notice and public procedures and a delayed effective date, normally required by 5 U.S.C. 553(b) and (d), respectively, are unnecessary with respect to this rule.

Executive Order 12291

In accordance with the memorandum from David Stockman, Director, Office of Management and Budget, to Donald Sowle, Administrator, Office of Federal Procurement Policy, and Christopher DeMuth, Administrator, Information and Regulatory Affairs, dated October 4, 1982, this rule is exempt from the provisions of Executive Order 12291.

Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have a significant economic impact on a substantial number of small entities. Since this rule reformats existing procurement policies to comply with the FAR structure and does not promulgate any new procurement policies which would impact the public, the Department of the Treasury certifies that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis has been prepared.

List of Subjects in 48 CFR Part 1033

Department of the Treasury Acquisition/Procurement Regulations, Disputes and appeals, Government procurement.

The revisions are as follows:

PART 10-60—PROCEDURES FOR SETTLING CONTRACT DISPUTE APPEALS

1. Part 10-60 of Title 41, Code of Federal Regulations is removed.

2. Part 1033 of Title 48, Code of Federal Regulations is amended by establishing Chapter 10, consisting of Part 1033 to read as set forth below:

Chapter 10—Department of the Treasury Acquisition/Procurement Regulation

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1033—DISPUTES AND APPEALS

Sec.

Authority: Office of Federal Procurement Policy Act of 1974, Pub. L. 93-400, as amended (41 U.S.C. 401 note) and Pub. L. 95-563 (41 U.S.C. 601-613).

§ 1033.070 Treasury contract appeals to be heard by General Services Administration Board of Contract Appeals.

The General Services Administration Board of Contract Appeals (herein called the Board) is the designated and authorized representative of the Secretary of the Treasury in hearing, considering, and determining, as fully and finally as would the Secretary, all appeals of decisions of contracting officers filed by contractors on disputed questions taken pursuant to the provisions of contracts (other than contracts of the Comptroller of the Currency) when such appeals require the determination by the Secretary or a duly authorized representative. (Formally 41 CFR 10-60.100.)

1033.071 Rules regarding contract dispute appeals.

The rules and regulations pertaining to the appeals of General Services Administration contract disputes prescribed in or pursuant to Part 533 of this title and this part shall govern the appeal of all contract disputes with the Department of the Treasury, or with any bureau (other than the Comptroller of the Currency) or other organization in the Department of the Treasury, except for the rules entitled "Notice of appeal", "Request, preparation and submission," "Payment of claims", now contained in Part 533 of this title. Wherever the rules of the GSA Board in Part 533 of this title refer to the General Services Administration (or GSA) or the Administrator or the General Counsel, GSA, there shall be substituted the terms Department of the Treasury, the Secretary or the General Counsel,

Department of the Treasury, respectively. (Formerly 41 CFR 10–60.200.)

1033.072 Notice of appeal.

1033.072–1 Filing.

A notice of appeal must be in writing, and shall be filed with the office of the contracting officer from whose decision the appeal is taken. The notice of appeal must be mailed or otherwise filed with the contracting officer within the time specified therefor in the contract, or as allowed in applicable provisions of regulation or law. (Formerly 41 CFR 10–60.201–1.)

1033.072–2 Forwarding of appeals.

When a notice of appeal in any form has been received by the contracting officer, he or she shall endorse thereon the date of mailing and the date of receipt (or the date of receipt only, if otherwise conveyed) and within 20 days shall forward said notice of appeal, together with the envelope in which same was enclosed, to the Board with a copy to the General Counsel, Department of the Treasury, Washington, DC 20220. Following receipt by the Board of the original notice of appeal (whether through the contracting officer or otherwise), the contractor, the contracting officer, and the General Counsel, Department of the Treasury, will be advised promptly thereof, and the contractor will be furnished a copy of the Board's rules. (Formerly 41 CFR 10–60.201–2.)

1033.073 Appeal file.

Following receipt of a notice of appeal, the contracting officer shall promptly, and in any event within 30 days, compile and transmit to the General Counsel, Department of the Treasury, two (2) copies of the appeal file as prescribed in Part 533 of this title. The General Counsel will submit the appeal file to the Board as promptly as possible after receipt of the Board's request therefor, and in any event so as to reach the Board within 45 days after such receipt. (Formerly 41 CFR 10–60.202.)

1033.074 Treasury representation before the General Services Administration Board of Contract Appeals.

The General Counsel of the Department of the Treasury will assure representation of the interests of the Government in proceedings before the General Services Administration Board of Contract Appeals. All officers and employees of the Department of the Treasury will appear and give testimony as required and will cooperate with the General Services Administration Board of Contract Appeals and Government counsel in the processing of appeals so as to assure their speedy and just determination. (Formerly 41 CFR 10–60.203.)

1033.075 Effective date.

The regulations in 1033.070–1033.075 are effective on April 1, 1984. The regulations in this part shall apply to all cases now pending or in which appeal from the contracting officer's decision is taken on or after the effective date. (Formerly 41 CFR 10–60.204.)

David E. Pickford,

Acting Assistant Secretary (Administration).

[FR Doc. 84–8485 Filed 3–29–84; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4100

Grazing Administration, Exclusive of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule correction.

SUMMARY: A final rulemaking amending the regulations in Part 4100 of Title 43 of the Code of Federal Regulations regarding grazing on public lands was published in the **Federal Register** on February 21, 1984 (49 FR 6440). The publication contained a number of errors which are corrected by this notice.

ADDRESS: Any inquiries or suggestions should be sent to: Director (220), Bureau of Land Management, 1800 C Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Alexander (202) 653–9210; or Mr. Richard Miller (202) 343–8735.

SUPPLEMENTARY INFORMATION: The corrections are as follows:

1. On page 6449, right column, § 4100.0–2, item 2, is corrected by removing the semicolon following the words "public lands" and replacing it with a comma, and by removing the semicolon following the words "public range" and replacing it with a comma.

2. On page 6449, right column, § 4100.0–3(d) item 3.c, is corrected by inserting a closing parenthesis following the citation "118(d)" where it appears, and correcting item d. by removing the period at the end of the first sentence in paragraph (e) and replacing it with a semicolon followed by the word "and".

3. On page 6450, left column, § 4110.0–5, item f, is corrected by removing it. As discussed in the preamble, item f was replaced in final rulemaking by a new definition of "consultation, cooperation and coordination," found at item h. The proposed revision was inadvertently retained in the final rulemaking.

4. On page 6450, center column, § 4100.0–5, is corrected by inserting the word "and" following the word "shelf" where it appears.

5. On page 6450, right column, § 4110.3–1(c), item 11.b., is corrected by removing the citation "§ 4110.5" where it appears and replacing it with the citation "§ 4130.1–2".

6. On page 6451, center column, § 4110.4–2(b), is corrected in line 6 by removing the comma and inserting a parenthesis preceding the word "national" where it first appears and closing the parenthesis following the word "etc.", and the word "waver" in line 13 is corrected to read "waiver".

7. On page 6452, center column, § 4120.3–3(b), is corrected by removing the word "improvement" where it first appears and replacing it with the word "improvements".

8. On page 6452, center column, § 4120.3–3(c), is corrected by removing the words "or wells" where they first appear.

9. On page 6452, center column, § 4120.3–6(b), is corrected by inserting the word "or" following the word "objectives" where it appears.

10. On page 6453, left column, § 4130.1–1(a), is corrected by removing the word "affecting" where it appears in the first sentence and replacing it with the word "affected" and removing the word "required", where it appears in the second sentence and replacing it with the word "require".

11. On page 6453, left column, § 4130.1–2(c), is corrected by removing the word "applicants," and replacing it with the word "applicant's".

12. On page 6453, left column, § 4130.2(a), is corrected by removing the semicolon following the word "title" and replacing it with a period.

13. On page 6453, center column, § 4130.5(b), is corrected by removing the word "and" following the word "bulls", inserting a period following the word "sanitation" and removing the semicolon and the word "and" and replacing it with a period.

14. On page 6453, right column, § 4130.6–2, is corrected by placing the following paragraphs immediately following paragraph (d):

"(e) The kinds of indigenous animals authorized to graze under specific terms and conditions;

"(f) Provision for livestock grazing to be temporarily delayed, discontinued or modified to allow for the reproduction,

establishment, or restoration of vigor to plants, or to prevent compaction of wet soils, such as where delay of spring turnout is required because of weather conditions or lack of plant growth; and

"(g) The percentage of public land use determined by the proportion of livestock forage available on public lands within the allotment compared to the total amount available from both public lands and those owned or controlled by the permittee or lessee."

15. Beginning on page 6453, right column, § 4130.6–3 (e), (f), and (g) are removed in their entirety.

16. On page 6454, left column, § 4130.7–2(b) is corrected by removing the word "amount" where it appears and replacing it with the word "among".

17. On page 6454, center column, § 4130.7–3, is corrected by adding a closing parenthesis to the citation "(43 U.S.C. 1734(a)".

18. On page 6454, right column, § 4150.4–2, is corrected by inserting the word "or" before the figure "§ 4150.4–1(c)" where it appears.

19. On page 6455, left column, § 4160.3(c), is amended by placing a period after the word "appeal" in the third sentence and deleting the remainder of the sentence. As presently written, the final words of this sentence refer to paragraphs 4160.3 (d) and (e) which are deleted by the final rulemaking at page 6455, center column, item 45 c.

20. On page 6454, right column, § 4160.1–1 inserted a new second sentence that should have replaced the second sentence of the existing regulation. The second sentence of section 4160.1–1 is removed because it is inconsistent with the new sentence.

21. On page 6455, center column, item 46, is corrected by inserting the words "or lessee" following the word "permittee".

Dated: March 27, 1984.

Leona A. Power,

Acting Assistant Secretary of the Interior.

[FR Doc. 84–8531 Filed 3–29–84; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 97

Restrictions on Amateur Service Use of the 1900–2000 kHz Band Imposed Due to LORAN–A Operations.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission amends Parts 2 and 97 of its Rules to remove restrictions on Amateur Service use of the 1900–2000 kHz band which were imposed due to LORAN–A radiolocation operations. This action eliminates provisions now obsolete because of discontinued LORAN–A operations.

EFFECTIVE DATE: March 27, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Thomas, Office of Science and Technology, 2025 M Street, NW., Washington, D.C. 20554, (202) 653–8171.

List of Subjects

47 CFR Part 2

Frequency allocations.

47 CFR Part 97

Radio.

Order

In the Matter of Amendment of Parts 2 and 97 to remove restrictions on Amateur Service use of the 1900–2000 kHz band due to LORAN–A operations.

Adopted: March 22, 1984.

Released: March 27, 1984.

By the Commission.

1. In General Docket 80–739, Implementation of the 1979 World Administrative Radio Conference (FCC 83–511, 49 FR 2357), footnote NG15 to the Table of Frequency Allocations contained in Section 2.106 was modified to provide continued protection from harmful interference to Canadian LORAN–A radiolocation operations in the 1900–2000 kHz band until January 1, 1984. There is no reason to continue protection to the Canadian LORAN–A radiolocation operations, as they were discontinued on December 31, 1983. Therefore, this Order modifies the Table of Frequency Allocations by removing footnote NG15 and by modifying footnote US290, which makes reference to footnote NG15. Further, Part 97, governing the Amateur Radio Service, is also modified to remove restrictions on amateur use which were imposed to protect the LORAN–A operations. The appropriate modifications to Parts 2 and 97 are listed in the Appendix.

2. Because this amendment simply removes obsolete restrictions on spectrum use and is to the benefit of FCC licensees, compliance with the prior notice and effective date provisions of the Administrative Procedure Act (5 U.S.C. § 553) is unnecessary.

3. Accordingly, It is ordered, that effective March 27, 1984, §§ 2.106, 97.61 and 97.185 are amended as set forth in the Appendix. Authority for this action is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

4. For further information about this item contact Fred Thomas, (202) 653–8171.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Parts 2 and 97 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 2—[AMENDED]

A. Part 2 Frequency Allocations and Radio Treaty Matters; General Rules and Regulations.

1. Section 2.106 is amended by removing footnote designation NG15 at column 5 for the 1900–2000 kHz band, by removing the text of footnote NG15 in its entirety from the list of footnotes following the Table of Frequency Allocations and by revising the text of footnote US290 at the list of footnotes following the Table of Frequency Allocations.

§ 2.106 Table of Frequency Allocations.

UNITED STATES TABLE

Government	Non-Government
Allocation kHz (4)	Allocation kHz (5)
• • • • •	
1900–2000 RADIOLOCATION US290	1900–2000 RADIOLOCATION US290

* * * * *

US290 In the band 1900–2000 kHz amateur stations may continue to operate on a secondary basis to the radiolocation service, pending a decision as to their disposition through a future rule making proceeding in conjunction with the implementation of the standard broadcasting service in the 1625–1705 kHz band.

* * * * *

PART 97—AMENDED

B. Part 97 Amateur Radio Service.

1. Section 97.61 is amended by amending paragraph (a) by changing the first entry in the table to read 1800–2000, by removing the second entry in the table in its entirety, and by removing the texts of paragraphs (b)(1) and (b)(2), while reserving their paragraph designators.

§ 97.61 Authorized frequencies and emissions.

(a) * * *

Frequency band	Emissions	Limitations (see paragraph (b))
kHz: 1800 to 2000	A1, A3	

* * * * *

(b) Limitations:

(1) [Reserved]

(2) [Reserved]

* * * * *

2. Section 97.185 is amended by amending § 97.185(b) by removing limitation designator one (1) in the table and by amending subsection 97.185(c) by removing the text of limitation one (1) in its entirety, while reserving its designator.

§ 97.185 Frequencies available.

* * * * *

FREQUENCY OR FREQUENCY BANDS

	Limitations
kHz: 1975–2000	

* * * * *

(c) Limitations:

(1) [Reserved.]

* * * * *

[FR Doc. 84–8545 Filed 3–29–84; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–192]

Organization and Delegation of Powers and Duties; Emergency Preparedness Functions of the Maritime Administration

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Final rule.

SUMMARY: This amendment revokes the separate delegation to the Maritime Administration (MarAd) to carry out defense mobilization and emergency preparedness functions, since MarAd has now been integrated into DOT's general plan for defense mobilization and emergency preparedness of all civilian transportation.

DATE: The effective date of this amendment is March 30, 1984.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, C–50, Department of Transportation, Washington, DC (202) 426–4723.

SUPPLEMENTARY INFORMATION: Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the **Federal Register.**

When MarAd was transferred to DOT from the Commerce Department in 1981, the existing delegation to MarAd to conduct defense mobilization and emergency preparedness was left in force pending integration of MarAd's responsibilities into the DOT-wide plan for defense mobilization and emergency preparedness of all United States civilian transportation. This plan is carried out for the Secretary by the Office of Emergency Transportation in the Research and Special Programs Administration; that office has completed the integration of MarAd into its DOT-wide plan and there is no longer any reason for a direct delegation to MarAd.

List of Subjects in 49 CFR Part 1

Authority delegations (government agencies); Organization and functions (government agencies).

PART 1—[AMENDED]

§ 1.66 [Amended]

In consideration of the foregoing, § 1.66 of Part 1 of Title 49, Code of Federal Regulations, is amended by removing paragraph (p).

Authority: 49 USC 322.

Issued in Washington, DC, on March 15, 1984.

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 84–8606 Filed 3–29–84; 8:45 am]

BILLING CODE 4910–62–M

Proposed Rules

Federal Register
Vol. 49, No. 63
Friday, March 30, 1984

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

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 332 and 337

Check-Guaranty and Credit Card; Sponsorship Programs

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Withdrawal of proposed rulemaking.

SUMMARY: The Federal Deposit Insurance Corporation (the "FDIC") hereby gives notice that it has withdrawn its outstanding proposed rule published on June 12, 1981 (46 FR 31018) that would have specifically authorized nonmember insured banks to conduct check-guaranty and credit card sponsorship programs, subject to fixed limitations on risk. The proposal, which was intended to remove an uncertainty concerning the applicability of existing regulatory proscriptions to these programs, is being withdrawn because of its stale date. The FDIC is currently considering a new proposal which would have the same effect as the June 12, 1981 proposal and which reflects commentary received as a result of the earlier proposal.

DATE: The withdrawal is effective March 30, 1984.

FOR FURTHER INFORMATION CONTACT: Ms. Janis R. Blake, Attorney, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, D.C. 20429, (202) 389-4271.

By Order of the Board of Directors, March 26, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-8560 Filed 3-29-84; 8:45 am]
BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 240

[Release Nos. 33-6519; 34-20785; File No. S7-12-84]

Electronic Filing, Processing and Information Dissemination System

AGENCY: Securities and Exchange Commission.

ACTION: Solicitation of comments.

SUMMARY: The Commission today is publishing a release requesting indications of interest from companies in participating in a pilot electronic filing, processing and information dissemination system. The judgment and experience of companies participating in the pilot operation will influence the development and specifications of the system. The release includes a questionnaire directed to potential participants in the pilot which is designed to provide the Commission with information necessary to implement the pilot. The Commission expects experience with the pilot system to assist it in the creation of an operational electronic filing, processing and dissemination system which will permit corporations to make their required filings electronically and allow investors, securities analysts and the public to instantly access such information on home and business computer screens. The Commission also is soliciting comments from securities analysts and other potential users of the electronic disclosure system.

DATE: Comments and questionnaires should be received on or before May 11, 1984.

ADDRESS: Comments and questionnaires should be addressed in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. All comment letters should refer to File No. S7-12-84. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Herbert Scholl (202) 272-2589, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is seeking volunteer registrants to participate in a pilot electronic disclosure system, designated "EDGAR" for Electronic Data Gathering, Analysis and Retrieval, which will begin in September 1984. The pilot program's equipment specifications and processing systems will be based, in large part, on the information derived from the response to the attached questionnaire. Accordingly, only those registrants which complete the questionnaire will be eligible to file electronically during the pilot period. Therefore, all registrants who are potentially interested in participating are urged to complete the questionnaire.

The remainder of this release sets forth background on the development of EDGAR, information concerning the pilot program, a questionnaire to be completed by potential participants and a solicitation of comments from other registrants and potential users of the electronic disclosure system.

I. Background

Technological developments have revolutionized information analysis and distribution in the financial community. The traditional paper-supported system of data processing and reporting is being replaced by sophisticated electronic communication and data management systems. Computer literacy, instant data retrieval and electronic mail are having a profound impact on information gathering and dissemination.

The Commission has studied these developments with great interest. It has recognized for some time that the potential use of the information contained in corporate filings has not been fully realized by analysts or investors. With the adoption of the integrated disclosure system, which provides for a uniform disclosure system under the Securities Act of 1933 and the Securities Exchange Act of 1934,[1] a new data base framework for filed information has been created. The Commission is committed to providing the public with convenient and immediate access to this data base.

Accordingly, the Commission has formed a Computer Task Force with the purpose of determining, in conjunction

[1] Release No. 33-6383 (March 3, 1982) [47 FR 11380].

with the Mitre Corporation,[2] the most effective and efficient means of using computer technology to improve the receipt, storage, review and dissemination of filed information. The Task Force is seeking to develop the requirements for the EDGAR operational system, which will permit registrants to make their required filings electronically, provide investors with instant access to Commission information on their computer screens, and provide the Commission with the capability to process and analyze filings on an electronic basis. Such a system should reduce registrants' costs, improve the dissemination of information to investors and accelerate Commission reviews.

II. Pilot Program

In furtherance of these objectives, a "request for proposals" (RFP) has been issued seeking proposals from contractors to install and support a pilot program to test electronic filing, processing and dissemination on a limited basis.[3] The solicitation period closed on March 9 and the Commission anticipates award of the contract in May.

The Commission is establishing a pilot branch within the Division of Corporation Finance. The branch will begin processing and reviewing electronic filings in September 1984. The number of filings being processed electronically will increase as familiarity with the new system develops. When the pilot program is fully operational, the Commission anticipates that up to 1,000 registrants will be able to participate.[4]

The pilot branch also will evaluate various decision support systems (including data base access) and office automation tools, as well as test new automated selective review techniques. The judgment and experience of the participation companies and the Commission with the pilot operation will determine, in large part, the configuration of the fully operational system.

The Commission therefore is seeking volunteer companies will file their required disclosure documents electronically. The potential savings and efficiencies provided by electronic filing should be attractive to many registrants, and the Commission encourages registrants to take advantage of these benefits. Limitations on filing formats and graphics will be kept to a minimum during the test period.

In order to provide the Commission with the information necessary to establish the pilot, interested companies are requested to fill out the attached two part questionnaire. The first part provides general information about the registrant and the name of the person to contact for further information. The second part requests information on potential cost savings and technical data, such as requirements for electronic filing and computer storage capacity, which the Commission will use in developing the system's technical specifications.

After the Commission evaluates the responses to the questionnaire, it will contact registrants directly to explore more fully the mechanics of participating in the pilot program.

The Commission recognizes that certain of its current rules and regulations concerning signatures, fee receipt and general filing requirements will need to be revised. Commentators are requested to suggest rules that may need revisions and to recommend specific changes. Following the award of the pilot contract, the Commission will take necessary steps to accommodate the pilot system.

III. Solicitation of Comments

The Commission also is requesting comments on EDGAR from potential users, such as securities analysts and investors, as well as from registrants who initially may not wish to participate in the pilot. The Commission is seeking specific information on the estimated annual dollar benefits which may accrue from the electronic system. Information on potential cost savings (printing, delivery, clerical, etc.), expedited delivery times and immediate information access for purpose of research, analysis, and investment decisions is sought. The Commission also is interested in (1) whether commentators would be willing to invest in hardware or software, assuming a reasonable cost, to view Commission filings on their computer screens; (2) whether the ability to analyze and compare individual data items (e.g., sales, income, names of directors, management's discussion and analysis) found in Commission filings, with or without additional software, is important to effective use of the system; and (3) if so, which items are important. Responses to these questions will aid the Commission as it constructs its system to meet the needs of investors and the business and financial communities.

By the Commission.

Dated: March 22, 1984.

George A. Fitzsimmons,

Secretary.

BILLING CODE 8010-01-M

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[2] Mitre Corporation is a Federal contract research center.

[3] Copies of the RFP are available from the Commission's Public Reference Room.

[4] Investment company filings, which are handled by the Division of Investment Management, will not be included in the pilot program.

OMB Approval
OMB No. 3235-0319
Expires March 31, 1985

EDGAR QUESTIONNAIRE

(Please Type or Print)

COMPANY INFORMATION

1. Name:

2. Address: Zip Code

3. Name of Person to Contact:

4. Telephone Number: ( )

5. Industry (SIC Code):

6. Number of Shareholders:

7. Common Stock Traded on:

☐ NYSE ☐ AMEX ☐ NASDAQ ☐ Regional Exchange ☐ Other (Specify)

8. Total Assets (End of 1983 Fiscal Year):

$

9. Total 1983 Fiscal Year Sales (Revenues):

$

10. Which 1933 Act registration statement Form types would the Company use for a primary offering of equity securities for cash?

☐ Form S-3 ☐ Form S-2 ☐ Form S-1

TECHNICAL QUESTIONS

11. What type of equipment is used to prepare mailings to shareholders (such as annual reports and proxy statements), periodic reports (Forms 10-K, 10-Q, 8-K) and registration statements filed under the Securities Act of 1933? (Please identify equipment brand name.)

	Shareholder Mailings	Periodic Reports	1933 Act Registration Statements
Word processor:			
Computer Typesetter:			
Other (specify):			

12. Would you be willing to obtain, assuming a reasonable cost, additional hardware or software in order to file documents electronically for the pilot program? For the operational System?

Pilot Program ☐ Yes ☐ No

Operational Program ☐ Yes ☐ No

SEC 2064 (2-84)

13. Who presently transmits mailings to shareholders, periodic reports and registration statements to the Commission?

	Shareholder Mailings	Periodic Reports	1933 Act Registration Statements
In-house staff	☐	☐	☐
Attorneys	☐	☐	☐
Accountants	☐	☐	☐
Financial printers	☐	☐	☐
Other: _____	☐	☐	☐

14. Which would be your preferred method of filing periodic reports and registration statements?

	Periodic Reports	Registration Statements
On magnetic diskette (please give size, type and format)		
On magnetic tape (please give number of tracks, format, density and code)		
Via direct transmission over communications facilities		

15. Do you presently transmit materials similar to SEC documents over electronic communications links? (If so, please identify communications facilities.)

☐ Yes _____ ☐ No

16. Would you be using your own facilities to transmit documents electronically or those of an agent, if available? (If an agent, such as a financial printer, please identify type of agent.)

☐ Own facilities ☐ Agent facilities _____

17. What communications equipment would you use to transmit filings (e.g., IBM 3705)?

18. Do you anticipate sending your filings over a public network such as Telenet or Tymnet? (If yes, please identify the network.)

☐ Yes _____ ☐ No

19. Which would be your preferred communications protocol (e.g., X.25)?

20. What is the highest line speed you would desire for transmission of filings?

21. What is the highest line speed you desire for interactive communications at logon or signoff?

22. Do you prefer that communication be:

☐ (i) Asynchronous? or ☐ (ii) Synchronous?

☐ (a) half duplex? ☐ (b) full duplex?

23. Which character sets do you use?

☐ ASCII ☐ ASCII-2 ☐ Other (specify) _____

_____

24. Would you use any of the following characters in your filings?

Italics ☐ Yes ☐ No

Foreign language ☐ Yes ☐ No

Other non-standard characters? (identify) _____

_____

25. Would you use the ASCII graphics character set? ☐ Yes ☐ No

26. Please complete the following chart with respect to documents submitted to the Commission during the Company's 1983 fiscal year.

Document	No. of Original Documents	No. of Amendments	Total No. of Pages
Form 10-K			
Form 10-Q			
Form 8-K			
Annual Proxy Statement			
Annual Report to Shareholders			
Special Proxy Statement			
Form S-3			
Form S-2			
Form S-1			
Form S-14			
Form S-8			
Other Forms			

27. In what filings did you include graphics (photographs, specimens, maps, logos, designs) during the last year?

☐ Form 10-K ☐ Annual Reports to Shareholders ☐ 1933 Act Registration Statements

☐ Form 10-Q ☐ Proxy Statements ☐ Other _____

28. How many pages of graphics in each type of filing?

Filing	Number of Pages	Filing	Number of Pages	Filing	Number of Pages

29. Assuming graphics are to be digitized, at what scanning density (bit per inch) would you be rendering your graphic materials?

30. How would you signify the beginning, end, scan density and compression of a graphic imbedded in a stream of text?

31. Could you tag and identify predetermined data items in your transmission? If so, how?

☐ Yes _____ ☐ No

32. What total cost savings would you expect each year from electronic filing and processing?

Printing? .....$ _____

Professional Fees? ..... _____

Time? ..... _____

Delivery (Mail or messenger)? ..... _____

Other (specify)? ..... _____

Total .....$ _____

33. Please include any other comments or suggestions you may have with respect to EDGAR.

[FR Doc. 84-8536 Filed 3-29-84; 8:45 am]

BILLING CODE 8010-01-C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM82-22-001 and Docket No. RM83-48-001]

Natural Gas Policy Act; Termination of Rulemaking Dockets; Miles Laboratories, Inc. and Church and Dwight Co., Inc.

Issued: March 26, 1984.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Order denying rehearing.

SUMMARY: On January 6, 1984, the Federal Energy Regulatory Commission (Commission) issued Order No. 354, terminating fifteen rulemaking dockets. Order No. 354 withdrew two Notices of Proposed Rulemaking and denied 13 petitions for rulemaking.

The Commission received two timely requests to rehear Order No. 354 from Miles Laboratories, Inc., Docket No. RM82-22-001, and from Church and Dwight Company, Inc., Docket No. RM83-48-001. For exemptions from incremental pricing for citric acid (Miles) and sodium bicarbonate used in animal feed (Church and Dwight). In this order, the Commission denies these requests for rehearing.

DATE: This order denying rehearing is effective March 26, 1984.

FOR FURTHER INFORMATION CONTACT: Elizabeth Withnell, Office of the General Counsel, Rulemaking and Legislative Analysis, Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 29428, (202) 357-8033.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is denying requests to rehear Order No. 354 [1] which were submitted by Miles Laboratories, Inc. (Miles), in Docket No. RM82-22-001, and by Church and Dwight Company, Inc. (Church and Dwight), in Docket No. RM83-48-001. Order No. 354 among other actions, denied petitions for rulemaking filed by the two companies requesting exemptions from incremental pricing for citric acid (Miles) and sodium bicarbonate used in animal feed (Church and Dwight).

[1] Termination of Rulemaking Dockets, Docket No. RM79-50-000, *et al.*, issued Jan. 6, 1984, 49 FR 1525 (Jan. 12, 1984).

II. Discussion

A. Miles Laboratories, Inc.

Miles Laboratories, Inc. is one of two manufacturers of citric acid. Miles petitioned the Commission to exempt the boiler fuel use of natural gas to manufacture citric acid, arguing that production of this chemical is food processing exempt from incremental pricing surcharges under section 206(b) of the Natural Gas Policy Act (NGPA), 15 U.S.C. 3346(b) (1981).[2] In Order No. 354, the Commission denied the petition. The Commission noted that Miles had failed to file its request for exemption by the date the Commission had set for consideration of agricultural exemptions under section 206(b) of the NGPA. The Commission was also not convinced that the exemption should be granted in any case because citric acid is not a food and therefore its production is not food processing, as that term is used in the Commission's regulations. Nothing in Miles' rehearing request persuades the Commission to change this view.

Miles disputes the Commission's authority to establish a date by which petitions for exemptions had to be filed, arguing that the NGPA requires the Commission to exempt any agricultural use. The Commission believes that its decision to require the filing of requests for exemption by a date certain fully comports with its Congressional grant of discretion to administer the incremental pricing program.[3] The Commission has initiated five separate rulemaking proceedings regarding the scope of exemptions under section 206 of the NGPA, spanning a period of nearly three years.[4] The Commission has not foreclosed the possibility of granting additional exemption requests. It nevertheless believes that those filing petitions asking the Commission to initiate a new rulemaking docket on agricultural exemptions must provide clear evidence that would warrant committing additional agency resources to this area. Miles has not sustained that burden. In any case, the Commission's decision to deny Miles' petition for rulemaking was not predicated solely on Miles' delay in filing its request, but primarily on the Commission's view that citric acid is a chemical additive and not a food and therefore its manufacture is not food processing.

The Commission has decided that the constituent chemicals that may eventually be combined with other ingredients to form "food" must themselves be "food" prior to the act of being combined in order for their separate manufacture to be considered food processing. The fact that food may eventually result from the addition of chemicals or that the chemicals may eventually be considered as part of food does not mean that the chemical, by itself, is food. Citric acid is a chemical used in food in a variety of ways. Its manufacture, however, is not the manufacture of food and is therefore not food processing.[5]

Miles disagrees with this substantive finding. To support its position, the company notes that citric acid is listed in the *Food Chemical Codex (FCC)*, "an authoritative compilation of foods and food additives." The inclusion of citric acid in the *FCC*, however, does not make citric acid a food.

The *FCC* contains specifications for over 450 chemical additives that contribute to the appearance, flavor, preservation or other aspects of food. While some of these chemicals may themselves be regarded as food, it would be inappropriate under the law to exempt the manufacture of any these products simply by virtue of their inclusion in the *FCC*.

The company also argues that the Commission's distinction between organic chemicals added to food and discrete food substances, such as spices, "does not withstand analysis because many organic chemicals which the Commission regards as food are chemical additives." The Commission regards as "food" those items that are generally considered by the industry to

[2] Section 206(b) exempts agricultural users of natural gas from surcharges designed to recoup increases in the average cost of natural gas. Agricultural uses of natural gas include gas used for agricultural production, natural fiber production, natural fiber processing, food processing, food quality maintenance, irrigation pumping or crop drying. 15 U.S.C. 3346(b)(3)(A) (1982).

[3] *See, e.g.*, H.R. Rept. No. 1752, 95th Cong., 2d Sess. 91, *reprinted in* 1978 U.S. Code Cong. & Ad. News 8983, 9012.

[4] Regulations Implementing the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978, Docket No. RM79-14-000 issued Sept. 28, 1979 (Order No. 49), 44 FR 57726 (Oct. 5, 1979); Agricultural Uses Exemption; Interim Rule Amending Commission's Regulations under the Natural Gas Policy Act of 1978, Docket No. RM80-75-000, issued Oct. 6, 1980, 45 FR 67276 (Oct. 9, 1980); Definition of Agricultural Use; Incremental Pricing; Final Rule, Docket No. RM80-48-000, issued Dec. 5, 1980 (Order No. 114), 45 FR 82915 (Dec. 17, 1980); Incremental Pricing; Final Rule, Docket No. RM80-18-000, issued Sept. 24, 1981 (Order No. 177), 46 FR 50000 (Oct. 9, 1981); Definition of Agricultural Use, Docket No. RM81-17-000, issued Nov. 16, 1981, (Order No. 189), 46 FR 57469 (Nov. 24, 1981).

[5] *See also* Definition of Agricultural Use; Incremental Pricing; Final Rule, Docket No. RM80-48-000, issued Dec. 5, 1980, (Order No. 114), 45 FR 82915 (Dec. 17, 1980) (the processing of agricultural products and by-products does not constitute food processing).

be food and are so classified by the Office of Management and Budget (OMB) in its *Standard Industrial Classification Manual (SIC Manual).*[6] In the *SIC Manual,* citric acid is not a food. Recognizing that the *SIC Manual* is not the only source of information on what is food, the Commission also classifies as "food" those items that are commonly considered food.

Spices are listed as food preparations in the *SIC Manual* (SIC. Code 2099 Miscellaneous Food Preparations and Kindred Products, Food Preparations, Not Elsewhere Classified). Spices are also the kind of products commonly regarded as food. Although they are added to foods, they are also sold separately as discrete products. Monosodium glutamate, which the Commission also regards as food, is not categorized as food by the *SIC Manual* but, like spices, it is a discrete product that is available separately from the products in which it may be used.[7] Citric acid is not a discrete product like spices that is available separately from the food products in which it is used.[8]

Finally, Miles points out that granting the company the requested exemption would have only very narrow implications. The Commission disagrees. A large number of chemicals used in food potentially could be exempt from incremental pricing under Miles' definition of food processing. The Commission's decision to draw the line at seasonings akin to spices reflects its view that at some point in the food production chain the manufacture of a substance becomes sufficiently attenuated to lose its distinction as a food. The Commission believes that the manufacture of citric acid is at this point. Miles' request for rehearing accordingly is denied.

B. Church and Dwight Company, Inc.

Church and Dwight Company, Inc. produces sodium bicarbonate which is used to adjust the content of the rumen of cattle in order to increase feed efficienty. Church and Dwight petitioned the Commission to exempt the boiler fuel use of natural gas in the production of sodium bicarbonate because, in their view, the substance is an animal feed. The Commission denied the petition in Order No. 354 on the basis that sodium bicarbonate is a non-feed ingredient added to animal feed, the primary purpose of which is not to provide nutrition but to promote the conversion of animal feed. The company disputes the Commission's decision.

When the Commission issued the final rule exempting from incremental pricing the boiler fuel use of natural gas in the manufacture of animal feed,[9] sodium bicarbonate was not included as an exempt animal feed. Church and Dwight argues that because it filed comments in the docket and because those comments were not cited in the Commission's final rule, its exclusion could only have been accidental. The Commission considered all comments submitted and arguments made before issuing its final rule. Nevertheless, the Commission wishes to point out that if Church and Dwight believed a clarification of the Commission's decision was necessary, the time to request such a clarification was during the statutory rehearing period following issuance of the final order. Church and Dwight, however, did not request rehearing.

Church and Dwight makes reference to its compliance with unspecified Federal and state animal feed regulations. The implication of this reference is apparently that such compliance proves the company manufactures animal feed. The Commission disagrees. Because Church and Dwight produces a regulated component of animal feed does not prove that it is an animal feed manufacturer. In implementing the NGPA, the Commission has the responsibility to determine precisely which facilities qualify under the exemption categories in Section 206 of the NGPA.[10]

The company further contends that sodium bicarbonate is an important element in proper animal digestion and thus qualifies as an animal feed. In reaching the contrary conclusion, the Commission first consulted the *SIC Manual* for animal feed. Sodium bicarbonate is not listed under the SIC Code for Prepared Feeds and Feed Ingredients for Animals and Fowls (SIC Code 2048). The Commission also considered the information initially supplied by Church and Dwight about its product and has reexamined its decision in light of the additional statements the company provided in the rehearing request. Upon reconsideration, however, the Commission does not believe its original determination should be modified. Just as the Commission's exemption for food processing distinguishes between the processing of food and the processing of non-food substances that are used in foods, the Commission's exemption for animal feed is designed to distinguish between the manufacture of animal feed and the manufacture of non-feed components of that feed. Sodium bicarbonate falls in this latter category.

Church and Dwight's final contention is that the Commission's decision on their exemption petition is contrary to Congressional intent. Congress gave the Commission broad authority under section 206(d) of the NGPA to decide who should be covered by its exemption rules.[11] The Commission believes its decision to deny Church and Dwight an exemption fully comports with its statutory authority to define the scope of its discretionary exemptive rules. Accordingly, the company's request for rehearing of Order No. 354 is denied.

The Commission orders:

For the foregoing reasons, the Commission denies rehearing of Order No. 354 as requested by Miles Laboratories, Inc. in Docket No. RM82-22-001 and by Church and Dwight Company in Docket No. RM83-48-001.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8499 Filed 3-29-84; 8:45 am]

BILLING CODE 6717-01-M

[6] The *SIC Manual,* while initially published as a government statistical tool, is now widely used by private industry. Office of Management and Budget, Standard Industrial Classification Manual 3 (1972).

[7] The same analysis holds true for naturally-occurring vitamins which also have an incremental pricing exemption for boiler fule used in their production.

[8] The Commission is not alone in distinguishing food on the basis of its availability as a discrete product. In determining that the use of natural gas to produce food-grade salt is an essential agricultural use, the Department of Agriculture used a similar analysis, which Miles quotes in its rehearing petition.

The NGPA does not permit distinction in determining the types of food products to be certified as essential agricultural uses. Instead, its language indicates that all food products are to be so certified. The production of food-grade salt should be included in the list of essential agricultural uses under section 401(f)(1)(A) because it is manufactured under food-grade standards for sanitation and cleanliness, is used as a food additive for preservative, and is sold in retail stores for food use. Proposed Amendment Regarding Certification of Essential Agricultural Uses and Requirements; Natural Gas Policy Act, 48 FR 23438, 23439 (May 25, 1983).

[9] Incremental Pricing, Final Rule, Docket No. RM80-18-000, issued Sept. 24, 1981 (Order No. 177), 46 FR 50060 (Oct. 9, 1981).

[10] Regulations Implementing the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978, Docket No. RM79-14-000, issued Sept. 28, 1979 (Order No. 49) 44 FR 57726, 57731 (Oct. 5, 1979).

[11] H. R. Rep. No. 1752, 95th Cong., 2d Sess. 102, *reprinted in* 1978 U.S. Code Cong. & Ad. News 6983, 9018.

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: United States Parole Commission.

ACTION: Correction of proposed rule.

SUMMARY: The Parole Commission is correcting a clerical error in its proposed rule revising its Paroling Policy Guidelines, 28 CFR 2.20 published on March 7, 1984 at 49 FR 8447–8448.

EFFECTIVE DATE: March 7, 1984.

FOR FURTHER INFORMATION CONTACT: Toby Slawsky, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland, telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: In FR Doc. 84–6108 published March 7, 1984 at page 8448, first column the title of Section 921 of Chapter Nine, Subchapter C of the Offense Behavior Severity Index, 28 CFR 2.20 is incorrect. This section title is corrected to read:

921 Distribution or Possession With Intent to Distribute.

Dated: March 26, 1984.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 84–8515 Filed 3–29–84; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1956

[Docket No. T–4]

Submission of the New York State Plan for Public Employees Only and Its Availability for Public Comment

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Proposed Initial State Plan Approval.

SUMMARY: This document gives notice of the submission by the New York Department of Labor of a State plan for the enforcement of occupational safety and health standards applicable to public sector (state and local government) employment only. After an opportunity for public comment, the Assistant Secretary of Labor for Occupational Safety and Health will approve the plan if it is determined that the plan meets the criteria set forth in the Occupational Safety and Health Act of 1970 and applicable regulations.

DATES: Written comments, data, views, and arguments on the proposal must be postmarked by April 30, 1984. Objections and requests for a hearing must be postmarked by April 30, 1984.

ADDRESSES: Written comments, objections and requests for a hearing should be submitted in quadruplicate, to the Docket Officer, Docket T–4 Room S–6212, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, telephone (202) 523–7894.

Location of Plan for Inspection and Copying

A copy of the plan may be inspected and copied during normal business hours at the following locations: Docket Office, Docket T–4, U.S. Department of Labor, Occupational Safety and Health Administration, Third Street and Constitution Avenue, NW., Room S–6212, Washington, D.C. 20210; Office of the Regional Administrator, U.S. Department of Labor, Occupational Safety and Health Administration, 1515 Broadway (1 Astor Plaza) Room 3445, New York, New York 10036; State of New York Department of Labor, State Office Building Campus, Building 12, Room 579, Albany, New York 12226; Division of Occupational Safety and Health, State of New York Department of Labor, Room 6994, 2 World Trade Center, New York, New York 10047.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Public Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3637, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone (202) 523–8148.

SUPPLEMENTARY INFORMATION:

Authority

Section 18 of the Occupational Safety and Health Act of 1970 ("the Act," 29 U.S.C. 667) provides that a State which desires to assume responsibility for the development and enforcement of standards relating to any occupational safety and health issue with respect to which a Federal standard has been promulgated may submit a plan to the Assistant Secretary of Labor for Occupational Safety and Health ("Assistant Secretary") describing in detail the proposed program. Regulations promulgated pursuant to the Act at 29 CFR Part 1956 provide that a State may submit a State plan for the development and enforcement of occupational safety and health standards applicable only to employees of the State and its political subdivisions ("public employees"). Under these regulations the Assistant Secretary will approve a State plan for public employees if, in his judgment, the plan provides for the development and enforcement of standards relating to hazards in employment covered by the plan which are or will be at least as effective as in providing safe and healthful employment and places of employment for public employees as standards promulgated and enforced under section 6 of the Federal Act, giving due consideration to differences between public and private sector employment. In making this determination the Assistant Secretary will consider, among other things, the criteria and indices of effectiveness set forth in 29 CFR Part 1956, Subpart B.

Background

A State plan for the enforcement of occupational safety and health standards in New York was approved by the Assistant Secretary on May 14, 1973 (39 FR 13482; 29 CFR 1952.180 et seq.). This plan included coverage of private workplaces as well as a program for public employees. The plan was subsequently withdrawn effective June 30, 1975 under the authority of then Governor Hugh L. Carey (40 FR 27655). During 1980, the New York State legislature passed legislation, signed into law by the governor on June 30, 1980, which provided the basis for establishing a comprehensive occupational safety and health program applicable to the public employees in the State. This statute, the Public Employee Safety and Health Act (the "New York Act"), Chapter 729 of the Laws of 1980, became effective on December 29, 1980. Pursuant to the New York Act, the State formally submitted for Federal appoval a plan applicable only to public employees on February 11, 1982. In response to Federal review of the proposed State plan, supplemental assurances, and revisions, corrections and additions to the plan were submitted on March 4, 1984 and March 15, 1984.

Description of the Plan

The plan designates the New York Department of Labor as the State agency responsible for administering the plan throughout the State. The State has pledged to adopt within three months of initial plan approval all Federal standards promulgated as of July 1, 1983 and to incorporate future OSHA revisions in accord with 29 CFR 1953.21. The plan includes legislation, the Public Employees Safety and Health Act (Chapter 729 of the Laws of 1980),

passed by the New York legislature in 1980. Under that legislation the Industrial Commissioner (now Commissioner of Labor), head of the State of New York Department of Labor, has full authority to enforce and administer all laws and rules protecting the safety and health of employees of the State and its political subdivisions.

The plan includes provisions for the granting of permanent and temporary variances from State standards in terms substantially similar to the variance provisions contained in the Federal Act. The State provisions require employee notification of variance applications as well as employee rights to participate in hearings held on variance applications. Variances may not be granted unless it is established that adequate protection is afforded employees under the terms of the variance.

Section 5 of the New York Act provides for inspections of covered workplaces including inspections in response to employee complaints. If a determination is made that an employee complaint does not warrant an inspection, the complainant shall be notified, in writing, of such determination and afforded an opportunity to seek informal review of the determination. Additionally, section 5 of the New York Act provides the opportunity for an employer and employee representatives to accompany an inspector during an inspection for the purpose of aiding in the inspection.

The plan provides for notification to employees of their protections and obligations under the plan by such means as a State poster, and required posting of notices of violation. Section 10 of the New York Act provides for protection of employees against discharge or discrimination resulting from exercise of their rights under the State's Act in terms essentially identical to section 11(c) of the Federal Act.

The plan provides a scheme of enforcement for compelling compliance under which employers are issued notices of violation and orders to comply, for any violation of standards and orders. Such notices shall fix a reasonable time for compliance. Employers, employees and other affected parties may seek informal review with the Department of the notice of violation including the reasonableness of the abatement period, and/or may seek formal administrative review with the Industrial Board of Appeals. Judicial review of the decision of the Industrial Board of Appeals may be sought pursuant to Article 78 of New York's Civil Practice Law and Rules. The Commissioner of Labor may seek judicial enforcement (mandamus actions) of orders to comply by commencing a proceeding pursuant to Article 78 of the Civil Practice Law and Rules against non-complying employers.

Also included in the plan are provisions for right of entry for inspection, prohibition of advance notice of inspection and employers' obligations to maintain records and provide reports as required. Further the plan provides assurances of a fully trained, adequate staff, including 30 safety and 8 health compliance officers for enforcement inspections, and 10 safety and 12 health consultants to perform consultation services in the public sector. The State has also given satisfactory assurances of adequate funding to support the plan. 29 CFR 1956.10(g) requires that State plans for public employees provide a sufficient number of adequately trained and qualified personnel necessary for the enforcement of standards. The staffing requirements (or "benchmarks") for State plans covering both the private and public sectors are established based on the "fully effective" test established in *AFL–CIO* v. *Marshall*, 570 F.2d 1030 (D.C. Cir., 1978). There is some question whether this staffing test, and the complicated formula used to derive benchmarks for complete private/public sector plans, was intended, or is appropriate for application to, the staffing needs for public sector only plans. However, the State has given satisfactory assurance in its plan that it will meet the compliance staffing benchmarks established for public sector only coverage in accord with the 1960 benchmarks formula or any subsequent revisions thereto, and the schedule for their attainment, thereby meeting the requirements of 29 CFR 1956.10.

Although the New York Act sets forth the general authority and scope for implementing the New York Public Employee Only Plan, the plan is developmental under the terms of 29 CFR 1956.2(b), in that specific rules and regulations must still be adopted to carry out the plan and make it fully operative. The plan sets forth a timetable for the accomplishment of these and other developmental goals. This timetable addresses such general areas as the development of procedures governing enforcement, consultation, variances and review of contested cases in addition to development of a Field Operations Manual and various forms and instructions.

During the course of Federal review of the New York Plan, a number of issues were raised which in OSHA's judgment required further clarification by the State. By letter dated March 4, 1984, from Lee O. Smith, Deputy Commissioner of Labor for Legal Affairs, the State provided assurances that (1) the New York State Department of Labor has full and complete authority to promulgate and enforce occupational safety and health standards in regard to employees of the public schools of the various political subdivisions within the State, (2) that despite the existence of a 60 day period for contest of notices of violation, judicial enforcement for nonabatement may and will be sought, as appropriate, at the expiration of the abatement period specified in the notice of violation (which period is often less than 60 days), and (3) that the New York Department of Labor has the authority to enter without delay and at reasonable times public sector workplaces to investigate and inspect for occupational safety and health violations. In order to prevent any questions concerning the State's right of entry, the State has sought a legislative amendment to the Public Employee Safety and Health Act, through a bill introduced in the 1984 session of the New York State Legislature. The State further assures that should the State's position on any of these issues be successfully challenged, legislative amendment will be sought.

Public comment on the New York Public Employee Plan is hereby requested. Any interested person(s) who submit particularized written objections to federal approval of the proposed plan may request an informal hearing concerning the proposed plan or any part thereof. If the Assistant Secretary finds that substantial objections have been filed, a hearing may be held on the subjects and issues involved. The Assistant Secretary will consider all relevant comments, arguments and requests which are submitted. He will thereafter issue the decision on the approvability of the plan, which decision will be published in the Federal Register.

Regulatory Impact and Regulatory Flexibility Act Analysis

The proposed approval of the New York State Public Employee Plan is not a major action as defined by Executive Order No. 12291 as it will not have an annual effect on the economy of $100 million or more, cause major increases in costs or prices, or have any other significant adverse effects. By its own terms, the plan will have no effect on private sector employment, but rather, is limited to the State and its political subdivisions. Moreover, the New York legislation has been in effect since 1980, public sector employers have been

subject to its terms since that time, and accordingly no new obligations would be placed on public sector employers as a result of Federal approval of the plan.

For the same reasons, OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that this proposed initial approval will not have a significant adverse economic impact on a substantial number of small entities.

List of Subjects in 29 CFR Part 1956

Administrative practice and procedure, Government employees, Intergovernmental relations, Law enforcement, Occupational safety and health.

Authority

This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

(Secs. 8(g), 18; 84 Stat. 1600, 1608; (29 U.S.C. 657(g), 667); 29 CFR Part 1956, Secretary of Labor's Order 9–83 (48 FR 35736))

Signed at Washington, D.C. this 23rd day of March, 1984.

Thorne G. Auchter,

Assistant Secretary of Labor.

[FR Doc. 84–8598 Filed 3–29–84; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 166

[CGD 81–80B]

Shipping Safety Fairway Amendments, Gulf of Mexico

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend existing shipping safety fairways and to establish new fairway anchorages in the Gulf of Mexico. The safety fairway modifications and anchorages are necessary to provide for safe access routes in areas of high traffic density and offshore structures. This action modifies proposals which were published in a notice of proposed rulemaking on August 9, 1982 (47 FR 34432). Under authority of the Ports and Waterways Safety Act (33 U.S.C. 1223) the Coast Guard is proposing a new fairway at the mouth of the Mermentau River; a widening of the existing fairway at the entrance to Southwest Pass; and new fairway anchorages at Sabine Bank and Calcasieu Pass. The regulations governing shipping safety fairways (33 CFR Part 166) provide that offshore structures are not permitted within designated safety fairways, and are permitted within fairway anchorages only if the structures are two miles apart.

DATE: Comments must be reached on or before June 28, 1984.

ADDRESSES: Comments should be submitted to Commandant (G–CMC/44) (CGD81–80B), U.S. Coast Guard, Washington, D.C. 20593. Comments may be delivered to and will be available for inspection and copying at the Marine Safety Council, room 4402, between the hours of 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Young, Project Manager, or Commander Galen Siddall, Chief, Marine Information and Rules Branch, Office of Navigation (G–NSR–3), room 1418, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, D.C. 20593, telephone (202) 245–0108.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each person submitting a comment should include his or her name and address, identify this notice as CGD 81–80B, and give the reasons for the comment. Persons desiring acknowledgement that their comment has been received should enclose a stamped self-addressed postcard or envelope.

All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned; but one may be held at a time and place to be set in a subsequent notice if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will be beneficial to this rulemaking.

Drafting Information

The principal persons involved in drafting this rulemaking are: Mr. Christopher Young, Project Manager, Office of Navigation, and Lt. David Shippert, Project Attorney, Office of Chief Counsel.

Background

In 1978, the Ports and Waterways Safety Act (PWSA) was amended to authorize the Coast Guard to establish shipping safety fairways (Pub. L. 95–474; 92 Stat. 1473; 33 U.S.C. 1223(c)). Prior to this amendment fairways were established by the Corps of Engineers. Although the Coast Guard now designates the fairways, the authority to issue permits for structures remains with the Corps.

A shipping safety fairway is an area or corridor of a waterway where the right of navigation is paramount over other uses, and where no fixed structures are permitted. A fixed structure in a fairway would be considered an obstruction to navigation, and the Corps of Engineers will not issue a permit for the construction of a structure therein. The fairways exist to ensure that an obstruction free corridor is available during development and production of offshore resources. Although the proposed fairways will be indicated on navigation charts, the use of fairways by vessels is voluntary.

The authority to create a fairway may be exercised by the Coast Guard only after a study of potential traffic density and use conflicts has been conducted to determine the need for designated safe access routes for vessels proceeding to and from U.S. ports. The study for this rulemaking was initiated by a notice in the **Federal Register** in April 1979 (44 FR 22543, modified in 45 FR 7027). The study results for the ports along the Gulf of Mexico were published on October 8, 1981 (46 FR 49989).

The study concluded that new vessel traffic fairways are necessary at the mouth of the Mermentau River and at Southwest Pass, and that fairway anchorages are needed at Sabine Bank and Calcasieu Pass. Before these findings could be implemented, it was necessary that Gulf fairways already established by the Corps of Engineers be adopted by the Coast Guard. This was accomplished by a Final Rule published in the **Federal Register** on May 13, 1982 (47 FR 20580). That action adopted the Corps' regulations with no substantive changes and the regulations formerly found at 33 CFR 209.135 are now contained in 33 CFR Part 166.

On August 9, 1982, the Coast Guard published a notice of proposed rulemaking to amend 33 CFR 166. That NPRM included editorial changes to Part 166, as well as specific proposals to add new fairways and anchorages in the Gulf of Mexico. Several comments were received which caused the Coast Guard to reevaluate the proposed fairways and anchorages. A Final Rule was published on June 30, 1983 (48 FR 30108), to promulgate only the editorial changes to Part 166. The present Supplementary NPRM contains the proposed amendments to specific fairways and anchorages. In drafting it, the Coast Guard has considered the comments received on the NPRM as well as newly available information such as the results

of the Outer Continental Shelf (OCS) lease sale for the Gulf of Mexico held on May 30, 1983.

Discussion of Proposed Regulations

The following discussion describes the proposals to establish specific safety fairways and fairway anchorages, with particular reference to changes made in response to comments on the NPRM published on August 9, 1982. Of eight comments received, one expressed concerns which were relevant to the Final Rule published on June 30, 1983, and addressed therein (48 FR 30109). Three commenters expressed support for the proposals as enhancements of navigation safety. Four comments identified specific objections to the proposed locations of new anchorages or fairways. Comments received on each proposal are addressed in the following discussion of the affected areas.

1. Sabine Bank/Port Arthur Anchorages

As in the original NPRM (August 9, 1982), it is proposed that two new fairway anchorages be established in the vicinity of Sabine Bank, adjacent to the existing Sabine Pass Safety Fairway in the approach to Sabine Lake and Port Arthur, Texas (as described in 33 CFR 200(d)(12)). One anchorage will be available to general cargo vessels, while the other will be designated for vessels carrying Liquefied Natural and Petroleum Gas (LGN/LPG). These anchorages are intended to improve navigation safety by providing areas where vessels may anchor during periods of reduced visibility or during times when scheduling of port facilities or pilot services causes a delay in arrival. The Sabine Bank/Port Arthur area is a major petrochemical area with a volume of vessel traffic which warrants the designation of fairway anchorage areas. Siting of structures in these anchorage areas will be governed by the spacing limitations described in 33 CFR 166.200(c).

The general anchorage will encompass an area approximately one and one-half miles by two miles. Although one commenter asserted that the proposed location overlapped a leased block, a review of the charts indicates that only unleased blocks 155, 156 and 162 in the West Cameron Area, West Addition, would be affected. Therefore, there is no change to the description as proposed in the NPRM.

The LNG/LPG anchorage will encompass an area approximately one and one-half miles by two and one-half miles. As originally proposed in the NPRM, this anchorage would have occupied portions of West Cameron Area, West Addition lease blocks 295, 296, 297 and 298. As observed by one commenter, a 12" pipeline lies approximately 800 feet to the northwest of the northwest corner of the proposed location. No other conflicts with the proposal have been identified. If the anchorage is shifted so that its northern boundary coincides with the northern boundary of blocks 297 and 298, the pipeline would clear the anchorage by approximately 1,000 feet, a more comfortable margin for navigation safety purposes. The area lost to this shift can be regained by moving the southern boundary of the proposed anchorage south to coincide with the southern boundary of blocks 297 and 298. The appropriate changes have been made in the geographical descriptions in the regulations proposed below.

As a consequence of these new anchorage areas, the existing Sabine Pass Anchorage area, described at 33 CFR 166.200(d)(13)), would be renumbered as 33 CFR 166.200(d)(13)(i).

2. Calcasieu Pass/Lake Charles Anchorage

As in the NPRM published on August 9, 1982, it is proposed that a new fairway anchorage be established adjacent to the existing Calcasieu Pass Safety Fairway in the approach to Calcasieu Lake and the port of Lake Charles, Louisiana (described at 33 CFR 166.200(d)(15)). This anchorage will be designated for vessels carrying LNG/LPG and will encompass an area approximately three and one half miles by two miles. The volume of deep draft vessels and the operations of LNG/LPG facilities in the area have created a need for a new anchorage area in the interest of navigation safety.

Siting of structures in this anchorage will be governed by the spacing limitations described at 33 CFR 166.200(c).

The proposed anchorage described in the August 1982 NPRM lies within the West Cameron Area. Two commenters objected to the location of this proposal as interfering with leased blocks. It appears that blocks 203, 204, 213 and 214 would be affected by the original proposal. Also, a 20" pipeline crosses block 213 from its southeast to northwest corners. Permits for this pipeline were issued in May 1981. Although any lease right awarded after April 1979 is subject to the results of the Coast Guard Port Access Route Study initiated at that time, a review by the Coast Guard indicates that the interests of navigation safety can be accommodated by locating the anchorage approximately 14 miles farther south along the western boundary of the Calcasieu Pass Fairway. In consultation with the Minerals Management Service, it was determined that blocks 257, 258 and 267 in the West Cameron Area, and block 366 in the West Cameron West Addition Area contained the closest area to shore free of structures, pipelines, leases and sanctuaries. Additionally, the MMS examined formation surveys and noted that the structure of the formation in these blocks is unlikely to bear hydrocarbons. Local Coast Guard officials in Port Arthur found that the increased distance offshore was acceptable to the pilots. The appropriate changes have been made in the geographical descriptions in the regulations proposed below.

As a consequence of this new anchorage, the existing Calcasieu Pass Anchorage Area would be designated as a general anchorage and would be renumbered as 33 CFR 166.200(d)(16)(i).

3. Mud Lake Fairway

As in the August 1982 NPRM, it is proposed that a new fairway be established at the channel entrance to Lower Mud Lake. This fairway would be approximately two miles wide and one and one half miles long to ensure obstruction free access to the channel which is in steady use by offshore crew boats and fishing vessels. In essence, it will replace the fairway which was located at the entrance to Mermentau River. After determining that vessel traffic uses this channel rather than Mermentau River to gain access to Mud Lake, the Corps of Engineers deleted the Mermentau River fairway from its regulations [33 CFR 209.135(d)(17)] on October 29, 1981 (46 FR 53408). This was prior to the Coast Guard adoption of the corps' fairway regulations on May 13, 1982 (47 FR 20580). The proposed fairway would be inserted at 33 CFR 166.200(d)(17). No comments were received regarding the Mud Lake Fairway as proposed in the NPRM, and no change is made in the geographical description in the proposed regulations below.

Currently there are two pipelines crossing the area of this proposed fairway: A 20" pipeline buried to a depth of 7 feet below the mudline; and a 12" pipeline buried to a depth of 3 feet. There is also a small production platform south of the end of the proposed fairway. However, the pipelines that cross the area have not interfered with a safe access for vessel traffic to or from Lower Mud Lake (crew boats, fishing vessels and recreational boats). In the event anchoring was required within the fairway, the anchors generally used aboard the small vessels

that ply these waters should pose little threat to the integrity of the pipelines located under it.

The presence of the production platform off the southeast end of the fairway does not present a significant obstruction to vessel movement in the fairway. The vessels that operate in and out of Lower Mud Lake handle sufficiently well to avoid the structure, and the new fairway will provide sufficient distance for lining up in a direct approach to the channel. Additionally, contacts with leaseholders in the area indicated no impact on their operations from the proposed fairway.

4. Southwest Pass Fairways and Anchorage

As in the August 1982 NPRM, it is proposed that the existing Southwest Pass (Mississippi River) Safety Fairway and anchorage (33 CFR 166.200(d) (28) and (29)) be amended by expanding a portion of the fairway and reducing the size of the anchorage at the entrance to Southwest Pass. However, where the NPRM originally proposed expansion of the fairway both to the west and to the east, the current proposal is to expand the fairway only to the East, with resulting changes in the anchorage area.

The proposed changes to the Southwest Pass fairway are intended to establish a greater obstruction-free maneuvering area for taking on and letting off pilots near the sea buoy. Pushing the anchorage area to the east will reduce confusion between anchored vessels and vessels maneuvering for a pilot.

The proposed westward triangular expansion of the fairway near the mouth of Southwest Pass would have moved the fairway into West Delta Area lease block 109 where an 8" oil pipeline is located. This pipeline currently runs south to north parallel to the existing western fairway boundary. The pipeline is 1000 feet away from the boundary and it is buried to a depth of 4 feet below the mudline.

Three commenters expressed concern about including this pipeline within the fairway limits. After reviewing the comments and the totality of circumstances affecting navigation in the area, the Coast Guard has concluded that the limited benefit to navigation in increasing the fairway slightly to the west is outweighed by the concern for safety of the pipeline or the cost of having it reburied to a safer depth below the mudline. Therefore, only the expansion of the fairway to the east, with resulting changes to the anchorage area, are proposed at this time. The appropriate changes have been made in the geographical descriptions in the regulations proposed below.

Regulatory Evaluation

Although shipping safety fairways interfere with the direct exploration for and production of oil and gas on the Outer Continental Shelf, and fairway anchorages limit how closely platforms may be situated, there is no indication that the acreage involved in the proposed regulations will obstruct OCS development. Indeed, the Coast Guard, in revising the original proposals, has minimized each identifiable cost impact while also satisfying the needs of safe navigation.

As explained in the NPRM, in circumstances where the Coast Guard is convinced that fixed structures must be placed in an area designated as a fairway to gain access to significant quantities of oil or gas, and that navigation safety would not be jeopardized by a modification of that fairway, a request would be given the appropriate consideration in accordance with the Ports and Waterways Safety Act (PWSA), and rulemaking procedures. In many cases a fairway modification will require a PWSA port access study before rulemaking can be commenced.

These proposed regulations are considered to be nonmajor under Executive Order 12291 and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). There are no costs associated with the proposed new fairways and anchorages. These designations will contribute to navigation safety without interfering with development of the OCS. The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 166

Marine safety, Shipping safety fairways, Anchorage areas.

PART 166—SHIPPING SAFETY FAIRWAYS

In consideration of the foregoing, the Coast Guard proposes to amend Title 33 of the Code of Federal Regulations Part 166 as follows:

In Section 166.200, paragraphs (d)(13), (d)(16), (d)(17), (d)(28) (i) and (ii), and (d)(29) are revised and introductory text is added to paragraph (d) to read as follows: **§ 166.200 Areas in the Gulf of Mexico.**

* * * * *

(d) *Designated Areas.* All geographical positions in the following designations are North Latitude and West Longitude.

* * * * *

(13) *Sabine Pass Anchorage areas*—(i) *Sabine Pass Anchorage Area.* The area enclosed by rhumb lines joining points at:

Latitude	Longitude
29°37'32"	93°48'02"
29°37'32"	93°21'25"
29°32'52"	93°43'00"
29°36'28"	93°47'14"
29°37'32"	93°48'02"

(ii) *Sabine Bank General Anchorage Area.* The area enclosed by rhumb lines joining points at:

Latitude	Longitude
29°26'06"	93°43'00"
29°26'06"	93°41'08"
29°24'06"	93°41'08"
29°24'06"	93°43'00"
29°26'06"	93°43'00"

(iii) *Sabine Bank LNG/LPG Anchorage Area.* The area enclosed by rhumb lines joining points at:

Latitude	Longitude
29°16'55"	93°43'00"
29°16'55"	93°41'08"
29°14'29"	93°41'08"
29°14'29"	93°43'00"
29°16'55"	93°43'00"

* * * * *

(16) *Calcasieu Pass Anchorage Areas*—(i) *Calcasieu Pass General Anchorage Area.* The area enclosed by rhumb lines joining points at:

Latitude	Longitude
29°41'12"	93°19'37"
29°41'12"	93°12'28"
29°31'16"	93°12'16"
29°37'30"	93°18'15"
29°41'12"	93°19'37"

(ii) *Calcasieu Pass LNG/LPG Anchorage Area.* The area enclosed by rhumb lines joining points at:

Latitude	Longitude
28°59'30"	93°16'30"
28°59'30"	93°14'00"
28°56'00"	93°16'30"
28°56'00"	93°14'00"
28°59'00"	93°16'30"

(17) *Lower Mud Lake Safety Fairway.* The area between a rhumb line joining points at:

Latitude	Longitude
29°43'24"	93°00'18"
29°42'00"	93°00'18"
and a rhumb line joining points at:	
29°43'33"	93°00'48"
29°42'00"	93°00'48"

* * * * *

(28) *Southwest Pass (Mississippi River) Safety Fairway*—(i) *Southwest Pass (Mississippi River) to Gulf Safety Fairway.* The areas between rhumb lines joining points at:

Latitude	Longitude
28°54'33"	89°26'07"
28°52'42"	89°27'06"
28°50'00"	89°27'06"
28°02'32"	90°09'28"
and rhumb lines joining points at:	
28°54'18"	89°25'46"
28°53'30"	89°25'18"
28°53'30"	89°23'48"
28°50'40"	89°24'48"
28°48'48"	89°24'48"
28°47'24"	89°26'30"
28°00'36"	90°08'18"

(ii) *Southwest Pass (Mississippi River) to Sea Safety Fairway.* The areas between rhumb lines joining points at:

Latitude	Longitude
28°54'33"	89°26'07"
28°52'42"	89°27'06"
28°50'00"	89°27'06"
28°47'24"	89°26'30"
28°36'26"	89°18'45"
and rhumb lines joining points at:	
28°54'18"	89°25'46"
28°53'30"	89°25'18"
28°53'30"	89°23'48"
28°50'40"	89°24'48"
28°48'48"	89°24'48"
28°45'06"	89°22'12"
28°43'27"	89°21'01"
28°37'54"	89°17'06"

* * * * *

(29) *Southwest Pass (Mississippi River) Anchorage.* The areas between rhumb lines joining points at:

Latitude	Longitude
28°53'30"	89°23'48"
28°53'30"	89°21'48"
28°55'06"	89°21'48"
28°55'06"	89°19'18"
28°52'41"	89°17'30"
28°50'40"	89°21'14"
28°50'40"	89°24'48"
28°53'30"	89°23'48"

(Sec. 4(c), Pub. L. 95-474; 92 Stat. 1473 (33 U.S.C. 1223); 49 CFR 1.46(n)(4))

Dated: March 26, 1984.

T. J. Wojnar,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 84-8433 Filed 3-29-84; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Medical-Dental Internships and Residencies

AGENCY: Veterans Administration.

ACTION: Proposed regulation.

SUMMARY: The regulation which the VA (Veterans Administration) uses in determining whether to recognize medical and dental residencies has become outdated. Changes in accrediting associations and the structure of medical and dental residencies are reflected in the proposal. This proposal states how the VA will determine which residencies are institutional training.

DATES: Comments must be received on or before April 30, 1984. It is proposed to make these regulations effective the date of final approval.

ADDRESSES: Send written comments to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until May 10, 1984. Anyone visiting VA Central Office in Washington, D.C. for the purpose of inspecting any of these comments will be received by the Central Office Veterans Services Unit in room 132. Visitors to VA field stations will be informed that the records are available for inspection only in Central Office and will be furnished the address and room number.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, Washington, D.C. 20420 (202-389-2092).

SUPPLEMENTARY INFORMATION: Section 21.4265, Title 38, Code of Federal Regulations is amended to show that accreditation by the Accreditation Council for Graduate Medical Education is sufficient for the VA to recognize a medical residency as institutional training. If the council has delegated its accrediting authority to a Residency Review Committee, accreditation by the committee will be sufficient for recognition of the medical residency as institutional training. The Commission on Dental Accreditation now accredits dental residencies. Section 21.4275, Title 38, Code of Federal Regulations is amended because medical and dental internships have been phased out.

The VA has determined that these proposed regulations are not a major rule as that term is defined by Executive Order 12291, entitled "Federal Regulation". The annual effect on the economy will be less than $100 million. The proposal will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans' Affairs hereby certifies that the proposed regulations, if made final, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these proposed regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because this is a technical change only. The VA does not expect substantial changes in recognition of residencies to result from this regulatory change. Consequently the proposal will have no significant impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by these regulations is 64.111.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 14, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

The Veterans Administration proposes to amend 38 CFR Part 21 as set forth below:

1. In § 21.4265, paragraph (a) is revised as follows:

§ 21.4265 Practical training approved as institutional training or on-job training.

(a) *Medical-dental internships and residencies.* (1) Medical and dental residencies, and osteopathic internships and residencies may be approved and recognized as institutional courses only when an appropriate accrediting agency accredits and approves them as leading to certification for a recognized professional objective.

(2) The appropriate accrediting agencies are:

(i) The Accreditation Council for Graduate Medical Education, or where the Accreditation Council for Graduate Medical Education has delegated accrediting authority, the appropriate Residency Review Committee,

(ii) The American Osteopathic Association, and

(iii) The Commission on Dental Accreditation of the American Dental Association.

(3) Residency programs—

(i) Must lead to certification by an appropriate Specialty or Subspecialty Board, the American Osteopathic Association, or the American Dental Association; and

(ii) Will not be approved to include a period of practice following completion of the education requirements even though the accrediting agency requires the practice.

(4) No other medical or dental residency or osteopathic internship or residency will be approved or recognized as institutional training.

(38 U.S.C. 1788(b))

* * * * *

2. In § 21.4275, paragraph (a) is revised as follows:

§ 21.4275 Practical training courses; measurement.

(a) Medical and dental residencies and osteopathic internships and residencies. The Veterans Administration will measure medical and dental residencies, and osteopathic internships and residencies as provided in § 21.4270(b) if they are accredited and approved in accordance with § 21.4265(a).

(38 U.S.C. 1788(b))

* * * * *

[FR Doc. 84-8605 Filed 3-29-84; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6581]

Revision of Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Cortlandt, Westchester County, New York.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in the **Federal Register** at 49 FR 1775 on January 13, 1984, and hence supersedes those previously published proposed rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in each community.

ADDRESSES: Maps and other information showing the detailed outlines of the floodprone areas and the proposed flood elevations are available for review at the Town Clerk's Office, Municipal Building, Croton-on-Hudson, New York.

Send comments to: Honorable Charles DiGiacomo, Cortlandt Town Supervisor, Municipal Building, Croton-on-Hudson, New York 10520.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the Town of Cortlandt, Westchester County, New York, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

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

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base (100-year) flood elevations are:

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Annsville Creek	At confluence with Hudson River.	*8
	At confluence with Peekskill Hollow Brook and Sprout Brook.	*8
Peekskill Hollow Brook.	At confluence with Annsville Creek and Sprout Brook.	*8
	Upstream side of Pump House Dam.	*31
	Approximately 0.73 mile upstream of Gallows Hill Road.	*50
	At first upstream corporate limits.	*99
	At third upstream corporate limits.	*123
Sprout Brook	At confluence with Annsville Creek and Peekskill Hollow Brook.	*8
	Upstream side of abandoned road.	*14
	Upstream side of Cortlandt Lake Dam.	*97
Furnace Brook	Approximately 130' downstream of Furnace Dock Road.	*77
	Upstream side of Washington Street.	*186
	Upstream side of Furnace Brook Drive (2nd crossing).	*238
	Approximately 0.38 mile upstream of Furnace Brook Drive (2nd crossing).	*251
Croton River	At downstream corporate limits.	*9
	Approximately 50' upstream of Quaker Bridge Road (1st crossing).	*44
	At upstreanm corporate limits.	*50
Hudson River	Entire shoreline within community.	*8
Lake Meahagh	Entire shoreline within community.	*8
New Croton Reservoir	Entire shoreline within community.	*199

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44

FR 19367; and delegation of authority to the Administrator)

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

Issued: March 20, 1984.

[FR Doc. 84-8525 Filed 3-29-84; 8:45 am]

BILLING CODE 6718-01-M

44 CFR Part 67

[Docket No. FEMA-6586]

Revision of Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Griswold, New London County, Connecticut.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in the **Federal Register** at 49 FR 6754 on February 23, 1984, and hence supersedes those previously published proposed rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in each community.

ADDRESSES: Maps and other information showing the detailed outlines of the floodprone areas and the proposed flood elevations are available for review at the Building Inspector's Office, 50 School Street, Griswold, Connecticut.

Send comments to: Honorable Donald Burdick, First Selectman of the Town of Griswold, 50 School Street, Griswold, Connecticut 06351-2398.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the Town of Griswold, New London County, Connecticut, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

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

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base (100-year) flood elevations are:

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Quinebaug River	Downstream corporate limits	*77
	Upstream of Connecticut Turnpike.	*83
	Most upstream corporate limits.	*100
Pachaug River	Downstream corporate limits	*129
	Upstream of Connecticut Turnpike.	*134
		*152
	Upstream of Bitgood Road (downstream crossing).	*155
	Downstream of dam located at confluence of Pachaug Pond.	
Pachaug Pond	Entire shoreline within corporate limits.	*160
Glasgo Pond	Entire shoreline within corporate limits.	*187

Maps available for inspection at the Building Inspector's Office, 50 School Street, Griswold, Connecticut.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: March 20, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-8524 Filed 3-29-84; 8:45 am]

BILLING CODE 6718-01-M

44 CFR Part 67

[Docket No. FEMA-6586]

Proposed Flood Elevation Determinations

Correction

In FR Doc. 84-2983 beginning on page 6752 in the issue of Thursday, February 23, 1984, make the following corrections.

1. On page 6755, in the second line of the location column for Barrington, Cook and Lake Counties, Illinois, "360 downstreams" should have read "360 feet downstreams".

2. On page 6759, in the source of flooding column for Franklin County, Missouri, "Little Calvey" should have read "Little Calvey Creek".

BILLING CODE 1505-01-M

FEDERAL MARITIME COMMISSION

46 CFR Part 508

[Docket No. 83-45]

Actions To Adjust or Meet Conditions Unfavorable to Shipping in the United States/Republic of the Philippines Trade

AGENCY: Federal Maritime Commission.

ACTION: Notice of request for further comment.

SUMMARY: The purpose of this Notice is to provide further opportunity for comment on the Notice of Proposed Rulemaking published at 48 FR 45800 (Oct. 7, 1983) and to address certain factual, legal, procedural, and policy matters raised by the initial round of comments. In addition, a synopsis of the factual allegations contained in the comments is provided in the Appendix to this Notice.

DATE: Comments on or before May 2, 1984 (original and 15 copies).

ADDRESS: Send comments to: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, D.C. 20573.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION:

Background

This rulemaking proceeding under section 19 of the Merchant Marine Act, 1920 was instituted by the Commission, on its own motion, in response to allegations of the existence of unfavorable conditions in the foreign oceanborne trade between the United States and the Republic of the Philippines.[1] The Proposed Rule would

[1] Section 19(1)(b), Merchant Marine Act, 1920, (46 U.S.C. 876), as implemented by Commission General Order No. 33 (G.O. 33) (46 CFR Part 506) authorizes the Commission to make rules and regulations affecting shipping in the foreign trade of the United States in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade of the United States and which arise out of, or result from, foreign laws, rules or regulations, or from competitive methods or practices employed by owners, operators, agents or masters of vessels of a foreign country.

suspend the tariffs of Philippine carriers operating in the United States/Republic of the Philippines trade or, alternatively, bar access of Philippine carriers to United States ports and cargoes unless these carriers obtain authorization from the United States Government.[2] The effect of the Rule would be to adjust or meet any unfavorable conditions by imposing burdens on Philippine carriers equal to those imposed on non-Philippine carriers by Philippine laws and regulations.

At the request of counsel for the Philippine carriers, the comment period on the Rule was extended from December 5, 1983 to January 20, 1984. A total of 13 comments were received. Philippine-flag [3] and U.S.-flag carriers [4] opposed the Proposed Rule. Comments either supporting the Proposed Rule, favoring some action by the Commission, or expressing concern over conditions in the United States/Republic of the Philippines trade were received from third-flag carriers,[5] port authorities,[6] shipper interests,[7] and foreign shipowners.[8] A motion by four Executive Branch Departments to file a comment after other comments were received was denied.

The purpose of this Notice of Request For Further Comment is to solicit comment on the allegations of unfavorable conditions which were presented in the initial round of comment. In addition, comment is specifically invited on certain matters which were not addressed or not sufficiently explored in the initial round of comment. Finally, this Notice affords an opportunity to dispose of some threshold legal and policy issues raised in the comments and thereby focus any further comment on the remaining issues. The Commission does not believe that further comment on legal and policy matters disposed of herein would be useful at this time and the parties are urged to avoid rearguing these matters. A synopsis of factual allegations made in the initial round of comment is provided in an Appendix to this Notice.

[2] The Notice of Proposed Rulemaking was published in the **Federal Register** on October 7, 1983 (48 FR 45800).

[3] A comment opposing the Proposed Rule was filed on behalf of National Galleon Shipping Corporation (Galleon) and the Maritime Company of the Philippines (MCP).

[4] A comment filed by the members of the U.S.-Flag Far East Discussion Agreement (Agreement No. 10050) opposes any action by the Commission. The members of Agreement No. 10050 are: American President Lines, Ltd.; Lykes Bros. Steamship Co., Inc.; Sea-Land Service, Inc., United States Lines, Inc.; and Waterman Steamship Co.

[5] Separate comments were filed by Maersk Line (Maersk) and Barber Blue Sea Lines (BBSL).

[6] The port authorities filing comments are: Port of Portland (Portland); Virginia Port Authority (VPA); The Port Authority of New York and New Jersey (New York); Philadelphia Port Corporation (Philadelphia); and the Maryland Port Administration (Baltimore).

[7] P.L. Thomas Paper Co., Inc., the New York Chamber of Commerce and Industry, and the Chemical Manufacturers Association (CMA) supported Commission action.

[8] The Council of European & Japanese National Shipowners' Associations (CENSA).

Discussion

The Philippine carriers present various legal, procedural, and policy arguments in opposition to the Proposed Rule. Certain U.S.-flag carriers also oppose the Proposed Rule and state that no action should be taken pending ongoing government negotiations. Many of these arguments, although expressed somewhat differently, were raised and recently addressed in a section 19 proceeding involving the United States/Venezuela trade. *See Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Venezuela Trade*, Interim Report on Current Status of Proceeding, 21 S.R.R. 1621 (1983). For reasons stated below, we conclude that these arguments are without merit and that there are no statutory, procedural or policy impediments to Commission action in this proceeding.

I. The Philippine carriers argue that section 19 was not enacted for the benefit of third-flag carriers or shippers and that the Commission is without authority to make rules under that section on their behalf. These carriers read the language and legislative history of the Merchant Marine Act of 1920 as authorizing action solely for the purpose of promoting and protecting the U.S. merchant marine. The Philippine carriers contend that U.S. carriers in the United States/Philippines trades have, in fact, been favored as a result of Philippine cargo reservation laws and that section 19, therefore, cannot be invoked. The U.S. carriers, in their comment, also contend that the congressional policy underlying the Merchant Marine Act, as expressed in section 1 of the Act (46 U.S.C. 861), limits the exercise of section 19 authority to measures which serve the statutory purpose of aiding the U.S. merchant marine.

Maersk argues that section 19 may be invoked for the benefit of third-flag carriers. Maersk states that the objective of the statute is to ensure fair and competitive access of all carriers in U.S. trades and not only to guarantee access to U.S. carriers. Maersk asserts that the Commission has, in the past, taken action specifically for the benefit of a third-flag vessel and cites the recent example of Commission action in the United States/Venezuela trade as support for such relief. CMA, in its comment, also argues that third-flag carriers, as well as shippers, are protected by section 19.

This argument of the Philippine carriers has been previously considered and rejected in other section 19 proceedings. The Commission has authority under section 19 to provide relief from *any* conditions unfavorable to shipping in the foreign trades of the United States. Section 19 authorizes the Commission:

> To make rules and regulations affecting shipping in the foreign trade * * * to adjust or meet general or special conditions unfavorable to shipping in the foreign trade whether in any particular trade or upon any particular route or in commerce generally * * *.

Nothing contained in the language of section 19 limits relief to U.S. carriers. Nor can the promotional goals of the Act, as expressed in the Preamble, in section 1, and in the legislative history, be construed to restrict relief under section 19 to U.S. carriers only. G.O. 33 states that any person "who has been harmed by, or who can reasonably expect harm from existing or impending conditions unfavorable to shipping in the foreign trade of the United States, may file a petition for relief" under section 19 (46 CFR 506.4).[9] G.O. 33 specifically includes importers, exporters, shippers and operators of liner vessels as persons who may petition for section 19 relief. Finally, the Commission has consistently held that section 19 relief extends to third-flag carriers and shippers.[10]

II. The Philippine carriers argue that one option under the Proposed Rule i.e., suspension of tariffs, goes beyond the present factual record and would be an

[9] Certain comments filed in Docket No. 72-62 (which led to the promulgation of present G.O. 33) suggested that the G.O. 33 regulations be restricted to protecting U.S.-flag ships. It was also proposed that other shipping interests in the foreign trade of the United States be protected in separate regulations. The Commission rejected these suggestions stating: "The intent of the Commission is not, however, so narrow. It is shipping in the foreign trade which is to be protected." The Commission also stated in connection with changes to another section of the regulations that: "The interests of the United States are much broader, however, than the conditions affected U.S. flag ships. Therefore, these rules have been amended to broaden the application to conditions affecting shipping in the foreign trade of the United States which are unfavorable." (30 FR 38647, November 1, 1974).

[10] *See Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Venezuela Trade*, 21 S.R.R. 1621 (1983); *Petition of Ace Lines, Ltd.*, 19 S.R.R. 481 (1979).

unacceptable act of retaliation not legally permitted under section 19. They contend that section 19 only permits the Commission to take action which *adjusts* or *meets* general or special *existing* conditions unfavorable to shipping. Allegedly, no actual trade dislocation has been established. The U.S. carriers also state that the Commission may exercise its section 19 authority "only if unfavorable conditions *exist*."

Maersk argues that section 19 is not limited to relief from existing unfavorable conditions and that Commission action may be taken in response to prospective harm which can reasonably be expected. It states that it is not unreasonable to predict that Maersk an other third-flag lines will ultimately be excluded from the trade if enforcement of the Philippine cargo reservation system is unchecked. Maersk also contends that, in this case, it has provided evidence of actual harm to Maersk Line.

The Commission is granted broad authority under section 19 to make rules and regulations not in conflict with law in order to meet unfavorable trade conditions. One remedy available to the Commission is the suspension of tariffs such as is proposed under Option A of the Proposed Rule. Although tariff suspension is admittedly a serious sanction, the Commission has the authority to take such an action should trade conditions warrant it. While the Philippine carriers do not state that tariff suspension is never available as a remedy under section 19, they do contend that such a sanction exceeds what would be legally permitted on the present record.

Section 19 contemplates the use of countervailing measures to correct an unfavorable trade condition. In some instances, *e.g.*, where a fine or charge is levied, a precisely mirrored penalty may be devised. In other cases, the remedy may not be so easy to devise but the Commission will consider all reasonable alternatives. In this instance, it is alleged that Philippine cargo reservation laws have the effect of excluding third-flag carriers from the trade. The suspension of tariffs, as proposed in Option A, would impose a similar effect on Philippine carriers. It should be noted that the Commission has merely issued a Proposed Rule and has not taken any final action. However, should conditions be established for which the only remedy is tariff suspension, then such action would not be an act of excessive retaliation under section 19. Suspension, in whole or in part, of any tariff is one of the actions specifically authorized under the Commission's rules. *See* 46 CFR 506.9(c).

Finally, it should be noted that section 19 relief may be granted upon a showing of prospective harm. Such action is provided for in the Commission's rules which state that an unfavorable condition is one which precludes or *tends to preclude* other vessels in the trade from competing in the trade on the same basis as any other vessel. *See* 46 CFR 506.3(a). In the recent Venezuela case, the Commission stated that it is not necessary to wait until a third-flag carrier is actually forced out of the trade or other actual harm is suffered before taking action.[11] Relief may be granted for prospective and potential harm which may reasonably be expected to occur.

III. The Philippine carriers argue that the foreign policy implications of tariff suspension make it an improper exercise of Commission authority under section 19. They state that the legislative history of the Act indicates that section 19 was not intended to authorize retaliatory sanctions with serious foreign policy implications through a summary administrative action. The Philippine carriers cite other provisions of the Shipping Act and argue that elsewhere the Commission is authorized to invoke severe sanctions affecting foreign entities only upon formalized hearings or consultations with the President.[12] The Philippine carriers argue that section 19 does not provide for such hearings or consultation. Therefore, they infer that the Commission may not so use section 19.

The Commission's procedures under G.O. 33 expressly provide for cooperation and consultation between the Commission and the Executive Branch and establish avenues for resolution of section 19 matters through diplomatic channels (46 CFR 506.8). Moreover, G.O. 33 states that:

> The Commission shall postpone or discontinue any or all such actions if the President informs the Commission that postponement, discontinuance, or suspension is required for reasons of foreign policy or national security. 46 CFR 506.13.

As discussed above, tariff suspension is a permissible remedy under section 19. The fact that tariff suspension has foreign policy implications does not make it an improper or an unlawful exercise of Commission authority. G.O. 33 is sensitive to foreign policy ramifications and tariff suspension is a proper exercise of Commission authority.

Finally, we note that the Philippine carriers object to the Proposed Rule as a "summary administrative device." However, Congress intended that section 19, which was modeled on the British Orders in Council, provide a summary administrative instrument for dealing swiftly and effectively with conditions unfavorable to shipping. Although the statute does not expressly provide for a hearing, the Commission has always taken care to afford parties who may be adversely affected by section 19 action with an adequate opportunity to be heard.

IV. The Philippine carriers argue that the Proposed Rule is procedurally defective under the Commission's own regulations. The carriers cite that section of G.O. 33 which sets forth the requirements for a petition for relief under section 19 (46 CFR 506.6). The Philippine carriers do not contend that the Commission must adhere to the same technical requirements as a private petitioner. However, they do argue that the Commission must adhere to comparable standards for proceedings initiated on its own motion. The carriers argue that the record relied upon by the Commission is insufficient even for the Commission to *propose* a rule under section 19.

Maersk Line argues that the laws and actions of the Philippine Government, in themselves, establish a *prima facie* case for the imposition of the Proposed Rule.

Whatever the minimum requirement for the Commission to merely propose a rule under section 19 might be, we believe that there is more than an adequate basis for the Commission to take the step of issuing a proposed rule where: (1) There is evidence of the existence of a legal and regulatory regime having as its stated purpose the limitation of third-flag carriers' participation in the trade; and (2) there have been complaints from interested parties that these laws are producing unfavorable conditions. Both of these factors were present in this case when the Commission took the action of issuing a notice of proposed rulemaking.

V. The Philippine carriers argue that this proceeding fails to meet minimum standards of due process established by constitutional and administrative law.

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[11] "The Commission is not inclined to wait for carriers to suffer irreparable harm in the form of declining shares before it takes action, when it is nevertheless clear that the foreign law on its face would create unfavorable conditions and the foreign government is beginning enforcement." 21 S.R.R. at 1627.

[12] The Philippine carriers note that section 14a of the Shipping Act, 1916 (46 U.S.C. 813), which provides for exclusion of a vessel from U.S. ports, requires a full evidentiary hearing on the record. The Commission is referred to other sections of the Shipping Act where authority to suspend tariffs, *i.e.*, sections 18(b)(7) and 22(c)(2) (46 U.S.C. 817(b)(7) and 821(c)(2)), is subject to review by the President.

They argue that they have a constitutionally protected property right in their authorization to pursue a lawful business. This property right is allegedly vested in their tariffs and may not be taken without due process of law. According to the carriers, due process guarantees them an opportunity to present evidence and to challenge allegations and evidence introduced against them. They argue that under principles of administrative law, a party may not be deprived of a property right in an adjudicatory proceeding without an evidentiary hearing. The Philippine carriers assert that no final action should be taken by the Commission without an opportunity to prepare rebuttal evidence and to present that evidence in an appropriate proceeding.

Comments by several ports express concern that the Philippine cargo-sharing plan and the waiver program will lead to a diversion of cargo presently moving through those ports. Maersk argues that the actions of the Philippine Government have been shown to unfairly burden third-flag carriers, as well as shippers, exporters, importers and ports and are otherwise unfavorable to shipping in the foreign trade of the United States. Maersk urges the Commission to issue the Proposed Rule without a further proceeding.

The essence of the Philippine carriers argument is that the Commission cannot take any retaliatory action or impose any sanction, based on the present record, without some opportunity for further participation in this proceeding by the Philippine carriers. The carriers do not argue that a formal trial-type hearing is necessary, but they do assert that, at a minimum they should have an opportunity to respond to adverse comments which were filed simultaneously with theirs. As indicated above, section 19 was intended by Congress to provide a means for dealing in the swiftest manner possible with unfavorable trade conditions. the statute does not contain any express requirement for an evidentiary hearing on the record. Moreover, G.O. 33 provides for summary disposition in section 19 proceedings. Nevertheless, the Commission through this Notice of Request for Further Comment is affording the Philippine carriers an opportunity to respond to adverse comments and to submit additional information in support of their position.

VI. The Philippine carriers state that the cargo sharing program of the Philippine Government is only a modest attempt to encourage the development of its own liner companies. They assert that this is a legitimate sovereign goal and suggest that the Philippine program is closely akin to United States cargo preference programs.

The Commission in the Notice of Proposed Rulemaking specifically stated that it does not question the sovereign right of a foreign government to impose conditions on its own domestic commerce. The Commission stated:

> Many nations, including the United States, have legitimate interests in promoting the economic well-being of their maritime commerce. However, it is not reasonable to expect the export commerce of the United States to bear the burden of the economic costs of the carrier promotion policies of the Republic of the Philippines.[13]

As further noted in the Notice of Proposed Rulemaking, the laws and regulations promulgated by the Philippine Government attempt to impose unilaterally a strict 40–40–20 cargo sharing formula on the trade of the United States.[14] This regime covers a substantial portion of the export cargo from the United States and is not comparable to the much more limited cargo reservation programs of the United States. A recent report of the U.S. General Accounting Office would appear to indicate that U.S. cargo preference programs do not cover a substantial portion of the total oceanborne liner cargo in the U.S. foreign trade.[15]

To the extent that specific information on the amount of cargo in the United States/Philippines trade affected by U.S. cargo preference laws is available, such information would be useful in this proceeding. Executive Branch departments or other interested persons with access to this information are invited to submit this data to the Commission.

VII. The U.S. carriers argue that no action should be taken by the Commission at the present time because of ongoing governmental and commercial efforts to resolve maritime issues in the United States/Philippines trade. According to the U.S. carriers, Commission action at this time would undermine these efforts. These carriers cite past commercial efforts to harmonize conflicting national policies through the filing of a proposed U.S.-Philippine Equal Access Agreement (Agreement No. 10461). They also cite recent maritime consultations in Manila between the United States and Philippine delegations at which the delegations agreed to meet again in the near future to draw up a bilateral agreement governing liner transport in the United States/Philippines trade. Implementation of sanctions under section 19 would allegedly chill these government negotiations.

The U.S. carriers present no reasonable basis to favor a suspension of this proceeding at this time. Agreement No. 10461 was withdrawn and is no longer being pursued as a commercial alternative. As to government negotiations, should the diplomatic situation change, it is presumed that the Executive Branch would advise the Commission of significant diplomatic developments which might affect any final decision by the Commission. Suspension of this proceeding at this time does not appear to be warranted.

Conclusion

An Appendix is included with this Notice which summarizes factual assertions made in the various comments. This synopsis is provided solely for the convenience of interested persons and in order to facilitate further comment. The synopsis should not be construed as factual findings nor is any further Commission action limited to matters contained in the synopsis.

The Commission declines analysis of the factual record established at this time and has limited its discussion in this notice to issues of law and policy raised by the comments. This absence of discussion of the factual record, however, should not be construed as a determination that the present record is not, in itself, sufficient to support a finding of unfavorable conditions.

In fact, serious allegations of unfavorable conditions have been made and factual information supporting those allegations has been provided. The present record establishes the existence of a comprehensive cargo sharing regime which seeks to allocate shares in the trade on a 40–40–20 basis. The record also shows that this regime is being implemented through a waiver program which affects only third-flag carriers.

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[13] Docket No. 83–45, *Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Republic of the Philippines Trade*, Notice of Proposed Rulemaking, October 7, 1983, p. 11; *see* also the Commission's Interim Report in the Venezuela proceeding at 21 S.R.R. 1628.

[14] This cargo sharing formula would appear to apply to all cargo except for that cargo covered by P.D. 1466, all of which is reserved for carriage by Philippine-flag vessels.

[15] Although the data presented in the GAO report does not provide specific information on the United States/Philippines trade, it does indicate that in 1980, U.S.-flag vessels carried 6.0 million tons of U.S. government cargo which was 9.5% of the total liner cargo shipped on U.S. flag vessels between U.S. and foreign ports. *See* U.S. General Accounting Office, *Economic Effects of Cargo Preference Laws*, Report To The Chairman, Committee on Merchant Marine and Fisheries House of Representatives, p. 10 (1984).

The Commission wishes through this Notice to provide parties that would be adversely affected by the Proposed Rule with the opportunity to address other comments which were filed simultaneously with theirs and to present any other additional factual information relevant to this proceeding. In addition, Executive Branch Departments will have an opportunity to address the comments filed and advise the Commission of their views. It should be noted, however, that further rounds of comment may not be necessary for the Commission to take some final action and should not be anticipated.

As discussed above, the present record does not indicate the extent to which cargo moving in the United States/Philippines trade is governed by U.S. cargo preference laws. Such data would be helpful to the Commission in this proceeding. Interested persons are invited to submit information which shows the percentage of the total oceanborne liner cargo in the U.S. export trade to the Philippines which was carried by U.S.-flag vessels because of the requirements of U.S. cargo preference laws. Such data for the most recent year available would be useful and relevant.

The Commission also invites further comment regarding the options proposed as remedies. Although some commentators opposed both options and others favored one option or another, the Commission believes that further comment on these options may be beneficial. In particular, port interests are invited to comment on whatever relief other than the proposed options they believe may be adequate to meet their specific concerns.

Interested parties are given until May 2, 1984 to file comments on the Proposed Rule. Factual submissions relating to conditions in the United States/Philippines trade should, to the extent possible, be supported by sworn documents and affidavits.

List of Subjects in 46 CFR Part 508

Maritime carriers, Tariffs.

By the Commission.

Francis C. Hurney,

Secretary.

Appendix: Synopsis of Comments

The purpose of this synopsis is to summarize the comments received in response to the Notice of Proposed Rulemaking in order to make this information broadly available to persons interested in this proceeding and thereby facilitate further comment on the Proposed Rule. This synopsis is limited to factual matters contained in the comments and does not include legal, procedural or policy matters which are raised by the comments and which are discussed in the supplementary information section of this Notice of Request for Further Comment. Moreover, it should be noted that this synopsis focuses, for the most part, on those factual matters which are in dispute among the several commentators, or which involve allegations of unfavorable conditions in the trade. However, not every factual assertion contained in the comments which may be relevant is necessarily included. This synopsis is not intended to be a substitute for the comments themselves which are available to interested persons in the Office of the Secretary. The comments in their entirety make up the present record in this proceeding. The synopsis is organized so that comments alleging facts which would be supportive of the Proposed Rule are summarized first, following by the comments of those who oppose the Proposed Rule.

I. The Waiver Program

A. Supporting Comment. Third-flag carrier commentators assert generally that the provisions, implementation and administration of the Philippine Government waiver program has caused unreasonable delay, unnecessary cost, and has placed shippers at a disadvantage to their foreign competitors. Both BBSL and Maersk note that only third-flag carriers are required to obtain a waiver. BBSL states that such a requirement puts third-flag carriers at a competitive disadvantage to national-flag carriers that do not need a waiver. Maersk states that a third-flag carrier may book cargo, and not know until the "eleventh hour" whether a national-flag vessel will claim that cargo. Maersk states that this uncertainty has an adverse impact on commitments of equipment and relationships with shippers. Maersk states that there are only eight Philippine consulates in the United States where waivers may be obtained. Shippers, particularly small shippers, located in areas distant from a consulate may simply decide to ship with a carrier not requiring a waiver. In order to reduce this burden on shippers, Maersk states that third-flag lines have undertaken to arrange for waivers on behalf of shippers and have absorbed the fee paid for waivers.

CMA contends that virtually all responding CMA members with significant involvement in the United States/Philippine export trade reported that they had experienced delays in shipments and incurred costs due to the waiver system. CMA contends that in recent months the waiver process has become even more time-consuming, often requiring extensive negotiations with Philippine carriers and the Philippine consulate. Finally, CMA cites examples of alleged arbitrary administration of the waiver system, such as refusal to grant waivers even where waiver criteria are met.

B. Opposing Comment. The Philippine carriers make an extensive defense of the waiver system including a point-by-point refutation of specific allegations mentioned in the Notice of Proposed Rulemaking. According to the Philippine carriers, all waiver requests are acted upon within 24 hours and 90 percent of these requests are granted. The specific grounds for issuing waivers are stated on the waiver form. However, MARINA allegedly has been flexible in administering the waiver program and has granted waivers for any good reason. The Philippine carriers assert that no complaints about the waiver system have been received by MARINA for some time. Waivers allegedly are granted automatically or for extended periods in appropriate cases, as where Philippine vessels do not call at a port, or where sailings are infrequent. They assert that there is no known instance of interruption of waiver service at New York or any other consulate office within the United States. According to the Philippine carriers, MARINA maintains a constant oversight of the waiver program in order to ensure its efficient operation.

The Philippine carriers explain that a lower freight rate is a valid reason for obtaining a waiver only where the third-flat rate is at least 15 percent below a national-flag carrier rate. The Philippine carriers state that this requirement is rarely met because the Philippine carriers have resigned from conferences and now offer rates which are competitive with other low-priced independents. The Philippine carriers conclude that the waiver system has not burdened shippers with either adverse rate or service conditions.

II. Fines and Penalties

A. Supporting Comment. Third-flag carriers, shippers and others assert generally that third-flag carriers are subjected to fines and penalties for failure to comply with regulations issued under E.O. 769. They note that section 48 of the "Rules & Regulations Implementing Executive Order No. 769" empowers MARINA to impose sanctions and administrative fines in an amount not to exceed the cost of freight covered by a particular violation.

B. Opposing Comment. The Philippine carriers assert that the fines imposed for violation of the waiver system have been so small as to be insignificant. They assert that the penalty provision, which would potentially subject a carrier offloading cargo from the United States in the Philippines without a waiver to a fine equal to the freight rate, has rarely, if ever, been applied. Furthermore, they state there are no present plans to apply this penalty. In the majority of cases, according to the Philippine carriers, fines have been a nominal 200 pesos (approximately $14). However, they do state that where violations have been repeated, the fine has been increased to 750 pesos (approximately $54).

III. Central Bank Memorandum Requirements

A. Supporting Comment. Maersk interprets the language of section 3 of the Central Bank Memorandum[1] as requiring third-flag carriers to wait until the national-flag lines have carried 80 percent of cargo for the year before they could participate for their 20 percent. Maersk notes that literal application of such a rule would, as a practical matter, exclude all third-flag service. CMA and the Port of New York interpret this Central Bank rule in the same manner as Maersk.

B. Opposing Comment. The Philippine carriers argue that section 3 of the Central Bank Memorandum has been interpreted to allocate cargo on a current basis throughout the year. The 20 percent share for third-flag carriers is not withheld until the bilateral share is obtained but rather is allocated on a current proportional basis. Otherwise, the Philippine carriers note, third-flag carriers would have to shut down operations until the 80 percent share for national-flag carriers had been achieved.

[1] Section 3 of the Central Bank Memorandum states:

In accordance with MARINA's guidelines, compliance with the 40–40–20 cargo sharing arrangement shall be determined periodically on the basis of the aggregate of Philippine import liner cargoes from the United States not covered by P.D. No. 1466 and not on the basis of import liner cargoes of each importer. *Moreover, the 40–40 share of the Philippines and the United States should first be filled up during the year to ensure compliance therewith.* Accordingly, all importations covered shall be shipped thru national flag vessels of the Philippines or the United States unless the prescribed waiver is secured. (Emphasis added).

IV. Cargo Shares in the United States/Philippines Trade

A. Supporting Comment. Maersk, BBSL[2] and CMA all contend that the Philippine cargo reservation program has already resulted in a shift of cargo from third-flag carriers to U.S. and Philippine-flag carriers. Maersk and CMA have provided Journal of Commerce data which shows the following recent trend in third-flag participation in United States/Philippines export trade:

	1981		1982		First half 1983	
	Tons	Percent	Tons	Percent	Tons	Percent
U.S.-flag	117,560	32.7	158,392	34.1	91,809	43.7
Philippine-flag	59,374	16.5	90,561	19.5	42,970	20.4
Third-flag	183,122	50.9	215,877	46.4	75,469	35.9

These data document a decline in third-flag share following implementation of the Philippine cargo sharing system. Maersk provides further data which attempts to document more specifically the impact of Philippine laws. Maersk states that these laws were first implemented in the third quarter of 1982. Maersk provides the following comparative third quarter data in the export trade for 1982 and 1983.

	Third quarter 1982		Third quarter 1983	
	Tons	Percent	Tons	Percent
U.S.-flag	123,772	33.7	144,870	44.9
Philippine-flag	72,674	19.8	60,839	18.9
Third-flag	170,752	46.5	116,768	36.2

These figures show a decline in the overall third-flag share for the third quarter from 47 percent to 36 percent. Maersk's own share of the export trade for this quarter dropped from 15.7 percent (57,547 tons) to 10.8 percent (34,716 tons).

Maersk states that during the period 1980–82 its annual revenues from the trade were approximately $18 million. In 1983, Maersk estimates revenues at $6 million. Prior to the implementation of Philippine laws, 9.1 percent of Maersk's total revenues were earned in United States/Philippines trades. Maersk now earns approximately 4.3 percent of total revenues from the trade. Annual average tonnage for Maersk has declined from 110,000 freight tons to about 50,000 freight tons in 1983.

Finally, Maersk provides data on its cargoes to the Philippines shipped in less-than-containerloads. During 1982, 34 percent of Maersk cargoes to the Philippines were less-than-containerloads, whereas in 1983 the comparable figure was 19 percent. Maersk concludes that these figures demonstrate that small shippers are turning away from third-flag carriers as a result of Philippine cargo reservation laws because it is easier for the small shipper to deal with a national-flag carrier.

[2] BBSL states that implementation of Philippine laws has resulted in actual cargo and revenue losses to third-flag carriers but does not provide specific data as does Maersk.

CMA also provides documentation of third-flag carrier cargo losses. CMA claims that its members report a shift of between 50 to 75 percent of their entire cargo from third-flag carriers to national-flag lines. CMA cites one member company which had shipped approximately 50 percent of its shipments with third-flag carriers and 50 percent with United States carriers. CMA states that, after this company's third-flag carriers began to have difficulty in obtaining waivers in May of 1983, this shipper shifted nearly all of its cargo to U.S.-flag vessels. CMA states that another company reported that in January of 1982, 80 percent of its traffic was transported by third-flag carriers. Now this company uses third-flag carriers for approximately 20 percent of its volume.

B. Opposing Comment. The Philippine carriers acknowledge that U.S.-flag carriers have increased their share of the U.S. export trade at the expense of third-flag carriers. They state:

"That is not to say there have been no changes in the trade as a result of the Philippine cargo-sharing program. The most important change is that while the Philippine Carriers' share of the trade has remained constant, there has been a substantial increase in the share of the trade carried by U.S.-flag vessels. This increase has been at the expense of third-flag carriers." (Philippine Carriers' Comment at 27).

They state, however, that section 19 does not provide relief for third-flag carriers' loss of share of the trade. The Philippine carriers also state that their own share of the total volume of the United States/Philippines trade has

remained more or less unchanged at approximately 17 percent.

V. Rates

A. Supporting Comment. A number of comments allege generally that Philippine cargo reservation laws will have an adverse impact on freight rates. However, only CMA provides specific information which attempts to establish that the Philippine cargo reservation system has resulted in rates which are higher than would otherwise prevail under current economic conditions. The CMA data show that rates on two commodities—borax and phosphates—in the United States/Philippines trades were not consistent with rates on these commodities in other comparable trades. These data show that rates on these commodities did not decrease as sharply between 1982 and 1984 in the Philippines trade as they did in the trades to Hong Kong, Taiwan and South Korea. CMA suggests that the rates on these commodities were insulated from the full impact of downward economic trends by the Philippine cargo reservation program. CMA believes that rates are 25 to 50 percent higher than they would be absent the Philippine cargo reservation system. CMA also cites the example of one member who reported that its freight rates increased by 19 percent when Yang Ming Line allegedly was driven out of the Philippine trade by the cargo reservation system.

B. Opposing Comment. The Philippine carriers note that both MCP and Galleon have resigned from their conferences and now offer rates that are competitive with other low priced independents. This comment is made in response to the allegation, cited in the Notice of Proposed Rulemaking, that shippers will be forced to pay higher conference rates.

VI. Service

A. Supporting Comment. Maersk asserts that third-flag carriers provide approximately 77 percent of the sailings in the United States/Philippines trade. Maersk states that restrictions on third-flag participation will severely diminish the available quantity of service necessary to satisfy the trade. Maersk asserts that without the competitive incentive provided by third-flag carriers, there will be deterioration in the quality of service. Maersk notes that third-flag carriers provide both all-water and intermodal service and that shippers will be deprived not only of a choice of carrier but also of service options. Maersk estimates that its revenues from this trade will continue to decline in 1984 and that such losses will result in a retrenchment in Maersk's overall service. Maersk does not present evidence of cutbacks in its own service or of other third-flag carriers.

BBSL states that Philippine laws are antithetical to regular third-flag liner service. BBSL states that the potential impact on service may be particularly severe on the U.S. Atlantic Coast where third-flag carriers have provided the vast majority of sailings. BBSL does not present evidence of actual service cutbacks.

CMA cites the withdrawal of Yang Ming Line from the Philippine trade in the second half of 1983 as an example of actual adverse impact on service. CMA believes that Yang Ming Line withdrew because it concluded that it could no longer effectively compete in the trade as a third-flag carrier. CMA states that Yang Ming Line had provided 36 sailings a year to the Philippines. CMA also believes that East Asiatic Company, and perhaps other lines, have refused to accept bookings to the Philippines due to the difficulty in obtaining waivers CMA also states that many of its members regard Philippine carrier service as inferior because of their infrequent sailings. CMA believes that U.S. shippers will be disadvantaged by inferior service should the cargo reservation system be fully implemented.[3]

B. Opposing Comment. The Philippine carriers state that they offer about 5 percent of the liner sailings in the trade. They maintain that this percentage has not changed under the cargo reservation system. They contend that liberal administration of the waiver system has resulted in minimal, if any, disruptive impact on service. They contend that where Philippine vessels do not call at a port or where sailings are infrequent, waivers are given automatically or for extended periods. They point out that to the extent cargo has been shifted, it has gone for the most part to U.S. carriers that maintain high quality service. The U.S. carriers, it is alleged, offer a full range of service options, including intermodal service.

VII. Cargo Routing

A. Supporting Comment. The Port Authority of New York and New Jersey filed a comment expressing concern over the potential adverse impact of the Philippine waiver system on cargo routing. New York notes that virtually all of the liner cargo—both import and export—in the United States/Philippines trade that moves through the Port of New York is carried by third-flag carriers. Only one U.S.-flag carrier (Waterman) and one Philippine-flag carrier (MCP) serve New York in this trade. According to the port, exporters and importers at New York currently are not experiencing difficulties in obtaining waivers. Nevertheless, New York expresses concern that a more aggressive policy by the Philippine Government could drastically change the situation. New York contends that exclusion of third-flag carriers would effectively close New York to the trade and force shippers to turn to other ports, the most likely being minibridge service through Pacific Coast ports. Should such a situation occur, New York notes that neither option of the Proposed Rule—tariff suspension or restricted entry—would provide relief to the port. New York, therefore, requests the Commission, in fashioning an appropriate remedy to consider the special problem which the Philippine cargo sharing regime causes for ports served almost exclusively by third-flag carriers.

Virginia Port Authority states that the current waiver system is so burdensome as not to be a viable option. VPA asserts that it is losing cargo through minibridge service to the Pacific Coast. VPA states that it has no U.S.-flag service and only monthly Philippine-flag service.

Philadelphia states that the port is not served by either U.S. or Philippine-flag carriers. As a result, shippers must either use minibridge service to the Pacific Coast or obtain a waiver in order to use third-flag direct service to and from Philadelphia. Because there is no Philippine consultate in Philadelphia, obtaining a waiver is a time-consuming process. Philadelphia expresses the view that the solution to this problem is

[3] P. L. Thomas Paper Co., Inc. states generally that it has had problems with infrequent sailings and shipping delays but does not provide specific data.

a blanket exemption for Philadelphia and third-flag carriers serving the port with direct service to the Philippines.

Baltimore's concern is that full implementation of the Philippine cargo-sharing program might result in routing of cargo to the Pacific Coast to the detriment of Baltimore, third-flag carriers, and shippers.

The Port of Portland notes that it is not served by either U.S. or Philippine-flag carriers. Consequently, shippers must either ship cargo via Seattle, and perhaps incur additional trucking charges, or obtain a waiver. Because there is no consulate in Portland, the waiver must be obtained from San Francisco or Seattle. Portland states that it attempted to obtain a blanket exemption for all cargoes moving through Portland from the waiver requirement until U.S.-flag or Philippine-flag service is available. MARINA denied the requested exemption. Portland also states that Philippine government assurances that waivers will automatically be granted are not sufficient to protect the port's interests.

B. Opposing Comment. The Philippine carriers assert that waivers are granted for extended periods where Philippine vessels do not call at a port or where sailings are infrequent. In such circumstances the granting of a waiver is automatic. The Philippine carriers state that such a waiver has been provided for the Port of Portland. The Philippine carriers also respond to specific allegations of adverse impact on ports cited in the Notice of Proposed Rulemaking.

[FR Doc. 84-8543 Filed 3-29-84; 8:45 am]

BILLING CODE 6730-01-M

Notices

Federal Register
Vol. 49, No. 63
Friday, March 30, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Meat Import Limitations; Second Quarterly Estimate

Pub. L. 88–482, enacted August 22, 1964, as amended by Pub. L. 96–177 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of cattle, sheep except lamb, and goats (TSUS 106.10, 106.22, and 106.25), and certain prepared or preserved beef and veal products (TSUS 107.55, 107.61, and 107.62), which may be imported into the United States in any calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles provided for in TSUS 106.10, 106.22, 106.25, 107.55, and 107.62 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1984 by subsection 2(c) as adjusted under subsection 2(d) of the Act.

As published on December 30, 1983 (48 FR 57576), the estimated aggregate quantity of meat articles prescribed by subsection 2(c), as adjusted by subsection 2(d) of the Act for calendar year 1984, is 1,117 million pounds.

In accordance with the requirements of the Act, I have determined that the second quarterly estimate for 1984 of the aggregate quantity of meat articles which would, in the absence of limitations under the act, be imported during calendar year 1984, is 1,190 million pounds.

Done at Washington, D.C. this 27th day of March, 1984.

John R. Block,

Secretary.

[FR Doc. 84–8527 Filed 3–29–84; 8:45 am]

BILLING CODE 3410–10–M

CIVIL AERONAUTICS BOARD

Announcement of Approval of Reporting Requirements by the Office of Management and Budget Under the Paperwork Reduction Act (44 U.S.C. 35)

On March 2, 1984, the Office of Management and Budget approved the following reporting requirement: "War Air Service Program Questionnaire"—approved through January 31, 1985, under OMB No. 3024–0073.

Dated: March 23, 1984.

Robin A. Caldwell,

Chief, Information Management Division, Office of Comptroller.

[FR Doc. 84–8600 Filed 3–29–84; 8:45 am]

BILLING CODE 6320–01–M

Agency Information Collection Activities Under OMB Review

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Proposed Collection of Information under the Provisions of the Paperwork Reduction Act (44 U.S.C. 35).

SUMMARY: The Civil Aeronautics Board is requesting the Office of Management and Budget's approval of extension of the submission of information by air carriers receiving subsidy pursuant to the reporting requirements contained in Sections 382.21, 382.22 and 382.23 of Part 382 of the Board's Special Regulations.

DATED: March 26, 1984.

FOR FURTHER INFORMATION CONTACT: Jack Calloway, Data Requirements Section, Information Management Division, Office of Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673–6042.

SUPPLEMENTARY INFORMATION: Agency Clearance Officer From Whom a Copy of the Collection of Information and Supporting Documents is Available: Robin A. Caldwell, (202) 673–5922.

How Often the Collection of Information Must Be Filed: Occasionally.

Who is Asked or Required to Report: U.S. Air Carriers receiving subsidy.

Estimate of Number of Annual Responses: 76.

Estimate of Number of Annual Hours Needed To Complete the Collection of Information: 106.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–8591 Filed 3–29–84; 8:45 am]

BILLING CODE 6320–01–M

[Order 84–3–107]

Rejection of Foreign Forwarder Registration

AGENCY: Civil Aeronautics Board.

ACTION: Rejection of Foreign Forwarder Registration; Order 84–3–107.

SUMMARY: The Board, having previously established in Orders 83–4–103, and 83–6–65 that there is unsatisfactory Philippines reciprocity for U.S. freight forwarders, rejected only the interstate and overseas air transportation portions of the foreign freight forwarder registration request of Queen's Maritime Ltd., which is 60 percent owned by citizens of the Philippines—Order 84–3–107 adopted March 26, 1984. The foreign air transportation portion of the applicant's registration was granted on February 10, 1984 and continues in effect.

To obtain a copy of the complete order, contact the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673–5432. Persons outside the Washington metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT: Dean L. Johnson, (202) 673–5134, Regulatory Affairs Division, Bureau of International Aviation, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: March 26, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–8596 Filed 3–29–84; 8:45 am]

BILLING CODE 6320–01–M

[Order 84–3–92; Docket 42056]

Order Instituting Investigations

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order Instituting Investigation: Order 84–3–92, Docket 42056.

SUMMARY: The Board is instituting the *London-Frankfurt Route Proceeding* to select primary and back-up carriers to operate local service between London and Frankfurt. The complete text of Order 84–3–92 is available as noted below.

DATES: Applications, motions to consolidate applications conforming to the scope of this proceeding, petitions from interested persons, and petitions for reconsideration shall be filed by April 5, 1984. Answers shall be filed by April 12, 1984.

ADDRESSES: All pleadings should be filed in the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428 in Docket 42056 *London-Frankfurt Route Proceeding.*

FOR FURTHER INFORMATION CONTACT: Don Hainbach, Bureau of International Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673–5035.

SUPPLEMENTARY INFORMATION: The complete text of Order 84–3–92 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 84–3–92 Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: March 22, 1984.

Phillis T. Kaylor,

Secretary.

[FR Doc. 84–8597 Filed 3–29–84; 8:45 am]

BILLING CODE 6320–01–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations (See, 14 CFR 302.1701 et seq.); Week Ended March 23, 1984

Subpart Q Applications

The due date for answers, comforming application, or motions to modify scope are set forth below for each application. Following the anwser period the Board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Mar. 19, 1984	42051	Aerotours Dominicano, C. por A, c/o Ralph R. Curry, 2055 North 15th Street, Arlington, Va. 22201. Application of Aerotours Dominicano, C. por A. pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations for a foreign air carrier permit to engage in non-scheduled foreign air transportation between the Dominican Republic and the U.S. Virgin Islands; San Juan Puerto Rico; Miami, Fla.; and Foreign Charter Air Transportaiton. Answers may be filed by April 16, 1984.
Do.	42053	Trans-Panama, S. A., c/o Richard P. Taylor, Steptoe & Johnson, 1250 Connecticut Avenue, NW., Washington, D.C. 20036. Application of Trans-Panama, S. A. pursuant to Section 402 of the Act for renewal of its foreign air carrier permit authorizing applicant to engage in non-scheduled foreign air transportation of property and mail between any point or points in the Republic of Panama and Miami, Florida, New York, N.Y., and Los Angeles, California, in the United States.
Mar. 21, 1984	42055	Arrow Air, Inc., c/o Lawrence D. Wasko, Seamon, Wasko, Ozment, 1211 Connecticut Ave., NW., Suite 300, Washington, D.C. 20036. Application of Arrow Air, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests a certificate of public convenience and necessity to engage in scheduled foreign air transportation of persons, property and mail as follows: Between Tampa, Florida and Merida, Cancun, and Cozumel, Mexico. Answers may be filed by April 18, 1984.
Mar. 23, 1984	42601	Malaysian Airline System Berhad, c/o James L. Devall, Zuckert, Scoutt, Rasenberger & Johnson, 888 Seventeenth Street, N.W., Washington, D.C. 20006. Application of Malaysian Airlines System Berhad pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations requests a foreign air carrier permit to engage in foreign air transportation of persons, property and mail on the following route: Between a point or points in Malaysia and the terminal point San Francisco, California, via the intermediate point Tokyo, Japan. MAS does not request authority to carry persons originating in Tokyo to the United States or passengers originating in the United States whose final destination in Tokyo. Answers may be filed by April 20, 1984.
Do.	41342	Polynesian Airlines (Holdings) Limited and Polynesian Airlines (Operations) Limited, c/o Robert D. Papkin, Squire, Sanders & Dempsey, 1201 Pennsylvania Ave., NW., Washington, D.C. 20004. Amendment No. 1 to the Joint Application of Polynesian Airlines (Holdings) Limited and Polynesian Airlines (Operations) Limited requests (1) additional authority to engage in foreign air transportation of persons, property and mail between Apia, Western Somoa and Honolulu, Hawaii, via Pago Pago, American Samoa and Christmas Island, Republic of Kiribati; and (2) the inclusion of Niue as an additional point to be served beyond Pago Pago on the Applicants' initial route. As amended, the two requested routes would read as follows: Between the terminal point Apia, Western Samoa, the terminal point Pago Pago, American Samoa, and beyond Pago Pago to Rarotonga, the Cook Islands, Niue, and Papeete, Tahiti; Between the terminal point Apia, Western Samoa, the intermediate points Pago Pago, American Samoa and Christmas Island, Republic of Kiribati, and the terminal point Honolulu, Hawaii. Answers may be filed by April 20, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–8594 Filed 3–29–84; 8:45 am]

BILLING CODE 6320–01–M

[Docket 42056]

London-Frankfurt Route Proceeding; Assignment of Proceeding

This proceeding has been assigned to Chief Administrative Law Judge Elias C. Rodriguez. Future communications should be addressed to him.

Dated at Washington, D.C., March 26, 1984.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 84–8592 Filed 3–29–84; 8:45 am]

BILLING CODE 6320–01–M

[Docket 40962]

Lone Star Certificate Amendment and Transfer Case; Postponement of Hearing

At the request of the applicant and with the concurrence of the Bureau of International Aviation, the hearing in

the above-titled case is postponed. The hearing will commence on April 10, 1984, at 10:00 a.m. (local time), in Hearing Room 1 Lower Level, 2120 L Street, NW., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., March 23, 1984.

William A. Kane, Jr.,

Administrative Law Judge.

[FR Doc. 84-8593 Filed 3-29-84; 8:45 am]

BILLING CODE 6320-01-M

[Docket 41675]

Skystar International, Inc., Fitness Investigation; Hearing

Notice is hereby given that a hearing in the above-entitled matter is assigned to commence on April 11, 1984, at 9:30 a.m. (local time) in Room 1027, Universal Building, 1825 Connecticut Ave., NW., Washington, D.C., before the undersigned Chief Administrative Law Judge.

Dated at Washington, D.C., March 23, 1984.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 84-8594 Filed 3-29-84; 8:45 am]

BILLING CODE 6320-01-M

CIVIL RIGHTS COMMISSION

Arizona Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Arizona Advisory Committee to the Commission will convene at 1:00 p.m. and will end at 6:00 p.m., on April 27, 1984, at the Grenada Royale Hometel, Aztec Room, 3211 East Pinchot Street, Phoenix, Arizona 85018. The purpose of the meeting is to discuss the Arizona University system.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Chairperson, Mr. Richard Zazueta, at (602) 267-5691, or the Western Regional Office at (213) 688-3437.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 27, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-8528 Filed 3-29-84; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-469-058]

Amoxicillin Trihydrate and Its Salts From Spain; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Countervailing Duty Order.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on amoxicillin trihydrate and its salts from Spain. The review covers the period January 1, 1982 through December 31, 1982. As a result of the review the Department has preliminarily determined the net subsidy to be 3.17 percent *ad valorem* for the period of review. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 30, 1984.

FOR FURTHER INFORMATION CONTACT: Susan Silver or Laura Kneale, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 8322) the final results of its last administrative review of the countervailing duty order on amoxicillin trihydrate and its salts from Spain (44 FR 44154, July 27, 1979) and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of Spanish amoxicillin trihydrate and its salts ("amoxicillin"), an antibiotic which is a semi-synthetic penicillin. Such merchandise is currently classifiable under item 411.7400 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1982 through December 31, 1982, and four programs: (1) A rebate of indirect taxes upon exportation, under the Desgravacion Fiscal a la Exportacion ("the DFE"); (2) an operating capital loans program; (3) a short-term export credit program; and (4) research and development incentives.

Analysis of Programs

(1) Desgravacion Fiscal a la Exportacion

Spain employs a cascading tax system. Under this system, the government levies a turnover tax ("IGTE") on each sale of a product through its various stages of production, up to (but not including) the final sale in Spain. Upon exportation of the product, the government, under the DFE, rebates both these accumulated IGTE indirect taxes and certain final stage taxes.

Although the Spanish government rebates upon exportation all indirect taxes paid under the cascading tax system, the Tariff Act and the Commerce Regulations allow the rebate of only the following: (1) Indirect taxes borne by inputs which are physically incorporated in the exported product (see Annex 1.1 of part 355 of the Commerce Regulations); and (2) indirect taxes levied at the final stage (see Annex 1.2 of part 355 of the Commerce Regulations). If the payment upon export exceeds the total amount of allowable indirect taxes described above, the Department considers the difference to be an overrebate of indirect taxes and, therefore, a subsidy.

Physical incorporation is a question of fact to be determined for each product in each case. In this case, the physically incorporated inputs are the raw materials previously allowed by the Department. The rebate of two final stage taxes, the parafiscal tax on export licenses and the tax on freight and insurance, is also allowable when calculating whether or not there is an overrebate of indirect taxes under the DFE.

As of January 1, 1982, the Spanish government increased the IGTE rate from 3.80 percent to 4.60 percent, while maintaining the previous rate for the export rebate. We concluded in our last review that an earlier increase in the IGTE rate had eliminated the overrebate previously found countervailable. Based on our analysis of the indirect taxes on physically incorporated inputs and the two indirect taxes on the final product, we preliminarily find that the additional change in the IGTE rate for 1982 continues to eliminate the overrebate. Therefore, we preliminarily determine the net subsidy attributable to this program during the period of review to be zero percent.

(2) Operating Capital Loans

The Spanish government requires banks to set aside funds to provide short-term operating capital loans, as part of its Privileged Circuit Exporter Credit Program. These loans are granted for a period of less than one year. For 1982, the Spanish government fixed the interest rate for such loans at 10 percent. To determine the interest rate on comparable commercial loans, we took the average national prime interest rate for loans of comparable length, added the prevailing interest charge over prime facing borrowers of average creditworthiness and added the legally established fees and commissions. Comparing this benchmark with the 10 percent interest rate established for the operating capital loans program, we found a differential of 9.38 percent during the period of review.

In the absence of information regarding loans received on worldwide exports, we calculated the benefit under this program by multiplying the amount of operating capital loans received by the only known exporter of this merchandise to the United States, Antibioticos, S.A., in 1982 on its exports of amoxicillin to the U.S. by the interest rate differential in 1982. We then divided the results by Antibioticos' exports of amoxicillin to the U.S. in 1982. Using this methodology, we preliminarily determine the net benefit conferred under this program to be 2.48 percent *ad valorem* for 1982.

The maximum loan principal available to a given exporter is determined as a percentage of the firm's previous year's exports. This amount may be increased by 10 percent if the firm has a government-issued Exporter's Card. Antibioticos has such a card. Effective January 1, 1984, the Spanish government reduced the maximum percentage of eligibility for operating capital loans (including Exporter's Card eligibility) to 10.5 percent of the previous year's exports. Antibioticos has used its maximum eligibility on exports to the United States. Therefore, by multiplying this eligibility level by the interest rate differential for 1982 (9.38 percent) as the most recent information available, we preliminarily determine, for purposes of cash deposits of estimated countervailing duties, the net subsidy conferred under this program is 0.98 percent *ad valorem*.

(3) Short-Term Export Credits

The short-term export credit program, which is part of the Privileged Circuit Exporter Credit Program, provides loans for up to 90 percent of the value of a company's export shipment at a 10 percent interest rate for a maximum of one year. The Spanish government, in its response to our questionnaire, stated that Antibioticos obtained a loan under this program in 1982 to finance a shipment of amoxicillin to the U.S. Antibioticos held this loan for less than three months. Again we chose as our benchmark the average national prime interest rate for loans of comparable length and added the prevailing interest charge over prime facing borrowers of average creditworthiness plus the legally established fees and commissions. We multiplied the interest rate differential by the portion of the year over which the loan was outstanding, and then multiplied this prorated differential by the loan amount to find Antibioticos' interest savings. Dividing this amount by Antibioticos' 1982 exports of amoxicillin to the U.S., we preliminarily find an *ad valorem* benefit of 0.69 percent. As with the operating capital loan program, we used information on U.S. exports in the absence of information on worldwide exports.

(4) Research and Development Incentives

In its final determination in the countervailing duty investigation on certain steel products from Spain, the Department found that firms may receive government loans covering up to 50 percent of the cost of R&D projects. In its questionnaire response, the Spanish government informed us that Antibioticos received assistance under this program. However, we preliminarily determine that the project for which Antibioticos received funding was for the development of new products and did not benefit the production of amoxicillin.

Preliminary Results of the Review

As a result of the review, we preliminarily determine that the aggregate net subsidy conferred by the four programs is 3.17 percent *ad valorem* during 1982. Accordingly, the Department intends to instruct the Customs Service to assess countervailing duties of 3.17 percent of the f.o.b. invoice price on all shipments of Spanish amoxicillin exported on or after January 1, 1982 and entered, or withdrawn from warehouse, for consumption on or before June 30, 1982.

On July 1, 1982, the International Trade Commission ("the ITC") notified the Department that the Spanish Government had requested an injury determination for this order under section 104(b) of the Trade Agreements act of 1979. Should the ITC find that there is material injury or likelihood of material injury to an industry in the United States, the Department will instruct the Customs Service to assess countervailing duties in the amount of the estimated duties required to be deposited on all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after July 1, 1982, and through the date of the ITC's notification to the Department of its determination.

Further, as provided for by section 751(a)(1) of the Tariff Act, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing tudies of 1.67 percent of the entered value on all shipments of Spanish amoxicillin entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of the current review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: March 26, 1984.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 84-8609 Filed 3-29-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-469-054]

Ampicillin Trihydrate and Its Salts From Spain; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of countervailing duty order.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on ampicillin trihydrate and its salts from Spain. The review covers the period January 1, 1982 through December 31, 1982. As a result of the review, the Department has preliminarily determined the net subsidy to be 1.67 percent *ad valorem*. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 30, 1984.

FOR FURTHER INFORMATION CONTACT: Susan Silver or Laura Kneale, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 8323) the final results of its last administrative review of the countervailing duty order on ampicillin, trihydrate and its salts from Spain (44 FR 17484, March 22, 1979) and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of Spanish ampicillin trihydrate and its salts ("ampicillin"), an antibiotic which is a semi-synthetic penicillin. Such merchandise is currently classifiable under item 411.6000 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1982 through December 31, 1982, and four programs: (1) A rebate of indirect taxes upon exportation, under the Desgravacion Fiscal a la Exportacion ("the DFE"); (2) an operating capital loans program; (3) a short-term export credit program; and (4) research and development incentives. There were no known shipments of ampicillin to the United States in 1982 and there are no known unliquidated entries for the period.

Analysis of Programs

(1) Desgravacion Fiscal a la Exportacion

Spain employs a cascading tax system. Under this system, the government levies a turnover tax ("IGTE") on each sale of a product through its various stages of production, up to (but not including) the final sale in Spain. Upon exportation of the product, the government, under the DFE, rebates both these accumulated IGTE indirect taxes and certain final stage taxes.

Although the Spanish government rebates upon exportation all indirect taxes paid under the cascading tax system, the Tariff Act and the Commerce Regulations allow the rebate of only the following: (1) Indirect taxes borne by inputs which are physically incorporated in the exported product (see Annex 1.1 of part 355 of the Commerce Regulations); and (2) indirect taxes levied at the final stage (see Annex 1.2 of part 355 of the Commerce Regulations). If the payment upon export exceeds the total amount of allowable indirect taxes described above, the Department considers the difference to be an overrebate of indirect taxes and, therefore, a subsidy.

Physical incorporation is a question of fact to be determined for each product in each case. In this case, the physically incorporated inputs are the raw materials previously allowed by the Department. The rebate of two final stage taxes, the parafiscal tax on export licenses and the tax on freight and insurance, is also allowable when calculating whether or not there is an overrebate of indirect taxes under the DFE.

As of January 1, 1982, the Spanish government increased the IGTE rate from 3.80 percent to 4.60 percent, while maintaining the previous rate for the export rebate. We concluded in our last review that an earlier increase in the IGTE rate had eliminated the overrebate previously found countervailable. Based on our analysis of the indirect taxes on physically incorporated inputs and the two indirect taxes on the final product, we preliminarily find that the additional change in the IGTE rate for 1982 continues to eliminate the overrebate. Therefore, we preliminarily determine the net subsidy attributable to this program during the period of review to be zero percent.

(2) Operating Capital Loans

The Spanish government requires banks to set aside funds to provide short-term operating capital loans, as part of its Privileged Circuit Exporter Credit Program. These loans are granted for a period of less than one year. For 1982, the Spanish government fixed the interest rate for such loans at 10 percent. To determine the interest rate on comparable commercial loans, we took the average national prime interest rate for loans of comparable length, added the prevailing interest charge over prime facing borrowers of average creditworthiness and added the legally established fees and commissions. Comparing this benchmark with the 10 percent interest rate established for the operating capital loans program, we found a differential of 9.38 percent during the period of review.

The maximum loan principal available to a given exporter is determined as a percentage of the firm's previous year's exports. This amount may be increased by 10 percent if the firm has a government-issued Exporter's Card. The only known exporter of this merchandise to the United States, Antibioticos, S.A., has such a card. Effective January 1, 1984, the Spanish government reduced the maximum percentage of eligibility for operating capital loans (including Exporter's Card eligibility) to 10.5 percent of the previous year's exports.

By multiplying this eligibility level by the interest rate differential for 1982 (9.38 percent) as the most recent information available, we preliminarily determine, for purposes of cash deposits of estimated countervailing duties, the net subsidy currently attributable to this program is 0.98 percent *ad valorem*.

(3) Short-Term Export Credits

The short-term export credit program, which is part of the Privileged Circuit Exporter Credit Program, provides loans for up to 90 percent of the value of a company's export shipment at a 10 percent interest rate for a maximum of one year.

Absent shipments of ampicillin to the U.S., we estimated the potential benefit from this program to be the subsidy received by Antibioticos under this program on exports of amoxicillin to the U.S. in 1982. We have made this decision based on our knowledge that Antibioticos is eligible for and has received loans under this program. Therefore, we have reason to believe that the firm would have received loans on exports of ampicillin. We preliminarily find a potential *ad valorem* benefit of 0.69 percent.

(4) Research and Development Incentives

In its final determination in the countervailing duty investigation on certain steel products from Spain, the Department found that firms may receive government loans covering up to 50 percent of the cost of R&D projects. In its questionnaire response, the Spanish government informed us that Antibioticos received assistance under this program. However, we preliminarily determine that the project for which Antibioticos received funding was for

the development of new products and did not benefit the production of ampicillin.

Preliminary Results of the Review

As a result of the review, we preliminarily determine the potential aggregate net subsidy conferred by the four programs is 1.67 percent *ad valorem*.

Accordingly, as provided by section 751(a)(1) of the Tariff Act, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 1.67 percent of the entered value on all shipments of Spanish ampicillin entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of the current review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: March 26, 1984.

Alan F. Holmer,

Deputy Assistant Secretary Import Administration.

[FR Doc. 84-8610 Filed 3-29-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-009]

Tubes for Tires, Other Than for Bicycle Tires, From the Republic of Korea; Postponement of Final Antidumping Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice in forms the public that the department of Commerce (the Department) has received a request from counsel for petitioners, Carlisle Tire & Rubber Company; Copper Tire & Rubber Company; Cupples Company, Manufacturers; Firestone Tire & Rubber Company; B.F. Goodrich Company; Indianapolis Rubber Company; and Robbins Tire Company, that the final determination be postponed until not later than 135 days after the date of publication of the preliminary determination, as provided for in section 735(a)(2)(B) of the Tariff Act of 1930, as amended (the Act); and, that the Department has determined to postpone its final determination as to whether sales of tubes for tires, other than for bicycle tires from the Republic of Korea have occurred at less than fair value, until not later than June 25, 1984.

EFFECTIVE DATE: March 30, 1984.

FOR FURTHER INFORMATION CONTACT: Steven Lim or Gary Taverman, 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) 377-1776 or 0161.

SUPPLEMENTARY INFORMATION: On August 12, 1983, the Department of Commerce published a notice in the **Federal Register** (48 FR 36637) that it was initiating under section 732(b) of the Act (19 U.S.C. 1673(b)) an antidumping investigation to determine whether tubes for tires, other than for bicycle tires, from the Republic of Korea were being, or were likely to be, sold at less than fair value. On February 10, 1984, the Department published a negative preliminary determination (49 FR 5155). The notice stated that if the investigation proceeded normally, we would make a final determination by April 23, 1984. Section 735(a)(2)(B) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value if the petitioner requests an extension after a negative preliminary determination.

All written views should be filed in accordance with 19 CFR 353.46 no later than April 27, 1984 and in at least 10 copies.

This notice is published pursuant to section 735(d) of the Act.

Dated: March 23, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-8608 Filed 3-29-84; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Receipt of Application for Permit; William S. Lawton

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217-222).

1. Applicant:

a. Name: Mr. William S. Lawton (P340).

b. Address: 3300 34th Avenue S., Seattle, Washington 98144.

2. Type of Permit: Scientific Research/Scientific Purposes.

3. Name and Number of Animals: Humpback whale (*Megaptera novaeagliae*)—Unspecified number.

4. Type of Take: Potential harassment while conducting fluke and dorsal fin photography, underwater acoustical recording for population estimates and distribution.

5. Location of Activity: Southeast Alaska, Alexander Archipelago.

6. Period of Activity: 3 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publicatioin of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300

Whitehaven Street, NW., Washington, D.C.;

Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115; and

Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau Alaska, 99802.

Dated: March 26, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-8614 Filed 3-29-84; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammal; Receipt of Application for Permit; North Wind Undersea Institute

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations, Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217–222).

1. Applicant:

a. Name: North Wind Undersea Institute (P339).

b. Address: 610 City Island Avenue, City Island, Bronx, New York 10464.

2. Type of Permit: Scientific Research/Scientific Purposes.

3. Name and Number of Animals: Gray Whale (*Eschrichtius robustus*)—1.

4. Type of Take: Importation of one skeleton found dead.

5. Location of Activity: Baja California, Mexico.

6. Period of Activity: 1 Year.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinon contained in this application are summaries of those of the applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Northeast region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930–3799

Dated: March 26, 1984

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-8638 Filed 3-29-84; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishing an Import Limit for Certain Man-Made Fiber Textiles Exported From Mexico

March 27, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 2, 1984. For further information contact William Boyd, International Trade Specialist (202) 377–4212.

Background

On December 27, 1983 a notice was published in the **Federal Register** (48 FR 56987) which established an import restraint limit of 703,471 pounds for acrylic spun yarn in Category 604pt. (only TSUSA 310.5049), produced or manfactured in Mexico and exported during the ninety-day period which began on January 1, 1984 and extends through March 31, 1984. The notice also stated that the Government of Mexico is obligated under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as amended and extended, if no mutually satisfactory solution is reached on a level for this category during consultations, to limit its exports during the twelve-month period which began on January 1, 1984, to 759,421 pounds.

The notice also stated that merchandise which exceeded the levels established for Category 604pt. (only TSUSA 310.5049) during 1983 and the aforementioned 90-day period might be charged to the twelve-month limit. Shipments from these prior periods are in excess of that limit. As a result, the twelve-month limit of 759,421 pounds will be filled at opening.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Mexico, further notice will be published in the **Federal Register.**

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

March 27, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as amended and extended, between the Governments of the United States and Mexico; and in accordance with the provisions in Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 2, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 604pt. (only TSUSA 310.5049), produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1984, in excess of 759,421 pounds.[1]

Textile products in Category 604pt. (only T.S.U.S.A. No. 310.5049) which have been exported to the United States prior to January 1, 1984 shall be subject to this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption

[1] The level of restraint has not been adjusted to reflect any imports after December 31, 1983.

to include entry for consumption into the Commonwealth of Puerto Rico.

The action taken with respect to the Government of Mexico and with respect to imports of man-made fiber textiles from Mexico has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-8607 Filed 3-29-84; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1984; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to procurement list a commodity to be produced by and services to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: March 30, 1984.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On October 28, November 25, and December 23, 1983, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (48 FR 49904, 48 FR 53148, and 48 FR 56819) of proposed additions to Procurement List 1984, October 18, 1983 (48 FR 48415).

After consideration of the relevant matter presented, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodity and services listed.

c. The actions will result in authorizing small entities to produce or provide a commodity and services procured by the Government.

Accordingly, the following commodity and services are hereby added to Procurement List 1984:

Class 7360

Dining Packet, Inflight: 7360-01-167-2610

SIC 7349

Janitorial Service, Federal Regional Center, Pinetree Boulevard, Thomasville, Georgia

SIC 7369

Commissary Shelf Stocking and Custodial, Peterson Air Force Base, Colorado.

C. W. Fletcher,

Executive Director.

[FR Doc. 84-8551 Filed 3-29-84; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1984; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1984 commodities to be produced by and a service to be provided by workshops for the blind and other severley handicapped.

Comments must be received on or before: May 2, 1984.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement List 1984, October 18, 1983 (48 FR 48415):

Class 7110

Bookcase, Steel, Contemporary Style: 7110-00-601-9823; 7110-00-149-1621

Class 7510

Envelope, Transparent, Type II: 7510-00-687-2664

SIC 7349

Janitorial Service; U.S. Post Office and U.S. Courthouse, 245 East Capitol Street, Jackson, Mississippi.

C. W. Fletcher,

Executive Director.

[FR Doc. 84-8552 Filed 3-29-84; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Equal Opportunity Management Institute Board of Visitors; Meeting

The Defense Equal Opportunity Management Institute (DEOMI) Board of Visitors will meet at Patrick Air Force Base, Florida, 2–4 May 1984.

The purposes of the meeting will be to review the Accreditation Report of the Southern Association of Colleges and Schools, and to insure the DEOMI curriculum is responsive to changing mission requirements.

The meeting will convene at 3:00 p.m. on 2 May 1984, and adjourn on 4 May 1984 at 1:00 p.m. The meeting is open to the public. For further information, contact the DEOMI Public Affairs Office at (305) 494–6096.

Dated: March 26, 1984.

M. S. Healy,

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

[FR Doc. 84-8519 Filed 3-29-84; 8:45 am]

BILLING CODE 3810-01-M

DoD-University Forum; Meeting

The DoD-University Forum will meet in open session April 17, 1984, from 1:30 until 4:30 p.m. at the Pentagon, Washington, D.C.

The mission of the DoD-University Forum is to advise and assist the Department of Defense on university research and related education issues important to the national defense.

The meeting is one of two formal meetings to be held annually as called for by the Charter. The purpose of this meeting is to examine various issues related to the Forum's mission. Public attendees will be accommodated as space permits. Public attendees are requested to telephone Edward Blake or Jeanne Carney in the DoD Office of Research and Laboratory Management, on Area Code 202/694–0205, before COB

April 6, 1984 to arrange for seating and to be advised of entry procedures to the Pentagon.

Dated: March 27, 1984.

M. S. Healy,

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

[FR Doc. 84-8521 Filed 3-29-84; 8:45 am]

BILLING CODE 3810-01-M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, May 1, 1984; Tuesday, May 8, 1984; Tuesday, May 15, 1984; Tuesday, May 22, 1984; and Tuesday, May 29, 1984 at 10:00 a.m. in Room 1E801, the Pentagon, Washington, D.C.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Manpower, Installations and Logistics) concerning all matters involved in the development and authorization of wage schedules for Federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "considered with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy & Requirements) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention. Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, the Pentagon, Washington, D.C. 20301.

Dated: March 27, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-8522 Filed 3-29-84; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Military Justice Act of 1983 Advisory Commission; Public Meeting

The Military Justice Act of 1983 Advisory Commission will meet on Thursday and Friday, April 12-13, 1984, commencing each day at 9:30 a.m. in the Air Force Office of Scientific Research Conference Room, room 200, building 410, Bolling Air Force Base, D.C. The meeting will be open to the public.

Anyone requiring additional information may contact the Commission Chairman, Colonel Thomas L. Hemingway, at 693-5770 or 693-5336.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 84-8601 Filed 3-29-84; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Deputy Under Secretary for Management invites comments in the proposed information collection requests as required by the Paperwork Reduction Act.

DATES: Interested persons are invited to submit comments on or before April 30, 1984.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208 New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B., Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426-7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The requirement for public consultation may be amended or waived by OMB to the extent that the public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform the statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information requests prior to the submission of these requests to the Office of Management and Budget. Public comment is invited from the OMB at the address specified above. Copies of the requests may be obtained from Margaret Webster at the address specified above.

Dated: March 26, 1984.

Charles L. Heatherly,

Deputy Under Secretary for Management.

Office of Postsecondary Education

New

Talent Search and Educational Opportunity Centers Programs Performance and Financial Status Reports

Annually

State or Local Governments; Businesses or Other For-Profit; Non-Profit Institutions

Reporting Burden, Responses: 200; Burden Hours: 400

Abstract: These reports combine the separate financial and status reporting requirements of the two programs: Talent Search and Educational Opportunity Centers. Grantees are required to submit annual financial status and performance reports. The reports are used to determine whether progress is being made toward project goals, objectives, and program purpose.

Application for the Strengthening, Special Needs and Challenge Grant Programs under Title III, Higher Education Act of 1965

Annually

State or Local Governments; Non-Profit Institutions

Reporting Burden, Responses: 1,000; Burden Hours: 20,000

Abstract: This application consolidates the application forms for three programs: The Strengthening,

Special Needs and College Grant programs under Title III, Higher Education Act of 1965. The application will enable the program to evaluate the needs of the applicants to determine which applications should be funded and the total amount of any grant that may be awarded.

Revision

Pell Grant Program Student Validation Roster for 1983–1984
ED 255–4
Annually
State or Local Governments; Businesses or Other For-Profit; Non-Profit Institutions; Small Businesses or Organizations
Reporting Burden, Responses: 5,000; Burden Hours: 81,250
Recordkeeping Burden, Recordkeepers: 5,000; Burden Hours: 2,500

Abstract: The Student Validation Roster is the form which ED uses to collect adjustments or corrections to data originally reported on Student Aid Reports, and to obtain institutional verification of funds actually disbursed to each Pell Grant recipient. The Department uses this data to make end-of-year adjustments to the authorization of Pell Grant funds.

Extension

Request for Collection Assistance Under Federal Insured Student Loan Program
ED 1249
On Occasion
State or Local Governments; Businesses or Other For-Profit; Individuals or Households; Small Businesses or Organizations
Reporting burden, Responses: 32,500; Burden Hours: 10,725
Recordkeeping Burden, Recordkeepers: 13,000; Burden Hours: 1,040

Abstract: ED form 1249 is used by lenders to request skip trace assistance on delinquent student loans where the lender is unable to locate the student borrower. Prior to submission of a claim a lender must show due diligence. Skip tracing is a part of due diligence.

Existing

Financial and Performance Reports Under the Graduate and Professional Study Fellowships Program
ED 591A; ED 591B
Annually
State and Local Governments; Non-Profit Institutions
Reporting Burden, Responses: 30; Burden Hours: 3,840
Recordkeeping Burden, Recordkeepers: 128, Burden Hours: 6.4

Abstract: The reports are utilized to obtain information from grant recipients to assure that Federal funds were expended within the provision of all applicable laws and regulations and to assess the accomplishment of project goals and objectives.

State Student Incentive Grant Program Records
Annually
State or Local Governments
Reporting Burden, Responses: 114; Burden Hours: 342
Recordkeeping Burden, Recordkeepers: 40; Burden Hours: 2,280

Abstract: In each State, the designated agency responsible for the State Student Incentive Grant Program must maintain certain records to ensure proper administration of program funds.

Reinstatment

Application for Veterans' Cost-of-Instruction Payments to Institutions of Higher Education
ED 269
Annually
State of Local Governments; Businesses or Other For-Profit; Non-Profit Institutions Small Businesses or Organizations
Reporting Burden, Responses: 900; Burden Hours: 900
Recordkeeping Burden, Recordkeepers: 4; Burden Hours: 3,440

Abstract: Pub. L. 36–374 mandates payments to postsecondary institutions based on veteran student enrollments. The Veterans' Cost-of-Instruction Payments application obtains the necessary data to verify eligibility and calculate awards.

Office of Vocational and Adult Education

Extension

Financial Status Report for State Administered Vocational Education
ED 2465
Annually
State or Local Governments
Reporting Burden, Responses: 53; Burden Hours: 2,915
Recordkeeping Burden, Recordkeepers: 2,000; Burden Hours: 106,000

Abstract: The financial status report is needed to determine each State's compliance with the enabling statute, to close out each year's grant, and to provide information for the Secretary's Report to Congress on the status of vocational education.

Office of Bilingual Education and Minority Languages Affairs

Existing

Information Service Reaction Form
ED 933
On Occasion
Individuals or Households; State or Local Governments; Businesses or Other For-Profit; Federal Agencies or Empolyees; Non-Profit Institutions; Small Businesses or Organizations
Reporting Burden, Responses: 3,000; Burden Hours: 150

Abstract: The Information Service Reaction Form is sent to individuals, groups, or organizations that request information or services from the National clearinghouse for Bilingual Education (NCBE) to have them appraise its services and performance. The information is used to modify NCBE services. The form is sent out with every request for information. NCBE asks users of its services to return the form on a voluntary basis.

Office of Educational Research and Improvement

New

Pilot Study for Integrated Postsecondary Education Data System (IPEDS)
Non-Recurring
State or Local Governments; Businesses or Other For-Profit; Non-Profit Institutions; Small Businesses or Organizations
Reporting Burden, Responses: 616; Burden Hours: 5,107

Abstract: This pilot study will test forms and procedures to be used in the Integrated Postsecondary Education Data System (IPEDS). IPEDS is planned as a general statistical data system that will provide a description of the entire postsecondary education enterprise.

Office or the Secretary

New

A Survey of Education Partnerships
On Occasion
State or Local Governments; Non-Profit Institutions
Reporting Burden, Responses: 106,057; Burden Hours: 53,828

Abstract: This data collection is part of the Secretary's initiative to implement the President's National Partnership in Education Program.

[FR Doc. 84–8569 Filed 3–29–84; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of the Secretary

National Petroleum Council, Refineries Task Group of the Committee on the Strategic Petroleum Reserve; Meeting

Notice is hereby given that the Refineries Task Group of the Committee on the Strategic Petroleum Reserve will

meet in April 1984. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on the Strategic Petroleum Reserve will address various aspects of the Strategic Petroleum Reserve and the long-term availability and movement patterns of tankers worldwide. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location, and agenda of the Refineries Task Group meeting follows:

The Refineries Task Group will hold its first meeting on Monday, April 16, 1984, starting at 12:00 p.m., in Room Three, Amoco Oil Company, Third Floor, 200 East Randolph Drive, Chicago, Illinois.

The tentative agenda for the Refineries Task Group meeting follows:

1. Opening remarks by the Chairman and Government Co-Chairman.

2. Discuss the scope of the overall study.

3. Discuss the study assignment of the Refineries Task Group.

4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Refineries Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Refineries Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Gerald J. Parker, Office of Oil, Gas and Shale Technology, Fossil Energy, 301/353-3032 prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meetings will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on March 23, 1984.

William A. Vaughn,

Assistant Secretary for Fossil Energy.

[FR Doc. 84-8627 Filed 3-29-84; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, SPR Facilities Task Group of the Committee on the Strategic Petroleum Reserve; Meeting

Notice is hereby given that the SPR Facilities Task Group of the Committee on the Strategic Petroleum Reserve will meet in April 1984. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on the Strategic Petroleum Reserve will address various aspects of the Strategic Petroleum Reserve and the long-term availability and movement patterns of tankers worldwide. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location, and agenda of the SPR Facilities Task Group meeting follows:

The SPR Facilities Task Group will hold its first meeting on Tuesday, April 10, 1984, starting at 11:00 a.m., in the Dauphine Room of the Royal Orleans Hotel, 621 St. Louis Street, New Orleans, Louisiana.

The tentative agenda for the SPR Facilities Task Group meeting follows:

1. Opening remarks by the Chairman and Government Co-Chairman.

2. Discuss the scope of the overall study.

3. Discuss the study assignment of the SPR Facilities Task Group.

4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the SPR Facilities Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the SPR Facilities Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Gerald J. Parker, Office of Oil, Gas and Shale Technology, Fossil Energy, 301/353-3032 prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on March 23, 1984.

William A. Vaughn,

Assistant Secretary for Fossil Energy.

[FR Doc. 84-8628 Filed 3-29-84; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Proposed Subsequent Arrangement; EURATOM

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale:

Contract Number S-EU-800, one gram of uranium, enriched to approximately one percent in U-235, for use as standard reference material at the Atomic Energy Research Establishment, the United Kingdom.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen (15) days after the date of publication of this notice.

For the Department of Energy.

Dated: March 23, 1984.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-8624 Filed 3-29-84; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Proposed Subsequent Arrangement; EURATOM

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the

export of 1,500,000 kilograms of natural uranium to various sites within the European Community for conversion to uranium hexafluoride and subsequent enrichment and ultimate use as fuel for power reactors within the European Community.

This subsequent arrangement is to be carried out under the above mentioned agreement in accordance with section 402(a) of the Nuclear Non-Proliferation Act of 1978 (42 U.S.C. 2153a).

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: March 23, 1984.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-8625 Filed 3-29-84; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Proposed Decisions and Orders; Period of January 30 Through March 9, 1984

During the period of January 30 through March 9, 1984, the proposed decision and order summarized below was issued by the Office of Hearing and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person received actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeeding involving the exception matter.

Copies of the full text of this proposed decision and order is available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: March 22, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

A. O. Smith Corporation, Milwaukee, Wisconsin, HXE-0072, Testing Requirements

On June 2, 1983, the A. O. Smith Corporation (Smith) filed an Application for Extension of Exception Relief from the testing requirements of 10 CFR Part 430, Subpart B, Appendix N, insofar as those requirements apply to the finned copper tube (FCT) boilers which it manufactures. In its submission, Smith asked that it receive an extension of the exception relief which it was previously granted in *A. O. Smith*, 9 DOE ¶ 81,042 (1982), until the Department of Energy modifies the testing procedures.

Proposed regulations addressing the problems recited in Smith's exception were issued for public comment on June 17, 1983. *See* 48 Fed. Reg. 28014 (1983). The DOE tentatively determined that in order to alleviate the gross inequity suffered by Smith, the firm should be granted an extension of exception relief until the final adoption of those amended testing procedures. On March 7, 1984, the DOE issued a Proposed Decision and Order which determined that Smith be granted exception relief to permit it to use the testing procedures specified for FCT boilers that were proposed by the DOE in June 1983. *See* 48 FR 28022 (1983).

[FR Doc. 84-8538 Filed 3-29-84; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of Implementation of Special Refund Procedures and Solicitation of Comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $92,691 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving Willis Distributing Company, Inc., a reseller of refined petroleum products located in Erie, Pennsylvania.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0197.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a consent order entered into by Willis Distributing Company, Inc., which settled possible pricing violations in the firm's sales of motor gasoline to its customers during the April 1, 1979 through September 30, 1979 audit period.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account funded by Willis pursuant to the consent order. The DOE has tentatively established procedures under which purchasers of Willis products during the audit period may file claims for refunds from the consent order fund. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: March 19, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Willis Distributing Company, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF–0197.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V regulations set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as part of a settlement agreement or pursuant to a Remedial Order. The Subpart V process is intended to be used in situations where the DOE is unable readily to ascertain the persons who were injured or the amounts that such persons are eligible to receive as a result of enforcement proceedings. *See Office of Enforcement,* 9 DOE ¶ 82,553 at 85,284 (1982).

I. Background

Pursuant to the provisions of Subpart V, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Willis Distributing Company, Inc. (Willis). Willis is a "reseller" of refined petroleum products as that term was defined in 10 CFR 212.31, and is located in Erie, Pennsylvania. The firm was subject to the Mandatory Petroleum Price Regulations set forth in 10 CFR Part 212, Subpart F until January 28, 1981, when motor gasoline and other refined petroleum products were exempted from price and allocation controls. Exec. Order No. 12287, 46 FR 9909 (January 30, 1981). A DOE audit of Willis' records revealed possible regulatory violations in the amount of $213,557 with respect to the firm's pricing of motor gasoline during the period April 1 through September 30, 1979 (the audit period). In order to settle all claims and disputes between Willis and the DOE regarding the firm's sales of motor gasoline during the audit period, Willis and the DOE entered into a consent order on December 31, 1980, in which Willis agreed to remit $92,691 to the DOE. This payment was deposited into an interest-bearing escrow account for ultimate distribution to the parties injured by the alleged overcharges. This Proposed Decision concerns the distribution of the $92,691 that was deposited into the escrow account, plus accrued interest.

II. Proposed Refund Procedures

We have considered the ERA's Petition for the Implementation of Special Refund Procedures and determined that it is appropriate to establish such a proceeding with respect to the Willis consent order fund. As we have stated in previous Decisions, refunding moneys obtained through DOE enforcement proceedings is the focus of Subpart V proceedings. *See generally Office of Enforcement,* 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). Based upon our experience with Subpart V cases, we believe that the distribution of refunds in the present case should take place in two stages. The first stage will attempt to refund moneys to identifiable purchasers of motor gasoline who may have been injured by Willis' pricing practices during the period April 1 through September 30, 1979. After meritorious claims are paid in the first stage, a second stage refund procedure may become necessary. *See generally Office of Special Counsel,* 10 DOE ¶ 85,048 (1982) (hereinafter cited as *Amoco*) (refund procedures established for first stage applicants, second stage refund procedures proposed).

A. Refunds to Identifiable Purchasers

We propose that the Willis consent order funds be distributed to claimants who satisfactorily demonstrate that they have been adversely affected by Willis' alleged pricing practices. The ERA has identified 97 customers who were overcharged in their purchases of Willis motor gasoline. Of these 97 customers, 92 were identified as first purchasers and are listed in Appendix A. The 5 remaining customers who were not identified as first purchasers are listed in Appendix B. The motor gasoline purchased by these claimants was purchased either directly from Willis or from other firms in a chain of distribution leading back to Willis.

In order to receive a refund, each claimant will be required to submit a schedule of monthly purchases of Willis motor gasoline for the period April through September 1979. If the gasoline was not purchased directly from Willis, the claimant must include a statement setting forth his reasons for believing the product originated with Willis. In addition, a reseller or retailer of motor gasoline that files a claim generally will be required to establish that it absorbed the alleged overcharges and was thereby injured. To make this showing, each claimant will be required to show that it maintained "blanks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices. (*1*) *See Office of Enforcement,* 10 DOE ¶ 85,029 at 88,125 (1982) (hereinafter cited as *Ada*). In addition, it will have to demonstrate that, at the time it purchased motor gasoline from Willis, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges.

However, as in many prior special refund cases, an applicant will not be required to submit any additional proof of injury if its refund claim is based on monthly purchases of less than 50,000 gallons. (*2*) *Ada* at 88,122. The adoption of a threshold level below which a claimant does not have to submit any evidence of injury is based on several factors. To conduct special refund proceedings with efficiency and reduced administrative costs, the Subpart V regulations authorize the use of presumptions. *See* 10 CFR 205.282(e). We are especially concerned that the cost of compiling information sufficient to show injury not exceed the amount of the refund to be gained. On balance, we believe that the establishment of a presumption of injury for all claims below 50,000 gallons per month is reasonable under the circumstances of this case. *See Office of Special Counsel: In the Matter of Conoco, Inc.,* 11 DOE ¶ ——, Case No. DFF–0003 (January 23, 1984) and cases cited therein.

If a reseller made only spot purchases from Willis, however, we propose that it should not receive a refund because it is not likely to have suffered an injury. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers at 85,396–97. We believe the same rationale holds true in the present case, and we will establish a rebuttable presumption that spot purchasers were not injured. Accordingly, a spot purchaser which files a claim should sumbit additional evidence to rebut the presumption and to establish that it was unable to recover the increased prices it paid for Willis motor gasoline. *See Amoco* at 88,200.

With respect to customers who were consumers or end-users of Willis motor gasoline, a showing of injury wil not be required in order to qualify for a refund. *See Standard Oil Co. (Indiana)/Union Camp Corp.,* 11 DOE ¶ 85,007 (1983); *Standard Oil Co. (Indiana)/Elgin, Joliet, and Eastern Railway,* 11 DOE ¶ 85,105 (1983) (end-users of various refined petroleum products granted refunds solely on the basis of documented purchased volumes). Therefore, in this proceeding a consumer need only document the specific quantities of Willis motor gasoline it purchased during the consent order period.

A successful refund applicant will receive a refund based upon a volumetric method of allocating refunds. Under this method, a volumetric refund amoung is calculated by dividing the settlement amount by the total gallonage of motor gasoline covered by the consent order. In the present case, based on the information available to us at this time, the volumetric refund amount is $.0144298 per gallon ($92,691 received from Willis divided by 6,423,576 gallons of motor gasoline sold by Willis during the audit period). Successful claimants will receive refunds based on their eligible purchase volumes multiplied by the volumetric refund amount, plus a proprotionate share of the interest accrued on the consent order fund since it was remitted to the DOE. As of January 31, 1984, accrued interest will increase the per gallon refund amount to $.024252. Consequently, a successful claimant who purchased 50,000 gallons of Willis motor gasoline during each of the six months of the audit period will receive a refund of $7,276.

As in previous cases, we will establish a minimum refund amount of $15.00 for first

stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

Detailed procedures for filing applications will be provided in a final Decision and Order. Before disposing of any of the funds received as a result of the consent order involved in this proceeding, we intend to publicize widely the distribution process to solicit comments on the proposed refund procedures and to provide an opportunity for any affected party to file a claim. In addition to publishing notice in the **Federal Register**, notice will be provided to the Independent Gasoline Marketers council, the National Oil Jobbers Council, the service Station Dealers of America, and the Society of Independent Gasoline Marketers of America. These organizations should be helpful in advising potential claimants of this proceeding. In addition, we are continuing our efforts to obtain a more complete list of the names and addresses of firms and individuals who purchased Willis motor gasoline.

B. Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all first stage claims have been disposed of, undistributed funds could be distributed in a number of different ways. For example, they could be deposited into the miscellaneous receipts account of the United States Treasury. However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It Is Therefore Ordered That:

The $92,691 refund amount remitted by Willis Distributing Company, Inc. pursuant to the consent order executed on December 31, 1980 will be distributed in accordance with the foregoing Decision.

Footnotes

(1) The price rules applicable to sales of motor gasoline by retailers were amended effective July 14, 1979. 44 FR 42542 (July 19, 1979). The amended regulation, 10 CFR 212.93(a)(2), provided for a fixed per-gallon markup of 15.4 cents (later increased) for retail sales of motor gasoline, and eliminated the "banking" provisions formerly in effect. Since the fixed markup rule was in effect through part of the period covered by the Willis consent order, no showing of cost banks will be required of retailers from July 14, 1979 through September 30, 1979. The use of banking remained optional for larger resellers of motor gasoline; firms that elected to continue cost banking will be required to submit this information throughout the audit period if they apply for refunds based on purchases greater than 50,000 gallons per month.

(2) Resellers whose monthly purchases during the period for which a refund is claimed exceed 50,000 gallons, but who cannot establish that they did not pass through the price increases, or who limit their claims to the threshold amount, will be eligible for a refund for purchases up to the 50,000 gallons per month threshold amount without being required to submit evidence of injury. *See Vickers* at 85,396; *see also Ada* at 88,122.

Appendix A

Identified First Purchasers With Addresses

Bel Aire Motel, 2800 West 8th Street, Erie, PA 16505
Benjamin Insulation, 9030 Benjamin Road, Erie, PA 16509
Bill's Atlantic Service, 1951 West 26th Street, Erie, PA 16508
Blue Bird Garage, 501 East 19th Street, Erie, PA 16503
Coca-Cola Bottling Company, 50th & Pittsburgh Avenue, Erie, PA 16509
County Fair, 1533 East 12th Street, Erie, PA 16511
Dodsworth, Inc., 928 West 19th Street, Erie, PA 16502
Ed's Mobil, 653 East 19th Street, Erie, PA 16503
Erie Cemetary, 2116 Chestnut Street, Erie, PA 16502
Erie Flexlume Corporation, 2646 West 14th Street, Erie, PA 16505
Erie Press Systems, 1253 West 12th Street, Erie, PA 16503
Erie Strayer Company, 1851 Rudolph Road, Erie, PA 16502
Erie Tool Works, 735 West 12th Street, Erie, PA 16415
Ettwein Service Station, 2505 Buffalo Road, Erie, PA 16510
Exit 4 Truck Stop, 8036 Avonia Road, Erie, PA 16415
Foggleback Excavating Contractor, 3419 Sterrettania Road, Erie, PA 16506
Fort LeBoeuf School District, 122 East 2nd Street, Waterford, PA 16441
Gene's Transmission Service, 2502 East Lake Road, Erie, PA 16511
General Electric, 2901 East Lake Road, Erie, PA 16511
Glenwood Beer Distributors, 2177 West Grandview Boulevard, Erie, PA 16509
Hammett Motors, 7311 Wattsburg Road, Erie, PA 16509
William Heidt & Sons Contractors, 5111 Emmaline Drive, Erie, PA 16509
Horton Precast Concrete, Inc., 432 Noble Road, Girard, PA 16417
Howard Neon & Plastic Displays, 2910 Pittsburgh Avenue, Erie, PA 16508
Frederick Huttel's Auto Service, 5434 West Lake Road, Erie, PA 16505
Independent Iron & Metal Corp., 235 East 20th Street, Erie, PA 16503
Jemko Petroleum Equipment Co., 929 Buffalo Road, Erie, PA 16503
Jerge Service, 2529 Parade Street, Erie, PA 16503
Jabe Construction & Equipment, Inc., 2501 Manchester Road, Erie, PA 16506
Kelly Erectors, 2023 Linwood Avenue, Erie, PA 16510
Larry's Truck Stop, 12201 East Main Street, North East, PA 16428
Laurel Hill Cemetery, 4523 Love Road, Erie, PA 16506
Lord Corporation, 2000 West Grandview Boulevard, Erie, PA 16509
Marina Gas Dock, 3333 Bolivar Street, Erie, PA 16508
Matz Mobil Service, 9088 West Main Street, McKean, PA 16426
Michalak Tire, 1564 West 26th Street, Erie, PA 16508
Mike's Arco, RD 3 Station Road, North East, PA 16428
Port Erie Plastics, 909 Troupe Road, Harborcreek, PA 16421
Presque Isle Yacht Club, Peach Street, Erie, PA 16501
R. D. McAllister & Son, Ltd., East Bay Front, Erie, PA 16501
Rich Miller Kendall Service, 97 Rice Avenue, Lake City, PA 16423
Seaway Aluminum Mfg. Corp., 2250 East 33rd Street, Erie, PA 16510
Skindell's Service Station, 5681 East Lake Road, Erie, PA 16511
Southern Tier Erector, Inc., 5055 Iroquois Avenue, Erie, PA 16511
Sam Travis Mobil Service, 3715 Peach Street, Erie, PA 16508
United Parcel Service, 1821 Beaver Avenue, Pittsburgh, PA 15233
U.S. Army Reserve Training Center, 3938 Old French Road, Erie, PA 16504
Union 76 Truck Stop, I90 & US20, North East, PA 16428
Allen Whipple Construction Co., 1625 Lowell Avenue, Erie, PA 16505
Wilson Machine Movers, Inc., 816 East 11th Street, Erie, PA 16503
Carl E. Wise, 2117 Bird Drive, Erie, PA 16510
Zurn Industries, Inc., 1 Zurn Place, Erie, PA 16501
Highway Oil, 1505 Buffalo Road, Erie, PA 16503

First Purchasers Without Addresses

Avonia
Bay City Auto
Clair Ferry
Corry Car Wash
Coughey's Mobil
Don Morse
F & R Bus Lines
Frontier Mobil
Gas-N-Glo
Gerry Hoyes
Glenn's Mobil
Hercules
Hertz Rent-A-Car
J. A. Holtz, Inc.
Jet Oil
Kane Liquid Fuels
Lake Erie Oil Company
Larry's Shortman
Liberty Homes
OK Service
R & R Linnger & Son
Rick & Dave's
Rick's Mobil
Ron Motz
Sanray Corporation
Sherman Tractor
Southland Corporation
Spoeder & Sons
T. C. Motors
Truck Stops of America
Union Fuel & Oil
Valley View Gas
Baer
Herman Drilling
Mowery
R. Aims Construction

Richard Young Contractors
Saurs
Savers Golf Club

Appendix B

Gartner-Harf Company, 9380 Peach Street, Waterford, PA 16441
L & A Equipment Sales, 1507 Liberty Road, Erie, PA 16502
Hoover Sand & Gravel Co., RD 1 Troupe Road, Harborcreek, PA 16421
J. Lechtner, 5575 Meehl Road, North East, PA 16428
James M. Quinlisk, 72 Lakeview Avenue, Fairview, PA 16415

[FR Doc. 84-8537 Filed 3-29-84; 8:45 am]
BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of Implementation of Special Refund Procedures and Solicitation of Comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $36,000 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving the Windham Gas Oil Company, a reseller of refined petroleum products located in Windham, Ohio.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0198.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a consent order entered into by the Windham Gas Oil Company, which settled possible pricing violations in the firm's sales of motor gasoline to its customers during the March 1, 1979 through August 31, 1979 audit period.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account funded by Windham pursuant to the consent order. The DOE has tentatively established procedures under which purchasers of Windham products during the audit period may file claims for refunds from the consent order fund. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: March 20, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Case: Windham Gas Oil Company.
Date of Filing: October 13, 1983.
Case Number: HEF-0198.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V regulations set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as part of a settlement agreement or pursuant to a Remedial Order. The Subpart V process is intended to be used in situations where the DOE is unable readily to ascertain the persons who were injured or the amounts that such persons are eligible to receive as a result of enforcement proceedings. *See Office of Enforcement*, 9 DOE ¶ 82,553 at 85,284 (1982).

I. Background

Pursuant to the provisions of Subpart V, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with the Windham Gas Oil Company (Windham). Windham is a "reseller" of refined petroleum products as that term was defined in 10 CFR 212.31, and is located in Windham, Ohio. The firm was subject to the Mandatory Petroleum Price Regulations set forth in 10 CFR Part 212, Subpart F until January 28, 1981, when motor gasoline and other refined petroleum products were exempted from price and allocation controls. Exec. Order No. 12287, 46 FR 9909 (January 30, 1981). A DOE audit of Windham's records revealed possible regulatory violations in the amount of $384,534.49 with respect to the firm's pricing of motor gasoline during the period March 1 through August 31, 1979 (the audit period). In order to settle all claims and disputes between Windham and the DOE regarding the firm's sales of motor gasoline during the audit period, Windham and the DOE entered into a consent order on February 10, 1981, in which Windham agreed to remit $36,000 to the DOE. This payment was deposited into an interest-bearing escrow account for ultimate distribution to the parties injured by the alleged overcharges. This Proposed Decision concerns the distribution of the $36,000 that was deposited into the escrow account, plus accrued interest.

II. Proposed Refund Procedures

We have considered the ERA's Petition for the Implementation of Special Refund Procedures and determined that it is appropriate to establish such a proceeding with respect to the Windham consent order fund. As we have stated in previous Decisions, refunding moneys obtained through DOE enforcement proceedings is the focus of Subpart V proceedings. *See generally Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). Based upon our experience with Subpart V cases, we believe that the distribution of refunds in the present case should take place in two stages. The first stage will attempt to refund moneys to identifiable purchasers of motor gasoline who may have been injured by Windham's pricing practices during the period March 1 through August 31, 1979. After meritorious claims are paid in the first stage, a second stage refund procedure may become necessary. *See generally Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (hereinafter cited as *Amoco*) (refund procedures established for first stage applicants, second stage refund procedures proposed).

A. Refunds to Identifiable Purchasers

We propose that the Windham consent order funds be distributed to claimants who satisfactorily demonstrate that they have been adversely affected by Windham's alleged pricing practices. The information available to us at this time regarding Windham's operations during the consent order period does not provide specific names and addresses of the firm's customers. However, from our experience with Subpart V proceedings, we believe that the claimants in this proceeding will fall into the following categories: (1) Resellers (including retailers) of motor gasoline, and (2) firms, individuals, or organizations that were consumers (end-users) of motor gasoline. The motor gasoline purchased by these claimants was purchased either directly from Windham or from other firms in a chain of distribution leading back to Windham. In order to received a refund,

each claimant will be required to submit a schedule of monthly purchases of Windham motor gasoline for the period March through August 1979. If the gasoline was not purchased directly from Windham, the claimant must include a statement setting forth his reasons for believing the product originated with Windham. In addition, a reseller or retailer of motor gasoline that files a claim generally will be required to establish that it absorbed the alleged overcharges and was thereby injured. To make this showing, each claimant will be required to show that it maintained "banks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices. *See Office of Enforcement*, 10 DOE ¶ 85,029 at 88,125 (1982) (hereinafter cited as *Ada*). In addition, it will have to demonstrate that, at the time it purchased motor gasoline from Windham, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges.

However, as in many prior special refund cases, a reseller will not be required to submit any proof of injury if its refund claim is based on monthly purchases of less than 50,000 gallons.* *Ada* at 88,122. The adoption of a threshold level below which a claimant does not have to submit any evidence of injury is based on several factors. To conduct special refund proceedings with efficiency and reduce administrative costs, the Subpart V regulations authorize the use of presumptions. *See* 10 CFR ¶ 205.282(e). We are especially concerned that the cost of compiling information sufficient to show injury not exceed the amount of the refund to be gained. On balance, we believe that the establishment of a presumption of injury for all claims below 50,000 gallons per month is reasonable under the circumstances of this case. *See Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ ——, Case No. DFF-0003 (January 23, 1984) and cases cited therein.

If a reseller made only spot purchases from Windham, however, we propose that it should not receive a refund because it is not likely to have suffered an injury. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers at 85,396–97. We believe the same rationale holds true in the present case. Accordingly, a spot purchaser which files a claim should submit additional evidence to establish that it was unable to recover the increased prices it paid for Windham motor gasoline. *See Amoco* at 88,200.

With respect to customers who were consumers of Windham motor gasoline, a showing of injury will not be required in order to qualify for a refund. *See Standard Oil Co. (Indiana)/Union Camp Corp.*, 11 DOE ¶ 85,007 (1983); *Standard Oil Co. (Indiana)/Elgin, Joliet, and Eastern Railway*, 11 DOE ¶ 85,105 (1983) (end-users of various refined petroleum products granted refunds solely on the basis of documented purchase volumes). Therefore, in this proceeding a consumer need only document the specific quantities of Windham motor gasoline it purchased during the consent order period.

A successful refund applicant will receive a refund based upon a volumetric method of allocating refunds. Under this method, a volumetric refund amount is calculated by dividing the settlement amount by the total gallonage of motor gasoline covered by the consent order. In the present case, based on the information available to us at this time, the volumetric refund amount is $.0041597 per gallon ($36,000 received from Windham divided by 8,654,369 gallons of motor gasoline sold by Windham during the audit period). Successful claimants will receive refunds based on their eligible purchase volumes multiplied by the volumetric refund amount, plus a proportionate share of the interest accrued on the consent order fund since it was remitted to the DOE. As of January 31, 1984, accrued interest will increase the per gallon refund amount to $.0061285. Consequently, a successful claimant who purchased 50,000 gallons of Windham motor gasoline during each of the six months of the audit period will receive a refund of $1,839.

As in previous cases, we will establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

Detailed procedures for filing applications will be provided in a final Decision and Order. Before disposing of any of the funds receiving as a result of the consent order involved in this proceeding, we intend to publicize widely the distribution process to solicit comments on the proposed refund procedures and to provide an opportunity for any affected party to file a claim.

In addition to publishing notice in the **Federal Register**, notice will be provided to the Southeastern Independent Oil Marketers Association, and also to the Independent Gasoline Marketers Council, the National Oil Jobbers Council, the Service Station Dealers of America, the National Association of Convenience Stores, the National Association of Truck Stop Operators, and the Society of Independent Gasoline Marketers of America. These organizations should be helpful in advising potential claimants of this proceeding. In addition, we are continuing our efforts to obtain a list of the names and addresses of first purchasers of Windham motor gasoline.

B. Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all first stage claims have been disposed of, undistributed funds could be distributed in a number of different ways. For example, they could be deposited into the miscellaneous receipts account of the United States Treasury. However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed. We encourage the submission of comments containing proposals for alternative distribution schemes.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by the Windham Gas & Oil Company pursuant to the consent order executed on February 10, 1981 will be distributed in accordance with the foregoing Decision.

Footnote

*Resellers whose monthly purchases during the period for which a refund is claimed exceed 50,000 gallons, but who cannot establish that they did not pass through the price increases, or who limit their claims to the threshold amount, will be eligible for a refund for purchases up to the 50,000 gallons per month threshold amount without being required to submit evidence of injury. *See Vickers* at 85,396; *see also Ada* at 88,122.

[FR Doc. 84-8540 Filed 3-29-84; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of Implementation of Special Refund Procedures and Solicitation of Comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $91,913 in consent order funds to members of the public. This moeny is being held in escrow following the settlement of enforcement proceedings involving Waller Petroleum Company, Inc., a reseller-retailer of middle distillates and residual fuel located in Towson, Maryland.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0191.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and

Order set out below. The Proposed Decision relates to a consent order entered into by Waller Petroleum Company, Inc., which settled possible pricing violations in the firm's sales of middle distillates and residual fuel to its customers during the November 1, 1973 through May 31, 1974 audit period.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account funded by Waller pursuant to the consent order. The DOE has tentatively established procedures under which purchasers of Waller products during the audit period may file claims for refunds from the consent order fund. Applications for Refund should not be filed at this time. Apropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: March 19, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: Waller Petroleum Company, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF–0191.

Under the procedural regulations of the Department of Energy, the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals formulate and implement special procedures to make refunds in order to remedy the effects of violations of DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V regulations set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. The Subpart V process is intended to be used in situations where DOE is unable readily to ascertain the persons who may be eligible to receive refunds as a result of enforcement proceedings or the amounts that such persons should receive. *See Office of Enforcement*, 9 DOE ¶82,553 (1982).

Pursuant to the provisions of Subpart V, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Proceedings in connection with a consent order entered into with Waller Petroleum Company, Inc. (Waller). Waller is a "reseller-retailer" of middle distillates and residual fuel oils as those terms were defined in 10 CFR 212.31, and is located in Towson, Maryland. A DOE audit of the firm's records revealed possible pricing violations in the firm's sales of No. 2 heating oil and Nos. 4, 5 and 6 fuel oil to its customers during the period from November 1, 1973 through May 31, 1974 (the audit period). In order to settle all claims and disputes between Waller and the DOE regarding the firm's sales of middle distillates and residual fuel oils during the audit period, the firm and the DOE entered into a consent order on August 21, 1979, in which Waller agreed to pay $508,087 directly to 50 identified customers plus $91,913 (including interest to that time) to the DOE in settlement of the firm's potential liability with respect to sales to Waller's other customers during the audit period. The payment to the DOE was deposited into an interest bearing escrow account for ultimate distribution to the parties bearing the burden of the alleged overcharges. This Decision concerns the distribution of the $91,913 that was deposited into the escrow account, plus accrued interest to date.

During the audit of the firm, 61 customers were identified by the ERA has having been overcharged. Pursuant to the Consent Order, 50 of these customers have received payment for their alleged injuries. On September 7, 1979, each of these customers were paid amounts specifically set forth in the Consent Order from the $508,087 fund. Eleven other customers, which were identified as first purchasers, have not yet been paid. These identified first purchasers, together with the amount of the firm's settlement payment attributable to each, are set forth in the table below.

Customer	Portion of settlement amount
Annapolis Utilities, P.O. Box 1871, Annapolis, MD 22404	$1,779
Bulk Sales, 1015 Ingleside Ave., Baltimore, MD 21228	1,270
Eastern Petroleum 708 Baltimore Annapolis Blvd. NE., Glen Burnie, MD 21061	1,786
E. Stewart Mitchell, 1400 Ceddox St., Baltimore, MD 21225	1,233
Southern Maryland Oil, Route 301 South, La-Plata, MD 20646	3,506
Space Petroleum, 5602 Baltimore National Pike, Suburban Building, Suite 701, Baltimore, MD 21228	13,168
Stape Best Co., 3465 North 6th St., Harrisburg, PA 17105	3,017
Tower Sales, 936 East Grant Ave., Tower City, PA 17980	22,492
Tri Gas & Oil Co., P.O. Box 246, Federalsburg, MD 21632	1,770
Way Oil Co., 1062 Old Manheim Pike, P.O. Box 4768, Lancaster, PA 17604	36,325
Wooten Oil & Fuel, P.O. Box 1277, Goldsboro, NC 27530	5,567
Total	91,913

On the basis of the information in the record at this time, we are inclined to distribute the money in the Waller refund pool to the customers indicated above in the amounts specified. In view of the small amount of money involved in this proceeding and since the record indicates that these firms are the parties most likely to have been injured by Waller pricing practices, we have tentatively decided that this would be most equitable and efficient method of accomplishing restitution. (*1*) We recognize, however, that other customers not identified by the ERA audit may be entitled to a portion of the consent order fund. If additional meritorious claims are filed, the appropriate amount of refund to each firm will be determined after analyzing those claims.

In order to obtain a refund, each of the firms will be required to file a refund application in which it certifies to the Office of Hearings and Appeals the amount of its purchases from Waller during the audit period and that there has been no change in ownership of the refund applicant since that time. If there has been a change in ownership, we will determine which owner is entitled to the refund. In addition, a firm that requests a refund of more than $25,000 will need to show that it did not pass through the effects of the alleged overcharges to its customers. (*2*) *See, e.g., Enterprise Products Company*, 10 DOE ¶ 85,017 (1982); *Tenneco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982).

In the event that money remains after all claims are disposed of, undistributed funds could be distributed in various ways. For example, they could be deposited into the miscellaneous receipts account of the United States Treasury or be distributed to the states or counties where the firms' sales were apparently made, provided the state or county files a plan with this Office to use these funds for an energy related project which meets with our approval. *See Worldwide Energy Corp.*, 11 DOE ¶ 85,023 (1983). However, it is premature to decide this issue now, since we do not know how much, if any, money will remain unclaimed. We therefore reserve judgment on this issue.

It Is Therefore Ordered That:

The $91,913 refund remitted to the Department of Energy by Waller Petroleum Company, Inc. pursuant to the Consent Order executed on August 21, 1979 will be distributed in accordance with the foregoing Decision.

Footnotes

(*1*) In previous decisions concerning special refund proceedings, we have generally required a party claiming a portion of a consent order fund who is not a consumer to demonstrate that it did not pass through the effects of the overcharges to its customers. We have also stated in our prior decisions, however, that a party that purchased a relatively small amount of product need not make such a showing. *See Office of Special Counsel (Tenneco)*, 9 DOE ¶ 82,538 at 85,202-05 (1982); *Office of Enforcement (Lyon County Cooperative)*, 10 DOE ¶ 85,016 (1982). In the present case, although data pertaining to the purchase volumes of the customers identified are not in the record, it appears that all except one of the purchase volumes and refunds will be relatively small. We therefore propose that all firms except Way

Oil Co. not be required to demonstrate that they absorbed the alleged overcharges.

(2) Our decision to adopt a threshold level below which applicants do not have to submit any further evidence of injury permits the OHA to conduct special refund proceedings with much greater efficiency and lower administrative costs. It also lessens the burden of what might otherwise be an onerous or impossible task for small firms and is authorized by the Subpart V regulations. *See* 10 CFR 205.282(e). In the past, we have set the threshold level on the basis of volumetric purchases. *See, e.g., Office of Special Counsel (Tenneco),* 9 DOE ¶ 85,538 at 82,203–05 (1982); *Office of Enforcement (Vickers),* 8 DOE ¶ 82,597 at 85,396 (1981). However, because we do not have adequate volumetric information in this case, we have established a threshold level based on the claimant's potential refund amount. This amount was determined by consideration of the same factors considered in setting volumetric thresholds. *See Office of Enforcement (Sid Richardson),* 10 DOE ¶ 85,056 at 88,275–76 (1983).

[FR Doc. 84–8539 Filed 3–29–84; 8:45 am]
BILLING CODE 6450–01–M

Western Area Power Administration

Fryingpan-Arkansas Project Reallocation; Intent To Reallocate Power and Call for Applications for Allocations

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of intent to reallocate power and call for applications for allocations.

SUMMARY: The Western Area Power Administration (Western) adopted a final marketing plan for power from the Mt. Elbert Pumped-Storage Powerplant of the Fryingpan-Arkansas Project (Fry-Ark) which was published in the Federal Register on June 23, 1981 (46 FR 32491). That marketing plan provided, in part, for the reallocation of power allocated under the plan but not placed under contract. Western has calculated the amount of Fry-Ark power to be reallocated, and is publishing this notice to announce the reallocation and solicit applications for allocations from eligible entities.

DATES: Written comments on the proposal and/or applications for power are due in the office of the Area Manager at the address given below, no later than 30 days from the publication of this notice in the Federal Register. This proposal will become final 30 days from its publication in the Federal Register unless Western publishes another Federal Register notice reflecting any differences between this proposal and any amended final determination.

ADDRESS: Comments and/or applications for allocations may be mailed to:

Mr. Peter G. Ungerman, Area Manager, Loveland-Fort Collins Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539, (303) 224–7201.

FOR FURTHER INFORMATION CONTACT:

Mr. Peter G. Ungerman, Area Manager, Loveland-Fort Collins Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539, (303) 224–7201.

Mr. John DiNucci, Director, Division of Marketing and Rates, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231–1545.

SUPPLEMENTARY INFORMATION:

I. Regulatory Procedural Requirements

A. *Determination Under Executive Order 12291.* The Department of Energy has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981). In addition, Western has an exemption from sections 3, 4, and 7 of the Executive Order.

B. *Regulatory Flexibility Analysis.* Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact to the proposed rule on small entities.

The Administrator of Western certified that the Fry-Ark power marketing plan (46 FR 32491) is not a rule under the Regulatory Flexibility Act, and that it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The Administrator's certification was published with the marketing plan and was sent to the Chief Counsel for Advocacy of the Small Business Administration.

C. *Environment Evaluation.* The reallocation of power under the existing marketing plan was evaluated before implementation of the plan and found not to be a major Federal action which significantly affects the environment. An environmental assessment or environmental impact statement is, therefore, not required under the National Environmental Policy Act of 1969.

D. *Statutory Basis.* This reallocation was authorized in the final marketing plan for power from the Mt. Elbert Powerplant established by Western pursuant to the Department of Energy Organization Act (42 U.S.C. 7101, *et seq.*) and the Reclamation Act of 1902 (43 U.S.C. 372, *et seq.*) as amended and supplemented by subsequent enactments, particularly by section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and the Fryingpan-Arkansas Project Acts (Pub. L. 87–590, 76 Stat. 389 (August 16, 1962) and Pub. L. 93–493, 88 Stat. 1486 (October 27, 1974)).

II. Background

Western's Loveland-Fort Collins Area Office markets power generated at 18 hydroelectric powerplants in Colorado, Wyoming, and Montana to 56 customers in a 200,000 square mile service area. Seventeen of these powerplants and their associated transmission facilities comprise the Pick-Sloan Missouri Basin Program-Western Division power system. The remaining powerplant, the Mt. Elbert Powerplant, and its associated transmission line comprise the Fry-Ark from which power is to be allocated under this Federal Register notice.

On March 9, 1976, the United States Bureau of Reclamation published a proposed marketing plan and rate for power from Fry-Ark (41 FR 10116).

After reviewing the proposal and the public comments on that proposal, Western held a public meeting on April 12, 1978, at which Western presented a modified plan for marketing Fry-Ark power. Delays in the scheduled inservice date of the Mt. Elbert Powerplant caused delays in preparing a final marketing plan. On receipt of notification of a new scheduled inservice date for the powerplant, Western reviewed the changing power supply conditions in the Loveland-Fort Collins Area and determined that additional public participation would be helpful in developing a final marketing plan. On September 30, 1980, a public information meeting was held at which additional public comments were solicited.

A proposed marketing plan was published in the Federal Register on March 31, 1981 (46 FR 19809). Public information and comment forums were held in Thornton, Colorado, on April 8, 1981, and April 29, 1981. After consideration of the comments received at these public forums, a final marketing plan was published in the Federal Register on June 23, 1981 (46 FR 32491).

Allocations of Fry-Ark power were approved by the Administrator of Western and were announced by a letter to all customers and interested parties in the marketing area as well as by press release. Because of problems

encountered by allottees in securing transmission arrangements for the delivery of Fry-Ark power and/or pump-back energy, and problems encountered in the operation of the first unit of the Mt. Elbert Powerplant, Western extended the deadline for placing allocations under contract on several occasions. On September 13, 1983, Western sent certified letters to all allottees of Fry-Ark power informing the allottees that any Fry-Ark allocation not under contract by November 30, 1983, would be rescinded. Ten customers responded prior to the deadline with total allocations under contract of 129,794 kilowatts in summer seasons and 133,224 kilowatts in winter seasons. The remaining Fry-Ark power, to be reallocated under the marketing plan, is 70,206 kilowatts in summer seasons and 66,776 kilowatts in winter seasons.

The reallocation method for Fry-Ark power appears below.

Reallocation of Fryingpan-Arkansas Project Power

1. *Applicability of Final Marketing Plan.* Except as otherwise specifically provided in this **Federal Register** notice, all power to be allocated hereunder shall be allocated and furnished in accordance with the provisions of the "Fryingpan-Arkansas Project Power Marketing Plan" published in the **Federal Register** on June 23, 1981 (46 FR 32491).

2. *Allocation Procedures.* In lieu of the procedures set forth in section 6 of the "Fryingpan-Arkansas Project Power Marketing Plan," the following procedures will be followed in reallocating the available Fry-Ark capacity:

a. Entities desiring an allocation of the available Fry-Ark capacity shall submit a request so that it is received by the Area Manager within 30 days after publication of this notice in the **Federal Register**. Entities should request power separately for the winter and summer seasons. System peakloads for the 1982–1983 winter season and the 1983 summer season should be set forth as part of the application. For preference entities that have a portion of their load within the marketing area, peakloads should be calculated only for that portion of its system within the marketing area.

b. Allotment of the available Fry-Ark capacity will be made first to preference entities in the Fry-Ark market area.

c. *Undersubscription.* If preference entities in the Fry-Ark market area do not subscribe for all the capacity available, the remaining capacity will be allotted first to preference entities outside the marketing area, then to nonpreference entities. If capacity remains undersubscribed, it may be sold on a seasonal, short-term, or withdrawable basis by Western through the 1989 summer season.

d. *Oversubscription.* If the total amount of capacity applied for exceeds the capacity available, a percentage of the total available capacity shall be reserved for the group of requesting preference entities having 1980 Fry-Ark marketing area peakloads of 20 MW or less. The percentage to be reserved for this group of small customers shall be determined by considering the number of members of this group and the total capacity requested by all preference entities.

If all of the capacity reserved for this group is not subscribed, the remainder will be added to the amount available for the group of preference entities with loads greater than 20 MW.

Capacity available in any season for each group will be apportioned among the members of the group by using the following formula:

$$(\text{Fry-Ark Allocation} + \text{CROD}_I) \div \text{Loads}_I = (\text{CROD}_A + \text{CROD}_T) \div \text{Load}_T$$

Where: Fry-Ark Allocation = The amount of Fry-Ark capacity allocated to the individual group member for the service season

Load_I = 1983 seasonal load of the individual group member

CROD_I = Federal resources allocated to the group member

Load_T = Total 1983 seasonal load of all the members of the group

CROD_A = Fry-Ark capacity available for allocation to the group

CROD_T = Federal resource allocated to all members of the group

If use of this formula results in a negative allocation to any group member, that member shall receive a zero allocation. The remaining allocations shall then be recomputed using the above formula. Separate allocations will be made for the summer and winter seasons, as defined in the marketing plan. No entity shall receive an allocation larger than that for which it applies.

3. *Term of Contract:* In place of the provisions set forth in section 9 of the Fryingpan-Arkansas Project Marketing Plan the following shall be applied to allocations made pursuant to this **Federal Register** notice:

Contracts for Fry-Ark capacity allocated hereunder shall be entered into on or before July 15, 1984. The term of these contracts shall be through the 1989 summer season.

Western reserves the right to rescind any allocation if, by July 15, 1984, an allottee has not entered into a contract to take and/or pay for its allotted capacity from and after the date specified in its contract. Power which is allocated, but not contracted for by the allottee by July 15, 1984, may be sold on a seasonal, short-term, or withdrawable basis by Western through the 1989 summer season.

Allottees may contract to take the allocated capacity on a staged basis, until the first full service season which occurs 1 year after the inservice date of the second Mt. Elbert unit. Power available during the buildup period, because of allocations being taken on a stepped up basis, may be sold by Western on a short-term basis, subject to withdrawal.

Issued at Golden, Colorado, March 22, 1984.

Robert L. McPhail,

Administrator.

[FR Doc. 84-8626 Filed 3-29-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-2555-4]

Availability of Environmental Impact Statements Filed March 19 Through March 23, 1984 Pursuant to 40 CFR 1506.9

Responsible Agency: Office of Federal Activities, General Information, (202) 382–5073 or (202) 382–5075.

EIS No. 840121, Final, FHW, OR, Chambers Connector Construction, River Road to 6th/7th Avenue Couplet, Lane County, Due: Apr. 30, 1984.

EIS No. 840122 Draft, OSM, WA, John Henry No. 1 Mine, Operation, Permit, King County, Due: May 21, 1984.

EIS No. 840123, Draft, FAA, FL, Palm Beach International Airport Fan Out Departure Procedures Elimination, Approval, Palm Beach County, Due: May 31, 1984.

EIS No. 840125, DSuppl, FHW, ID, St. Joe River Road/ID FH–50 Improvement, Marble Creek to Avery, Shoshone County, Due: May 14, 1984.

EIS No. 840126, Draft, FHW, TN, TN–27 Improvement, Alabama State Line to TN–156, Marion County, Due: May 14, 1984.

EIS No. 840127, Draft, FHW, TX, US 183 Upgrading, TX–71 to Ranch to Market Road 620, Travis and Williamson Counties, Due: May 14, 1984.

EIS No. 840128, Final, FHW, CA, CA–41 Freeway Extension, Bullard Avenue to Audubon Drive, Fresno County, Due: Apr. 30, 1984.

EIS No. 840129, Draft, OSM, WY, East Gillette Federal Mine, Operation,

Approval/Permit, Campbell County, Due: May 14, 1984.

EIS No. 840130, Draft, FHW, DC, Whitehurst Freeway/US 29 Corridor Improvements, Due: May 31, 1984.

EIS No. 840131, Draft, COE, MO, Ste. Genevieve Flood Control Plan, Mississippi River, Ste. Genevieve County, Due: May 14, 1984.

Amended Notices:

EIS No. 830669, Draft, AFS, IN, Hoosier National Forest, Land/Resource Management Plan, Bartholomew, Brown, Crawford, Dubois, Johnson, Lawrence, Martin, Monroe, Orange and Perry Cos., Due: 5/31/84. Published FR 01-13-84 Review extended.

Dated: March 27, 1984.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 84-8532 Filed 3-29-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Meetings of the FCC Advisory Committee on DBS Standards

March 26, 1984.

There will be a meeting of the W.G. on *Signal Format* on March 30, 1984. Time of meeting is 9:30 AM. Location of meeting is CBS TV Network Inc., 1800 M Street, third floor.

There will be a meeting of the Sub-Commmittee on *Transmission Standards* on March 30, 1984. Time of meeting is 2:00 PM. The meeting location is CBS TV Network Inc., 1800 M Street, third floor.

The chairmen of the above groups will gladly supply further details, or contact B. Pattan, FCC/OST, (202) 653-9098.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-8548 Filed 3-29-84; 8:45 am]

BILLING CODE 6712-01-M

Meeting of the Assembly of the Telecommunications Industry Advisory Group

Pursuant to Section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Telecommunications Industry Advisory Group's Assembly scheduled to meet on Wednesday, May 2, 1984. The meeting will be held at 9:30 a.m. in Room 856 of the Federal Commission's offices at 1919 M Street, NW., Washington, D.C. The meeting will be open to the public.

The agenda is as follows:

I. General Administrative Matters
II. Proposed Amendment To The By-Laws
III. Review Final Steering Committee Account Proposal
IV. Other Business
V. Presentation of Oral Statements
VI. Adjournment

With prior approval of the Group Chairman, Gerald P. Vaughan, oral statement, while not favored or encouraged, may be allowed if time permits and if the Group Chairman determines that an oral presentation is conducive to the effective attainment of Advisory group objectives. Anyone not a member of the Assembly 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. 84-8546 Filed 3-29-84; 8:45 am]

BILLING CODE 6712-01-M

Radio Advisory Committee; Meeting

April 12, 1984.

The next meeting of the Advisory Committee on Radio Broadcasting has been scheduled for 9:30 a.m., Thursday, April 12, 1984, in Room 330, 1200 19th Street, NW., Washington, D.C.

The Committee will consider recommendations to the FCC concerning: Implementation of the new bilateral agreement between the United States and Canada on AM broadcasting which adapts to particular U.S. and Canadian needs the Final Acts of the 1981 Rio de Janeiro Conference on AM broadcasting in Region 2 and supersedes the North American Regional Broadcasting Agreement (NARBA), insofar as the United States and Canada are concerned; the development of similar revisions to the U.S. Mexican AM Radio Broadcasting Agreement; and other business.

The meetings of the Committee are public, and are open for participation by all interested persons. The meeting scheduled for April 1984, may, if the participants so decide, be recessed for resumption at such other time and place as they may designate.

For further information please contact the Committee Chairman, Louis C. Stephens, or Jonathan David, at F.C.C. Headquarters, (202) 632-7792.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-8547 Filed 3-29-84; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 84-284; File No. BPCT-831027KH]

John R. Powley, et al.; Hearing Designation Order

Adopted: March 21, 1984.

Released: March 23, 1984.

In re Applications of John R. Powley, MM Docket No. 84-284, File No. BPCT-831027KH; Matlock Communications, Inc., MM Docket No. 84-285, File No. BPCT-831121KI; Barbara Chavez and Robert Vinson, d.b.a. Logan Television Company, Ltd., MM Docket No. 84-286, File No. BPCT-840104KG; For Construction Permit for new TV Station on Channel 12, Logan, Utah.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of John R. Powley, Matlock Communications, Inc. (Matlock), and Logan Television Company, Ltd. (Logan) for authority to construct a new commercial television station on Channel 12, Logan, Utah.

2. No determination has been made that the tower heights and locations proposed by the applicants would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.[1]

3. John R. Powley and Logan each proposes to construct transmitting facilities at the same site on top of Mount Pisgah. This site is 55 miles from the reference point of Channel 13, Salt Lake City, Utah. Section 73.610(c)(1) of the Commission's Rules requires a minimum separation of 60 miles. The applicants, therefore, would be short-spaced 5 miles to Channel 13, Salt Lake City, Utah.[2] An issue will be specified to determine whether circumstances exist warranting a waiver. In assessing the circumstances to determine whether a waiver is warranted, the Administrative Law Judge should consider the fact that the other applicant in this proceeding has specified a fully-spaced site.

4. Section V-C, Item 10, FCC Form 301, requires that an applicant submit figures for the area and population within its predicted Grade B contour. Matlock has not submitted figures for the population. Consequently, we are unable to determine whether there would be a significant difference in the size of the area and population that each applicant proposes to serve. Matock will be required to submit an amendment

[1] The Commission is not in receipt of FAA's determination for John R. Powley and Matlock.

[2] There are six (6) pending applications for Channel 13, Salt Lake City, Utah. However, the site proposed by John R. Powley and Logan is not short-spaced to any of the sites specified by the Salt Lake applicants.

showing the required information, within 20 days after this Order is released, to the presiding Administrative Law Judge. The presiding Administrative Law Judge will consider any significant difference in the areas and populations served under the standard comparative issue.

5. The terrain profiles submitted by Matlock have not been determined in accordance with Section 73.684 of the Commission's Rules. Section 73.684(g) generally requires use of U.S. Geological Survey Topographic Quadrangle Maps, if available for the area involved, in constructing terrain profiles from which average terrain elevations are determined. Use of information from the *National Oceanic and Atmospheric Administration Thirty Second Interval Point Elevation Data Base* does not comply with § 73.684(g). Matlock will be required to compute the radial elevations, site elevation and contour distances in accordance with § 73.684 and to submit copies of the profile graphs and topographic maps employed to the presiding Administrative Law Judge within 20 days after the date of the release of this Order.

6. An applicant seeking authority to construct a commercial television station is required to afford equal employment opportunity to qualified persons. See § 73.2080 of the Commission's Rules and Section VI, FCC Form 301. Pursuant to this requirement, an applicant who proposes to employ five or more full-time station employees must establish a program of practices to assure equal employment opportunities. Although Logan intends to employ at least five full-time employees, it has failed to submit the model EEO program required by FCC Form 301. Therefore, we cannot conclude that the applicant has complied with § 73.2080. Accordingly, Logan will be required to submit its model EEO program to the presiding Administrative Law Judge within 20 days after this Order is released.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine where there is a reasonable possibility that the tower height and location proposed by each applicant would constitute a hazard to air navigation.

2. To determine whether the proposals of John R. Powley and Logan are consistent with the minimum mileage separation requirements of § 73.610 of the Commission's Rules, and if not, whether circumstances exist which would warrant a waiver of the rule.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further ordered, That Matlock shall submit an amendment stating the population within its predicted Grade B contour, within 20 days after this Order is released, to the presiding Administrative Law Judge.

10. It is further ordered, That Matlock shall compute its radial elevations, site elevation and contour distances in accordance with § 73.684 and to submit copies of the profile graphs and topographic maps employed to the presiding Administrative Law Judge within 20 days of the date of the release of this Order.

11. It is further ordered, That Logan shall submit its model EEO program to the presiding Administrative Law Judge within 20 days of the date of the release of this Order.

12. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to Issue 1.

13. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

14. It is further ordered, That the applicants herein shall, pursuant to 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 84-8550 Filed 3-29-84; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Bankers Trust New York Corporation, et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of regulation Y (49 FR 794) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in section 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 18, 1984.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Bankers Trust New York Corporation,* New York, New York; to engage *de novo* through its subsidiary, BT Commercial Corporation, in making or acquiring loans and other extensions of credit such as would be made by a commercial finance company, including commercial loans secured by a borrower's accounts receivable, inventory, or other assets; purchasing or acquiring accounts receivable and making advances thereon as would be done by a factor, servicing such loans or accounts for others; and acquiring and selling participants in such obligations; making or acquiring leases and installment sale contracts of personal property; servicing such leases and installment sales contracts for others; acting as agent, broker or adviser in connection with such transactions; and acquiring participations in the obligations arising for such transactions; 225.25(b) (1) and (5).

2. *B.N.Y. Holdings (Delaware),* Wilmington, Delaware, and *The Bank of New York Company, Inc.,* New York, New York; to engage *de novo* through their subsidiaries, ARCS Mortgage, Inc., Canoga Park, California, ARCS Mortgage Corp., New York, New York, The Bank of New York Trust Company of Florida, N.A., Miami, Florida, the Bank of New York Life Insurance Co., Inc., Phoenix, Arizona, and BNY Financial Corporation, New York, New York in the following activities: ARCS Mortgage Corp.—making, acquiring or servicing loans or other extensions of credit for the company's account or for the account of others, such as would be made by a mortgage company; ARCS Mortgage, Inc.—making, acquiring or servicing loans or other extensions of credit for the company's account or for the account of others, such as would be made by a mortgage company; The Bank of New York Life Insurance Co., Inc.—underwriting, on a reinsurance basis, credit life insurance and credit accident lending affiliates of the Bank of New York Company, Inc., serving the states of New York and Delaware; The bank of New York Trust Company of Florida, N.A.—performing functions or activities that may be performed by a trust company (including activities of a fiduciary, agency, or custodial nature), in the manner authorized by federal or state law including acceptance of deposits that are generated from trust funds not currently invested and that are properly secured to the extent required by law, deposits representing funds received for a special use in the capacity of managing agent or custodian for an owner of, or investor in, real property, securities dealers or purchasing money market instruments such as certificates of deposit, commercial paper, government or municipal securities, and bankers acceptances, serving the state of Florida; B.N.Y. Financial corporation—making, acquiring or servicing loans or other extensions of credit for the company's account or for the account of others, such as would be made by a mortgage company.

Board of Governors of the Federal Reserve System, March 26, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-8503 Filed 3-29-84; 8:45 am]

BILLING CODE 6210-01-M

Citizens Bancorp of Morehead, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 20, 1984.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Citizens Bancorp of Morehead, Inc.,* Morehead, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of the Citizens Bank, Morehead, Kentucky. Comments on this application must be received not later than April 23, 1984.

2. *Jessamine Bancshares, Inc.,* Nicholasville, Kentucky; to become a bank holding company by acquiring 80 percent of the voting shares of The First National Bank & Trust Company, Nicholasville, Kentucky. Comments on this application must be received not later than April 23, 1984.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *C.S.B. Holding Corporation,* Wyoming, Iowa; to become a bank holding company by acquiring 80 percent of the voting shares of Citizens State Bank, Wyoming, Iowa.

2. *Peoples Bankshares, Ltd.,* Waterloo, Iowa; to acquire 80 percent of the voting shares of First State Bank, Britt, Iowa.

C. **Federal Reserve Bank of St. Louis** (Delmar P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Community Bancorp of McLean County, Kentucky, Inc.,* Island, Kentucky; to become a bank holding company by acquiring at least 80 percent of the voting shares of First Security Bank of McLean County, Island, Kentucky.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Britton Bancshares, Inc.,* Ellsworth, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens State Bank & Trust Co., Ellsworth, Kansas.

Board of Governors of the Federal Reserve System, March 26, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-8504 Filed 3-29-84; 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

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements 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) 84-0155—Mr. Alan E. Symonds' proposed acquisition of voting securities of Vertipile, Incorporated.	Mar. 8, 1984.
(2) 84-0156—Vertipile Incorporated's proposed acquisition of assets of Quaker Fabric Corporation (Mr. Alan E. Symonds, UPE).	Do.
(3) 84-0160—K mart Corporation's proposed acquisition of voting securities of Newco.	Do.
(4) 84-0162—Hechinger Company's proposed acquisition of voting securities of Newco.	Do.
(5) 84-0171—Augat Incorporated's proposed acquisition of voting securities of Altair International Incorporated (Charles Henritzy, UPE).	Do.
(6) 84-0178—Augat Incorporated's proposed acquisition of voting securities of Altair International Incorporated (Clifford Cloutier, UPE).	Do.
(7) 84-0180—Kings Entertainment Company's proposed acquisition of assets of Taft Broadcasting Company.	Do.
(8) 84-0184—Wetterau Incorporated's proposed acquisition of assets of The Kroger Company.	Do.
(9) 84-0187—International Thoroughbred Breeders, Incorporated's proposed acquisition of assets of Eagle Downs Racing Association.	Do.
(10) 84-0188—International Thoroughbred Breeders, Incorporated's proposed acquisition of assets of Continental Thoroughbred Racing Association (Herbert Barness and Irma Barness, UPE's).	Do.
(11) 84-0181—David A. Jones (Concord Corporation), proposed acquisition of Belknap Incorporated.	Mar. 13, 1984.
(12) 84-0106—General Instrument Corporation's proposed acquisition of TOCOM Incorporated.	Do.
(13) 84-0133—Land of Lincoln Savings and Loan's proposed acquisition of voting securities of The Illinois Company, Incorporated.	Do.
(14) 84-0136—The 1964 Simmons Trust's proposed acquisition of voting securities of GAF Corporation.	Do.
(15) 84-0149—GFI/Knoll International Holding Company's proposed acquisition of voting securities of Masonite Corporation.	Do.
(16) 84-0166—IMASCO Limited's proposed acquisition of voting securities of Peoples Drug Stores Incorporated.	Do.
(17) 84-0167—IMASCO Limited's proposed acquisition of voting securities of Peoples Drug Stores Incorporated.	Do.
(18) 84-0154—Richard W. Snyder's proposed acquisition of assets of Arco Comfort Products Company (Atlantic Richfield Company, UPE).	Mar. 14, 1984.
(19) 84-0144—GB-Inno-BM's proposed acquisition of voting securities of Scotty's Incorporated.	Do.
(20) 84-0122—Allegheny and Western Energy Corporation's proposed acquisition of voting securities of Columbia Gas of West Virginia, Incorporated (The Columbia Gas System, Incorporated, UPE).	Mar. 15, 1984.
(21) 84-0168—John W. Kluge's proposed acquisition of voting securities of Metromedia Incorporated.	Do.
(22) 84-0173—Reed International P.L.C.'s proposed acquisition of assets of Whitcom Investment Company.	Do.
(23) 84-0176—Gerber Products Company's proposed acquisition of voting securities of Bates Nitewear Company and Bates Realty Company (Victor Bates, UPE).	Do.
(24) 84-0185—Campbell Soup Company's proposed acquisition of voting securities of Mendelson-Zeller Company, Incorporated.	Do.
(25) 84-0189—Ashland Oil Incorporated's proposed acquisition of voting securities of Daniel, Mann, Johnson and Mendenhall.	Do.
(26) 84-0194—Crownx Incorporated's proposed acquisition of assets of Seven Nursing and Convalescent Centers (Sidney B. Ames, UPE).	Do.
(27) 84-0199—Elsinore Corporation's proposed acquisition of voting securities of Playboy of New Jersey, Incorporated, Playboy Enterprises, Incorporated (Hugh M. Hefner, UPE).	Do.
(28) 84-0202—Pantry Pride, Incorporated's proposed acquisition of voting securities of Devon Stores Corporation (Philip Devon, UPE).	Do.
(29) 84-0102—Roy M. Huffington (Huffington, Inc.), proposed acquisition of assets of Pacific Oasis Corporation.	Mar. 19, 1984.
(30) 84-0191—Safeway Stores Incorporated's proposed acquisition of assets of Thriftmart Incorporated.	Do.
(31) 84-0132—Energy Methods Corporation's proposed acquisition of voting securities of Tenneco, Incorporated.	Mar. 20, 1984.
(32) 84-0183—Schlumberger Limited's proposed acquisition of voting securities and assets of the Oilfield Service Business in U.S. and Canada (The Dow Chemical Company, UPE).	Do.
(33) 84-0192—Schlumberger Limited's proposed acquisition of voting securities of NEWCO.	Do.
(34) 84-0193—The Dow Chemical Company's proposed acquisition of voting securities of NEWCO.	Do.
(35) 84-0153—Sumitomo Corporation's proposed acquisition of voting securities of Auburn Steel Company, Incorporated (Ohtemachi Tatemono Company, Limited, UPE).	Do.
(36) 84-0165—Gibraltar Financial Corporation of California's proposed acquisition of Cathedral Mortgage Company Incorporated (Avco Corporation, UPE).	Do.
(37) 84-0198—Britoil PLC's proposed acquisition of assets of Amax Petroleum Corporation (Amax, Incorporated, UPE).	Do.

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.

Emily H. Rock,

Secretary.

[FR Doc. 84-8517 Filed 3-29-84; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Office of the Administrator Advisory Board; Meeting

Notice is hereby given that the GSA Advisory Board's subcommittees on Supply and Distribution and Contracting will meet on April 17, 1984 from 9:00 a.m. to 4:30 p.m. in room 1121, Crystal Mall 4, 1941 Jefferson Davis Highway Arlington, Va. 20406.

The agenda will cover management initiatives of GSA's Office of Federal Supply & Services (FSS), including productivity improvement efforts; actions to maximize civilian agency procurement through FSS sources; and, FSS business relationships with foreign and mutli-national corporations. This meeting is open to the public.

Questions regarding this meeting should be directed to Mr. James Dean on (202) 566-0382.

Dated: March 26, 1984.

Roger C. Dierman,

Deputy Associate Administrator.

[FR Doc. 84-8599 Filed 3-29-84 8:45 am]

BILLING CODE 6820-26-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on March 23.

Public Health Service

Office of the Assistant Secretary for Health

Subject: National Health and Nutrition Examination Survey I Epidemiologic Followup Study: Continued Followup 1985-86—new
Respondents: Individuals
Subject: Evaluation of Data Dissemination and Data Use—new
Respondents: Individuals, State and local governments, businesses, Federal agencies or employees
OMB Desk Officer: Fay S. Iudicello

Food and Drug Administration

Subject: Environmental Impact Considerations—existing collection
Respondents: Business firms
Subject: Notice of Participation—existing collection
Respondents: Business firms
Subject: Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report (0910-0012)—extension no change
Respondents: Business firms

Subject: (Petition for) Administrative Reconsideration of Action—existing collection
Respondents: Business firms
Subject: Advisory Opinions—existing collection
Respondents: Business firms
OMB Desk Officer: Bruce Artim

Office of the Secretary

Subject: Awareness of and Attitudes About Selected Types of Consumer Information—new
Respondents: Households
OMB Desk Officer: Milo Sunderhauf

Social Security Administration

Subject: Vocational Rehabilitation "301" Program Development (0960–0282)—revision
Respondents: State vocational rehabilitation agencies
Subject: Quality Control Negative Case Action Worksheet/Review Schedule (0960–0156)—revision
Respondents: State agencies administering Aid to Families with Dependent Children and adult financial assistance programs
OMB Desk Officer: Milo Sunderhauf

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, ATTN: (name of OMB Desk Officer).

Dated: March 26, 1984.

Robert F. Sermier,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 84-8533 Filed 3-29-84; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[FDA-225-84-2003]

Memorandum of Understanding With the Interstate Shellfish Sanitation Conference

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has executed an agreement with the Interstate Shellfish Sanitation Conference (ISSC). The purpose of the agreement is to establish a basis upon which to foster and to improve the sanitation and quality of shellfish in this country by stating the responsibilities of FDA and ISSC in the establishment of the Interstate Sanitation Program (ISSP) and the ISSC Procedures (Procedures).

EFFECTIVE DATE: This agreement became effective March 14, 1984.

FOR FURTHER INFORMATION CONTACT: Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1583.

SUPPLEMENTARY INFORMATION: In accordance with § 20.108(c) (21 CFR 20.108(c)), which states that all agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing the following memorandum of understanding:

Memorandum of Understanding Between the Interstate Shellfish Sanitation Conference and the Food and Drug Administration

I. Purpose

This agreement will establish a basis upon which to foster and improve the sanitation and quality of shellfish in this country by stating the responsibilities of the Food and Drug Administration (FDA) and the Interstate Shellfish Sanitation Conference (ISSC) in the establishment of the Interstate Shellfish Sanitation Program (ISSP) and the ISSC Procedures (Procedures).

II. Definitions

A. "Conference meetings" means the duly called meetings of the ISSC.

B. "ISSC" means the Interstate Shellfish Sanitation Conference. The ISSC consists of agencies from shellfish producing and receiving States, FDA, the shellfish industry, and the National Marine Fisheries Service of the U.S. Department of Commerce.

C. "ISSP" means the Interstate Shellfish Sanitation Program adopted by the ISSC. The ISSP is a set of guidelines for sanitary control of shellfish that is adequate to insure that the shellfish produced in States that comply with these guidelines will be safe and sanitary.

D. "NSSP" means the National Shellfish Sanitation Program. The NSSP consists of agencies from shellfish producing States, FDA, and the shellfish industry. Under international agreements with FDA, foreign governments also participate in the NSSP.

E. "Procedures" means the formally adopted methods of accomplishing ISSC business not otherwise established in the constitution or bylaws of the ISSC. The Procedures will establish methods for uniform application of the ISSP and will guide the activities and relationships of ISSC participants.

F. "Shellfish" means all edible species of molluscan bivalves, the most common of which are the fresh frozen oyster, clam, and mussel. All scallop species from the family Pectinidae are excluded from this definition.

G. "State shellfish regulatory officials" means those officials that have responsibility for any one of the following regulatory activities: Classification of shellfish growing waters; patrol of shellfish growing waters; sanitation of shellfish processing, storage or distribution facilities, or laboratory analysis of shellfish samples.

III. Background

FDA is the Federal agency responsible for enforcing the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., the Fair Packaging and Labeling Act, 15 U.S.C. 1451 et seq., and certain portions of the Public Health Service Act, including 42 U.S.C. 241, 242, 243, and 264. These laws require that all foods shipped in interstate commerce, including shellfish, be prepared, packed, and held at all times under sanitary conditions; that they be honestly and informatively labeled; and that the food itself be safe, clean, and sanitary. FDA is authorized to accept assistance from State and local authorities in the enforcement of laws to prevent and to suppress the spread of communicable disease, 42 U.S.C. 243 and 21 U.S.C. 372.

This latter authority gave rise to the NSSP, which was initiated in 1925 and has continued, to date, as a voluntary FDA, State, and shellfish industry program. The NSSP Manual of Operations, last published in 1965, sets forth the standards and procedures that govern the NSSP, including the recommended sanitary control practices for regulating the production and shipment of shellfish in interstate commerce.

The ISSC was formed September 21, 1982, at a meeting held in Annapolis, MD. Participants at the meeting included regulatory officials from 22 States, FDA, the National Marine Fisheries Service of the U.S. Department of Commerce, and members of the shellfish industry. At this meeting, the State officials ratified a constitution, bylaws, and minimum procedures for the formation of the ISSC.

The purpose of the ISSC is to provide a formal structure wherein State

regulatory authorities can establish updated guidelines, and procedures for the uniform application of those guidelines, for sanitary control of the shellfish industry. The ISSC is a voluntary organization and is open to all persons interested in fostering controls that will assure sources of safe and sanitary shellfish.

IV. Substance of Agreement

A. FDA agrees to:

1. Recognize the ISSC as the primary voluntary national organization of State shellfish regulatory officials that will provide guidance and counsel on matters for the sanitary control of shellfish.

2. Evaluate State shellfish sanitary control programs using the guidelines of the ISSP, the Procedures, and other appropriate criteria including applicable Federal laws and regulations.

3. Provide the ISSC with information on any State shellfish sanitation control program that FDA finds not to be in substantial compliance with the criteria referenced in IV.A.2.

4. Promote and maintain shellfish sanitation Memorandums of Understanding (MOU) with foreign countries that have agreed to follow the NSSP Manual of Operations. FDA will inform the ISSC of the agency's evaluation of these foreign shellfish sanitation control programs. FDA will take appropriate steps to assure that references to the NSSP in existing MOU's are changed to the ISSP as the MOU's are revised or updated.

5. Coordinate Federal interagency affairs on matters of concern to the ISSC, including classification of shellfish growing waters under Federal jurisdiction.

6. Support or provide shellfish sanitation training, seminars, technical assistance, and scientific research as resources permit. FDA will make every effort to maintain a current scientific basis for the ISSP guidelines and standards.

7. In a manner consistent with paragraph IV.C.2. of this agreement, publish revisions to the ISSP and issue interpretations of the ISSP.

8. Publish and distribute monthly a current listing of all State certified interstate shippers as furnished to FDA on Form FD-3038b, SHELLFISH CERTIFICATION, by each State.

9. Participate to the fullest extent possible in the ISSC meetings, committees, and other deliberative groups that are necessary for the ISSC and the ISSP to function effectively.

B. ISSC agrees to:

1. Adopt the NSSP Manual of Operations, Parts I and II, and the amendments adopted at Workshops as the ISSP. The ISSC further agrees that the Procedures and any future revisions and documents adopted by the ISSC will be used as the set of guidelines for sanitary control of shellfish.

2. Furnish FDA with any pertinent information that indicates that a member State's program may not be in substantial compliance with the ISSP and assist FDA by whatever means available to secure necessary corrective measures.

3. Notify FDA of any interstate shipments of shellfish that may not be in compliance with the ISSP or that may be adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act.

4. Furnish FDA with copies of all revisions or changes to the ISSP or Procedures for review for consistency with existing laws, regulations, and policies of FDA.

5. Review evaluation reports of State shellfish sanitation control programs submitted by FDA in accordance with paragraph IV.A.3. of this agreement and request appropriate reviews among ISSC members. The ISSC will inform FDA of the recommendations or actions taken in response to the information furnished.

6. Allow representatives of foreign governments that have effective agreements with FDA concerning sanitary control of shellfish to attend the Conference meetings.

C. ISSC and FDA mutually agree to:

1. Exchange information concerning the Procedures, the ISSP, and the matters that arise from the Conference meetings in a timely manner.

2. Resolve problems of interpretations and policy that involve the Procedures, the ISSP, and the ISSC.

3. Recognize that the ISSP and the ISSC Procedures contain the principal standards and procedures for the sanitary control of shellfish.

References

1. U.S. Department of Health and Human Services, Public Health Service (PHS). National Shellfish Sanitation Program, Manual of Operations: Part I, Sanitation of Shellfish Growing Areas, 1965 Revision; and Part II, Sanitation of the Harvesting and Processing of Shellfish, 1965 Revision.

2. National Shellfish Sanitation Program Policies and Interpretations, issued by the Public Health Service and Food and Drug Administration with respect to the National Shellfish Sanitation Program. A bound volume of these documents is maintained in the offices of the Shellfish Sanitation Branch, HFF-344, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

3. Official Methods of Analysis, 13th ed., 1980, Association of Official Analytical Chemists (AOAC), Box 540, Benjamin Franklin Station, Washington, DC 20044.

4. Food and Drug Administration, "Interstate Certified Shellfish Shippers List," published monthly and distributed to food control officials and other interested persons by FDA, Bureau of Foods, Shellfish Sanitation Branch, HFF-344, 200 C St. SW., Washington, DC 20204.

5. Federal Food, Drug and Cosmetic Act, U.S. Code, Title 21.

6. Fair Packaging and Labeling Act, Pub. L. 89-755, approved November 3, 1966.

7. Public Health Service Act with respect to research and investigation, 42 U.S.C. 241F; international cooperation, 42 U.S.C. 242F; Federal—State cooperation, 42 U.S.C. 243; and control of communicable diseases, 42 U.S.C. 264.

8. American Public Health Association "Recommended Procedures for the Examination of Seawater and Shellfish," 4th ed., 1970. APHA, Inc., 1015 18th St. NW., Washington, DC 20036.

9. Food and Drug Administration, "Current Good Manufacturing Practice in Manucafturing, Processing, Packing, or Holding Human Food" regulations, 21 CFR Part 110.

10. Food and Drug Administration Definitions and Standards for Food, "Fish and Shellfish" regulations, 21 CFR Part 161.

11. Control of communicable diseases regulations, specific provision for shellfish, 21 CFR 1240.60.

12. Interstate Conveyance Sanitation regulation concerning food service sanitation on land and air conveyances, and vessels. Special food requirements, 21 CFR 1250.26.

13. Interstate Shellfish Sanitation Conference Constitution, Bylaws and Procedures adopted September 21, 1982, Annapolis, MD. A certified copy is on file with the Shellfish Sanitation Branch, HFF-344, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

V. Name and Address of Participating Organizations

A. Food and Drug Administration, 5600 Fisher Lane, Rockville, MD 20857.

B. Interstate Shellfish Sanitation Conference (current address), 2111 Kenbridge Drive, Austin, TX 78758.

VI. Liaison Officers

The liaison officer for each party will be responsible for facilitating exchanges of information and expeditiously informing other interested parties within each respective organization on matters requiring prompt attention. Each party agrees to provide notification of any changes in liaison officer appointments. Such notification shall constitute an amendment to and not require a revision of this agreement.

A. For Food and Drug Administration: FDA member to ISSC Executive Board (currently J. David Clem), Chief, Shellfish Sanitation Branch, HFF-344, Bureau of Foods, Food and Drug Administration, 200 C St. SW.,

Washington, DC 20204, FTS: 202–485–0149, Commercial: 202–485–0149.

B. For Interstate Shellfish Sanitation Conference: ISSC Chairman of the Board (currently Mr. Neil B. Travis), 2111 Kenbridge Drive, Austin, TX 78758, 512–458–7537.

VII. Period of Agreement

This agreement will become effective upon acceptance by both parties and shall continue until terminated. The agreement may be revised by mutual consent, or terminated by either party upon a 30-day advance written notice to the other party.

VIII. Acceptance

Approved and Accepted for the Interstate Shellfish Sanitation Conference.

By: Neil B. Travis.

Title: ISSC Chairman of the Board.

Date: March 14, 1984.

Approved and Accepted for the Food and Drug Administration, Department of Health and Human Services.

By: Mark Novitch.

Title: Acting Commissioner of Food and Drugs.

Dated: March 14, 1984.

Effective date. This agreement became effective March 14, 1984.

Dated: March 23, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–8500 Filed 3–29–84; 8:45 am]

BILLING CODE 4160–01–M

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Advisory Council on Historic Preservation, Protection of Historic and Cultural Properties; Comments

AGENCY: Advisory Council on Historic Preservation (ACHP).

ACTION: Notice.

SUMMARY: Pursuant to Section 106 of the National Historic Preservation Act of 1966 and Section 800.6(d) of the regulations of the Advisory Council on Historic Preservation (Council), "Protection of Historic and Cultural Properties," the Council met on February 27, 1984, to consider a proposal by the Federal Highway Administration to assist in construction of the Presidential Parkway, Atlanta, Georgia. This project will adversely affect the following historic properties: The Druid Hills Historic District, the Inman Park Historic District, and the Candler Park Historic District, three historic districts included in the National Register of Historic Places; the Moreland Historic District, the North Highland/North Avenue Historic District, and an extension of the Martin Luther King, Jr., Historic District, areas eligible for inclusion in the National Register; and possible historic archaeological remains associated with the 1864 Battle of Atlanta. At the meeting, the Council adopted comments which have been transmitted to the Secretary of Transportation.

This notice, pursuant to 36 CFR 800.6(d)(5), is to advise parties that copies of these comments are available upon request from the Executive Director, Advisory Council on Historic Preservation, The Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20004, 202–786–0505, Attn: Ronald D. Anzalone.

Dated: March 26, 1984.

Robert R. Garvey, Jr.,

Executive Director.

[FR Doc. 84–8507 Filed 3–29–84; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Final Federal Coal Lease Form

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: By notice published December 18, 1980, the Bureau of Land Management issued a Notice of Revision of Coal Lease Form 3400–12 (formerly 3520–1 (July 1977)), to solicit comments on the revisions proposed to bring the coal lease form into conformance with new coal-related laws and regulations. Public comments were received from an industry trade association, four energy companies, and two individuals.

On April 28, 1983, the Bureau of Land Management requested comments on a proposed combined mineral lease form, which included coal as well as phosphate, sodium, potassium, gilsonite, sulfur in the States of Louisiana and New Mexico, asphalt in Oklahoma, and hardrock minerals. Seven mining companies, three mining associations, and two individuals submitted comments on the combined mineral lease form.

The combined mineral lease form proposed was an attempt to establish consistency among the leasing of various federally owned commodities. Generally, the comments received on the proposed combined lease form supported the concept of consistency; however, they preferred separate forms for each of the various minerals, particularly coal and phosphate. By virtue of this notice a separate form is established for the leasing of Federal coal. The final coal lease form closely follows the format of the combined mineral lease form from which it was separated. All comments received on the two proposed lease forms have been considered in the development of the final Federal coal lease form, which follows this notice. A discussion of the comments follows.

EFFECTIVE DATE: April 30, 1984. Director (650), Bureau of Land Management, 18th and C Streets NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Carole Smith, (202) 343–4774.

SUPPLEMENTARY INFORMATION: The comments are discussed below as they appear section-by-section in the proposed combined mineral lease form. Discussion of the comments received on the December 18, 1980, proposed coal lease form are integrated by subject matter under the appropriate section.

Part I. Lease Rights Granted

Sec. 1—All commenters objected to the phrase "or . . . hereafter in force," which appeared in section 1. They stated that the terms and conditions of mineral leases cannot be altered by regulation until the leases are subject to readjustment. The April 1983 lease form proposed to require lessees to comply with later-promulgated regulations and orders "where not inconsistent with the lease terms, regulations and orders hereafter promulgated."

Upon consideration, it has been decided to adopt for use in the Federal coal lease form the concept which has been used for the Federal oil and gas lease forms since the 1930's. Coal lessees will be subject to later promulgated regulations only when those regulations are not inconsistent with the specific provisions of the lease. The "when not inconsistent" clause now appears in all Federal coal, geothermal, and oil and gas lease forms.

It is thought that the use of the "when not inconsistent" clause will provide the lessor needed flexibility in administering the lease terms and conditions and the lessee stronger assurance that the terms and conditions of his lease will not necessarily change with each regulatory revision.

One commenter requested that the phrase "for a period of 20 years and so long thereafter as the condition of continued operation is met" be changed to "for a term of 20 years and for so long thereafter as coal is produced annually

in commercial quantities from that lease." The latter wording conforms with the Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. 181–287). The language has been changed to reflect the Act and the comment.

Sec. 2—Four comments were received on this section of the April 28, 1983, proposed lease form. One commenter objected to the granting clause, believing that it made the lessee responsible for paying all bonuses due at one time. To clarify that each coal lease is issued subject only to those lease-related payments which become due, the word "any" has been inserted before the word "bonuses."

Thus, a competitive coal lease issued on the basis of a deferred bonus would bind the lessee to submit one-fifth of the bonus bid at the time of the sale, and the remaining four-fifths of the bonus in four equal payments due on each anniversary date of the coal lease. Royalties would be payable monthly once production begins in the manner prescribed in the regulations.

Section 2 gives the lessee broad authority to drill for, mine, remove, and dispose of the coal leased. Specific development methods and conditions are addressed in exploration plans and later in the resource recovery and protection plans and mining permit packages which must be approved prior to entry upon the lands. The language of this section answers the objections of five commenters on the December 1980 coal lease form, who were concerned about restrictions on their rights to mine coal by unconventional methods—coal gasification, synthetic fuel development, and the like. Lessees' obligations to meet diligence and maximum economic recovery requirements on all coal leases, whether mined by conventional methods or not, will be addressed during approval of the resource recovery and protection plan and/or the mining permit application package.

The section also grants "on-lease rights-of-way." Separate rights-of-way under Title V are not needed for roads, power lines, and similar improvements within the boundaries of the lease. Lessor reserves the power to manage these activities as part of the mining plan; however, no separate authorization or payment of fees is needed.

Part II. Terms and Conditions

Sec. 1. Rentals—No comments specific to coal were received on the April 28, 1983, proposed lease form. No comments were received on the rental section of the December 1980 coal lease form. Nevertheless, to clarify that the August 4, 1976, coal amendments to the Act eliminated lessees' rights to credit coal lease rentals against coal lease royalties, a new paragraph, b, has been added to section 1 in this final coal lease form.

Sec. 2. Royalties.—Four comments received on the December 1980 proposed lease form objected to the method used to calculate the value of coal for royalty computation purposes. The valuation method remains unchanged. During the coal management program regulatory review (1981–1982), several methods for valuing coal were analyzed. It was concluded that any other method than one used currently would result in closer government scrutiny of individual coal lessees and additional paperwork requirements without any appreciable increase in the amount collected.

No comments relevant to coal were received on this section on the April 28, 1983, proposed lease form.

Sec. 3. Bonds—Two commenters on the April 28, 1983, form and three commenters on the December 1980 form requested clarification of the language on coal lease bonds. The Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*) established a reclamation bond for surface-mined coal separate and apart from the lease bond required as part of lease issuance. The bond required by section 3 does not include this reclamation bond or any lessee protection bond, also required by SMCRA, if such a bond is required. Office of Surface Mining Reclamation and Enforcement regulations at 30 CFR Chapter VII, describe these bonding requirements in detail.

Sec. 4. Diligence—Two commenters on the December 1980 form requested greater detail on the diligence and continued operation requirements for coal in the lease form. The language of section 4 is an attempt to provide more information about coal production requirements.

Sec. 5. Logical Mining Units (LMU)—No comments were received on this section.

Sec. 6. Documents, evidence and inspection—Eight comments were received on this section of the April 28, 1983, form, and eight comments were received on the corresponding section of the December 1980 coal lease form. All objected to the types of information required or to the access and copying requirements.

The language of this section has been revised to reflect the comments received. The reservation of the authority to copy lessee records has been limited to those documents necessary to verify compliance with lease terms and conditions. The manner of access to and examination of coal lease-related records and reports is described in the regulations at 43 CFR Group 3400 and 30 CFR Chapter VII.

The Secretary may exercise his reserved authority to inspect such documents or arrangements as, for example, contracts for the sale of production from leased deposits, processing agreements, transportation agreements, or marketing arrangements. The right of the Secretary to have access to such documents is intended to include transactions to which the lessee or its related corporate entities are parties.

To emphasize that much of the information contained in these documents and arrangements is protected from disclosure under the Freedom of Information Act, the language of the last sentence of the section has been changed.

Sec. 7. Damages to property and conduct of operations—Eight comments were received on this section and five comments were received on related sections of the December 1980 coal lease form. The section has been rewritten to reflect the concerns expressed and to state the lessor's and lessee's responsibilities with respect to multiple mineral development.

The first paragraph of this section adopts the language of one commenter, who noted that the language appears in Federal oil and gas leases and in Indian leases. Because one of the goals of this final coal lease form is to make it consistent with other leasable mineral forms to the extent possible (the language appears in the final combined mineral lease form as well as the two forms mentioned earlier), this language is adopted. The third paragraph of this section entirely adopts the language of one commenter and accomplishes several purposes: it notifies the coal lessee of his/her obligations to prevent injury or damage to life, health, or property and to prevent waste, damage or degradation to the environment of the leased area; and it informs the lessee that other uses may be made of the leased lands so long as they do not interfere with the lessee's rights. The third paragraph also mentions the concept of "multiple use" as established by the Federal Land Policy and Management Act of 1976 and the Multiple Mineral Development Act of 1955 (30 U.S.C. 521–531).

Section 14, Cultural Resources, and Section 15, Paleontological Resources, of the December 1980 coal form have been eliminated as standard stipulations in this final lease form. All commenters on this form objected to some aspect of these two lease sections. The primary

objection was the requirement that cultural and paleontological inventories be conducted on both the mine plan area and the areas adjacent to it.

A consideration of the comments led to the conclusion that the cultural and paleontological resources of leased areas differ sufficiently so that standard protection stipulations for these resources would be inadequate. Therefore, the general environmental protection language of section 6 of this final form will authorize the lessor to require the lessee to protect cultural and paleontological as well as other environmental resources.

For leases in areas where cultural or paleontological resources occur, site-specific (special) stipulations will be developed to protect these resources. If further protection measures are necessary, then they can be included in approved mine plans for the lease area.

Sec. 8. Protection of diverse interests and equal opportunity—Three comments were received on this section. One commenter questioned the meaning of the term "complete freedom of purchase." One requested deletion of the section and its replacement with a statement that lessees comply with all applicable laws. The third commenter questioned the requirement for an 8-hour workday.

The final lease form retains the language of the proposed form of April 1983 because section 30 of the Mineral Leasing Act of 1920 requires that these provisions be included in all mineral leases issued under the Act.

No comments were received on the applicable sections of the proposed coal lease form published for comment in December 1980.

Sec. 9. Transfer of lease interest and relinquishment of lease—Three comments were received on this section. They requested clarification of the term "legal subdivision" and a recognition of partial relinquishments. The language of this section has been revised to delete the term "legal subdivision" and to recognize partial relinquishments.

One commenter also requested a recognition of reduction in the rental when the lease was partially relinquished. The language of this section now reflects this reduction.

Consistent with the regulations, relinquishment only relieves the lessee of obligations which have not yet arisen. For obligations that have already accrued, the lessee remains liable and the period of liability under lessee's bond will not be terminated until these obligations are satisfied.

Sec. 10. Delivery of premises, removal of machinery, equipment, etc.—The five comments received on this section were concerned that the language of the section exceeds the authority of the Department under existing laws and regulations. For reclamation requirements for surface-mined coal, the provisions of the Surface Mining Control and Reclamation Act of 1977 and its implementing regulations apply. For underground mined coal, the approved mine plan required by the Act governs the conduct of mining and reclamation operations.

The language of this section merely states, in general terms, the requirements for reclamation and abandonment of mined-out areas. No comments were received on this topic on the December 1980 proposed coal lease form.

Sec. 11. Proceedings in case of default—This section is similar to Section 23 of the December 1980 coal lease form. No objections specific to coal were received on either proposed lease form for this subject.

Sec. 12. Heirs and successors-in-interests—No coal-related comments were received on this subject.

Sec. 13. Indemnification—This section was inadvertently omitted from the April 1983 lease form, although it appeared in the December 1980 coal lease form. It requires the lessee to indemnify and hold the United States harmless from all claims against lessee's activities and operations under the lease.

Sec. 14. Special statutes—This section was inadvertently omitted from the April 1983 lease form. The Federal Coal Leasing Amendments Act of 1976 specifically requires all Federal coal leases to contain provisions requiring compliance with the Federal Water Pollution Control Act (33 U.S.C. 1151–1175) and the Clean Air Act (42 U.S.C. 1857 *et seq.*). The reference to the requirements of Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*), appears in this section also. As two commenters on the December 1980 coal lease form pointed out, that law does not grant leasing authority and was incorrectly placed in the leasing authority section.

In addition, coal lessees must comply with the provisions of a number of other laws and their implementing regulations. These include, but are by no means limited to, the Endangered Species Act, 16 U.S.C. 1531 *et seq.*; and the laws governing the handling and disposal of hazardous waste materials on public lands, including the Comprehensive Environmental Response, Conservation, and Liability Act of 1980 (94 Stat. 2767 *et seq.*) and the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 *et seq.*).

Three commenters on the December 1980 coal lease form objected to language which conditioned lease issuance to compliance with the Federal Water Pollution Control Act and the Clean Air Act. This objection has been responded to in the final lease form by changing the word "conditioned" to the phrase "is subject to."

We believe that this final coal lease form is more concise and clearer than the proposed coal lease form, that it is consistent with the other Federal mineral lease forms to the extent possible, and that it reflects public concerns within the extent allowable by law and regulations.

The primary author of this final coal lease form is Carole Smith, Division of Solid Mineral Leasing, Bureau of Land Management, assisted by staff of the Division of Energy and Resources, Office of the Solicitor, Department of the Interior, and other Bureau of Land Management staff.

The environmental impacts of coal leasing were addressed in the environmental assessment prepared for the July 1982 revisions to the Federal coal management rules at 43 CFR Group 3400 and 30 CFR Part 211 (now 43 CFR Part 3480). That document resulted in the finding that no significant impact would result from publication of the final rulemaking. The rulemaking was published in the **Federal Register** on July 30, 1982, on pages 33114 through 33151. This lease form was specifically mentioned in that rulemaking at 43 CFR 3475.1 as a revision to the then-existing rules and is therefore included in the environmental assessment for the revised rules. The environmental assessment is incorporated by reference here.

The July 1982 rulemaking also concluded that the final rules did not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) was required. Because this coal lease form results from that rulemaking, the determination of no significant impact is incorporated by reference for this form.

The Department of the Interior determined that the July 1982 rulemaking from which this form arises was not a major rule under Executive Order 12291 and would not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as described in the July 1982 final coal rulemaking. That

determination is incorporated by reference here.

The information collection requirements contained in the coal lease form have been approved by the Office of Management and Budget and assigned clearance numbers 1004–0073, 1004–0143, and 1004–0144. Therefore, no additional approval is required.

The final coal lease form follows below.

Dated: March 9, 1984.

Robert F. Burford,

Director.

BILLING CODE 4310-84-M

Form 3400-12
(April 1984)
(Formerly 3520-1)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

COAL LEASE

Serial Number

PART I. LEASE RIGHTS GRANTED

This lease, entered into by and between the UNITED STATES OF AMERICA, hereinafter called lessor, through the Bureau of Land Management, and *(Name and Address)*

hereinafter called lessee, is effective *(date)* , for a period of 20 years and for so long thereafter as coal is produced in commercial quantities from the leased lands, subject to readjustment of lease terms at the end of the 20th lease year and each 10-year period thereafter.

Sec. 1. This lease is issued pursuant and subject to the terms and provisions of the:

☐ Mineral Lands Leasing Act of 1920, Act of February 25, 1920, as amended, 41 Stat. 437, 30 U.S.C. 181-287, hereinafter referred to as the Act;

☐ Mineral Leasing Act for Acquired Lands, Act of August 7, 1947, 61 Stat. 913, 30 U.S.C. 351-359;

and to the regulations and formal orders of the Secretary of the Interior which are now or hereafter in force, when not inconsistent with the express and specific provisions herein.

Sec. 2. Lessor, in consideration of any bonuses, rents, and royalties to be paid, and the conditions and covenants to be observed as herein set forth, hereby grants and leases to lessee the exclusive right and privilege to drill for, mine, extract, remove, or otherwise process and dispose of the coal deposits in, upon, or under the following described lands:

containing acres, more or less, together with the right to construct such works, buildings, plants, structures, equipment and appliances and the right to use such on-lease rights-of-way which may be necessary and convenient in the exercise of the rights and privileges granted, subject to the conditions herein provided.

PART II. TERMS AND CONDITIONS

Sec. 1. (a) RENTAL RATE - Lessee shall pay lessor rental annually and in advance for each acre or fraction thereof during the continuance of the lease at the rate of $ for each lease year.

(b) RENTAL CREDITS - Rental shall not be credited against either production or advance royalties for any year.

Sec. 2. (a) PRODUCTION ROYALTIES - The royalty shall be per-cent of the value of the coal as set forth in the regulations. Royalties are due to lessor the final day of the month succeeding the calendar month in which the royalty obligation accrues.

(b) ADVANCE ROYALTIES - Upon request by the lessee, the authorized officer may accept, for a total of not more than 10 years, the payment of advance royalties in lieu of continued operation, consistent with the regulations. The advance royalty shall be based on a percent of the value of a minimum number of tons determined in the manner established by the advance royalty regulations in effect at the time the lessee requests approval to pay advance royalties in lieu of continued operation.

Sec. 3. BONDS - Lessee shall maintain in the proper office a lease bond in the amount of $. The authorized officer may require an increase in this amount when additional coverage is determined appropriate.

Sec. 4. DILIGENCE - This lease is subject to the conditions of diligent development and continued operation, except that these conditions are excused when operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee. The lessor, in the public interest, may suspend the condition of continued operation upon payment of advance royalties in accordance with the regulations in existence at the time of the suspension. Lessee's failure to produce coal in commercial quantities at the end of 10 years shall terminate the lease. Lessee shall submit an operation and reclamation plan pursuant to Section 7 of the Act not later than 3 years after lease issuance.

The lessor reserves the power to assent to or order the suspension of the terms and conditions of this lease in accordance with, inter alia, Section 39 of the Mineral Leasing Act, 30 U.S.C. 209.

Sec. 5. LOGICAL MINING UNIT (LMU) - Either upon approval by the lessor of the lessee's application or at the direction of the lessor, this lease shall become an LMU or part of an LMU, subject to the provisions set forth in the regulations.

The stipulations established in an LMU approval in effect at the time of LMU approval will supersede the relevant inconsistent terms of this lease so long as the lease remains committed to the LMU. If the LMU of which this lease is a part is dissolved, the lease shall then be subject to the lease terms which would have been applied if the lease had not been included in an LMU.

Sec. 6. DOCUMENTS, EVIDENCE AND INSPECTION - At such times and in such form as lessor may prescribe, lessee shall furnish detailed statements showing the amounts and quality of all products removed and sold from the lease, the proceeds therefrom, and the amount used for production purposes or unavoidably lost.

Lessee shall keep open at all reasonable times for the inspection of any duly authorized officer of lessor, the leased premises and all surface and underground improvements, works, machinery, ore stockpiles, equipment, and all books, accounts, maps, and records relative to operations, surveys, or investigations on or under the leased lands.

Lessee shall allow lessor access to and copying of documents reasonably necessary to verify lessee compliance with terms and conditions of the lease.

While this lease remains in effect, information obtained under this section shall be closed to inspection by the public in accordance with the Freedom of Information Act (5 U.S.C. 552).

Sec. 7. DAMAGES TO PROPERTY AND CONDUCT OF OPERATIONS - Lessee shall comply at its own expense with all reasonable orders of the Secretary, respecting diligent operations, prevention of waste, and protection of other resources.

Lessee shall not conduct exploration operations, other than casual use, without an approved exploration plan. All exploration plans prior to the commencement of mining operations within an approved mining permit area shall be submitted to the authorized officer.

Lessee shall carry on all operations in accordance with approved methods and practices as provided in the operating regulations, having due regard for the prevention of injury to life, health, or property, and prevention of waste, damage or degradation to any land, air, water, cultural, biological, visual, and other resources, including mineral deposits and formations of mineral deposits not leased hereunder, and to other land uses or users. Lessee shall take measures deemed necessary by lessor to accomplish the intent of this lease term. Such measures may include, but are not limited to, modification to proposed siting or design of facilities, timing of operations, and specification of interim and final reclamation procedures. Lessor reserves to itself the right to lease, sell, or otherwise dispose of the surface or other mineral deposits in the lands and the right to continue existing uses and to authorize future uses upon or in the leased lands, including issuing leases for mineral deposits not covered hereunder and approving easements or rights-of-way. Lessor shall condition such uses to prevent unnecessary or unreasonable interference with rights of lessee as may be consistent with concepts of multiple use and multiple mineral development.

Sec. 8. PROTECTION OF DIVERSE INTERESTS, AND EQUAL OPPORTUNITY - Lessee shall: pay when due all taxes legally assessed and levied under the laws of the State or the United States; accord all employees complete freedom of purchase; pay all wages at lease twice each month in lawful money of the United States; maintain a safe working environment in accordance with standard industry practices; restrict the workday to not more than 8 hours in any one day for underground workers, except in emergencies; and take measures necessary to protect the health and safety of the public. No person under the age of 16 years shall be employed in any mine below the surface. To the extent that laws of the State in which the lands are situated are more restrictive than the provisions in this paragraph, then the State laws apply.

Lessee will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor. Neither lessee nor lessee's subcontractors shall maintain segregated facilities.

Sec. 9. (a) TRANSFERS

- ☐ This lease may be transferred in whole or in part to any person, association or corporation qualified to hold such lease interest.
- ☐ This lease may be transferred in whole or in part to another public body or to a person who will mine the coal on behalf of, and for the use of, the public body or to a person who for the limited purpose of creating a security interest in favor of a lender agrees to be obligated to mine the coal on behalf of the public body.
- ☐ This lease may only be transferred in whole or in part to another small business qualified under 13 CFR 121.

Transfers of record title, working or royalty interest *must* be approved in accordance with the regulations.

(b) RELINQUISHMENT - The lessee may relinquish in writing at any time all rights under this lease or any portion thereof as provided in the regulations. Upon lessor's acceptance of the relinquishment, lessee shall be relieved of all future obligations under the lease or the relinquished portion thereof, whichever is applicable.

Sec. 10. DELIVERY OF PREMISES, REMOVAL OF MACHINERY, EQUIPMENT, ETC. - At such time as all portions of this lease are returned to lessor, lessee shall deliver up to lessor the land leased, underground timbering, and such other supports and structures necessary for the preservation of the mine workings on the leased premises or deposits and place all workings in condition for suspension or abandonment. Within 180 days thereof, lessee shall remove from the premises all other structures, machinery, equipment, tools, and materials that it elects to or as required by the authorized officer. Any such structures, machinery, equipment, tools, and materials remaining on the leased lands beyond 180 days, or approved extension thereof, shall become the property of the lessor, but lessee shall either remove any or all such property or shall continue to be liable for the cost of removal and disposal in the amount actually incurred by the lessor. If the surface is owned by third parties, lessor shall waive the requirement for removal, provided the third parties do not object to such waiver. Lessee shall, prior to the termination of bond liability or at any other time when required and in accordance with all applicable laws and regulations, reclaim all lands the surface of which has been disturbed, dispose of all debris or solid waste, repair the offsite and onsite damage caused by lessee's activity or activities incidental thereto, and reclaim access roads or trails.

Sec. 11. PROCEEDINGS IN CASE OF DEFAULT - If lessee fails to comply with applicable laws, existing regulations, or the terms, conditions and stipulations of this lease, and the noncompliance continues for 30 days after written notice thereof, this lease shall be subject to cancellation by the lessor only by judicial proceedings. This provision shall not be construed to prevent the exercise by lessor of any other legal and equitable remedy, including waiver of the default. Any such remedy or waiver shall not prevent later cancellation for the same default occurring at any other time.

Sec. 12. HEIRS AND SUCCESSORS-IN-INTEREST - Each obligation of this lease shall extend to and be binding upon, and every benefit hereof shall inure to, the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

Sec. 13. INDEMNIFICATION - Lessee shall indemnify and hold harmless the United States from any and all claims arising out of the lessee's activities and operations under this lease.

Sec. 14. SPECIAL STATUTES - This lease is subject to the Federal Water Pollution Control Act (33 U.S.C. 1151—1175), the Clean Air Act (42 U.S.C. 1857 et. seq.), and to all other applicable laws pertaining to exploration activities, mining operations and reclamation, including the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et. seq.).

Sec. 15. SPECIAL STIPULATIONS -

Sec. 15. SPECIAL STIPULATIONS (Cont'd.) -

THE UNITED STATES OF AMERICA

By

Company or Lessee Name

(Signature of Lessee)

(Signing Officer)

(Title)

(Title)

(Date)

(Date)

Title 18 U.S.C. Section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

This form does not constitute an information collection as defined by 44 U.S.C. 3502 and therefore does not require OMB approval.

[FR Doc. 84-8502 Filed 3-29-84; 8:45 am]
BILLING CODE 4310-84-C

Realty Action; Exchange of Public Lands; Lassen and Modoc Counties; California

Correction

In FR Doc. 84–6972 beginning on page 9781 in the issue of Thursday, March 15, 1984, make the following corrections.

1. On page 9781, second column, remove the word "lots" in the eleventh, twelfth, and thirteenth lines.

2. On page 9781, third column, sixth line, "R. 13 E." should read "R. 12 E."; and in the tenth line "SE ½ " should read "SE ¼ ".

BILLING CODE 1505-01-M

Agency Forms Submitted to OMB for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Copies of the proposed information collections requirement and related forms and explanatory material may be obtained by contacting the Bureau of Land Management's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and the Office of Management and Budget Reviewing Official at 202–395–7340.

Title: 43 CFR 2564, "Native Indian or Eskimo of Alaska Trustee Deed Application"
Bureau Form Number: AK 2564–20
Frequency: Once
Description of Respondents: Claimants of lands reserved for the benefit of Indian or Eskimo occupants in trustee townsite in Alaska
Annual Responses: 500
Annual Burden Hours: 250
Bureau clearance officer (alternate): Linda Gibbs at 202–653–8853

Dated: March 12, 1984.

James M. Parker,

Acting Director.

[FR Doc. 84–8630 Filed 3–29–84; 8:45 am]

BILLING CODE 4310–84–M

Lakeview District Multi-Use Advisory Council; Meeting

Notice is hereby given, in accordance with Pub. L. 92–463 and 43 CFR 1784 that a meeting of the Lakeview District Multi-Use Advisory Council will be held May 16, 1984, at 10:00 a.m. in the BLM's Conference Room at 1000 S. 9th Street, Lakeview, Oregon 97630.

The agenda will include the following topics:

1. Introductory Remarks by New District Manager.
2. Election of Officers.
3. Cooperative Management Areas.
4. Progress Report on District Programs.
5. Bombing Range Update.
6. Wilderness Briefing.
7. Wildlife Briefing.
8. Forestry Briefing.
9. Geothermal.
10. Public Comment—1:30–2:30 p.m.

The meeting will be open to all interested parties who desire to attend. Interested persons may make oral statements to the Council or file a written statement for the Council's consideration.

Summary minutes of the Council meetings will be maintained in the District Office and available for public inspection during regular business hours within 30 days following the meeting.

Dated: March 19, 1984.

Jerry E. Asher,

District Manager.

[FR Doc. 84–8632 Filed 3–29–84; 8:45 am]

BILLING CODE 4310–84–M

Lakeview Grazing District Advisory Board; Meeting

Notice is hereby given, in accordance with Pub. L. 94–579 and 43 CFR 4120.6–1(e) that a meeting of the Lakeview Grazing District Advisory Board will be held May 10, 1984, at 10:00 a.m. at the BLM's Poor Jug Administrative Site, approximately 65 miles north of Lakeview, in Lake County, Oregon.

The agenda will include the following:

1. Tour of Fire Rehabilitation Area.
2. Specifics on Allocation of Forage From Estimated Forage Increase.
3. Presentation of Commendation Resolutions.
4. Public Comment—1:30–2:30 p.m.
5. Progress Report on District Programs.

The meeting will be open to all interested parties who desire to attend. Interested persons may make oral statements to the Board or file a written statement for the Board's consideration. Persons interested in attending the meeting can obtain a map to the Poor Jug site at the Lakeview District Office, 1000 South 9th Street, Lakeview, Oregon 97630.

Summary minutes of the Board meeting will be maintained in the District Office and available for public inspection during regular business hours within 30 days following the meeting.

Dated: March 19, 1984.

Jerry E. Asher,

District Manager.

[FR Doc. 84–8631 Filed 3–29–84; 8:45 am]

BILLING CODE 4310–84–M

[W–23432]

Nebraska; Classification Revoked and Lands Open to Entry

March 16, 1984.

Public Land Order 5323, dated December 21, 1972, published as FR Doc. 73–13 on pages 735–736 of the issue of January 4, 1973, classified the following described lands for lease or sale under the provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended. The classification segregated the lands from other use or disposition under the public land laws.

Sixth Principal Meridian, Nebraska

T. 31 N., R. 7 W.,
Sec. 4, lot 1.
T. 32 N., R. 8 W.,
Sec. 17, lot 3.
T. 32 N., R. 10 W.,
Sec. 1, lot 4.
T. 32 N., R. 31 W.,
Sec. 1, lots 1 and 2.
T. 33 N., R. 30 W.,
Sec. 31, SW¼SE¼.

The areas described aggregate 132.90 acres in Knox, Boyd, and Cherry Counties, Nebraska.

The classification of the above described land is hereby revoked and the segregation on the lands is terminated.

This land is now open to all forms of appropriation under the public land laws including location under the mining laws, subject to valid existing rights, and the requirements of applicable law. All valid applications received shall be considered in the order of filing. The land has been and will remain open to applications and offers under the mineral leasing laws.

Inquiries concerning the land should be addressed to the Chief, Branch of Land Resources, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003.

Hillary A. Oden,

State Director, Wyoming.

[FR Doc. 84–8629 Filed 3–29–84; 8:45 am]

BILLING CODE 4310–22–M

[NM 036230]

New Mexico; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97–451, Energy Reserve Group, Inc., and

Conoco, Inc., petitioned for reinstatement of oil and gas lease NM 036230 covering the following described lands located in Eddy County, New Mexico:

T. 19 S., R. 31 E., NMPM
Sec. 1: NE¼SE¼.
Sec. 11: N½NE¼.
Containing 120.00 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $5.00 per acre per year and royalties shall be at the rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, November 1, 1983.

Dated: March 21, 1984.

Leroy C. Montoya,

Acting State Director.

[FR Doc. 84-8633 Filed 3-29-84; 8:45 am]

BILLING CODE 4310-FB-M

Minerals Management Service

Request for Supplemental Information; Sand and Gravel Leasing Offshore Alaska

Purpose

The Secretary of the Interior is reviewing ongoing Outer Continental Shelf (OCS) lease sales. Interested parties are invited to provide him with up-to-date information on the necessity of holding sand and gravel lease sales offshore Alaska. Comments are also requested on the proposed Mineral Materials Lease form.

Use of Information

The information will assist the Secretary in determining if any Alaska sand and gravel sales should be held in the next 2 years under the Department of the Interior's (DOI) hardrock mineral leasing program.

Background Information

In 1982, the DOI developed a program for hardrock mineral leasing for the OCS. In 1983, prelease steps were completed for a Beaufort Sea proposed sand and gravel lease sale. Subsequently, the following related documents were issued: on March 3, 1983, a final environmental impact statement; on April 11, 1983, a Notice of Tentative Terms and Conditions for an Arctic Sand and Gravel Sale (see 48 FR 15541); and on July 27, 1983, a proposed Mineral Materials Lease form (see 48 FR 34143). Comments were requested and considered on the documents.

Four oil and gas companies and the State of Alaska commented on the Beaufort Sea Notice of Tentative Terms and Conditions. The State generally supported the proposal but recommended that areas around Weller Bank, Stamuki Shoals, and part of Stefansson Sound be deleted from the proposed sale. Sohio Alaska Petroleum Company commented that the lease terms and conditions should be designed to meet two additional goals: (1) Avoid exclusivity of the mineral holdings; and (2) provide a mechanism whereby sales could be held on a regular basis. Exxon Company, U.S.A., believed that holding an Arctic sand and gravel sale was premature until issues related to correlative rights were addressed. Marathon Oil Company and Texaco Inc. provided technical comments.

On August 16, 1983, comments were also requested on four proposed sand and gravel lease sales to be located in the Beaufort and Bering Seas. These sales were scheduled through 1986 (see 48 FR 37087). Comments by Exxon on that schedule indicated the first sale was premature and should be delayed and that sand and gravel sales in the Bering Sea are unnecessary. Sohio commented that the proposed conditions for the first Arctic sale, previously scheduled for October 1983, were unsatisfactory and recommended several changes. These included using a Call for Nominations on individual blocks, definition of the term "highest cash bonus" (i.e., highest bid per cubic yard), requiring the submittal of 5 percent of the bonus with the bid, treating the bonus as the royalty, and allowing multiple leases of the same tract by requiring late participants to pay an identical bonus to the Government and a rising fee based on time to the original leaseholder. Sohio had no comments on the other proposed sales. Amoco Production Company had no comment on the timing of proposed sales and was supportive of the April 11 proposed terms and conditions.

Instructions on Request for Supplemental Information

Information on industry interest is requested on the need for holding offshore sand and gravel lease sales. If such sales are necessary, information on their location, sequence, and timing is also desired. It is believed there may be insufficient industry interest to hold sales in the next 2 years in any of the following planning areas: Diapir Field, Navarin, St. George, or North Aleutian Basins. Comments are requested on that conclusion. The Mineral Materials Lease form, first published on July 27, 1983, has been revised and is also published for comment.

Information should be provided by letter. If new or supplemental information is submitted on specific areas which industry would like to have offered for lease sale, it should be depicted on the request for Supplemental Information Map, available free from the Regional Supervisor, Leasing and Environment. Interest should be defined as specifically as possible by outlining blocks or area(s) along block lines. Although individual and industry indications of interest are considered to be privileged and confidential information, the names of persons or entities submitting such information will be a matter of public record.

In order to be incorporated in the review process, information must be submitted no later than 30 days following publication of this document in the **Federal Register**. Correct receipt of the information will be facilitated if envelopes are marked "Request for Supplemental Information on Proposed Sand and Gravel Lease Sales Offshore Alaska."

Letters and maps should be sent to the Regional Supervisor for Leasing and Environment, Alaska OCS Region, P.O. Box 101159, 620 East 10th Avenue, Anchorage, Alaska 99510. A copy should be sent to the Chief, Offshore Leasing Management Division, Minerals Management Service, 12203 Sunrise Valley Drive, Mail Stop 645, Reston, Virginia 22091. Hand deliveries to the DOI may be made to 18th and C Sts., N.W., Room 2510, Washington, D.C. Telephone contacts may be made to Joan Hagans (907) 261-2469 (Alaska) or to Yvonne Morehouse (202) 343-5121 (Washington, D.C.).

Dated: March 23, 1984.

William D. Bettenberg,

Director, Minerals Management Service.

Dated: March 27, 1984.

Approved:

Leona A. Power,

Acting Assistant Secretary for Land and Minerals Management.

Form MMS-2038 (September 1983)

UNITED STATES DEPARTMENT OF THE INTERIOR MINERALS MANAGEMENT SERVICE

Mineral Lease of Submerged Lands Under the Outer Continental Shelf Lands Act

This form does not constitute an information collection as defined by 44 U.S.C.

3502 and therefore does not require approval by the Office of Management and Budget.

Office ———
Serial Number ———
Cash bonus ———
Acres, hectares ———
Rental rate per acre, hectare or fraction thereof ———
Minimum royalty rate per acre, hectare or fraction thereof ———

This lease is effective as of ——— (hereinafter called the "Effective Date") and shall continue for an initial period of —— years (hereinafter called the "Initial Period") by and between the United States of America (hereinafter called the "Lessor"), by the Minerals Management Service, its authorized officer, and (hereinafter called the "Lessee"). In consideration of any cash payment heretofore made by the Lessee to the Lessor and in consideration of the promises, terms, conditions, and covenants contained herein, including the Stipulation(s) numbered ——— attached hereto, the Lessee and Lessor agree as follows:

Sec. 1. *Statutes and Regulations.* This lease is issued pursuant to the Outer Continental Shelf Lands Act of August 7, 1953, 67 Stat. 462; 43 U.S.C. 1331 et seq., as amended (92 Stat. 629), (hereinafter called the "Act"). The lease is issued subject to the Act; all regulations and orders issued pursuant to the Act and in existence upon the Effective Date of this lease; all regulations and orders issued pursuant to the Act in the future providing for the prevention of waste and conservation of the natural resources of the Outer Continental Shelf, and the protection of correlative rights therein; and all other applicable statutes, regulations, and orders.

Sec. 2. *Rights of Lessee.* The Lessor hereby grants and leases to the Lessee the exclusive right and privilege to prospect for, mine, extract, remove, and dispose (hereinafter referred to as "production"), of all (hereinafter referred to as the "Leased Mineral"), located in, on, or under the submerged lands of the Outer Continental Shelf containing approximately ——— acres or ——— hectares (hereinafter referred to as the "Leased Area"), described as follows:

These rights include:

(a) The nonexclusive right to conduct within the Leased Area geological and geophysical explorations and core sampling activities in accordance with applicable regulations, and orders; (b) the nonexclusive right to drill water wells within the Leased Area, unless the water is part of geopressured-geothermal and associated resources, and to use the water produced therefrom for operations pursuant to the Act free of cost, on the condition that the drilling is conducted in accordance with procedures approved by the Director of the Minerals Management Service or the Director's delegate (hereinafter called the "Director"); and (c) the right to construct or erect and to maintain within the Leased Area artificial islands, equipment, installations, and other devices permanently or temporarily attached to the seabed and other works and structures necessary to the full enjoyment of the lease, subject to compliance with applicable laws, regulations, and orders.

Sec. 3. *Term.* This lease shall continue from the Effective Date of the lease for the Initial Period and thereafter so long as the Leased Mineral is produced from the Leased Area, or approved mining activities are conducted, or an approved suspension of operations is in effect, or as otherwise provided by regulation or orders.

Sec. 4. *Rentals.* The Lessee shall pay the Lessor, on or before the first day of each lease year which commences prior to production of the Leased Mineral on the Leased Area, a rental as shown on the face hereof.

Sec. 5. *Minimum Royalty.* The Lessee shall pay the Lessor at the expiration of each lease year which commences after production has begun, a minimum royalty as shown on the face hereof.

Sec. 6. *Payments.* The Lessee shall make all payments to the Lessor by check, bank draft, or money order unless otherwise provided by regulations, orders, or by direction of the Lessor. Rentals, royalties, and any other payments required by this lease shall be made payable to the Minerals Management Service and tendered to the Director. Determinations made by the Lessor as to the amount of payment due shall be presumed to be correct and paid as due.

Sec. 7. *Bonds.* The Lessee shall maintain at all times a bond in the amount specified in the notice of lease offering conditioned on compliance with all requirements applicable to this lease and shall furnish such additional security as may be required by the Lessor if, after operations have begun, the Lessor deems such additional security to be necessary.

Sec. 8. *Plans.* The Lessee shall conduct all operations on the Leased Area in accordance with the provisions of an approved mining plan, this lease, regulations, and orders. The Lessee may depart from an approved mining plan only as provided by applicable regulations, orders, or written instructions.

Sec. 9. *Performance.* The Lessee shall comply with all applicable regulations, orders, written instructions, and the terms and conditions set forth in the notice of lease offering. After due notice in writing, the Lessee shall conduct such Outer Continental Shelf mining activities at such rates as the Lessor may require in order that the Leased Area or any part thereof may be properly and timely developed and produced in accordance with sound operating principles.

Sec. 10. *Inspection.* The Lessee shall permit duly authorized and identified representatives of the Secretary of the Interior to conduct periodic on-site inspections, both scheduled and unscheduled, of any mining facility to assure compliance with applicable operating, environmental, and safety regulations.

Sec. 11. *Safety Requirements.* The Lessee shall: (a) Maintain all places of employment within the Leased Area in compliance with occupational safety and health standards and, in addition, free from recognized hazards to employees of the Lessee or of any contractor or subcontractor operating within the Leased Area; (b) maintain all operations within the Leased Area in compliance with regulations and orders intended to protect persons, property, and the environment on the Outer Continental Shelf; and (c) allow prompt access, at the site of any operation subject to safety regulations, to any authorized Federal inspector and shall provide any documents and records which are pertinent to occupational or public health, safety, or environmental protection as may be requested.

Sec. 12. *Suspension and Cancellation.* (a) The Lessor may suspend or cancel this lease pursuant to section 5 of the Act and compensation shall be paid as provided by the Act. (b) The Lessor may, upon recommendation of the Secretary of Defense, during a state of war or national emergency declared by Congress or the President of the United States, suspend operations under the lease, as provided in section 12(c) of the Act, and just compensation shall be paid to the Lessee for such suspension.

Sec. 13. *Indemnification.* The Lessee shall indemnify the Lessor for, and hold it harmless from, any claim, including claims for loss or damage to property or injury to persons caused by or resulting from any operation on the Leased Area conducted by or on behalf of the Lessee. However, the Lessee shall not be held responsible to the Lessor under this section for any loss, damage, or injury caused by or resulting from: (a) Negligence of the Lessor other than the commission or omission of a discretionary function or duty on the part of a Federal agency whether or not the discretion involved is abused; or (b) the Lessee's compliance with an order or directive of the Lessor against which an administrative appeal by the Lessee is filed before the cause of action for the claim arises and is pursued diligently thereafter.

Sec. 14. *Disposition of Production.* In time of war, or when the President of the United States shall so prescribe, the Lessor shall have the right of first refusal to purchase at the market price all or any portion of the Leased Mineral produced from the Leased Area, as provided in section 12(b) of the Act.

Sec. 15. *Unitization Agreements.* Within such time as the Lessor may prescribe, the Lessee shall subscribe to and operate under a unit agreement embracing all or part of the lands subject to this lease as the Lessor may determine to be appropriate or necessary. Where any provision of a unit agreement, approved by the Lessor, is inconsistent with a provision of this lease, the provision of the agreement shall govern.

Sec. 16. *Equal Opportunity Clause.* During the performance of this lease, the Lessee shall fully comply with paragraphs (1) through (7) of section 202 of Executive Order 11246, as amended (reprinted in 41 CFR 60-1.4(a)), and the implemention regulations, which are for the purpose of preventing employment discriminating against persons on the basis of race, color, religion, sex, or national origin. Paragraphs (1) through (7) of section 202 of Executive Order 11246, as amended, are incorporated in this lease by reference.

Sec. 17. *Certification of Non-segregated Facilities.* By entering into this lease, the Lessee certifies, as specified in 41 CFR 60-1.8, that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and

that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. As used in this certification, the term "segregated facilities" means, but is not limited to, any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Lessee further agrees that it will obtain identical certifications from proposed contractors and subcontractors prior to award of contracts or subcontracts unless they are exempt under 42 CFR 60–1.5.

Sec. 18. *Reservations to Lessor.* All rights in the Leased Area not expressly granted to the Lessee by the Act, the regulations, orders, the notice of lease offering, or this lease are hereby reserved to the Lessor. Without limiting the generality of the foregoing, reserved rights include: (a) The right to authorize geological and geophysical exploration in the Leased Area which does not unreasonably interfere with or endanger actual operations under the lease, and the right to grant such easements or rights-of-way upon, through, or in the Leased Area as may be necessary or appropriate to the working or development of other lands which may or may not be leased or to the treatment and shipment of products therefrom by or under authority of the Lessor; (b) the right to grant leases for any minerals other than the Leased Mineral within the Leased Area, except that operations under such leases shall not unreasonably interfere with or endanger operations under this lease; (c) the right, as provided in section 12(d) of the Act, to restrict operations in the Leased Area or any part thereof which may be designated by the Secretary of Defense, with approval of the President, as being within an area needed for national defense, and so long as such designation remains in effect no operations may be conducted on the surface of the Leased Area or the part thereof included within the designation except with the concurrence of the Secretary of Defense. If operations or production under this lease within any designated area are suspended pursuant to this paragraph, any payments of rentals and royalty prescribed by this lease likewise shall be suspended during such period of suspenion of operations and production, and the term of this lease shall be extended by adding thereto any such suspension period, and the Lessor shall be liable to the Lessee for such compensation as is required to be paid under the Constitution of the United States.

Sec. 19. *Transfer of Lease.* The Lessee shall file for approval (in the appropriate field office of the Minerals Management Service), any instrument of assignment or other transfer of interest in this lease. This requirement includes changes in lease ownership and any obligation to make royalty or other payments under the lease or the Act.

Sec. 20. *Surrender of Lease.* The Lessee may surrender this entire lease or any officially designated subdivision of the Leased Area by filing with the appropriate field office of the Minerals Management Service a written relinquishment, in triplicate, which shall be effective as of the date of filing. No surrender of this lease or of any portion of the Leased Area shall relieve the Lessee or its surety of the obligation to pay all accrued rentals, royalties, and other financial obligations or to abandon the area to be surrendered in a manner satisfactory to the Director.

Sec. 21. *Removal of Property on Termination of Lease.* Within a period of 1 year after termination of this lease in whole or in part, the Lessee shall remove all devices, works, and structures from the premises no longer subject to the lease in accordance with applicable regulations, orders, and instructions of the Director. However, the Lessee may, with the approval of the Director, continue to maintain devices, works, and structures on the Leased Area for operations on other leases. Artificial islands may be abandoned if approved by the Director.

Sec. 22. *Remedies in Case of Default.* (a) Whenever the Lessee fails to comply with any of the provisions of the Act, the regulations or orders issued pursuant to the Act, or the terms of this lease, the lease shall be subject to cancellation in accordance with the provisions of section 5 (c) and (d) of the Act and the Lessor may exercise any other remedies which the Lessor may have, including the penalty provisions of section 24 of the Act. Furthermore, pursuant to section 8(o) of the Act, the Lessor may cancel the lease if it is obtained by fraud or misrepresentation. (b) Nonenforcement by the Lessor of a remedy for any particular violation of the provisions of the Act, the regulations or orders issued pursuant to the Act, or the terms of this lease shall not prevent the cancellation of this lease or the exercise of any other remedies under subparagraph (a) of this section for any other violation or for the same violation occurring at any other time.

Sec. 23. *Unlawful Interest.* No member of, or Delegate to, Congress, or Resident Commissioner, after election or appointment, or either before or after they have qualified, and during their continuance in office, and no officer, agent, or employee of the Department of the Interior, except as provided in 43 CFR Part 20, shall be admitted to any share or part in this lease or derive any benefit that may arise therefrom. The provisions of section 3741 of the Revised Statutes, as amended, 41 U.S.C. 22, and the Act of June 25, 1948, 62 Stat. 702, as amended, 18 U.S.C. 431–433, relating to contracts made or entered into, or accepted by or on behalf of the United States, form a part of this lease insofar as they may be applicable.

The United States of America, Lessor

_____

(Lessee)

(Signature of Authorized Officer) _____

_____

(Name of Signatory) _____

(Title) _____

(Date) _____

(Address of Lessee) _____

(Signature of Authorized Officer) _____

_____

(Name of Signatory) _____

(Title) _____

(Date) _____

If this lease is executed by a corporation, it must bear the corporate seal.

[FR Doc. 84-8638 Filed 3-29-84; 8:45 am]

BILLING CODE 4310-MR-M

Minerals Management Service Request for Supplemental Information; Gulf of Alaska/Cook Inlet Sale 88

Purpose

The Secretary of the Interior is reviewing ongoing Outer Continental Shelf (OCS) oil and gas lease sales. Interested parties are invited to provide him with up-to-date information so a reassessment can be made on the advisability of offering areas in the Gulf of Alaska/Cook Inlet (GOA/CI) for lease. The proposed offering for Lease Sale 88 is scheduled for October 1984.

The Secretary is seeking specific information on the current level of industry interest in leasing and exploring the area covered by the GOA/CI Federal proposal. This is the area studied in the draft environmental impact statement (EIS) and outlined on the attached map. The EIS was made available to the public in January 1984 public hearings were held in Alaska the week of February 13, 1984. In addition, the Minerals Management Service has been examining a number of options affecting lease terms for Sale 88. They involve variations in bidding systems royalty rates, length of lease term, size of lease block, minimum bid level, and rental rates. The effects of the alternatives on the economics of exploration and development are being examined both individually and in various combinations. We would appreciate your comments relative to these factors, as will as any other lease terms and conditions that you feel are appropriate.

Use of Information

The information will assist the Secretary in determining if portions of the proposed sale area should be deferred or eliminated or whether the proposed sale should be rescheduled in the current 5-year Planning Schedule or cancelled.

Description of the Area

The general location of the areas for which information is requested is offshore the State of Alaska in the Gulf

of Alaska and Cook Inlet. It is the area studied in the EIS as the Federal proposal (see the attached map). With some exceptions it lies between the 3-geographical-mile boundary and the 2,000-meter isobath. It covers 4,792 blocks (approximately 10.1 million acres).

Summary of Comments Received From the Call for Information

The Call for Information covered two planning areas, the Gulf of Alaska and Cook Inlet. Together they contain about 37 million acres. Four companies responded to the Call; three indicated leasing interest in a total of about 18.3 million acres. Industry interest in the Gulf of Alaska planning area began west of Icy Bay and continued east and south until the U.S./Canada jurisdiction line was reached. Interest began at the 3-geographical-mile line and generally went out to the 2,000-meter isobath.

In Cook Inlet interest was shown in two areas: south of Kalgin Island to the northern end of Augustine Island and south of the Barren Islands, through the Shelikof Strait, to approximately 57°30′ N. latitude.

Comments were received from the State of Alaska; U.S. Department of Commerce, National Marine Fisheries Service; the City of Cordova; and Yak-Tat Kwaan, Inc. Agencies of the State provided comments on the possible effects of hydrocarbon development on the fisheries industry; on renewable resources and their habitats (fish, waterfowl, shorebirds, seabirds, and marine mammals); on the lack of technology to contain and clean up large offshore oil spills; on industry's ability to safely conduct activities in severe weather and sea conditions; on the advisability of using drilling rigs with zero pollution/discharge containment systems; on refuges, monuments, and State critical habitat areas; and on the culture of Native villages adjacent to the Call area.

The National Marine Fisheries Service commented on the possible conflicts between fisheries and marine mammal resources and oil and gas exploration. The City of Cordova commented on fisheries conflicts and Costal Zone Management funding. The Yak-Tat Kwaan generally supported leasing in certain portions of the Gulf of Alaska planning area and commented on the importance of salmon stocks.

The Environmental Impact Statement

If a copy of the draft EIS would be helpful in responding to this supplemental request, inquiries may be made to the Regional Supervisor for Leasing and Environment, Alaska OCS Region, P.O. Box 101159, Anchorage, Alaska 99510, (907) 261–2464.

Instructions on Request for Supplemental Information

Information on the interest industry has in leasing and exploring in the GOA/CI should be provided by letter. If new or supplemental information is submitted on areas which industry would like to have offered for lease sale, it should be depicted on the Request for Supplemental Information Maps. These maps are available at no cost from the Regional Supervisor for Leasing and Environment. Industry interest should be defined as specifically as possible by outlining blocks or area(s) along block lines. Areas of concern may also be indicated on these maps in the same manner. Although individual and industry indications of interest are considered to be privileged and confidential information, the names of persons or entities submitting such information and/or comments will be a matter of public record.

Respondents should rank blocks and/or areas according to priority of interest (e.g., priority 1 (high), 2, or 3). Priority information submitted will be proprietary.

In order to be incorporated in the review process, information and comments must be submitted no later than 30 days following publication of this document in the **Federal Register**. Correct receipt of the information will be facilitated if envelopes are marked "Request for Supplemental Information on Proposed Lease Sale 88—Gulf of Alaska/Cook Inlet".

Letters and maps should be sent to the Regional Supervisor for Leasing and Environment, Alaska OCS Region, P.O. Box 101159, 620 East 10th Avenue, Anchorage, Alaska 99510. A copy should be sent to the Chief, Offshore Leasing Management Division, Minerals Management Service, 12203 Sunrise Valley Drive, Mail Stop 645, Reston, Virginia 22091. Hand deliveries to the Department of the Interior may be made at 18th and C Sts., N.W., room 2510, Washington, D.C. Telephone contacts may be made to Joan Hagans (907) 261–2469 (Alaska), or to Yvonne Morehouse (202) 343–5121 (Washington, D.C.).

Date: March 27, 1984.

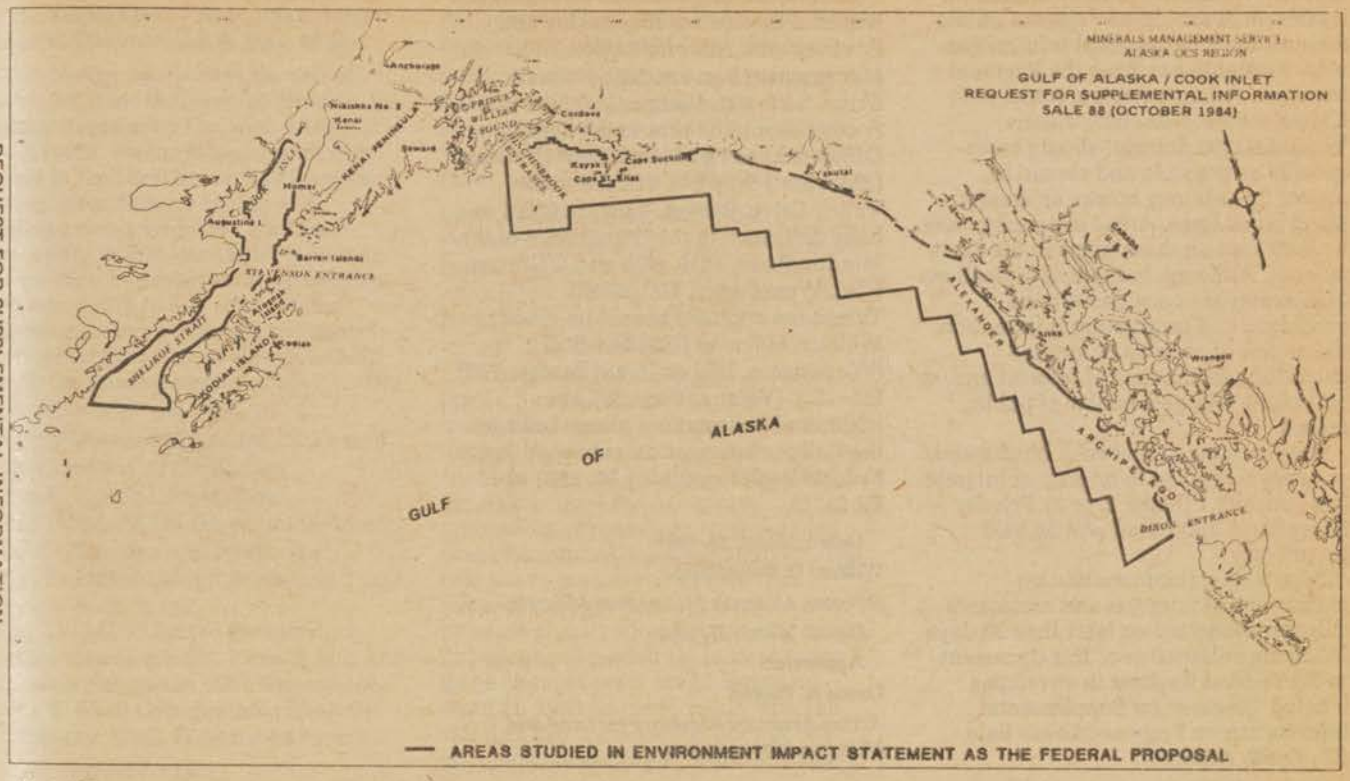
William D. Bettenberg,

Director, Minerals Management Service.

Approved:

Leona A. Power,

Assistant Secretary for Land and Minerals Management.



March 1984

REQUEST FOR SUPPLEMENTAL INFORMATION

[FR Doc. 84-8634 Filed 3-29-84; 8:45 am]
BILLING CODE 4310-MR-M

Request for Supplemental Information Sale 90—South Atlantic

Purpose of Request

As part of the Secretary of the Interior's ongoing review of Outer Continental Shelf (OCS) lease sales, interested parties are invited to provide up-to-date information related to the Federal proposal for Sale 90—South Atlantic, scheduled for January 1985 (see attached map).

The Secretary is seeking specific information on the current level of industry interest in leasing and exploring within the South Atlantic area depicted on the attached map. Potential bidders are requested to provide new information or clarify or supplement earlier information indicating their interest in areas for possible oil and gas leasing under the OCS Lands Act (43 U.S.C. 1331–1343).

In addition, the Minerals Management Service has been examining a number of options that affect lease terms and conditions for Sale 90. They involve variations in bidding systems, royalty rates, length of lease term, size of lease block, minimum bid level, and rental rates. The effects of the alternatives on the economics of exploration and development are being examined both individually and in various combinations. We would appreciate your comments relative to these factors, as well as any other lease terms and conditions that you feel are appropriate.

Use of Information From Request

Information received in response to this request will be used to help design a proposed sale area which best reflects a reasonable balance between industry interest and environmental, national defense, or other potential resource conflicts.

Description of Area

The area covered by this request is generally offshore the States of North Carolina, South Carolina, Georgia, and Florida and is depicted as the cross-hatched area on the attached map. The area shown represents the Area Identification decision made in August 1983 (40.8 million acres) and is the proposed Federal action.

Summary of Response to Call for Information

The Call for Information encompassed approximately 99 million acres. Two companies responded indicating leasing interest in about 22 million acres.

Comments were received from the States of North Carolina, South Carolina, and Florida, the National Oceanic and Atmospheric Administration, and the Natural Resources Defense Council. Concerns expressed included: leasing within the 200-meter isobath off North Carolina; leasing within the 500-meter isobath south of the 30° N. latitude; leasing adjacent to marine and estuarine sanctuaries; effects of leasing on tourism and environmentally sensitive areas; and length of lease terms. The Department of Defense and National Aeronautics and Space Administration have requested deferral of the area south of 31° N. latitude.

Instructions on Request

Information on the interest industry has in leasing and exploring in the South Atlantic should be provided by letter. If new or supplemental information is submitted on specific areas which

industry would like to have offered for lease sale, it should be depicted on the Request for Supplemental Information map, available free from the Regional Manager, Atlantic Region, MMS, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180. Interest should be as specific as possible and should be shown by outlining blocks or area(s) along block lines. Areas of concern may be indicated on these maps in the same manner. Although individual indications of interests are considered to be privileged and proprietary information, the names of persons or entities submitting indications of interest and/or comments will be a matter of public record.

Respondents should rank blocks and/or areas according to priority of interest (e.g., priority 1 (high), 2, or 3). Priority information submitted will be held proprietary.

Supplemental information on indications of interests and comments must be submitted no later than 30 days following publication of this document in the **Federal Register** in envelopes labeled "Request for Supplemental Information on Proposed Lease Sale 90—South Atlantic."

Letters and maps should be sent to the Regional Supervisor for Leasing and Environment, Atlantic Region, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Vienna, Virginia, 22180. A copy should be sent to the Chief, Offshore Leasing Management Division, MMS, Mail Stop 645, 12203 Sunrise Valley Drive, Reston, Virginia 22091 or hand delivered to the Department of the Interior, Room 2510, 18th and C Streets, NW., Washington, D.C. 20240. Telephone contacts should be made to Wallace Macnow (202) 343–5121 (Washington, DC) or Home Benton (703) 285–2207 (Vienna, Virginia). For additional information, please refer to the Call for Information published in the **Federal Register** on May 26, 1983 at 48 FR 23723.

Dated: March 23, 1984.

William D. Bettenberg,

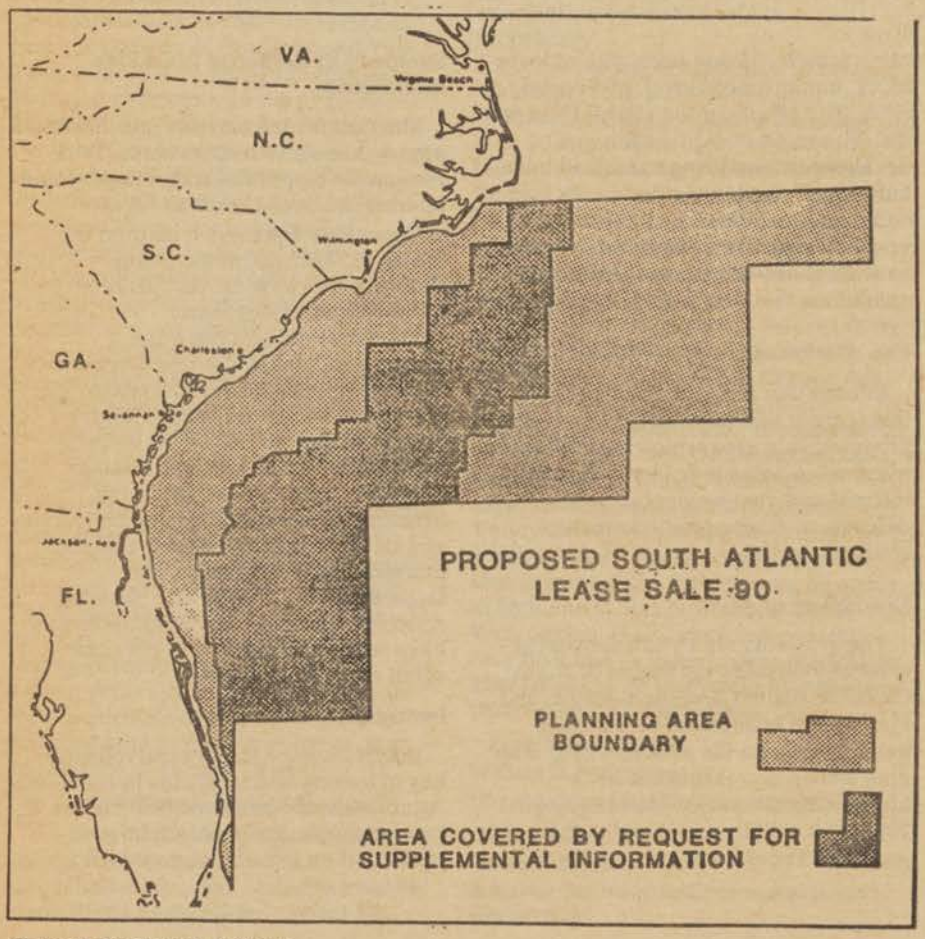
Director, Minerals Management Service.

Dated: March 27, 1984.

Approved:

Leona A. Power,

Acting Assistant Secretary for Land and Minerals Management.



[FR Doc. 84–8035 Filed 3–29–84; 8:45 am]
BILLING CODE 4310–MR–M

Outer Continental Shelf Oil and Gas Lease Sales; List of Restricted Joint Bidders; Chevron U.S.A. Inc., et al.

This Notice supersedes the List of Restricted Joint Bidders published in the Federal Register on October 4, 1983, at 48 FR 43318. Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period of May 1, 1984, through October 31, 1984.

Group I: Chevron U.S.A. Inc.; Standard Oil Company of California.

Group II: Exxon Corporation.

Group III: Mobil Oil Corporation; Mobil Oil Exploration and Producing Southeast Inc.; Mobil Producing Texas & New Mexico Inc.

Group IV: MTS Limited Partnership (Mesa Petroleum Co., Texaco Inc., and Sequoia Petroleum Inc.); Texaco Inc.

Group V: Shell Offshore Inc.; Shell Oil Company; Shell Western E&P Inc.

Dated: March 26, 1984.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 84-8622 Filed 3-29-84; 8:45 am]

BILLING CODE 4310-MR-M

Notification of Procedural Changes for OCS Bid Adequacy

AGENCY: Minerals Management Service, Interior.

ACTION: Notification of Procedural Changes.

SUMMARY: The Minerals Management Service has made three modifications in its existing bid adequacy procedures for ensuring receipt of fair market value on OCS leases. These procedures: (1) Allow for the classification of tracts as nonviable in Phase 1 only when adequate data and maps exist to support such a determination; (2) discontinue application of items labeled D through M in the discussion of the Phase 2 criteria, with the exception of item H (drainage costs), until a rigorous procedure is developed for quantitatively applying them; and (3) eliminate the geometric mean of the bids rule in Phase 1.

DATE: These modifications will be implemented beginning with the Navarin Basin Lease Offering (April 1984).

FOR FURTHER INFORMATION CONTACT: Dr. Marshall Rose, Minerals Management Service, MS643, 12203 Sunrise Valley Drive, Reston, Virginia 22091, telephone (703) 860-7571.

SUPPLEMENTARY INFORMATION: On February 22, 1983, the Department of the Interior (Department) adopted new procedures to evaluate bids received on tracts in OCS lease offerings to assure receipt of fair market value.

The refined bid adequacy system placed increased reliance upon competition in the free market through implementation of a two-phase process. All bids received would be evaluated through at least the first phase proceeding, if necessary, to a detailed economic and engineering analysis. The two-phase postsale review of bids allowed for bid adequacy decisions to be made shortly after the offering date. Bid adequacy guidelines incorporating these changes were promulgated on April 21, 1983. In conjunction with the changes listed above, the current bid adequacy procedure is described below:

Phase 1

Phase 1 is composed of criteria designed to partition block receiving bids into three general categories:

- Those receiving bids which Minerals Management Service (MMS) has identified as being non-prospective;
- Those where opportunities for strategic underbidding, information asymmetry, collusion, and other noncompetitive practices might most likely occur and where the Government has the most detailed and reliable data; and
- Those where the competitive market forces can be relied upon to assure fair market value.

Based on these categories, the following three Phase 1 criteria are applied to all blocks receiving bids:

1. High bids on all blocks classified by MMS as being either development or drainage will be referred directly for further evaluation in Phase 2.

2. All legal high bids for blocks judged by MMS not to be located on a viable prospect will be accepted.

3. After screening for anomalously low bids through application of the "one-eighth rule," [1] all legal high bids will be accepted for prospective wildcat and proven blocks receiving three or more bids and more than the average number of bids for prospective blocks bid upon in the offering, i.e., whichever is more.

Phase 1 is conducted block-by-block and will generally be completed within 3 days of the Bid Opening.

Phase 2

All prospective wildcat and proven blocks which are not accepted as a result of the application of the Phase 1 criteria and all drainage and development blocks will receive further evaluation by comparing the high bids with the MROV, DMROV, and GAEOT. In addition, if in the judgment of the Regional Manager a block is or may be subject to drainage, the relevant costs due to delays associated with bid rejection will be considered in the bid adequacy determination.

While it is expected that most analyses would be undertaken based upon data available at the time of the sale, additional geological and geophysical analyses can be undertaken postsale at the discretion of the Regional Manager.

The bid adequacy recommendations developed in Phase 2 will generally be completed within 3 weeks of the sale, however, the Regional Manager may extend this period when necessary to assure a thorough evaluation.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 84-8623 Filed 3-29-84; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Women's Rights National Historical Park

AGENCY: National Park Service: Women's Rights NHP Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of Women's Rights Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: May 9, 1984—1:00 to 4:00; May 10, 1984—8:30 to 1:00.

There will be a public forum from 4:00 to 6:00 on May 9 at the same address, providing an opportunity for all interested persons to present their role in the creatioin of the Park.

ADDRESS: Women's Rights National Historical Park, 116 Fall Street, P.O. Box 70, Seneca Falls, New York 13148.

FOR FURTHER INFORMATION CONTACT: Judy Hart, Superintendent, Women's Rights National Historical Park, 116 Fall Street, P.O. Box 70, Seneca Falls, New York 13148, (315) 568-2991.

SUPPLEMENTARY INFORMATION: The Advisory Commission was established by Public Law 96-607 to meet, consult and advise the Secretary with respect to matters relating to the administration of the Park. The agenda for the meeting will include: (1) Park development and (2) National constituency development project.

The meeting will be open to the public. Facilities and space to accommodate members of the public are limited and persons will be accommodated on a first-come, first-serve basis.

Any member of the public may file with the Commission a written statement concerning agenda items to be discussed. The statement should be addressed to the Commission, c/o Women's Rights National Historical Park, P.O. Box 70, Senaca Falls, New York 13148. Minutes of the meeting will be available for inspection at the same address above. The facility at which the meeting will be held is physically accessible. If interpretive services are requested by deaf or hearing impaired individuals they will be provided if notification is received within five working days before the meeting, at the Park Office.

Dated: March 12, 1984.

Steven H. Lewis,

Acting Regional Director, North Atlantic Region.

[FR Doc. 84-8581 Filed 3-29-84; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Denali National Park and Preserve; Availability

Notice is hereby given that pursuant to the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, George D. Bailey has filed a plan of operations in support of proposed mining operations on lands embracing a Mining Claim Group within the Denali Natinal Park and Preserve. These plans are available for inspection during normal business hours at the Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska.

Robert Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 84-8572 Filed 3-29-84; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Wrangell-St. Elias National Park and Preserve; Availability

Notice is hereby given that pursuant to the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Theodore W. VanZelst has filed a plan of operations in support of proposed mining operations on lands embracing four Mining Claim Groups within the Wrangell-St. Elias National Park and Preserve. These plans are available for inspection during normal business hours at the Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska.

Robert Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 84-8574 Filed 3-29-84; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Wrangell-St. Elias National Park and Preserve; Availability

Notice is hereby given that pursuant to the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Donald E. Dippel has filed a plan of operations in support of proposed mining operations on lands embracing Mining Claim Groups within the Wrangell-St. Elias National Park and Preserve. These plans are available for inspection during normal business hours at the Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska.

Robert Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 84-8575 Filed 3-29-84; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Wrangell-St. Elias National Park and Preserve; Availability

Notice is hereby given that pursuant to the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9,

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[1] Anomalously low bids will not be included in the bid number; e.g., if the lowest bid on a block is less than ⅛ of the next lowest bid, the lowest bid will not be included in the number of bids. This rule can exclude no more than one bid for a given block or bidding unit.

Silver Star Mining Company has filed a plan of operations in support of proposed mining operations on lands embracing a Mining Claim Group within the Wrangell-St. Elias National Park and Preserve. These plans are available for inspection during normal business hours at the Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska.

Robert Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 84-8580 Filed 3-29-84; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Yukon-Charley Rivers National Preserve; Availability

Notice is hereby given that pursuant to the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, James R. Layman has filed a plan of operations in support of proposed mining operations on lands embracing a Mining Claim Groups within the Yukon-Charley Rivers National Preserve. These plans are available for inspection during normal business hours at the Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska.

Robert Peterson,

Acting Regional Director, Alaska Regional.

[FR Doc. 84-8579 Filed 3-29-84; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Yukon-Charley Rivers National Preserve; Availability

Notice is hereby given that pursuant to the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Frank M. Hall has filed a plan of operations in support of proposed mining operations on lands embracing a Mining Claim Group within the Yukon-Charley Rivers National Preserve. These plans are available for inspection during normal business hours at the Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska.

Robert Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 84-8576 Filed 3-29-84; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Kenai Fjords National Park; Availability

Notice is hereby given that pursuant to the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, John M. Kinney has filed a plan of operations in support of proposed mining operations on lands embracing a Mining Claim Group within the Kenai Fjords National Park. These plans are available for inspection during normal business hours at the Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska.

Robert Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 84-8578 Filed 3-29-84; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Lake Clark National Park and Preserve; Availability

Notice is hereby given that pursuant to the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Howard N. Bowman has filed a plan of operations in support of proposed mining operations on lands embracing four Mining Claim Group within the Lake Clark National Park and Preserve. These plans are available for inspection during normal business hours at the Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska.

Robert Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 84-8577 Filed 3-29-84; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Gates of the Arctic National Park and Preserve; Availability

Notice is hereby given that pursuant to the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Glen D. Bouton has filed a plan of operations in support of proposed mining operations on lands embracing Mining Claim Groups within the Gates of the Arctic National Park and Preserve. These plans are available for inspection during normal business hours at the Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska.

Robert Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 84-8571 Filed 3-29-84; 8:45 am]

BILLING CODE 4310-70-M

Mining Plans of Operations at Denali National Park and Preserve; Availability

Notice is hereby given that pursuant to the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Kantishna Mines Ltd., has filed a plan of operations in support of proposed mining operations on lands embracing a Mining Claim Group within the Denali National Park and Preserve. These plans are available for inspection during normal business hours at the Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska.

Robert Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 84-8573 Filed 3-29-84; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. *Parent Corporation and Address of Principal Office*: Wickland Oil Company, a California corporation, 1765 Challenge Way, Sacramento, California 95815.

2. Wholly-owned Subsidiaries Which Will Participate in the Operations, and States of Incorporation:

(i) Wickland, Inc., a California corporation;

(ii) Olive City Service, Inc., a California corporation;

(iii) Regal Stations, Inc., a California corporation;

(iv) Wickland Oil Terminals, a California corporation;

(v) Wickland Oil Transport, a California corporation.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-8512 Filed 3-29-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30409]

The Chesapeake and Ohio Railway Co.; Trackage Rights Exemption Between Kanauga, OH and Point Pleasant, WV

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 11343 *et seq.*, the acquisition by The Chesapeake and Ohio Railway Company of trackage rights over 3.5 miles of rail line owned by Consolidated Rail Corporation, extending from Kanauga, OH, to Point Pleasant, WV.

DATES: This exemption will be effective on April 30, 1984. Petitions for reconsideration must be filed by April 19, 1984. Petitions to stay this decision must be filed by April 19, 1984. Petitions to stay this decision must be filed by April 9, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30409 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Rene J. Gunning, 100 North Charles Street, Baltimore, MD. 21201.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (D.C. Metropolitan area) or toll free (800) 424-5403.

Decided: March 23, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Commissioner Gradison did not participate.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-8513 Filed 3-29-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30425]

Norfolk and Western Railway Co.; Exemption; Discontinuance of Service in Pike County, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts the discontinuance of service by Norfolk and Western Railway Company over a 6-mile rail line in Pike County, IL from the requirement of prior approval under 49 U.S.C. 10903 et seq., subject to employee protection conditions.

DATES: This exemption shall be effective on April 30, 1984. Petitions for reconsideration must be filed by April 19, 1984. Petitions to stay must be filed by April 9, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30425 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC. 20423.

(2) Petitioners' representative: Angelica D. Lloyd, 204 South Jefferson Street, Roanoke, VA 24042.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC. 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: March 21, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Commissioner Gradison did not participate. Chairman Taylor would have required the petitioners to notify the Commission within 30 days of consummation.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-8514 Filed 3-29-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Judgment Orders Pursuant to the Clean Air Act; Jones & Laughlin Steel Inc., et al.

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Judgment Order in *United States of America, et al.* v. *Jones & Laughlin Steel, Incorporated, et al.*, Civil Action Numbers 79-426-K and 79-1193-A, has been lodged with the United States District Court for the Western District of Pennsylvania. Also, a proposed Judgment Order in *United States of America* v. *Jones & Laughlin Steel Incorporated, et al.*, Civil Action Number H-79-65, has been lodged with the United States District Court for the northern District of Indiana. Further, a proposed Judgment Order in *United States of America, et al.*, v. *Jones & Laughlin Steel Incorporated, et al.*, Civil Action Numbers C-77-144-Y and C-81-12, has been lodged with the United State District Court for the Northern District of Ohio.

Motions for entry of the proposed Judgment Orders were made by Jones & Laughlin Steel Incorporated and The LTV Corporation. The United States has preliminarily indicated that it does not oppose entry of the Judgment Orders, conditioned upon the publication of this Notice, and the evaluation of any comments received in response to this Notice.

The contempt motions previously filed by the United States alleged violations of existing Federal Consent Decrees and the Clean Air Act by Jones & Laughlin Steel Incorporated and The LTV Corporation at its Aliquippa Works, Aliquippa, Pennsylvania; Pittsburgh Works, Pittsburgh, Pennsylvania; Indiana Harbor Works, East Chicago, Indiana; Campbell Works, Campbell, Ohio; and Cleveland Works, Cleveland, Ohio. The contempt motions sought injunctive relief to require Jones & Laughlin Steel Incorporated and The LTV Corporation to comply with its existing Federal Consent Decrees and the Clean Air Act. The contempt motions also sought stipulated civil penalties for past violations of the Consent Decrees.

The Judgment orders provide that Jones & Laughlin Steel Incorporated and The LTV Corporation will comply with the Clean Air Act and undertake installation of necessary pollution control equipment in accordance with a schedule set forth in the Judgment Orders. Jones & Laughlin Steel Incorporated and The LTV Corporation are required to pay a civil penalty of $4,000,000 in settlement of stipulated civil penalty claims.

The U.S. Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Judgment Orders. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States of America, et al.* v. Jones & Laughlin Steel Incorporated, et al., D.J. Ref. 90-5-2-3-1011.

The proposed Judgment orders may be examined at the offices of the United States Attorney for the Western District of Pennsylvania, 633 U.S. Post Office and Courthouse, 7th Avenue and Grant Street, Pittsburgh, Pennsylvania 15219; United States Attorney for the Northern District of Indiana, Room 312, Federal Building, 507 State Street, Hammond, Indiana 46320; and the United States Attorney for the Northen District of Ohio, Suite 500, 1404 East Ninth Street, Cleveland, Ohio 44114. Further, the proposed Judgment Orders may be examined at the offices of Region III of the U.S. Environmental Protection Agency, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106 and Region V of the U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the Judgment Orders may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, U.S. department of Justice, Room 1517 or 1644, 9th Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed Judgment Orders may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice. In requesting a copy, please enclose a check in the amount of $20.00 ($0.10 per page reproduction charge) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 84-8590 Filed 3-29-84; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances Application; Ciba-Geigy Corp.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 19, 1983, Pharmaceuticals Division, Ciba-Geigy Corporation, 556 Morris Avenue, Summit, New Jersey 07901, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance Methylphenidate (1724).

Any other applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than (30 days from publication).

Dated: March 23, 1984.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 84-8603 Filed 3-29-84; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration; Hoffman La Roche Inc.

By Notice dated May 9, 1983, and published in the **Federal Register** on May 18, 1983 (48 FR 22385), Hoffman La Roche Inc., Kingland Road and Bloomfield Avenue, Nutley, New Jersey 07110, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Alphaprodine (9010)	II
Levorphanol (9220)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, Section 1301.54(e), the Deputy Assistant Administrator hereby orders that the bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: March 23, 1984.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 84-8602 Filed 3-29-84; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-14,709, 15,103, 15,104]

Wean United, Inc., Youngstown and Warren, Ohio, Vandergrift, Pennsylvania; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

Pursuant to section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued two notices of certification of eligibility to apply for worker adjustment assistance on February 2, 1984 in response to three petitions from workers and former workers of Wean United, Incorporated, in Youngstown, Ohio (TA-W-14,709), Warren, Ohio (TA-W-15,103) and Vandergrift, Pennsylvania (TA-W-15,104). The Notices of Certification were published in the **Federal Register** on February 14, 1984 (49 FR 5703).

Subsequently, the United Steelworkers of America asked to have the November 30, 1982 impact date for workers at the Vandergrift, Pennsylvania plant changed to May 6, 1982 because of investigation findings that production at that plant was integrated with the Youngstown and Warren plants. The USWA claims that the scope of the Department's factfinding investigation conducted in response to the first petition filed on behalf of workers of Wean United's Youngstown plants should have been expanded to include the Vandergrift and Warren plants when integration of production of the plants was identified rather than requiring the USWA to file separate petitions for the Warren and Vandergrift plants.

Findings in the investigation file show integration of production among all four plants and support the USWA's position that the scope of the initial investigation for Wean workers at the Youngstown plant under petition TA-W-14,709 dated May 6, 1983 should have been expanded to include Wean United's workers at the Warren and Vandergrift plants. Had the Department taken this action, Wean workers at Vandergrift and Warren would have been controlled by the earlier petition, TA-W-14,709 which permits an earlier impact date. Findings in the investigation file support an earlier impact date.

Other findings which support the USWA position show that domestic sales and production of finishing line machinery decreased in 1982 compared to 1981 and in the first eight months of

1983 compared to the same period in 1982 for all four plants.

Aggregate employment decreased at the four plants in 1982 compared to 1981 and in the first eight months of 1983 compared to the same period in 1982.

U.S. imports of metal-forming presses and miscellaneous machines for working metal increased relative to U.S. shipments in 1982 compared to 1981 and in the first 6 months of 1983 compared to the same period in 1982. U.S. imports of rolling mill machinery and parts increased absolutely in the first 9 months of 1983 compared to the same period in 1982.

Wean United submits bids for most of its capital equipment sales. The Department of Labor findings on lost bids by Wean United in 1981, 1982 and 1983 show that potential customers representing a significant portion of Wean's sales declines in 1982 and in the first 8 months of 1983 compared to the respective period in 1982, awarded bids to foreign sources where Wean United was the low domestic bidder. Because of the lead time involved in the capital goods industry between bids and the commencing of production, lost bids by Wean in 1981 would impact on 1982 production. Therefore, lost bids in 1981 were a factor in reduced production by Wean United in 1982 and would support an earlier impact date.

The Department's findings support consolidating Wean United facilities covered by the three petitions under one certification and certifying all workers producing finishing line machinery who were adversely affected by increased imports. Therefore, the certification for workers at Wean United's Vandergrift, Pennsylvania plant (TA-W-15,104) and Wean United Warren, Ohio plant (TA-W-15,103) are hereby withdrawn. Aggregate sales, production and workforce data, and increased imports of like or directly competitive products support changing the impact date to May 6, 1982.

The amended certification for TA-W-14,709 is hereby issued as follows: "All workers of Wean United in Youngstown and Warren, Ohio and Vandergrift, Pennsylvania who became totally or partially separated from employment on or after May 6, 1982 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, D.C., this 21st day of March 1984.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 84-8496 Filed 3-29-84; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefit Programs

[Application No. D-4514 et al.]

Proposed Exemptions; Canterbury Tales, Inc. Employee Profit Sharing Plan et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Canterbury Tales, Inc., Employee Profit Sharing Plan (the Plan), Located in Alexandria, Virginia

[Application No. D-4514]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the cash sale of a certain limited partnership interest (the Partnership Interest) in the Canterbury Tales Limited Partnership (the Partnership), located in Washington, D.C. by the Plan to David H. Pensky and Richard J. Hindin, parties in interest with respect to the Plan, provided the sales price is not less than the fair market value of the Partnership Interest at the time of sale.

Summary of Facts and Representations

1. The Plan is a multi-employer profit sharing plan that had approximately 113 participants and total assets of $1,375,867 as of February 28, 1982. The sponsors (the Sponsors) of the Plan are Canterbury Tales, Inc. and its wholly-owned subsidiaries, Britches of Georgetown, Inc., D.C., Britches of Lenox Square, Britches of Georgetowne-Preachtree Ctr., Inc., Britches of Georgetowne, Inc., Maryland and Britches of Georgetowne, Inc., Virginia, all of which are engaged in the retail or wholesale clothing trade. The investment decisions of the Plan are

made by the trustees (the Trustees), who are David H. Pensky and Richard J. Hindin, the principal shareholders and officers of the Plan Sponsors and the combined owners of 95% and the general partner of the Partnership.

2. In 1970, prior to the enactment of the Act, as part and parcel of an equity participation loan (the Loan), the Plan made a $16,000 loan to the Partnership, in exchange for a ten-year promissory note from the Partnership in the amount of $16,000, with interest at the then prevailing interest rate of 9% per annum, plus a 5% Partnership Interest in the Partnership. The business of the Partnership is the ownership and operation of a parcel of improved real property (the Property), located at 1241 Wisconsin Avenue, N.W., Washington, D.C. The Property, which is encumbered by a first mortage (the Mortgage) held by First National Bank of Maryland (the Bank), is rented on a net-net lease basis to its tenants (Tenants). In 1980, the Loan, together with all interest, was paid in full. It is represented that the Loan did not constitute a prohibited transaction by reason of the transitional rules contained in section 414 of the Act.[1] It is further represented that neither the Bank nor any of the Tenants is related to the parties to the transaction.

3. The 5% Partnership Interest has been and continues to be non-income producing. Since its inception, the Partnership incurred net losses in each year except for 1981 and 1982. In 1981 and 1982, the Partnership produced a small net profit due to the fact that the building on the Property had then been fully depreciated. As a result of the income received above, the negative capital accounts of the Partners in the Partnership decreased from $77,341 to $37,938. It is anticipated that future cash distributions to the Plan relative to the market value of the 5% Partnership Interests will be small.

4. In addition to the fact that the 5% Partnership Interest is non-income producing, the Trustees believe that the projected liquidity needs of the Plan support the conversion of this asset to cash. The Trustees, therefore, propose to sell the Partnership Interest to themselves, as individuals, for $20,087, which is based upon the sales price for Partnership Interests sold in March of 1983. At that tie a 25% partnership interest was sold by Mr. Stanley Smith, an unrelated limited partner, to Messrs. Hindin and Pensky for $100,000 payable with a note for the full sales price with interest at 10%. The note provides for interest only payments for 60 months with the entire principal due on April 1, 1988.

No commissions will be paid in connection with the sale nor will the Plan be required to pay the Partnership any portion of its negative capital balance. The outstanding balance of the Mortgage as of May, 1983 was $113,252. An appraisal performed by Kevin O. Curnyn, president of Thos J. Owen & Son, Inc. of Washington, D.C., on March 14, 1983, valued the Property at $515,000. Accordingly, the net equity of the Partnership in the Property is $401,748. It is represented that on the basis of $401,748, the fair market value of the Partnership Interests is $20,087.

5. In summary, the applicant represents that the proposed sale by the Plan would meet the statutory criteria for an exemption under section 408(a) of the Act because: (a) The Trustees have determined that the transactions are appropriate for the Plan and are in the best interests of the Plan's participants and beneficiaries; (b) the sale is a one-time transaction for cash; (c) the Plan will be able to dispose of the investment which is non-income producing for cash and reinvest the proceeds in more liquid income producing investments; (d) the sales price is equal to the most recent sales price paid for Partnership Interest; and (e) no commissions will be paid in connection with the sale.

Notice to Interested Persons: Notice to interested persons will be provided by the applicant within 30 days of the date of publication in the **Federal Register.** Comments and hearing requests are due 60 days after the date of publication.

For Further Information Contact: Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Norquist Salvage Corp., Inc. Profit Sharing Plan (the Plan), Located in Burlingame, California

[Application No. D-4596]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale by the Plan of an interest (the Partnership Interest) in a real estate limited partnership to Norquist Salvage Corp., Inc. (the Employer), the sponsor of the Plan, for $50,000 in cash, provided that the sales price for the Partnership Interest is no less than the fair market value of the Partnership Interest at the time of such sale.

Summary of Facts and Representations

1. The Plan is a qualified profit sharing plan with 89 participants and assets of approximately $400,000 as of December 31, 1982. The Plan is administered by Brandt M. Norquist (the Trustee), who is an officer of the Employer. On June 6, 1982, an investment committee of the Plan headed by the Trustee purchased on behalf of the Plan the Partnership Interest in a California real estate limited partnership known as REYN Fairmont "A" Ltd. (the Partnership) for a purchase price of $50,000. The general partner of the Partnership was REYN Financial, Inc. (REYN), a California corporation which operated as a general partner for a number of other projects similar to the Partnership. The Partnership Interest consists of an undivided 12.5 percent interest in a twelve-month deed of trust note (the Note) in the principal amount of $400,000. The Note was to provide a return of 22 percent over its twelve-month term. The Note was executed July 27, 1982 and provided for monthly payments of $7,333.33 with a balloon payment of all unpaid principal and interest on August 1, 1983. Investors in the Partnership consisted primarily of qualified employees benefit plans and other retirement vehicles in the San Francisco Bay area. The Trustee represents that the Plan's purchase of the Partnership Interest was highly recommended by reliable local investment advisors, that 150 plans and individuals had invested in excess of five million dollars into similar REYN projects, and a careful study of REYN supported the Trustee's opinion at the time of the purchase of the Partnership Interest that such investment would be an exercise of prudent financial responsibility on behalf of the Plan.

2. In September of 1982, REYN encountered major financial difficulties and the Partnership along with eleven other REYN projects went into default. On October 19, 1982, the Partnership filed a voluntary bankruptcy petition in the U.S. Bankruptcy Court for the Northern District of California. On behalf of the Plan the Trustee retained an attorney, Thomas J. LoSavio (LoSavio), to protect the Plan's investment in the Partnership. After a

[1] The Department expresses no opinion as to the applicability of section 414 of the Act in this instance.

review of the facts and circumstances surrounding the bankruptcy of the Partnership, LoSavio gave his opinion on June 21, 1983 that the likelihood of recovery of the Plan's investment in the Partnership was not great enough to justify pursuit of a case on behalf of the Plan on a contingency fee basis. The agent of the Partnership's general partner, Arthur Bigelow, president of REYN, verified to the Trustee on August 1, 1983 that the Partnership, which is no longer in existence, is without any assets. The Trustee represents that the Partnership Interest is now worthless and that there is no likelihood that legal proceedings could recover the Plan's original investment of $50,000 in the Partnership Interest.

3. The Trustee is requesting an exemption to permit the Employer to purchase the Partnership Interest from the Plan for $50,000 in cash. The Partnership Interest represents approximately 12.6 percent of the Plan's total assets as of December 31, 1982. The Trustee represents that, in light of the likelihood that legal action to recover the original investment in the Partnership Interest would not recover the investment, it is appropriate for the Plan to dispose of the Partnership Interest to prevent a hardship on the Plan and its participants and beneficiaries. If the Employer is allowed to purchase the Partnership Interest from the Plan, all of the Plan's rights with respect to the Partnership Interest will be transferred to the Employer. The pursuit of legal recovery efforts will be the responsibility of and at the expense of the Employer and the risk of a complete loss on the original investment of $50,000 will become the Employer's. The Trustee represents that there is no market for the Partnership Interest and that if the Employer does not purchase the Partnership Interest from the Plan the Plan will realize a principal loss of $50,000 and any opportunity for income on that amount for as long as it holds the Partnership Interest.

4. In summary, the Trustee represents that the Employer's purchase of the Partnership Interest from the Plan for $50,000 in cash will satisfy the criteria of section 408(a) of the Act because (1) the purchase of the Partnership Interest will constitute a single cash transaction which will not require any subsequent monitoring; (2) the sale of the Partnership Interest by the Plan is necessary to prevent a principal and interest loss to the Plan; and (3) the purchase of the Partnership Interest by the Employer will allow the Plan to invest in more liquid assets with a definite income potential rather than incurring legal expenses toward a likely loss of the original investment in the Partnership Interest.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

First American Corporation Comprehensive Employee Benefit Plan and Trust (the Plan), Located in Nashville, Tennessee

[Application No. L–4622]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act shall not apply to the proposed transfer of a group term life insurance policy (the Policy) to the Plan by First American Corporation (the Corporation), a party in interest to the Plan, provided that in the event the Corporation claims a deduction on its Federal income tax return for the transfer of the Policy, the deduction will not exceed the fair market value of the Policy on the date of its transfer to the Plan.

Summary of Facts and Representations

1. The Corporation is a bank holding company organized under the laws of the State of Tennessee. The Corporation established the Plan for the benefit of its own employees and the employees of 12 of its subsidiaries that have adopted the Plan.

The Plan, which provides survivor income, death, disability and health care benefits, had 1,962 participants and $1,983,082 in assets as of December 31, 1982. The trustee of the Plan (the Trustee) is First American National Bank of Nashville, a subsidiary of the Corporation.

2. To be eligible for the survivor income benefit under the Plan, a Plan participant was required to have a year of service and to participate in a group term life insurance plan maintained by the Corporation and its subsidiaries under which the participant contributed a fixed dollar amount per month. Pursuant to the group term life insurance plan, the Corporation has been the group policyholder of the Policy number GL–18279 issued by Bankers Life Company of Des Moines (Bankers). The Corporation, with contributions from its affiliates, has made all premium payments and other payments necessary to maintain the Policy in excess of the fixed rate of contributions made by the participants of the group term life insurance plan.

3. The most recent amendment to the Plan, which became effective as of May 1, 1983, adds group term life insurance benefits to Part I of the Plan which previously had provided for survivor income benefits. Pursuant to this amendment, the Plan will become the group policyholder of a group term life insurance policy and will pay all of the premiums and other amounts necessary to provide the benefits under Part I in excess of the contributions which will be required of those participants who elect to participate in Part I of the Plan. By combining the group life insurance benefit with the survivor income benefit, all interest, dividends and experience rating refund payments received on the group insurance policy will be made to the Plan.

In order to implement the latest amendment to the Plan, it is proposed that the Corporation transfer the Policy to the Plan. Following the transfer, the Plan would make the premium payments on the Policy from employee and employer contributions and would receive all dividends, interest and experience rating refunds on the Policy.

4. Reserves under the Policy amounted to $23,763 on January 1, 1983. These reserves for incurred but unreported claims would be held by Bankers for 13 months following cancellation of the Policy and at that time any remaining reserves and the final dividends which had accrued to the date of termination would be paid to the policyholder. In addition to the reserves, $105,000 is being held by Bankers to pay future death claims for persons who are currently disabled. These claims are payable whether or not the Policy is in force. If a disabled person recovers while the Policy is in force, the amount being held to pay the claim is credited to the policyholder. If the Policy is cancelled and a disabled person recovers, no funds revert to the prior policyholder. Both the $23,763 reserves and the $105,000 would transfer with the Policy.

5. The Policy would be transferred to the Plan at no cost to the Plan. The Policy has no readily ascertainable dollar value and no attempt has been made to place a specific value on the Policy due to the many contingencies involved in any value for the Policy. No deduction would be claimed by the Corporation for Federal income tax purposes in connection with the transfer of the Policy unless it were determined by the Internal Revenue Service that the transfer created taxable income for the Corporation, in which case an offsetting

deduction equal to the amount of such income would be claimed. In no event would a deduction be claimed by the Corporation for more than the fair market value of the Policy on the date of its transfer to the Plan.

There are no liabilities associated with the Policy other than the obligation, if the Policy is to be maintained in force, to pay monthly premiums as they become due. The Corporation is not delinquent with respect to the payment of any premium.

6. Bankers reviewed the Policy and determined that in addition to the reserves under the Policy which would transfer with the Policy, there were other advantages to the Plan in accepting the Policy rather than acquiring a new policy. Bankers estimates that a new policy would have gross retention charges of 8.9% of the first year premium as compared with 8.7% on the Policy. Further, during the first year of a new policy, reserve requirements of 12% of the non-pooled portion of the premium would be fulfilled by deducting the amount required from paid premiums, thereby reducing the amount of premium on which dividends would be payable.

Bankers concluded that in view of the potential cost savings if the Policy is transferred, it is in the best interest of the Plan and its participants and beneficiaries for the Trustee to accept the transfer of the Policy to the Plan. The Trustee also considers the transfer of the Policy to be in the best interests of the Plan and its participants and beneficiaries.

7. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because: (a) The transfer of the Policy is a one-time transaction which will be docu nented with Bankers; (b) the transfer of the Policy will result in lower costs to the Plan in providing group term life insurance benefits than would result if the Plan purchased a new group term life insurance policy; (c) Bankers has reviewed the Policy and determined that it would be in the best interests of the Plan and its participants to accept the transfer of the Policy; and (d) the Trustee also has concluded that the transfer of the policy would be in the best interests of the Plan and its participants and beneficiaries.

For Further Information Contact: Mrs. Mary Jo Fite of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

Drs. Bickmore, Boyles & Steinfurth, Inc. Employees' Profit-Sharing Plan (the Profit Sharing Plan) and Drs. Bickmore, Boyles & Steinfurth, Inc. Employees' Pension Plan (the Pension Plan) (collectively, the Plans) Located in Dayton, Ohio

[Application Nos. D–4911 and D–4912]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted and restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the cash sale of a parcel of unimproved real property (the Property) by the Plans to Practical Interests Limited (PIL), a party in interest with respect to the Plans, provided that the price paid for the Property is no less than its fair market value at the time the sale is consummated.

Summary of Facts and Representations

1. The Plans are both defined contribution plans with 13 participants in each. As of March 31, 1983, the Profit Sharing Plan had assets of $763,125.17 and the Pension Plan has assets of $722,803.73. The trustees of the Plans (the Trustees) are John T. Bickmore, M.D., John H. Bolyes, Jr., M.D., and Lee Steinfurth, M.D. Each Trustee owns 25% of the shares of Dayton Ear, Nose & Throat Surgeons, Inc., the sponsor of the Plans (the Sponsor). Arthur Gardikes, M.D., a plan participant, owns the remaining shares of the Sponsor. The Trustees have the right to direct the investment of the Plans' assets.

2. On July 28, 1978, the Plan purchased the Property from Scott H. Cappel, an unrelated party with respect to the Plans, for investment purposes. On the same date, Dr. Boyles purchased an adjacent parcel of real property from Mr. Cappel.[1] The Plans paid $40,000 in cash for the Property with each Plan paying one-half of the purchase price and receiving a one-half interest in the Property. Since the purchase, the Plans have paid $1,286.89 in real estate taxes. The Plans have incurred no other holding costs with respect to the Property. The Property has produced no income for the Plans.

3. The Property has appreciated an average of 4.5% per annum since it was purchased. The assets of the Profit Sharing Plan, excluding its share of the Property, have appreciated an average of 10.7% per annum. The assets of the Pension Plan, excluding its share of the Property, have appreciated an average of 10.9% per annum. The Plans desire to convert the Property into cash in order to invest in assets that will provide a higher rate of return.

4. Accordingly, the Plans propose to sell the Property for $50,000 in cash to PIL. PIL is a partnership which is owned one-third by Dr. Boyles, one-third by Dr. Steinfurth, and one-third by Dr. Gardikes. On August 22, 1983, Donald E. Stout, MAI, appraised the Property and determined that the fair market value of the Property as of that date was $50,000. With respect to the property owned by Dr. Boyles which is adjacent to the Property, in a letter dated January 27, 1984, Mr. Stout states that the value of assemblage does not exist to any degree in this instance because the developer platted the individual lots equal to the optimum size for whatever improvements would normally be constructed in this development. The Plans will incur no costs with respect to the sale of the Property to PIL.

5. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the sales price of the Property was determined by an independent appraiser; and (c) the sale will enable the Plans to divest themselves of a non-income producing asset which is appreciating at a lower rate than the other assets of the Plans.

For Further Information Contact: David M., Cohen of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

Pitometer Associates, Inc. Profit Sharing Plan (the Plan) Located in New York, New York

[Application No. D–5129]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application

[1] In this proposed exemption, the Department expresses no opinion as to whether the Plans' acquisition or holding of the Property violates any provision of Part 4 of Title I of the Act.

of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the making of loans (the Loans) by the Plan under the terms of a loan commitment (the Loan Commitment) of the lesser of $250,000 or an amount not to exceed 25 percent of the net assets of the Plan, to Pitometer Associates, Inc. (the Employer), provided the terms and conditions of the Loans are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

Temporary Nature of Exemption: This exemption is temporary in nature and will expire ten years after the date of the grant.

Summary of Facts and Representations

1. The Employer is an engineering firm which has engaged in business throughout the world since 1904. The Employer specializes in waste water and trunk main surveys, water distribution studies and water measurement and special hydraulic investigations. The Employer maintains its principal offices at 100 Church Street, New York, New York.

2. The Plan is a non-contributory profit sharing plan that was established by the Employer on December 27, 1945 for the benefit of the Employer's eligible employees and their beneficiaries. As of December 31, 1982, the Plan had 43 participants and total assets of $1,460,858. The trustees of the Plan (the Trustees), who serve as directors or officers of the Employer, are Messrs. G. Brewster Cole, William F. H. Gros and William D. Hudson. The Trustees make investment decisions for the Plan.

3. Over the past several years, the Employer has found it necessary to enter the credit market on a short term basis to meet part of its cash flow needs at certain times of the year. These periods generally coincide with the payment by the Employer of periodic bonuses to its employees, or the unexpected arrival of other extraordinary expenses. To offset its cash flow needs, the Employer has entered into loans with third party lenders. Typically, these loans have been made at the prime rate or one-half of one point over the prime rate and have been repaid by the Employer within a six month period.

4. To pay the expenses incident to the operation of its business, the Employer requests an exemption that will allow it to borrow amounts, which when aggregated with other Loans to the Employer that are outstanding, represent the lesser of $250,000 or 25 percent of the net value of the Plan's assets. The Loans will be drawn in varying amounts by the Employer. Any such Loans will be repaid within five years. No Loan entered into under the Loan Commitment will be made or continued ten years from the date of the grant of this exemption.

5. The Loans will carry interest at the rate of one percent above the prime rate charged by the Irving Trust Company (Irving) of New York for similar-type loans. In addition, the interest rate will feature a floor of ten percent per annum. Mr. John Kilminster (Mr. Kilminster), who will serve as the independent fiduciary for the Plan in monitoring the Loans, will have the discretion to adjust the interest rate on a quarterly basis as of the first day of each quarter following the date of the making of a Loan. Mr. Kilminster will be empowered to adjust the interest rate upward and in excess of one percent over Irving prime if the circumstances dictate an increase is required. However, Mr. Kilminster will not have the power to reduce the interest rate below the 10 percent level.

6. As documentation of the transaction, the Plan, the Employer and Mr. Kilminster will enter into a loan agreement (the Loan Agreement) that will set forth the terms and conditions of the Loans as well as the rights of the parties. To evidence each of the Employer's Loans under the Loan Agreement, a separate promissory note will be issued. The note will require repayment over a period of no longer than five years in equal quarterly payments of principal plus accrued interest. Each note may be prepaid in whole or in part at any time and will not subject the Employer to a penalty or premium.

7. The Loans will be secured by a first security interest in all of the accounts receivable (the Receivables) of the Employer. The Plan's security interest in the Receivables will constitute a continuing general lien on all such Receivables, including those arising or coming into existence after the date the Loan Commitment is executed until the Loans are paid in full. The Plan's security interest in the Receivables will be granted pursuant to a security agreement and UCC financing statement which will be executed and filed with the New York Secretary of State. At all times, the value of the collateral will exceed 150 percent of the outstanding balance of the Loans. If the value of the collateral falls below 150 percent of the outstanding balance of the Loans, Mr. Kilminster will require that the Employer pledge additional security.

8. A description of the Employer's Receivables has been provided by Mr. John W. Lappin (Mr. Lappin), the Employer's accountant. Although Mr. Lappin describes both firm and unbilled Receivables in his letter to the Department dated November 10, 1983, the Employer has represented that it will pledge only firm Receivables as security for the Loans.

In his letter, Mr. Lappin states that in 1981, the Employer's balance sheet reflected year-end Receivables of $721,155 which included unbilled Receivables of $165,991. In 1982, Mr. Lappin represents, the year-end figures were $535,063 including unbilled Receivables of $143,354. Mr. Lappin explains that the figures for both years, including the unbilled amounts, are placed on the Employer's books after field work required on any given contract has been completed and the right to receive payment is firm. According to Mr. Lappin, the unbilled Receivables represent the final payments to be made under a given contract and are the equivalent of a "retainage" which is customary in most engineering and construction contracts.

Mr. Lappin also states that historically, the Employer's Receivables are very secure since the Employer's clientele consists largely of governments, municipalities and public authorities. During the year 1981, Mr. Lappin represents that the Employer collected the Receivables in full on the average, within 60 days of the time they were due. In 1982, Mr. Lappin states that the collection period was reduced to an average of 45 days.

9. As discussed above, Mr. Kilminster, an attorney having experience in the areas of estate administration and taxation and who has no present relationship with either the Plan or the Employer, has agreed to serve as the independent fiduciary for the Plan with respect to approving, enforcing and collecting the Loans. Mr. Kilminster's appointment is set forth in the Loan Agreement. In addition to the independent fiduciary duties described previously, Mr. Kilminster will have authority and responsibility for: (a) Reviewing Employer and Plan financial statements; (b) approving or disapproving amounts drawn by the Employer; (c) requesting and receiving monies from the Trustees for the purpose of making disbursements to the Employer or paying fees or expenses; (d) obtaining and holding promissory notes and other documents; (e) collecting principal and interest payments on the Loans; (f) enforcing collection on the promissory notes and the secured party's rights; (g) accelerating any Loan if default occurs under a promissory note, the security agreement or the Loan Agreement or if the conditions of the

exemption are not satisfied or maintained; and (h) taking any steps that are necessary to protect the interests of the Plan.

Mr. Kilminster states that he intends to treat each request by the Employer for a Loan as a separate transaction. He indicates he would feel constrained to approve these requests unless the circumstances which might affect the Employer's financial position and past loan history are not fully examined. He also states that whenever any Loan is proposed (or while any earlier Loan remains outstanding) he will periodically confirm that the position of the Receivables has not changed in any material way that may be detrimental to the Plan's security.

Mr. Kilminster states that he has reviewed the exemption application and the various documents that are to be executed at the time any individual Loan is undertaken. Based on the terms set forth therein, he considers the Loans to be an appropriate and suitable investment for the Plan and its participants and beneficiaries. He also feels that there are adequate safeguards to ensure that the Plan will be fully protected.

Among the factors considered in determining the suitability of this type of investment for the Plan, Mr. Kilminster states that he has examined the overall investment portfolio of the Plan and its cash flow need as reflected in the Plan's balance sheets for the years 1979–1982. Since the Plan's portfolio consists basically of stocks and bonds of a high investment quality, Mr. Kilminster asserts that the Plan's cash flow needs are very limited. In view of this situation, he thinks the addition of the Loans will comport very well with the basic diversification and investment scheme of the Plan since the notes to be given are in many respects similar to the corporate bonds already maintained in the Plan's portfolio. In fact, he states, they will add a desired element since they will be of relatively short duration and thus Plan assets will not be locked into a specified interest rate for extended periods of time.

In addition, Mr. Kilminster regards the interest rate that each promissory note will bear to be in the Plan's best interest because it is higher than what is available in the marketplace for investments of a comparable grade. He states that he has examined the Employer's Receivables and shares Mr. Lappin's opinion that the Receivables are an appropriate form of collateral. He thinks the Receivables will render the Plan fully secure in the event of a default on any Loan.

Mr. Kilminster also believes the 25 percent limitation on the amount of the Plan's assets that can be borrowed and the Plan's first security interest in the Receivables are adequate and prudent safeguards which fully protect the Plan. Additional safeguards, Mr. Kilminster notes, are provided to the Plan in the powers afforded him as the independent fiduciary.

10. In summary, it is represented that the proposed transaction will satisfy the statutory requirements for an exemption under section 408(a) of the Act because: (a) The Loans will be approved and administered by Mr. Kilminster, who will monitor the Loans and also be authorized to protect the interests of the participants and beneficiaries of the Plan; (b) the Loans will be secured by a first security interest in all of the Receivables of the Employer; (c) any Loan made under the Loan Agreement will be limited to five years' duration; and (d) the Loans will at no time exceed 25 percent of the assets of the Plan.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 27th day of March 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 84–8565 Filed 3–29–84; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[84–28]

NASA Advisory Council, Space Applications Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Applications Advisory Committee, Informal Advisory Subcommittee on Microgravity Science and Applications.

DATE AND TIME: April 2, 1984, 9 a.m. to 5 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 226B, 600 Independence Avenue SW., Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Dudley G. McConnell, Code E, National Aeronautics and Space Administration, Washington, D.C. 20546 (202/453–1420).

SUPPLEMENTARY INFORMATION: The Informal Advisory Subcommittee on Microgravity Science and Applications will meet to develop a position paper for microgravity science and applications. The Subcommittee chaired by Dr. Robert F. Sekerka, is comprised of five members

The meeting will be open to the public up to the seating capacity of the room (approximately 10 people including the Subcommittee members and participants). The meeting has been scheduled for this date to coincide with an already-scheduled meeting of the full NAC Space Applications Advisory Committee to be held on April 3 and 4, 1984.

Type of Meeting: Open.

Dated: March 26, 1984.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 84-8506 Filed 3-29-84; 8:45 am]

BILLING CODE 7510-01-M

[84-29]

NASA Advisory Council, Space Applications Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Applications Advisory Committee, Informal Advisory Subcommittee on Remote Sensing.

DATE AND TIME: April 4, 1984, 1 p.m. to 3 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 226B, 600 Independence Avenue, SW., Washington, DC. 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Dudley G. McConnell, Code E, National Aeronautics and Space Administration, Washington, DC. 20546 (202/453-1420).

SUPPLEMENTARY INFORMATION: The Informal Advisory Subcommittee on Remote Sensing was established to investigate the details of the NASA program in remote sensing on behalf of the Committee and report its findings to the Committee. The Subcommittee chaired by Mr. Ernest L. LaPorte is comprised of four members.

The meeting will be open to the public up to the seating capacity of the room (approximately 10 people including the Subcommittee members and participants). The meeting has been scheduled for this date to coincide with an already-scheduled meeting of the full NAC Space Applications Advisory Committee to be held on April 3 and 4, 1984.

Type of Meeting: Open.

Agenda:

April 4, 1984

1 p.m.—Review the Earth Radiation Budget Experiment.

2 p.m.—Review the Upper Atmosphere Research Satellite program.

3 p.m.—Adjourn.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 84-8505 Filed 3-29-84; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION OF THE ARTS AND THE HUMANITIES

Office of the General Counsel

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506:

1. Date: April 18-19, 1984.
Time: 8:30 a.m. to 5:30 p.m.
Room: M-07.
Program: This meeting will review applications submitted for the Humanities Projects in Museums and Historical Organizations Program, Division of General Programs, for projects beginning after October 1, 1984.

2. Date: April 19-20, 1984.
Time: 9:00 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review applications submitted for Special Projects/Programs Development Programs, Division of General Programs, for projects beginning after October 1, 1984.

3. Date: April 25, 1984.
Time: 8:30 a.m. to 6:00 p.m.
Room: 315.
Program: This meeting will review Summer Seminars for College Teachers applications in Politics and Society, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.

4. Date: April 26, 1984.
Time: 8:30 a.m. to 6:00 p.m.
Room: 315.
Program: This meeting will review Summer Seminars for College Teachers applications in History II, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.

5. Date: April 26-27, 1984.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for the Humanities Panel in Media, Division of General Programs, for projects beginning after October 1, 1984.

6. Date: April 27, 1984.
Time: 8:30 a.m. to 6:00 p.m.
Room: 315.
Program: This meeting will review Summer Seminars for College Teachers applications in English and American Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.

7. Date: April 30, 1984.
Time: 8:30 a.m. to 6:00 p.m.
Room: 315.
Program: This meeting will review Summer Seminars for College Teachers applications in the Arts, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.

The proposed meetings are 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 meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or 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 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 these meetings will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 786-0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 84-8615 Filed 3-29-84; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel Social and Developmental Psychology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science

Foundation announces the following meeting:

Name: Advisory Panel for Social and Developmental Psychology.

Date and Time: April 18–20, 1984: 9:00 a.m. to 5:00 p.m. each day.

Place: Room 338, National Science Foundation, 1800 G Street, NW., Washington, D.C.

Type of Meeting: Part Open—Open April 19—9:00 a.m.—11:00 a.m. Closed April 18—9:00—5:00. Closed April 19—11:00—5:00. Closed April 20—9:00—5:00.

Contact Person: Dr. Jean B. Intermaggio, Program Director for Social and Developmental Psychology, Room 320, National Science Foundation, Washington, D.C. 20550, telephone/202–357–9485.

Summary Minutes: May be obtained from the contact person as listed above.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in Social and Developmental Psychology.

Agenda: Open—April 19, 9:00 a.m.—11:00 a.m. General discussion of research trends and opportunities in Social and Developmental Psychology.

Closed—to review and evaluate research proposals as part of the selection process for awards.

Reason for Closng: The proposal being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determination by the Director, NSF, on July 6, 1979.

Dated: March 26, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84–8508 Filed 3–29–84; 8:45 am]

BILLING CODE 7555–01–M

DOE/NSF Nuclear Science Advisory Committee; Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: DOE/NSF Nuclear Science Advisory Committee.

Date, Time and Place: April 16, 1984—9:00 a.m.–6:00 p.m., Bldg. 26, Room 414, Laboratory for Nuclear Science and Engineering, Massachusetts Institute of Technology, Cambridge, Massachusetts.

April 17, 1984—9:00 a.m.–4:30 p.m., Conference Room, Bates Linear Accelerator, Middleton, Massachusetts.

Type of Meeting: Open.

Contact Person: Dr. Harvey B. Willard, Head, Nuclear Science Section, National Science Foundation, Washington, D.C. 20550, 202/357–7993.

Summary Minutes: May be obtained from Ms. Dawn Frohlich, Physics Division, National Science Foundation, Washington, D.C. 20550.

Purpose of Committee: To provide advice on a continuing basis to both DOE and NSF on the management of and long range planning for basic nuclear science in the United States.

Agenda:

April 16, 1984—9:00 a.m.–6:00 p.m.

Presentations and discussions concerning the physics opportunities that can be addressed with a relativistic heavy ion collider facility. A round table/panel discussion of the accelerator performance criteria necessary for execution of the highest priority lines of research.

April 17, 1984—9:00 a.m.–4:30 p.m.

Continuation of above discussions, tour of Bates Facility, Subcommittee activities, and other business.

Dated: March 26, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84–8510 Filed 3–29–84; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Ecology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Ecology.

Date and Time: April 16 and 17, 1984—8:30 a.m. to 5:00 p.m. each day.

Place: Room 1141, National Science Foundation, 1800 G St., NW., Washington, D.C. 20550.

Type of Meeting: Closed.

Contact Person: Dr. Nancy L. Stanton, Program Director, Ecology (202) 357–9734, Room 1140, National Science Foundation, Washington, D.C. 20550.

Purpose of Panel: To provide advice and recommendations concerning support for research in ecology.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: March 26, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84–8509 Filed 3–29–84; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Availability of Reports, Recommendations and Responses

Reports Issued:

Marine Accident Report: Ramming of the Bayou Steel Company Pier Facility Two Miles South of LaPlace, Louisiana, by the Dutch Bulk Carrier M/V AMSTELVOORN, September 26, 1982 (NTSB/MAR–83/08) (NTIS Order No. PB83–916408).

Marine Accident Report: Ramming of the Poplar Street Bridge by the Towboat M/V CITY OF GREENVILLE and its Four-Barge Tow, St. Louis, Missouri, April 2, 1983 (NTSB/MAR–83/10) (NTIS Order No. PB83–916410).

Marine Accident Report: Sinking of the Charter Fishing Boat JOAN LA RIE III Off Manasquan Inlet, New Jersey, on October 24, 1982 (NTSB/MAR–84/02) (NTIS Order No. PB84–916402).

Highway Accident Report: Multiple Vehicle Collisions and Fires Under Limited Visibility conditions, Interstate Route 75, at Ocala, Florida, February 28, 1983 (NTSB/HAR–83/04) (NTIS Order No. PB83–916204).

Railroad Accident Report: Derailment of Burlington Northern Railroad Company Freight Train No. MTC–0718, near Crystal City, Missouri, July 18, 1983 (NTSB/RAR–84/01) (NTIS Order No. PB84–916301).

Railroad Accident Reports: Brief Format, Issue Number 2—1982 (NTSB/RAB–83/05) (NTIS Order No. PB83–917205).

Railroad Accident Reports: Brief Format, Issue Number 3—1982 (NTSB/RAB–84/01) (NTIS Order No. PB84–917201).

Note.—Reports may be ordered from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, for a fee covering the cost of printing, mailing, handling, and maintenance. For information on reports call 703–487–4650 and to order subscriptions to reports call 703–487–4630.

Recommendations to

Aviation—*Federal Aviation Administration: Feb. 21: A–84–7:* In conjunction with the United Kingdom Civil Aviation Authorities, evaluate Rolls-Royce Modification 1736 and 1719 as presented in Rolls-Royce Dart Aero Engine Service Bulletin Numbers Da–72–423 and Da–72–443, respectively, for modification of flame tube suspension systems in Rolls Royce Dart 520 and 530 series engines to determine which of these modifications are appropriate for mandatory installation. Upon completion of this review, require the installation of the appropriate modification in applicable Rolls Royce Dart 520 and 530 series turboprop engines at the earliest feasible date. *Feb. 8: A–84–10:* Issue an Airworthiness Alert

(Advisory Circular 43–16) to operators of Piper model PA–28 airplanes advising of the hazard of operating high-time engines in very cold weather conditions without winterization kits on crankcase breather lines. *A–84–11:* Evaluate the design of crankcase breather line installations of all Piper model 28 airplanes and piper models with similar engine installations to determine the need to provide icing protection on crankcase breather tubes for cold weather operations, and take appropriate action to initiate a retrofit of those models of airplanes that need such protection. *Feb. 8: A–84–12:* Require that after December 3, 1984, only devices which meet the standards of TSO–C69a will be acceptable for installation on newly manufactured airplanes which are to be equipped with passenger evacuation devices. *A–84–13:* Specify a date by which airplane passenger evacuation devices which do not meet the standards of TSO–C69a must be taken out-of-service or upgraded to meet the standards of TSO–C69a. *Mar. 14: A–84–14:* Issue an air carrier maintenance bulletin to emphasize: (1) the need for air carrier airworthiness inspectors to require during the certification process that the air carrier's manuals and maintenance organizational structure conform to regulatory requirements regarding the separation of maintenance and inspection functions, and (2) the need to conduct surveillance in a manner that will verify that the air carrier is performing maintenance/inspections functions and duties in accordance with the requirements. *A–84–15:* Issue air carrier maintenance and operations bulletins to emphasize to air carrier airworthiness and operations inspectors the regulatory requirements related to the recording of mechanical irregularities in aircraft maintenance logs and the need for proper surveillance to confirm conformity with the requirements, including scrutiny of aircraft maintenance logs and other maintenance records to verify that applicable maintenance corrective actions correlate to mechanical irregularities recorded by flightcrews in the aircraft maintenance logs. *Mar. 9: A–84–16:* Extend the terms of FAA Order 8440.5A Section 5, Waiver of Section 91.79(a) and (c), Motion Picture and Television Flight Operations Manual, to require an FAA-approved flight operations manual for all types of aircraft.

Highway—*Motor Vehicle Manufacturers Association: Feb. 23: H–84–3:* Review current state-of-the-art technology related to motor vehicle fuel systems and determine which elements of that technology might be used in the design, engineering, placement in the vehicle, and protection of fuel system components to reduce breaches of the fuel system and to minimize fuel spillage if the fuel system is breached. Consider high-speed impacts and underride/override impact dynamics in selecting effective countermeasures. *H–84–4:* After selecting the technology to enhance fuel system integrity, strongly encourage all Association members to employ that technology in the manufacture of motor vehicles.

Marine—*Saint Lawrence Seaway Development Corporation: Feb. 8: M–84–1:* Establish a lighted range at Point Vivian for the channel centerline between Comfort Island Shoal and Pullman Island Shoal. *M–84–2:* Restrict large vessels from attempting to meet and pass at night in the Saint Lawrence River, American Narrows Channel, between Comfort Island Shoal and Pullman Shoal until a lighted range can be established on Point Vivian which accurately delineates the centerline of the channel between those shoals. *M–84–3:* Publish in suitable form for use by mariners the available Saint Lawrence River current and velocity survey measurement data, and update such information as additional survey data become available.

Railroad—*Burlington Northern Railroad Company: Feb. 21: R–84–4:* Issue instructions which embody the guidelines of the Association of American Railroads, the Federal Railroad Administration, and the Railway Progress Institute Track Train Dynamics program for train makeup to those personnel who are involved in the makeup of trains and provide training in the instructions. *R–84–5:* In situations where train makeup does not conform with the guidelines of the Association of American Railroads, the Federal Railroad Administration, and the Railway Progress Institute Track Train Dynamics program, advise train engineers so that they can take compensating action in handling the train. *Feb. 22: R–84–8:* Revise and enforce inspection and maintenance requirements for maintenance-of-way cars to be moved in revenue freight trains to make the cars suitable for safe operation up to the maximum speeds at which the cars will be operated. *R–84–9:* Revise the procedure for the issuance and cancellation of a restricting train order due to high ambient temperatures to require that the order be issued for a specific restricting speed and be cancelled by the dispatcher when the ambient temperature falls below a predetermined level.

Association of American Railroads: Feb. 21: R–84–6: Advise its members of the consequences of improper distribution of loaded and empty cars in trains as illustrated by the derailment on the Missouri Pacific Railroad on July 25, 1981, near Jacksonville, Texas; the derailment on the Illinois Central Gulf Railroad on September 28, 1982, near Livingston, Louisiana; and the derailment on the Burlington Northern Railroad on May 6, 1983, near Hallet, Oklahoma. *R–84–7:* Form an Advisory Committee to develop a methodology for the practical application in railroad operations of the guidelines on train makeup, train handling, and engineer training developed in the joint Association of American Railroads, Federal Railroad Administration, Railway Progress Institute Track Train Dynamics program. *Feb. 22: R–84–11:* Urge its member railroads to review and revise as necessary their procedures for inspecting, maintaining, and operating maintenance-of-way cars to be moved in revenue freight trains so as to prevent accidents similar to that which occurred near Crystal City, Missouri, on July 18, 1983. *R–84–12:* Notify the Safety Board of the results of the reviews by its member railroads of their procedures for inspecting, maintaining, and operating maintenance-of-way cars to be moved in revenue freight trains. *Mar. 15: R–84–13:* Immediately advise member railroads, shippers, and receivers that handle hazardous materials in tank cars of the accident at Baton Rouge, Louisiana, on July 30, 1983, and of the subsequent findings regarding improperly positioned excess flow valves for protection against an undesired outward flow of hazardous materials from tank cars during loading, unloading, maintenance, or repair operations. *R–84–14:* Immediately issue a service bulletin to all Association of American Railroads-certified facilities emphasizing the need to verify the proper installation, maintenance, and testing of excess flow valves on tank cars.

Federal Railroad Administration: Feb. 22: R–84–10: Require that maintenance-of-way cars meet the Railroad Freight Car Safety Standards or, in the alternative, impose operating restrictions on maintenance-of-way cars being moved in revenue freight trains to compensate for the actual mechanical condition of the cars. *Mar. 15: R–84–15:* Immediately initiate inspections of tank cars equipped with excess flow valves to determine the extent to which these tank cars may have improperly positioned excess flow valve seats, determine the cause of deficient conditions found, and require correction of deficiencies before inspected tank cars are returned to service.

Chemical Manufacturers Association: Mar. 15: R–84–16: Immediately advise its members of the hazardous materials accident at Baton Rouge, Louisiana, on July 30, 1983, and of the subsequent findings regarding improperly positioned excess flow valve seats, and alert them not to rely upon tank car excess flow valves for protection against an undesired outward flow of hazardous materials from tank cars during loading, unloading, maintenance, or repair operations.

The American Short Line Railroad Association: Mar. 19: R–84–16: Immediately advise its members of the hazardous materials accident at Baton Rouge, Louisiana, on July 30, 1983, and of the subsequent findings regarding improperly positioned excess flow valve seats, and alert them not to rely upon tank car excess flow valves for protection against an undesired outward flow of hazardous materials from tank cars during loading, unloading, maintenance, or repair operations.

Pipeline—*Municipality of Anchorage, Alaska: Mar. 22: P–84–5:* Require contractors and other persons who perform excavation activities to notify, at least 48 hours in advance of beginning excavations, operators of nearby underground facilities either by contacting each operator or by providing notice to a one-call excavation notification system. *P–84–6:* Encourage and assist operators of underground facilities in the Anchorage area to develop and implement a one-call excavation notification and damage prevention system.

Note.—Single copies of these recommendation letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594. Please include recommendation number in your request. Copies of recent recommendations are free of charge while supplies last. Recommendations that must be photocopied will be billed at a

cost of 14 cents per page ($1 minimum charge).

Recommendation Responses From

Aviation—*Federal Aviation Administration: Feb. 23: A–83–61:* Is investigating the susceptibility of the hydraulic tubing in Fairchild (Swearingen) airplanes to stresss of fatigue cracking. *Mar. 15: A–81–100:* The main cabin door markings of Nord 262 aircraft, operated by certificated air carriers, conform to those described in the flight attendant's manual. *Mar. 13: A–83–56:* Is conducting a special certification review of Mitsubishi MU–2 airplanes. *Mar. 15: A–82–132:* February 1984 issue of the General Aviation Airworthiness Alerts (Advisory Circular 43–16) emphasizes the proper maintenance and inspection of mixture control linkage assemblies of general aviation airplanes.

Highway—*Federal Highway Administration: Feb. 17: H–81–54:* Efforts to expedite, complete, validate, and increase the use of barrier impact computer simulation programs are underway. *Mar. 5: H–78–2:* Specifications for the design of dolphins, fenders, and other energy-absorption and/or vessel redirection devices for the protection of both bridge and vessel during an accidental impact have been developed by the Coast Guard through a research contract and have been submitted to FHWA for further action. *Mar. 19: H–82–51:* The issue of distance gap between the end of railroad-highway crossing gates and the middle of the road is addressed in the Tariff Control Devices Handbook issued in November 1983. *H–83–52:* Is studying the use of median barriers and channelizing devices at railroad/highway grade crossing to deter motorists from driving around lowered railroad crossing gates.

Rhode Island Department of Transportation: Feb. 17: H–83–51: Will provide information on the misuse of child safety seats to persons who instruct seat users on the use these seats.

Washington State Superintendent of Public Instruction: Feb. 17: H–83–67: Will require that any schoolbus interior that is refurbished must be done so in compliance with Federal Motor Vehicle Safety Standard 222.

American Association of Motor Vehicle Administrators: Feb. 21: H–84–2: Checked various State driver manuals and some privately issued ones and did not find any information about driving in smokes of any kind—either natural or chemical. Will discuss the smoke problem at it International Driver License, Driver Control Workshop.

State of New Jersey: Feb. 22: H–82–18: The Conference of Northeastern Governors passed a resolution calling for a uniform regional minimum drinking age at its December meetng. Raising the drinking age in New Jersey has resulted in a reduction in drunk driving fatal accidents.

Research and Special Programs Administration: Mar. 7: H–83–29: RSPA and FHWA are reviewing and rewriting the regulations governing the manufacture, maintenance, repair, and retest of DOT Specification MC–306, MC–307, and 312 cargo tanks. *H–83–30:* RSPA and FHWA have jointly funded an ongoing research study involving the integrity of DOT Specification MC–307/312 cargo tanks.

State of Massachusetts: Mar. 16: H–83–51: Will continue to emphasize the misuse of child passenger restraints in its safety programs.

California Highway Patrol: Feb. 29: H–83–67: Although supportive of the concept of upgrading seats and restraining barriers of pre-1973 type 1 schoolbuses to the specifications of Federal Motor Vehicle Safety Standard 222, implementation would be a problem because of product liability and costs.

Marine—*C.L. Dill Co., Inc.: Mar. 9: M–80–49 through –51:* Has no record of receiving recommendations regarding employee supervision at tank batteries and other hazardous locations in oil fields; employee training in emergency procedures; and employee attendance at safety meetings.

Marine Transport Lines, Inc.: Mar. 13: M–83–53: The Military Sealift Command intends to supply exposure suits to the nine Sealift Class Tankers which Marine Transport Lines operates as well as all contract operated tankers.

Faris, Ellis, Cutrone & Gilmore (representing the owner of the M/V TESTBANK): Mar. 14: M–81–36: Will forward recommendation regarding on-deck placement of containers with dangerous cargo on board vessels to the TESTBANK owners.

Texaco, U.S.A.: Mar. 12: M–80–44 through –48: Has ordered and has applied for permits to install signs warning where active pipelines cross navigable waters of the Mississippi River Delta to prohibit mooring with spuds or anchors and warning against smoking at tank batteries.

New Orleans Steamboat Company: Mar. 16: M–81–34: The Natchez was guarding both the VTS channel and the bridge-to-bridge channel at the time of the accident with the Exxon Baltimore on Mar. 29, 1980. *M–81–35:* The Natchez has always participated fully in VTS.

American Bureau of Shipping: Feb. 14: M–84–9: Issued a revised circular recommending that surveyors consider structural gaugings at the drydocking intervals, which is very 30 months in the present ABS Rules, after a vessel reaches 20 years of age. *M–84–10:* Issued a revised circular indicating the allowable thicknesses for wastage at which hatch covers should be considered for extensive renewals or replacement of sections, and requesting surveyors to carry out gaugings of hatch covers at special surveys whenever there is an indication upon examination of serious general wastage. *M84–11:* Issued a circular to require the examination of the tops and bottoms of hatch covers visually for wastage at all annual surveys.

Trans-Atlas Marine Corporation: Feb. 24: M–81–81: Participates in the New Orleans VTS System. All pilots are trained and cognizant of the inland rules of the road and the New Oreleans VTS System, and a notice to all pilots and crews about the VTS system is posted in the wheelhouse of all vessels.

U.S. Coast Guard: Feb. 22: M–83–45 and –46: Does not feel that modification of the raked bow barge design would have a significant effect on the extent of collision damage to other vessels and structures because of the amount of energy that must be absorbed. The use of extensive fendering would most likely result in some reduction in the extent of collision damge. *Feb. 23: M–83–79:* Is considering changing 46 CFR 185.25–1(d) to require a safety orientation announcement and a general list of conditions under which passengers will be requested or required to don life preservers on board small passenger vessels that operate on other than protected waters. *M83–80:* A regulatory requirement specifying that life preservers be worn by children when departing protected waters is too broad and cannot be justified. *M–83–81:* Is considering changing 46 CFR 180.25–5 to require a life preserver suitable for each person carried on board a vessel for any voyage. *Mar. 19: M–83–82:* Does not concur with the recommendation to establish a requirement that self-propelled vessels of 1,600 gross tons or greater navigating in narrow rivers, channels, and harbors of the United States have the steering gear compartment manned by a competent person trained to switch the steering gear to all alternate modes of control and operation. A properly designed, constructed, and maintained main and auxiliary steering system obviates the need for manning of the steering gear compartment. *M–83–83:* Issued a Notice of Proposed Rulemaking (NPRM) on Oct. 14, 1983, proposing that all self-propelled vessels over 1,600 gross tons be required to conduct emergency steering drills at least once every 3 months and to have instructions for steering gear changeover procedures permanently displayed on the navigating bridge and in the steering gear compartment. *M–80–42:* The NPRM published on Oct. 14, 1983, proposes to require each self-propelled vessel of 1,600 gross tons or greater navigating in confined or congested waters of the United States to have operating instructions and a block diagram that clearly and simply explain the changeover procedures for the remote steering gear control systems and steering gear power units on the vessel. *M–83–3:* The recommendation to have operating instructions for vital emergency equipment and vital ship data, such as stability information, printed in a language which is readily understood by the ship's officers was raised at a meeting of the International Maritime Organization Subcommittee on Ship Design and Equipment in Feb. 1984. *Mar. 2: M–83–50:* Existing boarding requirements for inflatable liferafts will be improved under provisions of the revised Chapter III on Lifesaving Systems and Arrangements to the Safety of Life at Sea Convention (SOLAS), 1974. *M–83–51:* The final rule published on Feb. 7, 1984, regarding requirements for vessels to carry exposure suits did not exempt vessels operating between 35 degrees north latitude and 35 degrees south latitude on the outer continental shelf in the Atlantic Ocean because the water temperature there may be below 60 degrees in the winter. *M–83–52:* The final rule published on Feb. 7, 1984, requires tank vessels, cargo and miscellaneous vessels, mobile offshore drilling units, offshore supply vessels, and

oceanographic vessels to have exposure suits for each crewmember when operating in areas where the water temperature is below 60 degrees. Small passenger vessels are not included in any plans for exposure suit requirements at this time. The revision of SOLAS Chapter III includes provisions for individual thermal protection for everyone on board ships with open life boats. Our regulation proposals to incorporate the new SOLAS requirements will include provisions for this equipment on oceangoing passenger vessels.

The Barge and Towing Industry Association: Feb. 29: M–83–99: Informed its members of the benefits of having formal qualification procedures to insure that operators piloting towing vessels have sufficient experience and knowledge regarding all areas of their assigned routes to navigate safely in all prevailing waterway conditions.

Federal Highway Administration: Mar. 5: M–81–20: Because of the low probability of occurrence of ship-bridge collisions, the extraordinary costs required to design bridge piers to withstand the massive forces associated with the impacts of large ships, and the limited funds available to carry out the national bridge program, the FHWA and the Coast Guard have agreed that it is usually neither cost-effective nor desirable to design all water piers in navigable waters to withstand the full impact loads of modern vessels. Instead, each bridge crossing is being evaluated on by case-case basis and the degree of pier protection determined for the particular navigational conditions associated with the crossing. *M–81–21:* Does not have the resources to conduct a study to determine which existing bridges over the navigable waterways of United States ports and harbors are not equipped with adequate structural pier protection; however, all highway bridges are now being inspected regularly by the respective highway agencies. *M–81–22:* The results of each bridge inspection are provided to the appropriate bridge authorities for the review and subsequent action to correct identified deficiencies.

United States Power Squadrons: Mar. 10: M–83–75: References to alcohol usage will be included in the rewritten Boating Course given to 40,000 to 50,000 persons annually.

Railroad—*The Kansas City Southern Railway Company, Louisiana & Arkansas Railway Company: Feb. 23: R–83–60 and –61:* While we will continue to closely monitor the performance of our operating employees in regard to intoxicants or narcotics, we do not plan to advise others of the contents of our instructions and procedures or the number of or outcome of checks that are made by supervisors.

Burlington Northern Railroad: Mar. 8: R–84–4: Placement of cars in a train cannot always conform to the guidelines of the Association of American Railroads (AAR), the Federal Railroad Administration (FRA), and the Railway Progress Institute Track Train Dynamics because of craft work agreements, blocking requirements, and train placement restrictions for placarded cars. *R–84–5:* BN's air brake and train handling rules include specific instructions regarding appropriate train handling and operation procedures with specific reference to train makeup. *Mar. 8: R–84–8:* Currently established inspection and maintenance instructions for maintenance-of-way cars will be reissued to all mechanical personnel. Regional field inspectors will be instructed to give increased attention to maintenance-of-way cars during their routine inspections to insure this equipment conforms to all applicable AAR and FRA rules and procedures. *R–84–9:* Has formulated guidelines to assist in reduction of track buckling occurrences which will alleviate the necessity for issuing a train order regarding ambient temperatures.

State of California: Mar. 2: R–83–45: Has requested the Public Utilities Commission to respond to the recommendation concerning the State's operating practice inspections of railroad operations.

Southern Pennsylvania Transportation Authority: Mar. 8: R–82–111: Will not be modifying the inward opening passenger doors in the existing diesel rail cars to facilitate passenger evacuation in emergency situations because the rail diesel cars are being taken out of service and will not be returned to service.

Association of American Railroads: Feb. 14: R–83–108 and –109: Has distributed a circular to member railroads concerning abnormal weather conditions that may adversely affect train movements.

Terminal Railroad Association of St. Louis: *Mar. 20: R–83–60:* Forwarded documents regarding supervisory procedures at crew-change terminals for determining that operating department employees coming on duty at any hour of the day are physically fit and capable of complying with all pertinent operating rules. *R–83–61:* Forwarded copies of training courses attended by railroad officers.

Pipeline—El Paso Natural Gas Company: *Mar. 2: P–83–31:* Each plant superintendent is responsible for reviewing his maintenance records at least once per month. *P–83–32:* All plants that operate reciprocating compressors will incorporate in their maintenance and operations manual appropriate torquing specifications for each compressor in critical service. *P–83–33:* Plant maintenance personnel will be instructed and tested in torquing procedures. *P–83–34:* All emergency plant plans will be reviewed to make sure that they contain proper instructions that explain the intended use and operation of all shutdown and blowdown facilities. *P–83–35:* Employees will go through a simulated fire drill and be tested at least once per year on emergency procedures. *P–83–36:* Emergency blowdown activators for compressor plants A & B at Blanco Station will be installed in 1984. *P–83–37:* It would be impossible to familiarize a volunteer fire department on a continuing basis because of the high turnover in such departments. Will use our own trained personnel to shut down and blow down the plant and contain the fire with existing firefighting facilities.

Alaska Public Utilities Commission: *Mar. 1: P–84–1:* It is more appropriate to implement one-call systems on a regional rather than a statewide basis where utilities have installed underground facilities for distribution of flammable materials. *P–84–2:* Would support legislation requiring persons excavating near underground utilities to contact the one-call system operator.

Note.—Single copies of these response letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594. Please include respondent's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page ($1 minimum charge).

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

March 27, 1984.

[FR Doc. 84–8564 Filed 3–29–84; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Panel for the Decontamination of Three Mile Island, Unit 2

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island, Unit 2 will be meeting on April 12, 1984, from 7:00 p.m. to 10:00 p.m. at the Holiday Inn, 23 South Second Street, Harrisburg, Pennsylvania 17101. The meeting will be open to the public.

The purpose of this meeting is for the Advisory Panel to discuss issues pertaining to the ongoing cleanup activities at the Three Mile Island Nuclear Station, Unit 2.

Further information on the meeting may be obtained from Dr. Michael T. Masnik, Three Mile Island Program Office, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301/492–7466.

Dated: March 27, 1984.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84–8620 Filed 3–29–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–250 and 50–251]

Florida Power and Light Company; Exemption

I.

Florida Power and Light Company (the Licensee) is the holder of Facility Operating License Nos. DPR–31 and DPR–41 which authorize the operation of the Turkey Point Plant, Unit Nos. 3 and 4 (the facilities) at steady-state power level not in excess of 2200 megawatts thermal. The facilities are pressurized water reactors (PWRs) located at the licensee's site in Dade County, Florida.

II

Section III.A of Appendix R to 10 CFR Part 50 requires "two separate water supplies shall be provided to furnish necessary water volume and pressure to the main fire loop." In the case of Turkey Point Plant this required that Florida Power and Light Company (FPL) must, as a minimum (1) modify the existing on-site 500,000-gallon water tank by installing a new standpipe to dedicate a minimum of 300,000 gallons of capacity of that tank to fire protection purposes; (2) design, engineer, procure, and construct a new on-site water tank of 750,000-gallon capacity, to include a redundant water supply of at least 300,000 gallons; and (3) install an automatic starting diesel fire pump to supply the fire systems.

The schedule, set out in § 50.48(c)(2) applies to the installation of the modifications described above. That schedule requires that those modifications be installed nine months after the effective date of the rule, or by November 19, 1981. By letter dated November 9, 1981, the NRC granted FPL an exemption form the schedular requirements of 10 CFR 50.48(c)(2). The exemption extended the date by which Turkey Point Plant must be in compliance with Section III.A of Appendix R to 10 CFR Part 50 to March 31, 1984. The basis for granting the schedular exemption was the time required for engineering, procurement and construction associated with the modifications described above.

III

By letter dated February 10, 1984, FPL requests that an extension be granted to December 31, 1984, by which time they must be in compliance with Section III.A of Appendix R. The extension is required due to premature failure of protective coatings in both the existing and new Raw Water Storage Tanks (RWT) which contain the water supply for fire protection and identification of non-dedicated water connections on the fire main.

The problem was identified initially in preparing to place the new RWT in service. It was noted that rust spots were developing on the roof plating where the protective coating had failed. The upper portion of the existing tank was inspected indicating the original protective coating had completely failed on the interior ceiling and roof framing, the heavy rust scale resulting from the failed protective coating could impact the structural capability. The wall coating also exhibited cracks and blistering which could result in additional rusting.

In addition to the protective coating problem, water connections on the fire protection main have been identified which are not for fire protection purposes. Some of the connections were installed underground during the initial construction of Turkey Point fossil Units 1 and 2. These connections were not identified by the licensee or the NRC during the initial fire protection reviews. However, the licensee identified the connections during a recent internal audit and intends to remove all connections from the fire mains which are not dedicated for fire protection purposes.

The request for the schedular extension to December 31, 1984, is necessary to perform the following corrective actions:

(1) Make necessary repairs to the RWT's structure and protective coatings.

(2) Remove the connections from the fire protection main which are not for fire protection purposes.

(3) Perform modifications necessary to transfer the non-dedicated connections to the Service Water System.

(4) Perform other modifications to improve and enhance the Fire Protection System operability including installation of redundant jockey pumps.

The preventive and corrective maintenance performed on the RWTs will minimize future tank downtime and the removal of the non-dedicated connection from the fire protection main will assure dedication of the required water volume for fire protection purposes.

In the interim period, FPL will maintain one of the two RWTs available for a source of fire water and the capability to provide additional fire water from the discharge header of the three screen wash pumps. Each of the screen wash pumps are capable of supplying 1,680 gallons per minute and are sufficient to meet the maximum area of water demand. The analysis to support the adequacy of this interim action is provided in the licensee's letter dated May 7, 1980 relating to fire protection. Thus, the necessary redundancy of fire water supplies is met. This compensatory action coupled with the Turkey Point Fire Protection Program provides sufficient protection against fire hazards.

Based on the details provided above, the Commission has determined that an extension of the schedular requirements identified in § 50.48(c)(2) to assure compliance with Section III.A "Water Supplies for Fire Suppression System" of Appendix R to 10 CFR Part 50 should be granted.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemption with respect to the schedular requirements of § 50.48(c)(2) as it relates to Section III.A of Appendix R to 10 CFR Part 50:

The date which FPL must be in full compliance with Section III.A of Appendix R to 10 CFR Part 50 is December 31, 1984.

The NRC staff has determined that the granting of this Exemption 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 this action.

Dated at Bethesda, Maryland this 21st day of March, 1984.

For the Nuclear Regulatory Commission.

Edson G. Case,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. 84-8617 Filed 3-29-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250 and 50-251]

Florida Power and Light Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-31 and DPR-41, issued to Florida Power and Light Company (the licensee), for operation of the Turkey Point Plant Unit Nos. 3 and 4 located in Dade County, Florida.

The proposed license amendments were initially noticed December 21, 1983 (48 FR 56502). This notice includes requested changes provided in a submittal dated October 26, 1983 which were not included in the initial notice of December 21, 1983. The proposed amendments request the deletion of non-radiological Environmental Technical Specifications (Appendix B) which address the groundwater monitoring program and environmental protection limits. The justification for the requested deletions are based on the results of eight years of studies, the revised agreement with the South Florida Water Management District and an effective

National Pollutant Discharge Elimination System (NPDES) Permit from the Environmental Protection Agency in accordance with the licensee's applicaton for amendment dated September 12, 1983, as modified October 26, 1983.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendments involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possiblity or a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The amendments would delete the nor-radiological monitoring programs related to the groundwater monitoring and environmental protection limits. The amendments would not change any current limitations related to the operation of the plants. Since no operational limitations are being changed, the staff proposes to determine that the amendments do not involve a significant increase in the probability or consequences of an accident from any accident previously evaluated, do not create the possibility of a new or different kind of accident from any accident previously evaluated and do not involve a significant reduction in a margin of safety. The staff, therefore, proposes to determine that the amendments do not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission,. Washington, D.C. 20555, Attn: Docketing and Service Branch.

By April 27, 1984, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject mater of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendments request involve no significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Att: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephoine call to Western Union operator at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Steven A. Varga, Branch Chief, Operating Reactors Branch No. 1, Division of Licensing: petitioner's name and telephone number; date petition was mailed; plant name; and publication

date and page number of the Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Harold F. Reis, Esquire, Lowenstein, Newman, Reis and Axelrad, 1025 Connecticut Avenue, N.W., Suite 1214, Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for the amendments which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Dated at Bethesda, Maryland, this 20th day of March 1984.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 84-8618 Filed 3-29-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-388]

Pennsylvania Power & Light Company, Allegheny Electric Cooperative, Inc., Susquehanna Steam Electric Station, Unit No. 2; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission), has issued Facility Operating License No. NPF-22, to Pennsylvania Power & Light Company and Allegheny Electric Cooperative, Inc. (licensees) which authorizes operation of the Susquehanna Steam Electric Station, Unit No. 2 (the facility) at reactor core power levels not in excess of 3293 megawatts thermal in accordance with the provision of the License and the Technical Specifications. Authorization to operate beyond five percent (164.4 megawatts thermal) is still under consideration and will require specific Commission approval.

Susquehanna Steam Electric Station, Unit 2 is a boiling water nuclear reactor located at the licensees' site in Luzerne County, Pennsylvania. The license is effective as of the date of issuance.

The application for the license 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. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the Federal Register on August 9, 1978 (43 FR 35406).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see (1) Facility Operating License No. NPF-22, complete with Technical Specifications, (2) the report of the Advisory Committee on Reactor Safeguards, dated August 11, 1981, (3) the Commission's Safety Evaluation Report, dated April 1981, Supplement No. 1, dated June 1981, Supplement No. 2, dated September 1981, Supplement No. 3, dated July 1982, Supplement No. 4, dated November 1982, Supplement No. 5, dated March 1983, and Supplement No. 6 dated March 1984, (4) the Final Safety Analysis Report and amendments thereto; and (5) the Final Environmental Statement, dated June 1981.

These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701. A copy of Facility Operating License No. NPF-22 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing. Copies of the Safety Evaluation Report and its Supplements (NUREG-0776) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and through the NRC GPO sales program by writing to the U.S. Nuclear Regulatory Commission, Attention: Sales Manager, Washington, D.C. 20555. GPO deposit account holders can call (301) 492-9530.

Dated at Bethesda, Maryland, this 23rd day of March 1984.

For the Nuclear Regulatory Commission.

B. J. Youngblood,

Chief, Licensing Branch No. 1, Division of Licensing.

[FR Doc. 84-8619 Filed 3-29-84; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 23261; 70-6964]

Central and South West Corp.; Proposed Issuance and Sale of Common Stock Pursuant to Dividend Reinvestment and Stock Purchase Plan

March 26, 1984.

Central and South West Corporation ("CSW"), 2121 San Jacinto Street, Dallas, Texas 75266-0164, a registered holding company, has filed a declaration with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) thereunder.

By orders entered in File No. 70-6529, CSW was authorized to issue and sell through December 31, 1985, not to exceed 4,000,000 shares of its authorized and unissued common stock, par value $3.50 per share, pursuant to CSW's Dividend Reinvestment and Stock Purchase Plan ("Plan"). As of December 31, 1983, CSW has issued and sold pursuant to the Plan 3,261,199 shares of its common stock. CSW now requests authority to increase the number of shares of common stock authorized to be issued and sold under the Plan by 2,000,000 shares ("New Shares") to bring the total number of shares authorized to be issued and sold under the Plan to 6,000,000 shares. No other changes in the Plan are contemplated at this time. CSW states that since the effective date of the Plan, participation by shareowners has increased each year. Based on CSW's current estimate, approximately 2,702,702 additional shares will be issued under the Plan during the period January 1, 1984 to December 31, 1985, resulting in a total requirement of 5,963,901 shares. Proceeds derived by CSW from the sale of the New Shares will be applied through loans or equity contributions toward the continuing construction program of CSW's subsidiary companies.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested person wishing to comment or request a hearing should submit their views in writing by April 23, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in the 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 declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8621 Filed 3-29-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-20786; Filed No. SR-AMEX-84-9]

Self-Regulatory Organizations; Proposed Rule Change; American Stock Exchange, Inc.; Exchange's Equities Specialist Allocations Procedures

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 March 12, 1984, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("Amex" or the "Exchange") hereby files for Commission approval a 12-month pilot program under the Exchange's equities allocations procedures which would permit a newly listed company which so desires to select its specialist from a list composed of seven specialist units selected by the Exchange's Committee on Equities Allocations.

II. Self-Regulatory Organization's Statement of the Propose 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 Items IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) *Purpose.* The Exchange has previously filed and is awaiting Commission approval of its procedures for the evaluation of equities specialist performance and for the allocation and reallocation of equities (File No. SR-AMEX-83-27). These allocations procedures include a procedure which permits those newly listed companies which so desire to participate to a limited extent in the selection of their specialist. The purpose of this proposed rule change is to substitute for this procedure, on a pilot basis, a new modified procedure which will expand a company's participation in the section of its specialist, without significantly impinging on the integrity of the performance-based allocations process.

Under the current procedure, the Committee on Equities Allocations ("Allocations Committee")[1] submits a list of ten eligible specialist units to a newly listed company which has indicated its desire to participate in the specialist selection process. The Company may eliminate up to three units on the list from further consideration. The Allocations Committee then reconvenes to make its final selection from the remaining seven or more units.

In the Exchange's efforts to list new companies it has become clear that the selection of a specialist is extremely important to prospect companies, and the inability to be more directly involved in the selection process may be a disincentive to listing.

To address the concerns of these companies, the Exchange has adopted, on a 12-month pilot basis, a new procedure designed to increase company involvement in the allocation process. Under this procedure, the company would be given the choice of either letting the Allocations Committee acting independently select its specialist, or of participating in the process itself. If the company chooses to participate, the Allocations Committee would select a list of seven specialist units, based on the same performance-related criteria it presently uses for making allocations, and the company would be permitted to select its specialist unit from that list.

Moreover, whether or not the company chooses to participate, if a newly listed company should become dissatisfied with its specialist unit within the first year of listing, it would be permitted to request a change. Such a request could not be made until at least 120 days after the commencement of trading and the company would be expected to furnish an explanation of the basis for its dissatisfaction. If after counseling the company and the specialist unit such a change were still desired, the Exchange would reallocate the stock within 30 days. In any such reallocation the Exchange would follow its regular procedures, without any company involvement. Since the initial selection of a specialist unit under this new procedure would be in effect a conditional allocation, the subsequent reallocation would be without prejudice to the initial specialist.

The proposed procedure would be available only to those companies which complete the listing process during the pilot period; a company could only invoke the reallocation request once during the one year period following its listing.

The pilot program would allow newly listed companies greater participation in what is viewed by them as a major decision affecting the market for their securities, while preserving the basic concept of performance-based allocations procedures. The Allocations Committee, in furnishing the company with a list of seven specialist units, would continue to select the most eligible units for that particular stock, based on the perfomance criteria now used by Allocations Committees. The new procedure would thus continue to reward superior performance and encourage competition among specialists units for such new allocations.

To address the possibility that this new procedure could increase the likelihood of companies and specialists developing inappropriate or prohibited

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[1] The Allocations Committee has been delegated authority by the Board to allocate securities, and to reallocate securities on the recommendation of the Committee on Specialist and Registered Trader Performance.

relationships, the Exchange intends to monitor the pilot program closely. The Exchange's rules and policies at present prohibit business and other types of relationships that might raise problems of conflict of interest, receipt of non-public information, and improper communications, and these policies will continue in place. During the pilot period, prospect companies and specialists will be reminded of the limits on their relationships. Additional surveillance measures will also be instituted which will be geared to close surveillance of trading in those companies which are participating in the pilot, as well as those specialists units which are allocated stocks under the new procedure.

(2) *Basis.* The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that the proposed procedure is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The proposed rule change also furthers the purposes of Section 11A(a)(1)(C)(ii) in that it will stimulate fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition. Rather, the proposed rule change, by rewarding superior performance, will enhance competition among Exchange specialists, and, by improving the ability of the Exchange to attract prospect companies which desire greater participation in the specialist selection process, will enhance competition among markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

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 5th Street, N.W., 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 persons, 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 5th 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: March 22, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8621 Filed 3-29-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2114; Amdt. No. 2]

Texas; Declaration of Disaster Loan Area

The above-numbered Declaration (49 FR 2041 January 17, 1984) and Amendment No. 1 (49 FR 6196 February 17, 1984), are amended in accordance with the President's declaration of January 7, 1984, to include Dimmit and Zavala Counties, Texas, because of damage from freezing temperatures beginning on or about December 22, 1983. All other information remains the same, i.e., the termination date for filing applications for physical damage is the close of business on May 8, 1984, and for economic injury until the close of business on October 8, 1984.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Dated: March 23, 1984.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84-8588 Filed 3-29-84; 8:45 am]

BILLING CODE 8025-01-M

[Designation of Disaster Loan Area No. 615200]

Texas; Designation of Disaster Loan Area

Colorado County in the State of Texas constitutes a disaster area because of a freeze which occurred during December 1983. Eligible small businesses may file applications for economic injury assistance until the close of business on December 27, 1984, at the address listed below: Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051, 214–767–7571, or other locally announced locations. The interest rate for eligible applicants is 8 percent.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 27, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-8589 Filed 3-29-84; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council Meeting; Public Meeting

The Small Business Administration Region IV Advisory Council, located in the geographical area of Columbia, South Carolina, will hold a public meeting at 9:30 a.m. on Tuesday, April 17, 1984, at the Marriott Hotel, 1208 Washington Street, Columbia, South Carolina, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call John C. Patrick, Jr., District Director, U.S. Small Business Administration, 1835 Assembly Street, Room 358, Columbia, South Carolina 29201—(803) 765–5373.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 12, 1984.

[FR Doc. 84-8584 Filed 3-29-84; 8:45 am]

BILLING CODE 8025-01-M

Region X Advisory Council Meeting; Public Meeting

The Small Business Administration, Region X Advisory Council, located in the geographical area of Spokane, Washington, will hold a public meeting at 9:30 a.m., on Wednesday, April 11, 1984, in Room 752, U.S. Courthouse Building, West 920 Riverside Avenue, Spokane, Washington, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Valmer W. Cameron, District Director, U.S. Small Business Administration, Room 651, U.S. Courthouse Building, Post Office Box 2167, Spokane, Washington 99210, telephone (509) 456–3781.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 26, 1984.

[FR Doc. 84-8585 Filed 3-29-84; 8:45 am]

BILLING CODE 8025-01-M

Region X Advisory Council Meeting; Public Meeting

The Small Business Administration, Region X Advisory Council, located in the geographical area of Honolulu, Hawaii, will hold a public meeting at 9:00 a.m., on Wednesday, April 18, 1984, at the Prince Kuhio Federal Building, 300 Ala Moana, Room 3316 (3rd Floor), Honolulu, Hawaii, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call David K. Nakagawa, District Director, U.S. Small Business Administration, 300 Ala Moana, Room 2213, Honolulu, Hawaii 96850, (808) 546–8950.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 26, 1984.

[FR Doc. 84-8586 Filed 3-29-84; 8:45 am]

BILLING CODE 8025-01-M

Region X Advisory Council Meeting; Public Meeting

The Small Business Administration Region X Advisory Council, located in the geographical area of Seattle, will hold a public meeting at 9:30 a.m., on Thursday, April 12, 1984, at 915 Second Avenue, Room 1848, Seattle, Washington, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration or others present. For further information, write or call John J. Talerico, District Director, U.S. Small Business Administration, Room 1792, 915 Second Avenue, Seattle, Washington 98174, (206) 442–2786.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 26, 1984.

[FR Doc. 84-8587 Filed 3-29-84; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council Meeting; Public Meeting

The Small Business Administration Region VIII Advisory Council, located in the geographical area of Fargo, North Dakota, will hold a public meeting at 9:30 A.M., Thursday, April 19, 1984, at the Federal Building, Room 319, 657 2nd Avenue North, Fargo, North Dakota, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration and others attending.

For further information, write or call Robert L. Pinkerton, District Director, U.S. Small Business Administration, 657 2nd Avenue North, Fargo, North Dakota 58102—(701) 237–5771, extension 5131.

Dated: March 26, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84-8582 Filed 3-29-84; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council Meeting; Public Meeting; Amended

The Small Business Administration, Region VIII Advisory Council, located in the geographical area of Sioux Falls, South Dakota, has cancelled its public meeting for Thursday, April 26, 1984 (49 FR 7689, March 1, 1984) and rescheduled as follows—Thursday, April 19, 1984, 9:00 a.m. to 3:00 p.m., at the Community Room, First National Bank in Sioux Falls, 100 South Phillips, Sioux Falls, South Dakota 57102, to discuss such matters as may be presented by members, the staff of the Small Business Administration, or others present.

For further information, write or call Chester B. Leedom, District Director, U.S. Small Business Administration, Suite 101 Security Building, 101 South Main, Sioux Falls, South Dakota 57102, 605/336–2980, Ext. 231.

Dated: March 26, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84-8583 Filed 3-29-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Information Security Policy; Directive Concerning the Classification, Declassification and Control of National Security Information

AGENCY: Department of Transportation.

ACTION: Notice of directive concerning information security policy.

SUMMARY: The Department of Transportation is required by Section 5.3 of Executive Order 12356 of April 2, 1982, to publish in the **Federal Register** unclassified regulations that establish agency security policy and unclassified guidelines for systematic declassification review. Department of Transportation (DOT) Order 1640.4C constitute these regulations and guidelines. This notice publishes the directive, except for those portions that do not significantly affect the public. The directive is unclassified and is available for inspection in its entirety at the address below.

FOR FURTHER INFORMATION CONTACT: Thomas P. Colihan, Acting Chief, Security Staff, Department of Transportation, 400 7th Street, SW., Washington, D.C., 20590, Room 2318. The telephone number for this office is (202) 426–4677. The office is open Monday thru Friday, from 9:00 a.m. to 5:30 p.m. e.t.

Issued in Washington, D.C. on February 2, 1984.

Jon Seymour,

Deputy Assistant Secretary for Administration.

Classification, Declassification, and Control of National Security Information

1. *Purpose.* This Order implements Executive Order 12356, National Security Information, and Executive Order 10856, Safeguarding Classified Information Within Industry.

2. *Cancellation.*

a. DOT Order 1640.4B, Classification, Declassification, and Control of National Security Information, of 2–11–80.

b. DOT Order 1640.3C, National Security Information, of 11–21–79.

3. *Assignments.*

a. In addition to other actions directed by this Order, the Chief, Security Staff, Office of the Secretary, shall evaluate the overall application of and adherence to security policies and requirements prescribed herein and report his findings and recommendations to the Assistant Secretary for Administration and, as appropriate, to the heads of operating

administrations and the Secretary. The Chief, Security Staff, shall be the Departmental point of contact with the Information Security Oversight Office, established by E.O. 12065, and shall furnish such information as that office may require. The Chief, Security Staff, shall develop changes to Departmental directives which may be needed to comply with amendments to E.O. 12065, supplementing instructions from the National Security Council, or resulting from changed conditions.

b. Secretarial Officers and Heads of Operating Administrations shall assure:

(1) The effective administration of the provisions prescribed;

(2) That adequate personnel and funding are provided for this purpose, and;

(3) That corrective actions which may be warranted are taken promptly.

Paragraph

Chapter I. General

1–1. Discussion

a. The interests of the United States and its citizens are best served by making information regarding the affairs of government readily available to the public. This concept of an informed citizenry is reflected in the Freedom of Information Act and in the current public information policies of the Executive Branch.

Within the Federal Government there is some official information and material which, because it bears directly on the effectiveness of our national defense and the conduct of our foreign relations, must be subject to some constraints for the security of our Nation and the safety of our people and our allies. To protect against actions hostile to the United States, of both and overt and covert nature, it is essential that such official information and material be given only limited dissemination.

To ensure that such information and material is protected against unauthorized disclosure, this Order identifies the information to be protected, prescribes classifications, downgrading, declassification and safeguarding procudures to be followed, and establishes a monitoring system to ensure its effectiveness.

b. This Departmental Order is intended to achieve a coordinated and uniform policy throughout the Department of Transportation (DOT) in maintaining the security of classified information. It is applicable to all classified information in the custody of DOT regardless of whether the information or material was produced within DOT or originated outside DOT and released to it.

1–2. Security Principles

a. Official information which requires protection against unauthorized disclosure in the interest of the national defense or foreign relations of the United States (hereinafter collectively termed "national security") is designated classified information. Classification of information shall be solely on the basis of national security considerations.

b. Knowledge or possession of classified information shall be permitted only to persons whose official duties or contractual obligations require such access, and only if they have been determined to be trustworthy. Unless both standards are met, i.e., need-to-know and trustworthiness, the individual obtaining access is an unauthorized person and his/her gaining access constitutes an unauthorized disclosure.

c. The policies, standards, and requirements established by this Order are designed to assure proper classification/declassification of information and to prevent unauthorized persons from gaining knowledge of information designated as classified. These principles shall be kept foremost in mind when lcoal procedures are developed to implement the provisions of this Order.

1–3. Security Planning.

Security is not an end of itself. Rather, it is an integral part of operations and of program administration. Accordingly, managers of programs or projects which may involve classified information shall consult with the appropriate security element to assure that security planning, which includes classification and declassification planning, is provided at the outset and as the project develops.

1–4. Order Format and Use.

This Order is designed to be both a statement of Departmental policies and requirements and an employee operating manual. Headquarters, facility and office implementing procedures should be filed in the appropriate Chapter. In this way the reader may find easily and quickly the answers and guidance he/she is seeking. Requests for any modification or deviation from this Order, including supporting justification shall be submitted to the OST, Chief Security Staff, M–441, through appropriate channels.

1–5. Notification by Field Activities of Classified Material Held.

Field activities shall advise the security element of the appropriate region, district or national headquarters when any of the following occur:

a. An activity which does not have custody of classified material receives such material. The notification shall include a statement as to the highest classification level of the material received.

b. The highest classification level of the material held changes. For example, an activity which holds Confidential material receives Secret material, or an activity having had both Secret and Confidential material destroys or otherwise gives up custody of the Secret material.

c. An activity which had custody of classified material no longer possesses such material.

Chapter III. Declassification and Downgrading

3–1. Discussion

a. Information which is properly classified at the time it is developed does not necessarily require protection indefinitely. Most classified information has diminishing significance to the national security as time passes and as technological or other developments occur.

b. The lack of attention to downgrading and declassification in the past has resulted in the accumulation and protection of large volumes of material which actually no longer require protection, or which require a lesser degree of protection than afforded. Although attempts to correct this condition have been made, emphasis is still needed in this area.

c. The salient downgrading/declassification features of E.O. 12356 are:

(1) Declassification of classified material shall be given emphasis comparable to that afforded classification.

(2) Classified information shall be declassified as early as national security considerations permit.

(3) Decisions concerning declassification shall be based on the loss of the information's sensitivity with

the passage of time or on the occurrence of a declassification event.

3–2. Definitions

a. *Downgrade*—To determine that classified information requires a lesser degree of protection against unauthorized disclosure in the interest of national security than that currently assigned, e.g., Top Secret is downgraded to Secret; Secret is downgraded to Confidential. Material will be remarked to reflect this determination.

b. *Declassify*—To determine that information no longer requires protection against unauthorized disclosure in the interest of national security. Material will be remarked to reflect this determination, e.g., Top Secret, Secret or Confidential material is remarked as Unclassified.

3–3. Authority to Downgrade or Declassify

a. *Originally Classified Material.* Original classification authorities, a successor in capacity or a supervisory official of either, a higher authority, and the Departmental Security Review Committee, are authorized to downgrade or declassify information originally classified by DOT. In addition, the following headquarters security elements are authorized to downgrade or declassify information originally classified by an official within their respective organizational element and to resolve classification conflicts or doubts as to the appropriate classification of that information:

OST and DOT Administrations other than USCG and FAA-OST Security Staff
FAA—Office of Civil Aviation Security
USCG—Intelligence and Security Division
MARAD—Deputy Administrator; Deputy Administrator for Inland Waterways and Great Lakes; Chief Counsel; Associate Administrators for Maritime Aids, Shipbuilding and Ship Operations, Marketing and Domestic Enterprise, and Research and Development; Eastern, Central, Western, and Great Lakes Region Directors; Superintendent, U.S. Merchant Marine Academy; and Security Officer.

b. *Derivatively Classified Material.* Declassification authority designated above and the appropriate District or Regional security elements within the USCG and FAA are authorized to declassify or downgrade derivatively classified material when such action does not conflict with classification decisions evidenced by the source material or instructions from an original classification authority.

3–4. Marking New Material for Declassification or Downgrading

a. New material which derives its classification from information classified on or after August 1, 1982, shall be marked with the declassification date or event assigned to the source document.

b. New material that derives its classification from information classified prior to August 1, 1982, shall be treated as follows:

(1) If the source material bears a declassification date or event twenty (20) years or less from the date of origin, that date or event shall be carried forward on the new material.

(2) If the source material bears a downgrading date or event, that date or event shall be carried forward on the new material.

3–5. Notification to holders

a. Whenever information is declassified by appropriate authority, other than changes pre-determined to occur automatically, the authority making the determination shall notify all known holders of the change.

b. This notification shall include the authority for the change (name and title) and the effective date of the change. Notification may be by general notice rather than personal notice so long as the general notice is designed to achieve the intended result.

3–6. Automatic Downgrading or Declassification

Old material which is marked for automatic downgrading or declassification requires no further authority from the originator by any holder to remark the material. The marking itself conveys this authority.

3–7. Effect of Open Publication

The fact that information currently classified has been disseminated by a public medium of communication does not automatically mean that it has been declassified. Classification shall continue to be respected until advised to the contrary by the originating agency or higher authority. Questions as to the propriety of continued classification in these cases should be promptly brought to the attention of the originator. If the originator cannot be readily identified, the matter should be referred to the OST Chief, Security Staff.

3–8. Declassification of Presidential Papers

The Archivist of the United States has the authority to review for declassification or downgrading, information and material which has been classified by a President, his/her White House Staff or special committee or commission appointed by him/her and which the Archivist has in his/her custody at any archival depository, including a Presidential Library. Such declassification shall only be undertaken in accord with: (i) The terms of the donor's deed or gift, (ii) consultations with the Departments having a primary subject-matter interest, and (iii) the provisions of this Chapter with respect to the material of concern to DOT.

3–9. Mandatory Review for Declassification

a. E.O. 12356 requires that procedures be established to handle requests by a U.S. Citizen or permanent resident alien, a federal agency, or a State or local government, to declassify and release information. In order to be acted upon, a request needs to describe the information with sufficient particularity to permit the record to be identified and located. Agency responses to mandatory declassification review requests shall be governed by the amount of search and review time required to process the request. After review, the record or any reasonably segregable portion thereof that no longer is in the interest of national security shall be declassified and released unless withholding is otherwise warranted under applicable law.

b. Requests for classified records made under the Freedom of Information Act (FOIA), as amended, are processed differently than requests made under the Mandatory Review provision. (See Paragraph 3–11.)

c. An agency in possession of a classified document may not, in response to a request for the document made under the Freedom of Information Act or the Mandatory Review provision of E.O. 12356, refuse to confirm the existence or non-existence of the document, unless the fact of its existence or non-existence would itself be classified.

3–10. Procedures for Submitting and Handling Requests for Mandatory Review

a. The Chief, Security Staff, M–441, Office of the Secretary of Transportation, 400 7th Street, SW., Washington, D.C. 20590, is hereby designated as the official to whom a member of the public or another department or agency will submit a request for mandatory review of classified material produced by or under the primary cognizance of the Department of Transportation. Elements of the Department which may receive a

request directly shall immediately notify the Chief.

b. If the request involves material produced by or under the cognizance of the U.S. Coast Guard or the Federal Aviation Administration, the Chief will forward the request to the headquarters security staff of the element for action. If the request involves material produced by other Departmental elements, the Chief shall serve as the action officer.

c. Action offices shall:

(1) Immediately acknowledge receipt of the request and provide a copy of the correspondence to the Chief. If a fee for search of records is involved, pursuant to the Department of Transportation regulations, 49 CFR Part 7, in implementation of the Freedom of Information Act, the requester shall be so notified.

(2) Conduct a security review which shall include consultation with the office which produced the material and with source authorities when the classification, or exemption of material from automatic declassification, was based upon determinations by an original classifying authority.

(3) Assure that the requester is notified of the determination in a timely manner (or given an explanation as to why further time is necessary) and provide a copy of the notification to the OST Chief, Security Staff.

d. Whenever a request does not reasonably describe the records sought, the requester shall be notified that no further action can be taken without more specificity as to the records in question.

e. If the determination reached is that continued classification is required, the determination shall include a statement as to why the requested material cannot be declassified. The determination shall also advise the requester of the right to appeal. A requester who may wish to appeal a classification review decision, or who has not been notified of a decision after sixty (60) days, should submit the appeal to the Chairman, Security Review Committee, M–1, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590.

f. If the determination reached is that continued classification is not required, the information shall be declassified and the material remarked. The action office will then refer the request to the Director of the Office of Public Affairs or to the head of the operating element, as the case may be, responsible for the material to determine if it is otherwise available for public release under 5 U.S.C. 552 (The Freedom of Information Act) and implementing regulations.

(1) If the material is releasable, the requester shall be advised that the material has been declassified and is available. If the request involves the furnishing of copies and a fee is to be included, the requester shall be so advised pursuant to 49 CFR 7.91 through 7.95.

(2) If the material is not releasable, the requester shall be advised that the material has been declassified but that the record is exempt from disclosure, pursuant to the Freedom of Information Act, and that the provisions of 49 CFR 7.81, which pertains to appeals, is applicable.

g. Upon receipt of an appeal from a classification review determination based upon continued classification, the Departmental Security Review Committee shall immediately acknowledge receipt and act on the matter within thirty (30) days. With respect to information originally classified by or under the primary cognizance of DOT, the Committee, acting for the Secretary, has the authority to overrule previous determinations in whole or in part when, in its judgment, continued protection in the interest of national security is no longer required. When the classification of the DOT-produced material was based upon a classification determination made by another department or agency, the Security Review Committee (SRC) will immediately consult with its counterpart committee for that department.

(1) If it is determined that the DOT material requires continued classification, the requester will be so notified.

(2) If it is determined that the material no longer requires classification, it shall be declassified and remarked. The Committee shall refer the request to the Director of the Office of Public Affairs, or the head of the operating element concerned, as the case may be, to determine if the material is otherwise available for public release under Title 5, U.S.C. Section 552, and implementing directives, and the provisions set forth in subparagraphs (1) and (2), paragraph f, above, shall be followed. A copy of the response shall be provided to the Committee.

3–11. Procedures for Handling Requests Under the Freedom of Information Act Involving Classified Records

a. Amendments to the Freedom of Information Act, Title 5, U.S.C., Section 552, authorize withholding of records from public availability which are "(A) specifically authorized under criteria established by an Executive Order to be kept Secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive Order."

b. Persons who request records from an agency under the provisions of the Act, and whose requests are denied, may petition the courts to enjoin the agency from withholding the record, and in this event, the burden is on the agency to sustain its actions.

c. The Amendments also impose time limits for determinations on FOIA reqeusts. A determination on an initial request must be made within ten (10) working days after receipt of the request. In case of an appeal to an initial denial, a determination must be made within twenty (20) working days after receipt of the appeal. Except for unusual circumstances, failure to make a determination within the stated time limits means that a requester has exhausted the administrative remedies and may bring suit immediately.

d. To assure that FOIA requests involving classified records are subjected to a thorough classification review and response is made within the specified time limits, the procedures in paragraphs e. and f. shall apply.

e. The procedure for initial requests involving classified records is as follows:

(1) The office having responsibility to act upon a FOIA request shall consult immediately with the appropriate security element which shall conduct a classification review.

(2) If the record is declassified, the action officer shall be so advised and a determination of releasability shall be made without further reference to security considerations. A copy of the declassification decision shall be forwarded to the OST Chief, Security Staff.

(3) If the record warrants continued classification, the action officer shall be advised prior to the expiration of the time limit. The action officer shall advise the requester of the denial following the provisions of 49 CFR 7.21, "Initial Determination."

(4) If the classification review cannot be completed within the statutory time limit, due to unusual circumstances, the security element will so advise the action officer. The action officer will arrange for an extension of time in accordance with the Act (5 U.S.C. 552 (a)(6)(B) and 49 CFR 7.25, "Extension" and implementing Departmental regulations.

(5) A copy of the determination to deny based on classification of the record shall be forwarded immediately to:

(a) The OST Director of the Office of Public Affairs, the General Counsel, or

to the head of an operating element, as the case may be; and

(b) The OST Chief, Security Staff, through the appropriate headquarters security staff.

f. The procedure for receipt of an appeal for reconsideration of release of a classified record is as follows:

(1) The Departmental official receiving the appeal shall immediately refer the matter to the Departmental Security Review Committee which shall conduct a classification review. With respect to information originally classified by or under the primary cognizance of the Department, the Committee, acting for the Secretary, has authority to overrule previous determinations in whole or in part when, in its judgment, continued protection in the interest of national security is no longer required. When the classification of the record produced in the Department is based upon a classification determination made by another department or agency, the Security Review Committee shall consult immediately with its counterpart committee for that department. Before reaching a decision the Committee may consult with additional departments or committees as may be appropriate.

(2) If the Committee determines that the record is in fact properly classified pursuant to an Executive Order, the Committee shall so inform the head of the operating element concerned and the OST General Counsel. The head of the operating element concerned, or the General Counsel, as the case may be, shall issue a final denial to the requester.

(3) If the Committee determines that the record no longer requires classification, the head of the operating element concerned or the General Counsel, as the case may be, will be so informed. The head of the operating element or the General Counsel, as the case may be, shall determine if the material is otherwise available for public release and notify the requester.

(4) In its deliberations and notification to the head of the operating element or the General Counsel, as the case may be, the Committee shall determine, to the maximum extent possible, what portions of a requested record contains information properly classified and what unclassified portions may be reasonably segregated for the purpose of public availability.

(5) Actions upon appeal for reconsideration of requested records shall be completed within the prescribed time limits.

g. The OST Chief, Security Staff, is designated as the officer to whom another department or agency should submit a request for a classification review of classified material produced by or under the primary cognizance of the Department. If the reason for the review is based upon a request received by the other department or agency under the Freedom of Information Act, the Chief shall immediately inform the Chairman of the Security Review Committee who shall assure that action which is appropriate to the circumstances is taken. If the reason for the request for review is not based on the Freedom of Information Act, the Chief shall refer the matter to the operating element concerned or shall act directly on the matter. In either event, he shall assure that a proper and timely response is made.

3–12. Public Availability of Declassified Information

a. It is a fundamental policy of DOT to make information available to the public to the maximum extent permitted by law. Information which is declassified, for any reason, loses its protective status in the interest of national security. Accordingly, declassified information shall be handled in every respect on the same basis as all other unclassified information. Declassified information is subject to the Department of Transportation regulations (49 CFR Part 7) in implementation of the Freedom of Information Act and public information policies and procedures.

b. Information may be classified or reclassified after an agency has received a request under the Freedom of Information Act (5 U.S.C. 552) or the order if such classification meets the requirements of the order and is accomplished personally and on a document-by-document basis by officials designated by the Order.

Chapter XI. Dissemination of Classified Information

11–1. Discussion.

Information has no real value unless it is made available to those who can use it. This principle applies also to classified information. However, The Dissemination of Classified Information is Limited to Those Whose Official Duties Require Knowledge or Possession Thereof and Further to Those who Will Respect This Limitation.

11–2. Basic Provisions

a. Classified information may be released only to persons who have an official need for the information and only after they have been determined by designated authorities to be trustworthy for the classification level of information to be disclosed. For example, persons who are cleared at the SECRET level may not be given access to information at the TOP SECRET LEVEL. However, clearance for one level, i.e., TOP SECRET, conveys authority for release of information classified at lower levels, i.e., SECRET or CONFIDENTIAL when a need for release exists. The mere fact that an individual is employed by DOT or another Department or Agency of the Government or is a member of the Armed Forces does not mean that he has been Cleared for Access to Classified information.

b. A security clearance shall be administratively rescinded when an individual no longer requires access to classified information in the performance of official duties. Likewise, when an individual no longer needs access to a particular security classification category, the security clearance will be adjusted to the classification category still required for the performance of his/her duties. In both instances, such action shall be taken without prejudice to the person's eligibility for security clearance should the need arise again. DOT Order 1630.2, Personnel Security Program, sets forth policies, standards, procedures, and designated authorities for issuing and withdrawal of security clearances for DOT personnel.

c. After a person has been found eligible for access to classified information, but before being allowed such access, the individual shall be required to sign a SF–189, "Classified Information Nondisclosure Agreement". The completed agreement will be retained in a file system that will assure its expeditious recovery for the 50 year retention.

d. Access to certain types of information may require additional authorization and controls. As an example, a person having access to Sensitive Compartmented Information (SIC) would be required to sign a Form 4193, "Sensitive Compartmented Information Nondisclosure Agreement".

e. Supervisors are responsible for controlling the dissemination of classified information received or generated in their offices to persons under their jurisdiction.

f. The responsibility for determing whether an individual has a need for specific items of classified information rests with the person or activity which has possession or control of the information and not with the prospective recipient.

g. Classified material originated by another department or agency and furnished to DOT shall not be further distributed outside DOT without the prior consent of the originating

department or agency. This restriction applies to the distribution to contractors who require the informatin in performance of DOT contracts.

h. Classified material shall not be released to an employee or other person for his/her private use (personal, commercial, or as background material) even though the individual may have been partly or solely responsible for producing the material.

i. Before approving a release of classified information to a person who serves in more than one capacity, e.g., a contractor employee who also acts as a private consultant, the releasing official shall determine in which capacity the intended recipient is acting and will follow the release and clearance procedures established for the appropriate category.

j. Personnel shall refuse access to classified information for which they lack either the required authorization or need-to-know.

k. Officials who disclose classified information verbally will insure that the recipients have the proper security clearance and also advise the recipients of the classification of the information divulged.

l. Additional provisions for dissemination in connection with visiting are set forth in Chaptr XII.

11–3. Dissemination within the Executive Branch.

Classified information originated by DOT activities may be disseminated to other departments and agencies of the Executive Branch as necessary for the conduct of official business.

11–4. Dissemination Outside the Executive Branch.

Classified information shall not be disseminated outside the Executive Branch without the specific authorization of designated officials as indicated below. Classified material which is to be physically released to the U.S. entities outside the Executive Branch shall be marked as prescribed by Chapter IV.

11–5. To the Congress

a. Provided other Departmental policies and procedures regarding legislative affairs are met, classified information may be disseminated to the Congress when necessary in the interests of the national security and as authorized by the Secretary or the head of an operating administration. As used herein, the Congress includes members, committees, subcommittees, and staffs of members and committees.

b. DOT personnel who are to appear as witnesses before a Congressional Committee or who will met with staff representatives shall obtain prior approval from an authority designated above for the disclosure of classified information which he/she anticipates will be requested.

c. A DOT witness who is requested to disclose classified information which he/she has not been authorized to release shall respectfully state that he/she does not have authority to testify on the matter but that he/she will endeavor to obtain authority or have the information furnished.

d. Witnesses shall request that classified testimony be given in Executive session only, that any record of such testimony be identified as classified and not appear in any document subject to public inspection or availability, and shall obtain the assurance of a committee representative that everyone present has a security clearance commensurate to the classification of the information to be released or discussed.

e. Offices which release classified documents are responsible to assure that they will be provided adequate physical safeguards.

f. Personal communications to Congress shall not include classified information. Classified information shall not be furnished for further release to a constituent.

g. Classified information to be disclosed shall be reviewed specifically to assure that the assigned classification is still valid.

11–6. To Representatives of the General Accounting Office (GAO)

Properly cleared and identified representatives of the GAO may be granted acess to DOT classified information at DOT activities when such information is relevant to the performance of their statutory responsibilities and duties in accordance with the following:

a. The GAO will give advance notice to the heads of DOT activities to be visited. Each announcement of a planned visit will include the purpose of the visit, names of the representatives, and if access to classified information is anticipated, a certification as to the level of clearance of each representative.

b. The following GAO officials are authorized to certify security clearances: the Comptroller General, his Deputy, and Assistants; the General Counsel and Deputy General Counsel; the Director and Deputy Director, Office of Policy; the Directors, Deputy Directors, Associate Directors, and Assistant Directors of the following Divisions: General Government Resources and Economic Development, Resources and Economic Development, Manpower and Welfare, International, Transportation and Claims, Procurement and Systems Acquisition, Federal Personnel and Compensation, Logistics and Communications, Financial and General Management Studies; and Regional Managers.

c. GAO personnel can be identified by special credential cards issued by the Comptroller General. Each card is serially numbered and bears the photograph and signature of the authorized holder.

d. Requests for the following types of information shall be forwarded to the OST Chief, Security Staff, for the determination of whether or not the information is relevant to the performance of the GAO's statutory responsibilities and for authorization for release or access:

(1) Top Secret information;

(2) Other sensitive classified information falling in the general areas of tactical operations, intelligence and communications security; and

(3) Classified information originated by another department or agency of the Executive Branch, including FBI reports.

e. When classified documents are furnished to GAO representatives, they shall be informed of the classified nature of the information and of the need for safeguarding it properly. In this connection, the Comptroller General has agreed to establish a security system at least equal to that prescribed by the Executive Branch.

11–7. To the Government Printing Office (GPO).

Classified material, except TOP SECRET and similarly unique material, may be released to GPO plants, Washington and field, for reproduction when necessary as determined by DOT officials responsible for meeting printing and reproduction needs. The Public Printer has established policies and standards commensurate with those of the Executive Branch for the clearance of GOP personnel and for the safeguarding of classified information.

11–8. To the Judiciary

Every effort shall be taken to prevent the disclosure of classified information in proceedings before civil courts or a general courts-martial. If classified information becomes, or it appears that it might become, involved, the matter will be referred immediately to the OST General Counsel. The General Counsel in consultation with the OST Chief, Security Staff, will furnish advice and

guidance as appropriate to the circumstances of the given situation.

11–9. To Foreign Governments, Foreign Nationals, and International Organizations

a. The release of classified information to foreign nationals (orally, visually or in documentary form) requires special attention and controls. This paragraph deals only with the protection and controlled release of classified information. Other Departmental directives in the area of international relations should be consulted also. The term Foreign National includes a U.S. citizen acting as a representative of a foreign government or firm and is defined in Appendix 2—Item 23.

b. In rate instances, a DOT activity may wish to hire a foreign national as an employee or consultant in his/her capacity as a private individual. In this regard, the provisions of applicable directives and the Federal Personnel Manual will be followed. In addition, if access to classified information is involved, the activity or office shall submit a request to the security manager of the headquarters of the respective operating administration or the OST Chief, Security Staff for authorization together with necessary personnel security forms. The following requirements shall be fulfilled:

(1) The request shall identify precisely the classified information intended for release. The security staff shall determine RELEASIBILITY of the information in the manner described below as though the information were to be released to the government of the country of which the individual is a national. Activities shall permit access only to that classified information for which authorization has been obtained. Procedural controls shall be established to effectively screen all information furnished to the foreign national employees.

(2) A full field investigation shall be completed and evaluated before access is granted. Interim authorizations are not permitted. Since investigations overseas will be involved, delays in completing the investigation should be anticipated. If it is not possible to obtain full investigation coverage, authorization shall be denied. Upon completion and evaluation, a clearance as defined by Appendix 2, Item 13, will not be issued. Rather, authorization will be granted for access only to specifically identified information.

c. Except for the above, classified information as a matter of principle and policy is not made available to a foreign national as an individual, but is disclosed to his/her government. By this means, the parent government accepts responsibility for the clearance of the individual and for the protection of the information.

(1) Policies governing the disclosure of classified military information to foreign governments are formulated by the National Military Information Disclosure Policy Committee (NDPC). Releases of certain other classified information, including Restricted Data, intelligence, and communications security information, are made pursuant to policies established by the agency or interagency entity having cognizance of the information proposed for release. Often the determination of cognizance is difficult and involved and, in many cases, more than one department or agency may need to be consulted for approval.

(2) As a prerequisite for release the department or agency proposing such release must make a clear determination that the benefits to the U.S. outweigh the disadvantages of disclosure. The cognizant department or agency must concur in this determination.

(3) The foreign government proposed as a recipient of U.S. classified information must officially assure this government that the information will be used only for official purposes, will be afforded protection at least equal to our requirements, will not be released to any other person or nation without our express permission, and corporate or proprietary rights (if any) in the information will be respected.

d. No release of classified information to a foreign national or foreign government may be made by a DOT activity without the express consent of the chief of the security manager of the headquarters of the appropriate operating administration or the OST Chief, Security Staff.

e. Application for visits of foreign nationals to DOT activities wherein access to classified information may be involved, shall be made to the appropriate security manager or OST Chief, Security Staff, at least thirty days in advance of the proposed visit. In the case of a civilian or military representative of a foreign government application may be made by a civilian or military attaché of the mission of the country concerned. For all other foreign nationals (including U.S. citizens representing foreign interests), application shall be made by the Chief of Mission (ambassador, minister, etc.) of the country concerned. Applications shall contain the following information concerning the proposed visitor:

(1) Name in full, rank, title, and position;

(2) nationality, date and place of birth (in case of a civilian, furnish passport number);

(3) employer or sponsor (if other than government making appliction);

(4) name and address of installation(s) to be visited;

(5) date, time, and duration of proposed visit;

(6) purpose of visit in detail, including estimated degree of access required;

(7) security clearance status of visitor with his/her own government;

(8) where known and appropriate, names of individuals to be visited; and

(9) a certification that the visitor has been subjected to a military and political screening and does not constitute a security risk to the United States, that the visit and visitor are officially sponsored by his/her government which has officially cleared him/her to receive information on the stated purpose, that responsiblity for the security of the information obtained is officially accepted by his/her government, that all information obtained will be used for official purposes only and will not be released to any other person or nation without the express consent of the U.S. Government, and that corporate or proprietary rights involved, patented, or not, will be respected and protected.

f. Requests for documentary release of classified information shall be processed generally in accordance with the procedures prescribed in 11–9c above. Documents containing classified information approved for release shall be delivered to the appropriate security manager or OST Chief, Security Staff for onward transmission by means appropriate to the circumstances.

g. It is emphasized that these provisions apply to all situations where in a foreign national may gain access to classified information in the custody of DOT. They apply to visits of DOT personnel to foreign countries, participants in exchange missions, conferences, meetings, symposia, etc. To avoid embarrassment, personnel should be careful to avoid firm initations or commitments to foreign nationals which may involve access to classified information until the express consent for acess is obtained. Other department or agency approval of sponsorship of a foreign national visit, sometimes referred to as a clearance, does not authorize access to classified information in the custody of DOT. Any proposed release of, or access to, classified information involving a foreign national, which is not covered in these provisions shall be submitted to the appropriate security manager, or

chief, Security Staff, OST, for handling on a case-by-case basis.

(1) That he/she will abide by regulations issued by DOT:

11–10. To Historical Researchers.

a. Persons outside the Executive Branch who are engaged in historical research projects may have access to classified information provided that: (1) Access to the information will be clearly consistent with the interests of national security, and (2) the person to be granted access is trustworthy.

b. The provisons of this paragraph apply only to persons who are conducting historical research as private individuals or under private sponsorship and do not apply to research conducted under government contract or sponsorship. Further, the provisions are applicable only to situations where the classified information concerned, or any part of it, was orginated by DOT or by DOT contractors or where the information, if originated elsewhere, is in the sole custody of DOT. If any person requests access to material originated in another agency or to information under the exclusive jurisdiction of the National Archieves and Records Service, General Services Administration, he/she should be referred to the other agency or to the National Archives and Records Service.

c. When a request for access to classified information for historical research is received, it will be referred to the appropriate local security office. The security office shall obtain from the applicatnt completed Standard Form 86 in triplicate, Investigation Data for Sensitive Position, and Stndard Form 87, Fingerprint Chart; a statement in detail to justify access, including identification of the kind of information desired and the organization or organizations, if any, sponsoring the research; and a written statement (signed, dated, and witnessed) with respect to the following:

(1) That he/she will abide by regulations issued by DOT:

(a) To safeguard classified information: and

(b) To protect information which has been determined to be proprietary or privileged and is not eligible thereby for public dissemination.

(2) That he/she understands that any classified information which he/she receives affects the security of the U.S.

(3) That he/she acknowledges an obligation to safeguard classified information or privileged information of which he/she gains possession or knowledge as a result of his/her access to files of the Department.

(4) That he/she agrees not to reveal to any person or agency any classified information or privileged information obtained as a result of his/her access, except as specifically authorized in writing by the DOT and further agrees that he/she shall not use the information for purposes other than that set forth in his/her application.

(5) That he/she agrees to authorize a review of his/her notes and manuscript for the sole purpose of determining that no classified information or material is contained therein.

(6) That he/she understands that failure to abide by conditions of this statement will constitute sufficient cause for cancelling his/her access to classified information and for denying him/her any future access, and may subject him/her to criminal provisions of Federal law as referred to in this statement.

(7) That he/she is aware and fully understands the provisions of Title 18, U.S. Code, Crimes and Criminal Procedures, and of the Internal Security Act of 1950, as amended. Title 50, U.S. Code, prescribes, under certain circumstances, criminal penalties for the unauthorized disclosure of information respecting the national security and for loss, destruction or compromise of such information.

(8) That this statement is made to the U.S. Government to enable it to exercise its responsibilities for the protection of information affecting the national security. That he/she understands that any material false statement which he/she makes knowingly and willfully will subject him/her to the penalties of Title 18, U.S. Code, Section 1001.

d. The security office shall process the forms in the same manner as specified for a preappointment National Agency Check (NAC) for a critical-sensitive position. Upon receipt of the completed NAC, the security office, if warranted, may determine that access by the applicant to the information will be clearly consistent with the interests of national security and the person to be granted access is trustworthy. If deemed necessary, before making its determination, the office may conduct or request further investigation. Before access is denied in any case, the matter will be referred through channels to the OST Chief, Security Staff, for review and submission to the Secretary for final denial.

e. If access to TOP SECRET, intelligence or communications security information is involved, a full field investigation is required. However, this investigation shall not be requested until the matter has been referred through channels to the OST Chief, Security Staff, for determination as to adequacy of the justification and consent of other agencies as required.

f. When it is indicated that an applicant's research may extend to material originating in the records of another agency, approval must be obtained from the other agency prior to the grant of access.

g. Approvals for access shall be valid for the duration of the current research project but no longer than two years from the date of issuance, unless renewed. If a subsequent request for similar access is made by the individual within one year from the date of completion of the current project, access may again be granted without obtaining a new NAC. If more than one year has elapsed, a new NAC must be obtained. The local security office shall promptly advise its security manager of the appropriate headquarters, of all approvals of access granted under these provisions.

h. An applicant should be given access only to that classified information which is directly pertinent to his/her approved project. He/she may review files or records containing classified information only in offices under the control of DOT. Procedures should be established to identify classified material to which he/she is given access. He/she should be briefed on local procedures established to prevent unauthorized access to the classified material while in the custody, for the return of the material for secure storage at the end of the daily working period, and for the control of his/her notes until they have been reviewed. In addition to the security review of the applicant's manuscript, the manuscript should be reviewed by appropriate offices to assure that it is technically accurate insofar as material obtained from the Department is concerned and is consistent with the Department's public release policies.

11–11. To Former Presidential Appointees

Persons who previously occupied policy-making positions to which they were appointed by the President may be granted access to classified information or material which they originated, reviewed, signed, or received while in public office, provided that:

a. It is determined that such access is clearly consistent with the interests of national security; and

b. The person agrees to safeguard the information, to authorize a review of his/her notes to assure that classified information is not contained therein, and that the classified information will

not be further disseminated or published.

11–12. To Contractors.

Classified information may be disclosed to DOT contractors, subcontractors, bidders, and grantees, and to contractors of other Government agencies, provided access to the information is necessary to the performance of the contract and required security clearances have been issued (see Chapter XII).

11–13. To the National Defense Executive Reservists (NDER's).

For the purposes of dissemination, members of the DOT NDER program are considered to be in the same category as employees. Classified information may be disclosed to DOT NDER's for which they have a need provided clearances have been issued pursuant to the provisions of DOT Order 1630.2, Personnel Security Program. However, classified material shall not be physically released to the custody of NDER's except upon request to the Director of Emergency Transportation, RSPA, and in accordance with procedures established by the latter after consultation with the OST Chief, Security Staff.

11–14. To Reserve Military Personnel for Training and to Retired and Inactive Status Military Personnel.

The Commandant, U.S. Coast Guard, shall establish policies and procedures for the dissemination of classified information to reserve, retired, and inactive status personnel. Releases to retired and inactive status personnel shall be on a selective basis, limited to those persons and to that information deemed warranted in the furtherance of the USCG or overall Departmental mission. Dissemination shall be orally or visually as distinguished from the physical release of documentary material. Classified information to be used in training courses for reserve personnel shall be screened and justified.

11–15. Contact with News Media.

No person in DOT will discuss with or provide classified information to the news media. All contacts with the news media involving classified information, whether written or oral, will be referred to the OST Chief, Security Staff. The security element shall be consulted before any commitment to or understanding with the individual or entity has been made.

11–16. Prepublication Review.

Persons having access to Sensitive Compartmented Information (SCI) will be reqired to submit for security review to the Headquarters Security Staff all information or materials, including works of fiction, which contain or purport to contain SCI or description of activities that produce or relate to SCI or are believed to be derived from SCI. The request must be submitted in written form with complete justification.

11–17. Dissemination Through Meetings.

a. DOT activities which host or convene a classified conference, symposium, seminar, exhibit, or scientific and technical gathering (hereinafter referred to as a meeting) shall assure that security measures, appropriate to the circumstances, are taken. Requirements include, but are not limited to, the following:

(1) All persons attending the meeting shall be properly authorized and have a need for the information. In this regard, all attendees may not have a need for all of the information to be presented, particularly at a meeting covering a wide range of topics. In such instances, the agenda should be drawn and the meeting conducted in a manner to provide for selective attendance.

(2) Attendees shall be positively identified before being admitted to the meeting room.

(3) Persons who present classified information shall be advised of any limitations on their presentations which may be necessary because of the level of clearance or need-to-know of certain members of the audience. The speaker is responsible also for seeking such guidance and for keeping his/her disclosures within the prescribed limits.

(4) Notes, minutes, summaries, recordings, proceedings, reports, etc., on the classified portions of the meeting shall be safeguarded and controlled throughout the duration of the meeting. Such material, as appropriate, shall be forwarded to attendees by secure means at the conclusion of the meeting rather than being handcarried by them from the meeting site (except for local attendees).

(5) Physical and technical security controls shall be established as appropriate to the classification and sensitivity of the information to be discussed. Because of the security hazards inherent in the use of any normally public meeting place for the presentation or discussion of classified information, classified meetings or classified sessions of a meeting, shall, whenever possible, be held only on a U.S. Government installation or a cleared contractor facility. Exception to this provision may be approved by the appropriate security element.

[FR Doc. 84–8561 Filed 3–29–84; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Draft Advisory Circular on Use of Child/Infant Seats in Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to issue an Advisory Circular.

SUMMARY: The FAA has prepared an Advisory Circular that provides information on the proper use of child or infant seats aboard aircraft and precautions for rapid evacuations during emergencies. The Advisory Circular is not a regulation and will be issued for guidance purposes only.

DATE: Commenters must identify file number 120–XX (AWS–110) and comments must be received on or before May 14, 1984.

ADDRESSES: Send all comments on the draft Advisory Circular AC to:

Policy and Procedures Branch, AWS–110, Aircraft Engineering Division, Office of Airworthiness—File No. 120–XX (AWS–110), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591

Or deliver comments to:

Room 335D, 800 Independence Avenue, SW., Washington, D.C. 20591

FOR FURTHER INFORMATION CONTACT: Arthur J. Hayes, Policy and Procedures Branch, AWS–110, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone: (202) 426–8374.

Comments received on the draft AC may be inspected, before and after the closing date for comments, in Room 335D, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, D.C. 20591, between 8:00 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION: The telephone number given at the end of the draft AC may be used by the general public to obtain information on child or infant restraint devices approved for use in aircraft. When the AC is issued, that telephone number will be changed to an FAA Office of Public Affairs telephone number. Until then, public inquiries are still welcomed at the telephone number in the draft AC.

Comments Invited

Interested persons are invited to comment on the draft AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC file number 120–XX (AWS–110) and comments should be submitted to the address specified above. All comments received on or before the closing date specified above for comments will be considered by the Director of Airworthiness before issuing the final AC.

How to Obtain Copies

A copy of the draft AC may be obtained by contacting the person under "FOR FURTHER INFORMATION CONTACT."

Issued in Washington, D.C. on March 21, 1984.

M. C. Beard,

Director of Airworthiness.

Draft Advisory Circular

Subject: Use of Child/Infant Seats in Aircraft

Initiated by: AWS–110

[*AC No:* 120]

1. *Purpose.* This advisory circular provides information to assist the public in the proper use of child/infant seats aboard aircraft and provides precautions so all passengers are able to evacuate aircraft rapidly during emergencies.

2. *Related Federal Aviation Regulations (FAR) Sections.* Section 91.14, 121.311, 125.211, and 127.109.

3. *Background.*

a. *Establishing the Need.* A Federal Aviation Administration (FAA) Task Force on Child Restraint was convened in February 1979 to evaluate child restraint device use aboard aircraft and to explore the options for allowing child restraint devices in aircraft. Based on work previously done by the Civil Aeromedical Institute and the Flight Standards National Field Office in the FAA and the National Highway Traffic Safety Administration (NHTSA) of the Department of Transportation, the Task Force submitted a recommendation to the FAA Administrator on June 1, 1979; the recommendation indicated that the most suitable manner of allowing child restraint devices aboard aircraft would be to adopt the Federal Motor Vehicle Safety Standard No. 213, Child Restraint Systems, with additional provisions for the aircraft environment.

b. *The Aircraft Environment.* (1) In most nontransport category aircraft, there are small cabins; passenger seats with safety belts and shoulder harnesses; a need to evacuate entire aircraft rapidly in emergencies; aft, forward, and side facing passenger seats; passenger seats with backs that fold over, occasionally a single entrance/exit door; and up and down loads during inflight turbulance/gusts.

(2) In transport category aircraft, there are passenger seats with fold-over backs, safety belts, and arm rests (some may be folded up out of the way); a need to evacuate entire aircraft rapidly in emergencies; aft, forward, and side facing passenger seats; and up and down loads during inflight turbulence/gusts.

c. *Performance Standards.* Following development of the performance standards that account for the aircraft environment and after providing public notice, the FAA issued the standards in Technical Standard Order (TSO) C100, Child Restraint Systems, on May 28, 1982. The FAA issued the TSO for child restraint systems, i.e., child/infant seats, to provide for use of child/infant seats, which would not be a hazard to the child/infant or other passengers during an emergency in the air transportation environment.

d. *FAA approval.* A child/infant seat with an FAA TSO approval or a Parts Manufacturer Approval (PMA) may be used in all phases of flight and fully complies with FAR §§ 121.311(b), 125.211(b), and 127.109(b).

4. *Discussion.*

a. *Child/Infant Seats are Optional.* The FAA does not require the use of child/infant seats for small children aboard aircraft; however, air travelers are given the option, at their own expense, to use child/infant seats in accordance with paragraph 4b during all phases of an airline's flight operations. To exercise this option, the air traveler may be obliged, at the discretion of the airline, to purchase a ticket for an infant less than 2 years old.

b. *Approved Child/Infant Seats.* An air traveler may use a child/infant seat that either complies with TSO–C100 or is approved under a supplemental type certificate (STC)–PMA issued by the FAA. The child/infant seat should be clearly marked with one of these approvals or the original Federal Motor Vehicle Safety Standard label should be attached, and the seat's use should be acceptable to the airline (see paragraph 7).

c. *General Precautions.* (1) The owner of an FAA-approved child/infant seat has the responsibility to maintain and to use the seat in accordance with the maintenance, care, and use instructions provided with each seat.

(2) Instructions are provided with each child/infant seat to assure its proper use. All straps, especially shoulder straps, should always be used per the instructions, which should always be available and followed carefully. If all instructions are not followed for proper use of the child/infant seat, the device will at best provide only false security to the user, and at worst, be an actual hazard to a child/infant and other passengers.

(3) Unless the child/infant seat is stowed as carry-on luggage under a passenger seat, in an overhead compartment, or in another secured area identified by a flight attendant, the child/infant seat should be properly secured to a passenger seat at all times during flight, even while unoccupied by a child/infant; no other passenger may occupy that same seat.

(4) If a passenger seat is not available for an infant less than 2 years old, only the infant may be held by an adult. The infant should be taken out of the child/infant seat and held in the adult's lap. An infant in a child/infant seat held by an adult is more hazardous to other passengers.

(5) During takeoff or landing, the child/infant seat should not be occupied if placed in a sideward facing passenger seat.

5. *Precautions (Nontransport Category Aircraft).*

a. *Weight.* The weight of the child/infant seat should be considered in the weight and balance of the aircraft.

b. *Location.* Regardless of where the child/infant seat is placed in a small aircraft cabin, the possibility of it hindering evacuation in an emergency is real; however, the following precautions should improve evacuation capabilities:

(1) The child/infant seat should be located in an aft located passenger seat when available. Although the child/infant seat may be located anywhere, *an aft located seat is the preferred location* when another adult is also a passenger.

(2) The child/infant seat should not be located near an entry door or emergency exit except in 2-place aircraft where there is no other choice.

(3) The child/infant seat should not interfere with the full travel of the control wheel/yoke. Controls should be moved in all directions with the occupied child/infant seat in place. A special emphasis item may be placed in the takeoff and landing check list to ensure full travel of controls before takeoff and sufficient freedom of controls for landing. After a child/infant seat is secured in a safe position, care should be exercised if the seat is moved in flight.

c. *Shoulder Harnesses.* The child/infant seat should be attached using only the lap belt per manufacturer's instructions. Aircraft shoulder harnesses

should not be used to secure or to stabilize the child/infant seat as shoulder harnesses may result in injury to the child/infant.

6. *Precautions (Transport Category Aircraft).*

a. *Weight.* The weight of the child/infant seat is considered to be negligible in the normal situation where only a few passenger seats are occupied with children in restraint devices.

b. *Location.* (1) The child/infant seat should be located in a row that is neither the same row of an emergency exist nor the row forward or aft of an emergency exist. *A window passenger seat is the preferred location*; however, other locations are acceptable provided a responsible person occupies a seat next to the child/infant.

(2) The child/infant seat may also be located in the middle row of seats in a 2-aisle airplane but should not be located in an aisle seat. Again, an aisle seat may be acceptable provided all other seats in that row are occupied by persons responsible for the child/infant.

(3) More child/infant seats per row are allowed if the children are from the same family or traveling group.

(4) The child/infant seat should not block access ways and passageways to any emergency exit.

c. *Safety Belt Signs.* The child/infant should occupy its seat when the crew turns on the "Fasten Safety Belt" signs.

d. *Emergency Evacuation.* During an actual evacuation, any child/infant seat should remain attached to the passenger seat. Only the child/infant should be removed from the aircraft.

7. *Approval of Existing "Car Seats."*

a. *Privileges.* If a manufacturer receives a TSO–C100 authorization or an STC–PMA approval for a previously NHTSA approved model "car seat" without changes, each owner may be allowed to use one of those model "car seats" as a child/infant seat in an aircraft. To use the "car seat," the original Federal Motor Vehicle Safety Standard label should be attached, the "car seat" should be of a make and model that is FAA-approved, and the seat's use should be acceptable to the airline.

b. *Eligibility.* All airlines are provided with an updated listing of approved "car seat" models to allow a determination of the eligibility of a particular "car seat" for use on aircraft. An air traveler may check with the FAA (telephone: (202) 426–8374 on weekdays between 8:30 a.m. and 4:30 p.m.) or an airline to determine whether a particular "car seat" is eligible for use in aircraft and may check with the airline providing the transportation to determine whether it will accept the seat's use and whether it will require the purchase of a ticket for the seat's use.

[FR Doc. 84–8495 Filed 3–29–84; 8:45 am]
BILLING CODE 4910–13–M

[Docket No. 8429]

Petition for Reconsideration of Denial of Exemption From Northern Air Cargo, Inc.; Meeting and Invitation for Comments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting and invitation for comments.

SUMMARY: This notice requests comments and announces a public meeting to afford interested persons the opportunity to present information and views regarding the petition of Northern Air Cargo Inc. (NAC), to the Administrator to reconsider denial of Exemption No. 770N issued on December 27, 1983. That action denied a petition for exemption from NAC to extend and expand Exemption No. 770 which authorized NAC to use restricted category C–82 airplanes to carry only out-sized cargo for compensation or hire within Alaska. The FAA plans to use information received at the meeting in reconsidering its decision.

DATES: Public Meeting: Wednesday, April 25, 1984, 9:00 a.m. until all interested persons present are heard. Written Comments by: April 27, 1984.

ADDRESSES: Public Meeting: Sheffield Anchorage Hotel, 720 West Fifth Avenue, Anchorage, Alaska: Telephone: (907) 276–7676. Send written comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Petition Docket No. 8429, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Bedor, Project Development Branch, Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone (202) 472–4621.

SUPPLEMENTARY INFORMATION:

Background

The Federal Aviation Act of 1958 (FA Act) requires the FAA to give full consideration to the duty resting upon air carriers to perform their services with the highest possible degree of safety in the public interest and to make classifications of such standards, rules, regulations, and certificates appropriate to the differences between air transportation and other air commerce. To fulfill this responsibility, the Federal Aviation Regulations specify that airplanes engaged in carrying cargo for compensation or hire shall meet the airworthiness standards for certification in the normal or transport category. Until December 31, 1983, NAC was exempted from these standards in the public interest to allow it to carry, in its C–82 airplanes, only out-sized cargo, within the State of Alaska, which was too large, heavy, or bulky to be loaded aboard, unloaded from, or carried by conventional (side-loading) cargo airplanes.

In issuing Exemption No. 315 to Sholton and Carlson (now NAC) on April 7, 1964, the FAA based its grant of exemption on the fact that standard category airplanes which meet all required safety standards were not available in the Alaska area to fill the public need for the ventral-loading capabilities of the C–82 type airplane. After nearly two decades of granting relief to NAC, the FAA determined on December 27, 1983, that it would no longer be in the public interest to renew or expand NAC's exemption based on the grounds that standard category airplanes, which meet the minimum airworthiness safety standards prescribed in the FAR, are now available to meet the public safety and air transportation needs of Alaska.

The FAA is requesting public participation in the consideration of the NAC petition. The season for high activity in air transportation in Alaska is short and approaching rapidly. Accordingly, the FAA is making every effort to complete action on the NAC petition with all deliberate speed. Therefore, the schedule for the public meeting and the period for receiving written comments is not as liberal as might otherwise be the case. The FAA urges interested persons to mail written comments to the Docket to ensure they arrive by the closing date for comments.

Request To Make a Presentation

Interested persons are invited to attend the meeting and to participate by making oral or written statements. Written statements should be submitted in duplicate and will be made a part of the docket. Requests to make an oral presentation at the meeting should identify Docket No. 8429, indicate the time required, and be sent to: Ms. Ronnie Davis, Flight Standards Division, AAL–200, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, Alaska 99513; Telephone: (907) 271–5514. Requests must be received on or before April 20, 1984.

Presentations will be scheduled on a first-come first-served basis.

Meeting Procedures

Persons who plan to attend the meeting should be aware of the following procedures to be followed:

(a) The meeting will be informal in nature and will be conducted by the designated representative of the Administrator under 14 CFR 11.33. Each participant will be given an opportunity to made a presentation.

(b) The meetings will begin at 9:00 a.m. (local time). There will be no admission fee or other charge to attend and participate. The meeting will be open to all persons on a space available basis. All persons wishing to make a statement will be permitted to do so, however, the meeting will be adjourned once all persons present have had an opportunity to speak.

(c) All meeting sessions will be recorded by a court reporter. Anyone interested in purchasing the transcript should contact the court reporter directly. A copy of the court reporter's transcript will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meeting may be accepted at the discretion of the presiding officer. Participants submitting handout materials must present and original and two copies to the presiding officer for approval before distribution. If approved by the presiding officer, there should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by FAA participants at the hearing should not be taken as expressing a final FAA position.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1355(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983))

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

Kenneth S. Hunt,

Director of Flight Operations.

[FR Doc. 84–8667 Filed 3–29–84; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

The Department of Treasury has 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) 535–6020. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and/or to the Treasury Department clearance Officer, Room 7227, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545–0015
Form Number: IRS Form 706
Type of Review: Existing Collection
Title: United States Estate Tax Return

Alcohol, Tobacco and Firearms

OMB Number: 1512–0076
Form Number: ATF Form 1485
Type of Review: Extension
Title: Application and Withdrawal Permit of User to Procure Specially Denatured Spirits

OMB Number: 1512–0065
Form Number: ATF Form 1450
Type of Review: Extension
Title: Application and Withdrawal Permit to Procure Spirits Free of Tax

OMB Number: 1512–0175
Form Number: ATF Form 4327
Type of Review: Extension
Title: Limited Withdrawal Permit to Procure Specially Denatured Spirits or Tax-Free Alcohol

OMB Reviewer: Norman Frumkin (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

U.S. Customs Service

OMB Number: New
Form Number: None
Type of Review: Existing Regulation
Title: Declaration of Artist, Seller, or Shipper That Goods Imported are Original Works of Art

Comptroller of the Currency

OMB Number: 1557–0157
Form Number: CC 7022–12
Type of Review: Revision
Title: Rules, Policies, and Procedures for Corporate Activities; Conversions

Office of the Secretary

OMB Number: New
Form Number: None
Type of Review: New
Title: Economic Dislocation Certification

Bureau of Government Financial Operations

OMB Number: New
Form Number: TFS Forms 469, 460, 458, and 459
Type of Review: Existing Collection
Title: Financial Institution Offer to Contract and Application for Designation as a Depositary for Federal Taxes; Resolutions Authorizing the Financial Institution Offer to Contract and Application for Designation as a Depositary for Federal Taxes; Financial Institution Offer to Contract and Application for Designation as a Treasury and Loan Depositary; Resolutions Authorizing the Financial Institution Offer to Contract and Application for Designation as a Treasury and Loan Depositary

OMB Reviewer: Judy McIntosh (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Dated: March 26, 1984.

Gary Kowalczyk,

Department Reports, Management Office.

[FR Doc. 84–8616 Filed 3–29–84; 8:45 am]

BILLING CODE 4810–25–M

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 506; Ref: ATF O 1100.126A]

Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR Part 13, the Gauging Manual; Delegation Order

1. *Purpose.* This order delegates certain authorities of the Director to the Associate Director (Compliance Operations) and permits redelegation to other Compliance Operations personnel.

2. *Cancellation.* ATF O 1100–126, Delegation Order—Delegation to the Assistant Director (Regulatory Enforcement) of Authorities of the Director in 27 CFR Part 13, dated April 1, 1980, is canceled.

3. *Background.* Under current regulations, the Director has the authority to take final action on matters relating to the gauging manual. We have determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower organizational level.

4. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 221, dated June 6, 1972, and by 26 CFR 301.7701–9, authority to take final action on the following matters is delegated to the Associate Director (Compliance Operations):

a. To approve the use of other instruments for determination of specific gravity, under 27 CFR 13.21.

b. To approve other devices or methods and to authorize their use for determination of the quantity of distilled spirits or denatured spirits by volume; and to authorize the determination of the quantity of distilled spirits or denatured spirits by a statistical control method, under 27 CFR 13.36 and 13.51.

5. *Redelegation.*

a. The authorities in paragraph 4 may be redelegated to Bureau Headquarters personnel not lower than the position of branch chief.

b. The authorities in paragraph 4 may be redelegated to regional directors (compliance) to approve, without submission to Headquarters, subsequent requests which are identical to those previously approved by Bureau Headquarters. Regional directors (compliance) may redelegate these authorities to personnel not lower than the position of technical section supervisor.

6. *For Information Contact.* Virginia Yusken, Procedures Branch, 1200 Pennsylvania Avenue, NW., Washington, DC 20226, (202) 566–7602.

7. *Effective Date.* This delegation order becomes effective on March 30, 1984.

Approved: March 23, 1984.

Stephen E. Higgins,

Director.

[FR Doc. 84–8530 Filed 3–29–84; 8:45 am]

BILLING CODE 4810–31–M

[Notice No. 508; Ref: ATF O 1100.84A]

Delegation to the Associate Director (Compliance Operations) of Authority of the Director in 27 CFR Part 252, Exportation of Liquors; Delegation Order

1. *Purpose.* This order delegates certain authorities of the Director to the Associate Director (Compliance Operations) and permits redelegation to other Compliance Operations personnel.

2. *Cancellation.* ATF O 1100.84, Delegation Order—Delegation to the Assistant Director (Regulatory Enforcement) of Authorities of the Director in 27 CFR Part 252, dated March 9, 1978, is canceled.

3. *Delegation.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 221, dated June 6, 1972, and by 26 CFR 301.7701–9, there is delegated to the Associate Director (Compliance Operations) the authority to prescribe, pursuant to 27 CFR 252.2, all forms required by 27 CFR Part 252.

4. *Redelegation.* The authority delegated to the Associate Director (Compliance Operations) may be redelegated to personnel in Bureau Headquarters not lower than the position of branch chief.

5. *For Information Contact.* David M. Purcell, Procedures Branch, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20226, (202) 566–7602.

6. *Effective Date.* This delegation order becomes effective on March 30, 1984.

Approved: March 23, 1984.

Stephen E. Higgins,

Director.

[FR Doc. 84–8529 Filed 3–29–84; 8:45 am]

BILLING CODE 4810–31–M

Customs Service

Domestic Interested Party Petition Concerning Tariff Classification of Polypropylene Rope; Additional Comments Requested

AGENCY: U.S. Customs Service, Treasury.

ACTION: Domestic interested party petition; additional comments requested.

SUMMARY: This document requests additional comments from interested members of the public with respect to a domestic interested party petition concerning the tariff classification of certain imported polypropylene ropes. Imported polypropylene ropes are currently classified for duty purposes as other articles of plastics, not specially provided for. If these ropes are products of a beneficiary developing country, they are accorded duty-free entry under the Generalized System of Preferences (GSP). The petitioner contends that these ropes should be classified under the tariff provision for cordage of man-made fibers subject to a higher rate of duty and not eligible for duty-free entry under the GSP even if imported from a beneficiary developing country. A notice inviting the public to comment on the receipt of this petition was previously published in the **Federal Register**. Based upon Customs review of this matter and analysis of the comments received, additional matters have been raised regarding the proper classification. Customs believes that because of the complexity of the issues involved, additional comments on the new matters are warranted before a final determination is made with regard to the tariff classification of the subject articles.

DATE: Comments must be received on or before May 29, 1984.

ADDRESS: Written comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Phil Robins, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–8181).

SUPPLEMENTARY INFORMATION:

Background

A petition dated November 9, 1982, was filed with the Customs Service under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), by the Sunshine Cordage Corporation, an American manufacturer of synthetic twines, ropes, and cordage. The petitioner contends that certain imported polypropylene ropes made from strips and "plexiform filaments", which are currently classified by Customs under the provision for other articles of plastics, not specially provided for, in item 774.55, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), are more appropriately classified under the provision for cordage of man-made fibers in items 316.55 and 316.58, TSUS, depending on diameter. The current rate of duty for articles classified under item 774.55, TSUS, is 6.5 percent ad valorem and the current rate of duty for articles classified under items 316.55 and 316.58, TSUS, is 6 cents per pound plus 11.5 percent ad valorem and 12.5 cents per pound plus 15 percent ad valorem, respectively. The petitioner correctly notes that articles classified under item 774.55, TSUS, can be entered free of duty under the Generalized System of Preferences ("GSP") (see sections 10.171–10.178, Customs Regulations (19 CFR 10.171–10.178)), if imported directly from a beneficiary developing country, whereas articles classified under items 316.55 and 316.58, TSUS, cannot be entered free of duty under the GSP.

An amended petition, dated December 14, 1982, was submitted by the Sunshine Cordage Corporation and filed with Customs to support its original petition and set forth further arguments as to why the classification of polypropylene ropes should be changed. The polypropylene ropes which are the subject of both the petition and the amended petition, are composed of fibrillated strips, which Customs has considered to be man-made plexiform

filaments, in a folded, twisted, or crimped condition.

A notice inviting the public to comment on the receipt of this petition was published in the **Federal Register** on April 29, 1983 (48 FR 19510). A document correcting certain omissions in the April 29, 1983, notice was published on May 25, 1983 (48 FR 23513), and a subsequent document extending the period of time for submitting comments was published on July 26, 1983 (48 FR 33961).

In reviewing the comments received, additional questions concerning the appropriateness of classification have been raised. These questions were not presented in the original notice for public consideration and comments. Customs believes that the public should have the opportunity to present comments in regard to the new issues under consideration that were not previously mentioned.

New Issues

Issue 1

The first issue that was not previously considered is whether fibrillated strips, even those which are derived from solid strips measuring less than 1 inch in width, are plexiform filaments. As the tariff schedules were originally drafted, no provisions were made for plexiform filaments. In a submission made by the Man-Made Fiber Producers Association to the U.S. Tariff Commission, it was urged that a provision for plexiform fibers or filaments be included in the new tariff schedules. The following is an excerpt from that submission which describes plexiform fibers.

> Following the major classification categories of monofilaments and bands or strips we recommend a new category for plexiform fibers or filaments. These new manmade fibers of very recent development are neither in the traditional form of monofilaments or grouped filaments. Their structure is as the term connotes a complicated networklike fibrous structure in strands. In the manufacture of a manmade fiber of this type the filament comes out of a single orifice in the spinneret and as the solvent evaporates the nature of the material is such that the filament breaks into fibrils. Some of these may have free ends like splinters. Others may go back into the main body of the fiberlike loops. The filbrils are literally a plexus, or network, being intertwined or intermeshed in random fashion. The fiber or filament so composed is a retiform or weblike structure which is decidedly longitudinal in dimension.
>
> Essentially, the plexiform fiber is a monofilament of continuous length and should receive the same duty treatment as monofilaments. A separate classification is recommended because these plexiform filaments are quite new to commerce and their plexus nature may lead to some uncertainty as to whether they are grouped filaments or monofilaments. Since they are a distinct form of manmade fiber, they should be separately provided for and it is our judgment that they are more like monofilamentrs and, hence, should be dutiable at the rate applicable to monofilaments. (Tariff Classification Study, Explanatory and Background Materials, schedule 3, November 15, 1960, at pg: 516).

In view of the above, a substantial question has been raised whether any filbrillated strips can constitute plexiform filaments and, therefore, whether Customs' established and uniform practice of considering fibrillated strips derived from man-made fiber strips to be plexiform filaments is clearly wrong.

Issue 2

The second issue to be considered is, assuming that plexiform filaments are determined not to include filbrillated strips, are those filbrillated strips considered textile man-made fibers for tariff purposes. Headnote 3(f), schedule 3, TSUS, defines the term "fibers" as including filaments and strips and any other fibrous structure suitable for the manufacture of textiles. It would appear that a fibrillated strip used in the manufacture of cordage is fibrous structure which is suitable for the manufacture of textiles and, therefore, should be considered to be included under the definition for "fibers." If this merchandise were considered to be within the definition of "fibers," and is suitable for the manufacture of textiles, it would appear to be classifiable when imported in article form as opposed to material, under the provision for articles of textile materials not specially provided for, not ornamented and not knit, of man-made fibers, in item 389.62, TSUS, at a higher rate of duty than if it were classifiable as plexiform filaments, in item 309.10, TSUS.

Issue 3

The third issue not previously mentioned is whether a single fibrillated strip which has been twisted and imported as twine or cord may constitute cordage for tariff purposes. Headnote 1(a), part 2, schedule 3, TSUS, defines the term "cordage" as meaning "assemblages of textile fibers or yarn, in approximately cylindrical form and of continuous length." Customs has an established and uniform practice to classify twine or cord made from a single fibrillated strip as cordage. However, in view of the language contained in headnote 1(a), which refers to *assemblages* of textile fibers or yarns, the correctness of that practice is doubtful and the merchandise may be more properly classifiable under the provision for articles not specially provided for, not ornamented, of man-made fibers, in item 389.62, TSUS. Comments in this area should be directed to whether the present practice of classification applicable to single fibrillated strips being imported as twine or cord is clearly wrong.

Comments

Pursuant to § 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on this matter, Customs invites written comments from interested parties on the petition and the correctness of Customs classification of these articles.

The domestic interested party petition and the amended petition, as well as all comments received in response to the first notice and this notice, will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), between the hours of 9:00 a.m. to 4:30 p.m. on normal business days, at the Regulations Control Branch, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Authority

This notice is published in accordance with section 175.21(a), Customs Regulations (19 CFR 175.21(a), Customs Regulations (19 CFR 175.21(a)).

Drafting Information

The principal author of this document was James S. Demb, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved: March 16, 1984.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 84-8558 Filed 3-29-84; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

Privacy Act of 1974; Report of New System

AGENCY: United States Information Agency.

ACTION: Notice of new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, we are proposing to establish a new system of records. The system will be manually operated at first, and will be for internal use only. It

is intended to maintain, in one location, the names, backgrounds and qualifications of USIA employees who are working in positions which involve procurement activity, or who are proposed for appointment to positions as Contracting Officers. The system will also be used to monitor the contracting workforce of USIA.

DATE: Comments are due by April 30, 1984.

ADDRESS: The public should address comments to: Director, Office of Contracts, U.S. Information Agency, 1717 H Street NW., Washington, D.C. 20547.

FOR FURTHER INFORMATION CONTACT: Director, Office of Contracts, U.S. Information Agency, 1717 H Street NW., Washington, D.C. 20547.

SYSTEM NAME:

USIA Procurement Personnel Information System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Contracts, U.S. Information Agency, 1717 H Street NW., Washington, D.C. 20547.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USIA employees involved with procurement activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, office, position title, series and grade, service computation date, position description, education, training, experience, professional recognition, career objectives.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for this system is derived from the Federal Records Act, 44 U.S.C. 3101, and Federal Acquisition Regulation, Subpart 1–6.

PURPOSE(S):

The U.S. Information Agency intends to establish a register of trained and qualified individuals who may be appointed as Contracting Officers at all grade levels. In accordance with Section 1(g) of Executive Order 12352, clear lines of contracting authority and accountability must be established. The system will be used to establish and monitor the contracting workforce.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Identification of employees who have met standards of experience, education, and training for appointment as Contracting Officers and to analyze procurement system performance such as functional placement, system training needs, and workforce size. Information is available to personnel of the U.S. Information Agency as may be required for performance of official duties. Information on individuals will not normally be available outside the U.S. Information Agency as it falls within the excepted guidelines of the Freedom of Information Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All information will be maintained in a paper hard copy file which will be automated as soon as possible.

RETRIEVABILITY:

Records are retrieved by name, office, series and grade.

SAFEGUARDS:

Files are kept in the Office of Contracts in bar lock cabinets and may be accessed only by the office staff. As soon as the file is automated, it will be password protected.

RETENTION AND DISPOSAL:

Files will be retained as long as the individual remains an employee of the U.S. Information Agency, and will be destroyed upon the employee's separation.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Contracts, U.S. Information Agency, 1717 H Street NW., Washington, D.C. 20547.

NOTIFICATION PROCEDURE:

Access to Information Officer (M/AGP), U.S. Information Agency, 301 Fourth Street SW., Washington, D.C. 20547.

RECORDS ACCESS PROCEDURES:

Requests from individuals should be addressed to Access to Information Officer (M/AGP), U.S. Information Agency, 301 Fourth Street SW., Washington, D.C. 20547.

CONTESTING RECORD PROCEDURES:

The U.S. Information Agency's rules for access and for contesting contents and appealing initial determinations by the individual concerned are published in Part 505, Title 22, United States Code of Federal Regulations.

RECORD SOURCE CATEGORY:

Information is provided by the individual concerned.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated: March 23, 1984.

Charles Z. Wick,

Director.

[FR Doc. 84–8324 Filed 3–29–84; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 63
Friday, March 30, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, April 4, 1984.

LOCATION: Third Floor Hearing Room, 1111-18th Street, NW., Washington, D.C.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Squeeze Toys: Options

The staff will brief the Commission on options to address the choking hazards associated with squeeze toys and similar infant products.

2. Gas Heating Systems: Status

The staff will brief the Commission on the current status of this priority project.

3

FOIA Regulations: Proposed Amendment

The staff will brief the Commission on the proposed amendments to the regulations implementing the Freedom of Information Act, 16 CFR 1015.

For a recorded message containing the latest agenda information call, 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Avenue, Bethesda, Md. 20207 301-492-6800

Sheldon D. Butts,

Deputy Secretary.

March 28, 1984.

[FR Doc. 84-8679 Filed 3-28-84; 12:53 pm]

BILLING CODE 6355-01-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 a.m. (Eastern Time), Tuesday, April 3, 1984.

PLACE: Commission Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, D.C. 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Votes
2. A Report on Commission Operations (Optional)
3. Freedom of Information Act Appeal No. 83-1-FOIA-4-BI, concerning a request for information from a charge file.
4. Freedom of Information Act Appeal No. 84-02-FOIA-6-IN, concerning a request for information from a charge file.
5. Freedom of Information Act Appeal No. 84-2-FOIA-22-CL, concerning a request for documents from a closed ADEA charge file.
6. Freedom of Information Act Appeal No. 84-1-FOIA-2-NO, concerning a request for information from a closed Title VII charge file.
7. Proposed Annual Report—Coordination of Federal Equal Employment Opportunity Programs
8. Proposed Compliance Manual Section 612, Plant Relocation
9. Ten Proposed Compliance Manual sections of Volume I.
10. Proposed Amendments to Title VII Procedural Regulations

Closed

1. Litigation Authorization; General Counsel Recommendations
2. Consideration of Certain Subpoenas

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the **Federal Register**, the Commission also provides recorded announcements a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Treva McCall, Executive Secretary to the Commission at (202) 634-6748.

Dated: March 27, 1984.

Treva McCall,

Executive Secretary to the Commission.

[FR Doc. 84-8604 Filed 3-27-84; 4:44 pm]

BILLING CODE 6750-01-M

3

INTERNATIONAL TRADE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENTS: 49 FR 11748 (3/27/84).

PREVIOUSLY ANNOUNCED TIMES AND DATES OF THE MEETINGS: Monday, April 2, 1984 and Thursday, April 5, 1984.

CHANGES IN THE MEETING: Cancellation of the meeting to be held on Monday, April 2, 1984, and addition of those agenda items to the meeting on Thursday, April 5, 1984, at 2:30 p.m., as follows:

4. Investigations 731-TA-134 and -135 [Final] (Color Television Receivers from the Republic of Korea and Taiwan)—briefing and vote.
5. Agenda.
6. Minutes.
7. Ratifications.
8. Any items left over from previous agenda.

In conformity with 19 CFR 201.37(b), Commissioners Eckes, Stern, Haggart, and Lodwick, determined by action jacket CO59-84-003, on March 26, 1984, that item No. 5 on the agenda for April 2, 1984, should be rescheduled to the meeting of April 5, 1984. By deliberations on March 27, 1984, the Commission voted to reschedule the items remaining on the April 2nd agenda to the meeting on April 5, 1984, determined that Commission business requires the changes to the agenda and affirmed that no earlier announcement of the changes was possible, and directed issuance of this notice at the earliest practicable time. Commissioner Rohr did not participate in the vote.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-8693 Filed 3-28-84; 1:59 pm]

BILLING CODE 7020-02-M

4

LEGAL SERVICES CORPORATION (BOARD OF DIRECTORS)

PREVIOUSLY ISSUED: March 19, 1984 (Published March 21, 1984).

PREVIOUSLY ANNOUNCED TIME AND DATE: It will commence at 10:00 a.m. and continue until all official business is completed; Friday, March 30, 1984.

CHANGE IN NOTICE: Deletion under **MATTERS TO BE CONSIDERED:**

Under 5. Report from the Office of General Counsel
—Proposed Final Regulation
1612—Restrictions on Lobbying and Other Certain Activities

CONTACT PERSON FOR MORE INFORMATION: LeaAnne Bernstein, Office of the President, (202) 272-4040.

DATE ISSUED: March 28, 1984.

Donald P. Bogard,

President.

[FR Doc. 84-8694 Filed 3-28-84; 1:59 pm]

BILLING CODE 6820-35-M

5

NUCLEAR REGULATORY COMMISSION

DATE: Tuesday, March 27, 1984 (Revised), Friday, March 30, 1984 (Revised), and Week of April 2, 1984.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE DISCUSSED:

Tuesday, March 27

10:00 a.m.
Briefing on Status of Utility and NRC Compliance with TMI Action Plan (Public Meeting) (As Announced)

2:00 p.m.
Briefing by Executive Branch (Closed—Ex. 1) (Replaces Discussion of the Terms "Important to Safety" and "Safety Related")

Friday, March 30

10:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (New Item) a. Earthquakes—Diablo Canyon (postponed from March 23)

2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for WPPSS-2 (Public Meeting) (As Announced)

3:30 p.m.
Discussion of Letter to Mr. J. Miller (Ref: 2/28 Human Factors Meeting) (Public Meeting) (New Item)

Week of April 2

Tuesday, April 3

10:00 a.m.
Briefing on COBALT-60 Contamination of Mexican Steel (Public Meeting)

2:00 p.m.
Discussion and Possible Vote on QA Report to Congress and Status of QA Initiatives (Public Meeting)

Wednesday, April 4

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

2:00 p.m.
Briefing on PORVs in CE Plants (Public Meeting)

Thursday, April 5

10:00 a.m.
Briefing on Intergrated Safety Assessment Program (ISAP) (Public Meeting)

2:00 p.m.
Meeting with Advisory Committee on Reactor Safeguards (Public Meeting)

ADDITIONAL INFORMATION: Briefing on Public Comments on ANPR—Role of the Staff scheduled for March 22, *postponed.*

TO VERIFY THE STATUS OF MEETINGS CALL: (Recording), (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410.

Walter Magee,

Office of the Secretary.

[FR Doc. 84-8612 Filed 3-27-84; 4:56 pm]

BILLING CODE 7590-01-M

6

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENTS: (49 FR 10772 3/22/84)

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Friday, March 16, 1984.

CHANGE IN THE MEETING: Additional item.

The following additional item was considered at a closed meeting scheduled for Tuesday, March 27, 1984, at 9:30 a.m.

Litigation matter.

Chairman Shad and Commissioners Treadway and Cox determined that Commission business required the above change 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: Bruce Kohn at (202) 272-3195.

George A. Fitzsimmons,

Secretary.

March 27, 1984.

[FR Doc. 84-8678 Filed 3-28-84; 12:53 pm]

BILLING CODE 8010-01-M

federal register

Friday
March 30, 1984

Part II

Department of Energy

41 CFR Ch. 109

Property Management Regulations; Proposed Rule

DEPARTMENT OF ENERGY

41 CFR Ch. 109

Property Management Regulations

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) proposes to amend the DOE Property Management Regulations (DOE/PMR) (41 CFR Chapter 109) which were published on January 3, 1979 (44 FR 986). The revisions are intended to update the regulations to reflect (i) organizational, policy, and procedural changes that have occurred subsequent to their issuance; (ii) amendments to the Federal Property Management Regulations (41 CFR Chapter 101); and (iii) the proposed issuance of the Federal Acquisition Regulations (FAR) and the Department of Energy Acquisition Regulations (DEAR) which will become effective April 1, 1984. Because of the extensive changes to the DOE-PRM, with the exception of Parts 109–35 and 109–40, they are printed in their entirety in this proposed amendment.

DATE: Comments must be submitted on or before April 30, 1984.

ADDRESS: Comments should be addresssed to the Department of Energy, Property and Equipment Management Division, MA–422, Forrestal Building, Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT:
John D. French, Director, Property and Equipment Management Division, Procurement and Assistance Management, Department of Energy, Washington, D.C. 20585, (202) 252–8255.
Elliot Winnick, Office of General Counsel, Department of Energy, Room 6B–190, Washington, D.C. 20585, (202) 252–1526.

SUPPLEMENTARY INFORMATION:

I. Legislative Background

Under Section 644 of the Department of Energy Organization Act (Pub. L. 95–91, 91 Stat. 565, 42 U.S.C. 7101 *et seq*) the Secretary of Energy is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in him. The Department of Energy Property Management Regulations (DOE–PMR) were promulgated on January 3, 1979 (44 FR 986, 41 CFR Chapter 109).

Significant changes in the regulations being proposed by this amendment are: (1) Clarification of definitions of heads of field offices and of contractors (109–1.100–51); (92) description of the DOE–PMR (109–1.102–50); (3) description of delegated authority (109–1.5004); (4) clarification of the responsibilities of various Department officials (109–1.5005); (5) requirement for designation of property management officers (109–1.5005–2 and –5); (6) more detailed physical inventory requirements (109–1.5106–5); (7) revised listing of required reports (109–1.5148); (8) a new subpart on policy and responsibilities for contractor's personal property management programs (109–1.52); (9) requirement to report precious metals and lead to the DOE pool in lieu of reporting them to GSA (109–14.103–1.50); (10) requirement to utilize existing furniture and office machines (109–25.104); (11) inclusion of inventory management objectives (109–27.50); (12) revised definition of equipment held for future projects (109–27.5101); (13) requirement to maintain records of equipment held for future projects (109–27.5103); (14) a new subpart on policies, principles, and guidelines to be used in the management of precious metals (109–27.53); (15) requirement for control of GSA shopping plates (109–28.3); (16) requirement to purchase fuel efficient light trucks (109–38.1307); (17) a new subpart on policy and procedures for management of watercraft (109–38.53); (18) changes in the reporting of excess property for utilization within DOE (109–43.311–1.50); (19) establishment of the DOE lead bank (109–43.313–57); (20) policies for utilization and disposal of chemically contaminated property (109–45.50); and (21) deletion of the requirement for reclamation of wastepaper (109–42.50).

In addition to the foregoing significant changes, numerous other sections of the DOE–PMR are proposed to be revised or deleted for reasons of clarification, to reflect organizational changes, or because they are no longer deemed necessary.

II. Procedural Requirements

A. Review Under Executive Order 12291

Inasmuch as this proposed rule relates to agency management of personal property under the DOE procurement function, the OMB clearance procedures set forth in Executive Order 12291 (February 17, 1981) are not applicable.

B. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Publ. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

The information collection and recordkeeping requirements that are imposed on the public by this proposed rulemaking have been cleared by the Office of Management and Budget (OMB) in accordance with section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq*. OMB clearance number 1901–0261 has been assigned with an expiration date of March 31, 1984.

D. Public Hearing

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have a substantial impact on the Nation's economy of large numbers of individuals or businesses. Therefore, pursuant to Pub. L. 95–91, the DOE Organizational Act, the Department does not plan to hold a public hearing on this proposed rule.

III. Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to the proposed DOE–PMR amendments set forth in this notice. All written comments received will be carefully assessed and fully considered prior to publication of the proposed amendment as a final regulation.

List of Subjects in 41 CFR Ch. 109

Government property, DOE property management regulations.

For the reasons set in the preamble, Chapter 109 of Title 41 of the Code of Federal Regulations, is proposed to be amended by revising Parts 109–1, 109–14, 109–25—109–28, 109–30, 109–36, 109–38, 109–39, 109–42—109–46, 109–48, 109–50, 109–51, and 109–60 as set forth below.

Issued in Washington, D.C. March 20, 1984.

Thomas J. Davin, Jr.,

Deputy Director, Procurement and Assistance, Management Directorate.

Chapter 109—Department of Energy Property Management Regulations

SUBCHAPTER A—GENERAL

Part
109–1—Introduction

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109–1.000–50 Scope of part.

This part establishes a system by which the Department of Energy (DOE) implements and supplements the Federal Property Management Regulations (FPMR) (41 CFR Chapter 101) issued by the General Services Administration (GSA).

Subpart 109–1.1–Regulation System

§ 109–1.000–50 Scope of subpart.

This subpart established the Department of Energy Property Management Regulations (DOE–PMR), Chapter 109 of the Federal Property Management Regulations System (FPMR), (41 CFR Chapter 109).

§ 109–1.000–51 Definitions.

As used in this chapter for following definitions apply:

(a) "Heads of field offices" are the heads of any Departmental office located outside the Washington, D.C. metropolitan area. In addition, the Federal Energy Regulatory Commission, Headquarters, shall be considered a field office for purposes of these regulations. See § 109–1.5005–4 concerning the responsibilities of the Director, Office of Procurement Operations, Procurement and Assistance Management Directorate, Headquarters.

(b) "Direct operations" means operations conducted by DOE personnel.

(c) "Contractor" means a management and operating contractor, as that term is defined in the Federal Acquisition Regulation (FAR) 48 CFR 17.601 as supplemented by the Department of Energy Acquisition Regulations (DEAR) 48 CFR 917.604–70, and such other contractors as may be designated by the Procurement Executive or head of the contracting activity as subject to the provisions of this chapter.

§ 109–1.102–50 Department of Energy Property Management Regulations.

The DOE–PMR, established in this part, implement and supplement the FPMR provisions governing the acquisition, utilization, management, and disposal of personal property. The DOE–PMR are issued to establish uniform property management policies and, as necessary, procedures for the Department of Energy. (See 109–1.106–50(d) and (e) with respect to management of property in the possession of other DOE contractors and financial assistance recipients).

§ 109–1.103–50 DOE–PMR Bulletins.

A DOE–PMR Bulletin will be used to disseminate information not affecting policy or to clarify instructions in actions required by the FPMR or the DOE–PMR.

§ 109-1.104-50 Publication and distribution of DOE-PMR.

§ 109-1.104-1-50 Publication.

The DOE-PMR will be published in the **Federal Register** and will appear in the Code of Federal Regulations as Chapter 109 of Title 41, Public Contracts and Property Management. Looseleaf publications will be distributed to DOE offices.

§ 109-1.104-2-50 Distribution.

The responsibilities and authorities for distribution of publications in the FPMR series are as follows:

(a) The Director of Procurement and Assistance Management—

(1) Designates an official to serve as liaison with GSA;

(2) Establishes and maintains distribution patterns; and

(3) Processes DOE-PMR Handbooks for final approval and publication.

(b) The Director of Administration—

(1) Distributes publications in accordance with established patterns;

(2) Maintains a stock of FPMR and DOE-PMR publications for furnishing additional copies; and

(3) Provides additional support services as required.

(c) Heads of field offices—

(1) Provide the Director of Procurement and Assistance Management with field organization requirements;

(2) Forward one-time requests for additional copies of centrally distributed publications to the Office of Administrative Services, Headquarters (MA-234.2); and

(3) Distribute publications to their offices and contractors in accordance with established distribution patterns.

§ 109-1.106-50 Applicability of Federal and Departmental regulatory issuances.

(a) The FPMR and this DOE-PMR apply to all direct operations.

(b) Unless otherwise provided in the appropriate part or subpart, contracting officers shall assure that the FPMR and DOE-PMR are applied to contractors.

(c) The FPMR and DOE-PMR, as appropriate, shall be used by contracting officers in the administration of contracts, and in the review, approval, or appraisal of such contractor operations.

(d) Regulations for the management of Government property in the possession of other DOE contractors are contained in the Federal Acquisition Regulations, Part 45 (48 CFR Chapter 1) and in the DOE Acquisition Regulations, Part 945 (48 CFR Chapter 9).

(e) Regulations for the management of property held by financial assistance recipients are contained in the DOE Financial Assistance Rules (10 CFR Part 600) and the Financial Assistance Procedures Manual, DOE Order 4600.1.

§ 109-1.107-50 Consultation regarding DOE-PMR.

The DOE-PMR shall be fully coordinated with all Departmental elements substantively concerned with the subject matter.

§ 109-1.108 Agency implementation and supplementation of FPMR.

(a) The DOE-PMR shall include regulations deemed necessary to understand basic and significant Departmental property management policies and procedures which implement, supplement, or deviate from the FPMR. In the absence of any DOE-PMR issuance, the basis FPMR material shall govern.

(b) The DOE-PMR shall be consistent with the policies and procedures contained in the FPMR and shall not duplicate or paraphrase the FPMR material.

(c) Implementing procedures, instructions, and guides which are necessary to clarify or to implement the DOE-PMR may be issued by Headquarters or field organizations provided that the implementing procedures, instructions and guides—

(1) Are consistent with the policies and procedures contained in this regulation as implemented and supplemented from time to time;

(2) To the extent practicable, follow the format, arrangement, and numbering system of this regulation; and

(3) Contain no material which duplicates, paraphrases, or is inconsistent with the contents of this regulation.

§ 109-1.109-50 Numbering of DOE-PMR.

(a) Where the DOE-PMR implement the FPMR, the implementing part, subpart, section or subsection of the DOE-PMR will be numbered and captioned, to the extent possible, to correspond to the applicable part, subpart, section, or subsection of the FPMR.

(b) Where the DOE-PMR supplement the FPMR, the numbers 50 and up will be assigned to the parts, subparts, sections or subsections involved.

§ 109-1.110-50 Deviation procedures.

(a) Requests for deviations from the FPMR and the DOE-PMR shall be forwarded to the Headquarters organization having functional responsibility, as follows:

(1) Part 109-35—Director, Division of Telecommunications.

(2) Part 109-40—Assistant secretary for Defense Programs.

(3) All other parts—Director of Procurement and Assistance Management.

(b) In individual cases, deviations from the FPMR and DOE-PMR may be authorized by the Headquarters organization having functional responsibility. A supporting statement for each individual deviation, which indicates briefly the nature of the deviation, the reasons for such special action, and the Headquarters approval, shall be maintained by the Headquarters organization concerned.

(c) In classes of cases, requests for deviations from the FPMR and the DOE-PMR shall be accompanied by a supporting statement. Requests shall be considered on an expedited basis and coordination with Headquarters organizations will be obtained as appropriate. Requests involving the FPMR will be considered jointly by DOE and GSA, unless, in the judgment of the Headquarters organization having functional responsibility, circumstances preclude such joint effort. In such cases, the organization having functional responsibility will approve such class deviations as determined to be necessary and notify GSA.

Subpart 109-1.50—Personal Property Management Program

§ 109-1.5000 Scope of subpart.

This subpart supplements the FPMR, states DOE personal property management policy and program objectives, and prescribes authorities and responsibilities for the conduct of an effective property management program in DOE.

§ 109-1.5001 Policy.

It is DOE policy that a program for the management of Government personal property (sometimes referred to as personal property or as property) shall be established and maintained to meet program needs economically and efficiently and in accordance with applicable Federal statutes and Federal agency regulations.

§ 109-1.5002 Property management program objectives.

The objectives of the DOE property management program are to provide—

(a) A system for effectively managing Government personal property in the custody or possession of DOE organizations and DOE contractors; and

(b) Uniform principles, policies, standards, and procedures for economical and efficient management of Government personal property that are sufficiently broad in scope and flexible

in nature to facilitate adaptation to local needs and various kinds of operations.

§ 109–1.5003 Definitions.

As used in these regulations, the following definitions apply:

(a) "Government personal property" means property of any kind or type which is Government-owned or -rented or -leased from commercial sources in the custody of DOE or its contractors except real property; records; special source materials, which includes source materials and special nuclear material, and those other materials to which the provisions of DOE Order 5630.2 "Control and Accountability of Nuclear Materials, Basic Principles" apply, such as deuterium, enriched lithium, neptunium 237 and tritium, and atomic weapons and byproduct materials as defined in Section II of the Atomic Energy Act of 1954, as amended; enriched uranium in stockpile storage; and petroleum in the Strategic Petroleum Reserve and the Naval Petroleum Reserves.

(b) "Personal property management" means the development, implementation, and administration of policies, programs and procedures for effective and economical acquisition, receipt, storage, issue, use, control, physical protection, care and maintenance, determination of requirements and maintenance of related operating records, and disposal, as appropriate, for Government personal property exclusive of the accounting records.

§ 109–1.5004 Delegation of authority.

(a) The Secretary of Energy has delegated to the Assistant Secretary, Management and Administration, on a non-exclusive basis, the authority to acquire, manage, and dispose of personal property held by the Department for official use by its employees or contractors.

(b) The Assistant Secretary, Management and Administration has delegated to the Director, Procurement and Assistance Management, the authority to acquire, manage, and dispose of personal property held by the Department for official use by its employees or contractors.

(c) The Director of Administration and Heads of field offices are delegated appropriate procurement authority by memorandum from the Director, Procurement and Assistance Management, to acquire, manage, and dispose of personal property held by the Department for official use by its employees or contractors, consistent with policies, standards, and procedures as contained in this regulation.

§ 109–1.5005 Responsibilities.

§ 109–1.5005–1 The Director of Procurement and Assistance Management.

The Director of Procurement and Assistance Management provides direction and general supervision in the development and administration of an effective and efficient personal property management system for the Department, to include:

(a) The establishment of Department-wide policies, standards, systems, regulations, and procedures in accordance with applicable laws and regulations and sound management practice; and

(b) The review, evaluation, and improvement of personal property management programs, functions, operations, and procedures in the Department.

§ 109–1.5005–2 The Departmental Property Management Officer.

The Departmental Property Management Officer shall be the Director, Property and Equipment Management Division, Headquarters. This individual is responsible for developing, promoting, monitoring, administering, coordinating, and evaluating the Department-wide personal property management program, and shall—

(a) Develop and maintain Departmental personal property policies, standards and procedures;

(b) Develop and publish Departmental regulations relating to personal property management;

(c) Represent the Department with GSA and other agencies on matters relating to personal property management;

(d) Submit Departmental personal property management reports to GSA, the Congress and other Federal agencies, as required;

(e) Provide staff assistance to Departmental organizations performing personal property management functions;

(f) Conduct review and appraisals of Departmental personal property management functions; and

(g) Prepare the Departmental aircraft and motor vehicle budget.

§ 109–1.5005–3 The Director of Administration.

The Director of Administration—

(a) Manages personal property for DOE direct operations located in the Washington, D.C. metropolitan area with the exception of the Federal Energy Regulatory Commission.

(b) Exercises responsibilities cited in § 109–1.5005–5 as they relate to functions under his/her management control; and

(c) Appoints an Organizational Property Management Officer to be responsible for his/here organization's personal property management program.

§ 109–1.5005–4 Director, Office of Procurement Operations, Procurement and Assistance Management.

The Director, Office of Procurement Operations, Procurement and Assistance Management Directorate, Headquarters, shall exercise the responsibilities of the head of a field office as set forth in these regulations with respect to the management of property held under contracts for which his/her office is responsible.

§ 109–1.5005–5 Heads of field offices.

Heads of field offices shall—

(a) Appoint an Organizational Property Management Officer who shall be responsible for the organization's personal property management program; and

(b) Establish and administer a personal property management program within the organization which will provide for—

(1) Effective management of Government personal property in the custody of DOE and its contractors, consistent with applicable laws and regulations;

(2) Application of personal property management regulations, instructions, standards, procedures, and practices as prescribed in the FPMR and DOE–PMR;

(3) Planning and scheduling of property requirements to assure that supplies and equipment are readily available to satisfy program needs while minimizing operating costs and inventory levels;

(4) Development and maintenance of complete and accurate inventory control and accountability record systems;

(5) Maximum utilization of available property for official purposes;

(6) Proper care and securing of property to include storage, handling, preservation, and preventative maintenance;

(7) Identification of property excess to the needs of the organization, and proper reutilization of this property within the Department and reporting to GSA for transfer, donation, or disposal;

(8) The development and submission of required property management reports;

(9) Assuring that DOE employees and contractors are aware that acts of theft, illegal possession, and unlawful destruction or use of Government personal property are violations

punishable under Fedral law, notwithstanding disciplinary measures taken under administrative policy;

(10) Assuring that DOE employees and contractors are aware that every user of Government personal property is responsible for its physical protection and for reporting the loss, theft, destruction or damage of property;

(11) The conducting of periodic management reviews within the activity to assure compliance with prescribed policies, regulations, standards, and procedures; and

(12) The establishment of equipment and supply subsidiary reccords and accounts to support general ledger control accounts for personal property.

§ 109–1.5005–6 Organizational Property Management Officer.

The Organizational Property Management Officer (OPMO)—

(a) Provides advice and guidance for the organization's personal property mangement program;

(b) Coordinates and conducts the activities of the organization's personal property management program;

(c) Serves as principal contact point for the organization in matters concerning personal property management; and

(d) Represents the organization, or designates a representative, to attend Department meetings concerning personal property management issues, and acts as liaison with other DOE offices or other Federal agencies in property management matters affecting their organization.

§ 109–1.5005–7 Contracting officers.

Contracting officers shall—

(a) Assure that all contracts that involve property contain the applicable DEAR property clause; and

(b) Assure that contractors' personal property management systems are reviewed, appraised, and approved as provided for in § 109–1.52.

Subpart 109–1.51—Personal Property Management Standards and Practices

§ 109–1.5100 Scope of subpart.

This subpart provides guidance on DOE standards and practices to be applied in the management of Government personal property.

§ 109–1.5101 Definition.

"Sensitive items" are those items of property, regardless of value, which are considered to be susceptible to being appropriated for personal use or which can be readily converted to cash, for example: firearms, portable photographic equipment, binoculars, portable tape recorders, portable calculators, and portable power tools.

§ 109–1.5102 Official use of property.

Property shall be used only in the performance of official work of the United States Government, except (a) in emergencies threatening loss of life or property, or (b) as otherwise authorized by law and approved by the Director of Administration and heads of field offices for their respective organizations, or by the contracting officer for contractor-held property.

§ 109–1.5103 Maximum use of property.

Property management practices shall assure that the best possible use is made of property. Supplies and equipment shall be generally limited to those items essential for carrying out the programs of DOE effectively. Adequate staff review shall be made of operating programs to coordinate and plan future supply activities and to assure against overstocking, waste, and improper use of property.

§ 109–1.5104 Loan of property.

(a) Property which would otherwise be out of service for temporary periods (and not excess) may be loaned to other DOE offices and contractors, other Federal agencies, and to others for official purposes. Such loans shall be covered by written agreements or memorandum receipts which shall include all terms of the loan (such as loan period, delivery time, method of payment of transportation, point of delivery and return, conditions of use, responsibilities of the borrower for condition of property on return, inspection requirements, etc.) that may be required to ensure proper control and protect DOE's interest. The loan period should not exceed one year, but may be renewed.

(b) Requests for loan by foreign Governments and other foreign organizations shall be submitted through the Property and Equipment Management Division (MA–422) to the Assistant Secretary for International Affairs for approval, with a copy to the cognizant Headquarters program office.

§ 109–1.5105 Borrowing of property.

(a) DOE organizations and contractors are encouraged to borrow property within DOE to further DOE programs. Property classified as "Equipment Held For Future Projects (EHFFP)" or as "In Standby" should be reviewed by those receiving availability inquiries for short-term loans (one year or less). Borrowing of Government property from other Federal agencies is also encouraged when required for short periods of time. Such transactions shall be covered by written agreements which include all the terms of the transaction.

(b) In determining whether it is practical and economical to borrow property, consideration shall be given to suitability, condition, value, extent and nature of use, extent of availability, portability, cost of transportation, and other similar factors.

§ 109–1.5106 Control of property.

§ 109–1.5106–1 Identification marking of property.

(a) All Government property, including capitalized, sensitive, and non-capital equipment shall be identified as U.S. Government property. Capitalized and sensitive property shall also be identified by numbering for control purposes. Other property susceptible to unauthorized personal use, such as hand tools, should be considered for marking as a control measure. Marking may be accompanied by any means which will produce a permanent marking and which is most adaptable to the particular item of property.

(b) To the extent practicable and economical, markings shall be removed prior to disposal outside of DOE, or additional markings may be added to indicate such disposal.

(c) Property which by its nature cannot be marked is exempted from this requirement. Such Government property in the custody of contractors should not be commingled with contractor-owned property unless it is determined by the contracting officer to be advantageous to the Government.

§ 109–1.5106–2 Segregation of property.

Ordinarily, provisions shall be made for the contractor to keep Government property segregated from contractor-owned property. Commingling of Government-owned and contractor-owned property may be allowed only when—

(a) The segregation of the property would materially hinder the progress of the work, i.e., segregation is not feasible for reasons such as small quantities, lack of space, or increased costs; and

(b) Control procedures are adequate, i.e., the Government property is specifically marked or otherwise identified as being Government property.

§ 109–1.5106–3 Physical protection of property.

Controls such as property pass systems, memorandum records, regular or intermittent gate checks, marking of tools, and perimeter fencing shall be

established as required to prevent loss, theft, or unauthorized movement of property from the premises on which such property is located.

§ 109-1.5106-4 Control of sensitive items.

(a) Controls shall be established over the acquisition, storage, issue use, and return of sensitive items of property.

(b) Items on capital equipment which are also designated as sensitive items will be controlled as sensitive items and as capital equipment.

(c) A list of sensitive items shall be maintained for property considered to require special controls before and after issue. Determination of specific sensitive items shall be a matter for management judgment at individual locations, taking into consideration the dollar value of the items to be controlled and costs of administration.

(d) Written procedures shall be established for control of sensitive items, to include:

(1) Approval of purchase requisitions or issue documents at an appropriate supervisory level prior to acquisition or issue;

(2) Establishment of administrative controls in the central receiving and warehousing department. Such controls should include extraordinary physical protection, guidance for receiving and warehousing personnel as to procedures for protection, and a current listing of sensitive items;

(3) Establishment and maintenance of appropriate property management records;

(4) Requirements for tagging and identification;

(5) Use of memorandum receipts or custody documents at time of assignment or change in custody;

(6) Establishment of custodial responsibilities describing—

(i) Need for extraordinary physical protection;

(ii) Requirement for prompt reporting of apparent loss, damage or destruction;

(iii) Requirement to return items in condition beyond economical repair to an appropriate organizational element;

(iv) Requirement for promptly reporting changes in custody or extended loans;

(v) Reminder of prohibition of use for other than official purposes, and penalties for misuse;

(vi) Requirement for effective physical and administrative control of sensitive items assigned for general use within an organizational unit as appropriate to the type of property and the circumstances; and

(vii) A clear definition of the extent of responsibility or financial accountability, depending on contractor policy.

(7) Requirement for annual physical inventory;

(8) Requirement for prompt and thorough investigation of losses;

(9) Requirement for an employee transfer or termination checkout procedure and examination and adjustment of records; and

(10) Other property management procedures which, through experience and independent audit, have demonstrated effective physical and administrative control over sensitive items.

§ 109-1.5106-5 Physical inventories.

(a) Physical inventories of property shall be conducted at all DOE and contractor locations, consistent with approved procedures and generally accepted accounting procedures.

(b) The preferred method of performing physical inventories is by the use of personnel other than the property staff or custodian of the property. Where staffing restraints or other considerations require, the inventory may be performed by the property staff or the custodian.

(c) Detailed procedures for the taking of physical inventories shall be developed for each DOE organization and contractor. The Director of Administration and heads of field offices shall approve the procedures for their respective DOE operation. The appropriate field organization staff shall review and approve contractor's procedures.

(d) The taking of a physical inventory will be observed, or follow-on audits made, by independent representatives, e.g., finance, audit, or property staffs, to the extent deemed necessary to assure that the procedures are being followed and the results are accurate. These observations or audits should be documented and the documentation should be retained in the inventory record file.

(e) Procedures that are limited to a check-off of a listing of recorded property without actual verification of the location and existence of such property do not meet the requirements of a physical inventory.

(f) The frequency of physical inventories shall be as follows:

(1) *Moveable capital equipment*—not less frequently than every two years.

(2) *Sensitive items*—not less frequently than every twelve months.

(3) *Precious metals*—not less frequently than every six months.

(g) A physical inventory shall be performed at intervals more frequently than required in § 109-1.5106-5(f) whenever experience at any given location or with any given item or items indicates that this action is necessary for effective property accounting, utilization, or control.

(h) Special inventories may be required on certain types of property or on certain items or kinds of items when circumstances arise requiring such action, such as audits or special reviews.

(i) The results of physical inventories shall be reconciled with the property records and, except for non-capital sensitive items, with the financial control accounts in accordance with Chapter VI of the DOE Accounting Practices and Procedures Handbook.

(j) Physical inventories of capital equipment and stores inventories may be conducted by the "statistical sampling" method in lieu of the normal "wall-to-wall" method. In addition, the "inventory by exception" method may be used for capital equipment physical inventories. However, the system and procedures for taking physical inventories by these methods must be fully documented and approved by the Director of Administration and by heads of field offices for their respective organizations.

§ 109-1.5107 Retirement of property.

When Government property is worn out, lost, stolen, destroyed, abandoned, or damaged beyond economical repair, it shall be listed on a retirement work order. A full explanation shall be supported by an investigation, if necessary, as to the date and circumstances surrounding loss, theft, destruction, abandonment, or damage. The retirement work order shall be reviewed by the property management staff and signed by the responsible official initiating the report and reviewed and approved by an official at least one supervisory echelon above the official initiating the report.

§ 109-1.5108 Property belonging to others.

Procedures shall be established which will provide for adequate attention to the management of property belonging to other Federal agencies in the possession or custody of DOE organizations or its contractors.

§ 109-1.5109 Employee participation.

Full advantage shall be taken of suitable methods for stimulating employee participation and cooperation in carrying out an effective and economical program of property management. Some examples of effective methods are (a) indoctrination

of new employees and others who have access to or use property, (b) the use of incentive award plans to promote interest, and (c) the use of visual aids such as posters, plant publications, outdoor signboards, and displays to keep employees informed as to progress and to remind them of their responsibilities.

§ 109–1.5110 Use of non-Government-owned property.

Non-Government-owned personal property shall not be installed in, affixed to, or otherwise made a part thereof, of any Government-owned personal or real property. This restriction does not apply to the use and installation of privately owned decorative items or memorabilia to the workplace, provided that the structure of safety of the facility is not thereby degraded.

§ 109–1.5148 Personal property management reports.

Property management reports to be submitted to the Property and Equipment Management Division (MA–422) are listed below.

Report title	Due at DOE headquarters	References	Form No.
(a) Reports required of all offices.			
(1) Utilization and Disposal of Personal Property Pursuant to Exchange/Sale Authority.	Nov. 30	FPMR 101–46.407, DOE–PMR 109–46.407.	Letter.
(2) Excess Personal Property Furnished to Non-Federal Recipients.	Nov. 15	FPMR 101–43.4701(c), DOE–PMR 109–43.4701(c).	Letter.
(3) Contractor Property Holdings	Oct. 31	DOE–PMR 109–1.5205	Letter.
(4) Precious Metals	Oct. 31	FPMR 101–42.301–1, DOE–PMR 109–42.301–1.	Letter.
(5) Agency Report of Motor Vehicle Data.	Oct. 31	FPMR 101–38.1, DOE–PMR 109–38.1	SF 82.
(6) Unused Passenger Vehicle Replacement Authorizations.	June 15	DOE–PMR 109–38.5101–5(b)	Letter.
(7) Report of Exempted Motor Vehicles.	On request	FPMR 101–38.607, DOE–PMR 109–38.607.	Letter.
(8) Annual Forecast for Acquisition of Fuel Efficient Passenger Automobiles.	Dec. 1	Executive Order 12375, DOE–PMR 109–38.1306.	Letter.
(9) Aircraft Cost and Operations	Dec. 31	DOE–PMR 109–38.5212(a)	DOE F 4450.1.
(b) Reports required from field offices not reporting through the DOE Financial Information System.			
(1) Utilization and Disposal of Excess and Surplus Personal Property.	Nov. 15	FPMR 101–43.4701(a), DOE–PMR 109–43.4701(a).	SF 121.
(2) Summary of Excess Property Received from Other Agencies.		DOE Order 2200, Chapter XI	CR 85–4.
(3) Supply Activity Report	Nov. 15	DOE–PMR 109–25.48	GSA F 1473.
(4) Direct Labor Costs of Stores Warehousing Activities.	Nov. 15	DOE Order 2200, Chapter XI	CR 85–7.
(5) Completed Plant and Equipment	Oct. 31	DOE Order 2200, Chapter XI	CR 84–32.
(6) Equipment Held for Future Projects	Oct. 31	DOE Order 2200, Chapter XI	CR 57.

Subpart 109–1.52—Contractors' Personal Property Management Program

§ 109–1.5200 Scope of subpart.

This subpart prescribes policy and responsibilities for the establishment, maintenance, review and appraisal of a contractor's program and system for the management of Government personal property.

§ 109–1.5201 Policy.

(a) Contractors shall establish, maintain, and administer a program for the effective management of Government personal property consistent with the terms of the contract and directives for the contracting officer.

(b) Contractors shall maintain their personal property management systems in writing on a current basis.

(c) Contractors shall require those subcontractors provided Government property under the prime contract to establish and maintain a system for the management of such property. Procedures for assuring effective property management shall be included in the contractor's property control system. As a minimum, a subcontractor's system for control of Government property shall provide for the following:

(1) Adequate records.

(2) Controls over acquisitions.

(3) Identification as Government property.

(4) Physical inventories.

(5) Proper care, maintenance, and protection.

(6) Reporting, redistribution, and disposal of excess and surplus property.

(7) A retirement work order procedure to account for property that is worn out, lost, stolen, destroyed, abandoned, or damaged beyond economical repair.

(8) Periodic reporting, including physical inventory results and, at least annually, the total acquisition cost of Government property in the possession of the subcontractor.

(9) An internal surveillance system including periodic reviews to ensure that property is being managed in accordance with established procedures.

§ 109–1.5202 Designation of property administrator.

The contracting officer shall designate a property administrator to be responsible for property administration. This property administrator will be delegated the authority to assist the contracting officer on all matters involving the Government-owned personal property held by the contractor. If a property administrator has not been designated, the contracting officer is the property administrator.

§ 109–1.5203 Review and approval of contractor's property management system.

(a) A contractor's property management system should be reviewed by the property administrator within one year after the execution date of the contract, and the property administrator shall approve or disapprove the system in writing. If the system is disapproved, the property administrator shall advise the contractor, in writing, of deficiencies that need to be corrected, and a time schedule established for completion of the corrective actions.

(b) The purpose of the review is to determine whether the system will adequately protect, maintain, utilize, and dispose of Government personal property in accordance with the FPMR, the DOE–PMR, and applicable DOE directives.

(c) Appropriate follow-up will be made by the property administrator to ensure that corrective actions are taken.

(d) Any change to the approved property management system made after the original review and approval should be reviewed by the property administrator at the earliest possible time. Such changes should then be approved/disapproved by the property administrator as appropriate.

§ 109–1.5204 Property management appraisals.

(a) At least every two years (with a maximum period of three years) after the execution date of the contract, the property administrator shall make an appraisal of the property management operation of the contractor. The appraisal may be based on a formal in-depth appraisal on-site or a series of formal appraisals of the functional segments of the contractor's property management system to determine if the contractor is managing the Government personal property in its custody in accordance with its previously approved

policies and procedures, the FPMR, the DOE–PMR, and applicable DOE directives. The property administrator shall bring deficiencies in the contractor's property management operation to the attention of the contractor's management for correction.

(b) Appropriate follow-up will be made by the property administrator to ensure that corrective actions are taken.

§ 109–1.5205 Reporting.

Within 30 days after the end of each fiscal year, heads of field offices shall report the following information to the Director, Property and Equipment Management Division (MN–422):

(a) Name and address of each contractor.

(b) Contract number.

(c) Date contractor's property management system was approved.

(d) Date of most current appraisal of contractor's property management system, and status of the system (satisfactory or unsatisfactory).

SUBCHAPTER C—DEFENSE MATERIALS

PART 109–14—NATIONAL DEFENSE STOCKPILE

Sec.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109–14.000 Scope of part.

This part implements and supplements FPMR Part 101–14, National Defense Stockpile.

Subpart 109–14.1—Transfer of Strategic and Critical Materials Excess to Agency Needs to the National Defense Stockpile

§ 109–14.103–1–50 Exceptions to reporting.

The following materials excess to the needs of a DOE organization or contractor shall be reported to the DOE pool instead of to GSA:

(a) Precious metals, which include gold, silver, and the platinum family (See § 109–43.313–54).

(b) Lead (See § 109–43.313–57).

SUBCHAPTER E—SUPPLY AND PROCUREMENT

PART 109–25—GENERAL

Sec.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109–25.000–50 Scope of subchapter.

This subchapter implements and supplements FPMR Subchapter E, Supply and Procurement.

§ 109–25.001–50 Scope of part.

This part implements and supplements FPMR Part 101–25, General, and provides cross-references to the DOE Acquisition Regulations (DEAR) where appropriate.

Subpart 109–25.1—General Policies

§ 109–25.100 Use of Government personal property and nonpersonal services.

The Director of Administration and heads of field offices for their respective organizations shall ensure that the provisions of FPMR 101–25.100 are enforced to restrict the use of Government property/services to officially designated activities.

§ 109–25.101–1–50 Definitions.

As used in this subpart, the following definitions apply:

(a) "Equipment" consists of those items of nonexpendable personal property having an anticipated service life of one year or more regardless of use or source of funding.

(b) "Equipment pool" is a formally designated collection of equipment, generally functionally associated, which is available for loan or temporary use. The pool may be a physical collection of equipment or may be a record system which provides identification, location and availability information on equipment available for loan or temporary use.

(c) "Equipment in storage" is all equipment not in use, whether stored in formal storage areas, stored in or adjacent to work areas, held for future projects, or retained in standby or abandoned facilities.

§ 109–25.104 Acquisition of office furniture and office machines.

In making a determination as to whether requirements can be met through the utilization of already owned furniture and office machines as contemplated in FPMR § 101–25.104, reasonable efforts shall be made to determine whether such items are available from other DOE organizations and contractors within a reasonable transport distance. Such efforts shall include direct inquiries and shall not be limited to a review of available property circularized in accordance with § 109–43.311–1–50.

§ 109–25.109 Laboratory and research equipment.

(a) The provisions of FPMR 101–25.109 and this section shall apply to all types of personal property, including office furniture and office machines, in addition to laboratory and research equipment.

(b) The provisions of FPMR 101–25.109 and this section apply to all DOE field organizations and contractors, and are not limited to Federal laboratories.

§ 109–25.109–1 Identification of idle equipment.

(a) See § 109–25.109(b).

(b) As a minimum, management walk-through inspections shall be scheduled to provide for coverage of all operating and storage areas at least once every two years to identify idle and unneeded personal property. The frequency of management walk-through inspections may vary with the operation or area involved. A report of walk-throughs conducted, including participants, areas covered, findings, recommendations, and results achieved shall be submitted to the head of the laboratory or other facility involved. Equipment identified as idle and unneeded shall be redeployed, reassigned, placed in

equipment pools or declared excess, as appropriate.

(c) In accordance with FPMR § 101–25.109–1(c), members of management walk-through inspection teams should be appointed by the head of the DOE or contractor facility.

(d) Heads of field offices and contracting officers shall periodically review walk-through procedures and practices of organizations under their jurisdiction to evaluate their effectiveness. This review should include actual walk-through inspections of representative DOE or contractor facilities.

§ 109–25.109–2 Equipment pools.

(b) In accordance with FPMR § 101–25.109–2(b), equipment pools shall be established where practicable to obtain optimum utilization of equipment. The number and types of pools to be established will depend upon local circumstances. In addition to those provided in FPMR § 101–25.109–2, factors to be considered are types of equipment, number and location of potential users and distances involved.

(c) In accordance with FPMR § 101–25.109–2(c), surveys of equipment holdings should be conducted periodically to determine those items which are suitable for pooling. Criteria for placing an item in a pool should include (but not be limited to) the following: The item is suitable for use by more than one individual or group; its use is intermittent rather than full time; it has a degree of portability; and it has sufficient cost or value to merit controlling. It is anticipated that items pooled would vary from one activity to another due to local conditions, and each activity should develop its own criteria for items to be pooled. Items to be considered for pooling include (but are not limited to) certain types of measuring and recording equipment, pumps, electric motors, photographic equipment, portable tools, microscopes, portable radios, power supplies, amplifiers, business machines, radiation detection instruments, and construction and automotive equipment. Where feasible, equipment pools should be combined with existing calibration and maintenance services to foster use and control of pooled equipment.

(d) Records of usage shall be maintained to permit the evaluation of need for quantities and types of equipment in pools. Reviews of usage should be conducted periodically (at least annually) to eliminate items which are no longer required. Heads of field offices shall require DOE and contractor facilities to submit to them annually the report on the use and effectiveness of equipment pooling required by FPMR § 101–25.109–2(d).

(e) Heads of field offices and contracting officers shall require periodic independent reviews of equipment pool operations as required by FPMR § 101–25.109–2(e).

§ 109–25.110–4 Recordkeeping responsibilities.

In accordance with FPMR 101–25.110–4, heads of field offices shall establish procedures for promptly identifying and locating all tires whether in storage or in use on vehicles so that tire recall notices may be acted upon expeditiously.

§ 109–25.113 Leasing of motor vehicles.

See DEAR 908.11 and FPMR §§ 101–26.501–9 and 101–39.601 for additional guidance concerning the leasing of motor vehicles.

Subpart 109–25.3—Use Standards

§ 109–25.302 Office furniture, furnishings, and equipment.

(a) The criteria contemplated in FPMR § 101–25.302 shall be established by the Director of Administration and heads of field offices for their respective DOE operations, consistent with FPMR § 101–25.302–1 and this subpart. Office furniture, furnishings, and equipment shall be limited to that required for immediate needs, considering such factors as ordering lead time, potential emergency needs and economical ordering quantities. Requirements shall be met to the fullest extent practicable and economical from available excess or by rehabilitation or repair.

(d) Contractors should be encouraged to limit executive-type furniture and furnishings to contractor personnel who organizationally are in positions that are similar or comparable to DOE positions authorized to use executive type office furniture as provided in FPMR § 101–25.302–1, when such action will effect economy without decreasing efficiency.

§ 109–25.302–1 Executive type office furniture and furnishings.

The Director of Administration and heads of field offices for their respective organizations are authorized to make the determination contemplated by FPMR § 101–25.302–1.

§ 109–25.302–2 Filing cabinets and equipment.

In addition to the use standards prescribed in FPMR § 101–25.302–2, Departmental policies, standards, procedures, and guidelines for the files management program is contained in DOE Order 1324.3.

§ 109–25.302–3 Electric typewriters.

The Director of Administration and heads of field offices for their respective organizations shall establish policies, procedures, and standards for the use of electric typewriters as contemplated in FPMR § 101–25.302–3, and are authorized to approve exceptions to the criteria contained in that section.

§ 109–25.302–4 Figuring machines.

The Director of Administration and heads of field offices for their respective organizations shall establish standards for the use of figuring machines as contemplated in FPMR § 101–25.302–4.

§ 109–25.302–6 Electronic office machines.

The Director of Administration and heads of field offices for their respective organizations shall establish standards for the use of electronic office machines as contemplated in FPMR § 101–25.302–6.

§ 109–25.304 Additional systems and equipment for passenger motor vehicles.

(a) If an item is determined to be essential and the guidelines in FPMR § 101–25.304 cannot be met, or the required item is not shown in Federal Standard 122, requisitions, accompanied by supporting justifications, shall be submitted to the Property and Equipment Management Division (MA–422), for further coordination with the Commissioner, Federal Supply Service, General Services Administration, prior to acquisition.

(b) See FPMR § 101–26.501, "Purchase of new motor vehicles," and DEAR 908.7101–2, "Consolidated purchase of new vehicles by General Services Administration."

§ 109–25.304–50 Communications equipment exemption.

Communications equipment considered to be essential for the accomplishment of security and safety responsibilities is exempt from the requirements of § 109–25.304. Communications equipment may be acquired and installed in motor vehicles operated by DOE and its' contractors after approval by the Director of Administration and heads of field offices for their respective organizations.

§ 109–25.350 Use of furnishings and household goods in Government personnel quarters.

The Director of Administration and heads of field offices for their respective organizations have the authority to authorize the use of furnishings and household goods in Government personnel quarters.

§ 109-25.351 Furnishing of Government clothing and individual equipment to employees.

(a) Government-owned clothing and individual equipment may be furnished employees under the circumstances indicated below. Care should be exercised to avoid the acquisition and furnishing of clothing and individual equipment to be fitted to an employee who my soon be separated from service or permanently assigned to other duties. This section does not apply to provision of uniforms or uniform allowances under the Federal Employees Uniform Allowances Act of 1954, as amended.

(b) Special clothing and individual equipment for the protection of personnel from physical injury or occupational disease may be furnished employees.

(c) Articles of clothing and individual equipment may be furnished employees when the items are such that the employee could not reasonably be required to furnish them as a part of their personal clothing and equipment necessary to enable them to perform the regular duties of the position to which they are assigned or for which services were engaged.

Subpart 109-25.4—Replacement Standards

§ 109-25.401-50 Replacement approvals.

The Director of Administration and heads of field offices for their respective organizations are authorized to approve replacement of office machines, furniture, and materials handling equipment under the conditions cited in FPMR Subpart 101-25.4.

Subpart 109-25.48—Reports

§ 109-25.4800 Scope of subpart.

This subpart supplements information concerning the reporting of supply management data to GSA as contained in FPMR §§ 101-25.48 and 101-25.49.

§ 109-25.4800-50 Applicability.

The provisions of FPRM Subparts 101-25.48 and 101-25.49 and this subpart apply only to those DOE direct operations and contractors controlling Government-owned stores inventories. However, based on an agreement with GSA, the DOE Supply Activity Report is prepared at Headquarters from supply management data available in DOE's financial reports and is sent to GSA by the Property and Equipment Management Division (MA-422). Therefore, no additional reports are required from those field organizations or contractors reporting under the DOE financial reporting system. Those activities with stores operations which do not report under the DOE financial reporting system shall submit Supply Activity Reports to the Property and Equipment Management Division (MA-422) by November 15 for inclusion in the Departmental report.

PART 109-26—PROCUREMENT SOURCES AND PROGRAMS

Sec.

§ 109-26.000 Scope of part.

This part implements and supplements FPMR Part 101-26, Procurement Sources and Programs.

§ 109-26.050 Applicability.

FPMR Part 101-26 and this part are applicable to contractors to the extent that Government supply sources are made available. For DOE policy on the use of Government supply sources by contractors, see DEAR Subpart 970.51.

Subpart 109-26.2—Federal Requisitioning System

§ 109-26.203 Activity address codes.

In accordance with FPMR § 101-26.203, the Property and Equipment Management Division (MA-422) has been designated the DOE point of contact with GSA for matters concerning activity address codes. DOE organizations shall designate a point of contact who shall coordinate all matters concerning activity address codes with the DOE point of contact.

Subpart 109-26.4—Purchase of Items from Federal Supply Schedule Contracts

§ 109-26.406-1 General.

The Director of Administration and heads of field offices for their respective organizations may authorize the use of U.S. Government National Credit Cards in accordance with FPMR § 101-26.406-1. See FPMR § 101-38.12 and 109-38.12 for information on the assignment of billing address code numbers and the control of U.S. Government National Credit Cards.

Subpart 109-26.5—GSA Procurement Programs

§ 109-26.501 Purchase of new motor vehicles.

In addition to the provisions of FPMR § 101-26.501, DEAR 908.7101 contains DOE requirements concerning the purchase of new motor vehicles, and DEAR 908.11 contains the DOE requirements concerning the leasing of motor vehicles.

PART 109-27—INVENTORY MANAGEMENT

Sec.

Authority: Sec. 644, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109-27.000 Scope of part.

This part implements and supplements FPMR Part 101-27, Inventory Management, but excludes atomic weapons or byproducts and source or special nuclear materials as defined in the Atomic Energy Act of 1954, as amended, enriched uranium in stockpile storage, and petroleum in the Strategic Petroleum Reserve and the Naval Petroleum Reserves.

§ 109-27.001-50 Definitions.

As used in this part the following definitions apply:

(a) "Construction inventories" are supplies, materials and parts held for exclusive use on construction projects.

(b) "Economic order quality (EQQ)" means the size of the order which produces a level at which the combined costs of procuring and carrying inventory are at a minimum.

(c) "Expensed inventories" are items for which the cost is charged to operations and are not under financial control.

(d) "Inventories" are stocks of stores, construction, special reactor and other special materials, supplies and parts used in support of DOE programs.

(e) "Inventory level," usually expressed in the number of months supply on hand based on anticipated usage, is the amount of supplies authorized to be on hand and due-in less any amount due-out.

(f) "Inventory management" means the effective use of methods, procedures and techniques for recording, analyzing, and adjusting inventories in accordance with established policy. The following related functions are included:

(1) Providing adequate protection against misuse, theft, and misappropriation.

(2) Providing accurate analyses of quantities to determine requirements so that only minimal obsolescence losses will be encountered, while ensuring adequate inventory levels to meet program schedules.

(3) Providing adequate and accessible storage facilities and services based upon analyses of program requirements so that a minimum and economical amount of time is required to service the program.

(g) "Other special materials" include precious metals and other rare materials having a very high monetary value in relation to volume or weight, special barrier materials, and any others that have been specifically approved by the DOE Controller.

(h) "Physical inventory" means the process of counting the quantities of items on hand and reconciling quantities counted with the quantities shown on control records.

(i) "Quantity control" means the management of inventories through control of levels, determination of requirements, and replenishment of stock.

(j) "Safety stock" is that portion of inventories under stock control carried for protection against stock depletion due to an increase in demand or when lead time is greater than anticipated.

(k) "Shop, bench, cupboard or site stock" is a collection or store of materials located at or near the point of use.

(l) "Special reactor materials" include special materials approved for research and for use in reactors but not generally available through the usual channels in sufficient quantity because of limited commercial production applications.

(m) "Standardization" is the reduction of stores inventories to the least practicable variety of sizes, shapes and materials compatible with program needs.

(n) "Stock record" is a device for collecting, storing, and providing historical data on recurring transactions for each line item of inventory. The stock record of a line item may be visible register of transactions recorded by hand or by machine for that item, or it may be the input, output, stored data, or the corresponding print-out of such data representing transactions on the item in an electronic data processing system.

(o) "Stores catalog" means a listing of stock items for use in requistioning supplies and materials.

(p) "Sub-store" is a geographically removed part of the main store's operation conducted as a subordinate element of it and subject to the same management policies and inventory controls.

Subpart 109-27.1—Stock Replenishment

§ 109-27.102-2 Guidelines.

Procedures and practices shall provide for replenishment of stock items having recurring demands to minimize costs involved. When considered more suitable, contractors may use other generally accepted approaches to EQQ.

Subpart 109-27.2—Management of Shelf-Life Materials

§ 109-27.202 Applicability.

Procedures and practices shall provide for managing shelf-life items to minimize loss and ensure maximum use prior to deterioration. When considered more suitable, contractors may use other generally accepted approaches to the management of shelf-life items.

Subpart 109-27.3—Maximizing Use of Inventories

§ 109-27.302 Applicability.

Procedures and practices shall provide for maximizing use of inventories. When considered more suitable, contractors may use other generally accepted approaches to maximizing use of inventories.

Subpart 109-27.4—Elimination of Items From Inventory

§ 109-27.402 Applicability.

Procedures and practices shall provide for eliminating from inventory items that can be obtained more economically from readily available sources on a timely basis. When considered more suitable, contractors may use other generally accepted approaches to determine which items should be retained in inventory.

Subpart 109-27.50—Inventory Management Policies, Procedures, and Guidelines

§ 109-27.5001 Scope of subpart.

This subpart supplements FPMR Part 101-27 by providing additional policies, principles and guidelines for the

economical and efficient management of inventories in support of DOE programs.

§ 109-27.5002 Objectives.

Necessary inventories shall be established and maintained at reasonable levels, consistent with program requirements. They shall be managed and controlled in the most practicable and economical manner consistent with program needs, applicable laws and regulations and the following objectives:

(a) Provide materials and supplies as needed to meet DOE requirements.

(b) Maintain reasonable inventory levels.

(c) Provide adequate safeguards for protection.

(d) Maintain adequate quantity controls for effective management over all inventories, including those not under financial controls.

(e) Assure maximum efficient utilization and avoid waste.

(f) Maintain an economical operation.

(g) Standardize inventories to the greatest extent practicable.

§ 109-27.5003 Stores inventory turnover ratio.

Comparison of investment in stores inventories to annual issues shall be made to assure that minimum inventories are maintained for the support of programs. This comparison may be expressed either as a turnover ratio (issues divided by dollar value of inventory) or in the average number of month's supply on hand. Turnover or number of month's supply is calculated only on "current-use" inventory. Performance goals, i.e., a six months investment or a turnover ratio of 2.0, shall be established for each stores using activity. However, it is recognized that extenuating operating circumstances may preclude the achievement of such objectives.

§ 109-27.5004 Stock control.

§ 109-27.5004-1 General.

Stock control shall be maintained on the basis of stock record accounts of inventories on hand, on order, received, issued, and disposed of, and supported by proper documents in evidence of these transactions. Stock record accounts shall be available for review and inspection.

§ 109-27.5004-2 Construction inventories.

Stock control from construction inventories shall be maintained by the regular checking of individual items to assure that the quantities ordered plus amounts on hand do not exceed current job requirements. To test the effectiveness of such checks, they should be supplemented with DOE reviews of inventory items on a selective basis at approximately the 25 percent, 50 percent, and 75 percent construction completion stages. Undelivered portions of purchase orders, which these checks and reviews indicate are not needed to complete the project, should be canceled.

§ 109-27.5005 Guide levels for construction inventories.

To ensure that inventories maintained for construction programs and activities are reasonable, the following standards are established as guides (variations may be used where it is established by field organizations that they will more effectively or economically assure that inventory levels are held to the amount required to complete the construction project):

(a) Ordinary construction materials and supplies readily available from commercial sources, and not available as Government excess, permit phasing of deliveries and cancellation of undelivered quantities that may prove excess to project requirements. The onhand inventory of such materials generally should not exceed a three or four months supply at the anticipated usage rates.

(b) Ordinary construction materials and supplies readily obtainable from Government excess should be acquired only in the amounts estimated to complete the construction project.

(c) Items obtainable only by special manufacture or fabrication should be limited to the estimates of requirements to complete the project as determined from project plans and specifications, except as outlined in (d) below.

(d) Inventory levels in excess of estimates to complete the project should be confined to items so unusual in character or unique to the DOE project that they are obtainable only by special manufacture and will be required for maintenance purposes or for operation of the completed plant.

§ 109-27.5006 Sub-stores.

(a) Sub-stores shall be established when necessary to expedite delivery of materials and supplies to the users, serve emergencies, provide economy in transportation, reduce shop and site stocks, and enable stores personnel to provide assistance in obtaining materials and supplies as needed.

(b) Items stored for issue in the sub-stores shall be treated as inventory items for control and reporting purposes. Stock records shall be integrated with central stock records so that the total amount on hand of any item at all locations is known.

§ 109-27.5007 Shop, bench, cupboard or site stock.

(a) Shop, bench, cupboard or site stocks are an accumulation of small inventories of fast-moving materials at the point of use. Normally, these inventories are expensed. However, when stocks of such inventories are not consumed or do not turn over in a reasonable period of time, which normally should not exceed 90 days, these items should be subject to the required physical controls and recorded in the proper inventory account.

(b) Care shall be exercised to prevent excessive accumulation of inventories at such points. As a control measure, requisitions should be screened against issue data as reflected in stock records at the supply point. Also, work orders, retirement notices, minor construction projects, maintenance programs, and research and experimental projects, involving removal and dismantling should be reviewed and screened to prevent excessive inventories at point of use. However, the most effective control at point of use may be effected by administrative action through visual examination of quantities on hand, and close supervisory control and training of persons who requisition materials and supplies.

§ 109-27.5008 Stores catalogs.

A suitable stores catalog for customer use in requisitioning stores items shall be established for each stores operation. Exceptions to this requirement are authorized where establishment of a catalog is impracticable or uneconomical because of small total value or number of items involved, or temporary need for the facility. Revisions to the catalog should be made at reasonable intervals.

§ 109-27.5009 Physical inventories.

§ 109.27-5009-1 Procedures.

The following procedures shall be established for taking physical inventory of stocks subjected to quantity controls as well as those under financial control:

(a) Completion of a physical inventory not less frequently than every twelve months.

(b) Reconciliation of inventory quantities with the stock records.

(c) Preparation of a report of the physical inventory results.

§ 109-27.5009-2 Inventory adjustments.

(a) Discrepancies between physical inventories and stock records shall be adjusted and the supporting adjustment records shall be reviewed and approved by a responsible official at least one

supervisory echelon above the supervisor in charge of the warehouse or storage facility. Items on an adjustment report which are not within reasonable tolerances for particular items shall be thoroughly investigated before approval.

(b) Such inventory adjustment reports, when properly approved, support adjustments to the stock records and debits and credits to the financial inventory accounts. Adjustment reports shall be retained on file for inspection and review.

§ 109-27.5010 Control of drug substances and potable alcohol.

(a) The term "controlled substance" means any drug or substance which has been assigned a "Bureau of Controlled Substance Code Number" pursuant to 21 CFR Part 1308–Schedule of Controlled Substances.

(b) Effective procedures and practices shall provide for the management and physical security of controlled substances and potable alcohol from receipt to the point of use. Such procedures shall, as a minimum, provide for safeguarding, proper use, adequate records, and compliance with applicable laws and regulations. Controls and records of potable alcohol shall be maintained on quantities of one quart and above.

(c) Effective procedures and practices shall provide for the management and physical security of hypodermic needles to prevent illegal use. Controls shall include supervisory approval for issue, storage in locked repositories, and the rendering of the needles useless upon disposal.

§ 109-27.5011 Containers returnable to vendors.

Containers furnished by vendors shall be adminstratively and physically controlled before and after issuance. Prompt action shall be taken to return such containers to vendors for credit after they have served their intended use.

§ 109-27.5012 Identification marking of metals and metal products.

§ 109-27.5012-1 General.

Metals and metal products shall be identification marked in accordance with applicable Federal standards. This requirement applies to direct charges as well as to items procured for store, shop or floor stock, or for use on construction projects. Additional markings not covered by the Federal standards should be used to show special properties, corrosion data or test data as required. The preferred process is for the marking to be done in the manufacturing process, but it may be applied by jobbers or other vendors when circumstances warrant.

§ 109-27.5012-2 Exception.

Exception to the marking requirement may be made when—

(a) It is necessary to procure small quantities from suppliers not equipped to do the marking;

(b) It would delay delivery of emergency orders; or

(c) Procurement is from DOE or other Federal agency excess.

§ 109-27.5012-3 Federal standards applicable to marking.

The Federal standards listed below can be obtained from the General Services Administration, Federal Supply Service (3 FRI), Washington, D.C. 20407.

(a) Federal Standard 182A(2) "Identification Marking of Nickel and Nickel Base Alloys."

(b) Federal Standard 183B "Continuous Identification Marking of Iron and Steel Products."

(c) Federal Standard 184A "Identification Marking of Aluminum, Magnesium and Titanium."

(d) Federal Standard 185 "Continuous Marking of Copper and Copper Base Alloy Mill Products."

Subpart 109-27.51—Management of Equipment Held for Future Projects

§ 109-27.5100 Scope of subpart

This subpart provides policies, principles and guidelines to be used in the management of equipment held for future projects.

§ 109-27.5101 Definition.

"Equipment held for future projects (EHFFP)" is equipment that is being retained, based on approved justifications, for a known future use, or for a potential use in planned projects. This classification excludes spare equipment retained as backup for equipment in service or equipment placed in equipment pools (classified as "In Service"), spare and other equipment constituting a part of the facilities in standby (classified as "Standby"), excess equipment, and equipment classified as "Plant and Equipment Changes in Progress".

§ 109-27.5102 Objective.

The objective of the "equipment held for future projects" program is to enable DOE offices and contractors to retain equipment not in use in current programs-but which has a known or potential use in future DOE programs, while providing visibility on the types and amounts of equipment so retained through review and reporting procedures. It is intended that equipment be retained which is economically justifiable for retention, considering costs of replacement, storage, obsolescence, deterioration, or future availability, that it be made available for use by others, and that equipment no longer needed be promptly excessed.

§ 109-27.5103 Records.

Records of all EHFFP shall be maintained by the holding organization. Included shall be a listing of items with original date of classification as EHFFP, initial justifications for retaining EHFFP, rejustifications for retention, and documentation of reviews made by higher levels of management.

§ 109-27.5104 Storage.

EHFFP should be stored in warehouse space designated for that purpose. When such space can not be made available, such equipment may be stored in storage yards or other areas with due consideration to the type of property and protection required.

§ 109-27.5105 Justification and review procedures.

Procedures shall provide for the following:

(a) The original decision to classify and retain equipment as EHFFP shall be justified in writing, providing sufficient detail to support the need for retention of the equipment. This justification will cite the project for which retained, the potential use to be made of the equipment, or other reasons for retention.

(b) The validity of initial classification of equipment held for future projects shall be reviewed at a level of management one echelon above that of the individual making the initial determination.

(c) Retention of EHFFP must be rejustified annually to ensure that original justifications remain valid. These rejustifications will be supported with sufficient detail to support retention.

(d) Annual rejustifications for retention of EHFFP for longer than one year shall be reviewed at a level of management at least two levels above that of the individual making the determination to retain the equipment as held for future projects. EHFFP retained for periods longer than three years should be approved by the head of the DOE field office or his designee.

§ 109-27.5106 Field organization review.

Heads of field offices and contracting officers shall conduct periodic reviews to ensure the validity of justifications for retaining EHFFP. These reviews should

include onsite surveys of a representative sample of equipment in this classification.

§ 109-27.5107 Utilization.

It is DOE policy that, where practicable and consistent with program needs, EHFFP be considered as a source of supply to avoid or postpone acquisition. Procedures shall be established to provide for—

(a) Distribution within the holding organization of lists of EHFFP to acquisition offices (or some other central screening office) and potential users for screening against requirements prior to acquisition; and

(b) Exchange of lists of EHFFP which can be made available for loan between organizations involved in the same or similar programs.

Subpart 109-27.52—Management of Spare Equipment

§ 109-27.5200 Scope of subpart.

This subpart provides policy guidance to be used in the management of spare equipment.

§ 109-27.5201 Definition.

"Spare equipment" is equipment held as replacement spares for equipment in current use in DOE programs.

§ 109-27.5202 Exclusions.

The following categories of equipment will not be considered spare equipment:

(a) Equipment installed for emergency backup, e.g., an emergency power facility, or an electric motor or a pump, any of which is in place and electrically connected.

(b) Equipment-like items properly classified as stores inventory.

§ 109-27.5203 Management policy.

(a) Procedures shall require records of spare equipment and purpose for retention, cross-referenced to location in facility and engineering drawing number.

(b) Reviews shall be made based on technical evaluations of the continued need for the equipment. Frequency of review should be biennial. In addition, individual item levels shall be reviewed when spare equipment is installed for use, the basic equipment is removed from service, or the process supported is changed.

(c) Procedures shall be established to provide that unneeded spare equipment be identified and reported as excess.

Subpart 109-27.53—Management of Precious Metals

§ 109-27.5300 Scope of subpart.

This subpart provides policies, principles, and guidelines to be used in the management of DOE-owned precious metals by DOE organizations and contractors.

§ 109-27.5301 Definition.

"Precious metals" means uncommon and highly valuable metals characterized by their superior resistance to corrosion and oxidation. Included are gold, silver, and the platinum group metals—platinum, palladium, rhodium, iridium, ruthenium and osmium.

§ 109-27.5302 Policy.

DOE organizations and contractors shall establish effective procedures and practices for the administrative and physical control of precious metals in accordance with the provisions of this subpart.

§ 109-27.5303 Precious metals control officer.

Each DOE organization and contractor holding precious metals shall designate a responsible individual as Precious Metals Control Officer. This individual shall be the organization's primary point of contact concerning precious metals control and management, and shall be responsible for the following:

(a) Assuring that the organization's precious metals activities are conducted in accordance with the requirements of this subpart and Chapter IV of the DOE Accounting Practices and Procedures Handbook.

(b) Maintenance of an accurate list of the names of precious metals custodians.

(c) Providing instructions and training to precious metals custodians and/or users as necessary to assure compliance with regulatory responsibilities.

(d) Insuring that physical inventories are performed as required by, and in accordance with, these regulations.

(e) Witnessing physical inventories.

(f) Performance of periodic unannounced inspections of custodian's precious metals inventory and records.

(g) Conduct of an annual review of precious metals holdings to determine excess quantities.

(h) Preparation and submission of the annual forecast of anticipated withdrawals from, and returns to, to DOE precious metals pool.

(i) Conduct of a program for the recovery of silver from used hypo solution and scrap film in accordance with FPMR §§ 101-42.3 and 109-42.3.

(j) Preparation and submission of the annual report on recovery of silver from used hypo solution and scrap film as required by § 109-42.301-1.

(k) Developing and issuing current authorization lists of persons authorized by management to withdraw precious metals for stockrooms.

§ 109-27.5304 Practices and procedures.

§ 109-27.5304-1 Acquisitions.

DOE organizations and contractors shall contact the DOE Precious Metals Pool Manager to determine the availability of precious metals prior to acquisition on the open market.

§ 109-27.5304-2 Designation of custodians.

Responsible individuals shall be designated as precious metals custodians. Custodians shall be responsible for proper control and safeguarding of the precious metals when issued for use.

§ 109-27.5304-3 Physical protection and storage.

Precious metals shall be afforded exceptional physical protection from time of receipt until disposition. Precious matals not in use shall be stored in a noncombustible combination locked repository with access limited to the custodian and an alternate. When there is a change in custodian or alternate having access to the repository, the combination shall be changed immediately.

§ 109-27.5304-4 Perpetual inventory records.

Perpetual inventory records shall be maintained as specified in Chapter V of the DOE Accounting Practices and Procedures Handbook.

§ 109-27.5304-5 Physical inventories.

(a) Physical inventories shall be conducted semiannually by custodians, and witnessed by the Precious Metals Control Officer or his designee.

(b) Precious metals not in use shall be inspected and weighed on calibrated scales. The inventoried weight and form shall be recorded on the physical inventory sheets by class of metal. Metals in use in an experimental process, or which are contaminated and therefore cannot be weighed, shall be listed on the physical inventory sheet as observed and/or not observed as applicable.

(c) Any obviously idle or damaged metals should be recorded during the physical inventory. Justification for further retention of idle materials shall

be required from the custodian or disposed of in accordance with established procedures.

(d) The dollar value of physical inventory results shall be reconciled with the financial records. All adjustments shall be supported by appropriate adjustment reports, and approved by a responsible official.

§ 109-27.5304-6 Stock issue.

Metals in stock are metals held in a central location and later issued to individuals when authorized requests are received. The following control procedures shall be followed for such metals:

(a) Stocks shall be held to a minimum consistent with effective and economical support to programs.

(b) The name and organizations number of each individual authorized to withdrawn precious metals, and the type and kind of metal, shall be prominently maintained in the stockroom. This authorization shall be issued by the Precious Metals Control Officer or his designee and updated semiannually. Issue of metals will be made only to authorized persons.

(c) Accurate records of all movements (receipts, issues, returns, and disposals) shall be developed by, and maintained in, the stockroom.

(d) Receipts for metal issues and returns to stock shall be provided to users. Such receipts, signed by the authorized requesting individual and the stockroom clerk, shall list the requesting organization, type and form of metal, quantity, and date of transaction.

§ 109-27.5304-7 Control by using organization.

(a) After receipt, the using organization shall provide the necessary controls for the precious metal. Materials shall be stored in a locked repository at all times except for small quantities at the actual point of use.

(b) Each using organization shall maintain a log showing the individual user, type and form of metal, and the time, place, and purpose of each use. The log shall be kept in a locked repository when not in use.

(c) The logs and secured locked storage facilities are subject to review by the Precious Metals Control Officer and other audit or review staffs as required.

(d) Cognizant Department Managers are responsible for assuring that minimum quantities of precious metals are withdrawn consistent with work requirements and that quantities excess to requirements are promptly returned to the stockroom.

(e) Employee termination and transfer procedures shall include clearance for precious metals possession.

§ 109-27.5305 Management reviews and audits.

(a) Unannounced inspections of custodian's precious metals inventory and records may be conducted between scheduled inventories.

(b) DOE organizations and contractors holding precious metals shall annually review the quantity of precious metals on hand to determine if this quantity is in excess of programmatic requirements. Precious metals which are not needed for current or foreseeable requirements shall be promptly reported to the DOE Precious Metals Pool. The results of this annual review are to be documented and entered into the precious metals inventory records.

§ 109-27.5306 Precious metals pool.

§ 109-27.5306-1 Purpose and operation.

The purpose of the precious metals pool is to recycle DOE-owned precious metals within the Department at the minimum cost to participants. The pool is operated by a private firm under a contract with the Oak Ridge Operations Office. Current information regarding the contractor's name, address, and telephone number and processing charges can be obtained by request through the Chief, Property Management Branch, Oak Ridge Operations Office.

§ 109-27.5306-2 Withdrawals.

Pure metal, parts, fabricated products, catalysts, or solutions, are generally available and the DOE pool contractor can provide assistance in supplying such requirements. Metals can be shipped to any facility to fulfill fabrication requirements.

§ 109-27.5306-3 Returns.

The pool is entirely dependent on metal returns; therefore, metal inventories should be maintained on an as-needed basis, and any excess metals should be returned to the pool for recycling. With the exception of silver, this includes precious metals in any form, including shapes, scrap, or radioactively contaminated. Only high grade nonradioactively contaminated silver should be included. Procedures have been developed by the precious metals pool contractor for metal returns, including storing, packaging, shipping, and security.

§ 109-27.5306-4 Withdrawals/returns forecasts.

The precious metals pool contractor will request annually from each DOE field organization its long-range forecast of anticipated withdrawals from the pool and returns to the pool.

§ 109-27.5306-5 Assistance.

DOE organizations or contractors may obtain specific information relative to the operation of the precious metals pool by contracting the Oak Ridge Operations Office as indicated in § 109-27.5306-1.

§ 109-27.5307 Recovery of silver from used hypo solution and scrap film.

The requirements for the recovery of silver from used hypo solution and scrap film are contained in § 109-42.302.

PART 109-28—STORAGE AND DISTRIBUTION

Sec.

Subpart 109-28.3—Self Service Stores

Authority: Sec. 644, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109-28.000 Scope of part.

This part implements and supplements FPMR Part 101-28, Storage and Distribution.

§ 109-28.001-50 Policy.

Storage and warehouse services shall be—

(a) Established for the receipt, storage, issue, safekeeping and protection of Government-owned property when advantageous to the Government;

(b) Provided in the most economical and efficient manner through the use of Government-owned facilities, and where necessary available commercial facilities, consistent with program requirements; and

(c) Operated in accordance with generally accepted industrial management practices and principles.

§ 109-28.001-51 Storage guidelines.

(a) Adequate storage facilities shall be provided to ensure the proper safeguarding of all Government property.

(1) Indoor storage areas should be arranged to obtain proper stock protection and maximum utilization of space within established floor load capacities.

(2) Storage yards for items not requiring covered protection shall be protected by locked fenced enclosures to the extent necessary to protect the Government's interest.

(3) Storage areas shall be prominently posted to clearly indicate that the

property stored therein is U.S. Government property. Entrance to such areas should be restricted to authorized personnel only.

(b) The following general storage principles shall be observed in the planning for the storage of Government personal property.

(1) Efficient storage demands the maximum utilization of space with a minimum amount of labor. Where practicable, labor should be conserved by use of modern materials handling equipment and storage aids which permit stacking by unit loads rather than by individual container units.

(2) Fast-moving items should be stored in convenient locations from which they can be issued with minimum handling. Stocks of individual items or classes of items should be segregated to facilitate handling, issuing, and inventorying.

(3) Property should be stored according to the kind of protection required. All items must be protected from fire and theft. Certain items require protection from dampness, heat, freezing, or extreme temperature changes. Others must be stored away from light and odors, protected from vermin infestation, or, because of their hazardous characteristics, stored separate from other stocks. These factors, as well as maximum protection of property against all causes of deterioration or destruction, must be considered in selecting proper storage locations.

(4) Orderly arrangement is essential to efficient operation of storehouses. All items should be so arranged that nomenclature and quantity may be readily determined.

(5) Stock rotation is based on the general storage principle of "first in, first out." Many items, such as perishables, food stuffs, medicines, paints, and chemicals, are subject to deterioration or infestation which require that the older stock be issued first.

Subpart 109-28.3—Self Service Stores

§ 109-28.308-3 Limitations on use.

The Director of Administration and heads of field offices for their respective organizations shall establish internal controls for the use of GSA shopping plates in accordance with FPMR § 101-28.308-3.

§ 109-28.308-6 Safeguards.

The Director of Administration and heads of field offices for their respective organizations shall establish internal controls for safeguarding of GSA shopping plates in accordance with FPMR § 101-28.308-6.

PART 109-30-FEDERAL CATALOG SYSTEM

Sec.

Authority: Sec. 644, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109-30.000 Scope of part.

This part supplements FPMR Part 101-30, Federal Catalog System.

§ 109-30.000-50 Applicability.

The provisions in FPMR Part 101-30 and this part do not apply to contractors.

Subpart 109-30.5—Maintenance of the Federal Catalog System

§ 109-30.503 Maintenance actions required.

(b) Standard Form 1303 shall be sent directly to GSA for processing. Inquiries concerning policy should be directed to the Property and Equipment Management Division (MA-422).

SUBCHAPTER F—ADP AND TELECOMMUNICATIONS

PART 109-36—ADP MANAGEMENT

Sec.

Authority: Sec. 644, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109-36.000 Scope of part.

This part implements and supplements FPMR Part 101-36 as it relates to utilization and disposal of excess automatic data processing equipment (ADPE).

Subpart 109-36.3—Reutilization of Automatic Data Processing Equipment and Supplies

§ 109-36.300-50 Scope of subpart.

This subpart implements and supplements FPMR Part 101-36.3. Policies and procedures relating to acquisition, reassignment, or retention of excess ADPE are contained in policies and procedures established by the Office of the Director of Administration.

§ 109-36.302-50 Reassignment of ADPE within DOE.

(a) Transfers within DOE of excess ADPE having a current market price equal to or greater than that specified for major items as defined in the DOE Program Budget Structure are made pursuant to the requirement for proposals submitted in accordance with instructions from the Office of the Director of Administration.

(b) Transfers within DOE of excess ADPE with a current market price of less than that specified for major items shall be approved by the head of the field office and the head of the Headquarters organization having ADPE responsibility for the equipment. However, when more than one request is received, the field office head shall notify the requestors that acquisition proposals prepared in accordance with instructions from the Office of the Director of Administration shall be forwarded to the field organization for review. After receipt of all proposals, the field office head shall—

(1) Approve the request for transfer which is judged to be in the best interest of DOE; or

(2) Where this judgement cannot be made locally, forward the proposals to the Director of Administration for action in a manner similar to proposals for equipment having a current market price equal to or greater than that specified for major items.

§ 109-36.303-1 Designation of agency ADPE point of contact.

The Director of Administration shall designate the DOE point of contact to carry out the responsibilities contained in FPMR § 101-36.303-1.

§ 109-36.303-3-50 Reporting excess or exchange/sale ADPE within DOE.

(a) All ADPE, either Government-owned or—leased, which is no longer needed or is scheduled for replacement, shall be made available for utilization within DOE as soon as plans for the release of such equipment are known.

(b)(1) Government-owned ADPE shall be reported for utilization screening

within DOE on Standard Form (SF) 120, Report of Excess Personal Property. The SF 120 shall contain the information required in FPMR 101–36.4702 and, for internal screening purposes, a release date (date of availability). If the release date is not firm, a tentative release date should be given, which would be subject to change until the actual release date is established.

(2) The SF 120 shall be submitted to the Property and Equipment Management Division (MA–422) for inclusion in the Reportable Excess Automated Property System (REAPS) in accordance with § 109–43.311–1–50.

(3) ADPE shall not be reported to GSA as excess until this screening has been accomplishing and it has been established that there are no DOE claimants. Concurrent screening within DOE and GSA is not authorized. A minimum of 45 days should be allowed for screening ADPE prior to reporting it to GSA. In those instances where the release date can be determined sufficiently in advance, additional screening time should be allowed to permit maximum time for processing of requests to acquire excess ADPE.

(c) The procedures prescribed in § 109–36.303–350(b) shall be followed for leased ADPE. However, when time does not permit sequential DOE and GSA circularization, excess leased ADPE may be circularized concurrently in DOE and GSA to assure earned credits are not lost to the Government. The SF 120 should clearly indicate concurrent screening by DOE and GSA. Where time does not permit assurance that earned credits are not lost to the Government, announcement of availability of excess leased ADPE may be circularized within DOE by teletype (TWX). The TWX should be sent to all DOE field offices with a request to further distribute to applicable contractors, and copies should be sent to the Office of ADP Management (MA–24) and to the Property and Equipment Management Division (MA–422) at Headquarters.

§ 109–36.304 Availability list.

The Director of Administration shall develop and maintain distribution patterns for availability lists of excess and exchange/sale ADPE as contemplated in FPMR § 101–36.304.

§ 109–36.306 Requests for transfer of excess ADPE or exchange/sale ADPE.

The Director of Administration, heads of field offices, the Administrator, energy Information Administration and contracting officers are authorized to sign Standard Form (SF) 122, Transfer Order Excess Personal Property, after appropriate approvals, involving requests for transfer of excess or exchange/sale ADPE, as required by FPMR § 101–36.306(a).

Subpart 109–36.47—Reports

§ 109–36.4700 Scope of subpart.

This subpart implements and supplements FPMR Subpart 101–36.47 as it relates to reporting excess or exchange/sale ADPE to GSA.

§ 109–36.4702 Reporting excess or exchange/sale ADPE.

Excess Government-owned or-leased ADPE and exchange/sale ADPE shall be reported to GSA on Standard Form (SF) 120, Report of Excess Personal Property, in accordance with the requirements of FPMR § 101–36.4702. No provision is made in FPMR § 101–36.4702 for the use of a TWX as a substitute for the SF 120 in reporting excess ADPE to GSA. When a TWX is used to report excess leased ADPE to GSA, it shall be followed up with an SF 120 to GSA, providing appropriate cross-reference information.

SUBCHAPTER G—TRANSPORTATION AND MOTOR VEHICLES

PART 109–38—MOTOR EQUIPMENT MANAGEMENT

Sec.

Authority: Sec. 644, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254).

§109-38.000 Scope of part.

This part implements and supplements FPMR Part 101-38 concerning the management of motor equipment, vehicles, aircraft and watercraft.

§109-38.000-50 Policy.

Necessary motor equipment, vehicles, aircraft and watercraft shall be provided, maintained and utilized in support of DOE programs in the most practical and economical manner consistent with program requirements, safety considerations, fuel economy and applicable laws and regulations.

Subpart 109-38.0—Definition of Terms

§109-38.001 Definitions.

As used in this Part the following definitions apply:

(a) "Motor equipment" means any item of equipment which is self-propelled or drawn by mechanical power, including motor vehicles, motorcycles and scooters, construction and maintenance equipment, materials handling equipment, aircraft and watercraft.

(b) "Motor vehicle" means any equipment, self-propelled or drawn by mechanical power, designed to be operated principally on the highways in the transportation of property or passengers. This includes both motorcycles and motor scooters.

(c) A "replacement off-set" is an authorization to one DOE field organization to acquire a new passenger motor vehicle to replace an old passenger motor vehicle which has become excess to another DOE field organization. The transaction does not require the physical transfer of the excess vehicle, but is limited to a documentary transfer.

(d) "Special purpose vehicles" have limited but essential missions. They are not generally used to carry passengers, freight or other materials. Trucks with permanently mounted equipment, (such as fire trucks, special tank trucks, wreckers and trucks with compressors or generators in fixed mounting on the body), may be classified as special purpose trucks. Vehicles other than sedans and station wagons which are to be used only during a defined or specified contingency, such as evacuation or other similar emergency, may also be classified as special purpose vehicles. For reporting purposes within DOE, motorcycles and motor scooters will also be reported as special purpose vehicles.

(e) "Experimental vehicles" are those acquired solely for testing and research purposes or otherwise designated for experimental purposes. Such vehicles are to be the object of testing and research as differentiated from those used as vehicular support to testing and research. Experimental vehicles are not to be used for passenger carrying services, and they are not subject to statutory price limitations or to authorization limitations.

Subpart 109-38.1—Reporting Motor Vehicle Data

§109-38.1001-50 Reporting DOE motor vehicle data.

(a) Organizations operating DOE-owned and/or commercially term leased (60 continuous days or more) motor vehicles shall provide one copy of the following reports to the Property and Equipment Management Division (MA-422) by October 31 of each year.

(1) DOE Report of Motor Vehicle Data.

(2) DOE Report of Truck Data.

(b) Copies of the report forms may be obtained by contacting the Property and Equipement Division.

§109-38.102-2-50 Reporting DOE domestic and foreign vehicles.

Separate forms shall be prepared for vehicles located: (a) In the United States, including territories and possessions, and (b) in a foreign country.

Subpart 109-38.2—Registration and Inspection

§109-38.202-50 Registration in foreign countries.

Motor vehicles used in foreign countries are to be registered and carry license tags in accordance with the existing motor vehicle regulations of the country concerned.

§ 109-38.202-51 Shipment to foreign countries.

(a) When motor vehicles are being shipped for use in a foreign country, the desk officer or individual handling the affairs pertaining to the country in the Department of State shall be contacted before shipment is made for information concerning the licensing and shipping of the vehicle

(b) The person responsible for, and expected to use, a motor vehicle in a foreign country shall make inquiry at the United States Embassy, Legation, or Consulate concerning the regulations that apply to registration, licensing, and operation of motor vehicles and shall be guided accordingly.

Subpart 109-38.3—Official U.S. Government Tags

§ 109-38.302 Records.

(a) The Property and Equipment Management Division (MA-422) assigns "blocks" of U.S. Government license tag numbers to DOE organizations and maintains a current record of such assignments. Additional "blocks" will be assigned upon request.

(b) Each Departmental organization shall maintain a current record of individual assignments of license tags to the motor vehicles under its jurisdiction as required by FPMR § 101-38.302.

§109-38.303 Procurement.

The procedures for acquiring official Government license tags by DOE organizations are covered in DEAR 908.7101-7.

§ 109-38.305-50 Security.

Unissued license tags shall be stored in a locked drawer, cabinet or storage area with restricted access to prevent possible fraud or misuse.

§ 109–38.305–51 Lost or stolen license tags.

Fleet managers, upon receipt of information on lost or stolen Government license tags, should promptly report the loss to the local DOE security office and local law enforcement authorities. Lost or stolen Interagency Motor Pool Vehicle license tags should be reported to the applicable General Services Administration motor pool manager. District of Columbia or state license tags which are lost or stolen should be reported to the District of Columbia, Department of Transportation, or the appropriate state agency.

Subpart 109–38.4—Official Legend and Agency Identification

§ 109–38.404 Procurement of decalcomanias.

The official legend and agency identification for DOE shall be of elastomeric pigmented film type decalcomania which are currently available in black (DOE From 1530.1) and white (DOE Form 1530.2). These forms shall be requisitioned from the Logistics Management Division (MA–235) using DOE Form 4250.2, "Requisition for Supplies, Equipment or Services", a local supply request form or a memorandum.

§ 109–38.404–50 Security of decals.

Unissued decals shall be stored in a locker drawer, cabinet or storage area with restricted access to prevent possible fraud or misused.

Subpart 109–38.6—Exemptions From Use of Official U.S. Government Tags and Other Identification

§ 109–38.602 Unlimited exemptions.

(e) Exemptions from the requirement for the display of Federal license tags and other official identification may be approved by heads of field offices and the Director of Administration for motor vehicles under their cognizance which are used in the conduct of security operations or in the enforcement of security regulations of DOE.

§ 109–38.602–50 Additional Department of Energy exemptions.

The requirements for the display of Federal license tags and other identification do not apply to motor vehicles used in foreign countries, Trust Territories, or the Pacific Test Areas (see FPMR §§ 101–38.202 and 109–38.202–50).

§ 109–38.605 Additional exemptions.

(a) Requests made pursuant to FPMR § 101–38.605 for exemption from the requirement for displaying U.S. Government tags and other identification on motor vehicles which are not within the criteria in FPMR § 101–38.602 shall be submitted through normal administrative channels to the Property and Equipment Management Division (MA–422). Each such request shall describe the vehicle for which exemption is sought, the nature of the work on which it is used, and include a certification to the effect that conspicuous identification would interfere with such use.

(b) The Property and Equipment Management Division (MA–422) shall be notified promptly when the need for a previously authorized exemption no longer exists.

(c) Copies of certifications and cancellation notices required to be furnished to GSA pursuant to FPMR § 101–38.605 will be transmitted to GSA by the Property and Equipment Management Division.

§ 109–38.606 Approval of tag requests for exempted vehicles in the District of Columbia.

The Director of Administration is designated as the DOE liaison representative to approve requests for regular District of Columbia license tags for Headquarters motor vehicles exempted from carrying U.S. Government license tags and other official identification, and furnishes annually to the District of Columbia Department of Motor Vehicles the name and specimen signature of each representative authorized to approve such requests.

§ 109–38.607 Report of exempted motor vehicles.

The Director of Administration and heads of field offices for their respective organizations shall maintain records of motor vehicles exempted from displaying Federal license tags and other identification which will permit the submission of reports by the Property and Equipment Management Division upon request of GSA in accordance with FPMR § 101–38.607. The records shall contain a listing by type of each exempted vehicle operated during the previous fiscal year, giving the information for each vehicle on hand at the beginning of the year and each of those newly authorized during the year, including—

(a) By whom exemption was authorized, by name and title of authorizing official (including any authorization by Headquarters and GSA);

(b) Date exemption was authorized;

(c) Justification for exemptions and limitations on uses of the exempted vehicle;

(d) Date of discontinuance for any exemption discontinued during the year; and

(e) Probable duration of exemption for vehicles continuing in use.

Subpart 109–38.7—Transfer of Title to Government-Owned Motor Vehicles

§ 109–38.701 Methods of transfer.

(c) The certificates and copies of Certificate of Release of a Motor Vehicle (SF's 97 and 97A) shall be numbered consecutively by each DOE field and Headquarters organization disposing of motor vehicles.

§ 109–38.701–50 Delegation of authority to sign Standard Forms 97 and 97A.

(a) Heads of DOE field offices and the Director of Administration may delegate the authority to sign SF's 97 and 97A to responsible DOE personnel under their jurisdiction. The name of the officer delegated to sign will be typed on the certificate in addition to the signature in ink.

(b) All DOE field and Headquarters organizations shall establish proper controls to prevent blank copies of SF's 97 and 97A from being obtained by unauthorized persons.

Subpart 109–38.9—Motor Vehicle Replacement Standards

§ 109–38.900–50 Policy.

It is the policy of DOE to continue in service motor vehicles which meet prescribed replacement standards, but which are in usable and workable condition, provided that—

(a) A continued need exists for the vehicle;

(b) The vehicle can be operated safely and dependably without excessive repair and maintenance costs. Normally, when any single repair job exceeds 25 percent of the estimated current market value of a vehicle, consideration should be given to replacement in lieu of repair and retention;

(c) Repair parts are readily obtainable; and

(d) Retention will not substantially reduce the exchange/sale value of the vehicle.

§ 109–38.907 Fleets.

The replacement limitations cited in FPMR § 101–38.907 are applicable to each of DOE's field organizations and may not be exceeded.

§ 109–38.908 Exception.

Motor vehicles may be replaced without regard to the replacement standards in FPMR § 101–38.9 only after certification by the appropriate head of the field or Headquarters organization that a vehicle is beyond economical repair due to accident damage or wear caused by abnormal operating conditions.

§ 109–38.908–50 Prompt disposal of replaced passenger vehicles.

Because of the limitation on the total number of passenger vehicles which DOE may own, replaced passenger vehicles shall be removed from service and disposed of prior to or as soon as practicable after delivery of the replacement equipment to avoid concurrent operation of both vehicles. Because of disposal problems, there may be occasions where quick disposal of the old equipment may not be feasible or advantageous to the Government, e.g., it may be determined that there is an insufficient number for economical sale, or that sale would bring substantially better prices at a later date because of seasonal effects on sale prices. Under such circumstances, temporary retention of the replaced passenger vehicle may be justified. However, such retention may not be used as justification for concurrent operation of the new and replaced vehicles.

Subpart 109–38.10—Scheduled Maintenance of Motor Vehicles

§ 109–38.1003–50 DOE guidelines.

(a) Whenever practicable, existing Government service facilities shall be consolidated, or commercial services shall be utilized, to reduce to a minimum the maintenance facilities and equipment, supplies, parts, stocks and overhead costs.

(b) Maintenance also shall be geared to a planned replacement program. Individual vehicle maintenance record files shall be kept and made readily available to appropriate maintenance personnel to provide historical records of past repairs, as a control against unnecessary repairs and excessive maintenance, and as an aid in determining the most economical time for replacement.

(c) One-time maintenance and repair limitations shall be established by heads of field offices. To exceed repair limitations, approval from heads of field offices is required, particularly as the time of replacement approaches.

(d) Adequate maintenance schedules shall be provided to accomplish the following objectives in the most economical manner:

(1) To maintain equipment in safe and economical operating condition.

(2) To prevent equipment failures resulting in program delays and excessive downtime.

(3) To prevent premature wear and deterioration.

(4) To prevent undue depreciation.

(5) To conserve materials and manpower.

(e) Warranties.

(1) Special attention shall be devoted to the warranty on each motor vehicle to ensure that maximum benefits are realized. A system should be established to assure that defective materials and workmanship on vehicles under warranty are corrected under the terms of the warranty to avoid maintenance and repair of such vehicles at Government expense.

(2) When motor vehicles are maintained in Government shops in isolated locations that are distant from franchised dealer shops, or when it is not practical to return the vehicles to a dealer, billback agreement shall be sought from manufacturers to permit warranty work to be performed in Government shops on a reimbursable basis.

Subpart 109–38.12—Preparation and Control of Standard Form 149, U.S. Government National Credit Card

§ 109–38.1200 General.

FPMR § 101–26.406 authorizes the use of Standard Form 149, U.S. Government National Credit Card for Federal agencies for obtaining service station deliveries and services. The use of the SF–149 by each field organization or by Headquarters is optional. When a field organization elects to use the form, it shall be used on a field organization basis.

§ 109–38.1201 Billing Code.

DOE organizations shall request the assignment of billing address code numbers from the Property and Equipment Management Division (MA–422). Following the assignment, DOE organizations shall submit orders for issuance of national credit cards in accordance with FPMR § 101–26.406–5 and the current Federal Supply Schedule FSC Group 75, Part VII. The billing code consists of the following:

(a)(1) The first three digits of the 10–digit billing code embossed on national credit cards in use by DOE will always be 000.

(2) The fourth digit may be used by DOE organizations and contractors to designate the vehicle class or provide additional billing code numerals. If not used for either of these purposes, zero will be used.

(3) The fifth and sixth digits will be "89", the agency code assigned to DOE.

(4) The seventh, eighth, and ninth digits indicate the billing address code number.

§ 109–38.1202 Administrative control of credit cards.

(a) The head of each organization using credit cards shall be responsible for establishing procedures to provide for the administrative control of credit cards in accordance with the guidelines set forth in FPMR Part § 101–38.1202.

§ 109–38.1202–50 Additional control of credit cards.

(a) All vehicle operators should be provided with appropriate instructions regarding the use and protection of credit cards against theft and misuse.

(b) In the event an SF–149 is lost or stolen, reasonable precautions shall be taken to minimize the opportunity of purchases being made by unauthorized persons. In addition to the written notification required in FPMR § 101–38.1202(b)(1), the paying office shall be promptly notified of the loss or theft and to be on the alert for any unauthorized bills.

Subpart 109–38.13—Energy Conservation in Motor Vehicle Management

§ 109–38.1304 Mandatory provisions affecting the acquisition and use of all motor vehicles.

(c) The use of motor vehicles for official purposes within DOE is governed by the provisions of DOE Subpart 109–38.54.

(d) All requirements for term rentals or leases of sedans, station wagons or light trucks under 8,500 pounds gross vehicle weight shall be submitted to the Property and Equipment Management Division (MA–422) in accordance with §§ 109–38.1306–50, 109–38.1307 and DEAR 908.1170.

§ 109–38.1304–50 Selection of type of motor vehicles.

(a) All vehicles acquired for use, whether by buy, hire, lease, forfeiture or transfer from another agency, shall be limited to the minimum body and engine size, and to only that operational equipment (if any) necessary to fulfill programmatic needs.

(b) The least expensive unit overall should be used, considering both acquisition and operating costs for units to be bought, and rental rates for rented or leased units.

(c) Dual-purpose vehicles capable of hauling both personnel and light cargo shall be used whenever appropriate to avoid the need for two vehicles when one can serve both purposes. However, truck-type or van vehicles shall not be acquired for passenger use merely to avoid limitations on the number of passenger vehicles which may be acquired.

(d) Motor scooters and motorcycles in place of higher cost motor vehicles can be used advantageously for certain applications within plant areas, such as mail and messenger service and small parts and tool delivery. Their advantage, however, should be weighed carefully from the standpoint of overall economy (comparison with cost for other types of motor vehicles) and increased safety hazards, particularly when mingled with other motor vehicle traffic.

(e) Electric vehicles may be used advantageously for certain applications. The use of these vehicles is encouraged wherever it is feasible to use them to further the goal of fuel conservation.

§ 109-38.1305 Mandatory provisions affecting the acquisition, use, and replacement of passenger automobiles.

In accordance with FPMR § 101-38.1305, all requests to acquire passenger automobiles larger than class 1A, 1B or II shall be forwarded with justifications through normal administrative channels to the Property and Equipment Management Division (MA-422) for certification to GSA.

§ 109-38.1306 Acquisition of fuel-efficient passenger automobiles.

(a) Organizations conducting motor vehicle operations shall forward annually (on or before December 1) to the Property and Equipment Management Division (MA-422) a plan for acquisition of passenger motor vehicles for the next fiscal year. This plan shall conform to the fuel efficiency standards for motor vehicles for the applicable fiscal year, as established by Executive Order 12375 and as implemented by GSA and current DOE directives. Additional guidance for the preparation of the plan will be issued by the Property and Equipment Management Division (MA-422) as required. This organization shall also review each submission for conformance with established fuel efficiency standards and shall develop and forward to GSA the Departmental consolidated annual motor vehicle acquisition forecast.

§ 109-38.1306-50 Certification of fuel-efficient passenger automobile acquisitions.

(a) Requisitions for the buying of passenger motor vehicles shall be forwarded to the Property and Equipment Management Division (MA-422) for review, certification and submission to GSA.

(b) Proposals/ requests for commercially leased passenger automobiles, for a period of 60 continuous days or more, shall be forwarded to the Property and Equipment Management Division (MA-422) for review and certification prior to entering into an agreement to lease to insure compliance with Executive Order 12375 as implemented by GSA.

§ 109-38.1307 Acquisition of fuel-efficient light trucks.

In accordance with FPMR § 101-38.1307 and Executive Order 12375, the requirements of §§ 109-38.1306 and 109-38.1306-50 also apply to the acquisition of any truck under 8,000 pounds gross vehicle weight and covered by Federal Standards 292 and 307.

§ 109-38.1350 Conservation of motor vehicle fuels.

In furtherance of energy conservation objectives, each organization within DOE shall establish programs which will ensure achievement of the reduced motor vehicle fuel consumption objectives. The following actions shall be adopted to achieve the conservation goals of reduced motor vehicle fuel consumption:

(a) Do not idle engine for long periods of time.

(b) Reduce motor vehicle travel to the maximum extent practicable without jeopardizing essential business.

(c) Use the smallest vehicle that is feasible for the job.

(d) Maintain tire pressure to tire manufacturer's recommendations. Check pressure at least once each week.

(e) Give wide publicity on proper driving techniques as prescribed by GSA to conserve fuels and require that all drivers diligently follow them.

(f) Limit speed to the National Speed Limit.

(g) Ensure proper maintenance and servicing procedures, such as tuneups, in accordance with the manufacturer's latest specifications.

Subpart 109-38.50—Utilization of Motor Vehicles

§ 109-38.5000 General.

It is DOE policy to keep the number of motor vehicles at the minimum needed to satisfy program requirements. To assure attainment of this goal, continuing attention shall be given to developing and implementing controls and practices which will help achieve the most practical and economical utilization of vehicles.

§ 109-38.5001 Utilization controls and practices.

Controls and practices to be used by DOE organizations and contractors for achieving maximum economical utilization of motor vehicles shall include, but not be limited to—

(a) The maximum use of equipment pooling arrangements, taxicabs, shuttle buses, or other common service arrangements;

(b) The minimum, practicable assignment of equipment to individuals, groups or specific organizational components with periodic documented reviews of such assignments to determine if underutilization exists and whether reassignment is necessary;

(c) Frequent review of vehicle utilization statistics by appropriate levels of management, with prompt reassignment and/or disposal action performed as required;

(d) The careful selection of equipment types to permit the maximum appropriate use of multi-purpose equipment;

(e) The rotation of equipment between high and low mileage assignments where practicable to maintain the fleet in the best overall replacement age and mileage balance and operating economy; and

(f) The maintenance of individual equipment use records, such as trip tickets or vehicle logs, showing sufficiently detailed information to evaluate appropriateness of assignment and adequacy of use being made. If one-time use is involved, such as assignments from motor pools, the individual's trip records must, as a minimum, identify the vehicle and show the name of the operator, dates, destination, time of departure and return, and mileage.

§ 109-38.5002 Use objectives for motor vehicles.

The following use goals are established for DOE as average objectives:

(a) Sedans and station wagons—3,000 miles per quarter or 12,000 miles per year.

(b) Light trucks and general purpose vehicles, one ton and under (less than 12,500 GVW)—10,000 miles per year.

(c) Medium trucks and general purpose vehicles, 1½ ton through 2½ ton (12,500 to 16,999 GVW)—7,500 miles per year.

(d) Heavy trucks and general purpose vehicles, three ton and over (17,000 GVW and over)—7,500 miles per year.

(e) Truck tractors—10,000 miles per year.

(f) All-wheel-drive vehicles—7,500 miles per year.

(g) Other motor vehicles—No average use goals for other trucks, ambulances, buses, and special purpose vehicles are established. The use of such equipment shall be reviewed and necessary action taken to ensure that the equipment is fully utilized or declared excess to the Department's needs.

§ 109-38.5003 Application of use goals.

Individual motor vehicle utilization cannot always be measured or evaluated strictly on the basis of miles operated or against any Department-wide mileage standard. Other measures of use will need to be considered. Accordingly, as an aid in achieving maximum feasible utilization, local use objectives which represent practical units of measurement for vehicle utilization and for planning and evaluating future vehicle requirements must be established. Such objectives should generally be initiated by the organization involved and reviewed and adjusted as appropriate, but not less often than annually. The objectives will take into consideration past performance, future requirements and special operating conditions, and should be consistent with the justifications used to obtain vehicles authorizations. Both Department-wide and local use objectives should be applied in such a manner that their application does not stimulate vehicle use for the purpose of meeting the objective. The ultimate standard against vehicle use must be measured is that the minimum number of vehicles will be retained to satisfy program requirements.

Subpart 109-38.51—Acquisition of Motor Vehicles

§ 109-38.5100 General requirements.

The acquisition of motor vehicles shall be limited to the minimum number needed to adequately serve program requirements and satisfy the intent of Congress. Any additions to the fleet must be fully justified and the justification shall include substantiation that the intent of 109-38.000-50 and 109-38.50 are satisfied.

§ 109-38.5101 Authority required for acquisition or hire of passenger motor vehicles.

(a) In accordance with 31 U.S.C. 1343, authority for the buying, leasing, or hire of passenger motor vehicles is contained in the annual appropriation act for DOE.

(b) The acquisition of passenger motor vehicles by transfer from another Government agency shall be considered as an addition to the DOE passenger motor fleet.

(c) Passenger motor vehicles may not be bought or acquired by transfer or loan unless they are—

(1) Specifically authorized by the Director of Procurement and Assistance Management, pursuant to the appropriation concerned or other law;

(2) Acquired from excess for upgrading or replacement purposes and an equal number of replaced vehicles are reported for disposal as excess within 30 days; or

(3) For temporary emergency needs not in excess of three months in lieu of commercial rentals.

(4) For temporary emergency needs over three months and approved by the Director of Procurement and Assistance Management.

§ 109-38.5102 Passenger motor vehicle allocations.

(a) To assure that DOE acquisitions do not exceed the number of passenger motor vehicles authorized to be acquired in any fiscal year, the Director of Procurement and Assistance Management shall allocate to and inform the field organizations of the number of passenger motor vehicles which may be acquired each fiscal year. These allocations and the statutory cost limitations shall not be exceeded.

(b) In order that unused allocations to acquire passenger motor vehicles may be reassigned within the Department, the organizations concerned shall notify the Property and Equipment Management Division (MA-422) when allocations will not be used. Such notification shall be submitted as soon as possible but not later than June 15 of each year.

(c) Passenger motor vehicles acquired from excess to meet temporary emergency needs for longer than three months shall be charged against the number authorized for purchase unless otherwise approved by the Director of Procurement and Assistance Management (See Comp. Gen. Decision. B-154282 dated October 15, 1966).

(d) In order that passenger vehicles no longer needed by one field organization may be used by another, either by actual transfer for continued use or as replacement off-sets, they shall be reported to the Property and Equipment Management Division (MA-422) prior to any disposal action so that such use can be properly coordinated within DOE.

§ 109-38.5103 Acquisition.

(a) Policies and procedures for the procurement of new motor vehicles, including provisions for the acquisition of additional systems, and equipment for sedans and station wagons, are set forth in FPMR 101-25.304 and 101-26.5 and DEAR 908.7101.

(b) Policies and procedures for the leasing of motor vehicles are set forth in FPMR § 101-39.601 and DEAR 908.11. The Director of Administration and heads of field offices for their respective organizations are responsible for certifying that leased passenger vehicles larger than type II (compact) are essential to the mission of the organization concerned.

Subpart 109-38.52—Aircraft

§ 109-38.5200 Scope of subpart.

This subpart establishes basic policies and procedures that apply to the management of aircraft and aircraft services, excluding aircraft owned and operated by other Federal activities for DOE.

§ 109-38.5201 Definitions.

As used in this subpart the following definitions apply:

(a) "Aircraft" means a device that is used or intended to be used for flight in the air, including: heavier than air, and lighter than air and ultra-light aircraft, gliders, helicopters, rigid and nonrigid airships, and balloons.

(b) "Chartered aircraft" are aircraft rented or hired on an intermittent basis, with or without the services of a pilot or other operating aircrew members.

(c) "Leased aircraft" are aircraft obtained on a contractual basis, for a stipulated time interval, as distinguished from intermittent charter or short-term rental.

(d) "Military aircraft" are aircraft on loan from the Department of Defense (DOD).

(e) "Pilot" is an individual possessing the required FAA credentials and meeting the qualification requirements and other criteria as required by the employing organization.

(f) "Part-time pilot" is one who is employed specifically to operate aircraft on a "when-needed" basis.

§ 109-38.5202 General.

Department-wide policies, standards, guidelines and procedures for management of aircraft and aviation services, necessary staff assistance, and general liaison with other Federal agencies are provided by the Director of Procurement and Assistance Management. Heads of field offices

must ensure that management, review, approval and accounting procedures and systems are implemented to comply with the requirements of OMB Circular A-126, "Improving the Management and Use of Government Aircraft."

§ 109-38.5203 Aircraft safety.

(a) Policy development and general overview of aircraft safety in Departmental operations is exercised by the Assistant Secretary for Policy, Safety and Environment.

(b) Aviation operations and aircraft safety standards, criteria and procedures for DOE aviation operations are established by the Assistant Secretary for Policy, Safety and Environment. Heads of field offices may establish higher safety standards, criteria and procedures when they have determined that it is necessary to assure the safety of specific operations under their jurisdiction.

§ 109-38.5204 Pilot responsibility and authority.

(a) It shall be the responsibility of the pilot to be aware of, and conform to, Federal Aviation Regulations and other requirements of the Federal Aviation Administration (FFA), Department policies and field organization directives, and the regulations and directives of other applicable authority, including those relating to use for official purposes only.

(b) The pilot is responsible for ensuring that all necessary maintenance, repairs and FAA inspections are accomplished and for determining that the aircraft is airworthy.

(c) The pilot is at all times responsible for the safe operation of his aircraft and for the safety of his crew and passengers. Insofar as the loading of the aircraft, weather, mechanical, and other safety conditions are concerned, the pilot shall have final authority for determining whether a particular flight shall be continued or terminated and how it shall be made.

§ 109-38.5205 Authority required for the acquisition, hire, or borrowing of aircraft.

§ 109-38.5205-1 Statute.

(a) In accordance with 31 USC 1343(d), authority for the buying, leasing, or hire of aircraft is contained in the annual appropriation act for DOE.

(b) The acquisition of aircraft by transfer from another Government agency shall be considered as an addition to the DOE aircraft fleet.

(c) Aircraft may not be bought, leased, or acquired by transfer or loan unless they are—

(1) Specifically authorized by the Director of Procurement and Assistance Management, pursuant to the appropriations concerned or other laws (except for temporary rentals or loans of 30 days or less);

(2) Temporary rental or loans (30 days or less) approved by the head of the field office; or

(3) Acquired from Government excess for upgrading or replacement purposes, provided: (i) That such acquisition is without reimbursement, (ii) that the aircraft can be certified as airworthy without extensive or costly modification, and (iii) that an equal number of aircraft is reported for disposal as excess within 30 days after delivery of the replacement aircraft.

§ 109-38.5206 Aircraft authorization.

(a) To assure that acquisitions do not exceed the number of aircraft authorized to be acquired in any fiscal year, the Director of Procurement and Assistance Management shall inform DOE field organizations each fiscal year of the number of aircraft which may be acquired. These authorizations shall not be exceeded.

(b) The acquisition of specific aircraft by type shall be coordinated with the Office of Operational Safety (PE-242) to assure that the selected aircraft type can perform the mission requirements safely and meet all applicable safety standards.

§ 109-38.5207 Management responsibility.

The head of each field organization having an aircraft operation shall establish procedures to ensure—

(a) That the acquisition of aircraft, including military aircraft, is centrally controlled to ensure that authorizations are not exceeded;

(b) Because of the statutory limitations on the number of aircraft which DOE may acquire, replaced aircraft must be removed from service and disposed of prior to or as soon as practicable after delivery of the replacement equipment to avoid concurrent operation of both aircraft.

(c) That each aircraft is equipped with the appropriate avionics and accessories required by its FAA type certification or military department's operators manual for the type of flight intended. Life jackets shall be provided and readily available for all occupants of aircraft or extended overwater flights as defined in Federal Aviation Regulation 1.1. Aircraft on flights into isolated areas shall be equipped with emergency rations and appropriate survival gear;

(d) Conformance with FAA requirements for the registration, certification, maintenance, and operation of aircraft, engines, and component equipment;

(e) Selection of qualified pilots and crew members and the maintenance of pilot and crew competence commensurate with job requirements;

(f) Establishment of dispatching and tracking procedures or other controls that will assure knowledge of aircraft location when operating in areas where flight plan service is not available;

(g) Overall safe, efficient, and economical operation, maintenance, utilization, and replacement of aircraft;

(h) That pooling is used as necessary to obtain maximum utilization;

(i) That contract or charter pilots are duly certified to meet all requirements and regulations established by the FAA for the particular aircraft;

(j) That chartered, leased, or rented aircraft are operated and maintained in compliance with all rules, regulations, and minimum standards of the FAA;

(k) That any charter, rental or hire of aircraft and operators shall meet the requirements of 14 CFR 135; and

(l) That DOE-owned, -leased, and borrowed aircraft are used for official purposes only and that all flight and operational personnel, including the pilots, are aware of the provisions of § 109-38.54.

§ 109-38.5208 Registration and identification.

(a) Department-owned aircraft shall be registered with the FAA. The certificate of registration shall be displayed in the aircraft in accordance with FAA requirements. A similar requirement shall be included in any arrangement for the charter, rent, hire, loan or lease of aircraft.

(b) All aircraft shall display markings as required by the Federal Aviation Regulations for registered aircraft of the United States.

§ 109-38.5209 Airworthiness.

With the exception of public use aircraft being operated under special regulations of the FAA, all aircraft shall be required to have a currently effective FAA Airworthiness Certificate appropriate to the proposed usage. This certificate shall be displayed in the aircraft. Exceptions to this requirement are: (a) Uncertified aircraft may be ferried with minimum crew when there is a written determination by the head of the field office or his designee that the aircraft is safe for flight, and (b) aircraft obtained by transfer from the Department of Defense or the U.S. Coast Guard may be ferried incident to such transfer when the aircraft has been released as airworthy for flight.

§ 109-38.5210 Maintenance.

As a minimum, all aircraft, aircraft engines, propellers, accessories, and equipment shall be maintained and serviced in accordance with FAA requirements for air carrier and non-air carrier aircraft, as appropriate, and the instructions of the manufacturer. All repairs and alterations shall be performed and approved in accordance with applicable FAA or military standards and requirements. Preventive maintenance inspections shall be made of the airframe, engine, and accessory equipment in conformance with the equipment manufacturer's recommendations and FAA or military requirements, as applicable.

§ 109-38.5211 Operation.

(a) Flight operations must comply with the Federal Aviation Regulations, and responsibility for such compliance rests with the pilot of the aircraft (§ 109-38.5204). Any special problem requiring deviation from the regulations shall be submitted through normal administrative channels to the Assistant Secretary for Policy, Safety and Environment for review and possible referral to the FAA for an appropriate waiver. Such a waiver is required for all fixed-wing aircraft engaged in low-level flying, and any change of conditions shall be reported to the responsible FAA District Office.

(b) Flight plans are required for all flights over isolated areas, and are also required for flights under visual flight rules (VFR) conditions except where the flight is of a local nature. Where normal flight plan channels are not available, the procedures as stated in § 109-38.5207(f) or other controls shall be followed that will assure current knowledge by responsible DOE or DOE contractor personnel of the aircraft's operating plan and of its arrival at destination.

(c) Aircraft, engines, and equipment shall be operated within the operating limits prescribed by the manufacturer.

(d) Adequate preflight and in-flight check lists shall be provided to, and used by, all pilots. A visual preflight inspection shall be made by the pilot before each takeoff, and any deficiency which might affect the safety of the flight shall be corrected before takeoff.

(e) All flights shall be planned and conducted so that the aircraft will arrive over its destination with a fuel reserve sufficient to reach a planned alternate destination. Flights conducted under FAA Instrument Flight Rules shall be required to conform to FAA fuel-time minimum requirements, or better.

§ 109-38.5212 Records.

As a minimum, flight, aircraft, and engine logs shall be maintained in accordance with FAA requirements, and records of operations, maintenance, and costs shall be maintained as required for management budgetary and reporting purposes. Heads of field offices shall establish requirements for other records needed.

§ 109-38.5213 Reports.

(a) Organizations operating aircraft shall complete a DOE Form 4450.1, Aircraft Cost and Operations Report, for each DOE-owned, -leased, (over 30 days) or borrowed aircraft operated during the fiscal year. The completed forms shall be submitted to the Property and Equipment Management Division (MA-422) by December 31 of each year, or upon receipt or disposal of individual aircraft.

(b) Reports shall be submitted as required by the Federal Aviation Administration, the National Transportation Safety Board, the General Services Administration, and the Assistant Secretary for Policy, Safety and Environment. Heads of field offices shall establish the requirements for other reports that may be needed for management or other purposes.

(c) All accidents involving aircraft shall be reported promptly to the National Transportation Safety Board, the Federal Aviation Administration as required, the head of the field organization concerned and the Assistant Secretary for Policy, Safety and Environment.

Subpart 109-38.53—Watercraft

§ 109-38.5300 Scope of subpart.

This subpart establishes basic policies and procedures that apply to the management of all watercraft operated by DOE organizations and contractors. The policies and procedures set forth herein are minimal, and the head of each Departmental organization operating watercraft shall issue such supplemental instructions as may be needed to ensure the effective and efficient management of watercraft.

§ 109-38.5301 Definitions.

As used in this subpart the following definitions apply:

(a) "Watercraft" means any vessel used to transport persons or material on water.

(b) "Qualified Operator" means any person who has exhibited skill in handling watercraft, knowledge of "Rules of the Road," and other basic watercraft knowledge necessary for safe and efficient operation.

(c) "Rules of the Road" means laws which govern the operation of watercraft on: (1) Great Lakes, (2) western rivers, (3) Inland, and (4) International Waters.

§ 109-38.5302 General.

Departmental-wide policies, standards, guidelines and procedures for management of watercraft are established by the Director of Procurement and Assistance Management.

§ 109-38.5303 Watercraft safety.

Policy development and general overview of watercraft safety in Departmental operations is exercised by the Assistant Secretary for Policy, Safety and Environment.

§ 109-38.5304 Watercraft operations.

(a) No person may operate a watercraft on a waterway until skill of operation, knowledge of rules of the road, and basic watercraft knowledge have been exhibited to the head of the field office. The U.S. Coast Guard Auxiliary (USCG), American Red Cross and U.S. Power Squadrons teach public courses in some locations which are applicable to small boat operations (non-commercial watercraft up to 65' overall length).

(b) Before a watercraft is put underway, the operator shall check the vessel to ensure that the necessary equipment, including personal flotation devices and lights, as required by laws applicable to the area of operation, are present, properly stowed and in proper working order. Optional equipment recommended by USCG or other competent authority shall also be included when determined to be necessary by the responsible field office.

(c) Operators shall comply with all applicable Federal, state and local laws pertaining to the operation of watercraft. Where no state boating law exists, the requirements of the Federal Boating Act of 1958, as amended, shall apply.

(d) Operators shall not use watercraft or carry passengers except in the performance of official Departmental assignments.

§ 109-38.5305 Watercraft identification and numbers.

(a) Watercraft in the custody of DOE or DOE contractors shall display identifying numbers, whether issued by the U.S. Coast Guard, state or local field office. The numbers will be in addition to Departmental property control or other identification. Numbers shall be in block form affixed to the bow section, on both sides. Numbers and/or letters shall read from left to right in

contrasting color to background not less than three (3) inches in height. When a watercraft is not registered by either the U.S. Coast Guard or state, the field organization shall assign and alpha-numeric designation, which will reflect Departmental and field office issue. Example—DOE–4560–SR. (Note: Some states specify the arrangement of numbers and letters which shall be used by Federal small boats home posted in the state's waters. Compliance with such a requirement is appropriate.)

(b) DOE is not required to have DOE-owned watercraft inspected and registered by the U.S. Coast Guard, but these services may be provided upon request.

§ 109–38.5306 Display of flags and seal.

Watercraft with overall length of twenty (20) feet or more, except barges, shall display the U.S. Ensign (National Flag). The display of the Departmental flag is optional. Location and times of display of flags shall be in accordance with accepted practice. A facsimile of the Departmental seal may also be displayed. When the seal is used it shall be placed on the superstructure in a prominent place and a size appropriate to the superstructure; except that if there is no superstructure, the seal shall be placed above the water line in the midship section of watercraft.

Subpart 109–38.54—Official Use of Motor Vehicles and Aircraft

§ 109–38.5400 Scope of subpart.

This subpart supplements FPMR Part 101–38, implements the provisions of statutes concerning the use of Government-owned, -rented or -leased motor vehicles and aircraft for official purposes and prescribes policies and procedures governing the use of such vehicles and aircraft acquired for official purposes.

§ 109–38.5401 Statutory requirement.

(a) 31 U.S.C. 1344(a) provides that, unless otherwise specifically provided, no appropriation available for any department shall be expended for the maintenance, operation, and repair of any Government-owned passenger motor vehicle or aircraft not used exclusively for official purposes. Official purposes shall not normally include the transportation of officers and employees between their domiciles and places of employment, except in cases of medical officers on outpatient medical service, and where officers and employees are performing field work which makes such transportation necessary and which has been approved by the head of the department concerned.

(b) In accordance with 31 U.S.C. 1349(b), any officer or employee of the Government who willfully uses or authorizes the use of any Government-owned motor vehicle or aircraft or any motor vehicle or aircraft leased by the Government, for other than official purposes, shall be suspended from duty by the head of the department concerned, without compensation, for not less than one month and shall be suspended for a longer period or summarily removed from office if circumstances warrant.

(c) Under the provisions of 18 U.S.C. 641, any person who knowlingly misuses any Government property (which includes Government motor vehicles) is subject to criminal prosecution and, upon conviction, to fines up to $10,000 and/or imprisonment for up to 10 years.

(d) In addition to the potential administrative sanctions and criminal prosecution cited above, 31 U.S.C. 1344 is interpreted to preclude reimbursement to Government contractors for the maintenance, operation or repair of Government-owned, -rented, or -leased passenger motor vehicles or aircraft which are used by contractor personnel for other than official purposes.

§ 109–38.5402 Policy.

All Government-owned, -rented or -leased motor vehicles and aircraft operated by DOE and its contractors shall be utilized for official purposes only, and officers, employees and contractors of the Department shall not use or authroize others to use any Government-owned, -rented or -leased motor vehicle or aircraft for other than official purposes. It should be understood that use of Government-owned, -rented or -leased motor vehicles between an employee's domicile and place of employment when adequately justified may be authorized only as an exceptional action but not as a routine occurance.

§ 109–38.5403 Official purposes.

(a) The term "official purposes" means those purposes required to carry out authorized programs, including program work carried out under contracts made pursuant to authority vested in the Department. "Official purpose" largely is a matter of administrative discretion and determination based on the particular facts of the case and the Government interest in the proposed use of the Government motor vehicle. It is the responsibility of the person authorizing or approving the use to examine the circumstances surrounding such use and assure that the facts sufficiently justify a conclusion of "official purpose."

(b) The term "field work" as used in 31 U.S.C. 1344a quoted above refers to the nature of the work performance; it is not restricted to "field service" as distinguished from "Headquarters service."

§ 109.38.5404 Approval of authorizations.

(a) The Director of Administration and heads of field offices for their respective organizations may approve the use of a Government-owned, -rented, or -leased motor vehicle between a DOE employee's domicile and place of employment. This authority may be redelegated but not below the chief administrative officer level.

(b) Heads of field offices and contracting officers shall require:

(1) Contracting officer approval for all contractor authorizations over 10 days;

(2) That contractors prescribe and issue, subject to approval by the head of the field organization or contracting officer, such local written guidelines regarding the official use of motor vehicles or aircraft and the penalties for unauthorized use as may be necessary and appropriate for particular operating situations; and

(3) That the use of Government-owned, -rented, or -leased motor vehicles or aircraft by contractor employees for transportation between places of employment and domiciles, including storage at or near such domiciles, is justified in accordance with § 109–38.5403, and that such justifications, administrative determinations, and authorizations for such use and storage by contractor employees are documented and approved at appropriate supervisory levels within the contractor's organization and by the contracting officer when required by § 109–38.5404(b)(1).

(c) The approving official shall determine whether the official duties of the employees justify a conclusion of official purpose in accordance with § 109–38.5403. All approvals and supporting documentation shall be in writing and retained for three calendar years.

§ 109–38.5405 Duration of authorizations.

An authorization to use a motor vehicle for transportation between a domicile and place of employment shall be limited to the period of actual need or 60 days, whichever is less. Requests for renewals of such authorizations shall be subject to the same justification and document retention procedures as original requests, and must also indicate what attempts were made during the

original period to eliminate the necessity for such use.

§ 109-38.5406 Use of a motor vehicle to drive to residence at start of official travel.

The use of a Government motor vehicle by an officer or employee to drive to his/her residence when it is in the interest of the Government that the employee start on official travel in the vehicle from that point, rather than from his/her place of business, is not regarded as prohibited by 31 USC 1344(a), (25. Comp. Gen. 844) or by Departmental policy.

§ 109-38.5407 Use of Government-owned or Government-furnished motor vehicles in travel status.

The use of Government-owned or Government-furnished motor vehicles by Government employees while in travel is governed by the Federal Travel Regulations (FTR 1-2.6a) and Chapter III-3 of DOE Order 1500.2 (DOE Travel Policy and Procedures Manual).

§ 109-38.5408 Use of Government-owned or-leased bus systems.

The provisions of this subpart do not affect passenger use of Government-owned or -leased bus systems (regardless of type of vehicle used in such system) established under the provisions of section 161e of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2201e).

§ 109-38.5409 Use of Government motor vehicles in emergencies.

In limiting the use of Government motor vehicles to official purposes, it is not intended to preclude their use in emergencies threatening loss of life or property (see § 109-1.5102). Such use shall be documented.

§ 109-38.5410 Use of motor vehicles by the Postal Service.

(a) Section 411 of the Postal Reorganization Act provides that executive agencies are authorized to furnish property and services to the Postal Service under such terms and conditions, including reimbursability, as the Postal Service and the agency concerned deem appropriate. Executive Order 11672 establishes a requirement for reimbursement at fair market value of such property or at a rate based on appropriate commercial charges for comparable property , as agreed to by the agency head and the Postmaster General, unless the Director of the Office of Management and Budget finds that a different basis of valuation is more equitable or better serves the public interest.

(b) Pursuant to the authority in 39 U.S.C 411, motor vehicles may be made available to the Postal Service for temporary use. The rental rate to be charged shall be the same as is charged by the General Services Administration for similar motor vehicles available from the interagency motor pool serving the geographical area involved, with appropriate allowances for any fuel and oil furnished by the Postal Service.

§ 109-38.5411 Instructions to motor vehicle operators.

Procedures shall be established to inform motor vehicle operators concerning—

(a) The statutory requirement that motor vehicles shall be used only for official purposes;

(b) Personal responsibility for safe driving and operation of motor vehicles, and for compliance with Federal, State, and local laws and regulations, and all accident reporting requirements;

(c) Protection for DOE employees under the Federal Tort Claims Act (28 U.S.C. 2671) when acting within the scope of their employment;

(d) The penalties for unauthorized use of motor vehicles;

(e) The prohibition against picking up strangers or hitchhikers, and the transportation of non-official passengers;

(f) The proper care, control and use of credit cards; and

(g) Any other duties and responsibilities assigned to motor vehicle operators with regard to use, care, operation, and maintenance of motor vehicles.

PART 109-39—INTERAGENCY MOTOR VEHICLE POOLS

Sec.

Authority: Sec. 644, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109-39.000 Scope of part.

This part implements and supplements FPMR Part 101-39 concerning the establishment and operation of interagency motor vehicle pools and systems.

Subpart 109-39.3—Motor Vehicle Exemptions

§ 109-39.302 Unlimited exemptions.

In those instances where it is determined that an unlimited exemption from inclusion of a vehicle in a motor pool system is warranted under the criteria set forth in FPMR § 101-39.302, full particulars shall be forwarded to the Property and Equipment Management Division (MA-422) for consideration and possible referral to the Administrator of General Services.

§ 109-39.303 Limited exemptions.

The procedure established in § 101-39.202 shall be followed in seeking limited exemptions under the criteria set forth in FPMR § 101-39.303.

Subpart 109-39.4—Establishment, Modification, and Discontinuance of Motor Pools

§ 109-39.404-3 Problems involving service or cost.

To resolve problems involving motor pool service or cost, the affected field or Headquarters organization shall bring the matter to the attention of the chief of the motor pool providing the vehicles. In the event a satisfactory solution does not result, full particulars shall be forwarded to the Property and Equipment Management Division (MA-422) for consideration and possible referral to the Administrator of General Services.

§ 109-39.404-4 Agency requests to withdraw participation.

Should circumstances arise at a given interagency motor pool location which tend to justify discontinuance or curtailment of participation by a DOE organization, as contemplated in FPMR § 101-39.404-4, the participating organization should forward complete details to the Property and Equipment Management Division (MA-422) for consideration and possible referral to the Administrator of General Services.

Subpart 101-39.6—Official Use of Government Motor Vehicles and Related Motor Pool Services

§ 109-39.602-1 Government vehicles.

(a) Subpart 109-38.54, Official Use of Motor Vehicles and Aircraft, prescribes DOE policies and procedures governing the official use of Government motor vehicles.

SUBCHAPTER H—UTILIZATION AND DISPOSAL

PART 109-42—PROPERTY REHABILITATION SERVICES AND FACILITIES

Sec.
109-42.000 Scope of part.
109-42.000-50 Applicability.

Subpart 109-42.3—Recovery of Precious Metals and Strategic and Critical Materials

109-42.301 General.
109-42.301-1 Guidelines for conducting agency surveys and reporting to GSA.
109-42.302 Recovery of silver from used hypo solution and scrap film.
109-42.350 Excess precious metals.

Authority: Sec. 644, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109-42.000 Scope of part.

This part implements and supplements FPMR Part 101-42, Property Rehabilitation Services and Facilities.

§ 109-42.000-50 Applicability.

The provisions of FPMR 101-42 and this part apply to contractors which generate used hypo solution, scrap film, other precious metals scrap and other recoverable scrap materials.

Subpart 109-42.3—Recovery of Precious Metals and Strategic and Critical Materials

§ 109-42.301 General.

The Director of Administration and heads of field offices for their respective organizations are responsible for establishing a program for the recovery of precious metals and strategic and critical materials in accordance with FPMR 101-42.3 and this subpart.

§ 109-42.301-1 Guidelines for conducting agency surveys and reporting to GSA.

Each DOE organization and contractor generating silver or other precious metals shall prepare the report on precious metals recovery in accordance with FPMR § 101-42.301-1, except that the reports shall be prepared on an annual basis for the fiscal year. Negative reports are required. Contractors shall submit reports to the DOE contracting office for review and approval. DOE organizations shall submit reports, including contractor reports, to the Property and Equipment Management Division (MA-422) not later than 30 days after the end of the fiscal year.

§ 109-42.302 Recovery of silver from used hypo solution and scrap film.

The Director of Administration and heads of field offices for their respective organizations are responsible for the establishment and maintenance of a program for silver recovery from used hypo solution and scrap film in accordance with FPMR § 101-42.302.

§ 109-42.350 Excess precious metals.

See § 109-43.313-54 for procedures for reporting excess precious metals to the DOE precious metals pool for recovery and subsequent redistribution within DOE.

PART 109-43—UTILIZATION OF PERSONAL PROPERTY

Sec.
109-43.000 Scope of part.
109-43.000-50 Applicability.
109-43.001-14 Personal property.

Subpart 109-43.1—General Provisions

109-43.101 Surveys.
109-43.102 Reassignment of property within executive agencies.
109-43.103 Agency utilization officials.

Subpart 109-43.3—Utilization of Excess

109-43.301-50 Policy.
109-43.302-50 Utilization and disposal by contractors.
109-43.303-1 Acquisition of mercury.
109-43.306 Property not required to be reported.
109-43.311-1-50 DOE utilization screening.
109-43.311-1-51 Procedures for effecting transfers within DOE.
109-43.311-5 Property at installations due to be discontinued.
109-43.312 Exceptions to reporting.
109-43.313-2 Printing, binding, and blankbook equipment and supplies.
109-43.313-50 Radioactively and chemically contaminated property.
109-43.313-51 Automatic data processing equipment.
109-43.313-52 Classified property.
109-43.313-53 Naval gun mounts.
109-43.313-54 Precious metals.
109-43.313-55 Shielding material.
109-43.313-56 Property in which the Government has an interest.
109-43.313-57 Lead.
109-43.315-5 Procedure for effecting transfers.
109-43.317-1 Cost of care and handling.
109-43.317-2 Proceeds.
109-43.319 Use of excess property on cost-reimbursement type contracts.
109-43.321 Certification of non-Federal agency screeners

Subpart 109-43.5—Utilization of Foreign Excess Personal Property.

109-43.503 Holding agency responsibilities.
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109-43.5100 Scope of subpart.
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109-43.5104 Utilization of property in facilities in standby status.

Authority: Sec. 644, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109-43.000 Scope of part.

This part implements and supplements FPMR Part 101-43, Utilization of Personal Property.

§ 109-43.000-50 Applicability.

The provisions of FPMR Part 101-43 and this part are applicable to contractors unless otherwise provided herein.

§ 109-43.001-14 Personal property.

For the purposes of this part personal property means property of any kind or type except real and related personal property; records; special source materials, which includes source materials and special nuclear material, and those other materials to which the provisions of DOE Order 5630.2 "Control and Accountability of Nuclear Materials, Basic Principles" apply, such as deuterium, enriched lithium, neptunium 237 and tritium, and atomic weapons and byproduct materials as defined in Section 11 of the Atomic Energy Act of 1954, as amended; enriched uranium in stockpile storage; and petroleum in the Strategic Petroleum Reserve and the Naval Petroleum Reserves.

Subpart 109-43.1—General Provisions

§ 109-43.101 Surveys.

The Director of Administration and heads of field offices are responsible for continuously surveying property under their control to assure efficient use and shall promptly identify and report excess property available for use elsewhere. See 109-25.109-1 for DOE policy on the conduct of management walk-through inspection tours to identify idle and unneeded equipment.

§ 109-43.102 Reassignment of property within executive agencies.

See Chapter XI of the DOE Accounting Practices and Procedures Handbook for preparation of the feeder reports upon which the consolidated DOE report of internal property reassignments is based.

§ 109-43.103 Agency utilization officials.

The Director, Property and Equipment Management Division, Headquarters, is designated as the DOE National Utilization Officer.

Subpart 109-43.3—Utilization of Excess

§ 109-43.301-50 Policy.

It is the policy of DOE to consider excess property as the first source of supply. In no case, however, will excess property be acquired unless a present or foreseeable program need exists for the property. In carrying out this policy, the objective of which is to obtain maximum effective and economical utilization of property already owned by the Federal Government, consideration should be given to such factors as—

(a) Nature and cost of any repairs required to restore excess equipment to a safe, dependable, and economical operating condition;

(b) Duration of the job on which the equipment will be used;

(c) Economic feasibility of ownership vs. loan or rental of the equipment. Frequency of use, particularly where the equipment will be needed only infrequently, is one of the factors which must be considered in determining the most economical method of acquisition; and

(d) Handling and transportation costs involved in acquisition of excess property.

§ 109-43.302-50 Utilization and disposal by contractors.

Heads of field officers may authorize contractors to perform the functions pertaining to utilization and disposal of excess property, provided such activities are in accordance with written policies and procedures which they have approved as being consistent with this part and those contained in FPMR Part 101-45 and Part 109-45.

§ 109-43.303-1 Acquisition of mercury.

Requests for 76 pound flasks of mercury, for use by DOE or its contractors, shall be forwarded to the Director, Supply Division, Oak Ridge Operations Office, Oak Ridge, Tennessee.

§ 109-43.306 Property not required to be reported.

To the extent practicable and economical, notification of availability of nonreportable excess property (See FPMR § 101-43.312) shall be made on an informal basis to other DOE installations in the area known to use such property. If no requirement is established within a reasonable time, usually not more than 30 days after the availability of the property is announced, the property will be considered excess to the needs of the DOE and made available to GSA as provided for in FPMR Part 101-43.306.

§ 109-43.311-1-50 DOE utilization screening.

(a) Prior to reporting excess personal property to GSA as required by FPMR § 101-43.311-1, reportable property, as identified in FPMR § 101-43.4801, shall be reported to the Property and Equipment Management Division (MA-422) through the DOE Reportable Excess Automated Property System (REAPS) for completion of the 30-day DOE screening period. Information regarding REAPS reporting and screening procedures are provided in instructions and directives issued by MA-422.

(b) In exceptional cases where time does not permit formal DOE utilization screening through REAPS, notification of the availability of excess property may be made by telegram, teletype or telephone, with due consideration to the additional costs involved.

(c) Concurrent utilization screening within DOE and to other Federal agencies generally shall not be permitted.

(d) If, after DOE circularization, reportable property is desired by another Federal agency, it may be transferred as provided in FPMR § 101-43.315-5(a).

§ 109-43.311-1-51 Procedures for effecting transfers within DOE.

In accordance with instructions provided for the operation of the REAPS program, transfers between DOE organizations and contractors shall be effected by completion of an SF-122, Transfer Order Excess Personal Property. Except for those contractors authorized by the DOE contracting office to executed transfer orders, transfers to DOE contractors must be approved by the cognizant DOE contracting officer for the contractors receiving the property.

§ 109-43.311-5 Property at installations due to be discontinued.

(a) In closing out installations or any activities where it is important that upon completion of the work the personnel be released and activities ended as quickly as possible in order to avoid large expenditures, arrangements may be made for expediting the utilization and disposal of excess inventories and other excess property.

(b) Personal and real property staffs of DOE field organizations shall work with appropriate GSA regional offices to develop a utilization and disposal program which takes into consideration all the factors involved, is expedited to the maximum degree, and is mutually satisfactory and in the best overall interest of the Government. When closeout involves an activity which is not located geographically in a DOE installation, information concerning the situation shall be given to the appropriate regional administrator of GSA, as early as possible, by letter (copy to the Property and Equipment Management Division (MA-422)). The information should include the types of property available and indicate that the activity is to be discontinued, the scheduled date for the removal of personnel from the location, and the last dates when the property will be needed. The following guidelines are furnished for possible use, although variations may be used as long as agreement is reached with GSA and there is no conflict with DOE requirements except as noted in (1) below:

(1) If a proposed expedited program provides for deviation from the DOE policy or procedural requirements, approval of the Director of Procurement and Assistance Management shall be obtained.

(2) Approval of the proposed program by the appropriate GSA regional office, when deviation from existing GSA regulations is involved, will be sufficient to validate the program. A copy of the approved program should be forwarded for information to the Property and Equipment Management Division (MA-422).

(3) In developing an expedited disposal program, property shall be determined to be excess to DOE before it is reported to GSA. Concurrent circularization of lists of DOE excess property within DOE and to other Federal agencies generally is not permitted.

(4) Summary catalog listings of certain categories of excess property, such as property in classes 48, 51, 55, 56, etc., showing estimated release dates, might be furnished GSA with good utilization results. Excess property in such classes as 23, 24, 32, 34 and 38 shall normally be listed by individual item with sufficient description for ready identification.

(5) In order to obtain maximum utilization of the property by other Federal agencies, the disposal program shall provide that the field organization will furnish assistance to GSA, upon request, to arrange for invitational inspections by Federal agency representatives.

(6) Upon request, DOE can provide assistance to GSA in its circularization of reportable items to other Federal agencies or in locating potential users within the government.

(7) Care should be exercised to be sure that orders from other Federal agencies for excess property are processed through GSA, as may be

required by the GSA regional office concerned.

(8) Although it may be possible to arrange for expediting donations for educational, public health, or civil defense purposes, adequate time must be allowed for the screening of all donable property.

(9) Provisions should be made for accelerated release by GSA of excess property for disposal as surplus, particularly where there is little or no potential use by other Federal Agencies.

(10) Methods should be developed whereby last minute requests for surplus property, cataloged for an auction sale or listed in a sealed bid invitation and inspected by prospective bidders, can be kept to a minimum.

§ 109-43.312 Exceptions to reporting.

In addition to the categories of nonreportable property identified in FPMR § 101-43.312 (a) through (g), the following property, when determined excess to a DOE installation, is not reportable and shall not be formally circularized within DOE or reported to GSA—

(h) Asphalt products in less than carload (LCL) quantities (roofing tile, paving materials);

(i) Cement and fabricated cement products in LCL quantities (concrete block, pumic block, cinder block, pipe and fittings);

(j) Fabricated clay products in LCL quantities (brick, tile, pipe and fittings);

(k) Fuels in LCL quantities (gasoline, diesel fuels, coal, coke and kerosene);

(l) Special purpose or site fabricated shelving, cabinets, shop tables, etc., of limited adaptability or with high cost of disassembly or transportation;

(m) Uncrated window glass; and

(n) Equipment, parts, accessories, jigs and components, which are of special design, composition, or manufacture and which are intended for use only by specific DOE installations, such as spare parts for equipment used in atomic processes.

§ 109-43.313-2 Printing, binding, and blankbook equipment and supplies.

DOE organizations shall report excess printing, binding and blankbook equipment to the Office of Administrative Services, Headquarters, for processing in accordance with the Joint Committee on Printing Regulations.

§ 109-43.313-50 Radioactively and chemically contaminated property.

Radioactively and chemically contaminated property should be handled in accordance with § 109-45.50.

§ 109-43.313-51 Automatic data processing equipment.

Automatic data processing equipment should be handled in accordance with FPMR §§ 101-36.3 and 109-36.3.

§ 109-43.313-52 Classified property.

Classified personal property which is excess to DOE needs shall be stripped of all characteristics which cause it to be classified, or otherwise rendered unclassified prior to disposal, in accordance with instructions of the head of the field organization concerned. Declassification shall be accomplished in a manner which will preserve, so far as practicable, any civilian utility or commercial value of the property.

§ 109-43.313-53 Naval gun mounts.

When a naval gun mount obtained from the Naval Sea Systems Command, Department of the Navy, becomes excess, it may be listed, circularized, and transferred within DOE in the same manner as other excess property. However, when a naval gun mount is determined to be excess to DOE, it shall be reported to the Department of the Navy, Naval Sea Systems Command, Washington, D.C. 20360, and shall be disposed of in accordance with instructions of that Department.

§ 109-43.313-54 Precious metals.

All precious metals which become excess to current or foreseeable requirements shall be reported to the Oak Ridge Operations Office. With the exception of silver, this includes precious metals in any form, including shapes, scrap or radioactively contaminated. Only high grade nonradioactively contaminated silver should be reported, i.e., silver-bearing photo solutions, scrap film, or other low grade silver scrap should not be reported. (See § 109-27.53)

§ 109-43.313-55 Shielding material.

All excess movable shielding material of any type will be circularized within DOE using normal excessing procedures. However, prior to disposal outside DOE, the Property and Equipment Management Division (MA-422) shall be advised concerning the types and quantities which remain available.

§ 109-43.313-56 Property in which the Government has an interest.

Personal property in which the Government has an interest means: (a) Government-owned property which is available for exchange or sale, and (b) property leased with an option to purchase. Such property shall be circularized within DOE in accordance with § 109-43.311-1-50 for possible utilization whenever it is practicable to do so, considering the contract terms, cost in relation to remaining useful life, location of item, purchase option time remaining, etc.

§ 109-43.313-57 Lead.

Excess lead and lead bearing scrap, such as batteries, with the exception of radioactively contaminated lead, should be reported to the Idaho Operations Office for reclaiming and subsequent redistribution within DOE from the DOE lead bank. Only quantities of 40,000 pounds or more should be reported. The Idaho Operations Office will furnish shipping instructions upon request.

§ 109-43.315-5 Procedure for effecting transfers.

In accordance with a DOE agreement with GSA, execution of transfer orders by a DOE official is not required in those cases where heads of field offices have authorized contractors to perform this function, and GSA has been notified of such authorization. GSA regional offices will furnish the cognizant DOE field organization a copy of each transfer ordered received from contractors. This copy of the transfer order will be reviewed by the cognizant DOE field organization to determine if the contractor has been authorized to submit orders for excess property. If the contractor submitting the transfer order to the GSA regional office has not been authorized in writing to submit such orders, GSA will not honor such requests unless they are subsequently executed by an appropriate DOE official.

§ 109-43.317-1 Cost of care and handling.

DOE field organizations and contractors shall comply with the provisions of Chapter III of the DOE Accounting Practices and Procedures Handbook as they relate to billings for direct costs incurred in the transfer of excess property.

§ 109-43.317-2 Proceeds.

For DOE procedures on the handling of proceeds from transfer of excess property to another Government agency with reimbursement, see Chapter III of the DOE Accounting Practices and Procedures Handbook.

§ 109-43.319 Use of excess property on cost-reimbursement type contracts.

(b) It is DOE policy for contractors to use Government excess personal property to the maximum extent possible to reduce contract costs. However, the determination required in FPMR § 101-43.319(b) does not apply to such contracts and the acquisitions of

Government excess personal property by these contractors are not subject to the annual reporting requirements of FPMR § 101–43.4701(c). The procedures prescribed in § 109–43.315–5 for execution of transfer orders apply.

§ 109–43.321 Certification of non-Federal agency screeners.

Contracting officers shall maintain a record of the number of certified non-Federal agency screeners operating under their authority and shall immediately notify the appropriate GSA regional office of any changes in screening arrangements.

Subpart 109–43.5—Utilization of Foreign Excess Personal Property

§ 109–43.503 Holding agency responsibilities.

(a) Property which remains excess after utilization screening within the general foreign geographical area where the property is located should be reported by the accountable field office or Headquarters program organization to the Property and Equipment Management Division (MA–422) for consideration for return to the U.S. for further utilization within DOE, by other Government agencies, or for donation, based on such factors as cost, residual value, usefulness in ongoing or future programs, condition, and cost of transportation.

§ 109–43.504–50 Disposition of property not selected for return to the United States.

Property not selected for return to the United States for utilization within DOE or the Government or for donation in accordance with FPMR § 101–44.7 shall be disposed of in accordance with 109–45.5105.

Subpart 109–43.47—Reports

§ 109–43.4701 Performance reports.

(a) The DOE report of the utilization of domestic excess personal property as required in FPMR § 101–43.4701(a) is submitted to GSA by the Property and Equipment Management Division (MA–422). DOE field organizations and contractors reporting under the DOE financial reporting system should furnish this information to the Office of Controller in accordance with Chapter III of the DOE Accounting Practices and Procedures Handbook. Those activities which do not report under the DOE financial reporting system shall submit an SF 121 directly to MA–422 by November 15.

(c) The report required in FPMR § 101–43.4701(c) shall be submitted to the Property and Equipment Management Division (MA–422) within 45 days after the close of each fiscal year, in the format illustrated below. This reporting requirement does not apply to excess property acquired by management and operating contractors.

Name and address of recipient	Recipient's status	Original cost of property	Federal supply classification group

Subpart 109–43.51—Utilization of Personal Property Held for Facilities in Standby

§ 109–43.5100 Scope of subpart.

This subpart supplements FPMR Part 101–43 by providing policies and procedures for the economic and efficient utilization of personal property associated with facilities placed in standby status.

§ 109–43.5101 Definition.

"Facility in standby" is a significant segment of plant and equipment, such as a complete plant or section of a plant, which is neither "in service" or declared "excess".

§ 109–43.5102 Policy.

Procedures and practices shall assure economical and efficient utilization of property associated with facilities placed in standby status as provided for in this subpart.

§ 109–43.5103 Reviews to determine need for retaining items.

Procedures and practices shall require an initial review at the time the plant is placed in standby to determine which items can be made available for use elsewhere within the established startup criteria, periodic reviews (no less than biennially) to determine need for continued retention of property, and special reviews when a change in startup time is made or when circumstances warrant. Such procedures should recognize that: (a) Generally, equipment, spares, stores items, and materials peculiar to a plant should be retained for possible future operation of the plant, (b) where practicable, common-use stores should be removed and used elsewhere, and (c) uninstalled equipment and other personal property not required should be utilized elsewhere onsite or be disposed of as excess.

§ 109–43.5104 Utilization of property in facilities in standby status.

(a) Procedures and practices shall require that property comprising the plant in standby, to the extent consistent with program requirements reflected by the startup criteria, be considered as a source of supply prior to procurement. Such procedures should provide for: (1) Furnishing potential users and procurement officers or some other responsible screening office with listings of equipment and other significant property holdings available for loan or transfer, and (2) removal and use elsewhere of installed equipment which can be replaced or returned within the established startup criteria.

(b) In addition to the above procedures, DOE organizations and contractors should encourage informal contacts between their technical staffs and those engaged in similar work at other DOE locations for the purpose of ascertaining the availability of Government property to meet their program requirements.

PART 109–44—DONATION OF PERSONAL PROPERTY

Sec.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109–44.000 Scope of part.

This part implements and supplements FPMR Part 101–44, Donation of Personal Property. For donation of surplus personal property in foreign areas, see § 109–45.51.

Subpart 109–44.7—Donations of Property to Public Bodies

§ 109–44.701 Findings justifying donation to public bodies.

The Director of Administration and heads of field offices for their respective organizations shall appoint officials to make findings and reviews as required in FPMR § 101–44.7.

Subpart 109–44.47—Reports

§ 109–44.4701 Reports.

The report of the donation of surplus personal property is furnished to GSA in combination with the report of the utilization of domestic excess personal property required in FPMR § 101–43.4701. See § 109–43.4701 for DOE reporting requirements.

PART 109–45—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109–45.000 Scope of part.

This part implements and supplements FPMR 101–45, Sale, Abandonment, or Destruction of Personal Property, but does not apply to (a) properties which are sold or otherwise disposed of pursuant to special statutes, or (b) disposal of personal property in foreign areas (see § 101–45.51).

Subpart 109–45.1—General

§ 109–45.101–50 Applicability.

The provisions of FPMR 101–45 and this part are applicable to contractors authorized to dispose of surplus personal property.

§ 109–45.103–1 Responsibilities of the General Services Administration.

GSA regional offices are responsible for the conduct of sales of surplus and replacement property in the custody of DOE direct operations, except that DOE will continue to sell replacement property where trade-in offers are also involved in the transaction.

§ 109–45.103–2 Responsibilities of holding agencies.

See §§ 109–45.105–3 and 109–45.3 for policy and procedures governing the sale of personal property by DOE contractors.

§ 109–45.105–3 Exemptions.

The General Services Administration, by letter dated May 28, 1965, authorized DOE contractors to sell contractor inventory, including replacement property. This exemption is for sales of contractor inventory only. All surplus property in the custody of DOE direct operations (except replacement property where trade-in offers are involved) will be reported to GSA in accordance with FPMR § 101–45.303.

Subpart 109–45.3—Sale of Personal Property

§ 109–45.301–50 Sales by DOE contractors.

Sales of surplus contractor inventory will be made by DOE contractors when heads of field offices determine that it is in the best interests of the Government to do so.

§ 109–45.302–50 Sales to DOE and contractor employees.

(a) Employees of DOE and DOE contractors shall be afforded the same opportunity to acquire Government-owned property as is afforded the general public, provided the employees warrant in writing prior to award that they have not either directly or indirectly—

(1) Participated in the determination to dispose of the property;

(2) Participated in the preparation of the property for sale;

(3) Participated in determining the method of sale; or

(4) Obtained information not otherwise available to the general public regarding usage, condition, quality, or value of the property.

(b) Special clothing and other articles of personal equipment acquired for the exclusive use of and fitted to an individual employee, when not otherwise usable by, and in all respects excess to the needs of, the holding organization, may be sold to DOE or contractor employees at the best price obtainable in the event of termination of their employment or their permanent assignment to duties not requiring such clothing or equipment.

§ 109–45.303–50 Contractor reporting of property for sale.

GSA normally initiates sales action from the items remaining as surplus after utilization and donation screening. In order to assure no misunderstanding at GSA regional offices as to who is to perform the sale function for contractor inventory, each Standard Form 120 report forwarded to GSA shall bear a capitalized notation in a prominent place reading either "To BE SOLD BY GSA" or "NOT TO BE SOLD BY GSA" as appropriate.

§ 109–45.304–2–50 Negotiated sales and negotiated sales at fixed prices.

(a) Negotiated sales, including purchases or retentions at less than cost by the contractor, may be made when the contracting officer determines and documents that the use of this method of sale is essential to expeditious contract closeout, or is otherwise justified on the basis of circumstances enumerated below, provided that the Government's interests are adequately protected. Negotiated sales, including purchases or retentions at less than cost by the contractor, shall be at prices which are fair and reasonable and if the property was offered for competitive sale. Specific conditions justifying negotiated sales are when—

(1) No acceptable bids have been received as a result of competitive bidding under a suitably advertised sale;

(2) Property is of such small value that the proceeds to be derived would not warrant the expense of a formal competitive sale;

(3) The disposal will be to States, territories, possessions, political subdivisions thereof, or tax-supported agencies therein, and the estimated fair

market value of the property and other satisfactory terms of disposal are obtained;

(4) The specialized nature and limited use potential of the property would create negligible bidder interest;

(5) Removal of the property would result in a significant reduction in value, or the accrual of disproportionate expense in handling; or

(6) It can be clearly established that such action is in the best interests of the Government.

(b) Negotiated sales at fixed prices. When determined to be in the best interests of the Government, heads of field offices may authorize fixed-price sale of contractor inventory by DOE contractors provided (1) the reasonable recovery value of the property to be sold to any one purchaser at any one time does not exceed $1000, (2) adequate procedures for publicizing such sales have been established, (3) the sales prices are not less than could reasonably be expected if competitive bid sales were employed and the prices have been approved by a reviewing authority designated by the heads of field offices, and (4) the warranty prescribed in § 109–45.302–50(a) is obtained when sales are made to employees.

§ 109–45.304–6 Reviewing authority.

The reviewing authority required under FPMR § 101–45.304–6 may consist of one or more persons designated by the head of the field office who will be responsible for providing an adequate and independent review of proposed sales for the purpose of determining whether—

(a) The method of sale is in accordance with established policies and procedures; and

(b) Proceeds constitute a reasonable return for the property sold.

§ 109–45.304–50 Processing bids and award of contract.

The procedures established in Federal Acquisition Regulation 14.4 and DEAR 914.4 shall be made applicable to execution, receipt, safeguarding, opening, abstracting, and evaluation of bids and awarding contracts, except that in evaluating bids and awarding contracts, disposal under conditions most advantageous to the Government based on high bids received shall be the determining factor. For mistakes in bids, see FPMR 101–45.8.

§ 109–45.304–51 Documentation.

Files pertaining to sales shall contain copies of all documents necessary to provide a complete record of the transaction and as a minimum shall include the following:

(a) A copy of request for proposals if written proposals are employed.

(b) A list of prospective bidders contacted.

(c) An abstract of proposals received, whether oral or written.

(d) Copies of written proposals or confirming proposals received, including Standard Forms 119 (see FPMR § 101–45.313–9) which have been received from prospective bidders, together with other relevant information.

(e) A notation concerning basis for determination that proceeds constitute a reasonable return for property sold.

(f) Full and adequate justification for not advertising for competitive bids when the fair market value of property sold in this manner in any one case exceeds $1,000.

(g) A notation concerning any award made to other than the high bidder.

(h) The approval of reviewing authority when required.

(i) A copy of notice of award.

(j) All related correspondence.

(k) In the case of auction or spot bid sales, the following additional information should be included:

(1) A list of items or lots sold indicating book cost and sales price for each item or lot sold.

(2) A copy of advertising literature distributed to prospective bidders.

(3) A summary listing of advertising by means of newspapers, radio, television, public posting, etc.

(4) The names of prospective bidders who attended sale if list was made.

(5) A copy of any pertinent contract for auctioneering services and related documents or appropriate reference to files containing such documents.

(6) A record of deposits and payments made or appropriate reference to files containing such records.

§ 109–45.307 Proceeds from sales.

DOE installations shall comply with the provisions of Chapter IV of the DOE Accounting Practices and Procedures Handbook.

§ 109–45.309–50 Unserviceable property (salvage and scrap).

(a) A continuous cleanup program shall be maintained at all DOE installations to locate, efficiently handle, and promptly dispose of unserviceable property (salvage and scrap). Property inventories and construction, wrecking, dismantling and other projects which might produce scrap, should be regularly reviewed, particularly for metals and other items which offer potential as marketable materials and for economic returns to the Government. (See FPMR Part 101–42 and Part 109–42 for recovery of precious metals and reporting requirements.)

(b) Scrap metals shall be segregated to the maximum economical extent consistent with good industrial practice.

(c) Scrap metal which is contaminated with radioactive material and/or chemically hazardous materials shall be segregated and appropriately marked at the source as to type and degree of contamination and shall be controlled and disposed of in accordance with application regulations. (See Subpart 109–45.50).

§109–45.310 Antitrust laws.

Selling organizations shall submit to the Office of the General Counsel, with a copy of the Director of Procurement and Assistance Management, the report on proposed sales of surplus personal property with an acquisition cost of $3,000,000 or more, or a patent, process, technique, or invention, regardless of cost. Information to be included is contained in FPMR § 101–45.310.

§ 109–45.316 Report on identical bids.

Selling organizations shall forward the report on identical bids required by FPMR § 101–45.316 to the Office of the General Counsel, with a copy of the Director of Procurement and Assistance Management.

Subpart 109–45.5—Abandonment or Destruction of Surplus Property

§ 109–45.501–1 General.

(a) The finding required by FPMR § 101–45.501–1(a) that property has no commercial value or the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale shall be in writing and shall be made by an official designated by the head of the field office concerned.

§ 109–45.501–2 Reviewing authority.

The head of the field office concerned with the reviewing authority for approval to abandon or destroy property with an acquisition cost of more than $1,000.

Subpart 109–45.47—Reports

§ 109–45.4701 Performance reports.

The report of the sale or other disposition of surplus personal property is furnished to GSA in combination with the report of the utilization of domestic excess personal property required in FPMR § 101–43.4701. See § 109–43.4701 for DOE reporting requirements.

Subpart 109-45.50-Excess and Surplus Radioactively and Chemically Contaminated Personal Property

§ 109-45.5001 Scope of subpart.

This subpart sets forth policies and procedures for the utilization and disposal outside of DOE of excess and surplus personal property which has been radioactively or chemically contaminated.

§ 109-45.5002 Policy.

When the holding organization determines it is appropriate to dispose of contaminated personal property, such contaminated personal property shall be disposed of by DOE in accordance with appropriate Federal regulations governing radiation/chemical exposure to the public and contamination in the environment. In special cases where Federal regulations do not exist or apply, appropriate national consensus standards shall be used.

§ 109-45.5003 Responsibilities.

§ 109-45.5003-1 Development of criteria for utilization and disposal outside DOE.

The Assistant Secretary for Policy, Safety and Environment (PE-241) has responsibility for the development of criteria for utilization and disposal of excess and surplus radioactively and chemically contaminated personal property outside of DOE.

§ 109-45.5003-2 Approval of requests for utilization and disposal outside DOE.

Requests for utilization and disposal outside DOE shall be forwarded to the Director of Procurement and Assistance Management for approval and coordination with PE-241.

§ 109-45.5004 Procedures.

§ 109-45.5004-1 Suspect personal property.

(a) Each excess item of personal property (including scrap), having a history of use in an area where exposure to radioactively or chemically contaminated materials may occur, shall be considered suspect and shall be monitored using appropriate instruments and techniques by qualified personnel of the DOE office or contractor generating the excess.

(b) Prior to utilization or disposal outside DOE, with due consideration to the economic factors involved, every effort shall be made to reduce the level of contamination of items of excess or surplus property to the lowest practicable level.

(c) If contamination is suspect and the property is of such size, construction, or location as to make the contamination inaccessible for the purpose of measurement, such property shall not be utilized or disposed of outside DOE through normal channels.

§ 109-45.5004-2 Handled as uncontamination equipment.

If monitoring of suspect equipment indicates that the contamination does not exceed applicable standards, it may be utilized and disposed of in the same manner as uncontaminated equipment, provided the guidance in § 109-45.5004-1(b) has been considered. However, recipients shall be advised where levels of radioactive contamination require specific controls for shipment as provided in Department of Transportation Regulations for shipment of radioactive materials (49 VFR Parts 171-179, inclusive). In addition, when any contaminated equipment is circularized within DOE, reported to GSA, or otherwise disposed of, the kind and degree of contamination must be plainly indicated on all pertinent documents.

Subpart 109-45.51—Disposal of Excess Personal Property in Foreign Areas

§ 109-45.5100 Scope of subpart.

This subpart sets forth policies and procedures governing the disposal of DOE-owned foreign excess and surplus personal property.

§ 109-45.5101 Authority.

The policies and procedures contained in this subpart are issued pursuant to the provisions of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471). Title IV of that Act entitled "Foreign Excess Property" provides that, except where commitments exist under previous agreements, all excess property located in foreign areas shall be disposed of by the owning agency, and directs that the head of such agency conform to the foreign policy of the United States in making such disposals.

§ 109-45.5102 General.

Disposal of Government-owned property in the custody of DOE organizations or its contractors in foreign areas shall be made in an efficient and economical manner, and in conformance with the foreign policy of the United States.

§ 109-45.5103 Definitions.

As used in this subpart, the following definitions apply:

(a) "Foreign" means outside the United States, Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(b) "Foreign service post" means the local diplomatic or consular post in the area where the excess property is located.

§ 109-45.5104 Responsibilities.

§ 109-45.5104-1 Director of Procurement and Assistance Management.

The Director of Procurement and Assistance Management develops and interprets policies, principles, and general procedures for the disposal of excess property in foreign areas.

§ 109-45.5104-2 Heads of offices in foreign areas.

Heads of DOE foreign offices—

(a) Are authorized to handle foreign excess disposal matters in accordance with Title IV, "Foreign Excess Property" of the Federal Property and Administrative Services Act of 1949, as amended and this subpart;

(b) Shall refer to the Property and Equipment Management Division (MA-422), any requests for advice or approval of the State Department on proposed disposals of excess property in foreign areas for review, coordination and handling through appropriate channels; and

(c) Shall approve the exchange or lease of foreign excess property when in their opinion such action is clearly in the best interest of the Government as provided in § 109-45.5105-2(b).

§ 109-45.5105 Disposal.

§ 109-45.5105-1 General.

(a) Foreign excess property which is not required for transfer within DOE or to other U.S. Government agencies shall be considered surplus and may be disposed of by transfer, sale, exchange, or lease, for cash, credit, or other property and upon such other terms and conditions as may be deemed proper. Such property may also be donated, abandoned, or destroyed under the conditions specified in § 109-45.5105-2(c). Most foreign governments have indicated to the State Department that they wish to be consulted before U.S. Government property is disposed of in their countries (except in the case of transfers to other U.S. Government agencies). Matters concerning customs duties and taxes, or similar charges, may require prior agreement with the foreign government involved. The State Department shall be contacted in regard to these problems. Whenever advice or approval of the State Department is required by this subpart, it may be obtained either through the foreign service post in the foreign area involved or from the State Department in

Washington, D.C. If the problem is to be presented to the State Department in Washington, D.C., it shall be referred through appropriate administrative channels to the Director of Procurement and Assistance Management, for review, coordination and handling.

(b) Foreign excess property which is not transferred for use may be transferred to other U.S. Government agencies for disposal. This procedure may often prove advantageous, particularly when only small amounts of property are involved or when personnel of the other agencies are generally engaged in disposal activities.

§ 109-45.5105-2 Methods of disposal.

(a) Sales of foreign excess shall be conducted in accordance with the following guidelines:

(1) Generally, all sales of surplus foreign excess property shall be conducted under the competitive bid process unless it is advantageous and more practicable to the Government not to do so. When competitive bids are not solicited, reasonable inquiry of prospective purchasers shall be made in order that sales may be made on terms most advantageous to the U.S. Government.

(2) In no event shall any property be sold in foreign areas without a condition which states that its importation into the United States is forbidden unless the U.S. Secretary of Agriculture (in the case of any agricultural commodity, food, or cotton or woolen goods), or the U.S. Secretary of Commerce (in the case of any other property), determines or has determined that the importation of such property would relieve domestic shortages or otherwise be beneficial to the economy of the United States.

(3) Sales documents shall provide that the purchaser must pay any import duties or taxes levied against property sold in the country involved and further provide that the amount of this duty or tax shall not be included as a part of the price paid the U.S. Government for the property. In the event the levy is placed upon the seller by law, the buyer will be required to pay all such duties or taxes and furnish the seller copies of his receipt prior to the release of the property to him. However, if the foreign government involved will not accept payment from the buyer, the seller will collect the duties or taxes and turn the amounts collected over to the foreign government. Accounting for the amounts collected shall be coordinated with the disbursing officer of the nearest United States foreign service post. The property shall not be released to the purchaser until the disposal officer is satisfied that there is no responsibility for payment by the United States (as contrasted to collection by the United States) of taxes, duties, excises, etc.

(4) Certain categories of property, including small arms and machine guns; artillary and projectiles; ammunition, bombs, torpedoes, rockets and guided missiles; fire control equipment and range finders; tanks and ordnance vehicles; chemical and biological agents, propellents and explosives; vessels of war and special naval equipment; aircraft and all components, parts and accessories for aircraft; military electronic equipment; aerial cameras, military photo-interpretation, stereoscopic plotting and photogrammetry equipment; and all material not enumerated which is classified from the standpoint of military security (United States Munitions List, 22 CFR 121.01), are subject to restrictions as to disposal. Advance approval must be obtained from the State Department for the sale of all such articles. Therefore, prior to the sale of any of the articles enumerated in the U.S. Munitions List, the foreign service post in the area shall be consulted.

(5) Prior to the sale of property which had a total acquisition cost of $250,000 or more, plans for such sale shall be reported to the Property and Equipment Management Division (MA-422) in ample time to allow considerations of possible foreign policy aspects and advice thereon from the State Department. (See § 109-45.5106(a)). All proposed sales, regardless of the total acquisition cost of the property involved, which the head of the DOE foreign office believes might have a significant effect on the economic or political situation in a particular area, shall be discussed with the foreign service post.

(b) While there is authority for exchange or lease of foreign surplus property, such authority shall be exercised only when such action is clearly in the best interests of the U.S. Government. Disposals by exchange are subject to the same requirements as disposals by sale under § 109-45.5105-2(a).

(c) Foreign excess or surplus property (including waste, salvage, and scrap) may be donated, abandoned, or destroyed provided (1) the property has no commercial value, or the estimated cost of its care and handling would exceed the estimated proceeds from its sale, and (2) a written finding to that effect is made and approved by the head of the DOE foreign office. No property shall be abandoned or destroyed if donation is feasible. Donations under these conditions may be made to any agency of the U.S. Government, or to educational, public health or charitable nonprofit organizations of governments. Foreign excess property may also be abandoned or destroyed when such action is required by military necessity, safety, or considerations of health or security. A written statement explaining the basis for disposal by this means and approval by the head of the DOE foreign office is required. Property shall not be abandoned or destroyed in a manner which is detrimental or dangerous to public health and safety, or which will cause infringement on the rights of other persons.

§ 109-45.5106 Reports.

(a) Proposed sales of foreign excess property having an acquisition cost of $250,000 or more reported to the Property and Equipment Management Division (MA-422) should present all pertinent data, including the following:

(1) The description of property to be sold, including—

(i) Identification of property (description should be in terms understandable to persons not expert in technical nomenclature); property covered by the Munitions List and regulations pertaining thereto (as published in 22 CFR 121.01) should be clearly indicated;

(ii) Quantity;

(iii) Condition; and

(iv) Acquisition cost.

(2) The proposed method of sale (i.e., bid, negotiated sale, etc.).

(3) Any currency to be received and payment provisions (i.e., U.S. dollars, foreign currency, or credit, including terms of proposed agreement).

(4) Any restrictions on use of property to be sold (such as retransfer of property, disposal as scrap, demilitarization, etc.).

(5) Any special terms.

(6) The categories of prospective purchasers (e.g., host country, other foreign countries, special qualifications, etc.).

(7) How taxes, excises, duties, etc. will be handled.

(b) Instructions for reporting foreign excess utilization and disposal transactions are contained in Chapter III of the DOE Accounting Practices and Procedures Handbook.

PART 109-46—UTILIZATION AND DISPOSAL OF PERSONAL PROPERTY PURSUANT TO EXCHANGE/SALE AUTHORITY

Sec.

§ 109-46.000 Scope of part.

This part implements and supplements FPMR Part 101-46.

§ 109-46.000-50 Applicability.

Except as set forth below, the requirements of FPMR Part 101-46 and this part are not applicable to DOE contractors. Contractors shall comply with the following requirements:

FRMR § 101-46.201
FPMR § 101-46.202(a)
FPMR § 101-46.202(d) (1), (4), (5), (6), (7), and (10)
FPMR § 101-46.202(e)
FPMR § 101-46.401
DOE-PMR § 109-46.406

Subpart 109-46.4—Disposal

§ 109-46.406 Records.

Contractor shall prepare and maintain such records as will show full compliance with the applicable provisions of FPMR Part 101-46.

§ 109-46.407 Reports.

The report of exchange/sale transactions required by FPMR§ 101-46.407 shall be submitted through normal administrative channels to the Property and Equipment Management Division (MA-422) within 60 days after the close of the fiscal year. Negative reports are required.

PART 109-48—UTILIZATION, DONATION, OR DISPOSAL OF ABANDONED AND FORFEITED PERSONAL PROPERTY

§ 109-48.000 Scope of part.

This part implements and supplements FPMR Part 101-48, Utilization, Donation, or Disposal of Abandoned and Forfeited Personal Property.

§ 109-48.001-50 Applicability.

The provisions of FPMR 101-48 and this part are applicable to contractor operations where the abandoned or forfeited personal property is found on premises owned or leased by the Government.

Subpart 109-48.1—Utilization of Abandoned and Forfeited Personal Property

§ 109-48.101-6 Transfer to other Federal agencies.

(d) Transfer orders covering requests for transfers of forfeited or voluntarily abandoned distilled spirits, wine and malt beverages for medicinal, scientific or mechanical purposes shall be forwarded through normal administrative channels for signature by the Property and Equipment Management Division (MA-422) and for subsequent forwarding to GSA for release.

§ 109-48.102-4 Proceeds.

After retention of any monies received from disposal of abandoned or forfeited property for the three-year period specified in FPMR § 101-48.102-4 with no claim being filed, such monies shall be deposited as provided in Chapter IV of the DOE Accounting Practices and Procedures Handbook.

PART 109-50—PROGRAMMATIC DISPOSAL OF DOE PROPERTY

§ 109-50.000 Scope of part.

This part provides guidance on the authorities, policies, and procedures for the disposal of DOE property for programmatic purposes.

§ 109-50.001 Applicability.

The provisions of this Part 109-50 apply to direct DOE operations, but do not apply to contractors unless specifically provided in the appropriate subpart.

Subpart 109-50.1—General

§ 109-50.101 Authority.

Programmatic disposals of DOE property generally are made under the authority and subject to the provisions of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011), the Energy Reorganization Act of 1974 (42 U.S.C. 5801), the Department of Energy Organization Act (42 U.S.C. 7101), and other special laws which provide authority for DOE program activities.

§ 109-50.300 Scope of subpart.

This subpart provides guidance on the granting of used, energy-related laboratory equipment to universities and colleges and other nonprofit educational institutions of higher learning in the United States for use in energy-oriented educational programs.

§ 109-50.301 Applicability.

This subpart is applicable to direct operations and to contractors.

§ 109-50.302 General.

DOE, to encourage research in the field of energy, awards grants of used energy-related laboratory equipment to eligible institutions for use in energy-oriented educational programs. Under the Used Energy-Related Laboratory Equipment Grant Program, grants of used energy-related equipment excess to the requirements of DOE offices and contractors may be made to eligible institutions prior to reporting the equipment to GSA for utilization.

§ 109-50.303 Authority.

The used Energy-Related Laboratory Equipment Grant Program is conducted under the authority of Article 31 of the Atomic Energy Act of 1954, as amended, section 103, paragraph 10, of the Energy Reorganization Act of 1974, and Title III of the Department of Energy Organization Act.

§ 109-50.304 Definitions.

As used in this subpart the following definitions apply:

(a) "Book value" means acquisition cost less depreciation.

(b) "Eligible institution" means any nonprofit educational institution of higher learning, such as universities, colleges, junior colleges, hospitals, and technical institutes or museums located in the United States and interested in establishing or upgrading energy-oriented educational programs.

(c) "Energy-oriented education program" means one that deals partially or entirely in energy or energy-related topics.

(d) "DOE Financial Assistance Rules" (10 CFR Part 600) is the Department of Energy directive which establishes a uniform administrative system for application, awards, and administration of assistance awards, including grants and cooperative agreements.

§ 109-50.305 Responsibilities and authorities.

§ 109-50.305-1 Director of Procurement and Assistance Management.

The Director of Procurement and Assistance Management establishes policies and procedures for the award and administration of grants.

§ 109-50.305-2 Director, Office of Field Operations Management, Office of Energy Research.

The Director, Office of Field Operations Management, Office of Energy Research—

(a) Has program responsibility for the Used Energy-Related Laboratory Equipment Grant Program;

(b) Issues general instructions and information on the program to institutions;

(c) Reviews and, where appropriate, approves requests from institutions for used equipment where the book value of an item of equipment exceeds $100,000 or where the cumulative book value of used equipment grants to any one institution exceeds $100,000; and

(d) Issues annual summary reports of equipment granted under this program to field and Headquarters organizations. Advises when grants to individual institutions approach the $100,000 book value coumulative limit.

§ 109-50.305-3 Heads of field offices.

Heads of field offices shall establish procedures for review and evaluation of equipment grant proposals in accordance with this subpart.

§ 109.50.305-4 Contracting officers.

Contracting Officers—

(a) Award energy-related laboratory equipment grants under this program in accordance with the DOE Financial Assistance Rules and program instructions issued by the Director, Office of Energy Research and this subpart;

(b) Forward a copy of each approved and accepted grant to the Office of Energy Research; and

(c) Forward to the Office of Field Operations Management, Office of Energy Research, for approval prior to award of grant, requests from institutions for used equipment where the book value of the equipment exceeds $100,000 or where the cumulative book value of grants to an institution exceeds $100,000.

§ 109-50.305-5 Excess used energy-related laboratory equipment holding organizations.

Each DOE and contractor organization holding excess used energy-related laboratory equipment shall forward copies of excess reports (SF-120) to screening locations cited in § 109-50.310 after DOE screening through the REAPS program (See § 109-43.311-150).

§ 109-50.305-6 Screening locations.

Organizations designated in § 109-50.310 shall retain current files of reports of excess used energy-related laboratory equipment for review by eligible institutions.

§ 109-50.306 Types of equipment which may be granted.

Examples of types of equipment which may be granted under the Used Energy-Related Laboratory Equipment Grant Program are listed below. These examples are merely illustrative and not inclusive.

—Radiation detectors, monitors, scalers, and counters
—Nuclear reactors and accelerators
—Neutron howitzers and generators
—Critical and subcritical assemblies
—Bubble and cloud chambers
—Dosimerters, survey meters, radiometers, and spectroscopes
—Radiation shields and reactor associate components
—Mass spectrometers, infrared spectrometers, and ultraviolet spectrometers
—Gas and liquid chromatographs
—Ammeters, voltmeters, electrometers
—Linear and pulse-height analyzers
—Power supplies
—Catalyst test units
—Distillation columns
—Temperature and pressure recorders
—Ion control gauges
—Gas tracers and analyzers
—Solar collectors and heliometers

§ 109-50.307 Types of equipment which may not be granted.

Types of equipment which will not be granted include.

(a) Any equipment determined to be required by DOE direct operations or DOE contractors;

(b) General supplies, such as Bunsen burners, hoods and work benches; furniture; office equipment, such as typewriters, adding machines, and duplicating machines; drafting and office supplies; refrigerators; tools; presses, lathes, furnaces, hydraulic and mechanical jacks, cranes and hoists; and computing equipment; or

(c) Any equipment which has been obtained as excess from another Federal agency.

§ 109-50.308 Procedure.

(a) After completion of DOE utilization screening, copies of excess reports (SF 120) of used energy-related laboratory equipment will be forwarded by each holding organization to the sites listed in § 109.50.310 for use by eligible institutions in reviewing and earmarking specific equipment. These reports will be separately prepared and identified with the caption "Used Energy-Related Laboratory Equipment."

(b) The following periods have been established during which time equipment will remain available to this program prior to reporting it to the General Services Administration for utilization by other Federal agencies:

(1) Sixty days from the date DOE utilization screening is completed and the report is issued to screening locations, to permit suitable time for eligible institutions to review and earmark the desired equipment.

(2) An additional sixty days after the equipment is earmarked to permit the eligible institutions to prepare and submit an equipment proposal request and to provide time for field organizations to review and evaluate the proposal and take appropriate action.

(c) Upon approval of the proposal, the issuance of the grant instrument and acceptance by the institution are deemed to constitute transfer of title.

(d) A Standard Form 120, accompanied by a copy of the completed grant, shall be used to drop accountability of the granted equipment from the financial records.

(e) The cost of care and handling of property incident to the grant shall be charged to the receiving institution. Such costs may consist of packing, crating, shipping and insurance, and are limited to actual costs. In addition, where appropriate, the cost of any repair and/or modification to any equipment shall be borne by the recipient institution.

§ 109–50.309 Reports.

(a) In addition to the copy of the awarded grant required to be forwarded in accordance with § 109–50.305–4(b), each awarded grant shall be reported in the Procurement Assistance Data System.

(b) Heads of field offices shall include grants made under this program in the annual report of property transferred to non-Federal recipients, as required by FPMR § 101–43.4701(c).

§ 109–50.310 Screening locations.

The locations shown on the following pages shall retain current files of SF–120s, reports of excess used energy-related laboratory equipment, for review by eligible institutions. After completion of DOE utilization screening through REAPS, DOE activities shall forward copies of SF 120s covering used energy-related laboratory equipment to these locations.

California

Property Management Office Atomics International Division, Rockwell International Corporation, 8900 DeSoto Avenue, Canoga Park, California 91305

Property Manager, Lawrence Livermore Laboratory, University of California, Livermore, California 94720

Business Services, L–53, Lawrence Livermore Laboratory, University of California, Livermore, California 94550

Colorado

Department of Energy, P.O. Box 26247, Belmar Branch, 1075 S. Yukon, Lakewood, Colorado 89226

Department of Energy, Rocky Flats Area Office, P.O. Box 928, Golden, Colorado 80401

District of Columbia

Department of Energy, ER–44 Room 3F–053, 1000 Independence Avenue., SE. Washington, DC 20585. Attn: Dr. Larry L. Barker, (202) 252–6512

Department of Energy, MA–422, Room 8H–089, 1000 Independence Avenue., SE. Washington, DC 20585. Attn: Mr. J. H. Mackey, (202) 252–8261

Georgia

Department of Energy, 1655 Peachtree Street, NE., 8th Floor, Atlanta, Georgia 30309

Idaho

EG & G, Property Management Branch, 539 Second Street, Idaho Falls, Idaho 83401

Department of Energy, Idaho Operations Office, Property Management and Administrative Services Branch, 550 Second Street, Idaho Falls, Idaho 83401

Illinois

Argonne National Laboratory, Plant Operations, Plant Management 9700 South Cass Avenue, Argonne, Illinois 60439

Iowa

Ames Laboratory, Iowa State University, Materials Handling and Property Office, Room 152, Research Building, Ames, Iowa 50010

Missouri

Department of Energy,, 23rd Floor, 324 E. 11th St., Kansas City, Missouri 64106

Department of Energy, Kansas City Area Office, P.O. Box 202, Kansas City, Missouri 64141

Nevada

Department of Energy, Nevada Operations Office, Contract and Property Division, Property Management Branch, P.O. Box 14100, Las Vegas, Nevada 89114

New Mexico

Sandia Laboratories, Office of University Relations, P.O. Box 5800, Albuquerque, New Mexico 87115

New York

Brookhaven National Laboratory, Supply and Materials Office, Upton, Long Island, New York 11973

Ohio

Monsanto Research Corporation, Mound Laboratory, Property Management, P.O. Box 32, Miamisburg, Ohio 45342

Pennsylvania

Department of Energy, 1421 Cherry Street, 10th Floor, Philadelphia, Pennsylvania 10102

South Carolina

E. I. Dupont de Nemours & Co., Savannah River Laboratory, University Relations Office, Aiken, South Carolina 29801

Tennessee

Oak Ridge National Laboratory, Material and Services, P.O. Box X, Oak Ridge, Tennessee 37830

Texas

Department of Energy, P.O. Box 5800, 2626 Mockingbird Lane, Dallas, Texas 75235

Washington

Department of Energy, 1992 Federal Building, 915 Second Avenue, Seattle, Washington 98174

Rockwell Hanford, Excess Utilization, Building 1167–A. P.O. Richland, Washington 99352

Subpart 109–50.4—Programmatic Disposal to Contractor of DOE Property in a Mixed Facility

§ 109–50.400 Scope of subpart.

This subpart contains guidance to be followed when it is proposed to sell or otherwise transfer DOE personal property located in a mixed facility to the contractor who is the operator of that facility.

§ 109–50.401 Definitions.

As used in this subpart, the following definitions apply:

(a) "DOE property" is the DOE-owned personal property in a mixed facility.

(b) "Contractor" is the operator is the operator of the mixed facility.

(c) "Mixed facility" is a partly DOE-owned and partly contractor-owned facility. For purposes of this subpart, however, this definition does not apply to such a facility operated by an educational or other nonprofit institution under a basic research contract with DOE.

§ 109–50.402 Responsibilities and authorities.

§ 109–50.402–1 Director of Procurement and Assistance Management.

The Director of Procurement and Assistance Management is authorized to approve proposals for the programmatic disposal of DOE personal property in a mixed facility to the contractor operating that facility.

§ 109–50.402–2 Heads of Headquarters program organizations.

Heads of Headquarters program organizations shall review and forward to the Property and Equipment Management Division (MA–422) for approval, proposals for programmatic disposal of DOE personal property in a mixed facility to the contractor operating that facility.

§ 109–50.402–3 Heads of field offices and contracting officers.

Heads of field offices and contracting officers shall submit proposals involving programmatic disposals of DOE property in mixed facilities through appropriate administrative channels to the cognizant Headquarters program organization for review and forwarding for approval.

§ 109–50.403 Programmatic disposal of DOE property in mixed facilities.

§ 109–50.403–1 Submission of proposals.

Proposals involving programmatic disposals for DOE personal property in mixed facilities to contractors operating the facility shall be forwarded through the appropriate program organization to the Property and Equipment Management Division (MA–422) for review and processing for approval. Each such request for review and approval shall include all information necessary for a proper evaluation of the

proposal. The proposal shall include, as a minimum—

(a) The purpose of the mixed facility;

(b) The character, condition and present use of the DOE property involved, as well as its acquisition cost, accumulated depreciation, and net book value;

(c) The programmatic benefits which would acrue to DOE from the disposal to the contractor (including the considerations which become important if the disposal is not made);

(d) The appraised value of the DOE property (preferably by independent appraisers); and

(e) The proposed terms and conditions of disposal (covering for example, (1) price, (2) priority to be given work for DOE requiring the use of the transferred property, and including the basis for any proposed charge to DOE for amortizing the cost of plant and equipment items, (3) recapture of the property if DOE foresees a possible future urgent need, and (4) delivery of the property, whether "as is-where is," etc.).

§ 109-50.403-2 Need to establish DOE program benefit.

When approval for a proposed programmatic disposal of DOE personal property in a mixed facility is being sought, it must be established that the disposal will benefit a DOE program. For example, approval might be contingent on a showing that—

(a) The entry of the contractor as a private concern into the energy program is important and significant from a programmatic standpoint; and

(b) The sale of property to the contractor will remove obstacles which otherwise discourage his entry into the field.

§ 109-50.404 Notification.

The Under Secretary will be advised prior to any disposal which is considered sensitive.

SUBCHAPTER I—INDUSTRIAL PLANT EQUIPMENT

PART 109-51—LOANS OF INDUSTRIAL PLANT EQUIPMENT FROM THE DEFENSE INDUSTRIAL PLANT EQUIPMENT CENTER

Sec.

Authority: Sec. 644, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109-51.000 Scope of part.

This part prescribes the policy and conditions for loans of industrial plant equipment (IPE) from the Department of Defense General Reserve under the management of the Defense Industrial Plant Equipment Center (DIPEC) and makes reference to the DOE DIPEC Handbook which prescribes procedures for arranging loans of IPE from DIPEC.

§ 109-51.001 Policy.

Since loan of DIPEC equipment is at no cost, except for packing, crating, handling, and transportation charges, DOE field organizations and contractors are encouraged to use DIPEC as a source of industrial plant equipment in lieu of purchasing such equipment.

§ 109-51.002 Memorandum of Agreement.

An agreement between DOE and the Defense Logistics Agency establishes the policies, procedures and conditions by which DOE may obtain loans of IPE from DIPEC. (Exhibit A of the DIPEC Handbook).

§ 109-51.003 General provisions.

(a) DOE field organizations and contractors may requisition IPE on a loan basis for periods up to five years. The IPE loan period may be extended on mutual agreement between DIPEC and the DOE field office involved.

(b) DOE has a 30-day period to accept or reject IPE placed on hold by DIPEC.

(c) DOE field organizations or contractors will pay costs of transportation, dismantling, crating and handling of IPE from and to DOD.

(d) On completion of the loan period, the DOE field organization or contractor shall return the DIPEC-IPE in the same condition as received except for fair wear and tear.

(e) DOE is required under terms of the agreement to decontaminate IPE prior to return or replace the equipment with an equivalent item.

§ 109-51.004 DIPEC Handbook.

The DIPEC Handbook is available through field organizations or by request to the Property and Equipment Management Division (MA-422). The Handbook cites the procedures for arranging loan of IPE, illustrates the forms used and provides a bibliography of DIPEC publications which list the available IPE by type of equipment and by DIPEC control numbers.

SUBCHAPTER K—GOVERNMENT PROPERTY IN THE POSSESSION OF OFF-SITE CONTRACTORS

PART 109-60—MANAGEMENT OF GOVERNMENT PROPERTY IN THE POSSESSION OF OFF-SITE CONTRACTORS

Sec.

Authority: Sec. 644, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109-60.000 Scope and applicability of part.

This part sets forth the minimum requirements to be observed by off-site contractors in establishing and maintaining control over Government property provided pursuant to a contract with DOE. This part does not apply to transportation contracts, grants, cooperative agreements, contracts with state and local governments, and to operating and on-site service contractors. To the extent of any inconsistency between this part and the terms of the contract under which the Government property is provided, the terms of the contract shall govern.

§ 109-60.001 Definitions.

As used in this part the following definitions apply:

(a) "Accessory item" means an item that facilitates or enhances the operation of capitalized equipment but which is not essential for its operation, such as remote control devices.

(b) "Auxiliary item" means an item without which the basic unit of equipment cannot operate, such as motors for pump and machine tools.

(c) "Capital equipment" means personal property items having a unit acquisition cost of generally $500,00 or more and an anticipated service life in excess of one (1) year, regardless of types of funding, are not properly chargeable to buildings or utilities, and having the potential for maintaining their integrity as capital items, i.e., not expendable due to use.

(d) "Government personal property" means all property provided at Goverment expense for performance of the contract, regardless of the method by which it is provided, including rented or leased equipment, except real property, records of the Federal Government, nuclear and special source materials, and atomic weapons and by-product materials.

(1) "Government-furnished property" means property in the possession of or directly acquired by the Government and subsequently made available to the contractor for use in performance of the contract.

(2) "Contractor-acquired Government property" means property acquired or otherwise provided by the contractor for performance of a contract and to which the Government has title or the right to take title under the contract terms.

(e) "Materials" means property which may be incorporated into or attached to an end item to be delivered under a contract or which may be consumed or expended in normal use in the performance of a contract. It includes, but is not limited to, raw and processed material, parts, components, assemblies, or supplies.

(f) "Property administrator" means an authorized representative of the contracting officer assigned to administer the contract requirements and obligations relative to Government property. If an authorized representative has not been designated as the property administrator, the contracting officer is the property administrator.

(g) "Plant and equipment" means land, land rights, depletable resources, improvements to land, buildings and structures, utilities, and capital equipment having an anticipated service life of 1 year or more, the individual units of which satisfy the monetary and other criteria for capital charges and which therefore justify the maintenance of continuing plant and equipment records.

(h) "salvage" means that property which has some value in excess of its basic material content but which is in such condition that it has no reasonable prospect of use for any purpose as a unit and its repair or rehabilitation for use is clearly impracticable.

(i) "Scrap" means property that has no value except for the recoverable value of its basic material content.

(j) "Sensitive items" means those items of property which are susceptible to being appropriated for personal use or which can be readily converted to cash. Examples are firearms, photographic equipment, binoculars, tape recorders, calculators, and power tools.

(k) "Special test equipment" means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in the performance of a contract. It consists of items or assemblies of equipment that are interconnected and interdependent so as to become a new functional entity for special testing purposes. It does not include material, special tooling, facilities (except foundations and similar improvements necessary for the installation of special test equipment), and equipment items used for general testing purposes.

(l) "Special tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, all components of these items, and replacement of these items, which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or the performance of particular services. It does not include material, special test equipment, facilities (except foundations and similar improvements necessary for the installation of special tooling), general or specical machine tools, or similar capital items.

Subpart 109-60.1—Contractor's Responsibility

§ 109-60.100 General.

(a) The contractor is directly responsible and accountable for all Government property in its possession or control in accordance with the provisions of the contract, including property provided under such contract which may be in the possession or control of a subcontractor. The contractor shall establish and maintain a system, in accordance with the provisions of this part, to control, protect, preserve and maintain all Government property. It the contractor is expected to acquire and be accountable for, or does acquire Government personal property with an acquisition value of $500,000 or more, the contractor's property management system shall be in writing. Contractors holding Government personal property with an acquisition value of less than $500,000 may, at the discretion of the contracting officer, be required to have their property management system in writing. The requirement for written systems may be waived in writing by the contracting officer where the contracting officer determines that maintenance of a written system is unnecessary. The system shall be reviewed and if satisfactory, approved in writing by the contracting officer.

(b) The contractor shall maintain and make available such records as are required by Subpart 109-60.2 and shall account for all Government property until relieved of that responsibility. Liability for loss, damage, or improper use of property in a given instance will depend upon all the circumstances surrounding the particular case and will be determined in accordance with the provisions of the contract. The contractor shall furnish all data necessary to substantiate any request for discharge from responsibility.

(c) The contractor shall require subcontractors provided Government property under the prime contract to comply with the provisions of this part. Procedures for assuring subcontractor compliance shall be included in the contractor's property control system.

(d) If any portion of the contractor's property control system is found to be inadequate upon review by the property administrator, necessary corrective action will be accomplished by the contractor prior to approval of the

system. When agreement as to adequacy of control or corrective action cannot be reached between the contractor and the property administrator, the matter will be referred to the contracting officer.

(e) The property records and the premises where any Government property is located shall be accessible to the property administrator or other authorized representative during contract performance, at contract completion or termination, or at all reasonable times. The contractor's property control system is subject to audit by the Government as often as circumstances warrant during the contract's performance, at its completion or termination, or at any time thereafter while the contractor is required to retain the contract records. All these records, including related correspondence, shall be made available to the auditors.

§ 109-60.101 Assumption of responsibility.

(a) The contractor becomes responsible for Government-furnished property upon its delivery into the contractor's custody or control. For contractor-acquired Government property, the contractor assumes responsibility in accordance with the property provisions of the contract.

(b) All Government-furnished property shall be inspected and checked promptly at the of time receipt. Any visible or other external evidence of damage or error in quantity should be noted on the waybill with the signature of the carrier's agent. As soon as possible, the contractor shall send the contracting officer a full report of the damage or quantity error, including extent, apparent cause, and the estimated cost of repairs. The contracting officer will advise the contractor of the action to be taken.

(c) It is the contractor's responsibility to inspect, at the time of receipt, all property not furnished by the government that is acquired in the performance of the contract, and to take any necessary action with the vendor and/or carrier if there should be any damage or error in quantity.

(d) Procedures shall be established to protect any warranty rights which accrue to the Government with the acquisition of Government property.

§ 109-60.102 Contractor's liability.

(a) Subject to the terms of the contract, the contractor may be liable for shortage, loss, damage, or destruction of Government property or when there is evidence of improper or unreasonable use or consumption of Government property.

(b) The contractor shall report promptly to the property administrator any shortage, loss, damage, or destruction of Government property in its possession or control, or in the possession or control of any subcontractor, together with all the facts and circumstances of the case.

(c) Any loss that may be due to theft shall be reported by the contractor immediately to the local police and/or Federal Bureau of Investigation and the property administrator.

§ 109-60.103 Segregation of Government property.

Ordinarily, provisions shall be made by the contractor to keep Government property segregated from contractor-owned property. Commingling of Government and contractor-owned property may be allowed only when the segregation of the property would materially hinder the progress of the work, (e.g., segregation is not feasible for reasons such as quantities, lack of space, or costs caused by additional handling), and where control procedures are adequate, i.e., the Government property is identified as being Government property. Commingling must be approved in advance by the property administrator. In case of research and development contracts with educational institutions, commingling is authorized without the requirement for advance approval unless physical segregation is otherwise required by the contracting officer.

§ 109-60.104 Physical protection of property.

(a) Controls such as property pass systems, memorandum records, marking of tools, regular or intermittent gate checks and perimeter fencing shall be implemented, recognizing the value of the property, to prevent loss, theft, or unauthorized movement of Government property from the premises on which such property is located.

(b) Classified Government property will be handled in accordance with instructions of the contracting officer.

§ 109-60.105 Control of sensitive items of property.

(a) The contractor shall assure that effective procedures and practices are established for the administrative and physical control of sensitive property items before and after issuance. Each contractor shall prepare a list of the types of property considered to be sensitive. This list, together with control procedures, shall be provided to the property administrator for review and approval.

(b) At a minimum, controls on sensitive property shall include property records, memorandum receipts, bin or tool check systems, or combinations thereof. Procedures shall provide for physical inventories at least once each year, and methods for adjustment of inventory levels due to losses, thefts and damage. More frequent inventories of sensitive property may be necessary where the value of the property, degree of security achieved, or loss experience indicates greater controls are required in order to protect the Government's interest. Such procedures and practices shall be subject to review and approval by the property administrator.

§ 109-60.106 Disposition.

The contractor is responsible for disposing of Government property as provided for in the contract or as directed by the contracting officer. The contractor shall promptly advise the property administrator of any Government property that becomes excess to requirements for contract performance and to take such action for its disposition as directed.

§ 109-60.107 Relief from responsibility.

Subject to instructions of the contracting officer and the terms of the contract, the contractor may be relieved of responsibility for Government property when the property is—

(a) Consumed or expended in contract performance—to the extent the contracting officer has determined that its consumption or expenditure was for proper purposes and in reasonable quantity for performance of the contract;

(b) Removed from contractor's possession—when removed as directed by the property administrator or contracting officer;

(c) Lost, damaged or destroyed (including property consumed or expended in excess of reasonable requirements, and non-severable Government-owned property which has been connected to contractor-owned property for the performance of the contract and cannot be removed without destroying its serviceability)—when the contracting officer has determined the contractor's liability, if any; the Government has been reimbursed to the extent required by the contracting officer's determination; and, property disposition has been made of any property rendered unserviceable by damage; or

(d) Retained by the contractor, with approval of the contracting officer, and

for which the Government has received adequate consideration.

Subpart 109-60.2—Records and Financial Reports

§ 109-60.200 General.

(a) The contractor shall establish and maintain adequate property control records, either manual or mechanized and consistent with the requirements of this subpart, for all Government property provided under a contract, including property provided under such contract as may be in the possession of control of a subcontractor. Unless otherwise directed by the contracting officer, records of Government property established and maintained by the contractor under the terms of the contract shall be designated and utilized as the official contract records. Duplicate records shall not be furnished to nor be maintained by the Government.

(b) If a contractor has multiple contracts with DOE, separate property records for each contract should be maintained. However, if approved by the contracting officer, a consolidated property record may be maintained if it provides the pertinent information set forth in this subpart and the property is identified to the applicable contract.

(c) Property records of the type established for components acquired separately shall be used for serviceable components removed from items of Government property as a result of modification.

(d) The contractor's property control system shall contain a system or technique to locate any item of Government property with reasonable promptness.

§ 109-60.201 Unit cost.

(a) The unit cost of each item of Government property shall consist of the acquisition cost and the cost of any additional components, and shall be contained in the contractor's property control system. Unless the contractor's quantitative inventory record contains unit cost, the supplementary records containing this information must be identified and recognized as a part of the official property records. For Government-furnished property, copies of documents needed for record purposes, including pricing, will be furnished to the contractor.

(b) For property record purposes, original transportation and installation costs are to be considered as part of the acquisition cost of an item. Subsequent costs incurred in transporting and/or installing transferred or relocated property should not be added to the original acquisition cost.

§ 109-60.201 Records of plant and capital equipment.

(a) For each item of plant and capital equipment (as defined in § 109-60.001), the contractor shall maintain an individual item record containing, at a minimum the—

(1) Contract number;

(2) Asset type (Ref. § 109-60.206);

(3) Nomenclature or description of item;

(4) U.S. Government identification tag number;

(5) Manufacturer's name;

(6) Manufacturer's model number;

(7) Serial number;

(8) Acquisition document reference and date;

(9) Location; and

(10) Unit cost (including transportation and installation).

(b) Accessory and auxiliary items that are attached to, part of, or acquired for use with a specific item of capital equipment shall be recorded on the record of the associated item of capital equipment. Useable accessory and auxiliary items that are removed from items of Government equipment shall also be separately recorded, and the cost of the basic item reduced proportionally.

§ 109-60.203 Records of material maintained in stores.

Records of Government-owned material maintained by the contractor in stores, and held under inventory control, shall contain the—

(a) Contract number;

(b) Nomenclature or description of item;

(c) Quantity received;

(d) Quantity issued;

(e) Balance on hand;

(f) Posting reference and date of transaction;

(g) Unit price;

(h) Location; and

(i) Disposition.

§ 109-60.204 Records of material issued upon receipt.

(a) The property administrator may authorize the contractor to maintain, in lieu of stock records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of Government-provided materials that is issued for immediate consumption and not entered in the inventory records as a matter of sound business practice.

(b) With respect to non-profit organizations, where material is issued directly upon receipt, Government invoices, contractor's purchase documents, or other evidence of acquisition and issue will be accepted as adequate property records for material furnished to or acquired by the contractor and issued directly so to be considered consumed under the contract.

§ 109-60.205 Financial property control reports.

The contractor shall prepare a semi-annual report, as of March 31 and September 30 of each year, for each contract and subcontract thereunder showing the dollar amount and the number of line items of plant and capital equipment, by DOE asset type (see § 109-60.206), acquired or disposed or during the period. The report will show, at a minimum, the beginning balance, acquisition, disposition, and ending balance. The report format and the DOE office to which the report will be furnished will be as direced by the property administrator. The reports are due not later than 45 days after the end of the reporting period.

§ 109-60.206 DOE plant and equipment asset types.

401 Land
410 Land Rights
430 Minerals
440 Timber
460 Site Preparation, Grading and Landscaping
470 Roads, Walks, and Paved Areas
480 Fences and Guard Towers
490 Other Improvements to Land
501 Buildings
550 Other Structures
610 Communications Systems
615 Electric Generation, Transmission and Distribution Systems
620 Fire Alarm Systems
625 Gas Production, Transmission and Distribution Systems
630 Irrigation Systems
635 Railroad Systems
640 Sewerage Systems
645 Steam Generation and Distribution Systems
650 Water Supply, Pumping, Treatment and Distribution Systems
655 Nuclear Steam and Electric Generation and Transmission Systems
660 SPR Crude Oil Piping System
665 NPR Crude Oil Extraction and Distribution System
710 Heavy Mobile Equipment
715 Hospital and Medical Equipment
720 Laboratory Equipment
725 Motor Vehicles and Aircraft
730 Office Furniture and Equipment
735 Process Equipment
740 Railroad Rolling Stock
745 Reactors and Accelerators
750 Security and Protection Equipment
755 Shop Equipment
760 Reserve Construction Equipment Pool
770 Automatic Data Processing Equipment

799 Miscellaneous Equipment
800 Improvements to Property of Others
900 Unclassified Plant and Equipment

Subpart 109-60.3—Identification

§ 109-60.300 General.

(a) The contractor shall identify, mark, and record all capital and sensitive items of equipment promptly upon receipt, except leased or rented equipment, and shall maintain this identification as long as such property remains in the custody, possession, or control of the contractor. Property identification numbers will be recorded on all applicable receiving, shipping, and disposal documents, and any other documents pertaining to the property control system where practicable. Marking and numbering shall be accomplished by etching, stamping, painting, attaching metal or plastic tags or decalcomanias. Each item shall be marked "Property of the U.S. Government, Department of Energy." Information on property numbers will be furnished by the property administrator. If practicable, such markings shall be removed or obliterated from the property involved, if and when Government ownership is relinquished. Leased or rented equipment shall be identified in such manner as will not damage the property. Property which by its nature or size cannot be marked shall not be commingled with contractor-owned property unless approved by the property administrator. When items are not susceptible to marking, they shall be subject to other specific control measures, such as custodial receipts.

(b) Where special tooling or special test equipment is utilized under a contract or subcontract, it shall be identified as required by the contracting officer.

Subpart 109-60.4—Physical Inventories

§ 109-60.400 General.

The contractor shall periodically physically inventory Government property in its possession or control and shall require such inventories of property held by subcontractors. The physical inventory shall be consistent with approved contractor procedures and generally accepted accounting principles. Procedures that are limited solely to a check-off of a listing of recorded property do not meet the requirements of a physical inventory. Personnel who perform the physical inventory shall not be the same individuals who maintain the property records or have custody of the property unless the contractor's operation is too small to do otherwise.

§ 109-60.401 Frequency.

Physical inventories of permanently affixed plant (such as fencing, buildings, other structures, utilities and systems) are to be taken not less frequently than every 10 years. Inventories of movable capital equipment are to be taken not less frequently than every 2 years. Inventories of sensitive items (capital and non-capital) shall be taken not less frequenlty than annually. Substantial quantities of materials (stores) held under inventory control shall be inventoried annually. Small quantities of material representing bench stock need not be inventoried.

§ 109-60.402 Reporting results of inventories.

The contractor shall, at a minimum, submit to the property administrator a listing of all discrepancies disclosed by a physical inventory, and a signed statement that the physical inventory was completed on a certain date and that the official property records were found to be in agreement with the physical inventory, except for the discrepancies reported. As a minimum, the discrepancy listing shall contain the property number, nomenclature, and unit cost. The listing and signed statement shall be furnished with a minimum of delay after completion of the physical inventory, but no later than 60 days after its completion.

§ 109-60.403 Records of inventories.

Appropriate inventory records and reports shall be maintained and will serve as a basis for (a) effecting maximum utilization of available property, (b) prompt identification and reporting of excess property, (c) effective physical protection of property, and (d) the preparation of special and recurring reports. Full use will be made of accounting records and reports to avoid duplication.

§ 109-60.404 Inventories upon termination or completion.

(a) Immediately upon termination or completion of a contract, the contractor shall submit an inventory report adequate for determining appropriate disposal of all Government property applicable to the terminated or completed contract. Further, this report shall include an inventory report of all Government property in a subcontractor's possession or control which is also applicable to the terminated or completed contract. This inventory report will be submitted to the property administrator for verification and disposition action.

(b) Exception. The requirement for physical inventory of Government property at the completion of a contract may be waived by the contracting officer when the property is authorized for use on a follow-on contract, provided that—

(1) Past experience has established the adequacy of property controls; and

(2) A statement is provided by the contractor indicating that transfer of record balances has been made in lieu of preparing a formal inventory list and the contractor accepts responsibility and accountability for those balances under the terms of the follow-on contract.

Subpart 109-60.5—Care and Maintenance

§ 109-60.500 General.

The contractor shall be responsible for the proper care and maintenance of Government property in its possession or control from the time of receipt until properly relieved of responsibility. The removal of Government property to storage, or its contemplated transfer, does not relieve the contractor of these responsibilities.

§ 109-60.501 Contractor's maintenance program.

The contractor's maintenance program shall be consistent with sound economic industrial practice, the manufacturer's recommendation, and the terms of the contract, and shall include the following:

(a) Preventive maintenance. Preventive maintenance is generally performed on a regularly scheduled basis in order to detect and correct unfavorable conditions or defects before they result in breakdowns and to maximize the useful life of the equipment. An effective preventive maintenance program shall consist of, but not be limited to—

(1) Inspection of equipment at periodic intevals to detect maladjustment, wear, or impending breakdown;

(2) Regular lubrication of bearings and moving parts in accordance with a lubrication plan;

(3) Adjustments for wear, repair, or replacement of worn or damaged parts and the elimination of causes of deterioration;

(4) Removal of sludge, chips, and cutting oils from equipment which will not be used for a period of time;

(5) Taking necessary precautions to prevent deterioration from contamination and corrosion; and

(6) Proper storage and preservation of accessories and special tools furnished with an item of equipment but not regularly used with it.

(b) Major repairs or rehabilitation. The maintenance program of the contractor shall provide for the disclosure and reporting to the property administrator of the need for major repairs, replacement, and other rehabilitation work on Government property in its possession or control.

(c) Records of maintenance. The contractor shall keep records sufficient to disclose the maintenance and repair performed and associated cost.

Subpart 109-60.6—Utilization, Disposal, and Retirement

§ 109-60.600 General.

It is DOE's policy that all property furnished under a contract shall be utilized to the fullest extent possible. The contractor's procedures shall be adequate to assure that Government property will be utilized only for those purposes authorized in the contract, and that the contracting officer's approval is obtained prior to noncontract use.

§ 109-60.601 Maximum use of property.

Property and supply management practices shall assure that the maximum and best possible use is made of property. Materials and equipment shall be limited to those items essential for effective execution of work performed under the contract.

§ 109-60.602 Disposal.

Unless otherwise authorized, contractors having property determined to be excess shall contact the property administrator for instruction as to the proper method of disposal. Property shall not be disposed of without prior approval of the contracting officer.

§ 109-60.603 Retirement of property.

When capital equipment is worn out, lost, stolen, destroyed, abandoned or damaged beyond economical repair, it shall be listed on a retirement work order. A full explanation shall be made, supported by an investigation, if necessary, as to the date and circumstances surrounding loss, theft, destruction, or damage. The retirement work order shall be signed by the responsible contractor administrative official initiating the report and reviewed and approved by an official at least one supervisory echelon above the official initiating the report, and the property administrator. Detailed information concerning the retention and/or submission of retirement work orders will be furnished by the property administrator.

Subpart 109-60.7—Motor Vehicle and Aircraft Management

§ 109-60.700 Scope of subpart.

This subpart prescribes basic policies and procedures for the management of Government-owned motor vehicles and aircraft in the possession of off-site contractors.

§ 109-60.701 Definition.

"Government-furnished motor vehicles" are DOE-owned vehicles, vehicles leased from the General Services Administration Interagency Motor Pool System (GSA-IMPS), and vehicles leased from commercial sources.

§ 109-60.702 Policy.

(a) Government-furnished motor vehicles and aircraft shall be provided to or acquired by off-site contractors when considered essential for the performance of the contract work and when approved by the contracting officer.

(b) Government-owned motor vehicles and aircraft shall be maintained and utilized by contractors in the most practical and economical manner consistent with DOE program requirements, safety considerations, fuel economy, and applicable laws and regulations.

(c) DOE-PMR Parts 109-38 and 109-39 (41 CFR Chapter 109) contain the requirements for management DOE-owned motor vehicles and aircraft. DOE contracting officers shall apply the applicable provisions contained therein in their management of contractor motor vehicle and aircraft operations.

(d) Contractors shall conform fully to the average fuel economy standards established by law and these regulations in the selection of Government-furnished motor vehicles.

(e) Contractors shall maintain and operate motor vehicles in such a manner as to foster reduced fuel consumption.

(f) Normally, motor vehicles will not be furnished to fixed-price contractors.

(g) Prior approval of GSA must be obtained before—

(1) Fixed-price contractors can use the GSA-IMPS; and

(2) DOE-owned motor vehicles can be furnished to any contractor in an area served by a GSA-IMPS.

§ 109-60.703 Classification of motor vehicles.

Because of differences in controls or limitations on possession and use, Government vehicles are classified as follows:

(a) *Passenger vehicles.*

(1) Sedans and station wagons (small, subcompact, compact, mid-size, and large).

(2) Ambulances.

(3) Buses.

(b) *Trucks.*

(1) Light, less than 8,500 GVWR (Gross Vehicle Weight Rating).

(i) 4 x 2.

(ii) 4 x 4.

(2) Light, 8,500 to 12,499 GVWR.

(i) 4 x 2.

(ii) 4 x 4.

(3) Medium, 12,500 to 23,999 GVWR.

(4) Heavy, 24,000 GVWR or more.

(c) *Special purpose vehicles.*

(1) Fire trucks.

(2) Construction vehicles.

(3) Other vehicles equipped for special purposes.

§ 109-60.704 Acquisition of motor vehicles.

(a) GSA has the responsibility for procurement of motor vehicles for Government agencies.

(b) Contractors shall submit motor vehicle requirements to the contracting officer for approval.

(c) The acquisition of passenger vehicles is limited to small, subcompact, and compact vehicles which meet Government fuel economy standards.

(d) The DOE Procurement and Assistance Management Directorate, Headquarters, (MA-422), shall certify all requisitions for the following:

(1) The acquisition of small, subcompact, and compact passenger vehicles.

(2) The lease (60 continuous days or more) of light trucks less than 8,500 GVWR.

(e) Purchase requisitions for acquisition of passenger vehicles by purchase or lease must be processed in accordance with 41 CFR 109-38.1306.

(f) Purchase requisitions for other motor vehicles may be submitted to GSA as directed by the contracting officer.

(g) Contractors shall thoroughly examine motor vehicles acquired under a GSA contract for defects. Any defect shall be reported promptly to GSA, and repairs shall be made under terms of the warranty.

§ 109-60.705 Identification of motor vehicles.

(a) Except as indicated in § 109-60.705(b), DOE-owned motor vehicles will have Government license tags and the following identification, which will be furnished and displayed as specified by the property administrator:

For Official Use Only
U.S. Government

Department of Energy

(b) Security vehicles may be exempted from the above requirements by the contracting officer. All other exemptions require approval by the DOE Director of Procurement and Assistance Management Directorate.

§ 109-60.706 Use of the GSA Interagency Motor Pool System.

Where authorized by the contracting officer, contractors may use the services of the GSA-IMPS.

§ 109-60.707 Official use of motor vehicles.

Government-owned vehicles are to be used for "Official Use Only." Contracting officers may approve home-to-work or work-to-home transportation on a one-time exceptional basis. Home-to-work or work-to-home transportation on a continuing basis requires approval of the head of the cognizant DOE field office. Records of such approval will be kept on file.

§ 109-60.708 Maintenance.

Contractors shall maintain Government-owned vehicles according to a systematic written procedure and in accordance with manufacturer's specifications and the terms of the warranty. The GSA publication "Guide for the Preventive Maintenance of Motor Vehicles" provides guidance for the maintenance of Government-owned vehicles.

§ 109-60.709 Disposition of motor vehicles.

(a) The contractor shall dispose of DOE-owned motor vehicles as directed by the contracting officer.

(b) DOE-owned motor vehicles may be disposed of as exchange/sale items when directed by the contracting officer; however, a designated DOE official must excecute the Title Transfer forms.

§ 109-60.710 Required motor vehicle reports.

Contractors shall submit the following annual fiscal year-end reports of Government-furnished motor vehicles to the contracting officer. Information on preparation and submission of the reports will be furnished by the property administrator.

(a) Agency Report of Motor Vehicle Data (Standard Form 82).

(b) Special Purpose Vehicle Report.

(c) Age and Mileage Analysis.

§ 109-60.711 Aircraft.

(a) Acquisition of aircraft requires statutory authority. Contracting officers may authorize a lease, rental, hire, or loan of an aircraft if the period is less than 30 days. If longer than 30 days, approval must be obtained from the DOE Director of Procurement and Assistance Management.

(b) Aircraft shall be used for official purposes only.

Subpart 109-60.8-109-60.46—[Reserved]

Subpart 109-60.47—Reports

§ 109-60.4700 Required reports.

Following is a summary listing of those property reports required to be submitted by the contractor, along with the frequency of the reports and the subpart which describes the report:

(a) Loss, damage, or destruction of Government property (On occurrence) § 109-60.102(b).

(b) Loss due to theft (On occurrence) § 109-60.102(c).

(c) Financial property control reports (Semi-annual) § 109-60.205.

(d) Physical inventories of permanently affixed plant (Not less frequently than every 10 years) § 109-60.402.

(e) Physical inventories of capital equipment (Not less frequently than biennial) § 109-60.402.

(f) Physical inventories of sensitive items (Not less frequently than annual) § 109-60.402.

(g) Termination inventories (Termination or completion) § 109-60.404.

(h) Motor vehicle reports (Annual) § 109-60.710.

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Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Colorado: CO83-5113	July 15, 1983.
Idaho: ID82-5128	Nov. 26, 1982.
Indiana: IN83-2073	Sept. 9, 1983.
Kentucky: KY84-1003	Jan. 9, 1984.
Michigan: MI83-2020	Mar. 18, 1983.
Minnesota:	
MN83-2058	July 29, 1983.
MN83-2059	Do.
New York: NY80-3054	Sept. 5, 1980.
North Dakota:	
ND84-5006	Mar. 16, 1984.
ND81-5131	July 6, 1981.
Utah: UT83-5120	Sept. 30, 1983.
Washington: WA83-5110	June 3, 1983.
Wisconsin: WI83-2041	May 13, 1983.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

California: CA83-5128 (CA84-5001)	Dec. 9, 1983.
Kentucky: KY82-1060 (KY84-1010)	Oct. 8, 1982.
Massachusetts: MA83-3049 (MA84-3008)	Nov. 18, 1983.
Minnesota: MN81-2065 (MA84-5010)	Dec. 11, 1981.

Cancellation of General Wage Determination Decision

The General Wage Decision listed below is cancelled. Agencies with construction projects pending to which the cancelled decision would have been applicable should utilize the Project Determination procedure by submitting Form SF–308. See Regulations Part 1 (29 CFR), § 1.5. Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.7(b)(2), the incorporation of the cancelled decision in contract specifications, the opening of bids for which is within (10) days of this notice, need not be affected.

MN83–2060, Blue Earth, Faribault, Freeborn, Mower, and Olmsted Counties, Minnesota—Building and Residential Construction.

Signed at Washington, D.C. this 23rd day of March 1984.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

DECISION NO. CO83-5113 - MOD. #3
(48-FR-32451 July 15, 1983)
Adams, Arapahoe, Boulder, Clear Creek, Denver, Douglas, Eagle, Elbert, Gilpin, Grand, Jefferson, Lake, Larimer, Morgan, Park, Summit and Weld Counties, Colorado

Change:
Denver only:
TRUCK DRIVERS:

	Basic Hourly Rates Zone 1	Basic Hourly Rates Zone 2
Group 1	$14.63	$15.13
Group 2	14.71	15.21
Group 3	14.81	15.31
Group 4	14.86	15.36
Group 5	14.91	15.41
Group 6	14.96	15.46
Group 7	15.01	15.51
Group 8	15.06	15.56
Group 9	15.16	15.66
Group 10	15.21	15.71
Group 11	15.31	15.81
Group 12	15.51	16.01
Group 13	15.46	15.96
Group 14	15.61	16.11
Group 15	15.71	16.21
Group 16	15.81	16.31
Group 17	15.91	16.41
Group 18	16.11	16.61

FRINGE BENEFITS:
$2.94

DECISION NO. KY84-1003
Mod # 1
(49 FR 9057 - January 9, 1984)
McCracken County, Kentucky

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS & LATHERS	$14.00	2.13
MILLWRIGHTS & PILE-DRIVERMEN	14.50	2.13

DECISION NO. MI83-2020 - Mod. #3
(48 FR 11615 - March 18, 1983)
Genesee, Huron, Lapeer, Saginaw, St. Clair, Sanilac, and Shiawassee Counties, Michigan

	Basic Hourly Rates	Fringe Benefits
Delete:		
Laborers	$6.95	$1.69
Add:		
Laborers:		
Genesee, Lapeer, Shiawassee Counties	$11.66	$2.14
Remainder of Counties	6.95	1.69

DECISION NO. ND81-5131 - Mod. #7
(46 FR 35008 - July 6, 1981)
Burleigh, Cass, Grand Forks, Morton, Richland, Steele, Traill, Walsh and Ward Counties, North Dakota

	Basic Hourly Rates	Fringe Benefits
Change:		
ELECTRICIANS:		
Area 2:	$14.00	10½%+ 1.90

DECISION NO. ND84-5006 - Mod. #2
(49 FR 10006 - March 16, 1984)
Statewide, North Dakota

	Basic Hourly Rates	Fringe Benefits
Change:		
ELECTRICIANS:		
Burleigh and Ward Counties	$14.00	10½%+ 1.90

DECISION NO. UT83-5120 - Mod. #5
(48 FR 44992 - September 30, 1983)
Statewide, Utah

	Basic Hourly Rates	Fringe Benefits
Change:		
POWER EQUIPMENT OPERATORS		
HEAVY AND HIGHWAY CONSTRUCTION:		
FRINGE BENEFITS		$6.16

DECISION NO. ID82-5128 Mod # 8
(47 FR 53612 Nov 26, 1982)
Statewide Idaho

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS:		
Area 2:		
Fringe benefits (all groups and zones)		$4.70

DECISION NO. WA83-5110 - Mod#11
(48 FR 25108 - June 3, 1983)
Statewide Washington

	Basic Hourly Rates	Fringe Benefits
OMIT:		
BOILERMAKERS:		
Storage Tank Erection	$17.25	$4.00
Storage Tank Repair	16.05	4.00
All other work	19.67	4.00
ADD:		
BOILERMAKERS:	19.67	4.00

DECISION #WI83-2041-MOD#1
(48 FR 21811-May 13,1983)
Statewide, Wisconsin

	Basic Hourly Rates	Fringe Benefits
ADD:		
Well Driller Helper	$12.66	$2.45

DECISION NO. IN83-2073 - Mod. #4

(48 FR 40832 - September 9, 1983)
Statewide (except Lake, LaPorte, Porter and St. Joseph Counties, Indiana

Change:	Basic Hourly Rates	Fringe Benefits
LABORERS:		
Utility Construction: Adams, Allen, DeKalb, Huntington, Noble, Steuben, Wabash, Wells and Whitley Counties		
Top laborers; Well point leadman; Jackhammer & air tool op.	$9.75	$1.84
Pipelayer	10.05	1.84
Air track drillers; wagon drill men; Dynamite man; Powderman	10.60	1.84
Omit:		
POWER EQUIPMENT OPERATORS: Underground and Utility Construction: Wabash County		
Add:		
POWER EQUIPMENT OPERATORS: Underground and Utility Construction: Adams, Allen, Dekalb, Huntington, Noble, Steuben, Wabash, Wells and Whitley Counties		
Group 1	$12.94	1.85
Group 2	11.63	1.85
Group 3	10.96	1.85
Group 4	9.79	1.85

Basic Hourly Rates	Fringe Benefits

DECISION NO. IN83-2073 - Mod. #4 Cont'd

POWER EQUIPMENT OPERATORS
(Underground and Utility Construction)

GROUP 1: Air Compressor (pressurizing shafts, tunnels & drivers); Air tugger; Auto patrol; Back filler; Backhoe; Boom cat; Boring-machine; Bull dozer; Caisson drilling machine; Cherry picker; Compactor (with dozer blade); Concrete mixer (dual drum); Concrete plant; Crane with all attachments; Crane - electric overhead; Derrick; Dual purpose truck (pitman type); Ditching machine (18" and over); Dredge; Elevators (when hoisting material or tools); Fork Lift; Formless paver; Generator (power for welders or compressors); Gradall; Helicopter; Helicopter winch operator; High lift - front end loader; Hoist; Locomotive and/or dinkey engine; Mechanic on job site; Mucking machine; Panel board concrete plant; Pile driver; Push cat; Scoop & tractor; Scraper - rubber tired; Spreader - tractor mounted; Straddle carrier - ross type; Sub base finish machine (C.M.I. or similar); Tower crane; Tractor with backhoe (½ yard and over); Trench box - power driven; Tunnel shield.

GROUP 2: A Frame Truck; Batcher plant (automatic dry batch); Bending machine - power driven; Bituminous mixer; Bituminous paver; Bituminous plant engineer; Boatman; Bull float; Compactor or tamper-self propelled; Concrete mixer (21 cu.ft. or over); Concrete spreader - power driven; Ditching machine (less than 18"); Finish machine & bull float; Finishing machine; Fireman - pile driving & boilers; Gunite Machine; Head greaser; Mesh depressor - mesh placer; P.C.C. concrete belt placer; Roller - asphalt, stone & sub base; Rotary drill; Sheepfoot roller - self propelled; Spreader or base paver-self propelled; Sub grader; Throttle valve with air compressor or boiler; Tractor with backhoe (under ½ yd.); Tractor - high lift - farm type; Tractor - industrial type; Tractor with winch; Well points; Winch Truck.

GROUP 3: Air compressor (210 cu. ft. & over); Bituminous distributor; Chair cart; Concrete curing machine; Concrete saw; Dope pot - power agitated; Flex plane; Form grader; Hydrohammer; Jacks - hydraulic power driven; Minor equipment operator (2,3,4); Paving joint machine; Post hole digger; Roller - earth; Throttle valve; Track jack - power driven; Tractor - farm type; Truck crane driver.

GROUP 4: Air compressor (less than 210 cu. ft.); Concrete mixer (under 21 cu. ft.); Conveyor; Generator; Mechanical heater; Oiler; Power broom; Pump; Welding machine.

DECISION NO. MN83-2053 - MOD. #1

(48 FR 34617 - July 29, 1983)
Benton, Sherburne, & Stearns Counties, Minnesota

	Basic Hourly Rates	Fringe Benefits
Change:		
Bricklayers; Stonemasons	$15.24	$.50
Carpenters:		
Building Construction:		
Benton (Little Rock & Skaja) Co.:		
Millwrights	16.36	3.62
Benton (Rem. of Co.), Sherburne (Except Southern Tip), & Stearns Cos.:		
Carpenters; Millwrights; & Piledrivermen:		
Commercial Building	14.93	.90
Residential	13.23	.70
Sherburne (Southern Tip) Co.:		
Millwrights	16.36	3.62
Cement Masons; Plasterers:		
Building Construction:		
Benton & Stearns Cos.	14.45	.50
Roofers	14.33	1.57
Sprinkler Fitters	16.47	3.23
Laborers:		
Site Preparation, Excavation, & Incidental Paving:		
Benton & Stearns Cos.:		
Class 1	11.42	2.50
Class 2	11.60	2.50
Class 3	11.65	2.50
Class 4	11.80	2.50
Class 5	11.90	2.50
Class 6	12.15	2.50
Sherburne Co.:		
Class 1	12.35	2.60
Class 2	12.50	2.60
Class 3	12.55	2.60
Class 4	12.70	2.60
Class 5	12.80	2.60
Class 6	13.05	2.60
Omit:		
Electricians:		
Sherburne (Rem. of Co.) Co.:		
Commercial Building:		
Electricians	$16.80	10½% +3.59
Cable Splicers	16.95	10½% +3.59
Residential	13.75	17.5% +.20
Truck Drivers Classifications (Site Preparation, Excavation & Incidental Paving)		
Add:		
Electricians:		
Sherburne (Rem. of Co.) Co.:		
New Construction of Multiple dwellings in excess of 4-plexes and all residential remodeling, rewiring, & repairing of any apartment project exceeding 8 units or 400 amp service:		
Electricians	16.80	12½% +3.54
Cable Splicers	17.40	12.5% +3.54
Construction of all new single family dwellings with separate service, & multiple dwellings up to & Inclu. 4-plexes; & all residential remodeling, rewiring & repairing except that any single apartment project including a change of main service entrance, shall not exceed 8 living units or 400 amp service	14.30	23%

DECISION NO. MN83-2053 (Cont'd)

	Basic Hourly Rates	Fringe Benefits
Add (Cont'd):		
Truck Drivers (Site Prep., Excav. & Incidental Paving):		
Benton & Stearns Cos.:		
Group 1	$12.87	$2.10
Group 2	12.26	2.10
Group 3	12.13	2.10
Group 4	11.86	2.10
Add (Cont'd):		
Sherburne Co.:		
Group 1	$14.95	$2.10
Group 2	14.40	2.10
Group 3	14.30	2.10
Group 4	14.00	2.10

GROUP 1: Boom; Mechanic; Off-Road; Tractor Trailer; Truck Driver (Operation of Hand & Power Operated Winches); & Truck Trains
GROUP 2: Tri Axles (Including Four Axles)
GROUP 3: Bituminous Distributor; & Tandem Axles
GROUP 4: Bituminous Distributor Spray Operator (Rear End Oiler); Dumpman; Pilot Car; Self-Propelled Packer; Single Axles; Slurry Operator; Tank Truck (Gas, Oil, Road Oil & Water); Teamster & Stableman; Tractor Operator (Wheel Type Used for any Purpose)

The Following Classifications Shall Come Under The Appropriate Axle Rate Wage Group:
"A" Frame; Dry Batch Hauler; Dump; Ready-Mix Concrete; Slurry; Tank (Gas, Oil, Road Oil & Water)

DECISION NO. MN83-2059 - MOD. #1

(48 FR 34620 - July 29, 1983)
Carlton, Cook, Itasca, Koochiching, Lake, & St. Louis Counties, Minnesota

	Basic Hourly Rates	Fringe Benefits
Change:		
Asbestos Workers	$18.90	$1.71
Bricklayers; Stonemasons:		
Carlton, Cook, Lake, & St. Louis (S. of a line bet. Twp. 54 & 55 to 2 mi. N. of Cotton) Cos.	15.73	1.95
Itasca & St. Louis (Rem. of Co.) Cos.	15.73	1.95
Electricians:		
Carlton, Cook, Itasca (S. part, inclu. Blackberry, Goodland, & Wawina), Lake, & St. Louis (bounded on the north by the lines of Kelsey Twp. extended East & West) Cos.	15.75	31½%
Itasca (Exclu. section S. of a line extending East & West of the South line of Grand Rapids & Trout Lake Twp.), Koochiching, & St. Louis (Northern part bounded by the South line of Ellsburg Twp. extended East & West) Cos.:		
All Work, exclu. Residential Up to & inclu. 6-plexes under 1 roof:		
Electricians	15.93	32½%
Cable Splicers	16.48	32½%
Residential up to & inclu. 6-plexes under 1 roof	9.19	3%+1.44
Elevator Constructors:		
Lake & St. Louis Cos.:		
Mechanics	15.23	3.00+a
Helpers	70%JR	3.00+a
Helpers (Prob.)	50%JR	
Ironworkers	14.97	3.85
Plumbers; Steamfitters:		
Itasca, Cook (N ½), Lake (N½), & St. Louis (N½) Cos.	15.80	3.60
Koochiching Co.	17.20	2.25
Roofers:		
Itasca, Koochiching, & St. Louis (N 2/3) Cos.:		
Roofers	12.98	1.52
Sheet Metal Workers:		
Itasca, Koochiching, & St. Louis (N 2/3) Cos.:		
Commercial Building	15.15	2.94+d
Residential	68%JR	2.94+d
Sprinkler Fitters	16.47	3.23

Change (Cont'd):	Basic Hourly Rates	Fringe Benefits
Laborers:		
Building Construction:		
Carlton, Cook, Lake, & St. Louis (S. of T 55N) Cos.:		
Class 1	12.05	2.65
Class 2	12.20	2.65
Class 3	12.45	2.65
Class 4	12.75	2.65
Site Preparation, Excav. & Incid. Paving:		
Carlton, Cook, Lake, & St. Louis (S. of T 55N) Cos.:		
Class 1	11.88	2.40
Class 2	12.03	2.40
Class 3	12.08	2.40
Class 4	12.23	2.40
Class 5	12.33	2.40
Class 6	12.58	2.40
Itasca & St. Louis (N. of T 55N) Cos.:		
Class 1	12.68	1.95
Class 2	12.83	1.95
Class 3	12.88	1.95
Class 4	13.03	1.95
Class 5	13.13	1.95
Class 6	13.33	1.95
Koochiching Co.:		
Class 1	10.00	1.15
Class 2	10.15	1.15
Class 3	10.20	1.15
Class 4	10.35	1.15
Class 5	10.45	1.15
Class 6	10.70	1.15
Truck Drivers:		
Site Preparation, Excav. & Incid. Paving:		
Carlton, Cook, Itasca (E. of T.H. 6), Lake, & St. Louis Cos.:		
Group 1	14.95	2.10
Group 2	14.40	2.10
Group 3	14.30	2.10
Group 4	14.00	2.10
Itasca (Rem. of Co.), & Koochiching Cos.:		
Group 1	12.87	2.10
Group 2	12.26	2.10
Group 3	12.13	2.10
Group 4	11.86	2.10
Add:		
Carpenters; Millwrights; Piledrivermen; & Soft Floor Layers:		
Itasca County:		
Millwrights	16.36	3.62

DECISION NO. MN83-2059 'Cont'd)

Laborers Classifications:
Building Construction:
Carlton, Cook, Lake, & St. Louis (S. of T 55N) Cos.:

CLASS 1: General; Carpenter Tender; Concrete Laborer; Damp Proofer below grade; Drill Runner Tender; Dumpman - dirt, asphalt, concrete, cement; Heater Tender; Hot Tar Caulker - Corker; Joist Handlers (Inclu. Power Buggy); Rebar; Snow Blower Op.; Tool Crib Checker

CLASS 2: Chain Saw Op.; Concrete Saw, Drill Op.; Concrete Vibrator; Demolition & Wrecking, exclu. Remodeling; Gunite, Sandblasting Machine Operator; Mason Tender; Mortar Mixer - Cement or any other substitute material or composition; Pipe Handler; Pneumatic & Electric Tools, Jackhammer, Paving Buster, Chipping Hammer, Tamper Op., etc.; Swing Stage Line Scaffold (not including "patent" scaffolding); Torchman - gas, electric, thermal or similar device

CLASS 3: Caisson Work; Nozzle Op. - gunite, cement, sandblasting; Pipelayer; Refractory Worker; Sheeting Setter and Drivers, Heavy Building Excavation; Underground Work - open ditch or excavation 8' below grade; & Underpinning

CLASS 4: Driller for Blasting Purposes; Dynamite Blasters or substitute products Tovex TR, water, gas, gel, bristar, silent dynamite, etc.

Truck Drivers Classifications:
Site Preparation, Excavation & Incidental Paving:

GROUP 1: Boom; Mechanic; Off-Road; Tractor Trailer; Truck Driver (Operation of Hand & Power Operated Winches); & Truck Trains
GROUP 2: Tri Axles (Including Four Axles)
GROUP 3: Bituminous Distributor; & Tandem Axles
GROUP 4: Bituminous Distributor Spray Operator (Rear End Oiler); Dumpman; Pilot Car; Self-Propelled Packer; Single Axles; Slurry Operator; Tank Truck (Gas, Oil, Road Oil & Water); Teamster & Stableman; Tractor Operator (Wheel Type Used for any Purpose)

The Following Classifications Shall Come Under The Appropriate Axle Rate Wage Group:
"A" Frame; Dry Batch Hauler; Dump; Ready-Mix Concrete; Slurry; Tank (Gas, Oil, Road Oil & Water)

Add:
Footnotes:
c. 5 to 12 years' service - 2 weeks' paid vacation; 12 or more years' service - 3 weeks' paid vacation
d. $.56 to SASMI

DECISION NO. NY80-3054 - MOD. #9
(45 FR 59104 - Sept. 5, 1980)
JEFFERSON CO., NEW YORK

CHANGE:

	Basic Hourly Rates	Fringe Benefits
PLUMBERS & STEAMFITTERS	16.31	2.47
LINE CONSTRUCTION:		
Signal work for Railroads:		
Journeyman Lineman & Technician	14.20	3.95+ 5%+a
Cable Splicer	18.92	3.95+ 5%+a
Groundman Digging Machine Operator, Groundman Dynamite Man	12.78	3.95+ 5%+a
Groundman Mobile Equipment Operator, Mechanic First Class, Ground Truck Driver	11.36	3.95+ 5%+a
Groundman Truck Driver (Tractor Trailer)	12.07	3.95+ 5%+a
Driver Mechanic, Groundman - Experienced	10.65	3.95+ 5%+a
All Overhead Transmission Line Work and Lighting for Athletic Fields:		
Journeyman Lineman & Technician	16.32	3.95+ 5%+a
Groundman Digging Machine Operator, Groundman Dynamite Man	14.688	3.95+ 5%+a
Groundman Mobile Equipment Operator, Mechanic First Class Groundman Truck Driver	13.056	3.95+ 5%+a
Groundman Truck Driver (Tractor Trailer Unit)	13.872	3.95+ 5%+a
Driver Mechanic Groundman	12.24	3.95+ 5%+a
Sub-Station Switching Substructures (when not part of the line), Electrical, Telephone or CATV Commercial Work; Street Lighting & Signal Systems:		
Journeyman Lineman & Technician	17.20	3.95+ 5%+a
Cable Splicer	18.92	3.95+ 5%+a
Groundman Digging Machine Operator, Groundman Dynamite Man	15.48	3.95+ 5%+a
Groundman Mobile Equipment Operator, Mechanic First Class, Groundman Truck Driver	13.76	3.95+ 5%+a
Groundman Truck Driver (Tractor Trailer Unit)	14.62	3.95+ 5%+a
Driver Mechanic, Groundman	12.90	3.95+ 5%+a
All Pipe-type Cable Installations Maintenance Jobs or Projects:		
Journeyman Lineman	17.20	3.95+ 5%+a
Certified Lineman Welder	18.06	3.95+ 5%+a
Cable Splicer	18.92	3.95+ 5%+a
Groundman Equipment Operator	17.20	3.95+ 5%+a
Groundman Truck Driver (Tractor Trailer Unit)	14.62	3.95+ 5%+a
Groundman Truck Drivers	13.76	3.95+ 5%+a
Groundman	12.90	3.95+ 5%+a

FOOTNOTE:

a. Paid Holidays: New Year's Day, Washington's Birthday, Good Friday, Decoration Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day and Election Day for the President of the United States and Election Day for the Governor of New York State, provided the employee works the day before or the day after the holiday.

STATE: California
COUNTIES: Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, and Yuba

DECISION NUMBER: CA84-5001 DATE: Date of Publication
Supersedes Decision No. CA83-5128 dated December 9, 1983, in 48 FR 55239
DESCRIPTION OF WORK: Building; Heavy (excluding Water Well Drilling) and Highway Projects; and Residential Projects (excluding Alpine, Butte, Colusa, Fresno, Glenn, Kings, Lake, Lassen, Madera, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Stanislaus, Tehama, Trinity, and Tulare Counties)

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$24.20	$4.51
BOILERMAKERS	21.39	3.96
BRICKLAYERS; STONEMASONS:		
Area 1	18.52	6.10
Area 2	18.90	4.95
Area 3	17.35	3.30
Area 4	16.53	2.82
Area 5	18.30	3.53
Area 6	20.10	3.87
Area 7	17.57	3.89
Area 8	17.19	4.11
BRICK TENDERS:		
Area 1	13.80	4.76
Area 2	15.48	3.70
Area 3	15.24	4.91
Area 4	15.24	4.91
Area 5	16.24	4.91
Area 6	14.19	6.10
Area 7	15.15	4.45
Area 8	16.05	4.45
Area 9 (Residential Construction 2 stories+less)	12.55	4.96
CARPENTERS:		
Area 1:		
Carpenters	19.28	6.455
Hardwood Floorlayers; Shinglers; Power Saw Operator; Steel Scaffold Erector and Steel Shoring Saw Filers	19.43	6.455
Millwrights	19.28	7.455
Piledrivermen	19.38	7.705
Area 2:		
Carpenters	16.65	6.455
Hardwood Floorlayers; Shinglers; Power Saw Operators; Steel Scaffold Erector and Steel Shoring; Saw Filers	16.80	6.455
Millwrights	17.55	7.455
Piledrivermen	19.38	7.705
CARPENTERS: (Cont'd)		
Area 3 (Residential)	$11.80	$6.205
Area 4:		
Carpenters	16.95	6.455
Hardwood Floor Layers; Shinglers; Power Saw Operators; Steel Scaffold Erector and Steel Shoring; Saw Filers	17.10	6.455
Millwrights	17.85	7.455
Piledrivermen	19.38	7.705
Insulator (Hopper or Blower Operator) (Residential)	8.475	6.455
Area 5 (Residential)	12.00	6.205
CEMENT MASONS:		
Cement Masons	15.52	5.93
Swing or Slip Form Scaffolds or Composition Masons	15.77	5.93
COMMUNICATION TECHNICIAN	12.85	3.07
DIVERS:		
Divers	33.89	6.225
Stand-by Divers	18.05	6.225
DRYWALL INSTALLERS/LATHERS:		
Drywall Installers; Lathers	20.12	6.225
Residential Drywall; Lathers:		
Area 1	13.57	6.225
ELECTRICIANS:		
Area 1:		
Electricians	22.56	6.298 +3%
Area 2:		
Electricians	15.80	3.10+ 3%
Cable Splicers	17.38	3.10+ 3%
Residential Electrician	12.30	3.35

DECISION NO. CA84-5001

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS: (Cont'd)		
Area 3:		
Electricians	$22.78	$4.14+ 3%
Cable Splicers	24.91	4.14+ 3%
Area 4:		
Electricians	15.71	4.41 +3%
Cable Splicers	17.28	4.41 3%
Residential Electricians	12.87	3.51+ 3%
Area 5:		
Electricians	19.81	4.24+ 3⅛%
Cable Splicers	22.29	4.24+ 3⅛%
Residential Electricians	10.25	1.20+ 3%
Area 6:		
Electricians	24.16	5.20+ 3%
Cable Splicers	26.16	5.20+ 3%
Area 7:		
Electricians	17.08	1.54+ 25%
Cable Splicers	18.45	1.54+ 25%
Area 8:		
Electricians	18.40	4.06+ 3%
Cable Splicers	20.24	4.06+ 3%
Residential Electricians	10.00	1.01+ 3%
Area 9:		
Electricians	22.85	3.81+ 3%
Cable Splicers	25.14	3.81+ 3%
Area 10:		
Electricians	15.37	3.25%+ 4.45
Cable Splicers	16.91	3.35% +4.45
Residential Electricians	9.25	1.15+ 3%
Area 11:		
Electricians	18.89	6.68+ 3%
Cable Splicers	21.25	6.68+ 3%
Residential Electricians	9.45	4.12+ 4%
Area 12:		
Electricians	23.34	5.05+ 3%

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS: (Cont'd)		
Area 12: (Cont'd)		
Cable Splicers	$26.26	$5.05+ 3%
Area 13:		
Electricians	$24.40	$7.17
Cable Splicers	27.45	7.17
Area 14:		
Electricians	25.24	4.87+ 3%
Cable Splicers	28.39	4.87+ 3%
Area 15:		
Electricians	25.00	5.42+ 3%
Area 16:		
Electricians	20.42	4.41+ 3%
ELEVATOR CONSTRUCTORS:		
Mechanics	28.35	3.60+ a
Helpers	19.845	3.00+ a
Probationary Helper	14.175	
GLAZIERS:		
Area 1	20.92	5.66
Area 2	15.75	6.44
Area 3 (Residential)	10.00	2.72
Area 4 (Residential)	9.82	1.70
Area 5	16.40	5.52
Area 6	13.58	2.84
Area 7	20.06	6.11
IRONWORKERS:		
Fence Erectors	16.41	8.53
Reinforcing, Ornamental, and Structural	17.30	8.53
LINE CONSTRUCTION:		
Area 1:		
Groundman	18.12	5.20 3%
Line Equipment Operator	21.74	5.20+ 3%
Linemen	24.16	5.20+ 3%
Cable Splicers	26.16	5.20+ 3%
Area 2: (Zone 1):		
Group 1	20.03	3.00 3⅛%
Group 2	18.11	3.00 3⅛%
Group 3	16.35	3.00 3⅛%
Group 4	15.61	2.30+ 3⅛%

DECISION NO. CA84-5001

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION: (Cont'd)		
Area 2-Zone 1 (Cont'd)		
Group 5	$13.66	$2.30+ 3⅛%
Group 6	13.66	2.30+ 3⅛%
Group 7	12.84	2.30+ 3⅛%
Zone Differential (add to Zone 1 rate):		
Zone 2 - $2.40		
Zone 3 - 3.15		
Zone 4 - 3.90		
Zone 5 - 5.15		
Area 3:		
Groundmen	17.38	4.21+ 3%
Linemen	18.20	4.21+ 3%
Area 4:		
Groundmen	14.86	4.24+ 3⅛%
Line Equipment Operators	17.83	4.24+ 3⅛%
Linemen	19.81	4.24+ 3⅛%
Cable Splicers	22.29	4.24+ 3⅛%
Area 5:		
Groundmen	11.60	2.75+ 3⅛%
Linemen	15.47	2.75+ 3⅛%
Cable Splicers	17.02	2.75+ 3⅛%
Area 6:		
Groundmen	16.42	5.86+ 3%
Linemen, Technicians; Equipment Operators	21.89	7.23+ 3%
Cable Splicers	24.63	7.23+ 3%
Area 7:		
Groundman & Truck Driver	14.68	4.09+ 3%
Linemen	22.30	4.09+ 3%
Cable Splicers	22.30	4.09+ 3%

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION: (Cont'd)		
Area 8:		
Groundmen	$12.57	$4.41+ 3%
Linemen; Equipment Operators	15.71	4.41+ 3%
Cable Splicers	17.28	4.41+ 3%
Area 9:		
Groundmen and Truck Drivers	18.42	6.20 + 3%
Linemen	24.56	6.20+ 3%
Heavy Equipment Operators	22.10	6.20+ 3%
Area 10:		
Groundmen	16.14	4.75+ 4%
Equipment Operators	18.16	4.75+ 4%
Linemen	20.18	4.75+ 4%
Cable Splicers	22.20	4.75+ 4%
Area 11:		
Groundmen	21.25	5.42+ 3%
Line Equipment Operators	22.50	5.42+ 3%
Linemen	25.00	5.42+ 3%
Area 12:		
Groundmen	13.66	1.54+ 25%
Heavy Equipment Operators	15.37	1.54+ 25%
Linemen	17.08	1.54+ 25%
Cable Splicers	18.45	1.54+ 25%
Area 13:		
Groundmen	20.85	4.84+ 3%
Linemen; Technicians	24.535	4.84+ 3%
Cable Splicers	27.60	4.84+ 3%

DECISION NO. CA84-5001	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION: (Cont'd)		
Area 14:		
Groundmen	$18.70	$5.75+ 3%
Linemen; Line Equipment Operators	22.00	5.75+ 3%
Cable Splicers	24.75	5.75+ 3%
Area 15:		
Groundmen	18.28	4.74+ 3%
Heavy Equipment Operator	20.57	4.74+ 3%
Linemen	22.85	4.74+ 3%
Cable Splicers	25.14	4.74+ 3%
MARBLE SETTERS	20.52	6.10
MARBLE FINISHERS:		
Area 1	13.12	3.47
PAINTERS:		
Area 1:		
Brush	13.39	4.60
Spray	14.14	4.60
Sheetrock; Taper; Swing Stage; Scaffold; Sandblaster; Structural Steel	13.79	4.60
Area 2:		
Brush; Roller; Taper	15.22	1.59
Spray; Sandblasters; Structural Steel; Paperhangers; and Bazooka Operators	15.72	1.59
Area 3:		
Brush	16.20	2.57
Hazardous Coating	17.20	2.57
Spray; Sandblasting; Taping	16.70	2.57
Area 4:		
Brush	20.58	4.18
Tapers	21.38	4.18
Area 5:		
Brush	20.08	4.18
Tapers	21.38	4.18
Area 6:		
Brush and Roller	17.45	1.95
Spray; Sandblaster; Paperhanger; and Taper	17.95	1.95
Brush - Swing Stage up to 40 ft.; Brush-steel	17.70	1.95
Spray - Swing Stage up to 40 ft; Spray-steel	18.20	1.95

Page 4	Basic Hourly Rates	Fringe Benefits
PAINTERS: (Cont'd)		
Area 7:		
Brush	$20.53	$5.38
Spray; Sandblasting; Steam Cleaning	21.03	5.38
Drywall Finisher	21.53	5.38
Brush (exterior stage) 5, 6, and 7 story buildings; Erected steel over 50 ft.	21.81	5.38
Paperhangers	21.53	5.38
Area 8:		
Brush; Pot Tenders; Rollers	9.80	1.35
Spray; Sandblaster; Structural Steel; Swing Stage; Tapers	10.30	1.35
Area 9:		
Brush	19.79	5.38
Spray	20.29	5.38
Spray (coating) and Paperhangers	20.54	5.38
Tapers (paint)	20.18	5.38
Area 10:		
Brush	11.08	2.67
Spray; Sandblasters; Structural Steel; Swing Stage; Tapers; Paperhangers	11.33	2.67
PARKING LOT STRIPING WORK and/or HIGHWAY MARKERS:		
Area 1:		
Traffic Delineating Device Applicator	14.48	1.65+ b
Wheel Stop Installer; Traffic Surface Sandblaster; Striper	13.95	1.65+ b
Slurry Seal Operation:		
Mixer Operator	13.95	1.65+ b
Squeegee Man; Applicator Operator; and Shuttleman	12.37	1.65+ b
Top Man	10.39	1.65+ b

DECISION NO. CA83-5001	Basic Hourly Rates	Fringe Benefits
PARKING LOT STRIPING WORK and/or HIGHWAY MARKERS: (Cont'd):		
Area 2:		
Traffic Delineating Device Applicator; Wheel Stop Installer; Traffic Surface Sandblaster	$12.37	$1.55+b
Striper	13.57	1.55+b
Slurry Seal Operation:		
Mixer Operator	12.37	1.55+b
Squeegee Man	10.60	1.55+b
Applicator Operator	10.60	1.55+b
Top Man	8.91	1.55+b
PLASTERERS:		
Area 1	19.63	5.88
Area 2	20.18	7.65
Area 3	16.06	5.91
Area 4	16.63	5.44
Area 5	18.44	6.58
Area 6	16.55	6.94
Area 7	18.81	3.61
Area 8	14.30	7.45
PLASTERERS' TENDERS:		
Area 1	13.62	5.05
Area 2	16.85	5.01
Area 3	13.84	5.45
Area 4	13.71	4.45
Area 5	13.27	4.45
Area 6	13.82	4.45
Area 7	17.50	4.05
Area 8	16.15	3.10
Area 9	13.75	4.45
Area 10	14.95	2.70
PLUMBERS:		
Area 1	25.41	5.43
Area 2	25.86	6.79
PLUMBERS; Steamfitters:		
Area 1	19.72	6.71
Area 2	20.34	2.43
Area 3	26.64	8.30
Area 4	22.03	6.55
Area 5	26.40	5.84
Area 6	16.47	9.15
Area 7	24.17	7.80
Area 8	23.36	6.47

Page 5	Basic Hourly Rates	Fringe Benefits
ROOFERS:		
Area 1:		
Roofers	$16.75	$6.37
Mastic Workers; Kettlemen (2 kettles w/o pumps)	17.00	6.37
Bitumastic; Enamelers; Pipewrappers; Coal Tar Build-up	18.75	6.37
Area 2	16.94	3.15
Area 3	14.80	3.34
Area 4	15.30	3.35
Area 5:		
Roofers	16.00	6.64
Mastic Workers; Kettlemen (2 kettles w/o pumps)	16.25	6.64
Bitumastic; Enamelers; Pipewrappers; Coal Tar Pitch	18.00	6.64
Area 6	10.32	1.15
Area 7	19.10	4.00
Area 8:		
Roofers	16.80	6.09
Mastic Workers; Kettlemen (2 kettles w/o pumps)	17.25	6.09
Bitumastic; Enamelers; Pipewrappers; Coal Tar	18.80	6.09
Area 9:		
Roofers (slate, tile and composition)	14.45	7.34
Enameler and Pitch	16.45	7.34
Area 10:		
Roofer; Kettleman (1 kettle)	15.83	5.92
Kettlemen (2 kettles)	16.83	5.92
Bitumastic; Enamelers; Coal Tar; Pitch and Mastic	17.83	5.92
SHEET METAL WORKERS:		
Area 1	25.73	5.04
Area 2	16.93	4.67
Area 3	17.54	4.55+ 12%
Area 4	18.25	4.32
Area 5	20.57	6.86
Area 6	17.80	3.76
Area 7	26.18	4.74

DECISION NO. CA84-5001

	Basic Hourly Rates	Fringe Benefits
SHEET METAL WORKERS: (Cont'd)		
Area 8	$18.38	$4.22
Area 9	25.06	5.92
Area 10	22.16	4.70
Area 11	21.76	6.52
Area 12	24.51	8.84
Area 13	25.73	5.14
SOFT FLOOR LAYERS:		
Area 1	16.01	3.00
Area 2	13.74	.90
Area 3	19.42	3.93
Area 4	11.96	2.27
SPRINKLER FITTERS:		
Area 1	26.72	7.29
Area 2	21.87	3.23
STEAMFITTERS:		
Area 1	29.16	4.47
TERRAZZO WORKERS:		
Area 1	20.52	6.10
Area 2	17.53	3.46
Area 3	20.25	2.87
TILE SETTERS:		
Area 1	20.76	4.17
Area 2	18.02	3.05
TERRAZZO WORKERS and TILE SETTERS:		
Area 1	16.15	2.90
Area 2	20.23	3.69
TERRAZZO FINISHERS:		
Area 1:		
Terrazzo Finishers	15.81	3.46
Base Machine Operator	16.51	3.10
TILE FINISHERS:		
Area 1	13.90	4.73
LABORERS:		
Tunnel & Shaft Laborers:		
Group 1	17.46	5.11
Group 2	17.03	5.11
Group 3	16.78	5.11
Group 4	16.62	5.11
Housemoving Laborers:		
Group 1	13.56	5.11
LABORERS:		
Area 1:		
Group 1	14.56	5.11
Group 1-a	14.785	5.11
Group 1-b	15.06	5.11
Group 1-c	14.61	5.11
Group 1-d	14.81	5.11
Group 1-e	15.11	5.11
Group 1-f	15.145	5.11
Group 2	14.41	5.11
Group 3	14.31	5.11
Group 4	8.00	5.11

	Basic Hourly Rates	Fringe Benefits
LABORERS: (Cont'd Area 1)		
Gunnite Laborers:		
Group 1	$15.02	$5.11
Group 2	14.43	5.11
Group 3	14.41	5.11
Wrecking Work:		
Group 1	14.56	5.11
Group 2	14.41	5.11
Group 3	14.31	5.11
Area 2		
Group 1	13.56	5.11
Group 1-a	13.785	5.11
Group 1-b	14.06	5.11
Group 1-c	13.61	5.11
Group 1-d	13.81	5.11
Group 1-e	14.11	5.11
Group 1-f	14.145	5.11
Group 2	13.41	5.11
Group 3	13.31	5.11
Group 4	8.00	5.11
Gunnite Laborers:		
Group 1	14.02	5.11
Group 2	13.43	5.11
Group 3	13.31	5.11
Wrecking Work:		
Group 1	13.56	5.11
Group 2	13.41	5.11
Group 3	13.31	5.11

DECISION NO. CA84-5001

POWER EQUIPMENT OPERATORS*:	AREA 1	AREA 2	AREA 3	AREA 4	
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Group 1	$14.05	$16.05			
Group 2	14.55	16.55			
Group 3	14.85	16.85			
Group 4	15.62	17.62			
Group 5	15.92	17.92			
Group 6	16.13	18.13			
Group 7	16.35	18.35			
Group 8	16.97	18.97			
Group 9	17.28	19.28			
Group 10	17.60	19.60			
Group 10-A	17.77	19.77			
Group 11	18.01	20.01			
Group 11-A	19.65	21.65			
Group 11-B	20.04	22.04			
Group 11-C	20.05	22.05			
FRINGE BENEFITS: $8.75					
*Residential Construction 3 stories and under to be paid the Area 1 rate.					
DREDGING - SCHEDULE I					
Clamshell and Dipper Dredging (New Construction):					
Group 1	14.11	15.37	15.75	16.11	
Group 2	17.01	18.37	18.75	19.14	
Group 3	17.01	18.37	18.75	19.14	
Group 4	18.06	19.43	19.80	20.19	
Group 4-A	19.68	21.06	21.49	21.88	
DREDGING - SCHEDULE II					
Hydraulic Suction Dredging and all other Dredging:					
Group A-1	14.09	15.35	15.71	16.09	
Group A-2	15.45	16.76	17.16	17.54	
Group A-3	16.36	17.72	18.12	18.50	
Group A-4	17.60	18.98	19.35	19.74	
FRINGE BENEFITS: $8.56					

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
DREDGING (Cont'd)		
TOW BOATS:		
Work on self-propelled vessels (except Skiffs powered by outboard motors) engaged in towing vessels and water borne craft or in the transportation by water of personnel, materials, equipment and supplies:		
Deckhand/Mechanics	$10.86	$3.37
Operator Mechanic/ Watch Engineer	12.17	3.86
Work on self-propelled vessels):		
Boat Operators	12.17	3.86
PILEDRIVING:		
Group 1	14.12	8.75
Group 1A	14.61	8.75
Group 1B	14.90	8.75
Group 2A	14.90	8.75
Group 2B	15.68	8.75
Group 2C	15.98	8.75
Group 2D	16.20	8.75
Group 3	16.41	8.75
Group 3A	17.04	8.75
Group 4	17.82	8.75
Group 5	18.08	8.75
Group 6	19.71	8.75
STEEL ERECTION:		
Group 1	14.79	8.75
Group 2	15.33	8.75
Group 3	16.81	8.75
Group 4	17.00	8.75
Group 4A	17.46	8.75
Group 5	18.18	8.75
Group 6	18.79	8.75
Group 7	19.23	8.75
Group 8	19.65	8.75
Group 9	21.15	8.75

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS:		
Group 1	$17.55	$4.29
Group 2	17.63	4.29
Group 3	17.65	4.29
Group 4	17.66	4.29
Group 5	17.67	4.29
Group 6	17.68	4.29
Group 7	17.70	4.29
Group 8	17.72	4.29
Group 9	17.73	4.29
Group 10	17.75	4.29
Group 11	17.76	4.29
Group 12	17.80	4.29
Group 13	17.81	4.29
Group 14	17.82	4.29
Group 15	17.85	4.29
Group 16	17.86	4.29
Group 17	17.87	4.29
Group 18	17.89	4.29
Group 19	17.90	4.29
Group 20	17.91	4.29
Group 21	17.96	4.29
Group 22	17.99	4.29
Group 23	18.00	4.29
Group 24	18.09	4.29
Group 25	18.10	4.29
Group 26	18.10	4.29
Group 27	18.13	4.29
Group 28	18.15	4.29
Group 29	18.19	4.29
Group 30	18.20	4.29
Group 31	18.23	4.29
Group 32	18.29	4.29
Group 33	18.22	4.29
Group 34	18.44	4.29
Group 35	18.54	4.29
Group 36	18.59	4.29
Group 37	18.74	4.29
Group 38	18.89	4.29

WELDERS - receive rate prescribed for craft performing operation to which welding is incidental

FOOTNOTES:

a. Employer contributes 8% of basic hourly rate for over 5 years' service, and 6% of basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit. Six Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Christmas Day

b. Employer contributes $.32 per hour to Holiday Fund plus $.22 per hour to Vacation Fund for the first year of employment; 1 year but less than 5 years $.42 per hour to Vacation Fund; 5 years but less than 10 years $.60 per hour to Vacation Fund; over 10 years $.80 per hour to Vacation Fund

AREA DESCRIPTIONS

BRICKLAYERS; STONEMASONS:
Area 1: Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo, Siskiyou, Solano, Sonoma, and Trinity Cos.
Area 2: Alameda and Contra Costa Counties
Area 3: Fresno, Kings, Madera, Mariposa, and Merced Counties
Area 4: Butte, Colusa, El Dorado, Glenn, Lassen, Modoc, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Sutter, Tehama, Yolo, and Yuba Counties
Area 5: Monterey and Santa Cruz Counties
Area 6: San Benito and Santa Clara Counties
Area 7: Alpine, Amador, Calaveras, San Joaquin, Stanislaus, and Tuolumne Counties
Area 8: Tulare County

BRICK TENDERS:
Area 1: Amador, El Dorado, Nevada, Placer, Sacramento, and Yolo Cos.
Area 2: San Francisco and San Mateo Counties
Area 3: Fresno, Kings, Madera, and Tulare Counties
Area 4: Remaining Counties
Area 5: Marin County
Area 6: Alameda and Contra Costa Counties
Area 7: Santa Cruz County
Area 8: San Benito and Santa Clara Counties
Area 9: (Residential construction of 2 stories or less) Monterey and Napa Counties

CARPENTERS:
Area 1: Alameda, Contra Costa, Marin, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Solano and Sonoma Counties
Area 2: Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Mariposa, Mendocino, Merced, Modoc, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, and Yuba Counties
Area 3: (Residential) Calaveras, Mariposa, and Merced Counties
Area 4: Monterey and Santa Clara Counties
Area 5: (Residential) Del Norte and Humboldt Counties

AREA DESCRIPTIONS (Cont'd)

DRYWALL INSTALLERS/LATHERS:
Residential:
Area 1: Calaveras, Mariposa, Merced, and Tuolumne Counties

ELECTRICIANS:
Area 1: Alameda County
Area 2: Amador, Colusa, Sacramento, Sutter, Yolo, and Yuba Counties; Alpine, El Dorado, Nevada, Placer, and Sierra Counties (those portions west of the Sierra Mountain Watershed)
Area 3: Alpine, El Dorado, Nevada, Placer, and Sierra Counties (those portions east of the Main Watershed Divide)
Area 4: Butte and Glenn Counties; Lassen County (excluding the Sierra Army Depot (Herlong); Modoc, Plumas, Shasta, Siskiyou, Tehama and Trinity Counties
Area 5: Calaveras and San Joaquin Counties
Area 6: Contra Costa County
Area 7: Del Norte and Humboldt Counties
Area 8: Fresno, Kings, Madera, and Tulare Counties
Area 9: Lake, Marin, Mendocino, and Sonoma Counties
Area 10: Mariposa, Merced, Stanislaus, and Tuolumne Counties
Area 11: Monterey, San Benito, and Santa Cruz Counties
Area 12: Napa and Solano Counties
Area 13: Santa Clara County
Area 14: San Francisco County
Area 15: San Mateo County
Area 16: Sierra Army Depot (Herlong) in Lassen Counties

GLAZIERS:
Area 1: Alameda, Contra Costa, Monterey, Napa, San Benito, Santa Clara, and Santa Cruz Counties
Area 2: Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Lassen, Modoc, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Stanislaus, Sutter, Tehama, Tuolumne, Yolo, and Yuba Counties
Area 3: (Residential) Sutter and Yuba Counties
Area 4: (Residential) Amador, Calaveras, El Dorado, Nevada, Placer, Sacramento, San Joaquin, Solano, Tuolumne, and Yolo Counties
Area 5: Fresno, Madera, Mariposa, Merced, Kings, and Tulare Counties
Area 6: Del Norte and Humboldt Counties
Area 7: Lake, Marin, Mendocino, San Francisco, San Mateo, and Sonoma Counties

LINE CONSTRUCTION:
Area 1: Contra Costa County
Area 2: Del Norte, Modoc, and Siskiyou Counties:
Group 1: Cable Splicer, Leadman Pole Sprayer
Group 2: Lineman, Pole Sprayer, Heavy Line Equipment Man, Certified Lineman Welder
*Group 3: Tree Trimmer
Group 4: Line Equipment Man
Group 5: Head Groundman, Powderman, Jackhammer Man
*Group 6: Head Groundman (Chipper)
Group 7: Groundman
*Groups 3 and 6 receive BASE RATE (ZONE 1) ONLY (no Zone Differential)

AREA DESCRIPTIONS (Cont'd)

LINE CONSTRUCTION: (Cont'd)
Area 2: (Cont'd)
Zone Definitions: Zone 1: 0 to 3 miles radius from the geographical center of Alturos and Yreka, California
Zone 2: 3 to 20 miles radius
Zone 3: 20 to 35 miles radius
Zone 4: 35 to 50 miles radius
Zone 5: Over 50 miles radius
BASE RATE (ZONE 1) is paid when working out of employer's Permanent Shop
Area 3: Fresno, Kings, Madera, and Tulare Counties
Area 4: Calaveras and San Joaquin Counties
Area 5: Mariposa, Merced, Stanislaus, and Tuolumne Counties
Area 6: Monterey, San Benito, and Santa Cruz Counties
Area 7: Napa and Solano Counties
Area 8: Butte, Glenn, Lassen, Plumas, Shasta, Tehama, and Trinity Cos.
Area 9: Alameda County
Area 10: Amador, Colusa, Sacramento, Sutter, Yolo, and Yuba Counties; Alpine, El Dorado, Nevada, Placer, and Sierra Counties (those portions west of the Main Sierra Mountain Watershed)
Area 11: San Mateo County
Area 12: Humboldt County
Area 13: San Francisco County
Area 14: Santa Clara County
Area 15: Lake, Marin, Mendocino, and Sonoma Counties

MARBLE FINISHERS:
Area 1: Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo and Uba Counties, and the City and County of San Francisco, San Benito County

PAINTERS:
Area 1: Alpine, Amador, Calaveras, and San Joaquin Counties
Area 2: Fresno, Kings, Madera, and Tulare Counties
Area 3: Mariposa, Merced, Stanislaus, and Tuolumne Counties
Area 4: San Benito, San Mateo, and Santa Clara Counties
Area 5: Monterey and Santa Cruz Counties
Area 6: Lassen County (that portion that lies eastward of Highway #395, northward to and including Honey Lake); Lake Tahoe Area
Area 7: Lake, Marin, Mendocino, San Francisco, and Sonoma Counties
Area 8: Butte, Colusa, and Glenn Counties; Lassen County (excluding the extreme SE corner); Modoc, Plumas, Shasta, Siskiyou, Sutter, Tehama, Trinity, and Yuba Counties
Area 9: Alameda, Contra Costa, El Dorado, Napa, Nevada, Placer, Sacramento, Sierra, Solano, and Yolo Counties (excluding portions of Counties in the Lake Tahoe Area)
Area 10: Del Norte and Humboldt Counties

AREA DESCRIPTIONS (Cont'd)

PARKING LOT STRIPING WORK and/or HIGHWAY MARKERS:
Area 1: Fresno, Kings, and Tulare Counties
Area 2: Remaining Counties

PLASTERERS:
Area 1: Alameda and Contra Costa Counties
Area 2: San Francisco and San Mateo Counties
Area 3: Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Lassen, Modoc, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Yolo and Yuba Cos.
Area 4: Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, Solano, and Sonoma Counties
Area 5: San Benito, Santa Clara, and Santa Cruz Counties
Area 6: Fresno, Kings, Madera, and Tulare Counties
Area 7: Monterey County
Area 8: Mariposa, Merced, Stanislaus, and Tuolumne Counties

PLASTERERS' TENDERS:
Area 1: Alameda and Contra Costa Counties
Area 2: Fresno, Kings, Madera, and Tulare Counties
Area 3: San Francisco and San Mateo Counties
Area 4: Alpine, Amador, El Dorado, Nevada, Placer, Sacramento, Sierra and Yolo Counties
Area 5: Calaveras and San Joaquin Counties
Area 6: Marin County
Area 7: Monterey County
Area 8: San Benito, Santa Clara and Santa Cruz Counties
Area 9: Solano County
Area 10: Napa County

PLUMBERS:
Area 1: Alameda County
Area 2: Contra Costa County

PLUMBERS; STEAMFITTERS:
Area 1: Amador County (northern half); El Dorodo, Nevada, Sacramento, and Yolo Counties (excluding Lake Tahoe Area), Sierra County
Area 2: Lake Tahoe Area
Area 3: Marin, Mendocino, San Francisco, and Sonoma Counties
Area 4: Alpine County; Amador County (southern portion); Butte, Calaveras, Colusa, Fresno, Glenn, Kings, Lassen, Madera, Mariposa, Merced, Modoc, Monterey, Plumas, San Joaquin, Santa Cruz, Shasta, Sierra, Siskiyou, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, and Yuba Counties
Area 5: Lake, Napa, and Solano Counties
Area 6: Del Norte and Humboldt Counties
Area 7: San Benito and Santa Clara Counties
Area 8: San Mateo County

ROOFERS:
Area 1: Alameda and Contra Costa Counties
Area 2: Alpine, Calaveras, Mariposa, Merced, San Joaquin, Stanislaus, and Tuolumne Counties

AREA DESCRIPTIONS (Cont'd)

ROOFERS: (Cont'd)
Area 3: Butte, Colusa, El Dorado, Glenn, Lassen, Modoc, Placer, Plumas, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, and Yuba Counties
Area 4: Fresno, Kings, Madera, and Tulare Counties
Area 5: Lake, Marin, Mendocino, Napa, Solano, and Sonoma Counties
Area 6: Del Norte and Humboldt Counties
Area 7: Monterey and Santa Cruz Counties
Area 8: San Francisco and San Mateo Counties
Area 9: Amador, Sacramento, and Yolo Counties
Area 10: San Benito and Santa Clara Counties

SHEET METAL WORKERS:
Area 1: Alameda and Contra Costa Counties
Area 2: Alpine, Calaveras, and San Joaquin Counties
Area 3: Amador, Butte, Colusa, El Dorado, Glenn, Modoc, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sutter, Tehama, Yolo, and Yuba Counties
Area 4: Mariposa, Merced, Stanislaus, and Tuolumne Counties
Area 5: Monterey and San Benito Counties
Area 6: Del Norte, Humboldt, and Trinity Counties
Area 7: San Mateo County
Area 8: Fresno, Kings, Madera, and Tulare Counties
Area 9: San Francisco County
Area 10: Marin, Mendocino, Sonoma, and Lake Counties
Area 11: Santa Cruz Counties
Area 12: Santa Clara County
Area 13: Napa and Solano Counties

SOFT FLOOR LAYERS:
Area 1: Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, and Lassen Counties (excluding Honey Lake Area); Merced County (east of San Joaquin River); Plumas, Sacramento, San Joaquin, Shasta, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo, and Yuba Counties; El Dorado, Nevada, Placer, and Sierra Counties (those portions excluding Lake Tahoe Area)
Area 2: Honey Lake Area and Lake Tahoe Area
Area 3: Alameda, Contra Costa, Lake, Marin, Mendocino, Merced, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, and Sonoma Counties
Area 4: Del Norte and Humboldt Counties

SPRINKLER FITTERS:
Area 1: Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma Counties
Area 2: Remaining Counties

STEAMFITTERS:
Area 1: Alameda and Contra Costa Counties

AREA DESCRIPTIONS (Cont'd)

TERRAZZO WORKERS:
Area 1: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo, Siskiyou, Solano, Sonoma, and Trinity Counties
Area 2: Butte, Colusa, El Dorado, Glenn, Lassen, Modoc, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Sutter, Tehama, Yolo, and Yuba Counties
Area 3: San Benito and Santa Clara Counties

TILE SETTERS:
Area 1: Alameda, Butte, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Mateo, Santa Clara, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba Counties
Area 2: Alpine, Amador, Calaveras, San Joaquin, Stanislaus, and Tuolumne Counties

TERRAZZO WORKERS and TILE SETTERS:
Area 1: Fresno, Kings, Madera, Mariposa, Merced, and Tulare Counties
Area 2: Monterey and Santa Cruz Counties

TERRAZZO FINISHERS:
Area 1: Alameda, Alpine, Amador, Butle, Calaveras, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo and Yuba Counties, and the City and County of San Francisco, San Benito County

TILE FINISHERS:
Area 1: Alameda, Alpine, Amador, Butle, Calaveras, Coluia, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Joaquin, San Mateo, Sanata Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo and Yuba Counties, and the City and County of San Francisco

LABORERS

Area 1: Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Santa Clara Counties
Area 2: Remaining Counties

Group 1: Asphalt Ironers and Rakers; Asphalt Spreader Boxes (all types); Barko, Wacker and similar type Tampers; Buggymobile; Chainsaw, Faller, Logloader and Bucker; Compactors of all types; Concrete and Magnesite Mixer, 1/2 yd. and under; Concrete Pan Work; Concrete Saw; Concrete Sander; Cribber and/or Shoring; Cut Granite Curb Setter; Form Raisers; Slip Forms; Green Cutters, Headerboardmen, Hubsetters, Aligners; Jackhammer Operators; Jacking of Pipe over 12 inches; Jackson and similar type Compactors; Kettlemen, Potmen and Men applying asphalt, lay-kold, creosote, lime, caustic and similar type materials; Lagging, Sheeting, Whaling, Bracing, Trenchjacking, hand-guided Lagging Hammer; Magnesite, Epoxyresin, Fiberglass, Mastic Workers (wet or dry); Perma Curbs; Precast-manhole Setters; Cast-in-place Manhole Form Setters; Pressure Pipe Tester; Pavement Breakers and Spaders, including Tool Grinder; Pipelayers, Caulkers, Banders, Pipewrappers, Conduit Layers, Plastic Pipelayers; Post Hole Diggers, air, gas, and electric; Power Broom Sweepers; Power Tampers of all types (except as shown in Group 2); Ram Set Gun and Stud Gun; Riprap-stonepaver and Rock-slinger, including placing of sacked concrete and/or sand (wet or dry); Rotary Scarifier, Multiple Head Concrete Chipper; Davis Trencher, 300 or similar type (and all small Trenchers); Roto and Ditch Witch; Roto-tiller; Sandblasters, Potmen, Gunman, Nozzleman; Signalling and Rigging; Tank Cleaners; Tree Climbers; Vibrascreed, Bull Float in connection with Laborers' work; Vibrators; Dripak-it Machine; High Pressure Blow Pipe (1½" or over, 100 lbs. pressure and over); Hydro Seeder and similar type; Laser Beam in connection with Laborers' work

Group 1(a): Joy Drill Model TWM-2A; Gardener-Denver Model DH143 and similar type drills; Track Drillers; Jack Leg Drillers; Diamond Drillers; Wagon Drillers; Mechanical Drillers, all types regardless of type or method of power; Multiple Unit Drills; Blasters and Powdermen; all work of loading, placing and blasting of all power and explosives of whatever type regardless of method used for such loading and placing; High Scalers (including drilling of same); Tree Topper; Bit Grinder

Group 1(b): Sewer Cleaners receive an additional $4.00 per day, $5.00 per day on recently active large diameter sewers or sewer manholes

Group 1(c): Burning and Welding in connection with Laborers' work

Group 1(d): Repair Trackmen and Road Beds (cut and cover work of subway after the temporary cover has been placed)

Group 1(e): Laborers on general construction work on or in Bell Hole Footings and Shaft

Group 1(f): Wire Winding Machine in Connection with Guniting or Shotcrete - Aligner

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LABORERS - AREAS 1 and 2 (Cont'd)

Group 2: Asphalt Shovelers; Cement Dumpers and handling dry cement or gypsum; Choke-setter and Digger (clearing work); Concrete Bucket Dumper and Chuteman; Concrete Chipping and Grinding; Concrete Laborers (wet or dry); Chuck Tender; High Pressure Nozzleman, Adductors; Groutcrew; Hydraulic Monitor (over 100 lbs. pressure); Loading and unloading, carrying and hauling of all rods and materials for use in reinforcing concrete construction; Pittsburgh Chipper and similar type Brush Shredders; Sloper; Singlefoot, hand held, Pneumatic Tamper; All pneumatic, air, gas and electric tools not listed in Groups 1 through 1(f); Jacking of Pipe under 12 inches

Group 3: All Cleanup work of debris, grounds and buildings including but not limited to street cleaners; Cleaning and washing windows; Construction Laborers including Bridge and General Laborers; Dumpman; Load Spotter; Fire Watcher; Street Cleaners; Gardeners, Horicultural and Landscape Laborers; Jetting; Limbers; Brush Loaders; Pilers, Maintenance Landscape Laborers on new construction; Maintenance, Repair Trackmen and Road beds; Streetcar and Railroad Construction Track Laborers; Temporary air and water lines, Victaulic or similar; Tool Room Attendent; Fence Erectors; Guardrail Erectors; Pavement Markers (button setters)

Group 4: Brick Cleaners; Lumber Cleaners

GUNNITE

Group 1: Nozzleman (including Gunman, Potman); Rodmen, Groundman

Group 2: Reboundman

Group 3: General Laborers

TUNNEL and SHAFT WORK

Group 1: Diamond Driller; Groundman; Gunite and Shotcrete Nozzlemen; Rodmen; Shaft Work and Raise (below actual or excavated ground level)

LABORERS - AREAS 1 and 2 (Cont'd)

TUNNEL and SHAFT WORK (Cont'd)

Group 2: Bit Grinder; Blaster; Drillers, Powderman-heading; Cherry Pickermen - where car is lifted; Concrete Finisher in Tunnel; Concrete Screed Man; Grout Pumpman and Potman; Gunite and Shotcrete Gunmen and Potmen; Headermen; High Pressure Nozzleman; Miners - Tunnel, including Top and Bottom Man on Shaft and Raise Work; Nipper Nozzleman on slick line; Sandblaster-Potman (work assignment interchangeable); Steel Form Raisers and Setters; Timberman, Retimberman - wood or steel or substitute materials therefore; Tugger

Group 3: Cabletender; Chucktender; Powderman - Primer House; Vibratormen, Pavement Breakers

Group 4: Bull Gang - Muckers, Trackmen; Concrete Crew - includes rodding and spreading; Dumpmen (any method); Grout Crew Reboundmen; Swamper

WRECKING WORK

Group 1: Skilled Wrecker (removing and salvaging of sash, windows, doors, plumbing and electric fixtures)

Group 2: Semi-skilled Wrecker (salvaging of other building materials)

Group 3: General Laborer (includes all cleanup work, loading lumber, loading and burning of debris)

HOUSEMOVING

Group 1: Skilled Housemover

POWER EQUIPMENT OPERATORS
AREAS I and II

Group 1: Assistants to Engineers (Brakeman; Fireman; Heavy Duty Repairman Tender; Oiler; Deckhand; Signalman; Switchman; Tar Pot Fireman); Partsman (heavy duty repair shop parts room)

Group 2: Compressor Operator; Concrete Mixer (up to and including 1 yd.); Conveyor Belt Operator (tunnel); Fireman Hot Plant; Hydraulic; Monitor; Mechanical Conveyor (handling building materials); Mixer Box Operator (concrete plant); Pump Operator; Spreader Boxman (with screeds); Tar Pot Fireman (power agitated)

POWER EQUIPMENT OPERATORS (Cont'd)
AREAS I and II (Cont'd)

Group 3: Box Operator (bunker); Helicopter Radioman (Signalman); Motorman; Locomotive (30 tons or under); Oiler; Ross Carrier (construction job site); Rotomist Operator; Screedman (except asphaltic concrete paving); Self-propelled, automatically applied concrete curing machine (on streets, highways, airports and canals); Trenching Machine (maximum digging capacity 5 ft. depth); Tugger Hoist, single drum; Truck Crane Oiler; Boiler Tender

Group 4: Ballast Jack Tamper; Ballast Regulation; Ballast Tamper Multipurpose; Boxman (asphalt plant); Elevator Operator (inside); Fork Lift or Lumber Stacker (construction job site); Line Master; Material Hoist (1 drum); Shuttlecar; Tie Spacer; Towermobile

Group 5: Compressor Operator (over 2); Concrete Mixers (over 1 yd.); Concrete Pumps of Pumpcrete Guns; Generators; Grouting Machine; Pressweld (air operated); Pumps (over 1); Welding Machines (powered other than by electricity)

Group 6: BLH Lima Road Pactor or similar; Boom Truck or Dual Purpose A-Frame Truck; Concrete Batch Plants (wet or dry); Concrete Saws (self-propelled unit) on streets, highways, airports and canals; Drilling and Boring Machinery, vertical and horizontal (not to apply to Waterliners, Wagon Drills or Jackhammers); Gradesetter, Grade Checker (mechanical or otherwise); Highline Cableway Signalman; Locomotives (steam of over 30 tons); Maginnis Internal Full Slab Vibrator (on airports, highways, canals and warehouses); Mechanical Finishers (concrete) (Clary, Johnson, Bidwell Bridge Deck or similar types); Mechanical Burm, Curb and/or Curb and Gutter Machine, concrete or asphalt; Portable Crusher; Post Driver (M-1500 and similar); Power Jumbo Operator (setting slip forms, etc. in tunnels); Roller (except asphalt); Screedman (Barber-Greene and similar) (asphaltic concrete paving); Self-propelled Compactor (single engine); Self-propelled Pipeline Wrapping Machine, Perault, CRC, or similar types; Slip Forms Pumps (lifting device for concrete forms); Small Rubber Tired Tractor; Surface Heater; Self-propelled Power Sweeper; Self-propelled Tape Machine; Auger-type drilling equipment, up to and including 30 ft. depth digging capacity M.R.C.

Group 7: Concrete Conveyor or Concrete Pump, Truck or equipment mounted (boom length to apply); Concrete Conveyor, building site; Deck Engineers; Dual Drum Mixer; Fuller Kenyon Pump and similar types; Gantry Rider (or similar); Hydra-hammer (or similar); Material Hoist (2 or more drums); Mechanical Finishers or Spreader Machine (asphalt, Barber-Greene and similar); Mine or Shaft Hoist; Mixermobile; Pavement Breaker with or without Compressor Combination; Pipe Bending Machine (pipelines only); Pipe Cleaning Machine (tractor propelled and supported); Pipe Wrapping Machine (tractor propelled and supported); Refrigeration Plant; Roller Operator (finish asphalt); Self-propelled boom type lifting device (center mount) (10 tons or less M.R.C.); Self-propelled Elevating Grader Plane; Slusher Operator; Small Tractor (with boom); Soil Tester; Truck type Loader; Welding Machines (gasoline or diesel)

POWER EQUIPMENT OPERATORS (Cont'd)
AREAS I and II (Cont'd)

Group 8: Armor-Coater (or similar); Asphalt Plant Engineer; Cast-in-place Pipe Laying Machine; Combination Slusher and Motor Operator; Concrete Batch Plant (multiple units); Dozer; Heading Shield Operator; Heavy Duty Repairman and/or Welder; Ken Seal Machine (or similar); Kolman Loader; Loader (up to 2 yds.); Mechanical Trench Shield; Portable Crushing and Screening Plants; Push Cat; Rubber Tired Earth-moving Equipment (up to and including 45 cu. yds. "struck" M.R.C) (Euclids, T-Pulls, DW-10, 20, 21, and similar); Rubber Tired Dozer; Self-propelled Compactor with Dozer; Sheepfoot; Timber Skidder (rubber tired or similar equipment); Tractor drawn Scraper; Tractor; Trenching Machine; Tri-batch Paver; Tunnel Mole Boring Machine; Welder; Woods-mixer (and other similar Pugmill equipment)

Group 9: Canal Finger Drain Digger; Chicago Boom; Combination Mixer and Compressor (Gunite); Combination Slurry Mixer and/or Cleaner; Highline Cableway (5 tons and under); Lull Hi-lift or similar (20 ft. or over); Mucking Machine (rubber tired, rail or track type); Tractor (with boom) (D-6 or larger and similar)

Group 10: Boom-type Backfilling Machine; Bridge Crane; Cary-lift (or similar); Chemical Grouting Machine, truck mounted; Combination Backhoe and Loader (up to and including 1/2 cu. yd. M.R.C.); Derrick (2 operators required when swing engine remote from Hoist); Derrick Barges (except excavation work); Do-mor Loader; Adams Elegrader; Elevating Grader; Heavy Duty Rotary Drill Rig (including Caisson Foundation work and Euclid Loader and similar type; Robbins type drills; Koehring Skooper (or similar); Lift Slab Machine; (Vagtborg and similar types); Loader (2 yds. up to and including 4 yds.); Locomotive, 100 tons (single or multiple units); Multiple Engine Earthmoving Machine (Euclids, Dozers, etc.)(no tandem Scraper); Pre-stress Wire Wrapping Machine; Reservoir-debris Tug (self-propelled floating); Rubber-tired Scraper, Self-loading (paddle wheels, etc.); Shuttle Car (reclaim station); Single engine Scraper over 45 yds.; Soil Stabilizer (P & H or equal); Sub-grader (Gurrier or other automatic type); Tractor, Compressor Drill Combination; Track Laying type Earth Moving Machine (single engine with Tandem Scrapers); Train Loading Station; Trenching Machine, multi-engine with sloping attachment, Jeffco or similar; Vacuum Cooling Plant; Whirley Crane (up to and including 25 tons)

Group 10-A: Backhoe (Hydraulic)(up to and including 1 cu. yd. M.R.C.); Backhoe (cable)(up to and including 1 cu. yd. M.R.C.); Combination Backhoe and Loader (over 3/4 cu. yd. M.R.C.); Continuous Flight Tie Back Auger (Crane attached/separate controls); Cranes not over 25 tons, Hammerhead and Gantry; Gradalls (up to and including 1 cu. yd.); Power Blade Operator (single engine); Power Shovels, Clamshells, Draglines (up to and including 1 cu. yd. M.R.C.)(Long Boom Pay); Rubber-tired Scraper, self-loading (Paddle Wheel, twin engine); Self-propelled Boom-type lifting device (center mount)(over 10 tons up to and including 25 tons); CMI Dual Lane Auto Grader SP-30 or similar

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POWER EQUIPMENT OPERATORS (Cont'd)
AREAS I and II (Cont'd)

Group 11: Automatic Concrete Slip-form Paver (Gradesetter, Screedman); Automatic Railroad Car Dumper; Canal Trimmer with ditching attachments; Cary Lift, Campbell or similar, Continuous Flight Tie Back Auger (Crane attached, single controls); Cranes (over 25 tons up to and including 125 tons); Drott Travelift 650-A-1 or similar (45 ton or over); Euclid Loader when controlled from the Pullcat; Highline Cableway (over 5 tons); Loader (over 4 cu. yds., up to and including 12 cu. yds.); Miller Formless M-900 Slope Paver or similar (Grade Setter required); Multiple Engine Scraper (when used as Push Pull); Power Blade Operator (multi-engine); Power Shovels, Clamshells, Draglines, Backhoes, Gradalls (over 1 cu. yd. and up to and including 7 cu. yds. M.R.C., Long Boom Pay); Rubber-tired Earthmoving Machines (multiple propulsion power units and two or more Scrapers) (up to and including 75 cu. yds. Struck M.R.C.); Self-propelled Compactor Boom-type lifting device (center mount) (over 25 tons M.R.C.); Single engine Rubber-tired Earthmoving Machines (with Tandem Scrapers); Slip-form Paver (concrete or asphalt) (Screedman required); Tandem Cats; Tower Cranes Mobile (including rail mounted); Trencher (pulling attached shield); Tower Cranes, Universal Liebher and similar types (in the erection, dismantling and moving of equipment); Wheel Excavator (up to and including 750 cu. yds. per hour); Whirley Crane (over 25 tons); Multi-earthmoving Equipment (up to and including 75 cu. yds. "struck" M.R.C.); Truck mounted Hydraulic Crane when remote control equipped (over 10 tons up to and including 25 tons)

Group 11-A: Band Wagons (in conjunction with wheel excavator); Cranes (over 125 tons); Loader (over 12 cu. yds., up to and including 13 cu. yds.); Power Shovels, Clamshells, Backhoes, Gradalls, and Draglines (over 7 cu. yds. M.R.C.); Rubber-tired Multi-purpose Earth Moving Machines (2 units over 75 cu. yds. "struck" M.R.C.); Wheel Excavator (over 750 cu. yds. per hour)

Group 11-B: Loader (over 18 yards)

Group 11-C: Operator of Helicopter (when used in erection work); Remote controlled Earthmoving equipment

POWER EQUIPMENT OPERATORS (Cont'd)

DREDGING

AREA DEFINTIONS FOR SCHEDULES I and II

Four Centers designated: City Halls of Oakland, San Francisco, Sacramento and Stockton, California
Area 1: Up to 20 road miles from said Centers
Area 2: More than 20 road miles to and including 30 road miles from said Centers
Area 3: Outside of 30 road miles from said Centers
Area 4: An area extending 25 road miles from shoreline of Lake Tahoe

SCHEDULE I
CLAMSHELL and DIPPER DREDGING (New Construction)

Group 1: Bargeman; Deckhand; Fireman; Oiler

Group 2: Deck Engineers; Deck Mate

Group 3: Welder; Mechanic Welder; Watch Engineer

Group 4: Clamshell Operator (up to and including 7 cu. yds. M.R.C.) (Long Boom Pay)

Group 4A: Clamshell Operator (over 7 cu. yds. M.R.C.) (Long Boom Pay)

SCHEDULE II
HYDRAULIC SUCTION DREDGING and all other CLAMSHELL and DIPPER DREDGING

Group A-1: Bargeman; Deckhand; Leveehand; Fireman; Oiler

Group A-2: Winchman (Stern Winch on Dredge); Deck Engineer

Group A-3: Watch Engineer; Welder; Welder Mechanic; Deckmate; Booster Pump Operator (Mud Cat)

Group A-4: Leverman; Clamshell Operator

PILEDRIVING

Group 1: Assistant to Engineer (Fireman, Oiler, Deckhand)

Group 1A: Compressor Operator

Group 1B: Assistant to Engineer (Truck Crane Oiler)

Group 2A: Tugger Hoist Operator (hoisting material only)

Group 2B: Forklift Operator

POWER EQUIPMENT OPERATORS (Cont'd)
PILEDRIVING (Cont'd)

Group 2C: Compressor Operator (over 2); Generators; Pumps (over 4); Welding Machines (powered by other than electricity)

Group 2D: A-Frames

Group 3: Deck Engineer (Deck Engineer Operator required when deck engine is used); Self-propelled Boom-type lifting device (center mount) (10 ton capacity or less M.R.C.)

Group 3A: Heavy Duty Repairman and/or Welder

Group 4: Operating Engineer in lieu of Assistant to Engineer tending boiler or compressor attached to Crane Piledriver; Operator of Piledriving Rigs, Skid or Floating and Derrick Barges (Assistant to Engineer required); Operator of diesel or gasoline power Crane Piledriver (without boiler) up to and including 1 cu. yd. rating (Assistant to Engineer required); Self-propelled Boom-type lifting device (center mount) (over 10 tons up to and including 25 tons); Truck Crane Operator (up to and including 25 tons) (hoisting material only) (Assistant to Engineer required)

Group 5: Operator of diesel or gasoline powered Crane Piledriver (with boiler) over 1 cu. yd. rating (Assistant to Engineer required); Operator of Crane (with steam, flash boiler, pump or compressor attached) (Group 4 Engineer required); Operator of steam powered Crawler or Universal type Driver (Raymond or similar) (Assistant to Engineer required) Truck Crane Operator (over 25 tons) (hoisting material or performing Piledriving work) (Assistant to Engineer required); Self-propelled Boom-type lifting device (center mount) (over 25 tons) (Assistant to Engineer required)

Group 6: Cranes (over 125 tons) (Assistant to Engineer required)

STEEL ERECTION

Group 1: Assistant to Engineer (Oiler)

Group 2: Compressor Operator, Generator, gasoline or diesel driven (100 K.W. or over) (structural steel or tank construction only)

Group 3: Compressors, Generators and/or Welding Machines or combination (2 to 6) (Over 6 additional Engineers required) (structural steel or tank erection only)

Group 4: Heavy Duty Repairman, Tractor Operator

Group 4A: Combination Heavy Duty Repairman and/or Welder

POWER EQUIPMENT OPERATORS (Cont'd)
STEEL ERECTION (Cont'd)

Group 5: Boom Truck or Dual Purpose A-Frame Truck; Boom Cat; Chicago Boom; Crawler Cranes and Truck Cranes (15 tons M.R.C. or less) (Assistant to Engineer required); Self-propelled Boom type lifting device (center mount) (10 ton capacity or less M.R.C.); Single drum Hoist; Tugger Hoist

Group 6: Cary Lift, Campbell or similar; Crawler Cranes and Truck Cranes (over 15 tons M.R.C.) (Assistant to Engineer required); Derricks (2 Operators when swing engine remote from hoist); Gantry Rider (or similar equipment); Highline Cableway (Signalman required); Self-propelled Boom-type lifting device (center mount) (over 10 tons up to and including 25 tons); Tower Cranes Mobile including rail mounted (Assistant to Engineer required); Tower Cranes, Universal Liebher and similar types (in the erection, dismantling and moving of equipment there shall be an additional Operating Engineer)

Group 7: Self-propelled Boom-type lifting device (center mount) (over 25 tons) (Assistant to Engineer required)

Group 8: Cranes (over 125 tons) (Assistant to Engineer required)

Group 9: Helicopter Operator

TRUCK DRIVERS

Group 1: Bulk Cement Spreader (w/wo Auger, under 4 yds. water level); Bus or Manhaul Driver; Concrete Pump Machine; Concrete Pump Truck (when Flat Rack Truck is used appropriate Flat Rack rate shall apply); Dump (under 4 yds. water level); Dumpcrete Truck (under 4 yds. water level); Dumpster (under 4 yds. water level); Escort or Pilot Car Driver; Nipper Truck (when Flat Rack Truck is used appropriate Flat Rack rate shall apply); Pickups; Skids (Debris Box, under 4 yds. water level); Team Drivers; Trucks (Dry Pre-batch Concrete Mix, under 4 yds. water level); Warehousemen

Group 2: Teamster Oiler and/or Greaser and/or Service Man

Group 3: Bulk Cement Spreader (w/wo Auger, 4 yd. and under 6 yds. water level); Dump (4 yds. and under 6 yds. water level); Dumpcrete (4 yds. and under 6 yds. water level); Dumpster (4 yds. and under 6 yds. water level); Skids (Debris Box, 4 yds. and under 6 yds. water level); Single Unit Flat Rack (2 axle unit); Industrial Lift Truck (mechanical Tailgate); Trucks (Dry Pre-batch Concrete Mix, 4 yds. and under 6 yds. water level)

Group 4: Jetting Truck and Water Truck (under 2,500 gallons)

Group 5: Road Oil Trucks or Boot Man

TRUCK DRIVERS (Cont'd)

Group 6: Lift Jitneys, Fork Lift

Group 7: Transit Mix, Agitator (under 6 yds.)

Group 8: Fuel and/or Grease Truck Driver or Fuelman

Group 9: Vacuum Truck, under 3,500 gallons

Group 10: Scissor Truck; Single unit Flat Rack (2 axle unit); Industrial Lift Truck (mechanical tailgate); Small rubber tired tractor (when used within Teamsters' jurisdiction)

Group 11: Jetting Truck and Water Trucks, 2,500 gallons and under 4,000 gallons

Group 12: Combination Winch Truck with Hoist; Transit Mix Agitator (6 yds. and under 8 yds.)

Group 13: Vacuum Truck, 3,500 gallons and under 5,500 gallons

Group 14: Rubber-tired Muck Car (not self-loaded)

Group 15: Bulk Cement Spreader (w/wo Auger, 6 yds. and under 8 yds. water level); Dump (6 yds. and under 8 yds. water level); Dumpcrete (6 yds. and under 8 yds. water level); Dumpster (6 yds. and under 8 yds. water level); Skids (Debris Box, 6 yds. and under 8 yds. water level); Trucks (Dry Pre-batch Concrete Mix, 6 yds. and under 8 yds. water level)

Group 16: A-Frame, Winch Truck; Buggymobile; Jetting and Water Truck (4,000 gallons and under 5,000 gallons); Rubber tired Jumbo

Group 17: Heavy Duty Transport (high bed)

Group 18: Ross Hyster and similar Straddle Carrier

Group 19: Transit Mix Agitator (8 yds. through 10 yds.)

Group 20: Vacuum Truck (5,500 gallons and under 7,500 gallons)

Group 21: Jetting Truck and Water Truck (5,000 gallons and under 7,000 gallons)

Group 22: Combination Bootman and Road Oiler

Group 23: Transit Mix Agitator (over 10 yds. through 12 yds.)

Group 24: Bulk Cement Spreader (w/wo Auger, 8 yds. and including 12 yds. water level); Dump (8 yds. and including 12 yds. water level); Dumpcrete (8 yds. and including 12 yds. water level); Self-propelled Street Sweeper with self-contained refuse bin; Skids (Debris Box, 8 yds. and including 12 yds. water level); Snow Go and/or Snow Plow; Truck (Dry Pre-batch Concrete Mix, 8 yds. and including 12 yds. water level)

TRUCK DRIVERS (Cont'd)

Group 25: Heavy Duty Transport (Gooseneck Lowbed)

Group 26: Transit Mix Agitator (over 12 yds. through 17 yds.)

Group 27: Ammonia Nitrate Distributor Driver and Mixer; Bulk Cement Spreader (w/wo Auger, over 12 yds. and including 18 yds. water level); Dump (over 12 yds., and including 18 yds. water level); Dumpcrete over 12 yds. and including 18 yds. water level); Dumpster (over 12 yds. and including 18 yds. water level); Truck (Dry Pre-batch Concrete Mix, over 12 yds. and including 18 yds. water level)

Group 28: Double Gooseneck (7 or more axles); Heavy Duty Transport Tiller Man

Group 29: P.B. or similar type self-loading Truck

Group 30: Transit Mix Agitator (over 14 yds. through 16 yds.)

Group 31: Bulk Cement Spreader (w/wo Auger, over 18 yds. and including 24 yds. water level); Combination Dump and Dump Trailer; Dump (over 18 yds. and including 24 yds. water level); Dumpcrete (over 18 yds. and including 24 yds. water level); Dumpster (over 18 yds. and including 24 yds. water level); Skid (Debris Box, over 18 yds. and including 24 yds. water level); Transit Mix Agitator (over 12 yds. through 16 yds.); Trucks (Dry Pre-batch Concrete Mix, over 18 yds. and including 24 yds. water level)

Group 32: Bulk Cement Spreader (w/wo Auger, over 24 yds. and including 35 yds. water level); Dump (over 24 yds. and including 35 yds. water level); Dumpcrete (over 24 yds. and including 35 yds. water level); Dumpster (over 24 yds. and including 35 yds. water level); DW 10's, 20's, 21's and other similar Cat type, Terra Cobra, LeTournapulls, Tournarocker, Euclid and similar type equipment when pulling Fuel and/or Grease Tank Trailers or other misc. Trailers; Skids (Debris Box, over 24 yds. and including 35 yds. water level); Trucks (Dry Pre-batch Concrete Mix, over 24 yds. and including 35 yds water level)

Group 33: Truck Repairman

Group 34: Bulk Cement Spreader (w/wo Auger, over 35 yds. and including 50 yds. water level); Dump (over 35 yds. and including 40 yds. water level); Dumpcrete (over 35 yds. and including 50 yds. water level); Dumpster (over 35 yds. and including 50 yds. water level); Skids (Debris Box, over 35 yds. and including 50 yds. water level); Trucks (Dry Pre-batch Concrete Mix, over 35 yds. and including 50 yds. water level)

Group 35: DW 10's 20's, 21's and other similar Cat type, Terra Cobra, LeTournapulls, Tournarocker, Euclid and similar type equipment when pulling Aqua/Pak or Water Tank Trailers

TRUCK DRIVERS (Cont'd)

Group 36: Bulk Cement Spreader (w/wo Auger, over 50 yds. and under 65 yds. water level); Dump (over 50 yds. and under 65 yds. water level); Dumpcrete (over 50 yds. and under 65 yds. water level); Dumpster (over 50 yds. and under 65 yds. water level); Helicopter Pilot (when transporting men or materials); Skids (Debris Box, over 50 yds. and under 65 yds. water level); Trucks (Dry Pre-batch Concrete Mix, over 50 yds. and under 65 yds. water level)

Group 37: Bulk Cement Spreader (w/wo Auger, over 65 yds. and including 80 yds. water level); Dump (65 yds. and including 80 yds. water level); Dumpcrete (over 65 yds. and including 80 yds. water level); Dumpster (over 65 yds. and including 80 yds. water level); Skids (Debris Box, 65 yds. and including 80 yds. water level); Trucks (Dry Pre-batch Concrete Mix, 65 yds. and including 80 yds. water level)

Group 38: Bulk Cement Spreader (w/wo Auger, over 80 yds. and including 95 yds. water level); Dump (over 80 yds. and including 95 yds. water level); Dumpcrete (over 80 yds. and including 95 yds. water level); Dumpster (over 80 yds. and including 95 yds. water level); Skids (Debris Box, over 80 yds. and including 95 yds. water level); Trucks (Dry Pre-batch Concrete Mix, over 80 yds. and including 95 yds. water level)

AREA DESCRIPTIONS
FOR
POWER EQUIPMENT OPERATORS
AREAS I and II

**AREA I: All areas included in the description defined below which is based upon Township and Range Lines of AREAS I and II.

Commencing in the Pacific Ocean on the extension of the Southerly line of Township 19S.
Thence Easterly along the Southerly line to Township 19S, crossing the Mt. Diablo Meridian to the S.W. corner of Township 19S, range 6E, Mt. Diablo Base Line and Meridian,
Thence Southerly to the S.W. corner of township 20S, range 6E,
Thence Easterly to the S.W. corner of township 20S, range 13E,
Thense Southerly to the S.W. corner of township 21S, range 13E,
Thence Easterly to the S.W. corner of township 21S, range 17E,
Thence Southerly to the S.W. corner of township 22S, range 17E,
Thence Easterly to the S.E. corner of township 22S, range 17E,
Thence Southerly to the S.W. corner of township 23S, range 18E,
Thence Easterly to the S.E. corner of township 23S, range 18E,
Thence Southerly to the S.W. corner of township 24S, range 19E, falling on the Southerly Line of Kings County, thence Easterly along the Southerly Boundary of Kings County and the Southerly Boundary of Tulare County, to the S.E. corner of township 24S, range 29E,

AREA DESCRIPTIONS (Cont'd)
FOR
POWER EQUIPMENT OPERATORS
AREAS I and II

Thence Northerly to the N.E. corner of township 21S, range 29E,
Thence Westerly to the N.W. corner of township 21S, range 29E,
Thence Northerly to the N.E. corner of township 13S, range 28E,
Thence Westerly to the N.W. corner of township 13S, range 28E.
Thence Northerly to the N.E. corner of township 11S, range 27E,
Thence Westerly to the N.W. corner of township 11S, range 27E,
Thence Northerly to the N.E. corner of towhship 10S, range 26E,
Thence Westerly to the N.W. corner of township 10S, range 26E,
Thence Northerly to the N.E. corner of township 9S, range 25E,
Thence Westerly to the N.W. corner of township 9S, range 25E,
Thence Northerly to the N.E. corner of township 8S, range 24E,
Thence Westerly to the N.W. corner of township 8S, range 24E,
Thence Northerly to the N.E. corner of township 6S, range 23E,
Thence Westerly to the S.E. corner of township 5S, range 19E,
Thence Northerly to the S.E. corner of township 5S, range 19E,
Thence Westerly to the N.W. corner of township 5S, range 19E,
Thence Northerly to the N.E. corner of township 3S, range 18E,
Thence Westerly to the N.W. corner of township 3S, range 18E,
Thence Northerly to the N.E. corner of township 2S, range 17E,
Thence Westerly to the N.W. corner of township 2S, range 17E,
Thence Northerly crossing the Mt. Diablo Baseline to the N.E. corner of township 2N, range 16E,
Thence Westerly to the N.W. corner of township 2N, range 16E,
Thence Northerly to the N.E. corner of township 3N, range 15E,
Thence Westerly to the N.E. corner of township 3N, range 15E,
Thence Northerly to the N.E. corner of township 4N, range 14E,
Thence Westerly to the N.W. corner of township 4N, range 14E,
Thence Northerly to the N.E. corner of township 5N, range 13E,
Thence Westerly to the N.E. corner of township 5N, range 13E,
Thence Northerly to the N.E. corner of township 10N, range 12E,
Thence Easterly to the S.E. corner of township 11N, range 14E,
Thence Northerly to the N.E. corner of township 11N, range 14E,
Thence Westerly to the N.E. corner of township 11N, range 14E,
Thence Northerly to the N.E. corner of township 15N, range 14E,
Thence Easterly to the S.E. corner of township 16N, range 14E,
Thence Northerly to the N.E. corner of township 16N, range 14E,
Thence Easterly to the S.E. corner of township 17N, range 14E,
Thence Southerly to the S.W. corner of township 14N, range 14E,
Thence Easterly to the S.E. corner of township 14N, range 15E,
Thence Southerly to the S.W. corner of township 13N, range 16E,
Thence Easterly to the S.E. corner of township 13N, range 16E,
Thence Southerly to the S.W. corner of township 12N, range 17E,
Thence Easterly along the Southern Line to township 12N to the Eastern Boundary of the State of California, to the State of California to the N.E. corner of township 17N, range 18E,
Thence Westerly to the N.W. corner of township 17N, range 11E,
Thence Northerly to the N.E. corner of township 20N, range 10E,

AREA DESCRIPTIONS (Cont'd)
FOR
POWER EQUIPMENT OPERATORS
AREAS I and II

Thence Westerly to the N.W. corner of township 20N, range 20E,
Thence Northerly to the N.E. corner of township 21N, range 9E,
Thence Westerly to the N.W. corner of township 21N, range 9E,
Thence Northerly to the N.E. corner of township 22N, range 8E,
Thence Westerly to the N.W. corner of township 27N, range 8E,
Thence Northerly to the S.W. corner of township 27N, range 8E,
Thence Easterly to the S.E. corner of township 27N, range 8E,
Thence Northerly to the N.E. corner of township 28N, range 8E,
Thence Westerly to the N.W. corner of township 28N, range 7E,
Thence Northerly to the N.E. corner of township 30N, range 6E,
Thence Westerly to the N.W. corner of township 30N, range 1E,
Thence Northerly along the Mt. Diablo Meridian to the N.E. corner of Township 34N, range 1W,
Thence Westerly to the N.W. corner of township 34N, range 6W,
Thence Southerly to the N.E. corner of township 32N, range 7W,
Thence Westerly to the N.W. corner of township 32N, range 7W,
Thence Southerly to the S.W. corner of township 30N, range 7W,
Thence Easterly to the S.E. corner of township 30N, range 7W,
Thence Southerly to the S.W. corner of township 16N, range 6W,
Thence Easterly to the S.E. corner of township 16N, range 6W,
Thence Southerly to the S.W. corner of township 14N, range 5W,
Thence Westerly to the S.E. corner of township 14N, range 7W,
Thence Northerly to the N.E. corner of township 14N, range 7W,
Thence Westerly to the N.W. corner of township 14N, range 7W,
Thence Northerly to the N.E. corner of township 15N, range 8W,
Thence Westerly to the S.E. corner of township 16N, range 12W,
Thence Northerly to the N.E. corner of township 16N, range 12W,
Thence Westerly to the N.W. corner of township 16N, range 12W,
Thence Northerly to the N.E. corner of township 18N, range 12W,
Thence Westerly to the N.W. corner of township 18N, range 14W,
Thence Southerly to the S.W. corner of township 18N, range 14W,
Thence Easterly to the S.E. corner of township 18N, range 14W,
Thence Southerly to the S.W. corner of township 16N, range 13W,
Thence Westerly to the N.W. corner of township 15N, range 14W,
Thence Southerly to the S.W. corner of township 14N, range 14W,
Thence Easterly to the S.E. corner of township 17N, range 14W,
Thence Southerly to the S.W. corner of township 13N, range 13W,
Thence Easterly to the S.E. corner of township 13N, range 13W,
Thence Southerly to the S.W. corner of township 11N, range 12W,
Thence Easterly to the S.E. corner of township 11N, range 12W,
Thence Southerly along the Eastern Line to range 12W, to the Pacific Ocean excluding that portion of Northern California within Santa Clara County included within the following line:
Commencing at the N.W. corner of township 6S, range 3E, Mt. Diablo Baseline and Meridian:
Thence in a Southerly direction to the S.W. corner of township 7S, range 3E,
Thence in a Easterly direction to the S.E. corner of township 7S, range 4E,
Thence in a Northerly direction to the N.E. corner of township 6S, range 4E,

AREA DESCRIPTIONS (Cont'd)
for
POWER EQUIPMENT OPERATORS
AREAS I and II

Thence in a Westerly direction to the N.W. corner of township 6S, range 3E, to the point of beginning which portion is a part of Area 2.

AREA 1: also includes that portion of Northern California within the following lines:
Commencing in the Pacific Ocean on a extension of the Southerly line to township 2N, Humboldt Baseline and Meridian:
Thence Easterly along the Southerly line to Township 2N, to the S.W. corner of Township 2N, range 1W,
Thence Southerly to the S.W. corner of township 1N, range 1W,
Thence Easterly along the Humboldt Baseline to the S.W. corner of township 1N, range 2E,
Thence Southerly to the S.W. corner of township 2S, range 2E,
Thence Easterly to the S.E. corner of township 2S, range 2E,
Thence Southerly to the S.W. corner of township 4S, range 3E,
Thence Easterly to the S.E. corner of township 4S, range 3E,
Thence Northerly to the N.E. corner of township 2S, range 3E,
Thence Westerly to the N.W. corner of township 2S, range 3E,
Thence Northerly crossing the Humboldt Baseline to the S.W. corner of township 1N, range 3E,
Thence Easterly along the Humboldt Baseline to the S.E. corner of township 1N, range 3E,
Thence Northerly to the N.E. corner of township 9N, range 3E,
Thence Westerly to the N.W. corner of township 9N, range 2E,
Thence Northerly to the N.E. corner of township 10N, range 1E,
Thence Westerly along the Northerly line to township 10N, into the Pacific Ocean.

AREA I: also includes that portion of Northern California included within the following lines:
Commencing at the Northerly boundary of the State of California at the N.W. corner of township 48N, range 7W, Mt. Diablo Baseline and Meridian:
Thence Southerly to the S.W. corner of township 44N, range 7W,
Thence Easterly to the S.E. corner of township 44N, range 7W,
Thence Southerly to the S.W. corner of township 43N, range 6W,
Thence Easterly to the S.E. corner of township 43N, range 5W,
Thence Northerly to the N.E. corner of township 48N, range 5W, on the Northerly boundary of the State of California,
Thence Westerly along the Northerly boundary of the State of California to the point of beginning.

AREA II: All areas not inlcuded within AREA I as defined.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii))

SUPERSEDEAS DECISION

STATE: KENTUCKY

COUNTY: FORT CAMPBELL (CHRISTIAN COUNTY, KY. & MONTGOMERY CO., TN

DECISION NUMBER: KY84-1010

DATE: DATE OF PUBLICATION

Supersedes Decision Number KY82-1060, dated October 8, 1982 in 47 FR 44668

DECSRIPTION OF WORK: BUILDING CONSTRUCTION PROJECTS (does not include single family homes and apartments up to and including four (4) stories).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$16.15	2.81
BOILERMAKERS	18.05	3.175
BRICKLAYERS, STONE MASONS, MARBLE MASONS, TILE SETTERS, TERRAZZO WORKERS, CEMENT MASONS & PLASTERERS	13.75	1.75
CARPENTERS, LATHERS, & SOFT FLOOR LAYERS	14.00	2.13
ELECTRICIANS:		
KENTUCKY PORTION:		
Industrial (*See Scope of Work):		
Wireman	15.84	.85+ 13⅛%
Cable Splicer	16.09	.85+ 13⅛%
Commercial (*See Scope of Work):		
Wireman	12.50	.85+ 13⅛%
Cable Splicer	12.75	.85+ 13⅛%
TENESSEE PORTION:		
Wireman	14.10	1.05+ 3⅛%
Cable Splicer	14.35	1.05+ 3⅛%
ELEVATOR CONSTRUCTORS:		
Mehcanics	12.44	2.69 +a
Helpers	8.71	2.69 +a
Probationary Helpers	6.22	
GLAZIERS	12.50	1.12+b
IRONWORKERS	12.35	2.17
LABORERS:		
Group 1	10.75	2.00
Group 2	10.90	2.00
Group 3	11.25	2.00
MILLWRIGHTS & PILEDRIVERMEN	14.50	2.13

	Basic Hourly Rates	Fringe Benefits
PAINTERS:		
Industiral - (applies to power plants, water & sewage treatment plants & any industrial manufacturing plant that engages in the producing of a project; & related site facilities):		
Brush & Roller	11.35	1.55
Spray & Drywall Finishing	11.60	1.55
Structural Steel, Swing Stage & Chair, Motor Stage	11.70	1.55
Paperhanger	11.85	1.55
Sandblaster	12.60	1.55
Commercial (all other building construction):		
Brush	9.75	1.55
Spray, Sandblast, Boswain Chair or heights over 50'	10.25	1.55
PLUMBERS & PIPEFITTERS	14.14	1.89
POWER EQUIPMENT OPERATORS:		
Kentucky Portion:		
CLASS A	14.97	2.18
CLASS B	12.23	2.13
CLASS C	11.46	2.18
Tennessee Portion:		
CLASS A	11.45	1.65
CLASS B	10.78	1.65
CLASS C	10.10	1.65
CLASS D	9.56	1.65
ROOFERS	10.60	1.46
SHEET METAL WORKERS	16.03	1.14
SPRINKLER FITTERS:		
Kentucky Portion	16.47	3.23
Tennessee Portion	14.57	3.23
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.		

CLASSIFICATION DEFINITIONS - LABORERS:

Group 1 - General Laborers, Wrecking Labor on buildings, Clearing right-of-way & building site, Carpenter Tender, Truck Spotter & Dumper, Axe & Cross Cut Saw Filer, Concrete Pudler & Form Stripper.

Group 2 - All power driven tools, Hod Carrier, Mason Tender, Finisher Tender, Mortar Mixer, Jackhammer, Vibrator, Wagon Drill, Core Drill, Test Drill, Well Drill Concrete Pump Machine, Tunnel Boring Machine, Men in tunnel and crib ditch work, Signal Men, Riprap Rock Setter & Handler, Asphalt Raker, Tamper & Smoother, Pipe Layer, Grout Pump Men, Chain Saw, Pipe Clearing, Doping & Wrapping, Swamper & Straight Cable Hooking, Cement Gun, Grade Checker Machine Excavating, Batch Plant Scale Man, Sand Hog Free Air, Sand Hog Compressed Air, Cutting Torch Man on salvage work, Road Form Setter, Brick Slinger, Hand Spiker, Power Buggy, Handling of creosote material, Sandblaster, Curing of concrete & apply hardener, Air & Gas Tamper, Concrete Saw, Power Post Hole Digger & Green Cut Man on concrete work.

Group 3 - Powderman, Blaster.

CLASSIFICATION DEFINITIONS - POWER EQUIPMENT OPERATORS (KENTUCKY PORTION)

Class A - Auto Patrol, Batcher Plant, Bituminous Paver, Cable Way, Central Compressor Plant, Clamshell, Concrete Mixer (21 cu. ft. or over), Concrete Pump, Crane, Crusher Plant, Derrick, Derrick Boat, Ditching & Trenching Machine, Dragline, Dredge Operator, Dredge Engineer, Elevating Grader & all types of Loaders, Hoe type Machine, Hoist (1-drum when used for stack or chimney construction or repair), Hoisting Engine (2-drums or more), Locomotive, Motor Scraper, Carry-all Scoop, Bulldozer, Heavy Duty Welder, Mechanic, Orangepeel Bucket, Pile Driver, Power Blade, Motor Grader, Roller (bituminous), Scarifier, Shovel, Tractor Shovel, Truck Crane, Winch Truck, Push Dozer, High Lift, Fork Lift (regardless of lift height & except when used for masonry construction), All types of Boom Cats, Core Drill, Hopto, Tow or Push Boat, A-Frame Winch Truck, Concrete Paver, Gradeall, Hoist, Hyster, Pumpcrete, Ross Carrier, Boom, Tail Boom, Rotary Drill, Hydro Hammer, Mucking Machine, Rock Spreader attached to equipment, Scoopmobile, KeCal Loader, Tower Cranes (French, German & other types), Hydro Crane, Backfiller, Gurries, Sub-Grader.

Class B - All Air Compressors (over 900 CFM), Bituminous Mixer, Joint Sealing Machine, Concrete Mixer (under 21 cu. ft.) Form Grader, Roller (rock), Tractor (50 HP & over), Bull Float, Finish Machine, Outboard Motor Boat, Flexplane, Fireman, Boom type Tamping Machine, Truck Crane Oiler, Greaser on grease facilities servicing heavy equipment, Switchman or Brakeman, Mechanic Helper, Whirley Oiler, Self-Propelled Compactor, Tractair & Road Widening Trencher, Farm Tractor with attachments (except Backhoe, High Lift & End Loader), Elevator (when used to hoist building materials), Hoisting Engine (1-drum or buck hoist), Fork Lift (when used for for masonry construction), Well Points Grout Pump, Throttle-Valve Man, Tugger, Electric Vibrator Compactor.

Class C - Bituminous Distributor, Cement Gun, Conveyor, Mud Jack, Paving Joint Machine, Roller (earth), Tamping Machine, Tractors (under 50 HP), Vibrator, Oiler, Concrete Saw, Burlap & Curing Machine, Hydro-Seeder, Power Form Handling Equipment, Deckhand Steersman, Hydraulic Post Driver, Drill Helper,

CLASSIFICATION DEFINITIONS - POWER EQUIPMENT OPERATORS (TENNESSEE PORTION)

Class A - Shovel, backhoe, dragline, crane, derrick, gentry, gradeall, winches with boom, motor patrol, trenching machine (18" or over), pile driver, tug boat operator, mechanic, fork lift, central mixing plant, locomotive engineer, straddle carrier, core drill, tower crane, hydro-crane, Austin Western & all similar type crane, drilling of piling (all types), tugger, hoist (2-drums or more), earth freezing equipment, side-boom, dredge operator & engineer, hopto, pump crete, mucking machine, cableway, finishing machine, central compressor, derrick boat, concrete pump, welders, helicopters, de-waterting system (all types), sweeper, bulldozer, pan, pull, scraper, traxcavator, front end loader, concrete placing machine

Class B - Trenching machine (18" or smaller), tandem roller, paver, mixer mobile, backfiller, blade grader, dinkey operator, elevating grader, winch operated from truck & tractor without boom, distributor bituminous surface, hoist (1-drum), mixer, grout pump, motor boat, switchman, brake man, elevator earth compactor.

Class C - Locomotive fireman on boiler, air compressor (sationary), earth drill, scale operator, motor crane driver & oiler, pump (4" & larger), oiler on gantrey, greaser, drill helper.

Class D - Air compressor, mechanic helper, firemen (low pressure pump under 4"), oiler, welding machine operator, deckhand.

*SCOPE OF WORK

ELECTRICIANS - KENTUCKY PORTION

Commercial - consists of alterations, renovations and new construction on the following structures:

1) Elementary, middle & high schools, 2) churches, 3) restaurants, 4) warehouses (limited to 50,000 sq. ft. or less, 5) free standing small commercial buildings - A) service station, B) convenience stores, C) launderettes, D) one & two story motels

Industrial - All other building construction

FOOTNOTES:

a. Seven Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; Christmas Day; Vacation Pay Credit: Employer contributies 8% of the basic hourly rate of employees with 5 years or more of service, or 6% for employees with 6 months to 5 years.

b. Six Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Christmas Day.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Massachusetts COUNTY: Worcester
DECISION NUMBER: MA84-3008 DATE: Date of Publication
Supersedes Decision Number MA83-3049 dated November 18, 1983, in 48 FR 52559.
DESCRIPTION OF WORK: Building construction Projects (including Residential Projects) Heavy and Highway construction Projects

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	18.23	2.67+ a
BOILERMAKERS	18.16	3.441
BRICKLAYERS; CEMENT MASONS; PLASTERERS; and STONEMASONS:		
Area 1	14.05	4.24
Area 2	16.16	4.42
Area 3	18.06	2.52
Area 4	17.05	2.80
CARPENTERS; LATHERS; SOFT FLOOR LAYERS:		
Area 1	15.25	2.87
Area 2	15.86	3.60
ELECTRICIANS:		
Area 1	15.83	3.78+ 3%
Residential (Single Family Housing)	12.00	2.03+ 3%
Area 2	15.90	4.27+ 3%
Residential (Single Family Housing)	11.75	2.27+ 3%
Area 3	16.00	1.81+ 3%
Residential (Single Family Housing)	12.00	1.84+ 3%
ELEVATOR CONSTRUCTORS:		
Mechanics	16.71	3.00+ b+c
Helpers	11.70	3.00+ b+c
Probationary Helpers	8.355	
GLAZIERS:		
Area 1	14.12	3.32
Area 2	17.30	3.45
IRONWORKERS	16.65	4.25
LABORERS:		
BUILDING CONSTRUCTION:		
Group 1	13.20	2.75
Group 2	13.45	2.75
Group 3	13.70	2.75
Group 4	13.95	2.75
Group 5	14.20	2.75

	Basic Hourly Rates	Fringe Benefits
WRECKING:		
Group 1	9.95	2.80
Group 2	13.05	2.80
Group 3	13.15	2.80
Group 4	13.30	2.80
Group 5	13.55	2.80
Group 6	13.80	2.80
HEAVY & HIGHWAY CONSTRUCTION:		
Group 1	13.20	2.80
Group 2	13.45	2.80
Group 3	13.95	2.80
Group 4	14.20	2.80
Tunnels, Caisson and Cylinder Work in Compressed Air:		
Group 5-A	18.70	2.80
Group 5-B	20.20	2.80
Group 5-C	20.35	2.80
Group 5-D	20.43	2.80
Group 5-E	20.93	2.80
Free Air Operation: Shield driven and Liner Plate in Free Air:		
Group 6-A	14.50	2.80
Group 6-B	13.65	2.80
Cleaning Concrete and Caulking Tunnel (both new and existing):		
Group 6-C	13.65	2.80
Group 6-D	13.975	2.80
Rock shaft, Concrete Lining of same and Tunnel in Free Air:		
Group 6-E	13.40	2.80
Group 6-F	13.55	2.80
Group 6-G	13.65	2.80
Group 6-H	14.50	2.80
OPEN AIR CAISSON, UNDERPINNING and TEST BORING INDUSTRIES:		
Open Air Caisson, Underpinning Work and Boring Crew:		
Group 1-A	13.20	2.80
Group 1-B	13.95	2.80
Test Boring:		
Group 2-A	13.20	2.80
Group 2-B	14.07	2.80

DECISION NO. MA84-3008	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION		
Line	17.50	2.10+ 4.375% +d
Equipment Operator	14.88	2.10+ 4.375% +d
Driver Groundman	14.00	2.10+ 4.375% +d
Groundman	9.63	2.10+ 4.375% +d
MARBLE, TILE and TERRAZZO WORKERS:		
Area 1	16.50	3.45
MARBLE & TILE FINISHERS	15.04	2.85
TERRAZZO FINISHERS	17.85	1.50
MILLWRIGHTS	16.90	4.25
PAINTERS:		
Areas 1, 2, and 3:		
Sign Painters, Erectors and Fabricators	13.00	1.84
Area 1:		
Brush and Tapers	13.56	2.89
Spray and Sandblasting	17.43	2.89
Swing and chair work and steel riding under 40 feet	13.75	2.89
Swing and chair work and steel riding 40 feet and over	14.06	2.89
Area 2:		
New Commercial Work		
Brush	14.30	2.68
Spray and Sandblast	15.30	2.68
Steel	15.55	2.68
Repaints & Residential:		
Brush	13.75	2.68
Spray and Sandblast	14.75	2.68
Steel	15.00	2.68
Area 3:		
Brush	16.08	3.15
Wall Coverings	16.33	3.15
Spray; Sandblasting	17.08	3.15
Steel	18.20	3.15
Repaint	13.67	3.15
Residential	12.06	3.15
PILEDRIVERMEN	16.90	3.20
PLUMBERS and PIPEFITTERS:		
Area 1	15.50	6.13
Area 2	15.08	3.70
Area 3		
Plumbers	18.33	2.35
Pipefitters	15.98	2.45
ROOFERS	16.76	4.25
SHEET METAL WORKERS:		
Area 1	20.10	5.29
Residential	14.07	3.79
Area 2	15.66	4.79
SPRINKLER FITTERS	16.37	3.23
POWER EQUIPMENT OPERATORS		
Area 1:		
BUILDING CONSTRUCTION:		
Group 1	15.53	2.40+e
Group 2	15.33	2.40+e
Group 3	15.13	2.40+e
Group 3-A	14.76	2.40+e
Group 4	13.23	2.40+e
Group 5	12.53	2.40+e
Group 6	11.38	2.40+e
Group 7	16.28	2.40+e
Group 8	12.55	2.40+e
Group 9	16.11	2.40+e
Group 10	16.03	2.40+e
Group 11	16.53	2.40+e
HEAVY and HIGHWAY CONSTRUCTION:		
Group 1	15.63	2.40+e
Group 2	15.43	2.40+e
Group 3	15.23	2.40+e
Group 3-A	14.86	2.40+e
Group 4	13.33	2.40+e
Group 5	12.63	2.40+e
Group 6	11.48	2.40+e
Group 7	16.38	2.40+e
Group 8	12.655	2.40+e
Group 9	16.21	2.40+e
Group 10	16.13	2.40+e
Group 11	16.63	2.40+e
Area 2:		
BUILDING, HEAVY, HIGHWAY and MARINE CONSTRUCTION:		
Group 1:	18.11	3.43+e
Hourly Premium for boom lengths including jib:		
Over 150 ft.: + 0.64		
Over 185 ft.: + 1.14		
Over 210 ft.: + 1.59		
Over 250 ft.: + 2.41		
Over 295 ft.: + 3.35		
Group 2	17.99	3.43+e
Group 3	15.16	3.43+e
Group 4	16.53	3.43+e
Group 5	13.43	3.43+e
Group 6	14.26	2.43+e

DECISION NO. MA84-3008	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS:		
Group 1	12.86	3.00+ g+h
Group 2	13.03	3.00+ g+h
Group 3	13.10	3.00+ g+h
Group 4	13.22	3.00+ g+h
Group 5	13.32	3.00+ g+h
Group 6	13.61	3.00+ g+h
Group 7	13.90	3.00+ g+h

Basic Hourly Rates	Fringe Benefits

WELDERS: Receive rate for craft to which welding is incidental

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day;
D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:
a. Paid Holiday: Day before Christmas, providing the employee works the three days prior to the holiday
b. Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% of basic hourly rate for 6 months to 5 years of service as vacation pay credit
c. Paid Holidays: A through F and the Friday after Thanksgiving
d. Paid Holidays: A through F and Bunker Hill Day, provided the employee has worked 10 days prior to the holiday
e. Paid Holidays: A through F, Washington's Birthday and Veterans Day
f. Paid Holidays: A through F, Washington's Birthday, Columbus Day and Veterans Day
g. Paid Holidays: A through F, Washington's Birthday, Patriots Day, Columbus Day and Veterans Day
h. Paid Vacation: 4 months to 1 year - half (1/2) day's pay per month; 1-5 years - 1 week; 5-10 years - 2 weeks; 10 years or more - 3 weeks. Employee must have received pay for 120 days during last year of employment

AREA DESCRIPTIONS

BRICKLAYERS; CEMENT MASONS; PLASTERERS; and STONEMASONS:
Area 1: Warren Township
Area 2: Hopedale, Milford, and Southboro Townships
Area 3: Ashburnham, Athol, Fitchburg, Gardner, Harvard, Hubbardston, Lancaster, Leominster, Lunenburg, Petersham, Phillipston, Princeton, Royalston, Sterling, Templeton, Wesminister and Winchendon Townships
Area 4: Remainder of County

CARPENTERS, LATHERS, and SOFT FLOOR LAYERS:
Area 1: Hardwick, Warren, and West Brookfield Townships
Area 2: Remainder of County

ELECTRICIANS:
Area 1: Warren, and West Warren Townships
Area 2: Ashburnham, Athol, Bolton, Fitchburg, Gardner, Harvard, Hubbardston, Lancaster, Leominster, Lunenburg, Phillipston, Wesminister, and Winchendon Townships
Area 3: Remainder of County

GLAZIERS:
Area 1: Warren, and West Warren Townships
Area 2: Remainder of County

AREA DESCRIPTIONS (Cont'd)

MARBLE, TILE, and TERRAZZO WORKERS:
Area 1: Ashburnham, Fitchburg, Harvard, Lancaster, Leominster, Lunenburg, Princeton, Sterling, and Westminister Townships

PAINTERS:
Area 1: Warren and West Warren Townships
Area 2: Hopedale, Mendon, Milford, Southboro, Upton, and Westboro Townships
Area 3: Remainder of County

PLUMBERS and PIPEFITTERS:
Area 1: Hopedale and Southboro
Area 2: Ashburnham, Athol, Bolton, Fitchburg, Gardner, Harvard, Hubbardston, Lancaster, Leominster, Lunenburg, Petersham, Phillipston, Royalston, Templeton, Westminister, and Windendon Townships
Area 3: Remainder of County

SHEET METAL WORKERS:
Area 1: Harvard and Lancaster Townships
Area 2: Remainder of County

POWER EQUIPMENT OPERATORS:
Area 1: Royalston, Phillipston, Athol, Petersham, Hardwick, New Braintree, Brookfield, East Brookfield, North Brookfield, Oakham, Barre, Templeton, Winchendon, Strubridge, West Brookfield, and Warren Townships
Area 2: Remainder of County

LABORERS CLASSIFICATONS
BUILDING CONSTRUCTION

Group 1: Laborers, Carpenters Tenders

Group 2: Jackhammer Operator; Pavement Breakers; Asphalt Rakers; Carbide Core Drilling Machine; Chain Saw Operator; Pipelayer; Barco Type Jumping Tampers; Laser Beam; Concrete Pump; Mason Tenders; Motorized Mixers; Ride-on Motorized Buggy; Fence and Beam Rail Erectors

Group 3: Air Track; Block Pavers; Rammers; Curb Setter

Group 4: Blasters, Powdermen

Group 5: Pre-cast Floor and Roof Plank Erectors

WRECKING CONSTRUCTION

Group 1: Yardmen Laborers

Group 2: Yardmen Burners; Sawyers

Group 3: Wrecking Laborers

Group 4: Adzeman

LABORERS CLASSIFICATIONS (Cont'd)

WRECKING CONSTRUCTION (Cont'd)

Group 5: Burners; Jackhammers

Group 6: Asbestos Removers; Small Front Loaders on Tracks and Bobcat Operators

HEAVY and HIGHWAY CONSTRUCTION

Group 1: Laborers; Carpenter Tenders; Cement Finisher Tenders

Group 2: Asphalt Rakers; Fence and Guard Rail Erector; Laser Beam Operator; Mason Tender; Pipelayer; Pneumatic Drill Operator; Pneumatic Tool Operator, Wagon Drill Operator

Group 3: Air Track Operator; Block Pavers; Rammer; Curb Setters

Group 4: Blasters, Powdermen

Tunnel, Caisson and Cylinder Work in Compressed Air:

Group 5-A: Powder Watchmen; Top Men on Iron Bolt; Change House Attendant

Group 5-B: Brakeman; Trackman; Groutman; Laborer; Outside Lock Tender; Lock Tender; Guage Tenders

Group 5-C: Motormen

Group 5-D: Blaster

Group 5-E: Mucking Machine Operator

Free Air Operation - Shield Driven and Liner Plate Tunnel in Free Air:

Group 6-A: Miners; Miner Welder; Conveyor Operator; Motormen; Mucking Machine Operator; Nozzle Men; Grout Men; Shaft and Tunnel Steel and Rodmen; Shield and Erector Arm Operators

Group 6-B: Brakemen, Trackmen

Cleaning Concrete and Caulking Tunnel (both new and existing):

Group 6-C: Concrete Workers; Strippers and Form Movers (wood and steel)

Rock Shaft, Concrete Lining of Same and Tunnel in Free Air:

Group 6-E: Change House Attendants

Group 6-F: Laborers; Topside

Group 6-G: Brakeman; Trackman; Tunnel Laborers; Shaft Laborees

Group 6-H: Miner, Cage Tender; Bellman

LABORERS CLASSIFICATIONS (Cont'd)

OPEN AIR CAISSONS, UNDERPINNING And TEST BORING INDUSTRIES:

Includes installation and performance of caissons of all types, underpinning, soil test borings, core borings, diamond drill soundings, wash borings, auger borings, shot drilling, grouting (cement, chemical, etc.), installation of earth and rock anchors, tiebacks, ground water observation wells and monitoring wells, installation of instrumentation, drilling and installation of horizontal drains, lagging (carrying of bands and settling bands in place), installation and extraction of grout pipes, pit work, hand excavation and labor required in piledriving and related work, welding of caissons not driven by pile driving equipment, pouring of concrete piles and caissons of all types, cutting-off concrete piles and clean-up:

Air Air Caisson, Underpinning Work and Boring Crew:

Group 1-A: Laborers; Top Man

Group 1-B: Bottom Man

Test Boring:

Group 2-A: Laborers

Group 2-B: Driller

POWER EQUIPMENT OPERATORS CLASSIFICATIONS
AREA 1

BUILDING CONSTRUCTION

Group 1: Shovels; Cranes (including all Tower, Climbing and Bridge Cranes, as used in Building Construction); Hydraulic Cranes, 10 ton capacity or over; Draglines; Derricks; Elevators with Chicago Boom; Backhoes; Gradalls; Elevating Graders; Pile Driving Rigs; Concrete Road Pavers; all three Drum Hoisting and Trenching Machines; Belt-type Loaders; Front End Loaders, 5½ yds. or over; Dual Drum Paver; Automatic Grader (i.e. C.M.I.); Combination Backhoe/Loader, 3/4 yd. or over; Jet Engine Dryer; Tree Shredder; Post Hole Digger; Post Hole Hammer; Post Extractor; Truck-mounted Concrete Pump with Boom; Roto-mill

Group 2: Rotary Drill (with mounted Compressor); Compressor House (3 to 6 Compressors); Rock and Earth Boring Machines (excluding McCarthy and similar Drills); Graders; Front End Loaders, 4 yds. to 5½ yds.; two Drum Hoists; High Fork Lifts with capacity of 15 ft. and over; Scraper, 21 yds. and over (struck load); Sonic Hammer Console; Road Planer; Cal Tracks; Ballast Regulators; Rail Anchor Machines; Switch Tampers

POWER EQUIPMENT OPERATORS CLASSIFICATIONS (Cont'd)
AREA 1 (Cont'd)

BUILDING CONSTRUCTION (Cont'd)

Group 3: Combination Backhoe/Loader, up to 3/4 yd. Hoe; Bulldozers; Push Cats; Scrapers, up to 21 yds. (struck load) (self-propelled or tractor drawn); Tireman; Front End Loaders, up to 4 yds.; Asphalt Paver; Well Drillers; Mechanics; Welder; Pumpcrete Machines; Concrete Pumps and similar type Pumps; Engineer or Fireman on High Pressure Boiler (on job); Self-loading Batch Plant; Well Point Operators (including installing); Electric Pumps used in Well Point System; Pumps, 12 inches and over (total discharge); Compressor, one or two 900 cu. ft. and over; Engineers in charge of Powered Grease Truck; all Automatic Elevators (permanent or temporary)(operated manually or remote control) (not to be confused with elevators operating from conventional hoist, 1, 2, or 3 drum); Grout Pumps; Boom Truck; Hydraulic Cranes, under 10 ton

Group 3-A: Asphalt Rollers; Self-powered Rollers and Compactors; Tractor without blade drawing Sheepsfoot Roller; Rubber Tire Roller; Vibratory Roller, or other type of Compactors including Machines for pulverizing and aerating Soil

Group 4: Single Drum Hoist; Power Pavement Breakers; Concrete Pavement Finishing Machines; Two Bag Mixers with Skip; McCarthy and similar Drills; Batch Plants (not self-loading); Bulk Cement Plants; Self-propelled Material Spreaders; A-Frame Trucks; Fork Lifts, up to 15 ft.; 3 or more 10 KW Light Plants; 30 KW or more Generators

Group 5: Compressors (one or two)(315 cu. ft. to 900 cu. ft.); Pumps, 4 inches to 12 inches (total discharge)

Group 6: Compressors, up to 315 cu. ft.; Small Mixers; Pumps, up to 4 inches; Power Heaters, except when 3 or more Heaters are used on one job, classification 4 rate shall be paid; Welding Machines, except when 3 or more Welding Machines are used on one job, classification 4 rate will be paid; Conveyors; Oiler; Helpers on Grease Trucks with hand greasing equipment

Group 7: Truck Crane Crews

Group 8: Oiler

Group 9: Master Mechanic

Group 10: Boom lengths over 184 ft. including Jib

Group 11: Boom lengths over 225 ft., including Jib

POWER EQUIPMENT OPERATORS CLASSIFICATIONS (Cont'd)
AREA 1 (Cont'd)

HEAVY and HIGHWAY CONSTRUCTION

Group 1: Shovels; Crawler and Truck Cranes; Derricks; Backhoes; Trenching Machines; Elevator Graders; Belt-type Loaders; Gradalls; Pile Drivers; Concrete Pavers, On-site Processing Plant (Engineer in charge); Dragline; Clamshell; Cableways; Shaft Hoists; Mucking Machines; Front End Loader, 5½ yds. and over Tower Cranes; Self-propelled Hydraulic Cranes, 10 tons and over; Dual Pavers; Automatic Grader, Excavator (C.M.I. or equal); Scrapers towing Pan or Wagon; Tandem Dozers or Push Cats (2 units in Tandem); Welder using Semi-automatic Welding Machine; Shotcrete Machine; Tunnel Boring Machine; Combination Back Hoe/Loader, 3/4 yd. Hoe or over; Jet Engine Dryer; Tree Shredder; Post Hole Digger; Post Hole Hammer; Post Extractor; Truck mounted Concrete Pumps with boom; Roto-mill

Group 2: Rotary Drill, with mounted Compressor; Compressor House, 3 to 6 Compressors; Rock and Earth Boring Machines, excluding McCarthy and similar Drills; Grader; Front End Loaders, 4 yds. to 5½ yds.; Scraper, 21 yds. and over (struck load); Forklifts, 7 ft. lift and over or 3 ton capacity and over; Sonic Hammer Console; Road Planer; Cal Tracks; Ballast Regulators; Rail Anchor Machines; Switch Tampers

Group 3: Bulldozer; Push Cats; Scrapers, up to 21 yds., struck load, self-propelled or Tractor Drawn; Self-powered Asphalt Paver; Front End Loaders, up to 4 yds.; Mechanics, Welders; Well Driller; Pumpcrete Machine; Engineer or Fireman on High Pressure Boiler (on job); Self-loading Batch Plant (on job); Well Point Operators; Electric Pumps used in Well Point System; Tireman; Pumps, 16 in. or over total discharge; Compressors (1 or 2) 900 cu. ft. and over; Powered Grease Truck; Tunnel Locomotives and Dinkeys; Grout Pumps; Hydraulic Jacks (jacking pipe, slip forms, etc.); Boom Truck, self-propelled Hydraulic Cranes, up to 10 ton; Combination Backhoe Hoe/Loader, up to 3/4 yd. Hoe

Group 3A: Asphalt Rollers; Self-powered Rollers and Compactors; Tractor without blade drawing Sheeps Foot Roller; Rubber Tire Roller; Vibratory Roller or other type of Compactors including Machines for pulverizing and aerating soil

Group 4: Hoists; Conveyors; Power Pavement Breaker; Self-propelled Material Spreader; Self-powered Concrete Finishing Machine; Two bag Mixer with Skip; McCarthy and similar Drills; Batch Plant (not self-loading); Bulk Cement Plant; 3 or more 10 KW Light Plants; 30 KW or more Generators

Group 5: Compressor, 315 cu. ft. to 900 cu. ft., 1 or 2; Pumps, 4" to 16" total discharge

POWER EQUIPMENT OPERATORS CLASSIFICATIONS (Cont'd)
AREA 1 - HEAVY and HIGHWAY CONSTRUCTION (Cont'd)

Group 6: Compressor, up to 315 cu. ft.; Small Mixers with Skip; Oiler; Pumps up to 4"; Grease Truck; Helper on powered Grease Trucks; Power Heaters; Welding Machines, when 3 or more Welding Machines are used, Classification 4 rate shall be paid; A-Frame Trucks; Forklifts, up to 7 ft. Lift and up to 3 ton capacity; Hydro Boom; Power Safety Boat

Group 7: Truck Crane Crews

Group 8: Oiler

Group 9: Master Mechanic

Group 10: Boom Lengths over 184 feet, including Jib

Group 11: Boom Lenghts over 225 feet, including Jib

AREA 2

BUILDING CONSTRUCTION

Group 1: Cranes; Shovels; Truck Cranes; Cherry Pickers; Dragline; Trench Hoes; Backhoes; Three Drum Machines; Derricks; Pile Drivers; Elevator Towers; Hoists; Gradalls; Shovel Dozers; Front End Loaders; Fork Lifts; Augers; Boring Machines; Rotary Drills; Post Hole Hammers; Post Hole Diggers; Pumpcrete Machines; Asphalt Plant, on site; Concrete Batching and/or Mixing Plant, on site; Crusher Plant, on site; Paving Concrete Mixers; Timber Jacks

Group 2: Sonic or Vibratory Hammers; Graders; Tandem Scrapers; Concrete Pumps; Bulldozers; Tractors; York Rakers; Mulching Machines; Portable Steam Boiler; Portable Steam Generators; Rollers; Spreaders; Tampers (self-propelled or tractor drawn); Asphalt Pavers; Mechanics Maintenance; Paving Screed Machines; Stationary Steam Boilers; Paving Concrete Finishing Machines; Cal track; Ballast Regulators; Switch Tampers; Rail Anchor Machinery; Tire Trucks (when operated by the employer on the job site)

Group 3: Pumps, 1-3 grouped; Compressors; Welding Machines, 1-3 grouped; Generators; Concrete Vibrators; Lighting Plants; Heaters (power driven, 1-5); Well-point Systems, operating and installing; Syphones/Pulsometers; Concrete Mixers; Valves controlling Permanent Plant, air or steam; Conveyors; Jackson type Tampers; Single Diaphragm Pump; Lighting Plants

Group 4: Assistant Engineers (Fireman)

Group 5: Assistant Engineers (other than Truck Cranes and Gradalls)

Group 6: Assistant Engineers (on Truck Cranes and Gradalls)

POWER EQUIPMENT OPERATORS CLASSIFICATIONS (Cont'd)
AREA 2 (Cont'd)

HEAVY and HIGHWAY CONSTRUCTION

Group 1: Power Shovels; Cranes; Truck Cranes; Derricks; Pile Drivers; Trenching Machines; Mechaniclal Hoist Pavement Breakers; Cement Concrete Pavers; Draglines; Hoisting Engines; Three Drum Machines; Pumpcrete Machines; Uke Loaders; Shovel Dozers; Front End Loaders; Mulching Machines; Shaft Hoists; Steam Engine; Backhoe; Gradalls; Cable Ways Fork Lifts; Cherry Pickers; Boring Machines; Rotary Drills; Post Hole Hammer; Post Hole Diggers; Asphalt Plant on job site, Concrete Batching and/or Mixing Plant on job site; Crusher Plant on job site; Paving Concrete Mixers; Timber Jacks

Group 2: Sonic or Vibratory Hammers; Graders; Scrapers; Tandem Scrapers; Bulldozer; Tractors; Mechanic Maintenance; York Rakes; Mulching Machines Paving Screed Machines; Stationary Steam Boilers; Paving Concrete Finishing Machines; Grout Pumps; Potable Steam Boilers; Portable Steam Generators; Rollers; Spreaders; Asphalt Pavers; Locomotives or Machines used in place thereof; Tampers, self-propelled or tractor drawn; Cal Tracks; Ballast Regulators; Rail Anchor Machines; Switch Tampers

Group 3: Pump, 1-3 grouped; Compressors; Welding Machine, 1-3 grouped; Generators; Lighting Plants; Heaters, power driven, 1-5; Syphons/Pulsometers; Concrete Mixers; Valves controlling Permanent Plant, air or steam; Conveyors; Wellpoint System, operating and installing

Group 4: Assistant Engineers (Firemen)

Group 5: Assistant Engineers (other than Truck Cranes and Gradalls)

Group 6: Assistant Engineers (on Truck Cranes and Gradalls)

MARINE CONSTRUCTION

Group 1: Shovels; Cranes; Truck Cranes; Cherry Pickers; Derricks; Pile Drivers two or more Drum Machines; Lighterns; Derrick Boats; Trenching; Mechanic Hoists; Pavement Breakers; Cement Concrete Pavers; Draglines; Hoisting Engines; Pumpcrete Machines; Elevating Graders; Shovels; Dozers; Front End Loaders; Backhoe; Gradalls; Cable Way; Boring Machines; Rotary Drills; Post Hole Hammer; Post Hole Diggers; Fork Lifts; Timber Jacks; Asphalt Plant (on site); Concrete Batching and/or Mixing Plant (on site); Crusher Plant (on site); Paving Concrete Mixers

Group 2: Portable Steam Boilers; Portable Steam Generators; Sonic or Vibratory Hammer; Graders; Scrapers; Tandem Scrapers; Concrete Pumps; Bulldozers; Tractors; York Rakers; Mulching Machines; Rollers; Spreader; Tamper, self-propelled or tractor drawn; Asphalt Pavers; Concrete Mixers with side Loaders; Mechanics, maintenance; Cal Track; Ballast Regulator; Switch Tampers; Rail Anchor Machines; Tire Trucks

POWER EQUIPMENT OPERATORS CLASSIFICATIONS (Cont'd)
AREA 2 - MARINE CONSTRUCTION (Cont'd)

Group 3: Pumps; Compressors; Welding Machines; Heaters (power driven); Valves controlling Permanent Plant, air or steam; Well Point Systems; Augers, powered by Independence Engines and attached to Pile Drivers; Hydraulic Saws; Generators; Lighting Plants; Syphons-Pulsometers; Concrete Mixers; Conveyors

Group 4: Assistant Engineers (Firemen)

Group 5: Assistant Engineers (other than Truck Cranes and Gradalls)

Group 6: Assistant Engineers (on Truck Cranes and Gradalls)

TRUCK DRIVERS

Group 1: Station Wagons; Panel Trucks and Pickup Trucks

Group 2: Two Axle Equipment; Helpers on Low Bed when assigned at the discretion of the employer; Warehousemen; Forklift Operators

Group 3: Three axle equipment and Tiremen

Group 4: Four and five axle equipment

Group 5: Specialized earth moving equipment, under 35 tons other than conventional type trucks; Low Bed; Vac-haul; Paving Restoration equipment; Mechanics

Group 6: Specialized earth moving equipment over 35 tons

Group 7: Trailers for earth moving equipment (double hookup)

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii))

SUPERSEDEAS DECISION

STATE: MINNESOTA
COUNTIES: BIG STONE, CHIPPEWA, DOUGLAS, GRANT, KANDIYOHI, LAC QUI PARLE, POPE, RENVILLE, STEVENS, SWIFT, & TRAVERSE
DECISION NUMBER: MN84-5010 DATE: Date of Publication
Supersedes Decision Number MN81-2065, dated December 11, 1981 in 46 FR 60755
DESCRIPTION OF WORK: HEAVY & HIGHWAY CONSTRUCTION PROJECTS

	Basic Hourly Rates	Fringe Benefits
CARPENTERS	$12.85	$.95
CEMENT MASONS	13.31	2.01
IRONWORKERS	13.90	2.71
LABORERS:		
Common	8.32	
Pipelayers	8.50	
Rakers	8.47	1.03
TRUCK DRIVERS:		
Bituminous Distributor Driver	10.11	1.03
Five Axle	10.46	.72
Lowboy	10.46	.72
Packer	9.43	.88
Single; Two Axle	9.34	
Tandem	10.02	.72
Wheel Tractor	9.43	1.03

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
Asphalt Distributor Spreader	$11.33	$.72
Asphalt Plant; Bituminous Plant	11.21	.45
Cranes; Derricks; Draglines; Backhoes; & Boom Truck Ops.	12.03	1.97
Crusher & Screening Plant	11.33	.72
Fireman	10.11	1.03
Front End Loader (Up to 1 cubic yard)	7.50	.72
Front End Loader (Over 1 cubic yard)	10.92	.96
Grader Operator; Blade Op.	10.89	.84
Mechanics	10.91	.72
Motor Patrols; Blade Op. (Finish); & Grader (Finish)	11.33	.72
Rollers, Self-Propelled	10.02	.72
Rollers (Over 6 Tons)	10.50	.86
Screedman	10.86	.89
Tractor; Bulldozer	10.91	.72
Turnapull	9.87	.55

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

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federal register

Friday
March 30, 1984

Part IV

Department of Energy

Federal Energy Regulatory Commission
Interstate Commerce Commission

18 CFR Parts 341, 342, 343, 344, 345, 346, and 347
49 CFR Part 1300
Transfer of Oil Pipeline Regulations; Final Rule

49 CFR Part 1300
Revision of Tariff Regulations, All Carriers; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 341, 342, 343, 344, 345, 346, and 347

49 CFR Part 1300

[Docket No. RM83-78-000; Order No. 367]

Transfer of Oil Pipeline Regulations

Issued: March 23, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is transferring oil pipeline regulations to Title 18 of the Code of Federal Regulation (CFR), which title concerns areas under Commission jurisdiction, from Title 49 of the CFR, which deals primarily with the work of the Interstate Commerce Commission (ICC). These regulations are currently published in Title 49 of the CFR because oil pipelines came under the jurisdiction of the ICC before the 1977 Department of Energy Organization Act transferred jurisdiction to the Commission. This transfer will avoid confusion since the ICC intends to revise the regulations in 49 CFR in the near future.

EFFECTIVE DATE: July 2, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph Hartsoe, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION:

I. Background

Jurisdiction over oil pipelines, as related to the establishment of rates or charges for the transportation of oil by pipeline and to the establishment of valuations for oil pipelines, was transferred in 1977 from the Interstate Commerce Commission (ICC) to the Federal Energy Regulatory Commission (Commission) under sections 306 and 402(b) of the Department of Energy Organization Act (DOE Act), 42 U.S.C. 7155 and 7172(b) (Supp. V 1981), and Executive Order No. 12,009, 3 CFR Part 142 (1978). Section 705(a) of the DOE Act further provides that regulations relating to functions transferred to the Commission shall continue in effect until modified by the Commission. 42 U.S.C. 7295(a) (Supp. V 1981). When the DOE Act became effective, the regulations relating to the Commission's jurisdiction over oil pipelines were in Title 49 of the Code of Federal Regulations (CFR).

Soon after the effective date of the DOE Act, the Commission also announced that regulations in Title 49 of the CFR that relate to the Commission's jurisdiction over oil pipelines would remain in effect until modified.[1] Effective January 28, 1981, the Commission transferred most of these ICC regulations from 49 CFR to 18 CFR.[2] However, regulations related to various oil pipeline filings and applications in Parts 1002, 1010, 1300, 1301, 1305, 1330, and 1331 of Title 49 were not transferred at that time. On July 7, 1983, the ICC announced that it intends to remove most or all of these regulations from 49 CFR on or before February 1, 1984.[3]

To avoid a confusing hiatus with respect to these regulations and to effect the most efficient and least costly relocation of these regulations, the Commission by this rule is transferring those Parts into Title 18 of the CFR. This action is being coordinated with the ICC.[4]

II. Amendments to Title 18

The rulemaking will transfer to 18 CFR the regulations in Parts 1002, 1010, 1300, 1301, 1305, 1330 and 1331 of 49 CFR that are applicable to the Commission's oil pipeline jurisdiction.[5] Part 1002 covers the fees charged by the Commission for services rendered to oil pipeline companies. Part 1010 covers competitive bids under section 10 of the Clayton Antitrust Act. Parts 1300, 1301, and 1305 cover the construction, posting, and filing of pipeline tariffs and related documents. Part 1330 governs the filing of quotations for government shipments at reduced rates. Part 1331 addresses applications under section 5a of Interstate Commerce Act for authority to establish and control agreements between or among carriers.

The transfer of these Parts will add to 18 CFR basically the same regulatory text that existed at the time the DOE Act took effect in 1977 and that still remains in effect today. The rule, however, makes minor editorial modifications that are necessary because of the transfer. For example, the rule revises the cross-references to sections that are being redesignated when transferred to 18 CFR. However, no substantive changes are intended by these revisions.

This rulemaking completes the Commission's previously stated goal of publishing the regulations related to its jurisdiction over oil pipelines in 18 CFR. This effort generally will have three positive impacts on the regulated pipelines, the public, and the Commission itself. First, the regulations applicable to the Commission's oil pipeline jurisdiction will continue to be printed in the CFR without the hiatus that would otherwise result from the ICC's actions. Second, the transfer will eliminate any confusion caused by the ICC's post-1977 amendments to Part 1300 that may appear to affect the regulations applicable to oil pipelines, but which as a legal matter under section 705(a) of the DOE Act do not actually do so. Third, the transfer will benefit the public, the oil pipelines, and the Commission by combining the Commission's regulations into one Title, 18 CFR.

III. Paperwork Reduction Act Statement and Effective Date

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501-3520 (Supp. V 1981), and the Office of Management and Budget's (OMB) regulations, 5 CFR Part 1320 (1984), require that OMB approve certain information collection requirements or revisions thereof imposed by agency rule. Therefore, all information collection revisions in this rule are being submitted to OMB for its approval.

Interested persons can obtain information on these information collection provisions by contacting the Office of the General Counsel, Rulemaking and Legislative Analysis Division, Federal Energy Regulatory Commission, RC-421, 825 North Capitol Street, NE., Washington, D.C. 20426 (Attention: Joseph Hartsoe (202) 357-8033). Comments relating to the burden imposed by the proposed information collection provisions may be sent to the Officer of Information and Regulatory Affairs of OMB (Attention: Desk Office for the Federal Energy Regulatory Commission).

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[1] Interim Regulations for the Operations of the Federal Energy Regulatory Commission, "Order Providing for the Continuation of Functions Vested in, or Delegated to, the Federal Energy Regulatory Commission," 42 FR 55450 (October 17, 1977) (Docket No. RM78-1-000, Order No. 1).

[2] Final Rule, "Redesignation of Oil Pipeline Regulations," 46 FR 9043 (Jan. 28, 1981) (Docket No. RM81-8-000, Order No. 119).

[3] 48 FR 31265 (July 7, 1982).

[4] The Interstate Commerce Commission is publishing a final rule contemporaneously with this order that redesignates regulations from Title 49 of the CFR to Title 18 of the CFR.

[5] The word "transfer" as used in this docket does not mean that the ICC is entirely eliminating every one of these regulations from 49 CFR. Rather, the ICC may retain parts of the regulations insofar as they affect companies that are still subject to the ICC's regulatory jurisdiction. As a result, even though the term "transfer" is used to most accurately portray the technical form of this rule, there are instances when the Commission will as a practical matter be duplicating some regulations that will also be retained by the ICC.

This final rule concerns solely matters of agency practice and procedure because it transfers existing regulations from 49 CFR to 18 CFR and editorially revises these rules to ensure clarity of scope. These changes will aid oil pipelines subject to the Commission's jurisdiction in locating, understanding, and meeting the applicable procedural requirements. The Commission, therefore, finds pursuant to section 553(b) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b), that prior notice and opportunity for public comment are unnecessary.

The ICC has decided to remove Part 1300 from 49 CFR effective July 2, 1984. In addition, information collection revisions of this rule are being submitted to OMB for clearance. Therefore, this rule will become effective on July 2, 1984. If the necessary OMB approvals and control numbers have not been received by that effective date, the Commission will issue a notice temporarily suspending the effective date.

List of Subjects

49 CFR Part 1300

Oil pipelines, Tariffs.

18 CFR Parts 341, 342, 343, 344, and 345

Oil pipelines, Tariffs.

18 CFR Part 346

Oil pipeline fees.

18 CFR Part 347

Oil pipeline, Transportation.

In consideration of the foregoing, Part 1300 of Title 49, Chapter X and Parts 341, 342, 343, 344, 345, 346, and 347 of Title 18, Chapter I, Code of Federal Regulations, are amended as set forth below.

By the Commission.

Lois D. Cashell,

Acting Secretary.

I. Part 1300 of 49 CFR Chapter X is removed from Title 49 and transferred to 18 CFR Chapter I and redesignated as Part 341; the sections are redesignated accordingly; and the Part title and section heading for § 341.57 are revised to read as follows:

PART 341—OIL PIPELINE TARIFFS: PIPELINE COMPANIES SUBJECT TO SECTION 6 OF THE INTERSTATE COMMERCE ACT AND CARRIERS JOINTLY THEREWITH

* * * * *

341.57 Newly constructed pipelines.

* * * * *

II. The authority citation for 18 CFR Part 341 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (Supp. V 1981); Interstate Commerce Act, 49 U.S.C. 1–27 (1976); E.O. 12009, 3 CFR Part 142 (1978).

III. 18 CFR Part 341 is amended as follows:

a. By changing all references to "Interstae Commerce Commission" throughout Part 341 to read "Federal Energy Regulatory Commission";

b. By changing all references to "Interstate Commerce Commission, Washington, D.C. 20423" throughout Part 341 to read "Federal Energy Regulatory Commission, Washington, D.C. 20426";

c. By changing all references to "ICC" or "I.C.C." throughout Part 341 to read "FERC";

d. By removing the "NOTE:" and "CROSS REFERENCE" that precede § 341.0;

e. By revising § 341.0(a)(1) to read as follows:

§ 341.0 General provisions; definitions.

(a) *General application; conformation to rules; reissue.* (1) This part contains regulations issued by the Interstate Commerce Commission under the Interstate Commerce Act, as amended and transferred to the Federal Energy Regulatory Commission under authority of section 705(a) of the Department of Energy Organization Act, as amended, to govern the construction and filing of tariffs of pipeline companies filing under the Interstate Commerce Act. The regulations in this Part shall also govern the construction and filing of tariffs naming through routes and joint rates over the lines of common carriers by pipeline subject to the Interstate Commerce Act, on the one hand, and vessel-operating common carriers by water engaged in the foreign commerce of the United States, as defined in the Shipping Act, 1916, on the other hand, for the transportation of oil between any place in the United States and any place in a foreign country. See § 341.67.

* * * * *

§ 341.1 [Amended]

f. In § 341.1(a), by removing the words "size 8 by 11 inches" and inserting, in their place, the words "size 8½ by 11 inches";

g. In § 341.3, by removing paragraph (f)(3) and by revising paragraphs (b), (f)(1), (f)(2) and (h) to read as follows:

§ 341.3 Content of title page.

* * * * *

(b) On the upper right-hand corner, the FERC identification, in which each carrier or agent numbers each new issue consecutively. (All tariffs filed after January 1, 1985 must use a FERC identification number.) The type shall be bold-face and of not less than 12 point. Immediately under this number, in smaller type, shall be shown the FERC number of each tariff or the number of each supplement cancelled thereby. If the number of cancelled publications is so large as to render it impracticable to thus enter them on the title page, they must be shown immediately following the table of contents, provided specific reference thereto is entered on the title page directly under the FERC number.

* * * * *

(f)(1) Reference by name and FERC number to the rules tariff, if any, governing the tariff. The following form modified as required shall be used.

Governed, except as otherwise provided herein, by rules and regulations shown in FERC No. ——, supplements thereto or successive issues thereof.

(2) A tariff is not governed by a rules tariff, except when and to the extent stated on or in the tariff.

* * * * *

(h) On every tariff or supplement in which all the rates, rules, or regulations are made effective on less than 30 days' notice under authority of the Commission, notation that it is issued on ——— days' notice under authority of ——— (here show the authority).

* * * * *

h. In § 341.3(d), by removing the words "class or" and "or both"; and by removing the words "all-rail, rail-motor, all water, or rail-water rates" and inserting, in their place, the words "all-pipeline or intermodal pipeline rates";

i. By amending § 341.4 as follows:

1. In paragraph (c)(1), by removing the words "coal "Coal" " and inserting, in their place, the words "petroleum, "Petroleum" "; and removing the words " "Coal, anthracite," "Coal, bituminous," " and inserting, in their place, the words " "Petroleum, crude," "Petroleum Products, butane,";"

2. In paragraph (c)(3), by removing the words "or a combined class and commodity tariff";

3. In paragraph (d), the title is revised to read "*Index of origins and destinations.*"; and in paragraph (d)(1) by removing from the second sentence the words "station numbers" and inserting, in their place, the word "points";

4. In paragraph (d)(2), by removing the word "railroad" and inserting, in its place, the word "pipeline"; and by removing the words "as provided in § 1300.15";

5. In paragraph (d)(6), by removing the words "or when the points in a tariff are

arranged by States as authorized in paragraph (j) of this section";

6. By removing paragraphs (f), (h)(4)(i), (h)(4)(ii), and (k)(2)(iii) in their entirety; by adding a new paragraph (e), and by revising paragraphs (h)(2), (h)(4), (h)(8), (i)(1), (i)(7), and (k)(2)(ii) to read as follows:

§ 341.4 Content of tariffs.

* * * * *

(e) *Public holding out.* (1) Tariffs must contain only rates, charges, and related provisions that cover services in strict conformity with each carrier's public holding out. No provision may be published in tariffs, supplements, or revised pages which results in restricting service to less than the carrier's full obligation to the public to provide and furnish transportation or which exceeds such carrier's lawful public holding out.

(2) Unless each tariff filed on and after the effective date hereof contains a certification by the carrier filing the same that, with respect to all of the services described therein (except those services being published for the first time), it is in fact (i) fully offering and, when requested, impartially providing all of its obligated services, and (ii) fully observing all requirements of law and the regulations prescribed by the Commission, the tariff or supplement will be rejected until such time as certification thereof is made. Such service includes service on c.o.d., freight-collect, and order-notify shipments, including such services on shipments transported under combinations of rates.

* * * * *

(h) *Rules governing the tariffs.*

* * * * *

(2) Each rule or regulation should be given a separate number; portions which can be understandingly read without recourse to the whole may be published in separate paragraphs, and such paragraphs be given subnumbers or letters.

* * * * *

(4) Where it is not desirable or practicable * * * except as follows: The following tariffs will not be counted in applying the provisions of this section: Tariffs containing exclusively rules, regulations, and/or charges applying to the special services covered by § 341.10(a); tariffs containing rules and regulations governing the transportation of explosive materials and other dangerous substances.

* * * * *

(8) Tariffs which contain rates for the transportation of explosive materials and other dangerous substances must also contain the hazardous material regulations of the Department of Transportation governing the transportation thereof, must bear specific reference to the FERC number of the publication which contains such rules and regulations. When the latter plan is adopted, the tariff referred to shall contain no matter other than the regulations promulgated by the Department of Transportation.

* * * * *

(i) *Rates.* (1) An explicit statement of the rates, in cents or in dollars and cents, per 100 pounds, per ton, per gallon, per barrel, or other unit, together with the names or designation of the places from and to which they apply, all arranged in a simple and systematic manner. Complicated plans or ambiguous terms must not be used.

* * * * *

(7) Minimum volumes governing the application of commodity rates must be specifically stated in immediate conjunction with such rates or shown in such manner as will avoid an extensive search therefor, except as provided in paragraph (i)(5) of this section.

* * * * *

(k) *Routing.*

* * * * *

(2) When in a tariff. * * *

* * * * *

(ii) Where complete through routes are shown in connection with joint rates (either in the rate tariff or in a routing guide or guides to which it is subject), such rates may be made subject to the separate routing guides of any of the carriers parties thereto for internal routing over their respective lines.

7. In paragraph (h)(3), by removing the words "§§ 1300.7(c)," and inserting, in their place, "§";

8. In paragraph (i)(8), by removing the word "articles" throughout the paragraph and inserting, in its place, the word "products"; and by removing the words "Iron and steel articles" and inserting, in their place, the words "Petroleum products"; and by removing the words "weight (or weights)" throughout the paragraph and inserting, in their place, the words "volume (or volumes)";

9. In paragraph (i)(9), by removing the words "article or articles" throughout the subparagraph and inserting, in their place, the words "product or products";

10. In paragraph (i)(10), by removing the words "or a combined class and commodity tariff" in the first sentence; by removing the words "class or" in the fourth sentence; and by removing the word "Staves," in the third sentence and inserting, in its place, the word "Butane,";

11. In paragraph (k)(1), by removing the word "lines" throughout the subparagraph and inserting, in its place, the word "pipeline";

12. In paragraph (k)(3), by removing from the first sentence the word "railroad" and inserting, in its place, the word "pipeline"; by removing the second paragraph in paragraph (k)(3) in its entirety;

13. In paragraph (k)(5), by removing from the example the words "pronounced traffic congestion" and inserting, in their place, the words "capacity shortage"; by removing from the example the word "wreck,"; and by removing from the example the word "lines" and inserting, in its place, the word "pipelines";

14. In paragraph (m)(3), the symbol and words "* to denote prepay stations or points" are removed in their entireties.

15. By removing paragraphs (d)(4) and (d)(5) in their entirety and redesignating paragraph (d)(6) as (d)(4);

16. By removing paragraphs (i)(4), (i)(5), (i)(6) and (i)(11) in their entirety and redesignating paragraphs (i)(7) through (i)(10) as paragraphs (i)(4) through (i)(7);

17. By removing paragraph (j) in its entirety and inserting, in its place, "(j) [Reserved].";

j. In § 341.5, by removing from the last sentence the word "traffic" throughout the sentence and inserting, in its place, the word "movements";

§ 341.6 [Amended]

k. By amending § 341.6 as follows:

1. In paragraph (a), by removing the parenthetical "(including tariffs of classification exceptions, but not classifications)";

2. In paragraph (b), by removing the comma and words "including tariffs of classification exceptions, but not classifications," following the words "other tariffs";

3. In paragraph (c), by removing from the parenthetical the words "Iron and Steel Articles" and inserting, in their place, the words "petroleum products"; and by removing from the last sentence the word "weights" and inserting, in its place, the word "volumes";

4. In paragraph (f), by removing from the first sentence the work "articles" and inserting, in its place, the word "products";

l. By amending § 341.7 as follows:

1. In paragraph (a), by removing the word "weight" throughout the paragraph

and inserting, in its place, the word "volume";

2. By removing the designation "(1)" from paragraph (a)(1) and by removing paragraph (a)(2) in its entirety;

3. By revising paragraph (b)(4) to read as follows:

§ 341.7 Alternating rates.

* * * * *

(b) *Alternative use of rates in sectional tariffs.*

* * * * *

(4) Each commodity tariff arranged in alternating sections shall also contain a section hereinafter referred to as the non-alternating section. That section shall contain only commodity rates which in all instances result in charges lower than would result from the application of the commodity rates in any other section. If the tariff contains only commodity rates, the non-alternating section shall be section 1. The title page of the non-alternating section shall contain either of the two following notations, as appropriate:

When rates are published in this section on a given shipment, such rates will apply to the exclusion of the rates in any other section.

or

When rates are published in this section on a given shipment, such rates will apply to the exclusion of the rates in any other section.

* * * * *

4. In paragraph (b)(6)(i), by removing the words "that class rates in one section may alternate with class rates in only one other section, and";

5. By removing paragraph (c) in its entirety;

§ 341.8 [Amended]

m. By amending § 341.8 as follows:

1. In paragraph (a)(2), by removing the last sentence of the paragraph;

2. In paragraph (e), by removing the words "or "Class rates will apply,";

n. By amending § 341.9 as follows:

1. By revising paragraphs (d)(3), (e)(11), (h), (i)(5), and (i)(6) to read as follows:

§ 341.9 Amendments and supplements.

* * * * *

(d) *Effective date: reissued matter.*

* * * * *

(3) Matter brought forward without change from a tariff which has not been in effect 30 days, also matter brought forward without change from one supplement to another, must be designated "Reissued" in distinctive type and must show the original effective date and the number of the supplement or tariff from which it is reissued; or must be uniformly indicated by the letter T in a square when reissued from another tariff or from a supplement to another tariff and by numerals commencing with 1 in squares when reissued from a prior supplement to the same tariff, printed in distinctive type and shown in a conspicuous manner, and the explanation thereof must be made in the tariff or supplement in which the symbols are used. Examples: "1 Reissued from FERC No. ——— or (supplement No. ——— to FERC No. ———), effective (date upon which item became effective in former tariff or supplement to another tariff ———, 19—)"; "1 Reissued from Supplement No. 1, effective ———, 19—", and so on numerically, the figures of the symbols always representing the number of the supplement to the same tariff from which the reissued item is brought forward. If items in a tariff or supplement are made effective on dates other than the general effective date shown on the title page, reissue of such items may be indicated in later publications by showing a letter suffix or other symbol in connection with, and as a part of, the letter T or the numerals in squares as authorized in this paragraph. When the reissued item became effective in a supplement to another tariff, the FERC number of that tariff must also be given.

* * * * *

(e) * * *

* * * * *

(11) Changes shall be indicated as required by § 341.2(a). Items which have been in effect 30 days or more need not be shown as reissued items on revised pages but may be republished as effective on 30 days' notice. Items which have not been in effect 30 days when brought forward on revised page must be shown as reissued in the manner prescribed in paragraph (d) of this section.

* * * * *

(h) *Supplement to tariff filed not yet effective.* (1) If a tariff is filed on statutory notice cancelling another tariff and after such filing a supplement to the tariff to be so cancelled should be issued effective prior to the general effective date of such new tariff, rates in such supplement could not continue in effect for the 30 days required by law because the cancellation of the former tariff also cancels supplements to it. In such a case, and confined to additions or to changes in rates or provisions which were brought forward in the new tariff without change, the provisions of paragraph (e) of this section need not be observed as to the old tariff, and a supplement making the same changes in or additions to both tariffs may be issued as supplements both to the tariff in effect and to the tariff which will effect cancellation, and be given both FERC numbers. In other words, such issue must be a supplement both to the old and the new tariffs and copies must be posted and filed accordingly. Only one such supplement may be in effect at any time.

(2) Rates or provisions which have been established in an old tariff and reproduced or reissued in a new tariff may be changed upon lawful notice by supplement to the new tariff, effective not earlier than the general effective date of the new tariff, by showing in the following manner in connection with the changed rates or provisions that the rates or provisions changed thereby have been in effect 30 days or more, in the former issue. Example: "Item 40–A cancels item 40. Item 40 effective ———, brought forward without change from Item No. ——— of FERC No. ——— (former issue)." New rates or provisions which do not change rates or provisions in either the old or new tariff may be established upon lawful notice by supplement to the new tariff, effective not earlier than the general effective date of the new tariff, by showing in the following manner, in connection with the new rates or provisions that the rates or provisions previously applicable have been in effect 30 days or more in a former issue. Example: "Addition. Changes commodity rates which became effective ——— in FERC No. ———." Unless the provisions of this paragraph are complied with no supplement to a tariff that is on file and not yet effective may be made effective within 30 days from the effective date of the tariff without special permission.

This section does not waive the requirements of §§ 341.14 and 341.54.

* * * * *

(i) *Complete adoption notice.*

* * * * *

(5) Tariffs issued by other carriers or agents in which the pipeline absorbed, taken over, * * *

(6) A similar adoption notice must immediately be filed by a receiver when he assumes possession and control of a carrier's lines. The adoption notice bears a FERC number and it must be consecutively numbered in the FERC series of the adopted carrier. When the receivership is terminated, the carrier taking over the properties shall file an adoption notice and shall also file supplements as hereinabove prescribed if a change in the name of the carrier has been made.

* * * * *

2. In paragraph (i)(1), by removing from the example the words "classifications," and "freight"; and by removing from the example the word "traffic" and inserting, in its place, the word "movements";

3. In paragraph (j)(1), by removing from the text of the example the word "classifications,"; and by removing the word "traffic" and inserting, in its place, the word "movement";

4. In paragraph (j)(6), by removing from the first sentence the word "line" and inserting, in its place, the word "pipeline";

5. In paragraph (k)(16), by removing the words "rule 9(k) of Tariff Circular No. 20" throughout the paragraph and inserting, in its place, the words "18 CFR 341.9(k)";

6. In paragraph (m), by removing the words "rule 9(m) of Tariff Circular No. 20" and inserting, in their place, the words "18 CFR 341.9(m)";

o. By amending § 341.10 as follows:

1. In paragraph (a), by removing the words "feeding, and grazing," and inserting, in their place, the words "odorization, coloration, filtration, loading and unloading, gathering, terminalling, in-line transfers, storage, batching, blending, commingling, etc.,"; and by removing the words "switching, floating,", "and drayage", and "icing, refrigeration,"; and by removing from the last sentence the words "traffic moving under less-than-carload or" and inserting, in their place, the words "volume moving under";

2. By amending paragraph (c) as follows:

A. In the title, by removing the words "switching, drayage, or";

B. In the first sentence, by removing the words "switching, drayage, or other transfer service"; and inserting, in their place, the words "transfer services";

C. In the second sentence, by removing the words "switching services" and inserting, in their place, the words "transfer services"; by removing the words "switching service" throughout the sentence and inserting, in their place, the words "transfer service"; and by removing the words "switching road" and inserting, in their place, the words "transferring line";

D. In the example at the end of the paragraph, by removing the words "switching, drayage, or other";

3. By amending paragraph (d) as follows:

A. By revising the title to read "(d) *Transfer charges.*";

B. By changing all references to "switching" throughout the paragraph to read "transfer";

C. In subparagraph (1), by removing the words "stations, warehouses, team, or industrial tracks, or other" and removing the words "within the switching limits, or must otherwise" and inserting, in their place, the words "or must";

D. In subparagraph (2)(ii), by removing the words "coal and coke" and inserting, in their place, the words "gasoline and diesel";

4. In paragraph (e), by changing all references to "switching" throughout the paragraph including the title to read "transfer";

5. By amending paragraph (f) as follows:

A. By revising the title to read "(f) *Transfer charges absorbed.*"

B. In the first sentence, by removing the words "for switching" and inserting, in their place, the words "for transfer"; by removing the words "such switching" and inserting, in their place, the words "such transferring"; and by removing the words "switching carrier" and inserting, in their place, the words "transferring carrier";

C. In the second sentence, by removing the words "switching charges" and inserting, in their place, the words "transfer charges";

D. In the third sentence, by removing the words "switching carrier" and inserting, in their place, the words "transferring carrier";

6. By revising paragraph (g)(1) to read as follows:

§ 341.10 Terminal and special services: Distance and mileage rates.

* * * * *

(g) *Distance rates may be used when no other rates provided.* (1) A carrier or an agent acting for two or more carriers may file tariffs containing distance or mileage commodity rates. Except as otherwise provided in §§ 341.7 and 341.27, distance or mileage commodity rates may be used only when no specific through commodity rates from and to the same points are provided. Except as otherwise provided in §§ 341.7 and 341.27, distance or mileage commodity rates will apply.

* * * * *

7. In paragraph (g)(6), by removing the words "notations for class or commodity or both class and commodity rates, as the case may be," and inserting, in their place, the words "notation for commodity rates,";

8. By removing paragraphs (g)(3) and (g)(5) and redesignating paragraph (g)(4) as (g)(3) and paragraphs (g)(6) and (g)(7) as paragraphs (g)(4) and (g)(5), respectively;

9. In paragraph (h), by changing throughout the paragraph all references to "station" to read "point"; all references to "stations" to read "points"; all references to "carload traffic" to read "volumes"; and all references to "railroad" to read "pipeline";

10. By removing paragraphs (i) and (j) in their entireties;

§ 341.11 [Amended]

p. By amending § 341.11 as follows:

1. In paragraph (a), by removing from the second sentence the word "all-rail" and inserting, in its place, the word "all-pipeline"; by removing from the fifth sentence the words "class and commodity tariffs, class tariffs"; by removing from the fifth sentence the words "billing books, classifications, exception sheets, switching tariffs," and inserting, in their place, the words "rules and regulations, loading/unloading, transfers,"; by removing from the seventh sentence the words " "Lumber, hardwood, Lumber, yellow pine" ", and inserting, in their place, the words " "Petroleum, crude, Petroleum, product" "; by removing from the eighth sentence, the words "class and commodity tariffs, and class tariffs,"; by removing from the ninth sentence the words "tariff publishing bureaus," throughout the sentence; and by removing from the ninth sentence the words "and classes";

2. In paragraph (b), by removing the words "Tariffs covering only specific circus movements and"; by removing the words "division sheets," in the third sentence;

3. By removing the "Note" at the end of the paragraph in its entirety;

q. By amending § 341.12 as follows:

1. By changing all references to "all-rail" to read "all-pipeline"; and

2. By revising the introductory text and paragraphs (a) and (e) to read as follows:

§ 341.12 Restoration and discontinuance of water service.

Tariffs containing pipeline-and-water rates applicable via routes upon which it is necessary to close navigation during a portion of each year, must provide for the restoration and discontinuance of service over such routes in the manner prescribed in paragraphs (a) to (e) of this section.

(a) *Notation on title page.* The following notation shall appear either (1) on the title page of the pipeline tariff, (2)

* * *

* * * * *

(e) *Tariffs may be reissued.* Tariffs containing pipeline-and-water rates may be reissued or amended at any time in the regular manner, but tariffs containing the clause prescribed by

paragraph (b) of this section which are made effective subsequent to the date of actual discontinuance of service must contain a statement that service was discontinued on ——— as per supplement No. ——— to FERC No. ——— (former tariff) and that supplement announcing discontinuance of service for that season will not be filed.

* * * * *

§ 341.13 [Amended]

r. In § 341.13, paragraph (c) is amended by removing the word "stations" and inserting, in its place, the word "offices";

s. By amending § 341.14 as follows:

1. By revising paragraphs (a) and (g) to read as follows:

§ 341.14 Statutory notice; additional procedure in filing tariffs.

(a) *Period of notice.* The act requires that all changes in rates, or in rules that affect rates, shall be filed with the Commission at least 30 days before the date upon which they are to become effective unless otherwise authorized by the Commission. Manifestly it is impossible for the Commission to check the items in tariffs to determine whether or not statutory notice has been given. Therefore, except as otherwise authorized by the Commission, 30 days' notice to the public and to the Commission must be given as to every tariff publication filed with the Commission, regardless of whether or not changes are effected thereby. (See §§ 341.3(h), 341.9(d)).

* * * * *

(g) *Explanation of missing numbers required.* Tariffs bearing FERC numbers and supplements are required to be numbered consecutively. If, for any reason, this is not done, the tariff or supplement which is not numbered in sequence with the publication last filed must be accompanied by a memorandum explaining why consecutive numbers were not used.

* * * * *

2. In paragraph (f)(4), by removing the word "classifications,"; and by removing the word "statutory" and inserting, in its place, the words "thirty days";

3. In paragraph (h), by removing the word "classification,";

§ 341.15 [Amended]

t. By removing § 341.15 in its entirety and inserting, in its place, the following "§ 341.15 [Reserved].";

§ 341.16 [Amended]

u. By removing § 341.16 in its entirety and inserting, in its place, the following "341.16 [Reserved]."

§ 341.18 [Amended]

v. In § 341.18, paragraphs (b)(2), (c)(2) and (f)(2) are amended by removing the word "freight" from the examples;

§ 341.19 [Amended]

w. In § 341.19, paragraph (a) is amended by removing the word "freight" throughout the paragraph; and paragraph (c) is amended by removing the words "small or";

§ 341.20 [Amended]

x. In § 341.20, paragraph (b) is amended by removing the words "8 x 10½ inches" and inserting, in their place, the words "8½ x 11 inches";

§ 341.25 [Amended]

y. By amending § 341.25 as follows:

1. In paragraph (a), by removing the words "traffic officer" and inserting, in their place, the word "Officer";

2. In paragraph (c), all references to "rail-motor" throughout the paragraph (including the title) are changed to read "intermodal pipelines" and all references to "Rail-Motor" throughout the paragraph are changed to read "Intermodal Pipelines";

§ 341.27 [Amended]

z. By amending § 341.27 as follows:

1. In the introductory text, by removing the words "class or" and removing the parenthetical "(except for account of irregular-route motor carriers)";

2. In paragraph (b)(1), by removing the words "3, and 4" and inserting, in their place, the words "and 3"; and by removing **"Note 3"** in its entirety and redesignating **"Note 4"** as **"Note 3"**;

3. In paragraph (b)(2), by removing the words "3, and 4" and inserting, in their place, the words "and 3" and by removing **"Note 3"** in its entirety and redesignating **"Note 4"** as **"Note 3"**;

4. By removing paragraph (c) in its entirety;

5. In paragraph (d), by changing all references to "class (or commodity)" to read "commodity"; and all references to "classes (or commodities)" to read "commodities"; and by removing the word "stations" and inserting, in its place, the word "offices";

6. By redesignating paragraphs (d) through (f) as paragraphs (c) through (e), respectively;

aa. By adding a § 341.28 to read as follows:

§ 341.28 Tariff notations in connection with fourth section orders.

(a) *When relief from long-and-short haul provision is granted.* (1) When the Commission has issued an order granting to a carrier authority to depart from the provisions of the amended fourth section of the act and to charge higher rates for shorter than for longer distances over the same line or route, the title page of each tariff or supplement issued and filed under such authority must bear the following notation:

This tariff (or supplement) contains rates that are higher for shorter than longer distances over the same route. Such departure from the terms of the amended fourth section of the Interstate Commerce Act is permitted by authority of Federal Energy Regulatory Commission fourth section order (or orders), as indicated in individual items herein.

(2) In connection with the item or items containing the rates as to which such authority has been granted, specific authority has been granted, specific reference to the Commission's fourth section order number and date must be given, except that in instances where all of the rates in the tariff or supplement are covered by one fourth section order references to the number and date thereof may be shown on the title page. When a general fourth section order is referred to, the particular section thereof granting such authority must be shown in addition to the order number.

(b) *When relief from aggregate of intermediate provision is granted.* (1) When the Commission has issued an order granting to a carrier authority to depart from the provisions of the amended fourth section of the Act and to charge rates higher than the aggregate of the intermediate rates subject to the act, the title page of each tariff or supplement issued and filed under such authority must bear the following notation:

This tariff (or supplement), contains rates that exceed the aggregates of the intermediate rates subject to the Interstate Commerce Act. Such departure from the terms of the amended fourth section of the Act is permitted by authority of Federal Energy Regulatory Commission Fourth section order (or orders), as indicated in individual items herein.

(2) In connection with the item or items containing the rates as to which such authority has been granted, specific reference to the Commission's fourth section order number and date must be given, except that in instances where all of the rates in the tariff or supplement are covered by one fourth section order, reference to the number and date thereof may be shown on the title page. When a general fourth section order is referred to, the particular section thereof granting such authority

must be shown in addition to the order number.

(c) *When relief is denied.* When the Commission has denied authority to carriers to continue existing departures from the provisions of the amended fourth section of the act, but has not prescribed specific rates in lieu of those existing, and it becomes necessary for carriers to publish and file rates in full conformity with the provisions of that section, the rates so filed have not been approved by the Commission. Tariffs or supplements in which they are published should not indicate that they are prescribed by, or are in compliance with an order of the Commission. If desired, however, a clause reading substantially as follows may be shown:

Issued to bring rates into conformity with the provisions of the fourth section of the Interstate Commerce Act following the issuance by the Federal Energy Regulatory Commission of its fourth section order No.—— of ——— (date), denying carrier's application.

(d) *Fourth section not waived.* Nothing in this section may be construed as waiving any of the provisions of the amended fourth section of the Interstate Commerce Act.

§ 341.291 [Amended]

bb. By amending § 341.29 as follows:

1. In paragraph (a), by removing the words "8 by 10½ inches" and inserting, in their place, the words "8½ by 11 inches"; and by removing the words "GENERAL FREIGHT DEPARTMENT" from the example test;

2. In paragraph (b), by removing the sentence "Separate letters must be used for freight and passenger schedules.";

cc. IN § 341.30(b), by removing the comma and words "and publications reproducing service orders" following the words "announcing adoptions" in the last sentence;

§ 341.31 [Amended]

dd. By removing § 341.31 in its entirety and inserting, in its place, the following "§ 341.31 [Reserved].";

§ 341.51 [Amended]

ee. By amending § 341.51 as follows:

1. By removing paragraph (b) in its entirety;

2. In the last sentence of paragraph (c), by removing the word "articles" and inserting, in its place, the word "volumes"; by removing the word "returning" and inserting, in its place, the word "redeeming"; and by removing the words "have become shopworn or have gotten into a state of disrepair through use" and insert, in their place, the word "have been altered";

3. In paragraph (d), by removing from the last sentence the word "property" and inserting, in its place, the word "product";

4. By redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively;

§ 341.53 [Amended]

ff. In § 341.53, by removing the words "Not infrequently" and inserting, in their place, the words "On occasion";

gg. By adding a new § 341.54 to read as follows:

§ 341.54 Changes in rates.

Section 6(3) of the act, as amended, provides that:

No change shall be made in the rates, fares, and charges or joint rates, fares, and charges which have been filed and published by any common carrier in compliance with the requirements of this section, except after 30 days' notice to the Commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection.

(a) *Effectiveness; notice of change.* This provision plainly refers to rates which have already become effective, and also applies the term "proposed changes" to rates which have not become effective. It follows that after notice of a change in rates has been published and filed the new rates must be allowed to go into effect, and cannot be changed, withdrawn, or canceled for at least 30 days after the date when the rates have become effective except as otherwise specifically authorized by rule, decision, or order of the Commission. A tariff may provide that it will expire with a date specified therein and which is at least 30 days subsequent to the date upon which it becomes effective, or a tariff may contain a notation that certain rates therein stated will expire with a date specified which is at least 30 days subsequent to the date upon which such rates become effective, and this will be legal notice of the cancellation or withdrawal of such tariff or of such rates. A provision in a tariff or supplement that the same or any part thereof will expire with a given date is not a guaranty that the tariff, or supplement, or such part thereof, will remain effective until and including that date. Such provision must be understood to mean that the tariff, or supplement, or specified part thereof, will expire with the date named unless sooner canceled, changed, or extended in lawful way. (See § 341.3(g).)

(b) *Commission may allow exception.* Carriers must comply fully with the requirements of the law respecting the publication, filing, and taking effect of proposed rates, unless upon application and for good cause shown, the Commission, in the exercise of authority conferred upon it, shall allow rates to be changed or withdrawn upon less than 30 days' notice, or by formal order otherwise modify such requirements. No rule decision, or order of the Commission is authority to change rates or issue tariffs on less than statutory notice unless so specifically provided in the rule, decision, or order. (See § 341.14(f).)

§ 341.55 [Amended]

hh. In § 341.55, the "NOTE" is amended by removing from the first sentence the words "or gateway" and the words "or via a different gateway,";

ii. By adding a new § 341.56 to read as follows:

§ 341.56 Reduction of rate to equal the aggregate of the intermediate rates.

(a) Section 4 of the act, as amended, prohibits the charging of any greater compensation as a through rate than the aggregate of the intermediate rates that are subject to the act. The Commission has frequently held that through rates which are in excess of the sum of the intermediate rates between the same points via the same route are prima facie unreasonable. The Commission has no authority to change or fix a rate except after full hearing. It is believed to be proper for the Commission to say that if called upon to formally pass upon a case of this nature it would be its policy to consider a rate which is higher than the aggregate of the intermediate rates between the same points via the same route as prima facie unreasonable and that the burden of proof would be upon the carrier to defend such unreasonable rate.

(b) Where a rate is in effect by a given route from point of origin to destination which is higher than the aggregate of intermediate rates from and to the same points, by the same or another route, such higher rate may, on not less than 1 day's notice to the public and the Commission, be reduced to the actual aggregate of such intermediate rates. Such reduced rate must be published in a supplement to or a reissue of the tariff in which the rate so reduced appears. Any tariff or supplement containing a rate reduced under authority of this section must bear on its title page, or in connection with such item, the notation

"Issued on 1 day's notice under authority of 18 CFR 341.56. The rate (or rates) hereby reduced appears in ——— Tariff, FERC ———, item (or page) ———, and the factors to and from ——— (here insert point or points on which combination makes) used in making the new rate (or rates) are found in ———, Tariff, FERC No. ———, item (or page) ———, and ——— Tariff, FERC No. ———, item (or page) ———."

(c)(1) In order to facilitate the publication of rates which will be in accord with the aggregate of intermediates provision of the fourth section of the act the following rule may be incorporated in tariffs:

Carriers have endeavored to publish herein rates which do not exceed the aggregate of the intermediate rates between points between which there is an actual movement of traffic, but if there should be in this tariff any rate which is in excess of the aggregate of intermediates, or if through subsequent change in an intermediate factor any rate in this tariff becomes higher than the aggregate of intermediates in violation of the provisions of the fourth section of the Act, carriers will reduce such rates to the aggregate of the intermediate rates on 1 day's notice under authority of 18 CFR 341.56. On any commodity between points between which there is a movement or a prospective movement of that commodity. The publication of such reduced rate will be made within 30 days after such unlawful rate comes to carrier's notice.

Carriers, parties to this tariff, whose rate over the route of movement is higher than the aggregate of the intermediates over that route, further agree that on any shipment on which the higher rate named in this tariff for that route has been charged, application will be made promptly to the Federal Energy Regulatory Commission for authority to award reparation on the basis of the aggregate of intermediates in effect on date of shipment. (See note.)

Note.—Carriers or shippers who discover combinations which result in lower charges than the rates named herein, should promptly report such cases to the publishing agent of his tariff, showing the through rate and the item or page where it is found together with the separate factors which make up the combination, giving tariff reference by item or page, where possible, for each.

(2) In placing this rule in tariffs carriers must strictly adhere to the wording of the rule as no modification thereof will be permitted.

(3) The failure to publish and file reduced rates as provided in this part, within 30 days from the date that said rates are brought to the attention of the carriers parties thereto, or any of them, or their agents, will be considered by the Commission as sufficient ground for the issuance of an order prohibiting its use in connection with such carrier or carriers. A promise to publish certain rates, when published in a tariff, becomes the rule of the carriers parties to the tariff and therefore when a carrier or agent has been called upon to reduce rates under authority of the above rule it will not be necessary for such carrier or agent to secure any additional authority from the carriers parties to the tariff for the publication of the reduced rates and any delay on that account may cause carriers, to incur the penalties provided for violations of the fourth and sixth sections of the act in addition to losing the right to use the rule in tariffs.

jj. By amending § 341.57 as follows:

1. By revising the title to read "*Newly constructed pipelines*".

2. In paragraph (a), the first sentence is revised to read as follows:

§ 341.57 Newly constructed pipelines.

* * * * *

(a) * * * Charges applicable at, and rates, charges, rules or regulations applicable from, to, or via points on newly constructed pipelines including loops, branches and extensions of existing pipelines may be established in the first instance on not less than 10 days' notice.

* * * * *

3. In paragraph (b), by removing the word "classifications," throughout the paragraph; by removing from the example the words "rule 57, Tariff Circular 20" and inserting, in their place, the words "18 CFR 341.57"; and by removing from the example the words "stations on railroads (or pipeline or reached by water carrier, as case may be)." and inserting, in their place, the words "points on pipeline";

4. In paragraph (c), by removing the word "classifications," throughout the paragraph; by removing from the example the words "rule 57, Tariff Circular 20," and inserting, in their place, the words "18 CFR 341.57"; and removing the words "stations on railroads (or pipeline or reached by water carrier, as case may be)." and inserting, in their place, the words, "points on pipeline."; and removing the word "stations" and inserting, in its place, the word "points";

5. By revising paragraph (d) to read as follows:

* * * * *

(d) *Rates established may not be reduced by similar rates.* When a commodity rate has been established from, to, via, or between points on a newly constructed line, a different commodity rate from, to, via, or between the same points may not be established at a later date under authority of this section; but commodity rates may be established under authority of this section within the 60-day period prescribed herein. Interested carriers and publishing agents should be notified as much in advance of the opening of a newly constructed line as is possible in order that rates may be established which will give carriers and shippers fullest possible use of such newly constructed lines.

* * * * *

6. By removing paragraph (e) in its entirety:

§ 341.58 [Amended]

kk. By amending § 341.58 as follows:

1. In the title and paragraph (a), by changing the reference to "Section 10762" to read "Section 6";.

2. In paragraph (a), by removing the words "less than statutory notice" and inserting, in their place, the words "a notice of less than 30 days";

3. In the first sentence of paragraph (c), by adding the words "sixth section" following the word "file" and removing the word "statutory" and inserting, in its place, the words "30 days' ";

4. In the last sentence of paragraph (c), by removing the number "10762" and by inserting the word "sixth" preceding the word "section";

5. In the second sentence of paragraph (d), by removing the number "10762" and by inserting the word "sixth" preceding the word "section";

6. By amending title of paragraph (e) to read:

(e) *Applications, form and number.* 7. By further amending paragraph (e) as follows:

A. By removing the word "in duplicate" in the first sentence and inserting, in its place, the word "with fourteen copies in conformance with Rule 2004 of Commission's Rules of Practice and Procedure.";

B. By removing the words "8 by 10½ inches" and inserting, in their place, the words "8½ by 11 inches";

C. In the first sentence under the words "Form of Application", by revising the number "10762" to read "6";

D. By removing from the example the word "articles" and inserting, in its place, the word "commodities"; and

E. By removing from the example the parenthetical "(state whether class, commodity or combination)";

11. By removing § 341.60 in its entirety and inserting, in its place, the following "§ 341.60 [Reserved].";

§ 341.63 [Amended]

mm. By removing § 341.63 in its entirety and inserting, in its place, the following "§ 341.63 [Reserved].";

§ 341.66 [Removed]

nn. By removing § 341.66 in its entirety and inserting, in its place, the following "§ 341.66 [Reserved].";

oo. By amending § 341.67 as follows:

(1) By revising paragraph (b)(1) to read as follows:

§ 341.67 Export and import traffic—ocean carriers.

* * * * *

(b) *Through routes and joint rates.* (1) A common carrier by pipeline subject to the Interstate Commerce Act (hereinafter referred to in this section as the domestic carrier), may establish a through route and joint rate with a vessel-operating common carrier by water engaged in the foreign commerce of the United States (hereinafter referred to in this section as the ocean carrier) as defined in the Shipping Act, 1916, for the transportation of property between any place in the United States and any place in a foreign country. Every tariff naming such a through route and joint rate shall be filed with this Commission. The tariff may be filed in the name of the ocean carrier, a conference of ocean carriers, the domestic carrier or the duly appointed tariff publishing agent of such carriers.

* * * * *

2. In paragraph (b)(2), by removing the words and parenthetical "Parts 1300 and 1305 (regulations in both parts included in Tariff Circular No. 20)" and inserting, in their place, the words "Parts 341 and 343"; by removing from the fourth sentence the words "and/or loaded containers"; by removing the sentence "If the tariff provides containerload rates, such rates must be made subject to a specified minimum weight or minimum measure per container, or a specified minimum charge per shipment per container, and a maximum weight per container."; by removing from the last sentence the words "freight is" and inserting, in their place, the words "volumes are"; and by removing from the last sentence the words "packed (loaded) or unpacked (unloaded) into or from the containers" and insert, in their place, the words "loaded or unloaded into or from the facilities";

(3) In paragraph (b)(5), by inserting in the third sentence the parenthetical "(such as tariffs (containing joint pipeline-ocean rates)" preceding the words "in which the domestic carrier desires";

4. By removing the "Cross Reference" at the end of the section and inserting, in its place, the following:

Cross Reference: For regulations governing the posting of tariffs of common carriers by pipeline see Part 343.";

pp. By removing the following sections or paragraphs in their entirety: §§ 341.2(a)(4); 341.9(n); 341.13(f); 341.32; 341.33; 341.34; 341.300, 341.310, 341.311, 341.312, 341.313, 341.314 and 341.315;

qq. By changing the following references throughout Part 341:

References to	Change to read
1300.0	341.0;
1300.2	341.2;
1300.2(b)	341.2(b);
1300.3(b)	341.3(b);
1300.3(g)	341.3(g);
1300.4	341.4;
1300.4(d)	341.4(d);
1300.4(h)	341.4(h);
1300.4(m)	341.4(m);
1300.6	341.6;
1300.7	341.7;
1300.8	341.8;
1300.8(e)	341.8(e);
1300.9	341.9;
1300.9(d)	341.9(d);
1300.9(k)	341.9(k);
1300.10(a)	341.10(a);
1300.11	341.11;
1300.12(d)	341.12(d);
1300.14	341.14;
1300.17	341.17;
1300.18	341.18;
1300.18(e)	341.18(e);
1300.1	341.1;
1300.2(a)	341.2(a);
1300.3	341.3;
1300.3(c)	341.3(c);
1300.3(h)	341.3(h);
1300.4(b)	341.4(b);
1300.4(e)(1)	341.4(e)(1);
1300.4(i)	341.4(i);
1300.5	341.5;
1300.6(a)	341.6(a);
1300.7(b)	341.7(b);
1300.8(d)	341.8(d);
1300.8(f)	341.8(f);
1300.9(c)	341.9(c);
1300.9(e)	341.9(e);
1300.10	341.10;
1300.10(g)	341.10(g);
1300.12	341.12;
1300.13	341.13;
1300.14(f)	341.14(f);
1300.17(a)	341.17(a);
1300.18(d)	341.18(d);
1300.18(f)	341.18(f);
1300.19	341.19;
1300.20	341.20;
1300.21	341.21;
1300.23	341.23;
1300.24	341.24;
1300.25(b)	341.25(b);
1300.26(b)	341.26(b);
1300.28	341.28;
1300.30	341.30;
1300.52	341.52;
1300.54	341.54;
1300.56	341.56;
1300.58	341.58;
1300.61	341.61;
1300.67	341.67;
1300.19(b)	341.19(b);
1300.20(b)	341.20(b);
1300.22	341.22;
1300.23(a)	341.23(a);
1300.25	341.25;
1300.26	341.26;
1300.27	341.27;
1300.29	341.29;
1300.51	341.51;
1300.53	341.53;
1300.55	341.55;
1300.57	341.57;
1300.59	341.59;
1300.64	341.64;
1300.67(b)	341.67(b).

rr. By changing all references to "circular" throughout Part 341 to read "tariff"; all references to "I. & S. Docket No." throughout Part 341 are changed to read "Docket No. IS"; all references to "Tariff Circular No. 20" throughout Part 341 are changed to read "this part"; all references to "station" throughout Part 341 are changed to read "point"; and all references to "stations" throughout Part 341 are changed to read "points".

IV. Part 342 is added to 18 CFR Chapter I to read as follows:

PART 342—LONG-AND-SHORT-HAUL AND AGGREGATE-OF-INTERMEDIATE RATES—PIPELINES

Sec.

342.11 [Reserved]
342.21 Disposition of fractions.
342.31 [Reserved]
342.61 Relief for departures in rates on transit shipments.
342.65 Filing schedules simultaneously with applications.
342.75 Applications, preparation and filing, conformity with rules.
342.76 [Reserved]
342.77 Long-and-short-haul and aggregate of intermediate applications separate.
342.78 Number of copies, form, general specifications and requirements, signatures, and verification.
342.79 Matters to be shown in the application.
342.80 Additional information required.
342.81 Additional matters to be shown.
342.82 Miscellaneous provisions.
342.83 Acceptance of applications.
342.84 Applications for relief previously denied.
342.85 Changes and additions.

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (Supp. V 1981), Interstate Commerce Act, 49 U.S.C. 1–27 (1976); E.O. 12009, 3 CFR Part 142 (1978).

§ 342.11 [Reserved]

§ 342.21 Disposition of fractions.

(a) Applying the rule de minimis, all carriers are hereby authorized, in the making up of through rates on the aggregate of the intermediate rates, to disregard fractions of a cent less than .5 retaining the half cent in the rate when it is even .5, and making the rate in even cents when the fraction is more than .5.

(b) Tariffs need contain no reference to this order. The Commission does not hereby approve any rates that may be filed under this authority, all such rates being subject to complaint, investigation, and correction if in conflict with any other provision of the act.

§ 342.31 [Reserved]

§ 342.61 Relief for departures in rates on transit shipments.

In those instances in which fourth-section orders have been or may be entered granting carriers relief from the provisions of section 4 of the act to

maintain lower rates for the transportation of like kind of property for longer than for shorter distances the same relief shall also apply when the said rates, with or without the addition of lawfully established charges to cover the cost of transit, are applied on transit shipments. This section shall not be construed as authorizing fourth-section departures which might result from the establishment of transit privileges at some points and not at other points on the route of movement, nor as approving any transit arrangements that may be established under this permission, all such arrangements being subject to complaint, investigation, and correction if in conflict with any other provision of the act.

§ 342.65 Filing schedules simultaneously with applications.

(a) Section 4(1) of the Interstate Commerce Act (49 U.S.C. 4(1)) has been amended by the Transportation Act of 1940, now effective, so as to eliminate the so-called equidistant clause and to provide:

> That tariffs proposing rates subject to the provisions of this paragraph may be filed when application is made to the Commission under the provisions hereof, and in the event such application is approved, the Commission shall permit such tariffs to become effective upon one day's notice.

(b) Heretofore, the practice of carriers has been to file applications for, and to obtain, fourth-section relief of either a temporary or continuing character before publishing and filing rates which would without relief contravene the fourth section. The new proviso is construed as intended to shorten the period intervening between carrier's determination to publish rates and their effective date so that if relief is granted, the time now intervening between the filing of the application and its granting will be eliminated, but is not intended to set aside the 30 days' notice requirement of section 6 or to abridge the rights of interested persons to seek suspension under section 15(7). To facilitate administration of the new proviso and at the same time to avoid interference with other sections of the act, the following procedure has been adopted:

(1) Insofar as possible, fourth section applications filed under the proviso will be acted upon before the effective date of the tariffs.

(2) In cases where it is found possible to pass upon applications before the effective date of the tariffs, if relief is granted, such relief will be made effective not with issuance of the order but on the same date as the effective date of the tariffs.

(3) In cases where action upon the application has not been taken prior to the effective date of the schedules, or where the relief sought has been denied in whole or in part, the present intention is to suspend the tariffs in order to avoid the unauthorized fourth-section departures which otherwise would result.

(4) Where rates were suspended solely because of failure to act upon the fourth-section application and where the necessary relief is subsequently granted, the present intention is promptly to vacate the order of suspension, the vacating order to be effective with issuance.

(c) Pending modification of the Commission's Rules of Practice, carriers that file applications for relief from the provisions of section 4 with respect to rates or charges included in schedules filed concurrently with such applications, should include in the applications a complete statement of the tariffs and supplements containing such rates or charges in substantially the following form:

> The rates (charges) as to which relief is prayed herein have been published and filed to become effective ——— (date) in ——— (name of agent or carriers). Tariff, FERC ——— (No.) (supplement number to tariff should be shown if published therein).

(d) Tariffs and supplements filed under the above provision should show on the title page thereof a statement that they contain rates or charges, as the case may be, that contravene the long-and-short-haul (or aggregate-of-intermediates) provision of section 4, and should give specific reference to an item or page of the tariff or supplement on which shall be prominently displayed a complete and specific list of items and pages on which such rates are found, with specific number and date reference to the application for relief with respect to such rates or charges.

(e) When appropriate fourth section relief has been granted before the effective date of tariffs or supplements, and such tariffs or supplements become effective, number reference to the order granting such relief need be given only when the next supplement or reissue is filed.

(f) Many outstanding orders granting relief from the long-and-short-haul provision of section 4 contain conditions designed to give effect to the equidistant clause. The present intention is not to eliminate such conditions in the absence of petitions for reopening of proceedings in which such orders were entered as it is believed that in some cases retention of such conditions may be warranted notwithstanding the repeal of the equidistant clause and in others some substitute limitation may be necessary.

> Note.—See previous notice in this matter, 5 FR 3758, Sept. 25, 1940.

§ 342.75 Applications, preparation and filing, conformity with rules.

Any common carrier subject to the Act may apply to this Commission, under section 4(1) of the Act, for such authorization as it is empowered to grant thereunder. Such application must conform to the requirements hereinafter provided.

§ 342.76 [Reserved]

§ 342.77 Long-and-short-haul and aggregate of intermediate applications separate.

Separate applications shall be filed for relief from the long-and-short-haul provision, and for relief from the aggregate-of-intermediates provision of section 4 of the act.

§ 342.78 Number of copies, form, general specifications and requirements, signatures, and verification.

(a) Applications shall be substantially in the form shown below, and five copies of each, including all exhibits and maps must be furnished.

Form of Application for Relief Under Section 4(1) of the Act

Fourth Section Application

Commission's No. ——

Carrier's No. ——

The ——— Company, by ———, its ——— (Official title), hereby petitions the Federal Energy Regulatory Commission (FERC) for authority to establish rates or charges hereinafter set forth without observing the long-and-short-haul (or aggregate-of-intermediates) provision of section 4(1) of the Interstate Commerce Act. (If rates, etc., are to apply over the lines of more than one carrier, the application should show that it is made for and on behalf of all such carriers, naming them, or if made for or on behalf of all carriers parties to a particular tariff, reference may be made by FERC No. to such tariff for the names of such carriers.)

I. (State fully the rates, charges, etc., which it is desired to establish, with complete reference to the tariffs in which published and the effective date thereof, the routes over and the commodities upon which they are to apply, and name, or descriptions of the points of origin and destination. See Note A following.)

II. (State fully names or description of intermediate points at which it is desired to maintain higher rates etc., and rates etc., at such points or a sufficient number of such points to illustrate the situation, including the first and last higher-rated and the highest-rated intermediate points. Distances between all points shown should be included in this statement. In applications for relief from the aggregate-of-intermediates provision, set

forth typical examples of the higher through rates or charges, and the intermediate rates or charges that in the aggregate are less than the through rates etc. See Note A, following. Also show FERC Nos. of tariffs, and supplements thereto, containing the rates and distances stated.)

III. This application is based upon the following facts which present all of the circumstances and conditions relied upon by your applicant in justification of the relief herein prayed: (Make a complete and accurate statement as to the necessity for the proposed changes, and all of the circumstances and conditions relied upon as justifying the relief prayed. See Note A, following.)

IV. (Give specific reference to any proceeding pending before or determined by the Commission, by docket number, and report citation, if any, which may have any bearing upon, or be in any way related to the rates, etc., sought to be established or maintained. If none, state that fact.)

———— Company (Corporate title of applicant)

By (Personal signature of officer)————

Title of officer ————

Note A.—When more convenient this information may be given in an exhibit or exhibits, and here referred to: "As stated in exhibit —— attached to and made a part hereof." Information required under each numbered section, as above, should be shown in a separate exhibit.

Exhibits should conform to the following requirements:

Generally. Exhibits of a documentary character may have a maximum width of 22 inches by 12½ inches in height. Whenever practicable the sheets of each exhibit and the lines of each sheet should be numbered. If the exhibit consists of five or more sheets, the first sheet or title-page should be confined to a brief statement of what the exhibit purports to show, with reference by sheet and line to illustrative or typical examples contained therein. The exhibit should bear an identifying number, letter, or short title which will readily distinguish it from other exhibits offered. It is desirable that, whenever practicable, rate comparisons and other evidence should be condensed into tables. Exhibits should not be argumentative, should be limited to statements of fact, and be relevant and material to the issue.

Reference to tariff authority, routes, and distances. All exhibits showing rates, charges, or other tariff or schedule provision must, by appropriate Federal Energy Regulatory Commission number reference, indicate the tariff or schedule authority therefor, and if distances are shown must also show the authority therefor and, by lines, highways, or waterways, and junction points, the routes over which the distances are computed; except that the routes over which the distances are computed need not be shown when such distances are specifically published in a tariff or schedule lawfully on file with the Commission, or definitely ascertainable from a tariff or schedule on file with the Commission showing rates prescribed by the Commission and based on short-lined distances, or short highway distances, provided the exhibit makes specific reference to such tariff or schedule as provided by this rule.

(b) Applications shall be on opaque, unglazed, durable paper not exceeding 8½ by 11 inches. To permit the binding in covers of uniform size, margins of at least 1½ and 1 inch, respectively, shall be allowed on the left and right margins. Binding shall be on the left margin. Reproduction may be by printing, multilithing, mimeographing, or any other process, provided the copies are clear and permanently legible. Whiteline blue prints which cannot be reproduced by photography are not desirable. If directly typewritten, or if in facsimile reproduction of typewriting, the impression must be on one side of the paper and must be double spaced, except that long quotations shall be single spaced and indented. If printed, nothing less than 10-point type shall be used, except that 8-point type may be used in footnotes.

(c) The original copy of the application must be over the personal signature of an executive officer, a responsible traffic officer, or a duly authorized attorney or agent, specifying his title, and sworn to before a notary public or other officer authorized by law to administer oaths. Verification shall be in the manner shown below:

Verification

State of ——— ss:

County of ———

——— (Name of affiant), being duly sworn, deposes and says: That he is the ——— (title of affiant) of the ——— (Name of applicant); that he is authorized by said applicant to sign and file with the Federal Energy Regulatory Commission this application and exhibits attached hereto, and to verify the facts and statements contained in said application and exhibits; that he has carefully examined all of such statements contained in said application and exhibits; and that the same are true and correct to the best of his knowledge, information, and belief.

Subscribed and sworn to before me, a ——— in and for the State and County above, this ——— day of ———, 19—.

(SEAL) My commission expires ———.

§ 342.79 Matters to be shown in the application.

(a) The information required in this section and in §§ 342.80 and 342.81, and 342.82, according to the grounds upon which relief is sought, shall be shown in the application when Commission action is desired on the presentation made therein, without hearing. When a hearing is desired and applicants propose to justify at the hearing the relief desired, the information specified in this section shall be included in the application, and the information required in §§ 342.80, 342.81 and 342.82 may, instead, be introduced at the hearing. It should be understood, however, that where the information included in the application does not fully justify the relief sought, or for other good cause, the application may be assigned for hearing at the Commission's discretion. The application shall show:

(b) The names of the carrier or carriers for, or on behalf of which it is made, or, if made on behalf of all carriers parties to a particular tariff, the application may refer to such tariff by the Federal Energy Regulatory Commission number (hereinafter abbreviated FERC No.).

(c) The FERC No. of all tariffs in which rates or charges referred to in the application or exhibits are published.

(d) The rates or charges proposed to be established; the basis or bases therefor; the commodities on which they are to apply; the points of origin and destination; and the routes between such points over which the rates or charges will apply. (Direct routes only with respect to applications for long-and-short-haul relief). When relief is desired from or to "related" points or "group" points, the points or groups shall be indicated in the map hereafter required to be furnished, or defined by reference to tariff publications providing the grouping.

(e) If long-and-short-haul relief is sought, the intermediate points at which it is proposed to maintain rates or charges higher than those proposed from or to more distant points and the rates or charges at such points. If relief from the aggregate-of-intermediate provision of section 4 is sought, the intermediate rates or charges that, in the aggregate, are less than the through rates or charges.

(f) A complete and accurate statement of the grounds relied upon as justification for the relief prayed.

(g) Applications for relief from the provisions of section 4 with respect to rates or charges included in schedules filed before the necessary relief has been obtained shall include in the opening or second paragraph a complete statement of the tariffs and supplements containing such rates or charges in substantially the following form:

The rates (charges) as to which relief is prayed herein have been published and filed to become effective——— (Date) in —— (Name of agent or carriers) tariff FERC —— (Number). (Supplement number should be shown if published in a supplement).

§ 342.80 Additional information required.

(a) *Long-and-short-haul relief.* Applications should show:

(1) That, where proposed rates are depressed to meet competition, the competitive rates they are being established to meet are not within the control of applicant carriers, and any other facts tending to show that such rates should not be observed as maxima at intermediate points.

(2) That the lower rates for longer than for shorter hauls over the same line or route are reasonably compensatory.

The following information is considered pertinent in a showing as to the reasonably compensatory nature of rates:

(i) Statement of ton-mile and per barrel-mile earnings under the competitive rates. When a general adjustment is involved covering rates between numerous competitive points and applicable or to be applied by numerous routes, it will be sufficient, ordinarily, to give representative examples of rates throughout the territory yielding the lowest earnings for the longest and shortest hauls involved.

(ii) Statement of ton-mile and barrel-mile expenses of petitioning carriers on the traffic involved, or other evidence showing that the proposed rates will be reasonably compensatory.

(3) A statement of rates at representative intermediate points at which rates exceed or would exceed the rates at more distant points under the proposed adjustment, including rates at the first and last higher-rated intermediate points and the distances from and to such intermediate points. This information need not be shown where the rates at the more distant points are constructed on the basis of a mileage scale and the rates at the intermediate points reflect the same mileage scale.

(4) That the higher rates for the shorter than for the longer hauls over the same line or route are reasonable. (The usual facts tending to show the reasonableness of rates should be presented).

(5) Whether there is a complaint pending as to the reasonableness of the rates at the intermediate points on the applicant line or route.

(6) In the event the rates proposed to be superseded by subsequent revisions are maintained under the authority of outstanding fourth-section orders, reference to such orders shall be furnished.

(7) Where the proposed adjustment is in any way related to a prior adjustment as to which relief has been authorized, that is, the addition of origins, destinations, commodities, etc., or involves rates for the return movement of commodities as to which relief for initial hauls has been authorized, reference to orders authorizing such relief shall be furnished.

(b) *Aggregate-of-intermediates relief.* Applications should show:

(1) The origins and destinations from and to which it is proposed to continue, or to establish and maintain through rates or charges which exceed the aggregate-of-intermediate rates or charges, together with the intermediate rates or charges that, in the aggregate, are less than the through rates or charges.

(2) That the intermediate rates or charges which, in the aggregate, are lower than the through rates or charges, are depressed by competitive conditions that do not affect the through rates, or charges; and the same information with respect to the conditions alleged as affecting the intermediate rates as that required in applications for long-and-short-haul relief with respect to similar conditions when alleged as grounds for maintaining lower rates for longer than for shorter distances.

(3) That the through rates or charges that would exceed the aggregate-of-intermediate rates or charges are reasonable. (The usual facts tending to show the reasonableness of rates should be presented).

§ 342.81 Additional matters to be shown.

(a) *Applications based on water competitions.* (1) The name of the competing water line or lines actually in operation between the water points and whether said water line or lines, in the transportation of the traffic involved, are subject to the Interstate Commerce Act.

(2) A detailed statement of the charges over the water line or lines, including marine insurance, wharfage, handling, shrinkage, and all other applicable incidental charges. Where such charges are named in tariffs on file with the Interstate Commerce Commission, reference should be made to such tariffs by ICC number.

(3) Whether facilities for loading into and unloading from barges or ships are available.

(4) The minimum tender that may be made to the water carrier or carriers, and whether shippers and receivers are equipped to handle such amounts.

(5) If the season of navigation is restricted, and, if so, that available storage will permit the handling by water of receivers' needs during the season of navigation.

(6) The cost of installation, maintenance, etc., of loading, unloading, and storage facilities which must be constructed or installed before water transportation is feasible.

(7) Evidence supporting water costs and accessorial charges which are not published in tariffs on file with the Interstate Commerce Commission.

(8) Certification that a copy of the application has been served upon the competing water line or lines named in paragraph (a)(1) hereof. The service and certification shall conform with the requirements of § 385.203 of this chapter.

(b) *Applications based on motor carrier competition.* The charges over the competing motor line or lines, including all incidental charges, and if interstate common contract carrier or carriers, reference to the applicable tariffs by ICC numbers.

(c) *Applications based on market competition.* (1) The names of the producing or receiving points whose competition is to be met.

(2) The short line or route and distances, or the class rate distances if the latter are normally used for rate making purposes, from the various producing points to the common market and tariff authority for the distances.

(3) The rates from the competitive producing points with reference by ICC No. to the tariffs naming the rates and whether they conform to the provisions of section 4 of the act. If relief has been granted or application is pending as to such rates, give reference to the ICC No. of the application or order.

(4) Whether similar competition is to be met at intermediate points.

(d) *Applications based on weak financial condition or high operating costs of the applicant line.* Financial statistics and operating conditions.

§ 342.82 Miscellaneous provisions.

(a) In addition to the above, applications should show any other conditions or circumstances relied upon as constituting a special case within the meaning of section 4(1) of the Act.

(b) Applications should contain a map, made a part thereof, showing the relative location of lines or routes, the competitive points, and representative intermediate points at which higher rates are to be charged, or representative points from or to which it is proposed to maintain through rates or charges which exceed the aggregate of intermediates.

§ 342.83 Acceptance of applications.

In any case when, upon inspection, the Commission is of the opinion that an application does not sufficiently set forth required material or is otherwise deficient, the Commission may decline to accept the application for filing and may return it unfiled, or the Commission may accept it for filing and advise the person tendering it of the deficiencies

and require that such deficiencies be corrected.

§ 342.84 Applications for relief previously denied.

If the Commission denies an application, and the carrier presents a new application based upon new or additional facts in justification of the proposed rates or charges, such facts should be clearly indicated as such, and the modified application must refer specifically to the previous application and the number of the order by which it was denied.

§ 342.85 Changes and additions.

Copies of any amendment to the application, or any additional information furnished to the Commission in connection therewith, including notices of any changes in the effective date of the rates or charges as set forth in compliance with § 342.79(g), shall be served by applicant upon all parties served with a copy of the application and upon all parties protesting the application. The service and certification thereof shall conform with the requirements of § 385.203 of this chapter.

V. Part 343 is added to 18 CFR Chapter I to read as follows:

PART 343—POSTING TARIFFS OF COMMON CARRIER PIPELINES

Tariffs of Common Carriers by Pipeline and Tariffs Containing Joint Intermodal Pipeline Rates

Sec.

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (Supp. V 1981); Interstate Commerce Act, 49 U.S.C. 1–27 (1976); E.O. 12,009, 3 CFR Part 142 (1978).

Tariffs of Common Carriers by Pipeline and Tariffs Containing Joint Intermodal Pipeline Rates

§ 343.0 Application-posting of tariffs defined.

(a) The regulations in this part shall also govern the posting (by carriers subject to the jurisdiction of the Federal Energy Regulatory Commission) of any tariff containing a through route and joint rate over the lines of a common carrier by pipeline subject to the Interstate Commerce Act, on the one hand, and a vessel-operating common carrier by water engaged in the foreign commerce of the United States, as defined in the Shipping Act, 1916, on the other hand, and all other tariffs governing the application of the rate tariff, for the transportation of property between any place in the United States and any place in a foreign country. The carrier subject to the jurisdiction of this Commission receiving shipments at a port for delivery to points in the United States under joint through rate and route arrangements shall post at its office at such port the tariffs naming such rates and its governing tariffs.

(b) The term "post" as used in this part means the maintenance of a file of tariffs in the custody of an agent of the carrier in a complete, accessible, and usable form, and keeping such file of tariffs available to the public upon request during ordinary business hours. The term "tariff" as used in this part includes tariff supplements or amendments.

§ 343.1 Location of complete public files of tariffs.

Each common carrier by pipeline shall post at its principal office a complete set of all tariffs which it issued or to which it is a party, together with an index thereto.

§ 343.2 Time of posting.

Each tariff must be posted at least 30 days before its effective date, excepting those as to which the Commission has authorized a shorter period of notice to the public. Each carrier shall require the agent at every office at which tariffs are posted to write or stamp on each tariff the date on which it was posted.

§ 343.3 Tariff files to be accessible to the public.

Each file of tariffs shall be in charge of an agent of the carrier. Each carrier shall require and instruct such agent to afford inquirers an opportunity to examine any of such tariffs without asking the inquirer to assign any reason therefor, and, upon request, to lend assistance to seekers of information therefrom with all promptness possible and consistent with proper performance of other duties.

§ 343.4 Notice required to be posted.

Each carrier shall also cause to be displayed continuously in a conspicuous public place at each office at which tariffs are required to be posted, a notice printed in large type reading as follows:

With only such exceptions as have been authorized by the Federal Energy Regulatory Commission, all tariffs which contain rates and charges applying from or at this location are on file, in this office, together with an index of all of this company's tariffs. The tariffs and index may be inspected by any person upon application and without the assignment of any reason for such inspection. The agent on duty in this office will lend any assistance desired in securing information therefrom.

If request is made for a tariff naming rates from this location, the posting of which has been discountinued because of nonuse, the agent will arrange to have it reposted within 20 days and thereafter keep it posted.

In addition a complete file of all of this company's tariffs, with indexes thereof, is maintained and kept available for public inspection at:

(Here indicate the place or places where complete tariff files are maintained, including the street address and, where appropriate, the room number.)

§ 343.5 Check-up on files of tariffs.

Each carrier shall place in effect a system of supervision that will insure the continued maintenance in proper and readily accessible form of tariff files required at each office where complete files are maintained. Such offices must be furnished at least once a year with a list of all of the tariffs which should be in their files. Upon receipt of the list the agent or employee in charge will immediately check the tariffs on hand against the list, and report any deficiencies. Evidence of improper maintenance of files at any office may incur the prescription of detailed instructions to the carrier by the Commission necessary to insure compliance with the regulations.

VI. Part 344 is added to 18 CFR Chapter I to read as follows:

PART 344— FILING QUOTATIONS FOR GOVERNMENT SHIPMENTS AT REDUCED RATES

Sec.

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (Supp. V 1981); Interstate Commerce Act, 49 U.S.C. 1–27 (1976); E.O. 12009, 3 CFR Part 142 (1978).

§ 344.1 Applicability.

The provisions of this part shall apply to copies of quotations or tenders made by all pipeline common carriers to the United States Government, or any agency or department thereof, for the transportation, storage or handling of property at reduced rates as permitted by section 22 of the Interstate Commerce Act, as amended, except quotations or tenders which, as indicated by the United States Government or any department or agency thereof to any carrier or carriers, involves information the disclosure of which would endanger the national security.

§ 344.2 Manner of submitting quotations.

(a) *General.* Copies of all quotations or tenders by common carriers to which this part applies, concerning rates or charges for the transportation, storage, or handling of property, at reduced rates, including quotations or tenders for retroactive application whether negotiated or renegotiated after the services have been performed, which are submitted to the Federal Energy Regulatory Commission on and after the effective date of this part in conformity with the provisions of paragraph (2) of section 22 of the Interstate Commerce Act (49 U.S.C. 22) shall conform to the provisions of paragraphs (b), (c), (d), (e), (f) and (g) of this section.

(b) *Copies to be submitted concurrently with submittal to government agencies.* Exact copies of the quotation or tender shall be submitted to the Commission concurrently with the submittal of the quotation or tender to the Federal department or agency for whose account the quotation or tender is offered or the proposed services are to be rendered.

(c) *Filing in duplicate required.* All quotations or tenders shall be filed in duplicate, one copy of which will be maintained at the Washington office of this Commission for public inspection. One of such copies shall be signed and both shall clearly indicate the name and official title of the officer executing the document.

(d) *Filing procedure.* Both copies of the quotations or tenders shall be filed together with a letter of transmittal which clearly indicates that they are being filed in accordance with the requirements of section 22, as amended. They must be addressed to the "Federal Energy Regulatory Commission, Washington, D.C. 20426," with the envelope marked as containing "Section 22 Quotations", and delivered free of all charges. If receipt for the accompanying documents is desired, the letter of tramsmittal must be sent in duplicate, and one copy showing date of receipt by the Commission will be returned to the sender.

(e) *Numbering.* The copies of quotations or tenders which are filed with this Commission by each carrier or agent shall be numbered consecutively in a series maintained by such carrier or agent beginning with the number "1".

(f) *Quotation or tender superseding prior one.* A quotation or tender which supersedes a prior quotation or tender shall, by a statement shown immediately under the number of the new document, cancel the prior document by number.

(g) *Amendments or supplements to quotations or tenders.* When amendments or supplements are filed to quotations or tenders issued prior to August 31, 1957, copies of the original quotations or tenders, and any prior amendments thereto, must be filed with the amendments or supplements.

VII. Part 345 is added to 18 CFR Chapter I to read as follows:

PART 345—SECTION 5a APPLICATIONS

Applications for Authority To Establish or Control Agreements Between or Among Carriers

Sec.

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (Supp. V 1981); Interstate Commerce Act, 49 U.S.C. 1–27 (1976); E.O. 12009, 3 CFR Part 142 (1978).

Applications for Authority to Establish or Control Agreements Between or Among Carriers

§ 345.1 Form and contents of application.

The application and supporting exhibits shall conform to Rule 203 of the general rules of practice (§ 385.203 of this chapter) and shall show, in the order indicated, with the following paragraph designations, the following information:

(a) Full and correct name and business address (street and number, city and ZIP Code, county and State) of the carrier applicant or applicants (hereinafter called applicant); whether applicant is a corporation, individual, or partnership; if a corporation, the government, State or territory under the laws of which the applicant was organized and received its present charter, and if a partnership, the names of the partners and the date of formation of the partnership.

(b) Full and correct name and business address (city and State) of each carrier on whose behalf the application is filed and whether it is a corporation, individual, or partnership.

(c) If the agreement of which approval is sought pertains to a conference, bureau, committee, or other organization, a complete description of such organization, including any subunits, and of its or their functions and methods of operation, together with a description of the territorial scope of such operations; and, if such organization has a working or other arrangement or relationship with any other organization, a complete description of such arrangement or relationship. If the agreement is of any other character, a precise statement of its nature and scope and the mode of procedure thereunder.

(d) The facts and circumstances relied upon to establish that the agreement will be in furtherance of the national transportation policy declared in the Interstate Commerce Act, as amended.

(e) The name, title, and post office address of counsel, officer, or other person to whom correspondence in regard to the application is to be addressed.

§ 345.2 Required exhibits.

There shall be filed with and made a part of each orginal application, and each copy, the following exhibits:

(a) As Exhibit 1, a true copy of the agreement.

(b) As Exhibit 2, if the agreement pertains to a conference, bureau, committee, or other organization, a copy of the constitution, by-laws, or other documents or writings, specifying the organization's powers, duties, and procedures, unless incorporated in the agreement filed as Exhibit 1.

(c) As Exhibit 3, if the agreement relates to a conference, bureau, committee, or other organization, an organization chart.

(d) As Exhibit 4, if the agreement relates to a conference, bureau, committee, or other organization, a schedule of its charges to members or, where expenses are divided among the members, a statement, showing how the expenses are divided.

(e) As Exhibit 5, opinion of counsel for applicant that the application made meets the requirements of law as set forth in section 5a of the Interstate Commerce Act, as amended, and will be legally authorized if approved by the Commission, with specific reference to any specially pertinent provisions of articles of incorporation or association.

§ 345.3 Procedure.

The following procedure shall govern the execution, filing, and disposition of the applications:

(a) The orginal application shall be made under oath and shall be signed in ink by applicant, if an individual; by all partners, if a partnership; and if a corporation, by an executive officer having knowledge of the matters therein contained; and shall show, among other things, that the affiant is duly authorized to verify and file the application.

(b) The original application and supporting papers and twenty copies thereof for the use of the Commission shall be filed with the Secretary of the

Federal Energy Regulatory Commission, Washington, D.C. 20426. Each copy shall bear the dates and signatures that appear in the original and shall be complete in itself, but the signatures in the copies may be stamped or typed, and the officer's seal may be omitted.

(c) A copy of the application shall be served by applicant by first-class mail upon the regulatory body having jurisdiction as to rates, fares, or charges of each State, territory, or district embraced within the scope of the agreement, and the original application filed with the Commission shall include a certificate naming the bodies upon whom the application has been so served.

(d) A public notice will be issued by the Commission and filed with the Director of the Federal Register stating the fact that an application has been filed under these rules and indicate how a hearing on such application may be obtained.

(e) A protest against the granting of an application should be filed in accordance with Rule 1403 of the general rules of practice (§ 385.1403 of this chapter).

(f) To the extent that matters of procedure are not covered by these special rules, the Commission's general rules of practice shall apply.

§ 345.4 New parties to an agreement.

Where a carrier becomes a party to an agreement which has been approved by the Commission, such approval will extend and be applicable to such carrier upon the filing with the Commission by the carrier or its authorized agent of a verified statement that it has become a party to the agreement, which statement shall show the information required by § 345.1(b): *Provided* (a) That such carrier is not, under the agreement, to act with carriers of a different class, within the meaning of section 5a(4) of the Interstate Commerce Act, except as the agreement relates to transportation under joint rates or over through routes, and (b) that no change is made in the agreement except the addition of such carrier.

§ 345.5 Public notice.

When independent action is announced and tariff publication is to be made by a publishing agent operating pursuant to an agreement under section 5a of the Interstate Commerce Act, notification thereof will be given by the agent to the same extent and in the same manner that the agent gives notice of actions proposed under procedures for collective consideration of the parties to the agreement; and no other joint or collective procedures under the agreement are thereby invoked.

VIII. Part 346 is added to 18 CFR Chapter I to read as follows:

PART 346—FEES

§ 346.1 Filing fees.

(a) *Manner of payment.* All filing fees will be payable at the time and place the application, petition, notice, tariff, contract, or other document is tendered for filing. Fees will be payable to the Federal Energy Regulatory Commission by check drawn upon funds deposited in a bank in the United States or money order payable in U.S. currency.

(b) *Fees not refundable.* Fees will be assessed for every filing in the types of proceedings listed in the schedule of fees contained in paragraph (d) of this section. After the application, petition, notice, tariff, contract, or other document has been accepted for filing by the Commission, the filing fee will not be refunded, regardless of whether the application, petition, notice, tariff, contract, or other document is granted or approved, denied, dismissed, or withdrawn. If an application, petition, notice, tariff, contract, or other document is rejected by the Commission as incomplete or for some other reason, the fee will be returned.

(c) *Related or consolidated proceedings.* (1) Separate fees need not be paid on related applications filed by the same applicant which would be the subject of one proceeding. In such instances, the only fee to be assessed will be that applicable to the embraced proceeding which carries the highest filing fee as listed in paragraph (d) of this section.

(2) The Commission may reject concurrently filed applications, petitions, notices, contracts, or other documents asserted to be related and refund the filing fee if, in its judgment, they embrace two or more severable matters which should be the subject of separate proceedings.

(d) *Schedule of filing fees.*[1]

Type of Proceeding Fee Applications To Enter Upon a Particular Financial Transaction of Joint Arrangement

(1) An application for the pooling or division of traffic. Section 5(1)—$100.

(2) An application for approval of, or to amend, a rate association agreement. Section 5a—$300.

Other Proceedings

(3) An application for relief from the long-and-short-haul and aggregate-of-intermediate provisions, including applications for relief with respect to additional commodities, origins or destinations, but not including petitions for modification of conditions, effective or not yet effective of outstanding orders, or amendments to applications not yet disposed of. Section 4—$250.

(4) An application for authority to establish released value rates or ratings, except that no fee will be assessed for applications seeking such authority in connection with reduced rates established to relieve distress caused by drought or other calamitous visitation under section 22(1) of the act. Sections 20(11)—$200.

(5) An application for special permission for short notice or the waiver of tariff-publishing requirements, including applications to extend or eliminate the scheduled expiration date of an outstanding special permission or to broaden the application thereof to additional territory or tariffs, except amendments to pending applications not yet disposed of, and applications to postpone the effectiveness of suspended schedules, when carrier or agent is requested to do so, in order to afford the Commission more time for disposition of the proceeding or to postpone the scheduled effective date of protested schedules or those for which a fourth-section application has been filed, in order to afford the Oil Pipeline Board more time within which to process the protests or applications—$20.

(6) Application for basic (original) valuation of a pipeline carrier's operating property. Section 19a—$10/hr.

(7) Application for each annual valuation of a pipeline carrier's operating property as of the close of any calendar year following the carrier's basic valuation. Section 19a—

The following fees are based on the carrier's size:

Cost of reproduction (millions)	Fee
Under 10	$50
10 to 29.9	200
30 to 49.9	500
50 to 74.9	700
75 to 99.9	1,000
100 to 149.9	1,300
150 to 199.9	1,850
200 to 299.9	2,500
Over 300	4,300

(Department of Energy Organization Act, 42 U.S.C. 7101–7352 (Supp. V 1981); Interstate Commerce Act, 49 U.S.C. 1–27 (1976); Executive Order 12,009, 3 CFR Part 142 (1976))

IX. Part 347 is added to 18 CFR Chapter I to read as follows:

PART 374—COMPETITIVE BIDS OIL PIPELINE

Sec.

347.1 Specifications, form of proposal and contract; publication of request for bids; variation from the generally applicable procedure.

347.2 Opening of bids; bonds; form and contents of bids.

347.3 Considerations for acceptance of bids; rejection; readvertising for new bids.

347.4 Statement of the transaction.

347.5 Examination.

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (Supp.

[1] Except as noted, statutory references are to the Interstate Commerce Act.

V 1981); Interstate Commerce Act, 49 U.S.C. 1–27 (1976) E.O. 12,009, 3 CFR Part 142 (1978).

§ 347.1 Specifications, form of proposal and contract; publication of request for bids; variation from the generally applicable procedure.

(a) When any pipeline, subject to the Interstate Commerce Act, is required by section 10 of the Clayton Antitrust Act (38 Stat. 734; 15 U.S.C. 20) to call for bids for securities, supplies, or other articles of commerce, or for the construction or maintenance of any kind or part of its carrier property such carrier shall prepare specifications, form of proposals and contract, setting forth clearly and so far as applicable in each case in detail a description or descriptions of the matters and things for which bids are requested, the terms, times and conditions of delivery and payment, the place or places where delivery or performance is to be made, the character, amount, and terms of securities offered or sought, and a full description of the supplies or other ariticles required or offered for sale, hypothecation, or purchase, and shall make and attach to such specifications such maps, drawings, and illustrations and state such other substantial facts or conditions as are or may be necessary to a full understanding of the premises and procedure by bidders. Such specifications, drawings and illustrations in each case shall be kept open at the principal office or offices of the carrier for full examination, free of charges, by persons desiring to examine the same with a view to bidding, and, upon request, such carrier shall furnish to any person or persons desiring the same true and accurate copies of such specifications, maps, drawings and illustrations; *Provided*, That the pipeline may make a charge for such copies so furnished, the charge not to exceed the reasonable cost of making and forwarding the copies requested.

(b) The pipeline shall publish in each case a request for bids in at least two daily newspapers of general circulation, at least two publications in each week for two weeks, the first publication to be at least two weeks immediately preceding the day when the bids are to be submitted; one such newspaper shall be published or shall be of general circulation in the city or town where the principal operating officer of the carrier is located and the other newspaper shall be published in one other of the following cities nearest to the operating or financial office of the carrier or the place where the contract is to be performed; namely: New York, N.Y., Boston, Mass., Chicago, Ill., St. Louis, Mo., Atlanta, Ga., San Francisco, Calif., and Portland, Oreg.; and a printed copy of the published notice in each case shall be posted in plain view, for two weeks immediately preceding the day on which bids are to be received, on a bulletin board, designated for that purpose, in a public and conspicuous place in the building where the principal operating office of the carrier is located.

(1) Such published notices shall describe in general but intelligible terms the proposed contract, giving its serial number, and the special matter or things for which bids are requested, and the date and time at or before which the bids must be submitted, and the person by whom and the office at which the bids submitted will be recieved and opened as provided in this part. The carrier may in said notice reserve the right to reject, any and all bids and may, at its option, require each bidder to tender a bond in a reasonable sum to be therein named, with sufficient surety or sureties conditioned upon the faithful and prompt performance of the terms of the contract.

(c) Upon application, a pipeline owned or operated by any state or by an agency of one or more states or a wholly-owned subsidiary corporation thereof, may be authorized by the Commission to employ a competitive bidding procedure or precedures varying from the generally applicable procedure provided by this regulation upon the following showing: (1) That the applicant carrier is owned or operated by a state or by an agency of one or more states, or is a wholly-owned subsidiary corporation thereof: (2) a detailed statement of the procedure for which authorization is requested and the variations thereof from the generally applicable procedure provided by this regulation and the purpose or reason for such variation; and (3) that the generally applicable procedure provided by this regulation imposes on the carrier an unreasonable burden or interferes with obtaining by the carrier of the most favorable bid.

§ 347.2 Opening of bids; bonds; form and contents of bids.

(a) Every bid to receive consideration shall be submitted at the place and at or before the hour specified in the notice for the receipt of bids. The time specified may be any hour from 10:00 a.m. until 3:00 p.m of any business day, and the bids shall be opened after the specified hour and before six o'clock on the day and at place and by the person or persons designated in the notice. Each bidder may attend in person or by a duly authorized representative at the opening of the bids, and shall be afforded an opportunity to do so and to examine each bid. The bids shall forthwith be tabulated in conformity with the form of proposal prepared and a copy of such tabulation shall be promptly furnished to any bidder or his authorized representative upon application therefor.

(b) When required by the notice, each bid shall be accompanied by tender of a bond in the amount specified in the notice with sufficient surety or sureties conditioned upon the faithful and prompt performance of the proposed contract. A bond shall be required only in cases where the notice for bids expressly calls for a bond.

(c) Each bid shall be enclosed with accompanying papers in a plain envelope securely sealed bearing no indication of the name of the bidder or the amount of the bid, and shall be marked "Bid under proposed contract No. ———," and shall be addressed to the officer of the carrier designated in the notice to receive the name.

(d) Each bid shall state the name and address of the bidder and, if the bidder be a corporation, the names and addresses of the officers, directors and general manager thereof and of the purchasing or selling officer or agent in that transaction and, if the bidder is a firm, partnership or association, the bid shall give the names and addresses of each member thereof, and of the manager, purchasing or selling officer or agent in that transaction.

§ 347.3 Considerations for acceptance of bids; rejection; readvertising for new bids.

(a) After receiving and opening bids as aforesaid, the carrier receiving the same shall within 48 hours in cases where the sale or purchase of securities is the undertaking, and within 21 days where bids are for supplies, equipment, other articles of commerce and for construction or maintenance work, accept the most favorable bid considering (1) the lowest price or prices for the supplies, equipment, and other articles of commerce, and for the construction or maintenance work, described in the advertisement, and the highest price or prices offered for any securities or property, so described, for sale by the carrier, and (2) the ability and reliability of the bidder, financial and otherwise, to deliver the property or to perform the work or transaction, or to pay for the securities, described in the advertisement, giving due consideration to any bond or security tendered by the bidder.

(b) If the right be reserved in the notice, all bids may be rejected and the pipeline may readvertise for bids. The pipeline shall notify the successful

bidder of the acceptance of his or its bid, and the bidder shall within 10 days execute the required contract, and, if required by the notice, execute a good and sufficient bond for the faithful and prompt performance of the contract. In case the successful bidder shall neglect or fail within said time to execute the contract or bond as aforesaid the carrier may within 5 days award the contract to the next most favorable bidder, ascertained as herein provided for determining the most favorable bidder. If neither the most favorable bidder nor the next most favorable bidder shall execute a contract and qualify as aforesaid, the carrier shall readvertise for new bids.

§ 347.4 Statement of the transaction.

Each pipeline after having made and executed a contract as and in the manner above specified shall within 30 days after the execution of such contract file with the Federal Energy Regulatory Commission a statement of the transaction giving, (a) a copy of the published notice; (b) the names of all bidders, and, if the bidder be a corporation, the names and addresses of the officers, directors and general managers thereof and of the purchasing or selling officer or agent in that transaction, or if the bidder be a partnership or firm, the names and addresses of the members of the firm, the general manager and purchasing or selling agent thereof, and the total amount of each bid; (c) the name of the bidder to whom the contract was awarded together with a copy of the contract; and (d) if any other than the lowest or the highest bid, as the case may be, is accepted as being most favorable to the carrier, the reasons for such acceptance. The statement shall be made in typewriting, in pamphlet form on pages not less than 8 by 10½ inches in size nor greater than 9½ by 12 inches, in size, bound on the longer edge of the page, the paper to be of durable quality fit for permanent record.

§ 347.5 Examination.

In the case of each bid so taken as aforesaid, the pipeline shall preserve and keep open for examination by the Federal Energy Regulatory Commission or any duly authorized examiner thereof, (a) a copy of the resolution or order of the Board of Directors, Executive Committee, or officers of the said common carrier specifying the purposes and terms of the contract for which the bids were invited; (b) a copy of the specifications, maps, drawings, and illustrations upon which bids were made; (c) copies of the notices published, sworn to by or on behalf of the publisher of each paper, respectively, giving the dates and times of publication; (d) the original bids received, designating the bid accepted and giving a statement of the reasons for accepting the same; (e) a copy of the contract entered into between the carrier and the accepted bidder, together with a copy of the bonds if any; (f) references by number of volume and page to the records of proceedings of the stockholders, directors, or executive committee of the pipeline. The files in each transaction shall be securely fastened together and given the contract number and each document therein shall be numbered consecutively and at the conclusion there shall be a sworn statement by the president, a vice president, or the general manager of the pipeline, stating that the files in No. ——— contain true and complete records and statements of all the negotiations had in connection with the contract therein set forth. Carriers subject to the requirements of section 10 of the Clayton Antitrust Act, 15 U.S.C. 20, may destroy such contracts or other records required thereby 10 years after the expiration thereof, without permission of the Commission: *Provided,* There is no litigation pending involving these records: *And further provided,* That the carrier has informed the Commission of its intended action at least 2 weeks prior to the date the records are to be destroyed.

[FR Doc. 84-8363 Filed 3-29-84; 8:45 am]
BILLING CODE 6717-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1300

[Docket No. 37321]

Revision of Tariff Regulations, All Carriers

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: In this proceeding the Commission has proposed a revision and consolidation of its regulations in 49 CFR Parts 1300 to 1310. The new regulations would be located at 49 CFR Part 1312 and 49 CFR Parts 1300 to 1310 would be removed from the Code of Federal Regulations (CFR). The Federal Energy Regulatory Commission (FERC) also uses portions of 49 CFR Part 1300 in its regulation of rates and charges for the transportation of oil by pipeline. The purpose of this notice is to transfer 49 CFR Part 1300 from Title 49 of the CFR to Title 18 of the CFR, instead of removing the part from the CFR.

DATES: Effective July 2, 1984.[1]

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, (202) 275–7428 or Charles E. Langyher, (202) 275–7739.

SUPPLEMENTARY INFORMATION: By a notice of proposed rules (NPR) published in the **Federal Register** on July 7, 1983 (48 FR 31265), we proposed a revision of our regulations governing the construction, posting, and filing of carriers' tariffs and related documents. The proposed new rules would be located at 49 CFR Part 1312 and the existing rules in 49 CFR Parts 1300 to and including 1310 would be removed.

Jurisdiction over oil pipelines, as it relates to the establishment of rates or charges for the transportation of oil by pipeline and to the establishment of valuation for pipelines, was transferred from this Commission to FERC under the Department of Energy Organization Act, 42 U.S.C. 7155 and 7172(b). In its regulation of oil pipeline rates or charges, FERC has used 49 CFR Part 1300. Therefore, FERC has requested that this Commission transfer 49 CFR Part 1300 to Title 18 of the CFR, instead of removing it from the CFR entirely.

We are presently in the process of drafting final rules in response to our NPR in this proceeding. We expect to issue a final decision addressing the comments and adopting final rules for 49 CFR Part 1312 in the near future. However, granting FERC's request at this time will save that agency the cost of republishing the regulations in the **Federal Register** and will not adversely affect any of this Commission's regulations. Accordingly, we will grant FERC's request and order the redesignation of 49 CFR Part 1300 as 18 CFR Part 341. We have assigned a July 2, 1984, effective date for the redesignation. It is expected that our action regarding rules for 49 CFR Part 1312 should be finalized by that date.

The action we are taking by this notice concerns solely matters of agency practice and procedure because it merely transfers existing regulations from Title 49 CFR to Title 18 CFR. This change will aid oil pipeline companies subject to the procedural requirements. Therefore, we find pursuant to Section 553(b) of the Administrative Procedure Act, 5 U.S.C. 553(b), that prior notice and opportunity for public comment is unnecessary.

[1] The FERC is publishing a final rule contemporaneously with this notice that transfers rules for the establishment of rates or charges for the transportation of oil by pipeline from Title 49 to Title 18 of the CFR.

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

It is ordered: Part 1300 of 49 CFR, Chapter X is transferred to 18 CFR, Chapter I and redesignated as Part 341.

List of Subjects in Part 1300

Pipelines.

Authority: 5 U.S.C. 553 and 49 U.S.C. 10321.

Decided: March 23, 1984.

By the Commisson, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Commissioner Gradison did not participate.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-8364 Filed 3-29-84; 8:45 am]

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Federal Register

Friday
March 30, 1984

Part V

Department of Labor

Employment and Training Administration

20 CFR Parts 652 and 653
Services for Veterans; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 652 and 653

Services for Veterans

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training, Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: This document contains final regulations to implement certain amendments to the veterans' employment and training laws administered by the Department. It reflects the provisions of 38 U.S.C. requiring State employment service agencies to provide veterans and eligible persons the maximum of employment and training opportunities, with priority given to the needs of disabled veterans and veterans of the Vietnam era. Further, these regulations clarify the role and responsibilities of the Assistant Secretary for Veterans' Employment and Training in administering certain veterans' programs and activities that were previously under the jurisdiction of the Employment and Training Administration.

EFFECTIVE DATE: April 30, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph C. Juarez, telephone: (202) 523–9110.

SUPPLEMENTARY INFORMATION: The rules published in this document replace the veterans' service regulations at 20 CFR Part 653, Subpart C, issued March 27, 1979, with a new set of regulations in 20 CFR Part 652, Subpart B. The new rules implement amendments to the veterans' employment and training laws in 38 U.S.C., Chapters 41 and 42. They also clarify and simplify the administration of ongoing legislative mandates regarding employment services to veterans.

The Veterans' rehabilitation and Education Amendments of 1980 established the Assistant Secretary of Labor for Veterans Employment and Training (ASVET) and transferred to ASVET responsibilities for administration of employment services for veterans which were previously handled by the Employment and Training Administration. The 1980 amendments also established the Disabled Veterans Outreach Program (DVOP) as a permanent program administered by the ASVET. The Veterans' Compensation, Education and Employment Amendments of 1982 further clarified the responsibilities of the State and Assistant State Directors for Veterans' Employment and Training as well as the administration of the DVOP program. The new regulations in 20 CFR Part 652 implement these amendments.

The provisions of 38 U.S.C. continue to mandate that the "public employment service system" provide priority services to veterans. Sections 2004, 2007, and 2012 of 38 U.S.C. all contain specific references to functions to be carried out by the State employment service agencies. Further, 38 U.S.C. 2000, 2002, 2002A, and 2003 direct the ASVET to work closely with the State agencies to ensure that legislative mandates are carried out. These final rules continue to address State agency priority services to veterans. They also simplify the former regulations at 20 CFR Part 653, Subpart C, which they replace, by removing requirements that are more appropriately addressed through administrative guidelines.

Proposed rulemaking for the implementation of all amendments to Title 38, U.S. Code, Chapters 41 and 42 and to replace 20 CFR Part 653, Subpart C, was published on pages 34866–34869 of the **Federal Register** on August 1, 1983, for the purpose of soliciting public comment. The Department received written comments from a variety of sources including State agencies, veterans organizations, and other interested parties. The following summarizes the significant comments, recommendations, and actions taken:

Definitions

The Department agreed with several commentators and revised the definition for "Service Delivery Point" (SDP) under § 652.101 to encompass the area served by State agency local offices including extended service locations.

State Agency Services

Many commentators criticized the wording of § 652.120 for not containing a legislative reference, the services involved, or how such services relate to providing maximum employment and training opportunities to veterans and eligible persons. The Department has added the appropriate legislative reference, an explanation of services involved and a statement describing provision of maximum employment and training opportunities.

Local Veterans Employment Representatives (LVER)

Several commentators suggested that § 652.123 should be expanded to include the criteria for determining which local offices should be assigned full-time or part-time LVERs. The Department has added the full-time criteria at § 652.123(a)(1) requiring 1,000 new or renewed applications from veterans and eligible persons during the most recent twelve-month reporting period. Also added was § 652.123(a)(2) stating that part-time LVERs shall be assigned in proportion to the full-time criteria. If the ASVET determines that appropriations exigencies preclude full application of these criteria, it may permit appropriate limited adjustments.

State Agency Cooperation and Coordination

Some commentators suggested inclusion of references in § 652.124 to cover coordination with related programs under other legislation. A new subparagraph (b) was added to include such references.

Complaints of Veterans and Eligible Persons

The Department adopted a recommendation from several commentators to include references to the type of complaints covered by § 652.125.

Determination of Compliance

Some commentators expressed concern that removal of the statistical methodology and numerical values for the socalled "indicators of compliance" from the regulations would adversely affect enforcement of the standards of performance governing State agency services to veterans and eligible persons. The Department does not agree. State agencies are held to the qualitative, verbal standards described in §§ 652.120–652.125. The indicators of compliance merely provide a convenient numerical picture of the State agency's performance. Inclusion of the indicators in the regulations has proven to be cumbersome. Accordingly, § 652.130(b) provides that statistical indicators for evaluating services to veterans and eligible persons will be established administratively through negotiations between State agency administrators and State Directors for Veterans' Employment and Training. The numerical values thus established for each reporting period will be published as a public notice in the **Federal Register.** The Department believes that this approach permits greater sensitivity to change and to the particular needs of the individual State.

Technical and Editorial Changes

Finally, various technical and editorial changes were made throughout

the regulations for purposes of clarity and consistency.

Classification—Executive Order 12291

The regulations are procedural in character. Therefore, they are not classified as a "major rule" under Executive Order 12291 on Federal regulations because they are not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in cost 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 the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required. In addition, these regulations do not affect any trade-sensitive activity because they do not apply in any way to governments, industries, or firms engaged in international trade.

Regulatory Flexibility Act

The Department believes that these regulations will not have "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. 96-354, 91 Stat. 1164 (5 U.S.C. 605(b)). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because these regulations are procedural in character. The regulations implement amendments to 38 U.S.C. Chapters 41 and 42 and primarily concern changes at the national level in the administration of ongoing programs with no significant economic impact expected with respect to small entities. Accordingly, no regulatory impact analysis is required.

List of Subjects

20 CFR Part 652

Employment, Grant programs—Labor, Labor employment service programs, Veterans.

20 CFR Part 653

Agriculture, Employment, Equal employment opportunity, Labor, Migrant labor.

Accordingly, Parts 652 and 653 of Title 20, Chapter V of the Code of Federal Regulations are amended as set forth below:

PART 652—ESTABLISHMENT AND FUNCTIONING OF STATE EMPLOYMENT SERVICES

1. The table of contents for Part 652 is amended by designating §§ 652.1–652.9 as "Subpart A—Employment Service Planning and Operations" and adding a table of contents for a new Subpart B, as follows:

2. The authority citation for Part 652 is revised to read as follows:

Authority: Wagner-Peyser Act, 29 U.S.C. 49 et seq.; 38 U.S.C. Chapters 41 and 42.

3. A new Subpart A heading is added to §§ 652.1–652.9 to read as follows:

Subpart A—Employment Service Planning and Operations

* * * * *

4. A new Subpart B is added to Part 652 to read as follows:

Subpart B—Services for Veterans

Purpose and Definitions

§ 652.100 Purpose and scope of subpart.

(a) This subpart contains the Department of Labor's regulations for implementing 38 U.S.C. 2001–2012, Chapters 41 and 42, which require the Secretary of Labor to provide eligible veterans and eligible persons the maximum of employment and training opportunities, with priority given to the needs of disabled veterans and veterans of the Vietnam era, through the public employment service system established pursuant to the Wagner-Peyser Act, as amended.

(b) This subpart describes the roles and responsibilities of the Assistant Secretary for Veterans' Employment and Training (ASVET) and the staff of the Veterans' Employment and Training Service (VETS).

(c) This subpart describes the performance standards for determining compliance of State agencies in carrying out the provisions of 38 U.S.C., Chapters 41 and 42 with respect to:

(1) Providing services to eligible veterans and eligible persons to enhance their employment prospects,

(2) Priority referral of special disabled veterans and veterans of the Vietnam era to job openings listed by Federal contractors pursuant to 38 U.S.C. 2012(a), and

(3) Reporting of services provided to eligible veterans and eligible persons pursuant to 38 U.S.C. 2007(c) and 2012(c).

(d) Performance standards are contained in this subpart at §§ 652.140–652.142 on the conduct of the Disabled Veterans Outreach Program (DVOP) in accordance with 38 U.S.C. 2003A.

§ 652.101 Definitions of terms used in subpart.

"Assistant Secretary for Veterans' Employment and Training (ASVET)" shall mean the official of the Department of Labor as described in § 652.110.

"Assistant State Director for Veterans' Employment and Training Service (ASDVETS)" shall mean a Federal employee who is designated as an assistant to a State Director for Veterans' Employment and Training Service (SDVETS).

"Disabled Veteran" shall mean a veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Veterans Administration and who is not classified as a Special Disabled Veteran.

"Eligible person" shall mean:

(1) The spouse of any person who died of a service-connected disability; or

(2) The spouse of any member of the armed forces serving on active duty who at the time of application for assistance under this subpart, is listed, pursuant to 37 U.S.C. 556 and the regulations issued thereunder, by the Secretary concerned, in one or more of the following categories and has been so listed for a total of more than 90 days: (i) Missing in action, (ii) captured in line of duty by a hostile force, or (iii) forcibly detained or interned in line of duty by a foreign government or power; or

(3) The spouse of any person who has a total disability permanent in nature resulting from a service-connected disability or the spouse of a veteran who died while a disability so evaluated was in existence.

"Eligible veteran" shall mean a person who (1) served on active duty for a period of more than 180 days and was discharged or released therefrom with other than a dishonorable discharge, or (2) was discharged or released from active duty because of a service-connected disability.

"Local Veterans' Employment Representative (LVER)" shall mean a member of the State agency staff designated and assigned by the State agency administrator to serve veterans and eligible persons pursuant to this subpart.

"Regional Director for Veterans' Employment and Training Service (RDVETS)" is the representative of the ASVET on the staff of the Veterans' Employment and Training Service (VETS) at the regional level; supervises all other VETS staff within the region to which assigned; and shall report to, be responsible to, and be under the administrative direction of the ASVET.

"Service Delivery Point (SDP)" shall mean a designated local employment service office which serves an area that may also contain extended service locations.

"Special disabled veteran" shall mean (1) a veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Veterans Administration for a disability rated at 30 percent or more, or (2) a person who was discharged or released from active duty because of a service-connected disability.

"State agency" means the State governmental unit designated pursuant to section 4 of the Wagner-Peyser Act, as amended, to cooperate with the United States Employment Service in the operation of the public employment service system.

"State Director for Veterans' Employment and Training Service (SDVETS)" is the representative of ASVET on the staff of the Veterans' Employment and Training Service (VETS) at the State level.

"United States Employment Service (USES)" shall mean the component of the Employment and Training Administration of the Department of Labor, established under the Wagner-Peyser Act of 1933, as amended, to maintain and coordinate a national system of public employment service agencies.

"Veteran of the Vietnam era" shall mean an eligible veteran who (1) served on active duty for a period of more than 180 days, any part of which occurred during the Vietnam era (August 5, 1964, through May 7, 1975) and was discharged or released therefrom with other than a dishonorable discharge; or (2) was discharged or released from active duty for a service-connected disability if any part of such active duty was performed during the Vietnam era.

"Veterans' Employment and Training Service (VETS)" shall mean the organizational component of the Department of Labor administered by the Assistant Secretary of Labor for Veterans' Employment and Training established to promulgate and administer policies and regulations to provide eligible veterans and eligible persons the maximum of employment and training opportunities according to 38 U.S.C. 2002.

Federal Responsibilities

§ 652.110 Role of the Assistant Secretary for Veterans' Employment and Training (ASVET).

(a) As the principal veterans' advisor to the Secretary of Labor, the ASVET shall formulate, promulgate, and administer policies, regulations, grant procedures, grant agreements and administrative guidelines and administer them through the Veterans' Employment and Training Service (VETS) so as to provide eligible veterans and eligible persons the maximum of employment and training opportunities, with priority given to the needs of disabled veterans and veterans of the Vietnam era, through existing programs, coordination, and merger of programs and implementation of new programs.

(b) ASVET shall oversee activities carried out by State agencies pursuant to 38 U.S.C., Chapters 41 and 42.

(c) ASVET shall ensure that appropriate records and reports are maintained by State agencies within their management information systems to fulfill their obligations under this subpart.

Standards of Performance Governing State Agency Services to Veterans and Eligible Persons

§ 652.120 Standards of performance governing State agency services.

(a) To the extent required by 38 U.S.C. 2002 and other applicable law, each State agency shall assure that all of its SDPs, using LVERs and other staff, shall provide maximum employment and training opportunities to eligible veterans and eligible persons with priority given to disabled veterans and veterans of the Vietnam-era, by giving them preference over non-veterans in the provision of employment and training services available at the SDP involved. Services are those activities or efforts including but not limited to registration, counseling, referral to supportive services, job development, etc., which are directed to help applicants find jobs or training. When making referrals from the group of applicants meeting the specific eligibility criteria for a particular program, State agencies shall observe the priority order to referral in paragraph (b).

(b) In making referrals of qualified applicants to job openings and training opportunities, to provide maximum employment and training opportunities under 38 U.S.C., SDPs shall observe the following order of priority:

(1) Special disabled veterans;

(2) Veterans of the Vietnam era;

(3) Disabled veterans other than special disabled veterans;

(4) All other veterans and eligible persons; and

(5) Nonveterans.

§ 652.121 Performance standard on facilities and support for Veterans Employment and Training Service (VETS) staff.

Each State agency shall provide adequate and appropriate facilities and administrative support such as office space, furniture, telephone, equipment, and supplies to VETS staff.

§ 652.122 Reporting and budget requirements.

(a) State agencies shall provide RDVETS, SDVETS, and ASDVETS with access to regular and special internal State agency reports which relate in whole or in part with services to veterans and/or eligible persons.

(b) Each State agency shall make reports and prepare budgets pursuant to instructions issued by the ASVET and in

such format as the ASVET shall prescribe.

§ 652.123 Performance standards governing the assignment and role of Local Veterans' Employment Representatives (LVERs).

(a) To carry out the requirements of 38 U.S.C. 2004, at least one member of each State agency staff, preferably an eligible veteran, shall be designated and assigned by each State agency administrator as a full-time or part-time LVER in each SDP in accordance with terms/requirements of a grant agreement approved by the ASVET. The ASVET intends to use the following criteria in establishing the terms and requirements of grant agreements:

(1) At least one full-time LVER shall be assigned in each SDP which has had 1,000 new or renewed applications from veterans and eligible persons during the most recent twelve-month report period unless a waiver based on demonstrated lack of need is granted by the ASVET, and

(2) At least one part-time LVER whose time shall be devoted to veterans' services in proportion to the full-time criteria shall be assigned to each SDP not meeting the criteria for full-time LVERs in § 652.123(a)(1).

(b) Additional full-time or part-time LVERs may be assigned based on a determination of need by the State agency administrator and in accordance with terms/requirements of a grant agreement approved by the ASVET.

(c) Each LVER shall perform, at the SDP level, the duties prescribed at 38 U.S.C. 2003(c) required by 38 U.S.C. 2004.

§ 652.124 Standards of performance governing State agency cooperation and coordination with other agencies and organizations.

(a) Each State agency shall establish cooperative working relationships through written agreements with the Veterans Administration (VA) offices serving the State to maximize the use of VA employment and training programs for veterans and eligible persons.

(b) All programs and activities governed by this subpart will be coordinated to the maximum extent feasible with other programs and activities under 38 U.S.C., the Wagner-Peyser Act, the Job Training Partnership Act, and other employment and training programs at the State and local level.

(c) Such relationships or agreements may be described in the Governor's Coordination and Special Services Plan prepared according to section 121(b) of the Job Training Partnership Act (Pub. L. 97–300).

§ 652.125 Standards of performance governing complaints of veterans and eligible persons.

Each SDP shall display information on the various complaint systems to advise veterans and eligible persons about procedures for filing employment service, Federal contractor, equal opportunity, and other complaints.

State Employment Service Agency Compliance

§ 652.130 Determination of compliance.

(a) The ASVET shall have authority for applying the requirements and remedial actions necessary to implement 20 CFR 658, Subpart H.

(b) The ASVET shall establish appropriate program and management measurement and appraisal mechanisms to ensure that the standards of performance set forth in §§ 652.120–125 are met. Specific performance standards designed to measure State agency services provided to veterans and eligible persons required by § 652.120(a) will be developed administratively through negotiations between State agency administrators and SDVETS and numerical values of the standards will be published as public notices in the **Federal Register**. A full report of those State agencies in noncompliance with the standards of performance and their corrective action plans shall be incorporated into the Secretary's annual report to the Congress cited at § 652.131 of this subpart.

(c) Every effort should be made by the State agency administrator and the SDVETS to resolve all issues informally before proceeding with the formal process.

(d) If it is determined by the ASVET that certain State agencies are not complying with the performance standards at §§ 652.120–125, such State agencies shall be required to provide documentary evidence to the ASVET that their failure is based on good cause. If good cause is not shown, the ASVET, pursuant to Subpart H of Part 658 of this chapter, shall formally designate the State agency as out of compliance, shall require it to submit a corrective action plan for the following program year, and may take other action against the State agency pursuant to Subpart H of Part 658 of this chapter.

§ 652.131 Secretary's annual report to Congress.

The Secretary shall report, after the end of each program year, on the success of the Department and State agencies in carrying out the provisions of this subpart.

Standards of Performance Governing the Disabled Veterans Outreach Program (DVOP)

§ 652.140 Administration of DVOP.

(a) The ASVET shall negotiate and enter into grant agreements within each State to carry out the requirements of 38 U.S.C. 2003A for support of a Disabled Veterans Outreach Program (DVOP) to meet the employment needs of veterans, especially disabled veterans of the Vietnam era.

(b) The ASVET shall be responsible for the supervision and monitoring of the DVOP program, including monitoring of the appointment of DVOP specialists.

(c) DVOP specialists shall be in addition to and shall not supplant local veterans' employment representatives assigned under § 652.123 of this subpart.

§ 652.141 Functions of DVOP staff.

Each DVOP specialist shall carry out the duties and functions for providing services to eligible veterans according to provisions of 38 U.S.C. 2003A (b) and (c).

§ 652.142 Stationing of DVOP staff.

DVOP specialists shall be stationed at various locations in accordance with 38 U.S.C. 2003A(b)(2).

PART 653—SERVICES OF THE EMPLOYMENT SERVICE SYSTEM

§§ 653.200 through 653.31 [Removed]

5. In Part 653, §§ 653.200 through 653.231 (Subpart C—Services for Veterans) are removed.

Signed at Washington, D.C. this 23rd day of March 1984.

Raymond J. Donovan,

Secretary of Labor.

[FR Doc. 84–8497 Filed 3–29–84; 8:45 am]

BILLING CODE 4510–79–M

Federal Register

Friday
March 30, 1984

Part VI

Department of Education

34 CFR Part 796

National Diffusion Network; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 796

National Diffusion Network

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary is issuing final regulations for the National Diffusion Network. These final regulations are part of the Department of Education's deregulation effort. The intended effect of the action is to improve the operation of the National Diffusion Network.

EFFECTIVE DATE: These regulations will take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Lois N. Weinberg, (202) 653–7006, Division of National Dissemination Programs, U.S. Department of Education, 400 Maryland Avenue SW., Room 613 Brown Bldg., Washington, D.C. 20202.

SUPPLEMENTARY INFORMATION:

Background

The National Diffusion Network (NDN) was established in 1974 to promote—at a fraction of their original developmental costs—the widespread national use of exemplary educational programs.

The NDN was originally authorized in Fiscal Year (FY) 1974 under the Elementary and Secondary Education Act, Title III, Section 306. In FY 1977, the program was authorized in Section 422(a) of the General Education Provisions Act (GEPA). The FY 1980 authority was contained in the Elementary and Secondary Education Act, Sections 303 and 376. Current authority is based on the Education Consolidation and Improvement Act of 1981, Pub. L. 97–35, Sec. 583(a)(1).

The NDN is a delivery system composed of two types of projects—

(a) *Developer Demonstrator Projects.* A Developer Demonstrator Project is funded to install a specific exemplary educational program in new settings nationwide.

(b) *State Facilitator Projects.* State Facilitator Projects disseminate a variety of exemplary educational programs within the particular State served.

Comments and Responses

On December 27, 1983, the Secretary published in the **Federal Register** (48 FR 57090) the Notice of Proposed Rulemaking for the National Diffusion Network. During the period allowed for comments in response to the proposed regulations, 20 letters with numerous comments and questions were received.

The provisions of these final regulations are substantially the same as those of the Notice of Proposed Rulemaking. However, § 796.15 has been changed to permit the use of instructional levels and special populations as independent priorities as well as to permit their use as limitations on other priorities. This change to the proposed rules is more consistent with the current operation of the NDN while adding the flexibility of establishing more precise priorities.

Section 796.34(a)(2) proposed that student population would be considered in determining the level of funding for State Facilitator awards. Based on further consideration within the Department, and on the comments received on this issue, the section has been removed. As in the past, the Secretary will consider the size and density of student population along with other factors in determining funding levels as part of the cost analysis required by the Education Department General Administrative Regulations (EDGAR) § 75.232.

The following is a summary of the comments received and the Secretary's response to these comments.

Section 796.3 What definitions apply to the NDN?

Comment. A commenter made suggestions for minor changes in several of the definitions in this section.

Response. No change has been made. The changes that were suggested were matters of style and not substantive issues.

Adoption-Agreement

Comment. A commenter asked whether a written agreement was required for each adoption, and expressed concern that additional paperwork would be required.

Response. No change has been made. A written agreement is not required. Many Developer Demonstrators and State Facilitators have found written agreements very effective. Whether or not a written agreement exists, there must be an understanding among all of the parties involved in the planning of an adoption of an exemplary educational program, including the State Facilitator, the Developer Demonstrator and the adopting educational service provider.

Certified Demonstration Site and Certified Trainer

Comment. A commenter asked whether the *sponsor* of an exemplary educational program was the most appropriate entity to make decisions concerning certified demonstration sites and certified trainers when the project director or other project personnel might be the persons most capable of making these decisions.

Response. No change has been made. In general, project personnel will make decisions concerning certified demonstration sites and certified trainers. However, the Department will not dictate how or at what organizational level a grantee should make a decision regarding demonstration sites and certified trainers.

Section 796.13 How long do approval and recertification by the Joint Dissemination Review Panel last?

Comment. One commenter suggested that the four-year period for funding eligibility before recertification of an exemplary educational program is required begin with the initial funding date rather than the date of JDRP approval, so that evaluation data from adoption sites would be available.

Response. No change has been made. The purpose of this requirement is to assure adopting educational service providers that programs remain as effective as when they were originally approved by the JDRP. Recertification replaces the reapproval requirement, contained in the previous regulations, under which all of the original JDRP approval requirements had to be met. Recertification will serve as a streamlined mechanism to reconfirm the quality of the original program by reviewing the program features, the educational effects, and the adoption costs every four years. Many exemplary educational programs do not receive dissemination grants from the NDN until several years after they have been approved by the JDRP. Since each exemplary educational program must have a demonstration site in order to be eligible for funding, recent evaluation data from this site may be used in lieu of or along with data from adoption sites for recertification. The JDRP approval date will serve as a consistent starting date for all programs, regardless of their funding status.

Section 796.15 Will priorities for funding Developer Demonstrator grants be established?

Comment. Several commenters expressed concern that early childhood

and special education programs could be funded only in conjunction with other priorities.

Response. A change has been made. This section has been revised to allow the identification of instructional levels and special populations as independent priorities, as well as to permit their use as limitations on other priorities.

Comment. Another commenter asked when funding priorities would be made public.

Response. Funding priorities are identified in the Application Notice, which is the official announcement published in the **Federal Register** of application deadlines and other information concerning how to apply for Department of Education grants. In most cases, funding priorities are announced annually at least 45–60 days before applications are due.

Section 796.34 What additional criteria exist for new and continuation awards?

Comment. Several commenters expressed concern about the use of student population to determine funding levels for State Facilitator projects, particularly for States with low and sparsely distributed populations.

Response. A change has been made. Proposed § 796.34(a)(2) has been removed because it appeared that undue weight was to be given to this criterion. As in the past, the Secretary will consider the size and density of student population along with other factors in determining funding levels a part of the cost analysis required by EDGAR § 75.232.

Comment. Another commenter asked on what basis the determination of project effectiveness would be made, and whether the number of adoptions and the cost effectiveness of the project would be considered.

Response. A determination of project effectiveness will be based on the annual report submitted by each project as part of the continuation application. Particular attention will be given to each applicant's report of its accomplishment of the activities described under § 796.12 or § 796.16, taking into consideration the criteria under which the original application was evaluated. The number of adoptions, the quality, and the cost effectiveness of the project will be considered.

Section 796.41 Are there restrictions on the kinds of items a grant may support?

Comment. A commenter asked whether grant funds could be used for training purposes.

Response. Many of the costs associated with training are allowable under these grants. However, stipends may not be paid to participants in training activities.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document provides early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the absence of any comments on this matter and the Department's own review, it has been determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 796

Dissemination, Education, Educational research, Grant programs—education.

Citation of Legal Authority

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

(Catalog of Federal Domestic Assistance Number 84.073, National Diffusion Network)

Dated: March 27, 1984.

T. H. Bell,

Secretary of Education.

The Secretary revises Part 796 of Title 34 of the Code of Federal Regulations to read as follows:

PART 796—NATIONAL DIFFUSION NETWORK

Subpart A—General

Sec.

Subpart B—What Kinds of Projects Does the Department Assist Under This Program?

Subpart C—How To Apply for a Grant—[Reserved]

Subpart D—How Is a Grant Made?

Subpart E—What Conditions Must Be Met By a Grantee?

Authority: Section 583 of the Education Consolidation and Improvement Act of 1981 (Pub. L. 97-35) (20 U.S.C. 3851).

Subpart A—General

§ 796.1 What is the National Diffusion Network (NDN)?

The National Diffusion Network (NDN) funds activities designed to promote across the Nation the widespread use of exemplary educational programs by educational service providers. The NDN is designed—

(a) To identify potential exemplary educational programs nationwide;

(b) To acquaint educational service providers with information on exemplary educational programs; and

(c) To help these providers adopt the exemplary educational programs through training and technical assistance.

(20 U.S.C 3851)

§ 796.2 What regulations apply to the NDN?

(a) *Regulations.* The following regulations apply to the NDN:

(1) The Education Department General Administrative Regulations (EDGAR) in Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions), Part 78 (Education Appeals Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(2) The regulations in this Part 796.

(b) *Exceptions to EDGAR.* Section 75.650, Participation of students enrolled in private schools, does not apply to this program. (However, see § 796.42 in this part, which governs this participation.)

(20 U.S.C 3474(a); 20 U.S.C 3851)

§ 796.3 What definitions apply to the NDN?

(a) *Definitions in EDGAR apply to the NDN.* The following terms used in this part are defined in Part 77 of EDGAR:

Applicant
Application
Award
Budget period
Department
EDGAR
Equipment
Facilities
Grantee
Local educational agency (LEA)
Nonprofit
Project
Private
Public
State educational agency (SEA)

(20 U.S.C 3474(a))

(b) *Definitions that apply to this part.* The following definitions apply to this part:

"Adoption" means the use of a JDRP approved exemplary educational program by an educational service provider in a new setting.

"Adoption Agreement" means an understanding among a Developer Demonstrator grantee, a State Facilitator grantee, and officials of an educational service provider concerning the responsibilities of each for the adoption of an exemplary educational program.

"Certified Demonstration Site" means an adoption site that utilizes all key elements of an exemplary educational program and is authorized by the exemplary educational program sponsor to receive visitors and demonstrate the program.

"Certified Trainer" means an individual authorized by an exemplary educational program sponsor to perform certain functions such as awareness presentations, training, and assistance in the adoption of an exemplary educational project.

"Educational Service Provider" means any public or nonprofit private agency or organization responsible for the provision of educational services, including State educational agencies (SEAs), local educational agencies (LEAs), nonprofit private educational agencies, public or nonprofit private institutions of higher education, and other agencies such as correctional institutions and health facilities.

"Exemplary Educational Program" means a program, product, or practice approved by the Joint Dissemination Review Panel, and may be referred to as a "program" in these regulations.

"Joint Dissemination Review Panel" (JDRP) means a panel within the Department of Education that examines evidence of effectiveness in attaining goals of educational programs, products, or practices.

"JDRP Approval" means that a proposed exemplary educational program has demonstrated that a positive change has occurred that is directly attributable to the program; that the change was statistically and educationally significant; that the evidence supporting the program's claims was gathered and interpreted correctly; that the program is accurately described; that the program could be used effectively in other locations; that the cost was reasonable, considering the magnitude and the subject of change; that it has a high quality evaluation design; that it does not have any potential for educational harm to students; and that it is socially fair, e.g., free from race and sex-role stereotyping.

"JDRP Recertification" means that a program that was previously approved by the JDRP has demonstrated that the basic features of the program remain essentially the same as the originally approved program; that the educational effects at similar sites compare favorably to those that were demonstrated at the time of the initial JDRP approval; and that the costs of the program compare favorably to the costs of the originally approved program.

"Key Elements" are the components of an exemplary educational program that must be implemented if the program is to work as approved by the JDRP.

(20 U.S.C. 3851)

Subpart B—What Kinds Of Projects Does The Department Assist Under This Program?

§ 796.11 What types of projects does the NDN assist?

The National Diffusion Network assists two types of projects:

(a) Developer Demonstrator Projects—disseminate a specific exemplary educational program nationwide.

(b) State Facilitator Projects—disseminate a wide variety of exemplary educational programs within the particular State served by each project.

(20 U.S.C. 3851)

§ 796.12 What activities must a Developer Demonstrator project conduct?

A Developer Demonstrator project must—

(a) Develop and provide material—

(1) For educational service providers throughout the Nation to use in deciding whether to adopt the exemplary educational program;

(2) For training and instruction in the exemplary educational program; and

(3) For management and evaluation of the program;

(b) Negotiate adoption agreements with State Facilitator grantees and educational service providers;

(c) Install the exemplary educational program in new settings in other States by—

(1) Assisting potential adopters with preparatory stages;

(2) Providing training to staff members of the adopting educational service provider; and

(3) Providing technical assistance in the implementation and evaluation stages of an adoption;

(d) Evaluate the quality and effectiveness of the activities listed in paragraphs (a), (b), and (c) of this section as specified in the evaluation plan for the project;

(e) Monitor and evaluate the quality and effectiveness of the adoptions by collecting and analyzing impact data from a representative sample of adoption sites, as specified in the evaluation plan for the project;

(f) Maintain records during the grant period concerning the adoptions of the program including records of—

(1) Demographic data;

(2) Evaluation data; and

(3) Retention rates;

(g) Develop and implement a system to identify and train Certified Trainers;

(h) Identify and certify demonstration sites throughout the Nation;

(i) Participate with other NDN grantees in workshops and meetings arranged by the Secretary; and

(j) Cooperate with State Facilitator grantees in carrying out the activities in this section.

(20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 796.13 How long do approval and recertification by the Joint Dissemination Review Panel last?

For the purposes of NDN funding—

(a) JDRP approval granted on or before September 30, 1980, remains in effect for a four-year period beginning October 1, 1980;

(b) JDRP approval granted after September 30, 1980, remains in effect for a four-year period after the date of approval; and

(c) Any subsequent JDRP recertification of the same program remains in effect for four years after the recertification date.

(20 U.S.C. 3851)

§ 796.14 Who is eligible to apply for a Developer Demonstrator grant?

(a) Any public or nonprofit private agency, organization, or institution that has developed a program that has current JDRP approval or current JDRP recertification, and is available for visitation, may apply for a Developer Demonstrator grant.

(b) If the agency that developed the exemplary educational program does not apply, another public or nonprofit private agency, organization, or institution may apply if—

(1) The program is approved or recertified by the JDRP;

(2) The program continues in operation;

(3) The program is available for visitation; and

(4) The staff includes personnel who originally developed or operated the program, or who are experienced and knowledgeable about the program.

(c) Both federally and non-federally developed exemplary educational programs are eligible for NDN funding.

(20 U.S.C. 3851)

§ 796.15 Will priorities for funding Developer Demonstrator grants be established?

(a) Each year the Secretary may announce in an application notice published in the **Federal Register** the program priorities for which applicants may apply for assistance.

(b)(1) Each time the Secretary announces a competition, the Secretary may select one or more priorities.

(2) Applicants compete separately under each priority selected by the Secretary.

(3) The Secretary may select priorities under this section after taking into consideration any unmet national needs.

(c) The Secretary may select priorities from the following subject areas or special needs:

(1) English.

(2) Science.

(3) Social studies.

(4) Mathematics or higher mathematics.

(5) Reading.

(6) Written or oral communication.

(7) Health.

(8) Nutrition.

(9) Physical fitness.

(10) Environmental education.

(11) Foreign language programs that accomplish one or more of the following—

(i) Introduce students to non-English-speaking cultures;

(ii) Heighten awareness and comprehension of one's native tongue; or

(iii) Serve the Nation's needs in commerce, diplomacy, defense, and education.

(12) Computer science programs that enable students to accomplish one or more of the following—

(i) Understand the computer as an information, computation, and communication device;

(ii) Use the computer to enhance instruction in English, mathematics, science, social studies, or for personal and work-related purposes; or

(iii) Understand the world of computers, electronics, and related technologies.

(13) Programs that advance students' personal, educational, and occupational goals, such as courses in the fine and performing arts, vocational education, and industrial arts.

(14) Programs that improve students' skills in comprehension, analysis, problem solving, deductive and inductive reasoning, or study.

(15) Programs that improve teaching and the quality of instruction through either or both of the following—

(i) The identification and transfer of non-traditional practices;

(ii) The application of current research findings in learning, teaching, and management.

(16) Educational leadership programs designed to accomplish one or more of the following—

(i) Increase academic standards and expectations;

(ii) Increase the effective use of time in schools;

(iii) Bring esteem and respect to members of the teaching profession; or

(iv) Provide support of school boards and administrators who have demonstrated the ability to marshal community, business, or industry resources needed to promote educational excellence.

(d) In addition to the priorities listed in paragraph (c) of this section, the Secretary may establish priorities as specified in one or both of the following paragraphs.

(1) The Secretary may establish priorities at specified instructional levels, such as preschool, elementary, secondary, postsecondary, or adult education.

(2) The Secretary may establish as a priority one or more of the following special populations:

(i) Gifted and talented students.

(ii) Socioeconomically disadvantaged students.

(iii) Limited English-proficient students.

(iv) Handicapped students.

(v) Migrant students.

(vi) Functionally illiterate adults or pre-adults.

(e) The Secretary may also limit a priority established under paragraph (c) of this section to—

(1) An instructional level;

(2) One or more of the special populations listed in paragraph (d)(2) of this section; or

(3) To both an instructional level and one or more of the special populations listed in paragraph (d)(2) of this section.

(20 U.S.C. 385)

§ 796.16 What activities must a State Facilitator Project conduct?

A State Facilitator Project must—

(a) Inform educational service providers about the availability of all exemplary educational programs in the National Diffusion Network, both funded and non-funded, with a major focus on those developed in States other than the one served by the State Facilitator;

(b) Assist educational service providers in—

(1) Identifying and assessing their needs; and

(2) Matching those needs with exemplary educational programs;

(c) Negotiate adoption agreements with funded and non-funded Developer Demonstrator projects and educational service providers;

(d) Arrange for funded and non-funded Developer Demonstrator projects and Certified Trainers to train staff members of educational service providers that adopt exemplary programs;

(e) Arrange for and provide follow-up services during the implementation of the adoptions;

(f) Assist funded and non-funded Developer Demonstrator projects and adopters in the evaluation of the adoptions;

(g) Maintain records during the grant period concerning the exemplary

educational programs adopted in the State, including records of—

(1) Demographic data;

(2) Evaluation data; and

(3) Retention rates;

(h) Evaluate, as specified in the evaluation plan for the project, the quality and effectiveness of the activities listed under paragraphs (a) through (e) and the quality and effectiveness of the dissemination process;

(i) Monitor, as specified in the monitoring plan for the project, the activities listed under paragraphs (d), (e) and (f);

(j) Assist in the identification and training of Certified Trainers for Developer Demonstrator projects;

(k) Assist in the identification and development of local demonstration sites for Developer Demonstrator projects;

(l) Identify and assist in the submission to JDRP of potential exemplary educational programs developed in the State served by the State Facilitator;

(m) Participate with other NDN grantees in workshops and meetings arranged by the Secretary;

(n) Provide appropriate information to national, State, local, and private agencies about NDN on the State and local level; and

(o) Cooperate with Developer Demonstrator projects in carrying out the activities in this section.

(20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 796.17 Who is eligible to apply for a State Facilitator grant?

Any public or nonprofit private agency, organization, or institution located in the State to be served may apply for a State Facilitator grant.

(20 U.S.C. 3851)

§ 796.18 What types of awards does the Secretary make under the NDN?

(a) The Secretary awards grants and cooperative agreements under this program depending upon the nature of the relationship between the recipient and the Department.

(b) The Secretary evaluates cooperative agreements using the same procedures and criteria used to evaluate applications for grants.

(20 U.S.C. 3851)

Subpart C—How To Apply For A Grant—[Reserved]

Note.—EDGAR establishes the regulations for submission of applications. See, generally, 34 CFR 75.100–75.192.

Subpart D—How Is A Grant Made?

§ 796.31 How does the Secretary evaluate an application for a Developer Demonstrator or a State Facilitator grant?

(a) The Secretary evaluates an application—

(1) For a Developer Demonstrator grant on the basis of the criteria in § 796.32; and

(2) For a State Facilitator grant on the basis of the criteria in § 796.33.

(b) The Secretary awards up to 100 possible points under both—

(1) The Developer Demonstrator criteria; and

(2) The State Facilitator criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(d) For State Facilitator projects, only one award is made in each State, selected by a separate competition for each State.

(20 U.S.C. 3851)

§ 796.32 What selection criteria does the Secretary use to review an application for a new Developer Demonstrator grant?

(a) *Plan of operation.* (20 points) (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project (see § 796.12 for a description of each of the activities that a Developer Demonstrator must conduct under the design);

(ii) A description of training required to install the program in new settings;

(iii) An effective plan of management that insures proper and efficient administration of the project;

(iv) A clear description of how the objectives of the project relate to the purpose of the program;

(v) The way the applicant plans to use its resources and personnel to achieve each objective;

(vi) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly; and

(vii) If the applicant is a local educational agency or State educational agency, a clear description of how the applicant will satisfy the applicable requirements for consultation with private school officials and an opportunity for participation by private school children as stated in § 796.42.

(b) *Quality of Key Personnel.* (20 points) (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project;

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points) (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities;

(ii) Costs are reasonable in relation to the objectives of the project; and

(iii) An estimate of the costs to the adopter for installing the program in a new setting and a projection of the number of educational service providers that will adopt the program each year.

(d) *Evaluation Plan.* (20 points) (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See § 75.590—Evaluation by grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(3) The Secretary looks for information that shows plans for evaluation of the following—

(i) The quality and effectiveness of awareness materials and conferences, of training and follow-up, and of internal management plans;

(ii) The implementation status of the adoptions, including key elements and implementation levels; and

(iii) The effectiveness of the adoption including the impact on the students or the changes in teacher or administrator behavior.

(e) *Adequacy of resources.* (5 points) (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Monitoring.* (15 points) The Secretary looks for information that shows the extent to which the applicant clearly details plans that show promise of effective management of the project, including post adoption monitoring of the program implementation and resulting benefits at the adoption sites.

(g) *Effective dissemination strategies.* (10 points) The Secretary looks for information that shows the extent to which the applicant proposes effective dissemination strategies to meet specific characteristics of the program.

(20 U.S.C. 3851)

§ 796.33 What selection criteria does the Secretary use to review an application for a new State Facilitator grant?

(a) *Plan of operation.* (15 points) (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project, (see § 796.16 for a description of each of the activities that a State Facilitator must conduct under the design);

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (20 points) (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points) (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (15 points.) (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See § 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable, including evaluation of the impact of adoptions in the State served by the State Facilitator.

(e) *Adequacy of resources.* (4 points) (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Consultation during application.* (5 points) The Secretary looks for information that shows the extent to which the applicant, in developing its application, has consulted with the SEA, LEAs, IHEs, nonprofit private elementary and secondary schools, and other educational service providers in the State to be served;

(g) *Consultation and participation during project.* (5 points) The Secretary looks for information that shows the extent to which the applicant, in carrying out project activities, provides for consultation with, and participation of the SEA, LEAs, IHEs, nonprofit private elementary and secondary schools, and other educational service providers in the State.

(h) *Monitoring plan.* (16 points) The Secretary looks for information that shows the extent to which the applicant clearly details plans to monitor and assist sites that adopt the programs, and provide follow-up services after training.

(i) *Effective dissemination strategies.* (10 points) The Secretary looks for information that shows the extent to which the applicant proposes effective dissemination strategies that may be used by other NDN grantees.

(20 U.S.C. 3851)

§ 796.34 What additional criteria exist for new and continuation awards?

(a) In determining the order of selection under EDGAR § 75.217(d) for new Developer Demonstrator awards, the Secretary seeks diversity in the techniques used to teach a subject or meet a special need.

(b) If the Secretary makes a continuation award under § 75.253, the Secretary may consider the effectiveness of the project during the previous budget period in determining the amount of funding for the next budget period.

(20 U.S.C. 3851)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 796.41 Are there restrictions on the kinds of items a grant may support?

Funds may not be used for stipends for educational personnel to participate in training activities, construction, repair, remodeling, or alteration of facilities or sites. See EDGAR Part 74, Subpart Q—Cost Principles.

(20 U.S.C. 1221e-3(a)(1))

§ 796.42 Nonprofit private school requirements.

(a) A grant to an LEA or SEA is subject to the requirements in § 586 of the Education Consolidation and Improvement Act of 1981 concerning—

(1) Consultation with nonprofit private school officials in developing the application; and

(2) The opportunity for participation by nonprofit private school children. The requirements for consultation are governed by paragraph (b) of this section, and § 76.652 of EDGAR.

(b) *Consultation.* (1)(i) An applicant shall comply with paragraphs (b)(1)(ii) of this section if the following conditions are met:

(A) The applicant is an LEA or SEA.

(B) The applicant applies for a Developer Demonstrator grant.

(C) The project proposed under the application is designed for adoption at elementary or secondary schools.

(ii) The applicant shall consult with officials of nonprofit private elementary and secondary schools to ensure that the project can benefit children in those schools.

(2)(i) An applicant shall comply with paragraph (b)(2)(ii) of this section if the following conditions are met:

(A) The applicant is an LEA or SEA.

(B) The applicant applies for a State Facilitator grant.

(ii) The applicant shall consult with officials of nonprofit private elementary and secondary schools in the State served by the project to determine appropriate strategies to ensure that children in those schools can benefit from the project.

(c) *Participation.* (1) An LEA or SEA that receives a Developer Demonstrator grant designed for adoption at elementary and secondary schools shall—

(i) Based on the consultation under paragraph (b)(1) of this section, ensure that nonprofit private elementary and secondary schools have an opportunity to adopt the program; and

(ii) Ensure that nonprofit private elementary and secondary schools in the area served by an adopter are informed about the opportunities to adopt the program.

(2) An LEA or SEA that receives a State Facilitator grant shall use the strategies developed under paragraph (b)(2) of this section to ensure that teachers and administrators from nonprofit elementary and secondary schools have an opportunity to participate to adopt the program.

(d) An applicant that must comply with paragraph (c) of this section shall include in its application a description of how the applicant will meet the Federal requirements for participation.

(e) An LEA or SEA grantee shall comply with the rules for subgrantees in EDGAR § 76.658, Funds not to benefit a private school.

(20 U.S.C. 3851, 3862)

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Friday
March 30, 1984

Part VII

Department of Education

34 CFR Part 770
Library Services and Construction Act Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 770

Library Services and Construction Act Program (Titles I and III of the Library Services and Construction Act)

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education is issuing final regulations for the Library Services and Construction Act Program. These final regulations implement the Library Services and Construction Act (LSCA), Pub. L. 91–600, as amended. These regulations are necessary in order to provide guidance to State library administrative agencies in the development of their State plans so that the plans may meet the purposes of the authorizing legislation.

EFFECTIVE DATE: These regulations will take effect on October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Robert Klassen, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 613, Brown Building), Washington, D.C. 20202. Telephone (202) 254–9664.

SUPPLEMENTARY INFORMATION:

Background

The Library Services and Construction Act (LSCA) was originally enacted as the Library Services Act in 1956, Pub. L. 84–597. Most recently, the LSCA has been extended through fiscal year 1984 by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35. In these regulations, the title of part 770 is changed from "Library Services, Public Library Construction, and Interlibrary Cooperation" to the "Library Services and Construction Act Program," and the regulatory provisions relating to both Title II (Public Library Construction) and Title IV (Older Readers Services) are removed. Under the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, no funds are authorized to be appropriated to carry out Title II for fiscal years 1982, 1983, or 1984. Thus, regulatory provisions relating to Title II have been removed. However, the effective date of these regulations is October 1, 1984. For purposes of administering grants made prior to October 1, 1984 under the Emergency Jobs Bill, Pub. L. 98–8, the Appalachian Regional Development Act of 1965, as amended, Pub. L. 89–4, or under any other authorizations to which LSCA Title II statutory requirements apply, the current Title II regulations will continue to apply until the construction projects funded with such grants are completed. Although the Library Services and Construction Act was amended by the Older American Comprehensive Services Amendments of 1973, Pub. L. 93–29, to include Title IV, this Title has never been funded and no specific funding authority was provided in the Omnibus Budget Reconciliation Act of 1981. Therefore, these regulations include no provisions relating to Title IV.

Comments and Responses

On February 28, 1983, the Secretary published in the **Federal Register** (48 FR 8303) the Notice of Proposed Rulemaking for the Library Services and Construction Act Program. During the period allowed for comments in response to the proposed regulations, 24 letters with numerous comments and questions were received. The comments were generally in favor of the deregulation effort in that it represented a Departmental effort to reduce regulatory burdens and clarify regulatory requirements. Comments were generally opposed to the removal of LSCA Title II (Public Library Construction) regulatory provisions and the removal of the "handicapped" criterion from the provision determining adequacy of public library services. Comments and responses to the NPRM can be found in the Appendix to these regulations.

While the provisions of these final regulations are substantially the same as those of the Notice of Proposed Rulemaking (NPRM), changes include: (1) The clarification of § 770.13(a)(2)(i) to show that under section 6(d)(2) of the LSCA, a State's long range program is to be reviewed and revised annually in accordance with the State's changing needs for assistance under the Act; and (2) the deletion of § 770.13(b)(3)(iv) of the NPRM because under section 6(d), criteria, policies and procedures exclusively for Title III are not required.

Paperwork Reduction Act of 1980

Information collections requirements contained in these regulations, (§§ 770.11 (The basic State plan), 770.13 (The long range program), 770.14 (The annual program), and 770.20 (State and local spending requirements as conditions for payment to States)) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control numbers 1850–0528.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations apply to the "State library administrative agency" of each State. A State library administrative agency as defined in the statute is the official agency charged by the law of each State with the extension and development of public library services throughout the State, and which has adequate authority under State law to administer State plans in accordance with provisions of the LSCA. States and State agencies are not considered to be small entities under the Regulatory Flexibility Act.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the absence of any comments on this matter and the Department's own review, it has been determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 770

Correctional institutions—libraries, Education, Education of disadvantaged, Grant programs—education, Handicapped, Libraries, Mental health programs—libraries, Penal institutions—libraries, Prisons—libraries.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parenthesis on the

line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance No. 84.034, Title I, Public Library Services and No. 84.035, Title III, Interlibrary Cooperation)

Dated: March 27, 1984.

T. H. Bell,

Secretary of Education.

The Secretary revises Part 770 of Title 34 of the Code of Federal Regulations as follows:

PART 770—LIBRARY SERVICES AND CONSTRUCTION ACT PROGRAM

Subpart A—General

Sec.

Subpart B—How Does a State Apply for a Grant?

Subpart C—Payments and Reports

Subpart D—Federal Financial Participation

Authority: The Library Services and Construction Act, Pub. L. 91–600, as amended, 84 Stat. 1660 (20 U.S.C. 351 *et seq.*), unless otherwise noted.

Subpart A—General

§ 770.1 The Library Services and Construction Act Program.

Under the Library Services and Construction Act, Federal funds are provided to assist States to—

(a) Extend and improve public library services in areas that are without these services or in which these services are inadequate;

(b) Establish, extend, and improve public library services including those for physically handicapped, institutionalized, and disadvantaged persons;

(c) Strengthen State library administrative agencies;

(d) Promote interlibrary cooperation;

(e) Strengthen major urban resource libraries; and

(f) Strengthen metropolitan public libraries which serve as national or regional resource centers.

(20 U.S.C. 351; 353)

§ 770.2 Who is eligible to apply for a grant under the Library Services and Construction Act Program?

Under the Library Services and Construction Act Program, States are eligible to apply for Library Services grants under Title I and Interlibrary Cooperation grants under Title III of the Act, respectively.

(20 U.S.C. 351d)

§ 770.3 What regulations apply to the Library Services and Construction Act Program?

The following regulations apply to the Library Services and Construction Act Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State-Administered Programs), Part 77 (Definitions), Part 78 (Education Appeal Board) and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 770.

(20 U.S.C. 1221e–3(a)(1))

§ 770.4 What definitions apply to the Library Services and Construction Act Program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Department
ED
EDGAR
Fiscal Year
GEPA
Grant
Private
Project
Secretary
State

(b) The definitions provided for the following terms in section 3 (Definitions) of the Act, apply to this part:

Annual program
Basic State plan

Library service (For the purpose of this definition the Secretary defines "Library materials" to mean books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microforms, pictorial or graphic works, musical scores, maps, charts, globes, sound recordings, slides, films, filmstrips, and processed video and magnetic tapes, printed, published audiovisual materials, and non-conventional library materials designed specifically for the handicapped; and materials of a similar nature.

Library services for the physically handicapped
Public library
Public library services

Long-range program (Although section 3(12) of the Act refers to the long-range program as a "five year program", section 6(d)(1) of the Act provides that the long-range program may cover "a period of not less than three nor more than five years." In reconciling this inconsistency in the statute, § 770.13 (The long-range program) of this part provides that the long-range program may cover a period of "not less than three nor more than five fiscal years.")

State advisory council on libraries
State institutional library services
State library administrative agency
Major Urban resource libraries

(c) In addition, the following definitions apply to this part:

The "Act" means the Library Services and Construction Act, as amended.

"Disadvantaged" persons means persons whose socio-economic or educational deprivation, or cultural isolation from the community at large, prevent them from receiving the benefits of library services designed for persons without these deprivations.

"Interlibrary cooperation" under Title III of the Act, means the establishment, expansion and operation of local, regional, and interstate cooperative library networks. The purpose of a network is to provide for the systematic and effective coordination of the resources of school, public, academic, and special libraries and information centers for improved supplementary services for the special clientele served by each type of library or center.

"Limited English-speaking ability", when used with reference to individuals, means individuals who—

(1)(i) Were not born in the United States or whose native language is a language other than English;

(ii) Come from environments where a language other than English is dominant; or

(iii) Are American Indian and Alaskan Native students and who come from environments where a language other than English has had a significant impact on their level of English language proficiency; and

(2) Because of the reason(s) listed in paragraph (1) (i), (ii), or (iii) of this definition, have sufficient difficulty speaking, reading, writing, or understanding the English language to be denied the opportunity to learn

successfully in classrooms where the language of instruction is English. (See section 703(a) of Title VII of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 2701 *et seq.*).

(20 U.S.C. 351d(b)(4))

Subpart B—How Does a State Apply for a Grant?

§ 770.10 The State plan and the State advisory council on libraries.

(a) To receive its allotment for any fiscal year a State shall—

(1) Have in effect a basic State plan approved by the Secretary, in accordance with § 770.11 (The basic State plan);

(2) Submit or update a long-range program in accordance with § 770.13 (The long-range program);

(3) Submit an annual program for each allotment which is desired, in accordance with § 770.14 (The annual program); and

(4) Establish a State advisory council on libraries pursuant to the requirements of section 3(8) of the Act.

(b) The State plan must consist of three parts:

(1) The basic State plan.

(2) The long-range program.

(3) The annual program.

(c) The State shall make its plan available to the public.

Note.—34 CFR 76.106 (State documents are Public information) also applies.

(20 U.S.C. 351d; S. Rep. No. 1162, 91st Cong., 2nd Sess. 3)

§ 770.11 The basic State plan.

(a) The basic State plan must include—

(1) A document that—

(i) Provides for the administration, or supervision of the administration, of the programs authorized by the Act by the State library administrative agency;

(ii) Provides assurances that the officially designated State library administrative agency has the fiscal and legal authority and capability to administer all aspects of the Act;

(iii) Provides assurances for establishing the State's policies, priorities, criteria, and procedures necessary to the implementation of all programs under provisions of the Act;

(iv) Provides assurances that any funds paid to the State in accordance with a long-range program (§ 770.13 of this Part) and an annual program (§ 770.14 of this Part) must be expended solely for the purposes for which funds have been authorized and appropriated and that such fiscal control and fund accounting procedures have been adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid to the State, including any such funds paid to any other agency, under the Act;

(v) Provides satisfactory assurance that the State administrative agency will make such reports, in such form and containing such information as the Secretary may reasonably require to carry out the Secretary's functions under the Act and to determine the extent to which funds provided under the Act have been effective in carrying out its purposes, including reports of evaluations made under the State plans; and

(vi) Provides satisfactory assurance that the State administrative agency will keep such records and afford such access to these records as the Secretary may find necessary to assure the correctness and verification of the reports required under paragraph (a)(1)(v) of this section.

(2) The statements of criteria required by § 770.12 of this part; and

(3) The certifications required by 34 CFR 76.104.

(b) The Secretary may approve the basic State plan for each fiscal year only if the Secretary determines that—

(1) The plan fulfills the conditions of a basic State plan as specified in paragraph (a) of this section and is in compliance with the requirements of the Act and of all applicable regulations; and

(2) The information contained in the basic State plan indicates that the State has adequate procedures to insure that the assurances and provisions of the basic State plan will be carried out.

(20 U.S.C. 351a(11); 351d(d); 351d(c))

(Approved by the Office of Management and Budget under control number 1850–0528)

§ 770.12 Criteria for determining the adequacy of public library services.

Among the criteria for determining the adequacy of public library services in geographical areas and for groups of persons in the State, the State library administrative agency shall include criteria which assure that priority will be given to programs or projects serving—

(a) Urban and rural areas with high concentrations of low-income families; and

(b) Areas with high concentrations of persons with limited English-speaking ability.

(20 U.S.C. 351d(b)(4))

§ 770.13 The long-range program.

(a)(1) The State shall develop the long-range program with the advice of the State advisory council on libraries and in consultation with the Secretary.

(2) The State shall—

(i) Review and revise annually the long-range program in accordance with changing needs of the State for assistance under the Act;

(ii) Use the results of evaluations and surveys by the State agency and the State advisory council on libraries in developing and revising the long-range program; and

(iii) Incorporate any revisions into the annual program for each fiscal year.

(b) The long-range program must contain the following—

(1) A description of the State's identified present and projected library needs;

(2) A plan for meeting those identified needs with Federal funds made available under the Act, covering a specified period of not less than three nor more than five fiscal years; and

(3) A statement of the following policies, criteria, priorities, and procedures, to be updated as required in meeting the state's library needs:

(i) Policies and procedures for the periodic evaluation of the effectiveness of programs and projects supported under the Act.

(ii) Policies and procedures for appropriate dissemination of the results of these evaluations and other information pertaining to these programs and projects.

(iii) Policies and procedures for the effective coordination of programs and projects supported under the Act with library programs and projects operated by institutions of higher education or local elementary or secondary schools and with other public or private library services programs.

(20 U.S.C. 351d(d); 351a(12); 354; 355e–2)

(Approved by the Office of Management and Budget under control number 1850–0528)

§ 770.14 The annual program.

The annual program must include—

(a) a description of a program for the use of funds under each of the titles of the Act;

(b) A description of how each program will fulfill the State's library needs stated in the long-range program, in a manner consistent with the policies, criteria, priorities, and procedures specified in the long-range program;

(c) The criteria used in allocating Title I funds for program purposes under section 102 of the Act. These criteria must insure that the State will expend from Federal, State, and local sources an amount not less than the amount expended by the State from such sources for State institutional library sevices, and library services to the physically handicapped during the

second fiscal year preceding the fiscal year for which the annual program is developed;

(d) During each fiscal year in which funds appropriated for Title I of the Act exceed $60,000,000, a program for that year under which the amount reserved under section 102(c) of the Act will be used for purposes contained in section 102(a)(3) of the Act. During such a year, a State shall not reduce the amount paid to a major urban resource library below the amount that it received in the preceding year;

(e) A program description of the specific activities to be carried out by the State in the fiscal year—

(1) With funds for library services under Title I (Library Services) of the Act, for the purposes and activities stated in section 102 (Uses of Federal Funds) of the Act and § 770.30 (Library services) of this Part; and

(2) With funds for interlibrary cooperation under Title III (Interlibrary Cooperation) of the Act, for the purposes and activities stated in section 302 (Uses of Federal Funds) of the Act and § 770.31 (Interlibrary Cooperation) of this part.

(f) An annual review and revision of the long-range program that must take into consideration the results of the evaluations of the State's library program.

(20 U.S.C. 351a(13); 354; 355e–2)

[Approved by the Office of Management and Budget under control number 1850–0528]

Subpart C—Payments and Reports

§ 770.20 State and local spending requirements as conditions for payment to the States.

The Secretary makes a payment to a State under Title I of the Act only after the Secretary has determined that—

(a) The State has satisfactorily assured the Secretary that it will have available for expenditure under Title I (Library Services) of the Act during the fiscal year of the allotment—

(1) From State and local sources—

(i) Sums sufficient to earn its minimum allotment as stated in section 5(a)(1) of the Act; and

(ii) Not less than the total amount actually expended for program purposes from State and local sources in the second preceding fiscal year.

(2) From State sources—

(i) Not less than the total amount actually expended for program purposes from State sources in the second preceding fiscal year.

(20 U.S.C. 351e)

[Approved by the Office of Management and Budget under control number 1850–0528]

§ 770.21 Reports.

The State agency shall submit to the Secretary one copy of all surveys, films, and other publications developed with Federal funds under the Act.

(20 U.S.C. 351d(b)(3)(A))

Subpart D—Federal Financial Participation

§ 770.30 Lirary services.

Funds allotted to a State for the purpose of section 101 (Grants to States for Library Services) of Title I (Library Services) of the Act, must be used solely for paying the Federal share of the cost of activities specified in section 102 (Uses of Federal Funds) of the Act.

(20 U.S.C. 353)

§ 770.31 Interlibrary cooperation.

Funds allotted to a State for the purposes of section 301 (Grants to States for Interlibrary Cooperation Programs) of Title III (Interlibrary Cooperation) of the Act, must be used solely to pay the cost of carrying out a State plan as it relates to interlibrary cooperation, which must include—

(a) Planning for and taking steps leading to the development of cooperative library networks; and

(b) Establishing, expanding, and operating local, regional, State or interstate cooperative networks of libraries.

(20 U.S.C. 355e–1)

§ 770.32 Use of Federal funds by State library administrative agency.

In addition to the program activities specified in section 102 (Uses of Federal Funds) of the Act, funds allotted to a State under the Act for the purposes of section 101 (Grants to States for Library Services) of Title I (Library Services) of the Act, may also be used to pay the Federal share of the cost of the following activities of the State library administrative agency:

(a) Administration of the State plan submitted and approved under the Act and Subpart B of this part, including obtaining the services of consultants.

(b) Statewide planning for and evaluation of library services.

(c) Dissemination of information concerning library services.

(d) The activities of the State advisory council on libraries and of other advisory groups and panels that may be necessary to assist the State library administrative agency in carrying out its functions.

(e) Strengthening the capacity of the State library administrative agency for meeting the needs of the people of the State.

(f) Administrative costs necessary to carry out activities in paragraphs (b) through (e) of this section.

(20 U.S.C. 353(b))

§ 770.33 Federal and State shares of eligible expenditures.

(a)(1) Under section 7(b)(2) of the Act, every two years the Secretary promulgates the Federal share for each State under Title I (Library Services) of the Act.

(2) The State share for Title I (Library Services) is the difference between the costs under the State plan and the applicable Federal share.

(3) The Federal share for each State under Title III (Interlibrary Cooperation) is 100 percent.

(b) All Federal funds used for administrative costs specified in § 770.32 (a) through (f) (Use of Federal funds by State library administrative agency) of this part must be matched equally by nonFederal funds.

(c) In computing its share for library services under Title I (Library Services) of the Act, the State may consider only funds, regardless of their source, expended by it, or a political subdivision, for purposes of the State plan as it applies to Title I.

(20 U.S.C. 351e; 351f)

Appendix—Summary of Comments and Responses

The following is a summary of the public comments received on the proposed regulations published in the **Federal Register** on February 28, 1983 (48 FR 8303), and the Secretary's responses to those comments including any changes. The comments, responses and any changes are organized in the same order as the referenced sections are organized in these final regulations.

Section 770.1 The Library Services and Construction Act Program and provisions pertaining to Title II, Public Library Construction.

Comment. Several commenters felt that the regulatory provisions for LSCA Title II (Public Library Construction) should be retained. Many commenters believed the removal of the provisions for public library construction would hamper the implementation of any specific authorizations such as the $50 million under the supplemental Emergency Jobs Bill (Pub. L. 98–8) for public library construction.

Response. No change has been made. The final regulations delete all provisions relating to Title II (Public Library Construction) of the Library Services and Construction Act. Under the Omnibus Budget Reconciliation Act

of 1981, Pub. L. 97–35, no funds are authorized to be appropriated to carry out Title II for fiscal years 1982, 1983, or 1984, and with the exception of the supplemental Emergency Jobs Bill appropriation of March 24, 1983, there have been no appropriations for Title II since 1973. However, the effective date of these final regulations is October 1, 1984. Thus, for the purpose of administering grants awarded to States prior to October 1, 1984, under any authorizations to which LSCA Title II statutory provisions apply including the Jobs Bill and the Appalachian Regional Development Act, the current Title II regulations will apply until the projects funded with such grants are completed.

Comment. One commenter felt that the word "establish" should be retained in this section of the final regulations.

Response. No change has been made. As part of the effort to bring the LSCA program regulations into closer accord with the statutory language and requirements, the term "establish" was deleted from § 770.1(a) of the NPRM. Congress did not specifically include the establishing of libraries as a purpose in Sec. 2(a) of the Act, Declaration of Policy. That section states that it is the purpose of the LSCA to "assist the States in the *extension and improvement* of public library services in areas of the States which are without such services or in which such services are inadequate * * *" (emphasis added). Nor did Congress specifically include the establishing of libraries in areas without library services or where such services are inadequate as a purpose in the similarly-worded Title I purpose, in Sec. 102(a)(2)(A). Thus the term "establish" does not appear in § 770.1(a) of the NPRM nor does it appear in this section of these final regulations.

Section 770.1(b) The Library Services and Construction Act Program.

Comment. One commenter questioned the deletion of the reference to persons of limited English-speaking ability which appears in the current regulations, from this provision of the NPRM. This provision implements the overall purpose section of the statute, Sec. 2(a) (Declaration of Policy) as well as Sec. 102 of the statute (Use of Federal Funds.)

Response. No change has been made. Statutory reference to persons of limited English-speaking ability does not appear in Secs. 2(a) or 102 of the Act, but rather in Sec. 6(b)(4) of the Act. Section 6(b)(4) requires that States, in setting forth criteria to be used in determining the adequacy of public library services, include criteria to assure that priority will be given to projects serving, among others, "areas with high concentrations of persons with limited English-speaking ability". Thus, in these final regulations reference to persons of limited English-speaking ability appears in § 770.12, implementing Sec. 6(b)(4) of the Act, rather than in § 770.1(b).

Section 770.3 What regulations apply to the Library Services and Construction Act Program?

Comment. One commenter expressed the opinion that it would be helpful if this section included a listing, by priority, of the regulations noted as applicable in the event that there are any inconsistencies between regulations.

Response. No change has been made. Generally, in the event of any inconsistency the controlling regulations would be the program regulations in this Part. However, anyone who suspects that an inconsistency exists between the applicable regulations is strongly encouraged to contact the Department for guidance.

Section 770.4(b) Definitions.

Comment. One commenter felt that "online services" should be included in the definition of the term "library materials".

Response. No change has been made. The term "library materials" refers to those *materials* which may be provided by a public library to its clientele. Thus, it is believed that the inclusion of *services* such as "online services" in the definition of "library materials" would be inappropriate. However, access to a computer terminal resulting in the retrieval of computerized data is among the services which a public library may provide.

Section 770.4(c) Definitions.

Comment. One commenter felt that the new definition of "disadvantaged" deleted several qualifying statements which in the opinion of the commenter clarified and more sharply delineated the groups covered by this term. The commenter felt that the previous definition, with its specificity, was nonetheless sufficiently broad, and that the new definition could be interpreted to include many groups (e.g., the physically handicapped and institutionalized) which are already covered in other statutory and regulatory provisions.

Response. No change has been made. The definition for "disadvantaged" persons was changed in an effort to reflect congressional intent more accurately. In the 1970 amendments to the LSCA (Pub. L. 91–600), Congress added one of the requirements which now appears in Sec. 6(b)(4) of the Act. As of the 1970 amendments it has been required that in setting forth the criteria for determining the adequacy of public library services to certain geographical areas and groups, States must include in their State plans "criteria designed to assure that priority will be given to programs or projects which serve urban and rural areas with high concentrations of low-income families." The legislative history to the 1970 amendments indicates that, in making this amendment to the Act, Congress intended to equate the term "disadvantaged" with low economic status. (See December 7, 1970 Congressional Record, House, at H11229; and January 2, 1971 Congressional Record, Extension of Remarks, at E11001). The definition currently in effect lists specific target groups, which has tended to restrict States in their development of disadvantaged projects, in a manner inconsistent with congressional intent. It is hoped that the new definition will increase flexibility while providing the States with guidance as to what is meant by the statutory term "disadvantaged". It is not intended that the term "disadvantaged" include groups such as the physically handicapped or the institutionalized, except to the extent that any handicapped or institutionalized person is also a "disadvantaged" person as defined in § 770.4(c) of these final regulations.

Comment. Several commenters felt that "planning" should be included in the definition of "interlibrary cooperation".

Response. No change has been made. The definition of "interlibrary cooperation" in these final regulations, at § 770.4(c), does not include "planning" (nor does the current regulatory definition at § 770.3(b) include "planning") because although "planning" may be necessary for, and closely related to, a given program activity such as "interlibrary cooperation", it is not necessary to include the planning process in the definition of that activity. Moreover, it should be noted that § 770.31 (Interlibrary cooperation) of these regulations states clearly that funds may be used for planning purposes as specified in Sec. 302(a)(1) of the Act. Thus, planning for and taking other steps leading to the development of cooperative library networks would, of course, be a permissible purpose under Title III of the Act, even though

"planning" is not included in the definition of "interlibrary cooperation."

Comment. Several commenters felt that the definition for limited English-speaking ability was too restrictive in that it was applicable only to formal educational school settings and not to public libraries.

Response. No change has been made. Under the Education Amendments of 1974 (Pub. L. 93–380), the Library Services and Construction Act was amended to include library services for persons of limited English-speaking ability. The applicable definition, required by Sec. 6(b)(4) of the Act, is that of Sec. 703(a) of Title VII of the Elementary and Secondary Education of 1965, as amended, 20 U.S.C. 2701 *et seq.*, which cannot be changed except by legislative amendment.

Comment. One commenter felt that the "existing language" of the definition of the term "limited English-speaking ability" was preferable to that of the definition quoted in the NPRM.

Response. No change has been made. Section 6(b)(4) of the statute mandates that the definition of "limited English-speaking ability" found in Sec. 703(a) of Title VII of the Elementary and Secondary Education Act of 1965, as amended (ESEA), 20 U.S.C. 2701 *et seq.*, be used in defining the term for purposes of the LSCA. Pursuant to Sec. 6(b)(4), it is clear that the entire definition of the term is applicable, not portions thereof. Moreover, the entire definition, as it has appeared in the ESEA, has applied to the term since July 1, 1974 pursuant to Sec. 197 (b) and (c) of Pub. L. 93–380, regardless of whether it has or has not been quoted in its entirety in the program regulations.

Section 770.10 The State plan and the State advisory council on libraries.

Comment. Several commenters requested that membership requirements currently in § 770.4(b) of the regulations be retained in § 770.10(a)(4). The current advisory council membership requirements are that the councils must include persons broadly representative of public, school, academic, special, and institutional libraries, as well as of libraries serving the handicapped. The current regulations, at § 770.4(b), also require that State advisory councils on libraries be broadly representative of the users of these various types of libraries, that "users" comprise at least one-third of the council, and that at least one member be representative of disadvantaged persons.

Response. No change has been made. Sec. 3(8) of the Act, pursuant to which State advisory councils are to be established, requires these councils to be broadly representative of public, school, academic, special, and institutional libraries and libraries serving the handicapped in the States and of persons using such libraries, including disadvantaged persons within each State. The State library administrative agency for each State retains the discretion of fulfilling this requirement in a manner it deems appropriate, so long as the advisory council in any given State is "broadly representative" of each of the libraries named.

Comment. One commenter wanted an explanation of what is meant in § 770.10 of the NPRM by the phrase: "the State plan shall be made public."

Response. In requiring the State plan to be made public it is intended that at a minimum, the State library administrative agency make the State plan available for inspection or copying or both at its main office.

Section 770.12 Criteria for determining the adequacy of public library services.

Comment. The current regulations (§ 770.17) require that in determining the adequacy of public library services to geographical areas and groups of persons, the State must give special consideration to the library needs of certain named groups. Several commenters expressed the desire that groups currently named in § 770.17 as being due special consideration, but not named in § 770.12 of the NPRM, be retained.

Response. No change has been made. Sec. 6(b)(4) of the Act requires States to include in their basic State plans criteria to be used in determining the adequacy of public library services in geographical areas and for groups of persons in the State, including criteria designed to assure that priority will be given to programs or projects which serve areas with (1) high concentrations of low-income families, and (2) high concentrations of persons of limited English-speaking ability. However, Sec. 6(b)(4) does not require that the other "special populations" currently included in § 770.17 be assigned priority. Thus, § 770.12 of the NPRM and these final regulations require no more than the statute mandates.

Comment. One commenter expressed the opinion that the terms "urban" and "rural" should be deleted from § 770.12(a). Under § 770.12 of the NPRM, among the criteria for determining the adequacy of public library services in geographical areas and for groups of persons in the States, the State must include criteria which assure that priority will be given to programs or projects serving "urban and rural areas with high concentrations of low-income families * * *"

Response. No change has been made. The language of § 770.12(a), including the terms "urban" and "rural", is taken from the statute at Section 6(b)(4).

Section 770.13(a)(2)(i) The long-range program.

Comment. Several commenters felt that this section should be clarified to show that under Sec. 6(d)(2) a State's long-range program is to be reviewed and revised annually in accordance with the State's changing needs for assistance.

Response. A change has been made. Section 770.13(a)(2)(i) now reads: "review and revise annually the long-range program in accordance with changing needs of the State for assistance under the Act."

Section 770.13(b)(3)(iv) The long-range program.

Comment. One commenter suggested that there is an inconsistency in requiring criteria, policies, and procedures for Title III and not including such a requirement for Title I in the long-range program.

Response. A change has been made. Section 770.13(b)(3)(iv) has been deleted. Under Sec. 6(d) of the Act, criteria, policies, and procedures exclusively for Title III are not required. Rather, States must set forth a program under which all funds received under the Act will be used, as is already stated in § 770.13(b)(2).

Section 770.14 The Annual Program.

Comment. Several commenters wanted the criteria for the allocation of Title I funds (§ 770.14(c)) and provisions dealing with major urban resource libraries (§ 770.14(d)) placed under the long-range program, and the maintenance of effort requirements for institutional libraries, deleted.

Response. No change has been made. Section 103 of the Act places the criteria for the use of Title I funds and major urban resource libraries in the annual program. The maintenance of effort requirements for State institutional library services and library services to the physically handicapped are statutory and are also set forth in Sec. 103 (State Annual Program for Library Services) the Act.

Comment. One commenter asked whether under § 770.14(d), the provision on expenditure of funds for major urban resource libraries requires a State to maintain the same level of spending on such libraries in a year when the State

receives "set-aside" funds under Sec. 102(c), as it had in the year preceding the Sec. 102(c) determination, even though the Federal appropriation may be below that of the preceding year.

Response. Based upon the language of Sec. 103(5), in a year when a State receives "set-aside" funds for major urban resource libraries pursuant to a Sec. 102(c) determination, which would be in a year that Title I appropriations exceed $60,000,000, it may not reduce the amount paid to a given major urban resource library below the amount paid to that library in the preceding year. The legislative history of this prohibition against reduction of the level of spending for years where Title I appropriations exceed $60,000,000, indicates congressional intent that funds allocated pursuant to Sec. 102(c) be used by the States in a supplemental fashion. By including Sec. 103(5) in the 1977 amendments to the Act, it is believed that Congress intended to prevent States from using money made available under Sec. 102(c) in place of existing funds spent on major urban resource library programs. (See House Conference Report No. 95–607, 95th Cong., 1st Sess. at 7). In response to the commenter, the requirement in § 770.14(d) remains in effect regardless of any decline in Title I appropriation. Of course, for any year that the Title I appropriation does not exceed $60,000,000, States need not concern themselves with the Sec. 103(5) and § 770.14(d) requirement as no set-aside funds would be available for major urban resource libraries.

Section 770.20 State and local spending requirements as conditions for payment to the States.

Comment. One commenter suggested that maintenance of effort requirements be deleted for Title I.

Response. No change has been made. Sections 7(a) (1)(B) and 7(a)(2) of the Act require maintenance of effort on the part of States and on the part of States and local libraries, respectively, receiving Title I funds, and thus the requirement cannot be deleted from the regulations.

Comment. One commenter felt that the "State and local" maintenance of effort requirement of Sec. 7(a)(1)(B) of the Act was meant by Congress to refer only to local maintenance of effort, and that § 770.20(a)(1)(ii) should be changed accordingly.

Response. No change has been made. The statutory language is clear. No payments can be made to any State (except the Trust Territory of the Pacific Islands) from appropriations for the purposes of Title I, for any fiscal year, unless the Secretary determines the following: That "there will be available for expenditure under the programs from *State and local sources* during the fiscal year for which the allotment is made * * * not less than the total amount actually expended, in the areas covered by the programs for such year, for the purposes of such programs from such sources in the second preceding fiscal year * * * (emphasis added) (LSCA, Secs. 7(a)(1) and 7(a)(1)(B)). This requirement is one of joint maintenance of State and local effort.

Section 770.31 Interlibrary cooperation.

Comment. Two commenters felt that by using the term "cooperative library networks", activities such as collection of statistics, compilation of directories, and union lists would not be allowable expenditures.

Response. No change has been made. Sec. 302 (Uses of Federal Funds) requires that Title III grants be used "(1) for planning for, and taking other steps leading to the development of, cooperative library networks; and (2) establishing, expanding, and operating local, regional, and interstate cooperative networks of libraries, which provide for the systematic and effective coordination of the resources of school, public, academic, and special libraries and information centers for improved supplementary services for the special clientele served by each type of library or center." Generally, there is no restriction placed on "activities" to reach these goals so long as the activities engaged in are in the course of "carrying out the State plan as it relates to interlibrary cooperation," as required by Sec. 301 of the Act, and as long as the costs, incurred by these activities are allowable under the Act and under the Cost Principles of 34 CFR Part 74, Appendix C. In general, the activities mentioned by the commenter, namely the collection of statistics and the compilation of directories and union lists, when conducted in the course of planning for or operating a cooperative library network which provides for the "systematic and effective coordination of * * * resoureces * * *" (LSCA, Sec. 302(a) (2)), would be allowable under these final regulations.

Comment. One commenter suggested that the phrase "but is not limited to" should be inserted after the word "includes" in this provision governing the use of Title III funds. The commenter felt that the insertion of this phrase would permit States to use Title III funds for "developmental thrusts other than establishing and funding permanent cooperatives", and that, presumably, such forms of spending would be permissible under the LSCA.

Response. No change has been made. This provision implements Sec. 302(a) of the Act which requires that Title III funds be used, among other things, for "planning for, and taking other steps *leading to the development of,* cooperative library networks * * *" (emphasis added). It is not entirely clear what the commenter means when referring to developmental thrusts *other* than those leading to the establishment of cooperative networks. However, it is believed that whatever interlibrary planning or development activities a State might undertake and wish to fund in part with Title III moneys, the State must intend for such planning and development to result, ultimately, in one or more cooperative library networks.

Comment. One commenter felt that the proposed regulations at § 770.31 emphasized "networks" rather than cooperation and that such language would exclude cooperative projects that did not fit into a formal network structure.

Response. The distinction between a "formal" network structure and an "informal" network structure is not made clear by the commenter. However, neither the statute nor these final regulations preclude the use of Title III funds for any form of interlibrary cooperation project so long as the project is used to promote the systematic and effective coordination of the resources of the libraries involved in the project, and otherwise complies with applicable statutory and regulatory requirements.

Comment. One commenter asked whether a "network" must include a public library.

Response. As a matter of policy and in furtherance of the general purpose stated in Sec. 2 of the Act, States are strongly encouraged to include public libraries in all interlibrary cooperative networks. However, the inclusion of public libraries in all interlibrary cooperative networks is not clearly mandated by the statute nor is it required by these final regulations.

Section 770.32 Use of Federal funds by State library administrative agency.

Comment. Two commenters inquired as to whether the deletion of "training" from this section meant either that the use of LSCA funds for training was now considered impermissible or that training was now considered implicitly included under other definitions of "service".

Response. No change has been made. Generally, the cost of training and education are allowable under 34 CFR Part 74, (Appendix C, Principles for

Determining Costs Applicable to Grants and Contracts with State and Local Governments), which provides in Part II, B.26: "The cost of in-service training, customarily provided for employee development which directly or indirectly benefits grant programs, is allowable. Out-of-service training involving extended periods of time is allowable only when specifically authorized by the grantor agency."

Comment. One commenter felt that this provision of the NPRM—dealing with costs of administration of the LSCA program—conveyed an implicit prohibition against the use of LSCA funds for indirect costs.

Response. No change has been made. Pursuant to Sec. 102(b) of the Act, costs incurred by the State in administering State plans submitted under the Act, may be covered with Title I funds, subject to the match requirement of Sec. 8. Section 770.32(f) of the NPRM and of these final regulations sets out the types of administrative activities for which Title I funds may be expanded, as contained in Sec. 102(b) of the Act. To the extent that a State expects to incur indirect administrative costs as a result of its LSCA program, an indirect cost rate may be negotiated with the cognizant Federal agency for that State pursuant to the provisions of 34 CFR Part 74, Appendix C, and 34 CFR 75.560 and 75.561.

Removal of Title IV (Older Readers Services) from the regulations

Comment. Several commenters wanted the regulatory provisions for Older Readers Services retained.

Response. No change has been made. Although the Library Services and Construction Act was amended by Pub. L. 93–29, Older Americans Comprehensive Services Amendments of 1973, to include Title IV, this Title has never been funded and no specific funding authority was given in the Omnibus Budget Reconciliation Act of 1981. Thus, § 770.23 of the current regulations as well as other references to Title IV, have been eliminated.

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Part VIII

Department of Agriculture

Food and Nutrition Service

7 CFR Part 245

Verification of Eligibility for Free and Reduced Price Meals in Schools; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 245

Verification of Eligibility for Free and Reduced Price Meals in Schools

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: On March 25, 1983, the Department published an interim rule which established minimum verification requirements for a sample of applications for school meal and milk benefits in each School Food Authority in the National School Lunch, School Breakfast and Special Milk Programs for School Year 1983–84 and subsequent school years. This proposed rule responds both to the comments received and to the results of the income verification pilot study mandated by Pub. L. 97–35. This proposed rule would: (1) Allow use of an alternate verification method which focuses on those applications more likely to contain errors and which require fewer verifications; (2) Require additional income information on the free and reduced price application; (3) Allow food stamp households to provide their Food Stamp Program case number in lieu of income information on the application; (4) Require that households selected for verification receive written notice of selection; and (5) Require verification activity to be completed by each School Food Authority by November 15 of each school year. This proposed rule is intended to facilitate the certification process, to reduce program abuse and to result in an additional savings of Federal funds.

DATE: To be assured of consideration comments must be postmarked on or before April 30, 1984.

ADDRESSES: Comments should be sent to Stanley C. Garnett, Branch Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written submissions will be available for public viewing in Room 509, 3101 Park Center Drive, Alexandria, Virginia 22303, during regular business hours (8:30 a.m. to 5:00 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Garnett at the address listed above, or call (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This proposed action has been reviewed under Executive Order 12291 and has been classified not major. We anticipate that this proposal will not have an impact on the economy of more than $100 million. The proposed rule will decrease administrative costs by providing States, School Food Authorities and institutions more flexibility in administering the National School Lunch Program. No major increase in cost or prices for program participants, individual industries, Federal agencies, or geographic regions is anticipated. The proposal is not expected to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

This proposal has also been reviewed with regard to the requirements of Pub. L. 96–354, the Regulatory Flexibility Act. The Administrator of the Food and Nutrition Service (FNS) has certified that this proposal will not have a significant economic impact on a substantial number of small entities. The substance of this rule provides schools with an alternative method of conducting verification. The Department believes this alternative will reduce the administrative burdens associated with the current rule.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting and recordkeeping requirements contained in this proposed rule will be submitted to the Office of Management and Budget (OMB) for approval. They are not effective until OMB approval has been obtained.

The Administration of the Food and Nutrition Service has determined that an urgent need exists to limit the comment period to 30 days since the provisions of this rule directly affect the application and verification process for School Year 1984–85. In order to meet the timeframes required by States and School Food Authorities for effective implementation by the beginning of the next school year, a short comment period is necessary for this proposed rule.

Background

On March 25, 1983, for the National School Lunch, School Breakfast and Special Milk Programs, the Department published an interim rule in the **Federal Register** (48 FR 12505) which recommended minimum verification requirements for a sample of applications in each School Food Authority for School Year 1982–83 and required minimum verification standards in School Year 1983–84 and subsequent school years. An initial comment period of 60 days was subsequently extended until November 30, 1983, to allow commentors to gain operational experience with verification. A total of 183 comments were received on the interim rule. Commentors represented State educational personnel, School Food Authority personnel, private citizens, advocacy groups, and professional organizations. The Department would like to thank all commentors who responded to the interim rule. Especially appreciated were the suggestions based on practical experience which were helpful in the development of this proposed rule.

The interim rule on verification was developed in response to Congressional concern regarding fraud and abuse in federally supported school meal programs. This concern was reflected in Pub. L. 97–35, which also mandated that the Department conduct a pilot study of verification procedures designed to reduce fraud and abuse in these federally supported programs. This study, *The Income Verification Pilot Project*, involved a large-scale nationally representative test of a variety of quality assurance procedures conducted in 114 School Food Authorities during the 1982–83 School Year. These procedures were designed to deter household misreporting on the free and reduced price application and to enable School Food Authorities to verify income information submitted on these applications. One of the major findings of this study was that a revised application which requests income by source and by household member can significantly reduce misreporting. The study also determined that costs associated with this revised application are relatively low. The second major study finding concerns the method by which applications are selected for verification. The study reveals that it is significantly more cost-effective to verify applications which have been identified as likely to be high in error, "focused sampling", rather than to select applications by chance, "random sampling." The study revealed that non-food stamp household applications and, in particular, applications reflecting household income within $1200 of the annual income eligibility limit, are more likely to contain errors.

The remainder of this preamble will discuss the major concerns expressed by commentors on the interim rule and the findings of the pilot study as they affect this proposed rule.

General Comments on Interim Rule

Eighty-seven commentors expressed concerns regarding the increased administrative reponsibility associated

with verification. These commentors viewed the interim rule as requiring increased paperwork and staff time with resultant increases in administrative costs to School Food Authorities. While the Department recognizes that there are additional responsibilities associated with verification, the Department believes that current verification requirements are both reasonable and supported by Congressional intent. However, in response to these comments and the findings of the pilot study, the Department is proposing both an alternative system of verification and streamlined application/certification procedures for food stamp recipients (discussed later in the preamble). As an alternate to the 3 percent verification requirement contained in the interim rule, School Food Authorities may choose to verify approximately half as many applications if "focused sampling" is used to identify applications. This new option would require that School Food Authorities verify the eligibility of a sample of applications, selected from non-food stamp households claiming monthly or yearly income within specified dollar amounts below the eligibility limit. The dollar amount is within $100 for monthly income or $1,200 for yearly income. The number of applications reviewed for this group must be the lesser of 1,000 or 1 percent of the total applications certified by the School Food Authority. School Food Authorities choosing the new option would also be required to confirm food stamp recipient status of the lesser of one half of 1 percent or 500 applications of food stamp households that provided food stamp case numbers in lieu of income information on the application. This means that those School Food Authorities which select the new verification option will be required to perform less than half as many verifications as those School Food Authorities which select the current 3 percent verification requirement. Since the new optional verification method utilizes a focused sampling which identifies applications most likely to be in error, the Department is proposing to reduce the number of applications which must be verified. By providing School Food Authorities the flexibility to determine the verification method most suitable to local conditions, the Department believes that the administrative task may, in many cases, be reduced.

Twenty-five commentors stated that they did not believe that the level of fraud and abuse in school meal programs supported the need for any verification system. In the 1981 report entitled, "Nationwide Statistical Sample of Program Participation for May, 1980 and Verification of Free and Reduced Price Application Information," the Office of Inspector General (OIG) estimated that, prior to implementation of a verification system, approximately one of every four recipients of free and reduced price school means was receiving benefits improperly. The pilot study also confirmed that a number of recipients were not eligible for the benefits they were receiving. Further, the pilot study findings revealed that the use of an improved application, which requires that income information be identified by source and by individual household member, significantly reduced misreporting. These commentors also suggested that the administrative costs associated with verification would exceed any cost savings achieved by a verification system. The pilot study suggests that significant and worthwhile improvements in program integrity are likely to occur with a limited verification system which focuses on deterrence rather than detection. While direct recoveries or cost savings achieved through individual verification efforts may not equal the initial cost of verification, the overall deterrent effect of this verification system over time is likely to be cost-effective. Therefore, the Department is proposing that the application for free and reduced-price benefits be modified to include income information identified by source and by household member, and an abbreviated verification requirement is offered.

Thirteen commentors suggested that additional administrative funds be provided to School Food Authorities to cover the administrative costs associated with verification. Currently, program legislation contains no authorization for payment of local administrative costs. The Department recognizes that there are additional responsibilities associated with the verification process, but given the size of the verification sample and the magnitude of abuse cited by OIG, the Department does not believe that the verification responsibility imposed by the interim rule or this proposed rule is disproportionate. In most cases, the responsibility should be absorbed by existing staff and should not require additional personnel. However, this proposed rule does provide School Food Authorities with an alternative method of verification at lower administrative cost. Utilization of the focused method of verification will permit School Food Authorities to substantially reduce the number of verifications required by focusing on these applications most likely to contain errors.

More importantly, in an effort to simplify the application/certification process for School Food Authorities as well as applicants, the Department is proposing to allow food stamp households to establish eligibility without completing the income portion of the application. In many school districts, the majority of households receiving free meal benefits are also food stamp recipients. The certification process will be much faster for all such applicant households which choose to provide food stamp case numbers instead of income information. The school officials will quickly determine eligibility without calculating each household's monthly or annual income. The administrative time saved here should exceed that consumed by either verification method utilized by the School Food Authority.

Thirty-two commentors objected to the potential for the educator to be considered an investigator. These commentors believed that this perception will damage the educator's relationship with parents. The Department has intentionally provided flexibility for the State agency and local School Food Authorities to fulfill verification responsibilities. The Department believes that this flexibility should permit an adequate verification system which protects the parent-educator relationship. Both the interim rule and this proposed rule permit School Food Authorities to utilize non-teaching staff rather than educators to perform verification functions. School Food Authorities may opt to place verification responsibilities completely with non-teaching staff to avoid any possibility of endangering the parent-educator relationship.

Seventeen commentors believed that it is impossible to completely verify income if such income is not reported on the application. The Department believes that collecting income information by source and by household member, as required by this proposed rule, will alleviate much of this problem. While the Department does not expect that all failure to report income will be deterred or detected during verification efforts, the Department believes that this proposed rule represents a significant contribution to program integrity.

The pilot study findings show that an improved application, as proposed in this rule, successfully reduced misreporting especially among ineligible households. By gathering more complete information on the application, the

Department believes that the proposed improved application addresses the concerns of these commentors.

Three commentors believe that collection of social security nubers alone is sufficient to deter misreporting of income. This belief finds little support in the pilot study which suggests that more effective deterrance is predicated on an improved application/verification system as proposed by this rule.

Eleven commentors believed that verification should be a State agency/local School Food Authority option. Several of these commentors stated that their School Food Authority routinely verifies questionable applications. The Department believes that the degree of abuse identified by OIG requires that verification be mandatory on a national basis. While some individual School Food Authorities may, in prior years, have performed verification under certain circumstances, the abuse identified by OIG was national in scope and requires a consistent national response. Although both the interim rule and this proposed rule provide considerable flexibility to local School Food Authorities, the obligation to perform a minimal amount of verification is not optional.

Fourteen commentors expressed concern that children will be penalized by uncooperative parents and suggest that verification requirements may so frighten eligible households that they will not apply. The Department shares the concern that verification activity may discourage eligible applicants and wishes to point out that if a needy family fails to apply, School Food Authorities may complete and file an application for the children by using the best income and family size information available. This procedure may only be used in individual cases, not as a common form of certification.

Fourteen commentors objected to mandatory verification procedures prior to the final evaluation of the results of the pilot study on verification. In *Ernest Sargent et al.* v *John R. Block* (Civil Action No. 83–2727) the Court held that implementation of a mandatory verification system prior to the completion of the pilot study was consistent with the Department's statutory authority. Further, the results of the pilot study are now available, and the Department is proposing the improved verification system contained in this rule in response to the findings of that pilot study.

Twenty commentors suggested that verification activities be placed in either local food stamp or other welfare offices more familiar with verification requirements. The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) specified that the responsibility for verification is to be assumed by States and School Food Authorities. Consequently, the Department has imposed the primary administrative responsibility for conducting verification upon State and local school officials.

Two commentors sugested that households be required to submit income tax records at the time of application. The pilot study on verification found that requiring income documentation at the time of application did not produce a significant reduction in misreporting over and above that achieved by an improved application. Further, such income documentation resulted in a barrier to participation by eligible households. Given these two study outcomes, the Department does not believe that such a documentation requirement would be productive, and is very concerned that eligible applicants may be barred from applying for benefits under such a system.

Seven commentors suggested that verification should be required or allowed at the time of application. This proposed rule requires that households selected to provide verification information be given written notice of such selection and adequate time, as determined by the School Authority, to reply. In addition, any verification system selected must not unduly delay or deny the access of eligible children to program participation pending verification. Therefore, the Department believes that this type of verification is not possible.

Section 245.2 Definitions.

Four commentors addressed the interim definition of verification. The interim rule defined verification as " * * * confirmation of eligibility for free or reduced price benefits under the Program. At a minimum, verification shall include confirmation of income eligibility and, at State or local discretion, verification may also include confirmation of household size."

Two commentors believe that the current definition should include mandatory verification of household size. The Department believes that the current definition provides the flexibility to State agencies and School Food Authorities necessary for effective implementation of any verification system. If it is determined that verification of household size on either a State or local basis is appropriate, the current definition provides the authority for this decision.

Two commentors suggested additions to the definition section. One commentor suggested that definitions of written evidence, collateral contact and system of records be included in the definition section. The Department has provided lengthy descriptions of these sources of information at § 245.6(b) and does not believe any additional clarification would be provided by duplicating this material in the definition section.

Section 245.6(a) Verification Requirements.

Sample Size: Seven commentors addressed the provisions requiring School Food Authorities to verify 3 percent or 3,000 (whichever is less) of approved applications. Six of these commentors suggested that this level or a higher level of verification be required. One commentor suggested that this requirement be phased in over a three year period with 1 percent required the first year, 2 percent the second and 3 percent in the third and subsequent years. Another commentor suggested that recipients of other forms of assistance, such as Aid to Families with Dependent Children (AFDC), be excluded from the sample selected.

Although those commentors which specifically addressed the sample size were, in general, supportive of the number required by the interim rule, the Department is proposing an alternate method of verification in this proposed rule. This focused method of verfication consists of selecting and verifying the lesser of 1 percent or 1,000 of total applications selected from non-food stamp households claiming monthly income within $100 or yearly income within $1200 below the income eligibility limit and the lesser of one-half of one percent or 500 applications of food stamp households that provided food stamp case numbers in lieu of income information. Selection of applications which claim income within specified limits below the income eligibility cutoff has been determined by the pilot study to sharply increase the likelihood of identifying applications which contain misreported income information. Verification of households which elect to provide their food stamp case numbers rather than provide income information is necessary to reduce the chance of households falsely claiming to be food stamp recipients to avoid verification of eligibility. Verification of households supplying food stamp numbers can be accomplished by submitting a list of names and food stamp case numbers to the food stamp office for confirmation of participation, or at School Food Authority discretion, the household may be asked to provide evidence of eligibility for food stamps

by providing the "Notice of Eligibility" which is issued to the household periodically and which states the period of eligibility for food stamp benefits.

The Department believes that by providing alternate methods of verification the administrative responsibilities related to verification cited by other commentors will be reduced while maintaining an improved level of verification activity.

Five Month Timeframes

A total of fourteen commentors addressed the timeframe for completion of verification requirements by School Food Authorities. Two commentors supported the five month timeframe as adequate, while the remainder believed that five months was not sufficient for a variety of reasons. In this proposal the Department has replaced the five month timeframes with a specific deadline of November 15 of each school year. The Department recognizes that this fixed date may impose a more difficult task on those School Food Authorities which open schools later in the school year. However, the Department believes that it is necessary to identify ineligible recipients as soon as possible and thereby reduce the loss to the Federal Government. Further, completion of verification activity in School Food Authorities by November 15 will provide State agencies sufficient time to perform the monitoring activities required of them during the school year. The Department believes that the proposed streamlined application certification procedures for food stamp households discussed earlier in this preamble will allow school officials to complete the application process more quickly than in previous years. Such expedited procedures will allow school officials to proceed with verification much earlier in the school year. In addition, this proposed rule provides an alternative method of verification which reduces the number of verifications required for School Food Authorities. These provisions should eliminate the need for an extensive period of time for completion of verification. Therefore, the Department is proposing that verification be completed by November 15 of each school year. However, the Department recognizes that under certain circumstances, such as strikes which delay the start of the school year, it may be necessary to extend the time for completion of verification activity. Therefore, this proposed rule provides that extensions may be granted in writing by FNS.

Section 245.6(a)(1) Confirmation of income information.

Verification shall not delay approval of applications: A total of ten commentors addressed this provision. One commentor opposed requiring additional documentation with the application suggesting that this could discourage eligible families from applying. Seven commentors suggested that this section be amended to allow additional information requested with the application to be considered in the application review process if such verification does not delay the approval process. Several commentors suggested that all applications be verified to identify all ineligible applicants.

The pilot study indicates that requiring additional documentation at the time of application discourages some eligible households from applying and does not substantially reduce misreporting. This proposed rule establishes minimum verification requirements and does not prevent a School Food Authority from verifying all applications. The proposed rule, like the interim rule, requires that verification efforts shall not unduly delay the approval of applications. The Department is concerned that verification efforts at the time of application review could prevent prompt approval activity. Therefore, this proposed rule requires that households selected to provide verification information be given written notice of verification and adequate time, as determined by the School Food Authority, to reply. This proposed rule precludes requiring documentation at the time of application.

Confirmation of income: One commentor addressed this provision. This commentor suggested that vertification be focused on the validity of the income figure submitted on the application at the time of application and not income from a later period. This proposed rule provides that verification be completed by November 15 of each school year. This requirement should move many verifications much closer to the month of application thereby reducing the time lag which concerns this commentor. It should be noted however that both verification and continued eligibility are based on the most recent income of the household and not that received in the month of application.

Section 245.65(a)(2) Notification of Selection.

Sample Selection: The interim rule provided maximum State and local flexibility in the selection of applications to be verified. There were sixteen commentors who addressed sample selection. These commentors, in general, suggested that they desired additional guidance and direction on sample selection in order to avoid the potential for discriminatory selection. In response to these comments and to the pilot study findings, the Department is proposing an alternate method of verification which focuses on those applications most likely to contain errors. This method, if selected by School Food Authorities, will provide a clear and non-arbitrary standard for seletion of applications as requested by these commentors.

One commentor requested clarification of the need to nofity households when the School Food Authority is using a system of records to verify eligibility. The interim rule and this proposal both require that households asked to provide information be notified. However, when a system of records to which the school may legally gain access is utilized, schools would not be required to notify households. Of course, this presupposes that the application submitted by these households contains a statement, as required by the Privacy Act, to the effect that social security numbers may be utilized for vertification activity.

School Conferences: Three commentors questioned the provision which describes a school conference as a method of verification. The Department agrees that the language contained in the interim rule at § 245.6a(b)(4) concerning school conferences is confusing. The Department has determined that these conferences are not a method of verification but rather a situation in which verification activity may take place. Therefore, the Department is proposing in this rule that references to school conferences as a method of verification be eliminated. However, the Department wishes to emphasize that it views formal and informal discussion between parents and representatives from the School Food Authority as practical methods to expedite the verification process.

Special Milk Program: The Department is proposing in this rule to eliminate references to verification in the Special Milk Program for Children (Part 215). The Department believes that the potential for abuse in the Special Milk Program does not justify the administrative costs associated with a verification system.

Summary of Proposed Changes: This proposed rule would implement several changes in the verification procedures

required by the interim rule. These major changes are: (1) An alternative method of verification which focuses on those applications more likely to contain errors. School Food Authorities selecting this method must verify the eligibility of the lesser of 1 percent or 1,000 of total applications selected from the non-food stamp applications on file as of October 15. In addition, the School Food Authority must confirm the food stamp recipient status of the lesser of one half of 1 percent or 500 applications for food stamp households which provide food stamp case numbers in lieu of income information. (2) An improved application for free and reduced price meals which requires applicants to provide total household income identified by source of income for each household member. (3) Households selected to provide verification information shall receive written notice of selection and adequate time for response. (4) Verification activity shall be completed by each School Food Authority by November 15 of each school year.

Commentors are requested to direct their comments to those major proposed changes as summarized above and other conforming proposed changes as discussed in the preamble. Commentors are specifically requested not to comment on those provisions of the interim rule not modified by this proposed rule since the opportunity for comment on provisions in the interim rule was previously provided.

List of Subjects in 7 CFR Part 245

Food assistance programs, Grant programs—social programs, National school lunch program, School breakfast program, Special milk program, Reporting and recordkeeping requirements.

PART 245—DETERMINATION OF ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

Accordingly, Part 245 is proposed to be amended as follows:

1. In § 245.2, paragraphs (a–3) and (k) are revised as follows:

§ 245.2 Definitions.

* * * * *

(a–3) "Documentation" means the completion of the following information on a free and reduced price application: (1) Names of all household members; (2) social security number of each adult household member or an indication that a household member does not possess one; (3) household income received by each household member, identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, and social security) and total household income; or in lieu of income information, the Food Stamp Program case number for those households currently receiving food stamps; and (4) signature of an adult member of the family.

* * * * *

(k) "Verification" means confirmation of eligibility for free or reduced price benefits under the National School Lunch Program or School Breakfast Program. At a minimum, verification shall include confirmation of income eligibility or current participation in the Food Stamp Program. At State or local discretion, verification may also include confirmation of household size.

2. In § 245.5, paragraph (a)(1)(iii) is revised; paragraphs (a)(1) (iv) through (x) are redesignated as paragraphs (a)(1) (v) through (xi); and a new paragraph (a)(1)(iv) is added. The revision and addition read as follows:

§ 245.5 Public announcement of the eligibility criteria.

(a) * * *

(1) * * *

(iii) An explanation that in order to be considered eligible for free or reduced price benefits, an application must contain complete documentation of eligibility information including names of all household members, social security numbers of all adult household members or an indication that a household member does not possess one, total household income and the amount and source of income received by each household member, and the signature of an adult household member; (iv) an explanation that households currently receiving food stamps may submit their Food Stamp Program case number instead of income information;

* * * * *

3. In § 245.6:

a. Introductory paragraph (a), is amended by revising the third sentence; and by adding two sentences after the fourth sentence;

b. Paragraph (a)(1) is amended by adding the words "contacting a Food Stamp Office to determine current receipt of food stamps," between the words "determine income," and "contacting the State" in the fifth sentence;

c. Paragraph (a)(2) is amended by removing the second sentence; and

d. Paragraph (d) is removed.

The revision and addition reads as follows:

§ 245.6 Application for free and reduced price meals and free milk.

(a) * * * The information requested in the application with respect to the current annual income of the family shall be limited to the total household income, the income received by each member identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation and social security). * * * The application shall require applicants to provide total household income and the income received by each household member identified by source of income. The application shall enable households receiving food stamps to provide their Food Stamp Program case number in lieu of income information.

* * * * *

4. In § 245.6a:

a. Introductory paragraph (a) is revised;

b. The first sentence of paragraph (a)(2) is revised;

c. Paragraph (a)(3) is revised; and

d. Paragraph (b) is amended by removing the words "school conferences" in the first sentence, and by removing paragraph (b)(4).

The revisions and addition read as follows:

§ 245.6a Verification requirements.

(a) *Verification Requirement.* Unless a written extension of time is obtained from FNS, by November 15 of each School Year, School Food Authorities shall, at a minimum, select and verify the eligibility of a sample of the approved free and reduced price applications on file as of October 15. School Food Authorities shall satisfy the verification requirement by using either random sampling or focused sampling as described below. *Random* sampling consists of verifying the lesser of 3 percent or 3,000 applications which are selected by the School Food Authority. *Focused* sampling consists of selecting and verifying (1) the lesser of 1 percent or 1,000 of total applications selected from non-food stamp households claiming monthly income within $100 or yearly income within $1,200 of the income eligibility limit for free or reduced price meals; and (2) the lesser of one half of 1 percent (.5%) or 500 applications of food stamp households that provided food stamp case numbers in lieu of income information. School Food Authorities may choose to verify up to 100 percent of all applications to improve program integrity. Any State may, with the written approval of FNS, assume responsibility for complying with the verification requirements of

this Part within any of its School Food Authorities. When assuming such responsibility, States may utilize alternate approaches to verification provided that the results achieved meet the requirements of this Part.

* * * * *

(2) Households selected to provide verification shall be provided written notice that they have been selected for verification and that they are required, by such date as determined by the School Food Authority, to submit the requested verification information to confirm eligibility for free or reduced price benefits.

* * * * *

(3) Verification of the eligibility of households who provide their Food Stamp Program case number on the application in lieu of income information shall be accomplished either by confirming with the local food stamp office that the household is currently receiving Food Stamp Program benefits *or* by obtaining a copy of a current "Notice of Eligibility" for Food Stamp Program benefits from the household. If it is determined that the household is not currently receiving food stamp benefits, the household shall be notified that they shall resubmit a complete application which includes income information and documentation which confirms household income. The School Food Authority shall promptly verify such applications to determine if the household continues to be eligible for benefits.

* * * * *

(Sec. 803, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1758))

Dated: March 26, 1984.

Mary C. Jarratt,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 84–8542 Filed 3–29–84; 8:45 am]

BILLING CODE 3410–30–M

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Friday
March 30, 1984

Part IX

Department of Education

Office of Elementary and Secondary Education

34 CFR Part 222

School Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education; Proposed Rule

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 222

School Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend those sections of the regulations governing the establishment of local contribution rates under the Impact Aid Program. The rates are used by the Secretary to compute assistance to school districts in federally affected areas.

The Secretary is proposing these changes to clarify the regulations and, thus, provide additional guidance to school districts applying under Pub. L. 81–874 (the Act) for assistance for maintenance and operations.

DATE: Comments must be received on or before May 14, 1984.

ADDRESS: Comments should be addressed to Dr. David G. Phillips, Division of Impact Aid, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2107, Washington, D.C. 20202–6272.

FOR FURTHER INFORMATION CONTACT: Dr. David G. Phillips. Telephone: (202) 245–1975.

SUPPLEMENTARY INFORMATION: Under section 3 of Pub. L. 81–874, commonly referred to as the Impact Aid Program, the Secretary provides to certain local educational agencies (LEAs) assistance for maintenance and operations. LEAs eligible to participate in the program are those providing a free public education to certain types of so-called federally connected children; that is, children who reside on Federal property; children whose parents are employed on Federal property; children residing on Federal property with parents employed on Federal property; and children whose parents are on active duty in the uniformed services.

The proposed amendments to these regulations would affect implementation of section 3 of the Act. This section describes the process by which the Secretary determines payments to eligible applicants.

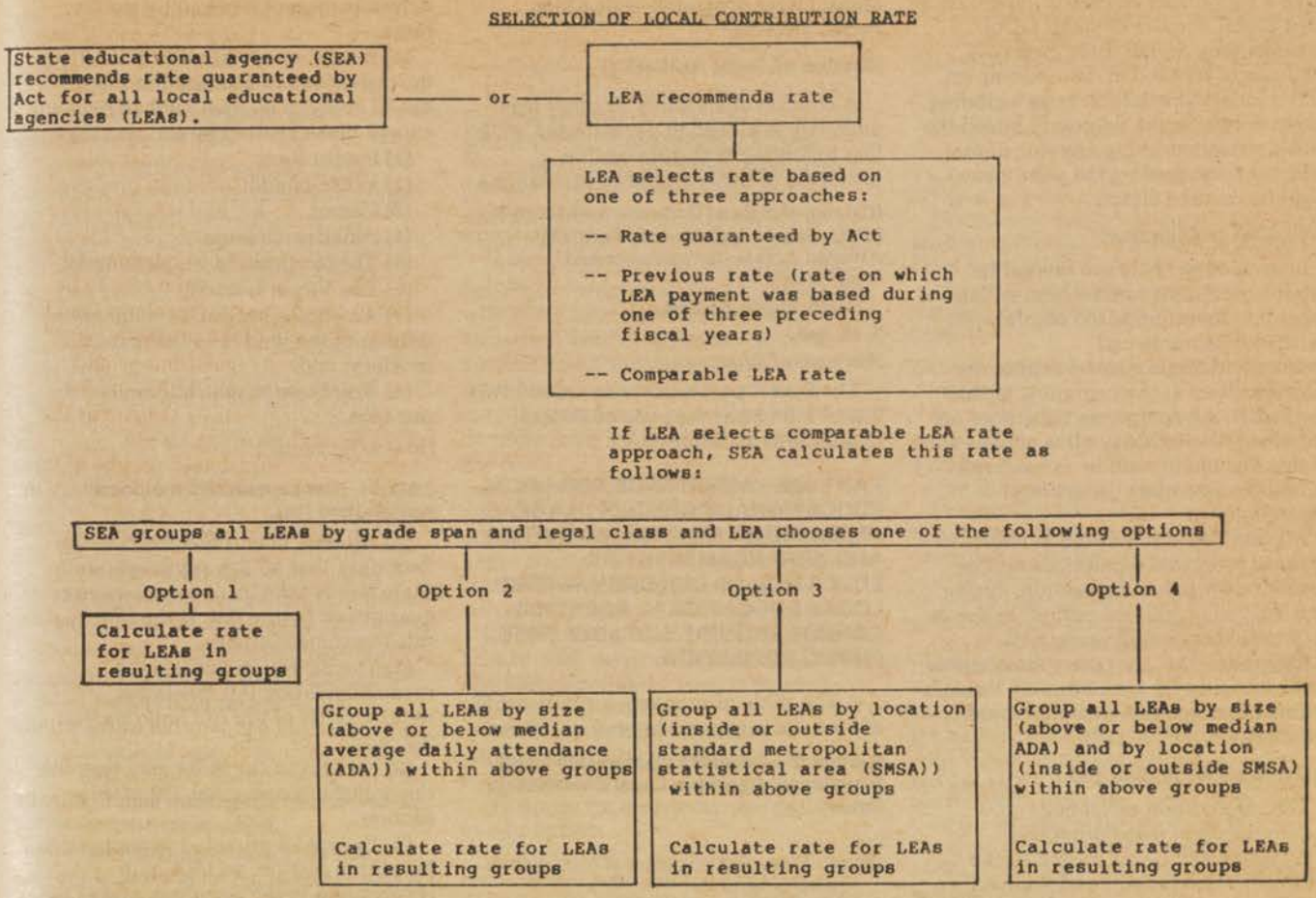
Payments are based on the number and type(s) of federally connected children attending the schools of an applicant LEA and on the applicant's local contribution rate. Among other provisions, section 3 requires the Secretary to establish for each applicant a local contribution rate and, in the case of certain applicants, to determine which LEAs in their respective States are generally comparable to the applicants.

Because of a number of inquiries regarding the methods used by the Secretary to select generally comparable districts, the Secretary has reviewed the current regulations for the program and determined that the provisions governing the methods should be simplified and clarified.

The changes proposed by the Secretary would permit the use of new methods of determining local contribution rates, in addition to rates derived under the two methods known as the "group rate" method and the "individually selected comparable district" method. Under the proposed changes, each LEA and its respective State educational agency (SEA) would have the opportunity to recommend for the Secretary's approval a rate to be used in computing payments to the LEA under section 3 of the program.

The proposed regulations would permit each applicant LEA—unless otherwise precluded by the Act or the regulations from doing so—to recommend a rate, based on one of three methods, to be used by the Secretary in determining the LEA's payment:

- The rate guaranteed by the Act.
- A rate on which the Secretary based the LEA's payment during any one of the three years preceding the year these amended regulations take effect.
- A rate based on appropriate data from generally comparable LEAs within the State. The applicant LEA would identify the generally comparable LEAs—using information supplied by its SEA—and would be permitted to recommend this method provided there were at least 10 LEAs (including the applicant itself, except in certain cases) within the generally comparable group. The regulations also would permit the LEA flexibility in selecting the type or types of LEAs it regards as generally comparable. The following chart depicts the methods described above.



Regardless of the method recommended, no LEA would receive a rate less than the rate guaranteed to the applicant by the Act.

The proposed regulations would also continue the current practice of allowing an SEA to recommend to the Secretary that the local contribution rate for all eligible LEAs in that State be the rate guaranteed by the Act. In that case the Secretary would accept the recommendation, and individual LEAs within the State would not then recommend another method for establishing their respective rates.

The proposed regulations would also clarify the requirements the Secretary applies to any LEA that requests additional assistance under section 3(d)(2)(B) of the Act. The regulations would specify, for example, that if the applicant LEA recommends for its regular payment a method based on generally comparable LEAs in its State, the Secretary uses those same LEAs in determining any additional assistance to the applicant. If an applicant recommends for its regular payment a rate based on the rate guaranteed by the Act or on a rate previously determined for the LEA, the Secretary, for purposes of determining any additional assistance, would regard the applicant LEA as being comparable to all LEAs in its State.

The changes proposed in these regulations would offer applicants a simpler and more flexible approach to the selection of comparable districts than those methods in current use. The proposed methods would reduce significantly the administrative burden for participating school districts that formerly used the "individually selected comparable district" method and would require no additional effort on the part of SEAs.

The Secretary believes that this new approach to selecting generally comparable LEAs is educationally sound. The Secretary considers the approach to be equitable because it is based on objective factors that produce a more uniform method for setting rates—among States as well as within States. For these reasons the Secretary regards this approach as preferable to the current practice.

Except for the changes to provisions governing the local contribution rate and additional assistance under section 3(d)(2)(B), these proposed regulations contain no other changes to the regulations implementing Pub. L. 81–874.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. The small entities affected by the regulations are small LEAs. The regulations will not

have a significant economic impact on a substantial number of small LEAs because they permit three types of methods to be used in determining an LEA's local contribution rate, including a rate on which the Secretary based the LEA's payment during any one of the three years preceding the year these regulations take effect.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments submitted on or before (the 45th day after publication of this document) will be considered before the Secretary issues final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 2107, 400 Maryland Avenue SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Paperwork Reduction Act

The information collection requirements in these proposed regulations will be submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980.

Comments concerning information collection requirements only should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, 17th and Pennsylvania Avenue NW., Washington, D.C. 20503. Attention: Desk Officer for the U.S. Department of Education.

All other comments regarding these proposed regulations should be sent to the Department of Education at the address given at the beginning of this preamble.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act and their overall requirements of reducing regulatory burden, public comment is especially invited on whether there may be further opportunities to reduce any regulatory burden found in these proposed regulations.

List of Subjects in 34 CFR Part 222

Education, Education of the handicapped, Elementary and secondary education, Federally affected areas, Grant programs—education, Public housing.

Citation of Legal Authority

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

(Catalog of Federal Domestic Assistance No. 84.041, School Assistance in Federally Affected Areas—Maintenance and Operations)

Dated: March 27, 1984.

T. H. Bell,

Secretary of Education.

The Secretary proposes to amend Part 222 of Title 34 of the code of Federal Regulations as follows:

PART 222—ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES AND ARRANGEMENTS FOR EDUCATION OF CHILDREN WHERE LOCAL EDUCATIONAL AGENCIES CANNOT PROVIDE SUITABLE FREE PUBLIC EDUCATION

1. The table of contents for Subpart D of Part 222 is revised to read as follows:

Subpart D—Generally Comparable Local Educational Agencies; Local Contribution Rates

Sec.

2. Subpart D of Part 222 is revised to read as follows:

Subpart D—Generally Comparable Local Educational Agencies; Local Contribution Rates.

§ 222.30 Determination of local contribution rates: general.

(a) Before computing the amount to be paid to an applicant local educational agency (LEA) under section 3 of the Impact Aid Program, the Secretary—after consultation with the LEA and its State educational agency (SEA)—determines the LEA's local contribution rate.

(b) The provisions in §§ 222.30 through 222.36 describe the methods that may be recommended by SEAs and LEAs to be used the Secretary in the determination of local contribution rates.

(c) Except as specified in § 222.31(c), the provisions in §§ 222.30 through 222.36 apply to all applicant LEAs except those located in—

(1) Puerto Rico;

(2) Wake Island;

(3) Guam;

(4) American Samoa;

(5) The Northern Mariana Islands;

(6) The Virgin Islands;

(7) Any State in which a substantial portion of the land is in unorganized territory; and

(8) Any State in which there is only one LEA.

(20 U.S.C. 238(d)(3))

§ 222.31 Recommendation of local contribution rate.

(a) An SEA may recommend to the Secretary that all the applicants in the State receive the local contribution rate guaranteed by the Act. If the SEA makes this recommendation—

(1) The Secretary accepts the recommendation if it meets the requirements of the Act and this Part 222; and

(2) No LEA in the State may exercise the options in paragraph (b) of this section.

(b) Except as provided in paragraph (a) of this section, an LEA may recommend to the Secretary one of the following types of local contribution rates on which the Secretary would base the LEA's payment:

(1)(i) The LEA may recommend the local contribution rate guaranteed by the Act.

(ii) The provisions governing this rate are in § 222.32.

(2)(i) The LEA may recommend the local contribution rate on which the Secretary based the LEA's payment during any one of the three fiscal years preceding the fiscal year in which this section takes effect.

(ii) However, if during the fiscal year selected, the LEA received assistance under section 3(d)(2)(B) of the Act in addition to regular assistance under section 3, the LEA may recommend only the rate used for determining its regular assistance under section 3 for the year selected.

(3)(i) The LEA may recommend a local contribution rate based on appropriate data from generally comparable LEAs within the State.

(ii) The provisions governing this rate rate are in §§ 222.33 through 222.35.

(c) In the case of a jurisdiction listed or identified in § 222.30(c), the Secretary establishes as the local contribution rate

the rate guaranteed by the Act, as described in § 222.32(b).

(20 U.S.C. 238(d)(3))

§ 222.32 Local contribution rate guaranteed by the Act.

(a) If an LEA recommends to the Secretary as its local contribution rate the rate guaranteed by the Act, the Secretary accepts the recommendation if it meets the requirements of the Act and this Part 222.

(b) The local contribution rate guaranteed by the Act is the greater of—

(1) Fifty percent of the average per pupil expenditure in the LEA's State during the second fiscal year preceding the fiscal year for which the computation is made; or

(2)(i) Fifty percent of the average per pupil expenditure in all of the 50 States and the District of Columbia during the second fiscal year preceding the fiscal year for which the computation is made.

(ii) However, the Secretary does not approve a local contribution rate that exceeds 100% of the average per pupil expenditure in the State in which the LEA is located.

(20 U.S.C. 238(d)(3)(B))

§ 222.23 Local contribution rate based on generally comparable LEAs.

(a) If an LEA recommends to the Secretary as its local contribution rate a rate based on appropriate data from generally comparable LEAs within its State, the Secretary accepts the recommendation if it meets the requirements of the Act and this Part 222.

(b)(1) The SEA for that State shall—

(i) Group all of the LEAs within the State according to each of the factors in § 222.34; and

(ii) Compute the local contribution rate for each group according to the provisions of § 222.35.

(2) In grouping LEAs under any factor or factors for purposes of establishing generally comparable LEAs, the SEA may not identify any group that contains fewer than 10 LEAs.

(c) In preparing its recommended rate, the LEA shall use the following steps:

(1) *Step 1.* The LEA shall select the factor or factors in § 222.34 the LEA wishes to use as the basis for general comparability.

(2) *Step 2.* (i) Using State-supplied data, the LEA shall identify within the State the entire group of LEAs that match the selected factor or factors.

(ii) Except as provided in paragraph (c)(2)(iii) of this section, the minimum number specified in paragraph (b) of this section shall include the applicant LEA.

(iii) The following may not be included in any group of generally comparable LEAs:

(A) Any LEA having—in the second fiscal year preceding the fiscal year for which the local contribution rate is computed for the applicant LEA—20 percent or more of its average daily attendance constituted by children identified under section 3(a) of the Act.

(B) Any LEA having—in the second fiscal year preceding the fiscal year for which the local contribution rate is computed for the applicant LEA—50 percent or more of its average daily attendance constituted by children identified under section 3(b) of the Act, or under both sections 3(a) and 3(b) of the Act.

(3) *Step 3.* (i) Using State-supplied data for the group of LEAs identified under Step 2, the LEA shall recommend to the Secretary its local contribution rate, which the SEA has computed according to the provisions of § 222.35.

(ii) In making this computation, the LEA or SEA may not include data for any LEA identified under paragraph (c)(2)(iii) of this section.

(d) An LEA identified under paragraph (c)(2)(iii) of this section is entitled to—

(1) Apply for assistance under the program; and

(2) Recommend as its local contribution rate any type of rate described in § 222.31 for which the LEA is eligible.

(20 U.S.C. 238(d)(3)(A))

§ 222.34 Selection of generally comparable LEAs.

In selecting generally comparable LEAs within its States, an LEA—

(a) Shall use the following factors:

(1) The LEA's grade span in the current year.

(2) The LEA's legal classification within the State in the current year, if the Secretary regards this classification as sufficiently different from grade span within the State; and

(b) May also use either or both of the following factors:

(1)(i) The LEA's size in the current year, as determined by placement above or below the median average daily attendance (ADA) for the LEA's grade span within the State.

(ii) The Secretary considers an ADA that is equal to the median as being below the median.

(2) The LEA's location in the current year, as determined by placement inside or outside a standard metropolitan statistical area as defined by the U.S. Bureau of the Census.

Example. An LEA applies for assistance under section 3 of the Impact Aid program and wishes to recommend to the Secretary a local contribution rate based on generally comparable LEAs within its State.

Characteristics of Applicant LEA

The grade span of the applicant LEA is kindergarten through grade 8 (K–8). In the applicant's State, legal classification of LEAs is based on grade span.

The average daily attendance (ADA) of the applicant LEA is above the median ADA of LEAs serving only K–8 in the State.

The applicant LEA is located outside a standard metropolitan statistical area (SMSA).

Characteristics of Other LEAS Serving Same Grade Span

The SEA of the applicant's State groups all LEAs in its State according to the factors in § 222.34.

The SEA identifies the following groups:

One hundred LEAs serve only K–8. One of these LEAs has 20 percent of its ADA comprised of children identified under section 3(a) of the Act and, therefore, may not be used by the applicant LEA in any determination of general comparability.

One of the remaining 99 LEAs in the group, the SEA has identified a group of 49 LEAs having an ADA above the median ADA for the group of 99, one LEA having an ADA at the median, and a group of 49 LEAs having an ADA below the median ADA; thus, according to § 222.34(b)(1)(ii), 50 LEAs are considered to have an ADA below the median ADA.

Of the 99 LEAs in the group, the SEA has identified a group of 63 LEAs as being inside an SMSA and a group of 36 LEAs as being outside an SMSA.

Among the group of 49 LEAs having an ADA above the median, the SEA has identified a group of 36 LEAs as being inside an SMSA and a group of 13 LEAs as being outside an SMSA.

Among the group of 50 LEAs having an ADA below the median, the SEA has identified a group of 27 LEAs as being inside an SMSA and 23 LEAs as being outside an SMSA.

On the basis of § 222.35 the SEA computes the local contribution rate for each group of generally comparable LEAs that the SEA has identified.

Selection of Generally Comparable LEAS

The applicant LEA selects the group of generally comparable LEAs on which it wishes to base its recommended local contribution rate.

Under the requirements of § 222.34, the applicant LEA must begin with the group that includes all LEAs in its grade span and legal classification. In this case grade span and legal classification happen to be the same. Thus, the group would include 100 LEAs. However, the applicant LEA must exclude from the group the one LEA that has 20 percent of its ADA comprised of children identified under section 3(a) of the Act. This reduces the group to 99 LEAs.

The applicant LEA then has several options:

Option 1: The LEA may select as its group of generally comparable LEAs on which to base its recommended local contribution rate

the group of 99 LEAs serving K–8. The LEA then recommends to the Secretary as its local contribution rate the rate computed for this group by the SEA.

Option 2: Instead of selecting the group of 99, the LEA may select as its generally comparable group only those LEAs within the 99 that have an ADA above the median ADA for the 99; that is, the group of 49. The LEA then recommends to the Secretary as its local contribution rate the rate computed for this group by the SEA.

Option 3: Instead of selecting either of the groups described in Options 1 and 2, the LEA may select as its generally comparable group only those LEAs within the 99 that are outside an SMSA; that is, the group of 36. The LEA then recommends to the Secretary as its local contribution rate the rate computed for this group by the SEA.

Option 4: Instead of selecting any of the groups described in Options 1, 2, and 3, the LEA may select as its generally comparable group only those LEAs that *both* have an ADA above the median ADA for the 99 *and* are outside an SMSA; that is, the group of 13. The LEA then recommends to the Secretary as its local contribution rate the rate computed for this group by the SEA.

However, as provided in § 222.339(b)(2), if the SEA were to have identified fewer than 10 LEAs under any factor or combination of factors, the SEA would not have established a group for this factor or combination of factors, and the LEA would be precluded from using this factor or combination of factors in recommending its local contribution rate to the Secretary.

(20 U.S.C. 238(d)(3)(A))

§ 222.35 Computation of local contribution rates.

Except as otherwise specified in the Act, if an LEA wishes to recommend to the Secretary a local contribution rate based on generally comparable LEAs within its State, the LEA selects the group of generally comparable LEAs, and the SEA, subject to the Secretary's review and approval, computes the LEA's local contribution rate as follows:

(a)(1) The SEA shall compile the aggregate current expenditures of the comparable LEAs during the second fiscal year preceding the fiscal year for which the computation is made.

(2) For purposes of this section, the SEA shall consider only those aggregate current expenditures made by the comparable LEAs from revenues derived from local sources.

(b) The SEA shall compile the aggregate number of children in ADA to whom the generally comparable LEAs provided free public education during the second fiscal year preceding the fiscal year for which the computation is made.

(c) The SEA shall divide—

(1) The aggregate current expenditures determined under paragraph (a) of this section; by

(2) The aggregate number of children determined under paragraph (b) of this section.

(d) If a rate computed under this section is lower than the rate guaranteed by the Act, the Secretary bases the LEA's payment on the guaranteed rate.

(20 U.S.C. 238(d)(3)(A))

§ 222.36 Determination of additional assistance.

(a) The provisions of this section govern an LEA that applies to the Secretary for assistance under section 3(d)(2)(B) of the Act, in addition to apply for a regular payment under section 3.

(b) If the LEA is applying for a regular payment under section 3 based on a local contribution rate guaranteed by the Act or a rate previously determined for the LEA under § 222.31(a)(2), the Secretary—

(1) In determining the amount of additional assistance, considers the LEA comparable to all LEAs in its State; and

(2) Establishes a rate of the additional assistance.

(c) If the LEA, in applying for a regular payment under section 3, recommends to the Secretary a local contribution rate based on generally comparable LEAs in its State, the Secretary—

(1) In determining the amount of the additional assistance, considers as comparable LEAs the same LEAs that the applicant identifies as comparable in its application for a regular payment under section 3; and

(2) Establishes a rate for additional assistance.

(20 U.S.C. 238(d)(2)(B))

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Part X

Department of Commerce

48 CFR Ch. 13
Acquisition Regulations; Final Rule

DEPARTMENT OF COMMERCE

48 CFR Ch. 13

Aquisition Regulations; Establishment of Chapter

AGENCY: Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce (DOC) issues this rule to be known as the Commerce Acquisition Regulation (CAR). This rule is established as Chapter 13 of Title 48 of the Code of Federal Regulations. The purpose of the CAR is to implement and supplement the Federal Acquisition Regulation (FAR) which has been separately promulgated by the General Services Administration, Department of Defense, and National Aeronautics and Space Administration as Chapter 1 of Title 48 of the Code of Federal Regulations. The FAR was published in the September 19, 1983 issue of the **Federal Register**. The FAR is promulgated as the uniform, simplified acquisition regulation called for by Executive Order 12352, Federal Procurement Reforms.

The FAR will supersede the Defense Acquisition Regulation, the Federal Procurement Regulations, and the National Aeronautics and Space Administration Procurement Regulation. Civilian agency implementations of the Federal Procurement Regulations will become obsolete as a result of the promulgation of the FAR. For this reason, the Department of Commerce Procurement Regulations (DOCPR), codified as Chapter 13 of Title 41 of the Code of Federal Regulations, and all related implementation and supplementation thereof is superseded by this final rule.

The intended effect of the FAR is to simplify the Federal procurement process by adopting a uniform regulation for all agencies. The uniform regulation will eliminate the confusion caused contractors by differing policies among the various Federal agencies. The intended effect of the CAR is to implement the FAR where required and to supplement the FAR in areas where there is no FAR coverage of Commerce unique policy.

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: John Dammeyer, Office of Procurement Management, U.S. Department of Commerce, 14th & Constitution Ave., NW., Washington, D.C. 20230, Telephone: (202) 377–4248

SUPPLEMENTARY INFORMATION: The Notice of Proposed Rulemaking was published on Page 6508 of the **Federal Register** on February 22, 1984 and invited comments by March 23, 1984.

Executive Order 12291

This rule is exempt from the provisions of Executive Order 12291. The application of this exemption to this rule has been agreed to by the Office of Management and Budget.

Regulatory Flexibility Act

DOC certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

Paperwork Reduction Act

This rule does not impose information collection and recordkeeping requirements on the public beyond those requirements established by the FAR. This rule was reviewed by the Office of Management and Budget (OMB) in accordance with section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq.

National Environmental Policy Act

DOC has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432 et seq. 1976) and the regulations (40 CFR Parts 1500–1508) and therefore does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

List of Subjects in 48 CFR Chapter 13

Government procurement, Commerce acquisition regulations.

For the reasons set forth in the preamble, Title 48 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, D.C., March 27, 1984.

Hugh L. Brennan,

Director, Office of Procurement and Federal Assistance.

Title 48 of the CFR is amended by establishing Chapter 13 to read as follows:

Chapter 13—Department of Commerce

SUBCHAPTER A—GENERAL

Part

SUBCHAPTER B—ACQUISITION PLANNING

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

SUBCHAPTER G—CONTRACT MANAGEMENT

SUBCHAPTER H—CLAUSES AND FORMS

SUBCHAPTER A—GENERAL

PART 1301—GENERAL

Subpart 1301.1—Purpose, Authority, Issuance

Sec.

Subpart 1301.2—Administration

Subpart 1301.3—Agency Acquisition Regulations

Subpart 1301.4—Deviations

Subpart 1301.5—Agency and Public Participation.

Sec.

1301.501 Solicitation of agency and public views.

Subpart 1301.6—Contracting Authority and Responsibilities

1301.601 General.
1301.601–70 Responsibilities of Heads of Contracting Activities.
1301.601–71 Responsibilities of the Office of Procurement and Federal Assistance.
1301.603 Selection, appointment, and termination of appointment.
1301.603–70 Ratification of unauthorized contract awards.
1301.603–71 Responsibility of other Government personnel.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486 (c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

Subpart 1301.1—Purpose, Authority, Issuance

1301.100 Scope of subpart.

This subpart states the relationship of the Commerce Acquisition Regulation (CAR) to the Federal Acquisition Regulation (FAR). This subpart also explains the purpose, authority and issuance of the CAR.

1301.101 Purpose.

(a) Chapter 13 of Title 48 of the Code of Federal Regulations shall be known as the Commerce Acquisition Regulation (CAR).

(b) The purpose of the CAR is to implement and supplement the FAR within the Department of Commerce. Since the CAR is intended to supplement and implement the FAR without paraphrasing or duplicating FAR language, the CAP should be read in relation to the FAR.

1301.102 Authority.

The CAR is prescribed by the Department Procurement Executive pursuant to a delegation initiating from the Secretary of Commerce in accordance with the Federal Property and Administrative Services Act of 1949, as amended, and other applicable law and regulation.

1301.103 Applicability.

The FAR and CAR apply to all acquisitions within the Department of Commerce.

1301.104 Issuance.

1301.104–1 Publication and code arrangement.

(a) The CAR is published in (1) daily issues of the **Federal Register**, (2) cumulative form in the Code of Federal Regulations (CFR), and (3) a separate loose-leaf edition.

(b) The CAR is issued as Chapter 13 of Title 48 of the CFR.

1301.104–2 Arrangement of regulations.

(a) *General.* The CAR is divided into the same parts, subparts, sections, subsections and paragraphs as the FAR. When FAR coverage is adequate by itself, there will be no corresponding CAR coverage.

(b) *Numbering.* Where the CAR implements the FAR, the CAR part, subpart, section or further subdivision will be numbered the same as the corresponding FAR part, subpart, section, or further subdivision except that the CAR implementation will be preceded by a 13 or 130 so that there are four numbers to the left of the first decimal. Where the CAR supplements the FAR, supplementing material will be assigned the number 70 and above. The placement of the sequence of 70 numbers in relation to the decimal point will depend on what division of the FAR is supplemented.

(c) *References and citations.* (2) This regulation may be referred to as the Commerce Acquisition Regulation (CAR).

(3) References to FAR materials will include FAR and the identifying number, for example, FAR 1.402. Reference to CAR materials will consist of the identifying number, for example 1301.402.

1301.104–3 Copies.

(a) Copies of the CAR in **Federal Register** or CFR form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, D.C. 20402. Requests should reference the CAR as Chapter 13 of Title 48 of the Code of Federal Regulations.

(b) Loose-leaf copies of the CAR are distributed within the Department by the Office of Procurement Management, Office of Procurement and Federal Assistance.

Subpart 1301.2—Administration

1301.201–1 The two FAR councils.

(b) The Department representative to the Civilian Agency Acquisition Council will be a staff member of the Office of Procurement and Federal Assistance who will be appointed for that purpose by the Procurement Executive. The Office of Procurement and Federal Assistance (OPFA) will be responsible for coordinating and advocating Department proposed revisions to the FAR.

Subpart 1301.3—Agency Acquisition Regulations

1301.301 Policy.

(a) The Procurement Executive will issue Department acquisition policy and procedure in the CAR when necessary to implement or supplement the FAR.

(b) The Office of Procurement and Federal Assistance may issue internal Department guidance in the form of Procurement Letters, policy manuals, or model operating procedures.

(c) Heads of Contracting Activities may issue internal operating procedures for their contracting activities. These internal operating procedures may include routine office procedures, procedures which implement policy prescribed by the Office of Procurement and Federal Assistance, and the dissemination of guidance or information to program officials who may be affected by the policy. Heads of Contracting Activities shall not prescribe policy and shall not issue any procedures which appear to be in conflict with policy issued by the Office of Procurement and Federal Assistance.

1301.303 Codification and public participation.

(a) The CAR is published as Chapter 13 of Title 48 of the Code of Federal Regulations.

(b) Public participation procedure is described in 1301.5.

Subpart 1301.4—Deviations

1301.402 Policy.

Requests for authority to deviate from the provisions of the FAR or the CAR shall be submitted to the Office of Procurement and Federal Assistance as soon as the need to deviate is known. Requests shall be in writing and reasonably describe the deviation desired, the reason for the deviation, and the time by which a decision is needed. When timing is crucial, the written request should be preceded by a telephone request to the Office of Procurement and Federal Assistance. Requests for both individual deviations and class deviations shall be considered and decided upon by the Procurement Executive. When requests are received for class deviations from FAR provisions, the Procurement Executive shall consult with the chairperson of the Civilian Agency Acquisition Council. (see FAR 1.404). Individuals responsible for unauthorized deviations may be considered for disciplinary action as described in the Department Administrative Order on *Discipline* (DAO 202–751).

Subpart 1301.5—Agency and Public Participation

1301.501 Solicitation of agency and public views.

The initial CAR was published with a notice of proposed rulemaking inviting public comments, review and analysis of comments received, and publication of a final rule. The final rule included a discussion of the public comments received and described any changes made as a result of the comments. A future issuance under this title may or may not require publication for public participation, depending on whether the issuance is a significant revision of the FAR which alters the substantive meaning of any coverage in the FAR having a substantive impact on the public. Each future issuance will be considered on a case-by-case basis. If a future issuance is determined by the Procurement Executive to be a significant revision of the FAR, that issuance shall be published for public participation. Any issuance under this title shall be done by or with the concurrence of the Office of Procurement and Federal Assistance.

Subpart 1301.6—Contracting Authority and Responsibilities

1301.601 General.

Contracting authority vests with the Secretary of Commerce. The Secretary has delegated this authority to the Assistant Secretary for Administration who has delegated this authority, with the right to redelegate, to the Procurement Executive, as prescribed in the Department Administrative Order on *Procurement Authority* (DAO 208–2).

1301.601–70 Responsibilities of heads of contracting activities.

Heads of Contracting Activities shall be responsible for directing and maintaining efficient contract operations within their contracting activities. Adequate controls shall be established to assure compliance with applicable laws, regulations, and policy guidance from the Office of Procurement and Federal Assistance. Heads of Contracting Activities shall provide the necessary coordination and cooperation required for periodic oversight reviews conducted by the Office of Procurement and Federal Assistance.

1301.601–71 Responsibilities of the Office of Procurement and Federal Assistance.

The Office of Procurement and Federal Assistance shall establish Department-wide policy for contracting activities. Also, the Office of Procurement and Federal Assistance shall conduct periodic oversight reviews of Department contracting activities to assure that Department contracting activities are operating efficiently and in accordance with the provisions of the FAR, the CAR, and OPFA policy.

1301.603 Selection, appointment, and termination of appointment.

The Department's systems for selection, appointment and termination of appointment of contracting officers is contained in the *Contracting Officer Certification/Warrant Program.*

1301.603–70 Ratification of unauthorized contract awards.

(a) The Department is not bound by any formal or informal type of agreement or contractual commitment which is made by persons who are not delegated contracting authority. When these unauthorized acts are discovered they shall be immediately reported to the Head of the Contracting Activity concerned. The Head of the Contracting Activity shall:

(1) Immediately inform any person who is performing work as a result of an unauthorized commitment that the work is being performed at that person's risk;

(2) Inform the person who made the unauthorized commitment of the seriousness of the act and the possible consequences;

(3) Ensure receipt of documentation detailing the actions taken and the reasons for those actions; and

(4) Decide whether ratification of the unauthorized act is proper, and take appropriate action.

1301.603–71 Responsibility of other Government personnel.

The responsibility of other Government personnel is generally described in the Department's procurement requisitioning guides and the Department Administrative Order on the *Procurement Planning System* (DAO 208–15). These documents are designed for internal Department use.

PART 1302—DEFINITIONS OF WORDS AND TERMS

Subpart 1302.1—Definitions

1302.1–1 Definitions.

Acquisition Executive The Acquisition Executive, as defined in OMB Circular A–109, means the Assistant Secretary for Administration. The Acquisition Executive monitors the development of major systems and reviews their progress through the major systems acquisition process.

Department When used in the CAR, Department means the Department of Commerce.

Head of the Agency means the Secretary of Commerce and those designees which have been delegated the authority to act for the Secretary of Commerce in specifically delegated areas. The head of the agency for procurement matters is the Assistant Secretary for Administration. This authority for procurement matters has been further delegated to the Procurement Executive pursuant to the Department Administrative Order on *Procurement Authority* (DA) 208–2). Where the term "Agency head or designee" is used, that term shall mean the Procurement Executive unless otherwise indicated in the CAR.

Head of the Contracting Activity means the official who has overall responsibility for managing the contracting activity, as more fully described in the Department Administrative Order on *Procurement Authority* (DAO 208–2).

Head of the contracting office means the official who heads the office that awards and administers contracts, as more fully described in the Department Administrative Order on *Procurement Authority* (DAO 208–2).

Procurement Executive means the official delegated broad procurement authority under the Department Administrative Order on *Procurement Authority* (DAO 208–2). Duties of the Procurement Executive include the following:

(a) Prescribe and publish Department procurement policies, regulations and procedures;

(b) Enter into, make determinations and decisions and take other actions, consistent with appropriate policies, regulations and procedures with respect to purchases, contracts, leases, sales, agreements and other transactions, except those required by law or regulation to be made by other authority;

(c) Designate contracting officers and representatives thereof;

(d) Establish clear lines of contracting authority;

(e) Exercise priorities authority concerning the internal procurement needs of the Department, in accordance with the provisions of the Defense Production Act of 1950 (50 U.S.C. App. 2071, et seq.), Department of Defense Delegation of Priorities Authority, dated October 21, 1958, and applicable policies and regulations;

(f) Evaluate and monitor the Department's procurement system performance;

(g) Manage and enhance career development of the procurement work force;

(h) Examine, in coordination with the OFPP, the procurement system to determine specific areas where Government-wide performance standards should be established and applied and participate in the development of Government-wide procurement policies, regulations and standards;

(i) Determine areas for Department unique standards and develop unique Department-wide standards;

(j) Be the advocate for competition; and

(k) Certify to the Department head that the procurement system meets approved standards.

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2)

PART 1303—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1303.1—Safeguards

Sec.
1303.101-3 Agency regulations.

Subpart 1303.2—Contractor Gratuities to Government Personnel

1303.203 Reporting procedures.

Subpart 1303.3—Reports of Identical Bids and Suspected Antitrust Violations

1303.302-70 Reporting requirements.

Subpart 1303.4—Contingent Fees

1303.409 Misrepresentations or Violations of the Covenant Against Contingent Fees.

Subpart 1303.5—Other Improper Business Practices

1303.502 Subcontractor kickbacks.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1303.1—Safeguards

1303.101-3 Agency regulations.

The agency rules implementing Executive Order 11222 are contained in the Department Administrative Order on *Employee Responsibilities and Conduct* (DAO 202-735).

Subpart 1303.2—Contractor Gratuities to Government Personnel

1303.203 Reporting procedures.

Suspected violations of the Gratuities clause shall be reported to the head of the contracting office in writing detailing the circumstances. The head of the contracting office will evaluate the report and if the allegations appear to support a violation the matter will be referred to the Office of Inspector General in accordance with the Department Administrative Order on *Inspector General Investigations* (DAO 207-10).

Subpart 1303.3—Reports of Identical Bids and Suspected Antitrust Violations

1303.302-70 Reporting requirements.

(a) Executive Order 12430 revoked the requirement of Executive Order 10936 to submit a report to the Attorney General on identical bids.

(b) Suspected anti-competitive practices and antitrust law violations as described in FAR 3.301 and FAR 3.303 shall be reported to the general counsel through the Head of the Contracting Activity. A copy of the report shall be sent to the Procurement Executive concurrently with the submission to the general counsel.

Subpart 1303.4—Contingent Fees

1303.409 Misrepresentations or Violations of the Covenant Against Contingent Fees.

Suspected violations of the Covenant Against Contingent Fees shall be reported to the Office of Inspector General in accordance with the Department Administrative Order on *Inspector General Investigations* (DAO 207-10).

Subpart 1303.5—Other Improper Business Practices

1303.502 Subcontractor kickbacks.

Suspected violations of the Anti-Kickback Act shall be reported to the Office of Inspector General in accordance with the Department Administrative Order on *Inspector General Investigations* (DAO 207-10).

PART 1305—PUBLICIZING CONTRACT ACTIONS

Subpart 1305.5—Paid Advertisements

1305.502 Authority.

The authority to approve the publication of paid advertisements in newspapers for recruitment of personnel was delegated to personnel managers pursuant to the Department Administrative Order on *Recruitment, Selection and Placement* (DAO 202-330). The authority to approve the publication of paid advertisements in newspapers for other than recruitment of personnel is delegated to the heads of contracting offices.

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2)

SUBCHAPTER B—ACQUISITION PLANNING

PART 1307—ACQUISITION PLANNING

Subpart 1307.1—Acquisition Plans

Sec.
1307.103 Agency-head responsibilities.

Subpart 1307.3—Contractor Versus Government Performance

1307.307 Appeals.

Subpart 1307.4—Equipment Lease or Purchase

1307.401 Acquisition considerations.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1307.1—Acquisition Plans

1307.103 Agency-head responsibilities.

The Department's procedures for acquisition planning are contained in the Department Administrative Order on the *Procurement Planning System* (DAO 208-15) and the Department Administrative Order on *Management of Automatic Data Processing Resources* (DAO 212-1).

Subpart 1307.3—Contractor Versus Government Performance

1307.307 Appeals.

The Department's appeals procedures of the cost-comparison is contained in the Department Administrative Order on the *Acquisition of Commercial or Industrial Products and Services Needed by the Department of Commerce* (DAO 201-41).

Subpart 1307.4—Equipment Lease or Purchase

1307.401 Acquisition considerations.

The contracting officer shall decide whether to acquire equipment by lease or purchase.

PART 1308—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 1308.1—Excess Personal Property

Sec.
1308.101 Definition.

Subpart 1308.8—Acquisition of Printing and Related Services

1308.802 Policy.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

Subpart 1308.1—Excess Personal Property

1308.101 Definition.

The authority to designate personal property as excess is delegated to the Director of the Office of Property and Building Management or designee.

Subpart 1308.8—Acquisition of Printing and Related Services

1308.802 Policy.

The Director of the Office of Information Services is the central printing authority for liaison with the Joint Committee on Printing and the Public Printer.

PART 1309—CONTRACTOR QUALIFICATIONS

Subpart 1309.4—Debarment, Suspension and Ineligibility

Sec.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

Subpart 1309.4—Debarment, Suspension and Ineligibility

1309.403 Definitions.

"Debarring official" means the Procurement Executive.

"Suspension official" means the Procurement Executive.

1309.470 Procedures for debarment, suspension and ineligibility.

1309.470–1 Scope of section.

This section prescribes Department procedures for: (a) Distribution, use and maintenance of GSA's consolidated list of debarred, suspended, and ineligible contractors; and (b) debarment and suspension of Government contractors.

1309.470–2 Consolidated list of debarred, suspended, and ineligible contractors.

The following procedures apply to GSA's consolidated list of debarred, suspended, and ineligible contractors:

(a) The Procurement Executive shall notify GSA of any Department imposed debarments or suspensions of a contractor or any modification or rescission of these actions.

(b) GSA's consolidated list shall be distributed to the Department contracting activities by the Office of Small and Disadvantaged Business Utilization (OSDBU).

(c) Preliminary and ordinary inquiries concerning GSA's consolidated list should be made from the contracting office to the agency or authority which took the action. When unique or complex matters are concerned, the contracting office shall also inform the Office of Procurement and Federal Assistance.

(d) Personnel in all contracting offices should be familiar with GSA's consolidated list and all updates.

1309.470–3 Agency records.

The Office of Small and Disadvantaged Business Utilization (OSDBU) shall maintain records relating to each suspension or debarment action taken by the Department.

1309.470–4 Procedures on debarment.

(a) *Investigation and referral.* Personnel in all contracting offices shall be familiar with the causes for debarment (FAR 9.406–2) and shall be alert to information which indicates that a contractor (to which the Department plans to award a contract) has committed an action which is a cause for debarment. If a contractor not on the list has committed an action which is a cause for debarment, heads of contracting offices shall determine which other agencies award contracts to this firm and if any of these agencies have initiated, or plan to initiate debarment actions.

(1) If another agency is considering debarment, the Head of the Contracting Activity shall promptly report this fact and recommend action to the Procurement Executive after discussions with general counsel. Within 30 days after receipt of notice, the Procurement Executive shall decide whether it is necessary for the Department to proceed with a debarment action.

(2) If another agency is not considering debarment, the Head of the Contracting Activity shall promptly report this fact and recommend action to the Procurement Executive after discussions with general counsel. The Head of the Contracting Activity shall attach all available documenting evidence to support the recommendation. The mere existence of a cause for debarment does not require that a contractor be debarred. The seriousness of the contractor's acts or omissions and any mitigating factors shall be considered in recommendations for action and any debarment decision.

(b) *Decision making process.* Upon receipt of a debarment recommendation, the Procurement Executive shall review all available evidence and shall promptly determine whether or not to proceed with debarment. The Procurement Executive may refer the matter to the Office of Inspector General for further investigation. After completion of any additional review or investigations, the Procurement Executive shall make a written determination. A copy of this determination shall be promptly sent to the initiating contracting office. (See FAR 9.406–3(b).)

(c) Notice of proposal to debar. (See FAR 9.406–3(c).)

(d) Debarring official's decision. (See FAR 9.406–3(d).)

(e) Notice of debarring official's decision. (See FAR 9.406–3(e).)

1309.470–5 Period of debarment.

(See FAR 9.406–4)

1309.470–6 Scope of debarment.

(See FAR 9.406–5)

1309.470–7 Procedures on suspension.

(a) *Investigation and referral.* Heads of contracting offices may recommend suspension of a firm or individual based on the causes for suspension listed in FAR 9.407–2. The procedures for investigation and referral of suspension are the same as those contained in 1309.470–4(a). When using that subsection for suspension procedures, substitute the word "suspension" for the word "debarment".

(b) *Decision making process.* Procedures for the decision making process of suspensions are the same as those contained in 1309.470–4(b) except that an initial decision by the Procurement Executive regarding debarment results in a proposal to debar, whereas the initial decision for suspension results in immediate suspension. (See FAR 9.407–3(b).)

(c) Notice of suspension. (See FAR 9.407–3(c).)

(d) Suspending official's decision. (See FAR 9.407–3(d).)

1309.470–8 Period of suspension.

(See FAR 9.407–4)

1309.470-9 Scope of suspension.

(See FAR 9.407-5)

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1313—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 1313.1—General

1313.106-70 Technical evaluation and written or oral discussion procedure for negotiated small purchases.

Subpart 1313.1—General

1313.106-70 Technical evaluation and written or oral discussion procedure for negotiated small purchases.

(a) *Technical evaluation.* A technical evaluation may be requested for negotiated small purchases, at the discretion of the contracting officer. The manner and extent of the technical evaluation shall be determined by the contracting officer, except that the technical evaluation shall not be as formal or as extensive as required for procurements above the small purchase dollar threshold.

(b) *Written or oral discussions.* Written or oral discussions may be conducted with all qualified sources which submit quotations for negotiated small purchases. The contracting officer shall determine the manner, extent, and need for written or oral discussions, except that discussions shall not be as formal or as extensive as required for procurements above the small purchase dollar threshold.

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2)

PART 1314—FORMAL ADVERTISING

Subpart 1314.4—Opening of Bids and Award of Contract

Sec.

1314.406-3 Other mistakes disclosed before award.

1314.407-8 Protests against award.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1314.4—Opening of Bids and Award of Contract

1314.406-3 Other mistakes disclosed before award.

(e) The authority to make the determinations listed in FAR 14.406-3(e) concerning mistakes in bids was delegated to the Heads of Contracting Activities.

1314.407-8 Protests against award.

(a) *General.*

(1) Protests must be received within ten working days after the basis for protest is known or should have been known unless good cause is shown to extend the time limit. However, protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing time for receipt of initial proposals shall be filed prior to bid opening or the closing time for receipt of initial proposals.

(2) The Department-wide contact point for protests to GAO against an award of a contract is the Office of the Assistant General Counsel for Administration. This office shall represent the Department before the GAO on protests against award. This office shall furnish all necessary correspondence concerning protests to GAO, including the Department's report in response to the protest to GAO.

(b) *Protests before award.* The head of the contracting office is the designated official to approve award of a contract before a protest against award is resolved.

PART 1315—CONTRACTING BY NEGOTIATION

Subpart 1315.3—Determinations and Findings to Justify Negotiation

Sec.

1315.307 Signatory authority.

Subpart 1315.4—Solicitation and Receipt of Proposals and Quotations

1315.413-2 Alternate II.

Subpart 1315.5—Unsolicited Proposals

1315.501 Definitions.

1315.504 Advance guidance.

1315.506 Agency procedures.

Subpart 1315.6—Source Selection

Subpart 1315.612—Formal source selection.

Subpart 1315.8—Price Negotiation

1315.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

1315.805-70 Audit as an aid in proposal analysis.

Subpart 1315.9—Profit

1315.902 Policy.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1315.3—Determinations and Findings to Justify Negotiation

1315.307 Signatory authority.

Determinations and findings for contracts negotiated under 41 U.S.C. 252(c)(11) shall be signed by the Assistant Secretary for Administration when more than $25,000 will be obligated. Determinations and findings for contracts negotiated under 41 U.S.C. 252(c)(11) which obligate $25,000 or less may be signed by the head of the contracting office.

Subpart 1315.4—Solicitation and Receipt of Proposals and Quotations

1315.413-2 Alternate II.

The procedures described in FAR 15.413-2 may be used if approved by the Head of the Contracting Activity or designee.

Subpart 1315.5—Unsolicited Proposals

1315.501 Definitions.

"Coordinating office" means the head of the contracting office.

1315.504 Advance guidance.

(a) Department employees should encourage inquiries on Department missions, needs and methods of operation and refer inquiries to the program office concerned with the subject matter of the inquiry. Any inquiry which could reasonably lead to a procurement action should be promptly coordinated with the appropriate head of the contracting office.

(b) When it appears that a person or firm is interested in making a proposal, that person or firm should be referred to the head of the contracting office concerned who will provide instructions for submission of an unsolicited proposal.

(c) Heads of contracting offices shall provide instructions for submission of unsolicited proposals to each person or firm which expresses an interest in submitting an unsolicited proposal.

1315.506 Agency procedures.

(a) The head of the contracting office is the contact point to coordinate the receipt and handling of unsolicited proposals.

(b) The head of the contracting office shall promptly acknowledge receipt of unsolicited proposals by letter.

(c) The head of the contracting office shall comply with FAR 15.509 concerning the limited use of data.

(d) Promptly after receipt of an unsolicited proposal which conforms to this regulation, the head of the

contracting office shall forward a copy of the proposal along with instructions for technical evaluation of unsolicited proposals to the appropriate program office for technical evaluation. If more than one Department activity has an interest in a proposal, copies of the proposal shall be circulated to each interested office.

(e) Program offices receiving unsolicited proposals for evaluation shall conduct the evaluation in accordance with this Subpart 1315.5, FAR Subpart 15.5, and any additional guidance provided by the Office of Procurement and Federal Assistance.

(f) Program offices shall complete the recommendation and evaluations and submit them along with all copies of the unsolicited proposal, and a written justification for a noncompetitive procurement action if appropriate, to the head of the appropriate contracting office within 60 days of receipt of a proposal for evaluation.

(g) No part of an unsolicited proposal shall be duplicated or circulated outside of the evaluation office. Each unsolicited proposal shall be closely safeguarded to prevent disclosure of any restricted data. Only heads of contracting offices or their designees may duplicate unsolicited proposals and then only to facilitate evaluation by more than one technical evaluation office.

Subpart 1315.6—Source Selection

1315.612 Formal source selection.

(e) *Safeguarding information.* The contracting officer is designated as the releasing authority for source selection information.

Subpart 1315.8—Price Negotiation

1315.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

(i) *Waiver for exceptional cases.* The head of the contracting office is delegated the authority to waive the requirement for submission of certified cost or pricing data in exceptional cases.

1315.805-70 Audit as an aid in proposal analysis.

(a) Preaward audit services include:

(1) The submission of an auditor's report which sets forth the results of review and analysis of cost data submitted by contractors as part of their pricing proposals, reviews of contractors' accounting systems, recorded contract costs, and other related matters; and

(2) Personal consultation and advice regarding the use of the auditor's report in the negotiation and award of a contract.

(b) Requests for audit services should be sent to the External Audit Division, Office of Inspector General, Herbert C. Hoover Building.

(c) Preaward audits should not be routinely requested for actions below the dollar threshold specified in FAR 15.805-5. Before requesting audits below the dollar threshold, the contracting office should consider using price or cost analysis techniques, recent audit reports, price negotiation memoranda, and other relevant information regarding the offer to establish the reasonableness of price. However, audits should be considered for proposals below the specified dollar thresholds in the following circumstances:

(1) The contracting officer has reason to doubt the adequacy of the contractor's accounting policies or cost systems;

(2) The contractor has substantially changed its methods or levels of operation;

(3) Previous unfavorable experience indicates that the contractor's estimating, accounting, or purchasing methods may be unreliable; or

(4) The proposal concerns a new product for which cost experience is lacking.

Subpart 1315.9—Profit

1315.902 Policy.

(a) Except as provided in (b) and (c) below, a structured approach for determining profit or fee prenegotiation objectives shall be used in the negotiation of all contracts, subcontracts, and contract modifications above $100,000 where adequate price competition does not exist. A structured approach for determining profit or fee prenegotiation objectives may be used at lower dollar thresholds.

(b) Regardless of whether price competition exists, the structured approach for determining profit or fee prenegotiation objectives is not required for negotiation of contracts, subcontracts, and contract modifications for the following:

(1) Architect—engineering contracts;

(2) Management contracts for operation or maintenance of Government facilities;

(3) Construction contracts;

(4) Contracts primarily requiring delivery of material supplied by subcontractors;

(5) Termination settlements;

(6) Cost-plus-award-fee contracts; and

(7) Unusual pricing situations where the structured approach has been determined to be unsuitable. This exception must be justified in writing and signed by the head of the contracting office.

(c) In many circumstances, an examination of cost and profits is not required. Where adequate price competition exists and in other situations where cost analysis is not required (e.g., established catalog or market prices of commercial items sold in substantial quantities to the general public or prices set by law or regulation), contracts may be awarded without regard to the amount of profit involved.

(d) Additional internal instruction on the use of the structured approach can be found in Procurement Letters or policy manuals issued by the Office of Procurement and Federal Assistance.

PART 1316—TYPES OF CONTRACTS

Subpart 1316.3—Cost-Reimbursement Contracts

Sec.

1316.306 Cost-plus-fixed-fee contracts.

Subpart 1316.4—Incentive Contracts

1316.404-2 Cost-plus-award-fee contracts.

Subpart 1316.6—Time-and-Materials, Labor-Hour and Letter Contracts

1316.603-3 Limitations.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1316.3—Cost-Reimbursement Contracts

1316.306 Cost-plus-fixed-fee contracts.

The contracting officer is delegated the authority to sign a determination and findings establishing the basis for application of the statutory fee limitation.

Subpart 1316.4—Incentive Contracts

1316.404-2 Cost-plus-award-fee contracts.

(d) *Fee determination plans.* The award fee determination plan shall include both technical performance (including scheduling as appropriate) and business management consideration tailored to the needs of the particular situation. The goals and evaluation criteria should be results-oriented. The award fee should concentrate on the end product of the contract. However, equal employment opportunity, small business programs, and functional management areas, such as safety and security, cannot be disregarded and may be appropriately part of the criteria upon which to base the award fee. Specific

goals or objectives should be established in relation to each performance evaluation criterion against which contractor performance is measured.

Subpart 1316.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1316.603-3 Limitations.

The head of the contracting office is the designated official for executing a determination and findings that no contract other than a letter contract is suitable.

PART 1317—SPECIAL CONTRACTING METHODS

Subpart 1317.4—Leader Company Contracting

Sec.
1317.402 Limitations.

Subpart 1317.5—Interagency Acquisitions Under the Economy Act

1317.502 General.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

Subpart 1317.4—Leader Company Contracting

1317.402 Limitations.

Leader company contracting is authorized by the Department only when approved in writing by the Procurement Executive.

Subpart 1317.5—Interagency Acquisitions Under the Economy Act

1317.502 General.

The head of the contracting office is delegated the authority to determine if it is in the Government's interest to place orders for supplies or services with another agency.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1319—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 1319.2—Policies

1319.201 General policy.

(c) The Director of the Office of Small And Disadvantaged Business Utilization (OSDBU) is responsible for administering the Department's small and small disadvantaged business programs.

(d) The Head of the Contracting Activity or designee shall appoint a small business and disadvantaged business specialist for the contracting activity concerned.

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2)

PART 1322—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1322.1 Basic-Labor Policies

Sec.
1322.103–4 Approvals.

Subpart 1322.6—Walsh-Healey Public Contracts Act

1322.608–4 Award pending final determination.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

Subpart 1322.1—Basic Labor Policies

1322.103–4 Approvals.

The contracting officer is the designated official for approving the total dollar amount and use of overtime for contract performance.

Subpart 1322.6—Walsh-Healey Public Contracts Act

1322.608–4 Award pending final determination.

If the contracting officer determines that award must be made before a determination of the offeror's eligibility as a manufacturer or regular dealer by DOL or SBA, that decision must be approved by the head of the contracting office.

PART 1324—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 1324.1—Protection of Individual Privacy

Sec.
1324.103 Procedures.

Subpart 1324.2—Freedom of Information Act

1324.202 Policy.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

Subpart 1324.1—Protection of Individual Privacy

1324.103 Procedures.

(b)(2) The Department's procedures for implementing the Privacy Act are contained in 15 CFR Commerce and Foreign Trade, Subtitle A, Part 4b (Privacy Act) and the Department Administrative Order on *Implementing the Privacy Act of 1974* (DAO 205–15).

Subpart 1324.2—Freedom of Information Act

1324.202 Policy.

The Department's procedures for implementing the Freedom of Information Act (the Act) are contained in 15 CFR Commerce and Foreign Trade, Subtitle A, Part 4 (Public Information) and the Department Administrative Order on *Public Information* (DAO 205–12).

PART 1325—FOREIGN ACQUISITION

Subpart 1325.1—Buy American Act-Supplies

1325.102 Policy.

(a)(4) The contracting officer is authorized to make the written determination described by FAR 25.102(a)(4). If the contract is estimated to exceed $1 million, the Head of the Contracting Activity must approve the determination.

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486 (c)), as delegated by the Secretary of Commerce in Department Organization Orde 10–5 and Department Administrative Order 208–2)

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1331—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1331.2—Contracts With Commercial Organizations

1331.205–32 Precontract costs.

The payment of precontract costs must be approved in writing by the Head of the Contracting Activity.

PART 1332—CONTRACT FINANCING

Subpart 1332.1—General

Sec.
1332.102 Description of contract financing methods.

Subpart 1332.4—Advance Payments

1332.402 General.

Subpart 1332.6—Contract Debts

Sec.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

Subpart 1332.1—General

1332.102 Description of contract financing methods.

(e)(2) Progress payments based on a percentage or stage of completion are authorized for use as a payment method under Department contracts and subcontracts for construction, alteration, repair, ship construction, ship alteration, and ship repair. For all other contracts, progress payments shall be based on costs except when the head of the contracting office determines that progress payments based on costs cannot be practically employed. In those cases, progress payments based on a percentage or stage of completion may be authorized when the head of the contracting office also determines that adequate safeguards are provided for the administration of those payments.

Subpart 1332.4—Advance Payments

1332.402 General.

(e)(1) The Head of the Contracting Activity is delegated the authority to make findings and determinations and to approve contract terms concerning any advance payments, regardless of dollar amount.

(e)(2) Before authorizing advance payments, the Head of the Contracting Activity shall coordinate with the servicing finance office.

Subpart 1332.6—Contract Debts

1332.605 Responsibilities and cooperation among Government officials.

(b) The contracting officer has primary responsibility for determining the amount of contract debt and notifying the servicing finance office of the debt due to the Government. The servicing finance office has primary responsibility for debt collection and reporting of all contract debts under the Debt Collection Act of 1982.

1332.616 Compromise actions.

The Department's policy on compromise actions is contained in the Department Administrative Order on *Collection and Other Disposition of Claims of the United States* (DAO 203–23).

PART 1333—DISPUTES AND APPEALS

Subpart 1333.70—Department Board of Contract Appeals

Sec.

The General Services Administration (GSA) Board of Contract Appeals serves as the Board of Contract Appeals for the Department.

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2)

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 1334—MAJOR SYSTEM ACQUISITION

§ 1334.003 Responsibilities.

(a) The Department's policy, procedures and responsibilites for implementing OMB Circular A–109 are contained in the Department Administrative Order on *Major System Acquisitions for the Department of Commerce* (DAO 208–3).

(b) When the Secretary approves a mission need, the Acquisition Executive shall designate the servicing contracting office for all phases of the major systems acquisitions.

(c) Within 60 days after identification of the servicing contracting office, the program manager shall complete and submit the overall acquisition plan to the Acquisition Executive for approval. The servicing contracting office shall assist in developing the overall acquisition plan. The overall acquisition plan shall include for each of the major systems acquisition phases (i.e., exploration of alternative systems, competitive demonstrations, full-scale development and production) a schedule for completion of at least each of the following functions:

(1) Solicitation development in terms of mission need;

(2) Advance publicity for the initial, exploration phase;

(3) Issuance of requests for proposals (RFPs)

(4) Closing dates for RFPs; and

(5) Evaluation and award.

(d) The program manager shall submit all changes in the overall acquisition plan to the Acquisition Executive along with a written explanation of the need for each change. (See 1307.1 for acquisition planning, in general).

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2)

PART 1336—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 1336.2—Special Aspects of Contracting for Construction

Sec.

Subpart 1336.6—Architect-Engineer Services

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

Subpart 1336.2—Special Aspects of Contracting for Construction

§ 1336.209 Construction contracts with architect-engineer firms.

The head of the contracting office is delegated the authority to approve the exceptional circumstance of awarding a contract for construction of a project to the firm that designed the project. Any approval of this type of award must be justified in writing and signed by the head of the contracting office.

Subpart 1336.6—Architect-Engineer Services

§ 1336.602–4 Selection authority.

(a) The Head of the Contracting Activity is the designated selection authority for architect-engineer service contracts over the small purchase dollar threshold.

§ 1336.602–5 Short selection processes for contracts not to exceed $10,000.

Both short selection processes prescribed in FAR 36.602–5 may be used for contracts not to exceed $10,000. However, in either case the contracting officer shall review the report, approve it and commence negotiations or return it for appropriate revision.

§ 1336.603 Collecting data on and appraising firms' qualifications.

(a) *Establishing offices.* The Office of Small and Disadvantaged Business Utilization (OSDBU) is responsible for Department-wide receipt and maintenance of data on firms wishing to be considered for architect-engineer service contracts.

PART 1337—SERVICE CONTRACTING

Subpart 1337.2—Consulting Services

Sec.
1337.202 General.
1337.205 Management controls.

Authority: Federal Property and Administrative Services Act of 1949, ge a30mr0.115as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

Subpart 1337.2—Consulting Services

§ 1337.202 General.

The Department's contracts for consulting and related services are governed by FAR 37.2.

§ 1337.205 Management controls.

(b) The Department's management controls for acquisition of consulting and related services are contained in FAR 37.2.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1342—CONTRACT ADMINISTRATION

Subpart 1342.1—Interagency Contract Administration and Audit Services

§ 1342.102–70 Post award audit reviews.

(a) Generally, the final invoice shall not be approved until a close-out audit has been performed and all outstanding issues have been negotiated or resolved on the following types of contracts of $100,000 and above:

(1) Cost-reimbursement type contracts;

(2) The cost-reimbursement portion of fixed-price contracts;

(3) Letter contracts which provide for reimbursement of costs;

(4) Time and materials contracts; and

(5) Labor-hour contracts.

(b) Even though the $100,000 postaward audit threshold generally applies, an audit may be requested regardless of the dollar amount when the contracting officer determines that an audit is justified under one of the following circumstances:

(1) There is some evidence of fraud or waste;

(2) The contractor's performance under the contract has been questionable;

(3) The contractor had a high incidence of unallowable costs under a previous contract;

(4) The contract is with a newly established firm, or a firm which has just begun dealing with the Government.

(c) All requests for audit services and all relevant documents shall be sent to the address listed in 1315.805–70(b). To ensure receipt and planned action on audit requests, all requests should include a request for confirmation of receipt of the request and the date planned for delivery of the audit report.

(d) See the Department's *Model Procedures for Closeout of Completed Contracts* for further information on audits, including desk audits for contracts of less than $100,000, and waiver of the need for post award audits.

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2)

PART 1345—GOVERNMENT PROPERTY

Subpart 1345.1—General

1345.102 Policy.

The Department's policy and procedures on government property are contained in the *Property Management Policy Manual*, the *Property Management Procedure Handbook*, and the Department Administrative Order on *Property Management* (DAO 208–17).

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2)

SUBCHAPTER H—CLAUSES AND FORMS

PART 1352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 1352.0—General

Sec.
1352.000 Scope of part.
1352.001 General policy.

Subpart 1352.1—Instructions for Using Provisions and Clauses

1352.100 Incorporation by reference.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2).

Subpart 1352.0—General

1352.000 Scope of part.

This part implements and supplements FAR Part 52 by prescribing specific modifications, alterations, and deviations to FAR solicitation provisions and contract clauses for Department-wide use.

1352.001 General policy.

The Department's policy is to use the FAR and CAR prescribed solicitation provisions and contract clauses unless specific authority for deviations has been obtained. (See 1301.4 for authority to deviate.) The use of uniform solicitation provisions and contract clauses should: provide a less burdensome way for potential contractors to respond to the Government's request for information concerning the evaluation of bids and proposals; expedite solicitation and contract preparation; and facilitate contract negotiation, administration and review. Each solicitation which incorporates contract clauses or solicitation provisions which deviate from those prescribed by the FAR and the CAR must be submitted to the Office of Procurement and Federal Assistance for prior review. The Office of Procurement and Federal Assistance will coordinate requests for approval of these solicitations by the Office of Management and Budget, in accordance with the Paperwork Reduction Act of 1980 and 5 CFR Part 1320.

Subpart 1352.1—Instructions for Using Provisions and Clauses

1352.100 Incorporation by reference.

Contracting officers within the Department shall incorporate solicitation provisions and contract clauses by reference in solicitations and contracts to the maximum extent provided by applicable law and regulation. Incorporation by reference is the listing only by title, regulatory citation, and date of the provision or clause rather than the full text. The full text of the referenced solicitation provision or contract clause is contained in the Code of Federal Regulations (CFR); Chapter 1 of Title 48 for FAR provisions and clauses; and Chapter 13 of Title 48 for CAR provisions and clauses.

PART 1353—FORMS

Sec.
1353.000 Scope of part.

Subpart 1353.1—General

1353.103 Exceptions.

Subpart 1353.2—Prescription of Forms

1353.200 Scope of subpart.
1353.204 Administrative matters.
1353.204–2 Contract reporting (CD 338).
1353.232 Contract financing.
1353.232–2 (CD–45).

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

1353.000 Scope of part.

This part supplements FAR Part 53 by prescribing specific exceptions to FAR prescribed forms for Department-wide use.

Subpart 1353.1—General

1353.103 Exceptions.

The Department's policy is to use the FAR and CAR prescribed forms unless prior specific authority for exceptions or alterations has been obtained. Requests for exceptions to FAR or CAR forms shall be submitted to the Office of Procurement and Federal Assistance in the form prescribed by FAR 53.103 (See 1301.4 for authority to deviate).

Subpart 1353.2—Prescription of Forms

1353.200 Scope of subpart.

This subpart prescribes forms for Department-wide use which are exceptions to FAR prescribed forms. This subpart is arranged by subject matter, in the same order and keyed to the parts of the FAR or CAR in which the form use requirements are addressed.

1353.204 Administrative matters.

1353.204-2 Contract reporting (CD 338).

(a) *CD 338 (9/82) FPDS Code Sheet.* CD 338 is prescribed for Department-wide use in reporting individual contract actions above the small purchase dollar threshold, in lieu of SF 279.

1353.232 Contract financing.

1353.232-2 (CD 45).

CD 45 (3/76) Requisitioning Form. CD 45 is prescribed for Department-wide use in requesting action from the servicing contract office. This form is the vehicle for administrative approvals, clearances, and certification of the availability of adequate funds as specified in FAR 32.702.

Note.—This Appendix A will not appear in the Code of Federal Regulations.

BILLING CODE 3510-03-M

Appendix A—Forms

BATCH NUMBER

FORM CD-338 (REV 9-82) — U.S. DEPARTMENT OF COMMERCE

FEDERAL PROCUREMENT DATA SYSTEM CODE SHEET

DE2 [ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ] Contract Number (5-19) (Order Number)
Oper. U. | FY | C.O. | TT | Sequential Number

5-6 Oper. Unit Procured For, Table 1; 7-8 FY issued; 9-10 P or C Off., Table 1, 11 - TranType - Table 1A (DOC Proc. Data System Handbook.); 12-16 - Sequential No. 5 digits. (12 may be alpha for OS and NBS only). Left justified zero filled (e.g., 00012); 17-19 Leave blank.

DE3 [ ][ ][ ][ ] Mod. No. (20-23) **For Mods.** - Use a sequential No. to identify 1st., 2nd., 3rd., etc. mod. to parent DOC contracts or to modify delivery orders against DOC or other agency contracts. Begin at right and leave unneeded spaces blank. On original contract leave blank.

DE4 [ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ] Contract Number (24-38) (See DOC Proc. Data System Handbook.)

DE6 [ ][ ][ ][ ] Effective Date of Award (44-47) Use 2 digits for Month
CY | MO

DE7 [ ] Type Data Entry (48) Ø - Original Record. 1 - Reversing Record. 2 - Correcting Record. (See DOC Proc. Data System Handbook for clarification)

DE8 [ ][ ][ ] Report Period FY-Qtr. (49-51) For Reversing or Correcting Report enter for current fiscal year. For Qtr. use 1 - 4.

Foreign Countries. For other Country Codes See ANS A39.27-1976. (NBS LC 1067-1).

Australia	AU	China (Taiwan)	TW	India	IN
Belgium	BE	Finland	FI	Iran	IR
Brazil	BR	France	FR	Israel	IL
Canada	CA	Germany, Federal Republic of	DE	Italy	IT
Chile	CL	Greece	GR	Japan	JP
Korea, Republic of	KR	Sweden			SE
Mexico	MX	Switzerland			CH
Netherlands	NL	Thailand			TH
New Zealand	NZ	Union of Soviet Socialist Republics			SU
Norway	NO	United Kingdom			GB
Philippines	PH	Venezuela			VE

DE10 [ ][ ][ ][ ][ ][ ][ ] Principal Place of Performance (61-67)
State or Country (61-62) | City or Place (County) (63-67) See FIPS CODE 55 (ANS X3.47)

DE11 $ [ ][ ][ ][ ][ ][ ][ ][ ] Total Dollars Obligated or Deobligated (68-75) (Round to nearest dollar)

DE14 [ ] Kind of Procurement Action (79) 1 - New Letter Contract. 2 - Definitive Contract Superceding Letter Contract. 3 - New Definitive Contract. 4 - Order under DOC Contract. 5 - Modification. 6 - GSA Supply Schedule. 7 - Order Under Another Agency's Contract. 8 - Termination for Cause. 9 - Termination for Convenience.

DE16 [ ] Labor Surplus Area (81) 1 - Labor Surplus Area – No Preference. 3 - Labor Surplus Area – Tie Bid Preference. 4 - (Reserved – Do Not Use). 5 - Not a Labor Surplus Area Preference Award. 6 - Combined Small Business/Partial Labor Surplus Area Set-Aside Preference. 7 - Total Labor Surplus/Small Business Set-Aside Preference (P.L. 95-89). 8 - Total Labor Surplus Set-Aside Preference (P.L. 95-89)

DE17 [ ] Consultant Type Award (82) 1 - Yes 2 - No

DE18 [ ][ ][ ][ ] Prod./Service Code (83-86) See DOC Proc. Data System Handbook, Encl. E, Appendix I.

DE19 [ ] Procurement Method (87) 1 - Two-step Formal Advertising. 2 - Other Formal Advertising. 3 - Negotiated Competitive. 4 - Negotiated Noncompetitive. 5 - Directed Proc. for Foreign Govts. If codes 1 or 2 are used, then DE20 -Extent of Competition and DE21 - Negotiation Authority do not apply and entries must be left blank.

DE20 [ ][ ] Extent of Competition (88-89)
Competitive Negotiated: A1 - Small Business Total Set-Aside. A2 - Small Business Partial Set-Aside. A3 - Labor Surplus Set-Aside. A4 - Labor Surplus/Small Business Total Set-Aside. A9 - Other Negotiated Competitive.
Non-Competitive Negotiated: B1 - Buy Indian. B2-8(a) Program. B3 - Follow-on After Competition. B9 - Other Negotiated Non-Competitive.

DE21 [ ][ ][ ] Negotiation Authority (90-92)
C01 - National Emergency
C02 - Public Exigency
C03 - Purchases not more than $10,000
C04 - Personal or Professional Services
C05 - Services of Educational Institutions
C06 - Purchases Outside U.S.
C07 - Medicine or Medical Supplies
C08 - Supplies Purchased for Authorized Resale
C09 - Perishable or Non-Perishable Subsistence
C10 - Impractical to Secure Competition by Formal Advertising
C11 - Experimental, Developmental, Test or Research
C12 - Classified Purchases
C13 - Technical Equipment Requiring Standardization and Interchangeability of Parts
C14 - Negotiation after Advertising
C15 - Otherwise Authorized by Law

DE23 [ ][ ] Type of Business (94-95)
A1 - Small Business-Disadvantaged 8(a)
A2 - Small Business-Owned by Minority Group
A3 - Other Small Business
B1 - Large Minority Business
B2 - Other Large Business
C1 - Non-Profit-Private Educational Organization
C2 - Non-Profit-Hospital
C3 - Non-Profit-Research Institution, Foundation, Laboratory
C4 - Other Non-Profit Institutions
D1 - State/Local Government-Educational
D2 - State/Local Government-Hospital
D3 - State/Local Government-Research Organization
D4 - Other State/Local
E1 - Procured and Used Outside U.S./Possessions
E2 - Other Procurements Outside U.S./Possessions

DE24 [ ] Women Owned Business (96) Ø - Exempt 1 - Yes 2 - No

DE26 [ ][ ][ ][ ] Estimated Completion Date (98-101) Use 2 digits for Month.
CY | MO

Name of Preparer

Telephone Number | Date Prepared

USCOMM-DC 1978

To Be Completed For Original Transactions Over $10,000

DE9 [ ][ ][ ][ ][ ][ ][ ][ ][ ] Contractor Establishment Code (52-60) See Duns CIC Conversion File

DE12 [ ] Subject to Stat. Req. (76)

A - Walsh-Healy Act, Manufacturer,
B - Walsh-Healy Act, Regular Dealer,
C - Service Contract Act,
D - Davis-Bacon Act,
E - Not subject to above statutory requirements.

DE13A [ ] Affirmative Action Plan on File (77) 1 - Yes 2 - No

DE13B [ ] Previously Held Contract Subject to Affirmative Action Program Requirements (78) 1 - Yes 2 - No

DE15 [ ] Multi-Year Procurement (80) 1 - Yes 2 - No

DE22 [ ] Type of Contract/Modification (93)

A - Fixed Price Redetermination
J - Firm Fixed Price
K - Fixed Price Economic Price Adjustment
L - Fixed Price Incentive
R - Cost Plus Award Fee
S - Cost No Fee
T - Cost Sharing
U - Cost Plus Fixed Fee
V - Cost Plus Incentive Fee
Y - Time and Materials
Z - Labor Hours

DE25 [ ] Cost Accounting Standards Clause (97) Required 1 - Yes 2 - No

DE27A [ ] No. of Offerors Offering Foreign Item (102) 0-9 (if none, enter 0, if nine or more, enter 9)

DE27B [ ][ ] Percent Difference (103/104) 01-99 Percent difference between award price and low bidder offering foreign end item computed before application of Buy American Act differential.

DE27C [ ][ ] Country of Manufacturer

DE28 _____ Reserved FPDC (107-120)

DE29 [ ] Government Furnished Property (121) 1 - Yes 2 - No

DE30 [ ] Handicapped Set Aside (See 7(h) and 15(c) SBA Act) (122) 1 - Yes 2 - No

DE31 [ ][ ][ ][ ][ ][ ] Reserved OADPM Use (123-128)

DE32 [ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ] Reserved OADPM Use (129-144)

Optional

Contractor Name: _____

Address: _____

_____

FORM CD-346 (REV 8-82)

USCOMM-DC 1978

PAGE 1 OF

FORM CD-45 (REV. 3-76) U. S. DEPARTMENT OF COMMERCE

SUPPLY, EQUIPMENT OR SERVICE ORDER

FOR:

2. CHECK APPROPRIATE BLOCK

☐ PROCUREMENT ☐ OTHER *(Specify)*

1. THE NUMBER SHOWN IN BLOCK 5 MUST APPEAR ON ALL SHIPMENTS AND/OR DOCUMENTS RELATING TO THIS ORDER

3. REQUISITIONER DOCUMENT NO.	4. BUREAU CONTROL NO.	5. PURCHASE ORDER NO.
6. ISSUED TO:	7. DESTINATION SHIP TO	
8. ACCOUNTING CODE	9. QUOTATION REF. OR CONTRACT NO.	10. DISCOUNT TERMS
11. DELIVERY F.O.B.	12. GOVT. B/L NO.	13. DELIVERY DATE
14. FUNDS AVAILABLE *(Budget Office)*		14a. STATION

ITEM NUMBER 15. LINE NO.	16. DO NOT USE	17. DESCRIPTION	18. QUANTITY	19. UNIT	20. ESTIMATED TOTAL COST	21. ACTUAL UNIT PRICE	21. ACTUAL TOTAL COST

22. SIGNATURE OF REQUISITIONER / TITLE	DATE	23. SIGNATURE APPROVING OFFICER / TITLE	DATE

24. ☐ ACCOUNTABLE PROPERTY	INITIALS	25. ☐ NOT AVAILABLE-BUREAU STOCK/EXCESS	INITIALS	26. SIGNATURE-BUREAU CONTROL OFFICER	27. ☐ NOT AVAILABLE-DEPARTMENT STOCK/EXCESS	INITIALS

28. APPROVAL	DATE	29. PURCHASING AGENT	DATE

30. **RECEIPT ACTION** - Quantities shown in Column 18 above have been received and accepted, except as follows: *(If additional space is needed, use reverse side.)*

31. SIGNATURE-RECEIVING OFFICER	DATE	32. PROPERTY CONTROL NO.	☐ TRADE-IN ☐ RECEIVING REPORT

33. **SEND INVOICES IN DUPLICATE TO:** ⟶

[FR Doc. 84-8651 Filed 3-29-84: 8:45 am]

BILLING CODE 3510-03-C

federal register

Friday
March 30, 1984

Part XI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Ch. 1

Federal Acquisition Regulation; Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Ch. 1

[Federal Acquisition Circular 84-1]

Federal Acquisition Regulation

AGENCIES: Department of Defense (DoD), General Services Administration, (GSA), National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This Federal Acquisition Circular (FAC) amends the Federal Acquisition Regulation (FAR) with respect to the following: OMB approval under the Paperwork Reduction Act, Pub. L. 96-511; deletion of the requirement for reporting of identical bids; increasing the limitation of civilian agencies for the negotiation of contracts using small purchase procedures from $10,000 to $25,000; updating coverage pertaining to purchases under the Trade Agreements Act of 1979, 19 U.S.C. 2501-2582; removing the coverage in FAR Subpart 22.10, Service Contract Act of 1965, and the related contract clauses; prescribing policies, procedures, and contract clauses pertaining to patents, data, and copyrights; and revising thresholds requiring advance agreements for independent research and development and bid and proposal costs. Also included in FAC 84-1 are (1) a copy of the Memorandum of Understanding for FAR Maintenance executed by the Defense Acquisition Regulatory/Civilian Agency Acquisition Councils, together with a forwarding letter executed by representatives of DoD, GSA, and NASA, and (2) items concerning procedures to be followed with respect to the following subjects: (a) Publicizing proposed procurements and noncompetitive procurements; (b) revised small business size standards; (c) labor standards for contracts involving construction; (d) implementation of labor standards for Federal service contracts; (e) cost of money for capital employed on facilities in use and capital assets under construction; and (f) leasing of real property (space).

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: Roger M. Schwartz, Director, FAR Secretariat, Room 4041, GS Building, Washington, D.C. 20405, Telephone (202) 523-4782.

SUPPLEMENTARY INFORMATION:

Background

The FAR is codified in Chapter 1, Title 48 of the Code of Federal Regulations.

The initial publication of the FAR was contained in Book 2, Volume 48, No. 182 of the **Federal Register** of September 19, 1983.

FAR 1.501, Solicitation of agency and public views, states that views of agencies and nongovernmental parties or organizations will be considered in formulating acquisition policies and regulations under the FAR, and provides that, normally, at least 60 days will be given for the receipt of comments. However, because it is essential that the coverage in FAC 84-1 be published before the FAR's effective date of April 1, 1984, it has been necessary to proceed to publish FAC 84-1 prior to the solicitation of views other than those of those agencies that are represented at the Defense Acquisition Regulatory and Civilian Agency Acquisition Councils. Consequently, agencies and nongovernmental parties or organizations may submit written comments after the publication of this final rule. Comments will be considered if received by June 1, 1984.

List of Subjects in 48 CFR Chapter 1

Government procurement.

Roger M. Schwartz,

Director, FAR Secretariat.

March 26, 1984.

Federal Acquisition Circular

[Number 84-1]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in this Federal Acquisition Circular is effective April 1, 1984.

Ray Kline

Acting Administrator of General Services.

S. J. Evans,

Assistant Administrator for Procurement.

Harvey J. Gordon,

Assistant Deputy Under Secretary of Defense for Acquisition.

Federal Acquisition Circular (FAC) 84-1 amends the Federal Acquisition Regulation (FAR) and prescribes procedures to be followed pending development of FAR coverage, as specified below. The following is a summary of the amendments and procedures:

Item I—OMB Approval Under the Paperwork Reduction Act

The Office of Management and Budget (OMB) requires the display of OMB control numbers in the FAR text to comply with the Paperwork Reduction Act in order to collect information associated with Federal acquisition.

A new Section 1.105 is added to place the appropriate OMB control numbers in the FAR text.

Item II—Reports of Identical Bids

Executive Order 12430, July 6, 1983, revokes the requirement for all Federal agencies to report identical bids to the Attorney General.

Subpart 3.3 is revised to delete the requirement to submit reports. Subparts 53.2 and 53.3 are revised to delete Form DJ-1500, Identical Bid Report for Procurement.

Item III—Procedures for Publicizing Proposed Procurements and Noncompetitive Procurements

Pending FAR coverage pertaining to procedures for publicizing proposed procurements and processing noncompetitive procurements under Public Law 98-72, civilian agencies, other than NASA, shall continue to follow policies and procedures in FPR Temporary Regulation 75, Procedures for Publicizing Proposed Procurements and Processing Noncompetitive Procurements, October 1, 1983. DoD and NASA will provide separate direction in accordance with their established procedures.

Item IV—Small Purchase Limitation

Public Law 98-191 amended the Federal Property and Administrative Services Act of 1949 by increasing the limitation of civilian agencies for the negotiation of contracts using small purchase procedures from $10,000 to $25,000.

Part 13 is revised to change the amount of the small purchase limitation for civilian agencies from $10,000 to $25,000.

Item V—Small Business Size Standards

Pending new FAR coverage pertaining to small business size standards, civilian agencies, other than NASA, shall continue to follow the policies and procedures in FPR Bulletin 63, March 19, 1984, Changes in Small Business Size Standards and Requirements Under the Trade Agreements Act of 1979. DoD and NASA will provide separate direction in accordance with their established procedures.

Item VI—Labor Standards for Contracts Involving Construction

Pending FAR coverage pertaining to labor standards for contracts involving construction, civilian agencies, other than NASA, shall continue to follow

policies and procedures in FPR Temporary Regulation 70, Labor Standards for Contracts Involving Construction, June 28, 1983, and agency procedures instituted thereunder. DoD and NASA will provide separate direction in accordance with their established procedures.

Item VII—Service Contract Act of 1965

Pending new FAR coverage pertaining to the Service Contract Act of 1965, civilian agencies, other than NASA, shall continue to follow policies and procedures in FPR Temporary Regulation 76, Revision of Labor Standards for Federal Service Contracts, February 23, 1984, and agency procedures instituted thereunder. DoD and NASA will provide separate direction in accordance with their established procedures.

The coverage in Subpart 22.10, Service Contract Act of 1965, and the contract clauses at 52.222–40 through 52.222–44 are removed.

Item VIII—Purchases Under the Trade Agreements Act of 1979

The FAR text and clause concerning Purchases Under the Trade Agreements Act of 1979 have been updated to implement actions taken by the U.S. Trade Representative and to eliminate references in the contract clause that are made obsolete by final editing of the FAR text.

Item IX—Patents, Data, and Copyrights

Part 27, Patents, Data, and Copyrights, has been added to prescribe policies, procedures, and contract clauses pertaining to patents, and to provide a general statement of policy for rights in data and copyrights.

General coverage on the subjects of rights in data and copyrights is being provided at this time. It was not possible to develop uniform coverage in more detail for use on the FAR's effective date, based on the public and agency comments received on the proposed FAR coverage published in the Federal Register. Additional coverage in this area is being developed and will be published as soon as it is available. In the interim, agency supplements to the FAR will contain regulations on rights in data and copyrights.

Item X—Cost of Money for Capital Employed on Facilities in Use and Capital Assets Under Construction

Pending FAR coverage pertaining to cost of money for capital employed on facilities in use and capital assets under construction, civilian agencies, other than NASA, shall continue to follow policies and procedures in FPR 1–3.13, and agency procedures instituted thereunder.

Item XI—Revised Thresholds Requiring Advance Agreements for Independent Research and Development and Bid and Proposal Costs (IR&D and B&P)

The DoD Authorization Act of 1981 provided that the Department of Defense may periodically adjust the threshold amounts in 31.205–18 based on economic changes. Accordingly, the $4,000,000 threshold and the $500,000 threshold in 31.205–18 are adjusted to $4,400,000 and $550,000, respectively.

Item XII—Leasing of Real Property (Space)

Pending consideration by the Defense Acquisition Regulatory/Civilian Agency Acquisition Councils of the need for coverage on the subject of leasing of real property (space) in the FAR, civilian agencies, other than NASA, shall continue to use as guidelines the policies and procedures in FPR Temporary Regulation 68, Leasing of Real Property (Space), March 14, 1983.

Item XIII—Memorandum of Understanding for FAR Maintenance

The attached Memorandum of Understanding for FAR Maintenance (Appendix A) provides a uniform and orderly basis for the processing of FAR cases and the maintenance of the FAR. It contains procedures for processing recommendations for FAR changes, establishing FAR cases, and resolving disagreements.

Therefore, 48 CFR is amended as set forth below. Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1. Part 1 is amended by adding § 1.105 to read as follows:

* * * * *

1.105 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (Pub. L. 96–511) imposes a requirement on Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting information from ten or more members of the public. The information collection and recordkeeping requirements contained in this regulation have been approved by the OMB. The following OMB control numbers apply.

FAR segment	OMB control No.
4.102	3090–0158
4.7	3090–0160
5.405	3090–0162
8.203–2	3090–0126
9.506	3090–0128
14.101(c)	3090–0169
14.201	3090–0160
14.201–6(b)(2)	3090–0173
14.201–6	3090–0174
14.202–4	3090–0167
14.202–5	3090–0166
14.205–4(c)	3090–0164
14.406	3090–0165
14.5	3090–0168
15.106	3090–0160
15.404	3090–0164
15.404(c)(2)	3090–0173
15.407(h)	3090–0174
15.804	3090–0116
19.301	3090–0177
19.7	3090–0052
20	3090–0178
28.1	3090–0172
28.2	3090–0172
33	3090–0161
36.302	3090–0164
42.705–1(b)(5)	3090–0116
42.1406–1	3090–0186
48.1	3090–0146
48.2	3090–0146
49.1	3090–0152
49.2	3090–0152
49.3	3090–0152
49.4	3090–0152
49.5	3090–0152
49.6	3090–0152
50	3090–0153
52.203–2	3090–0127
52.203–4	3090–0017
52.208–1	3090–0126
52.208–2	3090–0126
52.209–1	3090–0129
52.210–5	3090–0155
52.210–6	3090–0155
52.212–1	3090–0170
52.212–2	3090–0170
52.214–2	3090–0173
52.214–5	3090–0169
52.214–8	3090–0127
52.214–14	3090–0174
52.214–15	3090–0171
52.214–16	3090–0171
52.215–1	3090–0160
52.215–2	3090–0160
52.215–6	3090–0173
52.215–11	3090–0175
52.215–19	3090–0171
52.215–20	3090–0174
52.215–24	3090–0116
52.215–25	3090–0116
52.215–26	3090–0160
52.219–1	3090–0177
52.219–2	3090–0179
52.219–3	3090–0176
52.222–4	1215–0119
52.222–21	1215–0072
52.222–22	1215–0072
52.222–23	1215–0072
52.222–25	1215–0072
52.222–26	1215–0072
52.222–27	1215–0072
52.222–35	1215–0072
52.222–36	1215–0072
52.222–41	1215–0017 1215–0150
52.223–1	3090–0130
52.225–1	3090–0139
52.225–6	3090–0136
52.225–8	3090–0140
52.225–10	3090–0131
52.228	3090–0172
52.242–12	3090–0186
52.243–6	3090–0144
52.248	3090–0146
52.247–2	3090–0181
52.247–51	3090–0187
52.247–53	3090–0185
52.247–63	3090–0182
52.249	3090–0152
52.250	3090–0153
SF 18	3090–0075
SF 24	3090–0172
SF 25	3090–0172

FAR segment	OMB control No.
SF 25-A	3090-0172
SF 25-B	3090-0172
SF 28	3090-0005
SF 33	3090-0074
SF 34	3090-0172
SF 35	3090-0172
SF 119	3090-0017
SF 129	3090-0009
SF 254	3090-0028
SF 255	3090-0029
SF 273	3090-0172
SF 274	3090-0172
SF 275	3090-0172
SF 294	3090-0052
SF 295	3090-0053
SF 1403	3090-0110
SF 1404	3090-0110
SF 1405	3090-0110
SF 1406	3090-0110
SF 1407	3090-0110
SF 1408	3090-0110
SF 1411	3090-0116
SF 1412	3090-0116
SF 1413	3090-0119
SF 1416	3090-0172
SF 1417	3090-0164
SF 1423	3090-0120
SF 1424	3090-0120
SF 1426	3090-0120
SF 1427	3090-0120
SF 1428	3090-0120
SF 1429	3090-0120
SF 1430	3090-0120
SF 1431	3090-0120
SF 1432	3090-0120
SF 1433	3090-0120
SF 1434	3090-0120
SF 1435	3090-0115
SF 1436	3090-0115
SF 1437	3090-0115
SF 1438	3090-0115
SF 1439	3090-0115
SF 1440	3090-0115
SF 1443	3090-0105
All other requirements	3090-0194

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. The heading for Subpart 3.3 is revised to read as follows:

Subpart 3.3—Reports of Suspected Antitrust Violations

* * * * *

3. Section 3.302 is revised to read as follows:

3.302 Definitions.

"Identical bids" means bids for the same line item that are determined to be identical as to unit price or total line item amount, with or without the application of evaluation factors (e.g., discount or transportation cost).

"Line item" means an item of supply or service, specified in an invitation for bids, for which the bidder must bid a separate price.

3.302-1 and 3.302-2 [Removed]

4. Subsections 3.302-1 and 3.302-2 are removed.

5. In section 3.303, paragraph (d) is revised to read as follows:

3.303 Reporting suspected antitrust violations.

* * * * *

(d) Identical bids shall be reported under this section if the agency has some reason to believe that the bids resulted from collusion.

* * * * *

PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

6. Section 13.000 is revised to read as follows:

13.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies, nonpersonal services, and construction from commercial sources, the aggregate amount of which does not exceed $25,000.

7. In section 13.101, the definition of "Small purchase" is revised to read as follows:

13.101 Definitions.

* * * * *

"Small purchase" means an acquisition of supplies, nonpersonal services, and construction in the amount of $25,000 or less using the procedures prescribed in this part.

* * * * *

8. In section 13.302, paragraph (a) is revised to read as follows:

13.302 Conditions for use.

* * * * *

(a) Individual orders do not exceed $25,000, except that executive agencies may establish higher dollar limitations for specified activities or items.

* * * * *

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

* * * * *

Subpart 22.10—[Reserved]

* * * * *

9. The title and text of Subpart 22.10, consisting of sections 22.1000 through 22.1015, are removed, and the subpart is reserved.

PART 25—FOREIGN ACQUISITION

* * * * *

25.401 [Amended]

10. In section 25.401, the table in "Designated country" is amended by adding "Israel" to the list.

11. Section 25.402 is amended as follows:

In paragraphs (a) and (c) change "$169,000" to read "161,000".

Paragraph (b) is revised to read as follows:

25.402 Policy.

* * * * *

(b) Except when waived under section 302(b)(2) of the Trade Agreements Act, there shall be no purchases of foreign end products subject to the Act unless the foreign end products are designated country end products.

* * * * *

25.403 [Amended]

12. In section 25.403, paragraph (a) is amended by changing "$169,000" to read "$161,000".

25.405 [Amended]

13. In section 25.405, the introductory text and paragraph (e) are amended by changing "$169,000" to read "161,000".

25.406 [Amended]

14. Section 25.406 is amended by alphabetically inserting "Maritime Administration of the Department of Transportation" and "Peace Corps" to the list.

15. A new Part 27 is added to read as follows:

TABLE OF CONTENTS

AUTHORITY: 40 USC 486(c); Chapter 137, 10 USC ; and 42 USC 2453(c).

27.000 Scope of part.

This part prescribes policies, procedures, and contract clauses pertaining to patents and directs agencies to develop coverage for Rights in Data and Copyrights.

SUBPART 27.1—GENERAL

27.101 Applicability.

The policies, procedures, and clauses prescribed by this Part 27 are applicable to all agencies. Agencies are authorized to adopt alternate policies, procedures, and clauses, but only to the extent determined necessary to meet the specific requirements of laws, executive orders, treaties, or international agreements. Any agency action adopting such alternate policies, procedures, and clauses shall be covered in published agency regulations.

27.102 Reserved.

27.103 Policy.

The policies pertaining to patents, data, and copyrights are set forth in this Part 27 and the related clauses in Part 52.

27.104 General guidance.

(a) The Government encourages the maximum practical commercial use of inventions made while performing Government contracts.

(b) Generally, the Government will not refuse to award a contract on the grounds that the prospective contractor may infringe a patent.

(c) Generally, the Government encourages the use of inventions in performing contracts and, by appropriate contract clauses, authorizes and consents to such use, even though the inventions may be covered by U.S. patents and indemnification against infringement may be appropriate.

(d) Generally, the Government should be indemnified against infringement of U.S. patents resulting from performing contracts when the supplies or services acquired under the contracts normally are or have been sold or offered for sale by any supplier to the public in the commercial open market or are the same as such supplies or services with relatively minor modifications.

(e) The Government acquires supplies or services on a competitive basis to the maximum practical extent, but it is important that the efforts directed toward increasing competition not improperly demand or use data relating to private developments.

(f) The Government honors the rights in data resulting from private developments and limits its demands for such rights to those essential for Government purposes.

(g) The Government honors rights in patents, data, and copyrights, and complies with the stipulations of law in using or acquiring such rights.

(h) Generally, the Government requires that contractors obtain permission from copyright owners before including privately-owned copyrighted works in data required to be delivered under Government contracts.

SUBPART 27.2—PATENTS

27.200 Scope of subpart.

This subpart prescribes policy with respect to—

(a) Patent infringement liability resulting from work performed by or for the Government;

(b) Royalties payable in connection with performing Government contracts; and

(c) Security requirements covering patent applications containing classified subject matter filed by contractors.

27.201 Authorization and consent.

27.201-1 General.

(a) In those cases where the Government has authorized or consented to the manufacture or use of an invention described in and covered by a patent of the United States, any suit for infringement of the patent based on the manufacture or use of the invention by or for the United States by a contractor (including a subcontractor at any tier) can be maintained only against the Government in the U.S. Claims Court and not against the contractor or subcontractor (28 U.S.C. 1498). To ensure that work by a contractor or subcontractor under a Government contract may not be enjoined by reason of patent infringement, the Government shall give authorization and consent in accordance with this regulation. The liability of the Government for damages in any such suit against it may, however, ultimately be borne by the contractor or subcontractor in accordance with the terms of any patent indemnity clause also included in the contract, and an authorization and consent clause does not detract from any patent indemnification commitment by the contractor or subcontractor. Therefore, both a patent indemnity clause and an authorization and consent clause may be included in the same contract.

(b) The contracting officer shall not include in any solicitation or contract—

(1) Any clause whereby the Government expressly agrees to indemnify the contractor against liability for patent infringement; or

(2) Any authorization and consent clause when both complete performance and delivery are outside the United States, its possessions, and Puerto Rico.

27.201-2 Clauses on authorization and consent.

(a) The contracting officer shall insert the clause at 52.227-1, Authorization and Consent, in solicitations and contracts (including those for construction; architect-engineer services; dismantling, demolition, or removal of improvements; and noncommon carrier communication services), except when small purchase procedures apply or both complete performance and delivery are outside the United States, its possessions, and Puerto Rico. Although the clause is not required when small purchase procedures apply, it may be used with them.

(b) The contracting officer shall insert the clause with its Alternate I in all R&D solicitations and contracts (including those for construction and architect-engineer services calling exclusively for R&D work or exclusively for experimental work), unless both complete performance and delivery are outside the United States, its possessions, and Puerto Rico. When a proposed contract involves both R&D work and supplies or services, and the R&D work is the primary purpose of the contract, the contracting officer shall use this alternate. In all other proposed contracts involving both R&D work and supplies or services, the contracting officer shall use the basic clause. Also, when a proposed contract involves either R&D or supplies and materials, in addition to construction or architect-engineer work, the contracting officer shall use the basic clause.

(c) If the solicitation or contract is for communication services with a common carrier and the services are unregulated and not priced by a tariff schedule set by a regulatory body, the contracting officer shall use the clause with its Alternate II.

27.202 Notice and assistance.

27.202-1 General.

The contractor is required to notify the contracting officer of all claims of infringement that come to the contractor's attention in connection with performing a Government contract. The contractor is also required, when requested, to assist the Government with any evidence and information in its possession in connection with any suit against the Government, or any claims against the Government made before suit has been instituted, on account of any alleged patent or copyright infringement arising out of or resulting from the contract performance.

27.202-2 Clause on notice and assistance.

The contracting officer shall insert the clause at 52.227-2, Notice and Assistance Regarding Patent and Copyright Infringement, in supply, service, or research and development solicitations and contracts (including construction and architect-engineer contracts) which anticipate a contract value above the dollar limit set forth at 13.000, except when small purchase procedures apply or both complete performance and delivery are outside the United States, its possessions, and Puerto Rico, unless the contracts indicate that the supplies or other deliverables are ultimately to be shipped into one of those areas.

27.203 Patent indemnification of Government by contractor.

27.203-1 General.

(a) To the extent set forth in this section, the Government requires reimbursement for liability for patent infringement arising out of or resulting from performing construction contracts or contracts for supplies or services that normally are or have been sold or offered for sale by any supplier to the public in the commercial open market or that are the same as such supplies or services with relatively minor modifications. Appropriate clauses for indemnification of the Government are prescribed in the following subsections.

(b) A patent indemnity clause shall not be used in the following situations:

(1) When the clause at 52.227-1, Authorization and Consent, with its Alternate I, is included in the contract, except that in contracts calling also for supplies of the kind described in paragraph (a) above, a patent indemnity clause may be used solely with respect to such supplies.

(2) When the contract is for supplies or services (or such items with relatively minor modifications) that clearly are not or have not been sold or offered for sale by any supplier to the public in the commercial open market. However, a patent indemnity clause may be included in (i) formally advertised contracts to obtain an indemnity regarding specific components, spare parts, or services so sold or offered for sale (see 27.203-2(b) below), and (ii) contracts to be awarded (either by formal advertising or negotiation) if a patent owner contends that the acquisition would result in patent infringement and the prospective contractor, after responding to a solicitation that did not contain an indemnity clause, is willing to indemnify the Government against such infringement either (A) without increase in price on the basis that the patent is invalid or not infringed, or (B) for other good reasons.

(3) When both performance and delivery are to be outside the United States, its possessions, and Puerto Rico, unless the contract indicates that the supplies or other deliverables are ultimately to be shipped into one of those areas.

(4) When the contract is awarded by small purchase procedures.

(5) When the contract is solely for architect-engineer work (see Part 36).

27.203-2 Clauses for formally advertised contracts (excluding construction).

(a) Except when prohibited by 27.203-1(b) above, the contracting officer shall insert the clause at 52.227-3, Patent Indemnity, in formally advertised contracts for supplies or services (excluding construction and dismantling, demolition, and removal of improvements), if the contracting officer determines that the supplies or services (or such items with relatively minor modifications) normally are or have been sold or offered for sale by any supplier to the public in the commercial open market. Also the clause may be included as authorized in 27.203-1(b)(2)(i).

(b) In solicitations and contracts (excluding those for construction) that call in part for specific components, spare parts, or services (or such items with relatively minor modifications) that normally are or have been sold or offered for sale by any supplier to the public in the commercial open market, the contracting officer may use the clause with its Alternate I or II, as appropriate. The choice between Alternate I (identification of excluded items) and Alternate II (identification of included items) should be based upon simplicity, Government administrative convenience and ease of identification of the items.

(c) In solicitations and contracts for communication services and facilities where performance is by a common carrier, and the services are unregulated and are not priced by a tariff schedule set by a regulatory body, use the basic clause with its Alternate III.

27.203-3 Negotiated contracts (excluding construction).

A patent indemnity clause is not required in negotiated contracts, (except construction contracts covered at 27.203-5), but may be used as discussed in 27.203-4 below. A decision to omit a patent indemnity clause in a negotiated fixed-price contract described in this subsection should be based on a price consideration to the Government for the foregoing indemnification rights normally received by commercial purchasers of the same supplies or services.

27.203-4 Clauses for negotiated contracts (excluding construction).

(a) The contracting officer may insert the clause at 52.227-3, Patent Indemnity—

(1) As authorized in 27.203-1(b)(2)(ii); and

(2) Except as prohibited by 27.203-1(b), in solicitations anticipating negotiated contracts (and such contracts) for supplies or services (excluding construction and dismantling, demolition, and removal of

improvements), if the contracting officer determines that the supplies or services (or such items with relatively minor modifications) normally are or have been sold or offered for sale by any supplier to the public in the commercial open market. Ordinarily, the contracting officer, in consultation with the prospective contractor, should be able to determine whether the supplies or services being purchased normally are or have been sold or offered for sale by any supplier to the public in the commercial open market. (For negotiated construction contracts, see 27.203-5).

(b) In solicitations and contracts that call in part for specific components, spare parts, or services (or such items with relatively minor modifications) that normally are or have been sold or offered for sale by any supplier to the public in the commercial open market, the contracting officer may use the clause with its Alternate I or II, as appropriate. The choice between Alternate I (identification of excluded items) and Alternate II (identification of included items) should be based upon simplicity, Government administrative convenience, and the ease of identification of the items.

(c) In solicitations and contracts for communication services and facilities where performance is by a common carrier, and the services are unregulated and are not priced by a tariff schedule set by a regulatory body, the clause shall be used with its Alternate III.

27.203-5 Clause for construction contracts and for dismantling, demolition, and removal of improvements contracts.

Except as prohibited by 27.203-1(b), the contracting officer shall insert the clause at 52.227-4, Patent Indemnity—Construction Contracts, in solicitations and contracts for construction or that are fixed-price for dismantling, demolition, or removal of improvements. If it is determined that the construction will necessarily involve the use of structures, products, materials, equipment, processes, or methods that are nonstandard, noncommercial, or special, the contracting officer may expressly exclude them from the patent indemnification by using the basic clause with its Alternate I.

27.203-6 Clause for Government waiver of indemnity.

If, in the Government's interest, it is appropriate to exempt one or more specific United States patents from the patent indemnity clause, the contracting officer shall obtain written approval from the agency head or designee and shall insert the clause at 52.227-5, Waiver of Indemnity, in solicitations and contracts in addition to the appropriate patent indemnity clause. The contracting officer shall document the contract file with a copy of the written approval.

27.204 Reporting of royalties—anticipated or paid.

27.204-1 General.

(a) (1) To determine whether royalties anticipated or actually paid under Government contracts are excessive, improper, or inconsistent with any Government rights in particular inventions, patents, or patent applications, contracting officers shall require prospective contractors to furnish certain royalty information and shall require contractors to furnish certain royalty reports. Contracting officers shall take appropriate action to reduce or eliminate excessive or improper royalties.

(2) Royalty information shall not be required (except for information under 27.204-3) in formally advertised contracts unless the need for such information is approved at a level above that of the contracting officer as being necessary for proper protection of the Government's interests.

(b) When it is expected that work may be performed in the United States, its possessions, or Puerto Rico, any solicitation that may result in a negotiated contract for which royalty information is desired or for which cost or pricing data is obtained (see 15.804) should contain a provision requesting information relating to any proposed charge for royalties. If the work is to be performed in the United States, its possessions, or Puerto Rico and the response to the solicitation includes a charge for royalties, the contracting officer shall, before award of the contract, forward the information relating to the proposed payments of royalties to the office having cognizance of patent matters for the contracting activity concerned. The cognizant office shall promptly advise the contracting officer of appropriate action. Before award, the contracting officer shall take action to protect the Government's interest with respect to such royalties, giving due regard to all pertinent factors relating to the proposed contract and the advice of the cognizant office.

(c) The contracting officer, when considering the approval of a subcontract for work to be performed in the United States, its possessions, or Puerto Rico, shall require and obtain the same royalty information and take the same action with respect to such subcontracts in relation to royalties as required for prime contracts under paragraph (b) above. However, consent need not be withheld pending receipt of advice in regard to such royalties from the office having cognizance of patent matters.

(d) The contracting officer shall forward the royalty information and/or royalty reports received to the office having cognizance of patent matters for the contracting activity concerned for advice as to appropriate action.

27.204-2 Solicitation provision for royalty information.

If it is expected that work may be performed in the United States, its possessions, or Puerto Rico, the contracting officer shall insert a solicitation provision substantially as shown in 52.227-6, Royalty Information, in any solicitation that may result in a negotiated contract for which royalty information is desired or for which cost or pricing data is obtained under 15.804. If the solicitation is for communication services and facilities by a common carrier, use the provision with its Alternate I.

27.204-3 Patents—notice of Government as a licensee.

(a) When the Government is obligated to pay a royalty on a patent because of a license agreement between the Government and a patent owner and the contracting officer knows (or has reason to believe) that the licensed patent will be applicable to a prospective contract, the Government should furnish information relating to the royalty to prospective offerors since it serves the interest of both the Government and the offerors. In such situations, the contracting officer should include in the solicitation a notice of the license, the number of the patent, and the royalty rate recited in the license.

(b) When the Government is obligated to pay such a royalty, the solicitation should also require offerors to furnish information indicating whether or not each offeror is a licensee under the patent or the patent owner. This information is necessary so that the Government may either (1) evaluate an offeror's price by adding an amount equal to the royalty, or (2) negotiate a price reduction with an offeror-licensee when the offeror is licensed under the same patent at a lower royalty rate.

(c) If the Government is obligated to pay a royalty on a patent involved in the prospective contract, the contracting officer shall insert in the solicitation, substantially as shown, the provision at 52.227-7, Patents—Notice of Government Licensee.

27.204-4 Clause for reporting of royalties (foreign).

In solicitations contemplating negotiated contracts (and such contracts) to be performed outside the United States, its possessions, and Puerto Rico, regardless of the place of delivery, the contracting officer shall insert the clause at 52.227-8, Reporting of Royalties (Foreign).

27.205 Adjustment of royalties.

(a) If at any time the contracting officer has reason to believe that any royalties paid, or to be paid, under an existing or prospective contract or subcontract are inconsistent with Government rights, excessive, or otherwise improper, the facts shall be promptly reported to the office having cognizance of patent matters for the contracting activity concerned. The cognizant office shall review the royalties thus reported and such royalties as are reported under 27.204 and 27.206 and, in accordance with agency procedures, shall either recommend appropriate action to the contracting officer or, if authorized, shall take appropriate action.

(b) In coordination with the cognizant office, the contracting officer shall promptly act to protect the Government against payment of royalties on supplies or services—

(1) With respect to which the Government has a royalty-free license;

(2) At a rate in excess of the rate at which the Government is licensed; or

(3) When the royalties in whole or in part otherwise constitute an improper charge.

(c) In appropriate cases, the contracting officer in coordination with the cognizant office shall obtain a refund pursuant to any refund of royalties clause in the contract (see 27.206) or negotiate for a reduction of royalties.

(d) For guidance in evaluating information furnished pursuant to 27.204 and 27.205(a) above, see 31.205-37 and 31.311-34. See also 31.109 regarding advance understandings on particular cost items, including royalties.

27.206 Refund of royalties.

27.206-1 General.

When a fixed-price contract is negotiated under circumstances that make it questionable whether or not substantial amounts of royalties will have to be paid by the contractor or a subcontractor, such royalties may be included in the target or contract price, provided the contract specifies that the Government will be reimbursed the amount of such royalties if they are not paid. Such circumstances might include, for example, either a pending Government anti-trust action or prospective litigation on the validity of a patent or patents or on the enforceability of an agreement (upon which the contractor or subcontractor bases the asserted obligation) to pay the royalties to be included in the target or contract price.

27.206-2 Clause for refund of royalties.

The contracting officer shall insert the clause at 52.227-9, Refund of Royalties, in negotiated fixed-price contracts and solicitations contemplating such contracts if the contracting officer determines that circumstances make it questionable whether or not substantial amounts of royalties will have to be paid by the contractor or a subcontractor at any tier.

27.207 Classified contracts.

27.207-1 General.

(a) Unauthorized disclosure of classified subject matter, whether in patent applications or resulting from the issuance of a patent, may be a violation of 18 U.S.C. 792 et seq. (Espionage and Censorship), and related statutes, and may be contrary to the interests of national security.

(b) Upon receipt from the contractor of a patent application, not yet filed, that has been submitted by the contractor in compliance with paragraph (a) or (b) of the clause at 52.227-10, Filing of Patent Applications—Classified Subject Matter, the contracting officer shall ascertain the proper security classification of the patent application. Upon a determination that the application contains classified subject matter, the contracting officer shall inform the contractor of any instructions deemed necessary or advisable relating to transmittal of the application to the United States Patent Office in accordance with procedures in the Department of Defense Industrial Security Manual for Safeguarding Classified Security Information. If the material is classified "Secret" or higher, the contracting officer shall make every effort to notify the contractor of the determination within 30 days, pursuant to paragraph (a) of the clause.

(c) In the case of all applications filed under the provisions of this section 27.207, the contracting officer, upon receiving the application serial number, the filing date, and the information furnished by the contractor under paragraph (d) of the clause at 52.227-10, Filing of Patent Applications—Classified Subject Matter, shall promptly submit that information to personnel having cognizance of patent matters in order that the steps necessary to ensure the security of the application may be taken.

(d) A request for the approval referred to in paragraph (c) of the clause at 52.227-10, Filing of Patent Applications—Classified Subject Matter, must be considered and acted upon promptly by the contracting officer in order to avoid the loss of valuable patent rights of the Government or the contractor.

27.207-2 Clause for classified contracts.

The contracting officer shall insert the clause at 52.227-10, Filing of Patent Applications—Classified Subject Matter, in all classified solicitations and contracts and in all solicitations and contracts where the nature of the work or classified subject matter involved in the work reasonably might be expected to result in a patent application containing classified subject matter.

SUBPART 27.3—PATENT RIGHTS UNDER GOVERNMENT CONTRACTS

27.300 Scope of subpart.

This subpart prescribes policies, procedures, and contract clauses with respect to inventions made in the performance of work under a Government contract or subcontract thereunder if a purpose of the contract or subcontract is the conduct of experimental, developmental, or research work, except to the extent statutory requirements necessitate different agency policies, procedures, and clauses as specified in agency supplemental regulations.

27.301 Definitions.

"Invention," as used in this subpart, means any invention or discovery that is or may be patentable or otherwise protectable under Title 35 of the U.S. Code.

"Made," as used in this subpart, when used in relation to any invention, means the conception or first actual reduction to practice of such invention.

"Nonprofit organization," as used in this subpart, means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

"Practical application," as used in this subpart, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a

machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

"Small business firm," as used in this subpart, means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.3-8 for small business contractors and in 13 CFR 121.3-12 for small business subcontractors will be used. See FAR Part 19).

"Subject invention," as used in this subpart, means any invention of the contractor conceived or first actually reduced to practice in the performance of work under a Government contract.

27.302 Policy.

(a) *Introduction.* (1) The policy of this section is based on 35 U.S.C. Chapter 18 (Pub. L. 96-517), OMB Circular A-124, and the Presidential Memorandum on Government Patent Policy to the Heads of Executive Departments and Agencies dated February 18, 1983. The objectives of this policy are to use the patent system to promote the utilization of inventions arising from federally supported research or development; to encourage maximum participation of industry in federally supported research and development efforts; to ensure that these inventions are used in a manner to promote free competition and enterprise; to promote the commercialization and public availability of the inventions made in the United States by United States industry and labor; to ensure that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions; and to minimize the costs of administering policies in this area.

(2) Some agencies are subject, in whole or in part, to one of the following statutes, which require that information as to uses, products, processes, patents, or other developments "be available to the general public": 31 U.S.C. 666, 22 U.S.C. 2572, 50 U.S.C. 167b, 30 U.S.C. 951(c), 30 U.S.C. 937(b), 40 U.S.C. App. 302(e), 30 U.S.C. 1226, and 15 U.S.C. 1395(c). Such agencies shall generally use the clauses herein allowing title to patents to be retained by the contractor, and the related procedures.

(b) *Contractor right to elect title.* Under the policy set forth in paragraph (a) above, each contractor may, after disclosure to the Government as required by the patent rights clause included in the contract, elect to retain title to any invention made in the performance of work under the contract. To the extent an agency's statutory requirements necessitate a different policy, or different procedures and/or contract clauses to effectuate the policy set forth in paragraph (a) above, such policy, procedures, and clauses shall be contained in or expressly referred to in that agency's supplement to this subpart. In addition, a contract may provide otherwise (1) when the contract is for the operation of a Government-owned research or production facility, (2) in exceptional circumstances when it is determined by the agency that restriction or elimination of the right to retain title in any subject invention will better promote the policy and objectives of 35 U.S.C. Chapter 18 and the Presidential Memorandum, or (3) when it is determined by a Government authority which is authorized by statute or Executive Order to conduct foreign intelligence or counterintelligence activities that the restriction or elimination of the right to retain title to any subject invention is necessary to protect the security of such activities. In those instances when the Government has the right to acquire title at the time of contracting the contractor may, nevertheless, request greater rights to an identified invention. (See 27.304-1(a).) The right of the contractor to retain title shall, in any event, be subject to the provisions of paragraphs (c) through (g) below unless for contracts with other than small business or nonprofit organizations the agency determines before contract award that all or portions of these provisions may be modified, waived, or omitted. (See 27.304-1(f).)

(c) *Government license.* The Government shall have (unless provided otherwise in accordance with 27.304-1(f)) at least a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on behalf of the United States, any subject invention throughout the world; and may, if provided in the contract (see Alternate I of the applicable patent rights clause), have additional rights to sublicense any foreign government or international organization pursuant to existing treaties or agreements identified in the contract, and any future treaty or agreement.

(d) *Government right to receive title.* (1) The Government has the right to receive title to any invention if the contract so provides pursuant to a determination made in accordance with subparagraph (b)(1), (2), or (3) above. In addition, to the extent provided in the patent rights clause, the Government has the right to receive title to an invention—

(i) If the contractor has not disclosed the invention within the time specified in the clause;

(ii) In any country where the contractor does not elect to retain rights or fails to elect to retain rights to the invention within the time specified in the clause;

(iii) In any country where the contractor has not filed a patent application within the time specified in the clause;

(iv) In any country where the contractor decides not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on the patent; and/or

(v) In any country where the contractor no longer desires to retain title.

(2) For the purposes of this paragraph, election or filing in a European Patent Office Region or under the Patent Cooperation Treaty constitutes election or filing in any country covered therein to meet the times specified in the clause, provided that the Government has the right to receive title in those countries not subsequently designated by the contractor.

(e) *Utilization reports.* Unless provided otherwise in accordance with 27.304-1(f), contracts provide that the Government shall have the right to require periodic reporting on the utilization or efforts at obtaining utilization that are being made by the contractor or its licensees or assignees. Such reporting by small business firms and nonprofit organizations may be required in accordance with instructions as may be issued by the Department of Commerce. Agencies should protect the confidentiality of utilization reports to the extent permitted by 35 U.S.C. 205 or other applicable laws and OMB Circular A-124.

(f) *March-in rights.* (1) With respect to any subject invention in which a contractor has acquired title, contracts provide that the agency shall have the right (unless provided otherwise in accordance with 27.304-1(f)) to require the contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such request, to grant such a license itself, if the agency determines that such action is necessary—

(i) Because the contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(ii) To alleviate health or safety needs which are not reasonably satisfied by the contractor, assignee, or their licensees;

(iii) To meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the contractor, assignee, or licensees; or

(iv) Because the agreement required by paragraph (g) below has neither been obtained nor waived, or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of its agreement obtained pursuant to paragraph (g) below.

(2) This right of the agency shall be exercised only after the contractor has been provided a reasonable time to present facts and show cause why the proposed agency action should not be taken, and afforded an opportunity to take appropriate action if the contractor wishes to dispute or appeal the proposed action, in accordance with 27.304-1(g).

(g) *Preference for United States industry.* Unless provided otherwise in accordance with 27.304-1(f), contracts provide that no contractor which receives title to any subject invention and no assignee of any such contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the agency upon a showing by the contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(h) *Minimum rights to contractor.* (1) When the Government acquires title to a subject invention, the contractor is normally granted a revocable, nonexclusive, royalty-free license to that invention throughout the world. The contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the contractor is a part and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the contracting officer except when transferred to the successor of that part of the contractor's business to which the invention pertains.

(2) The contractor's domestic license may be revoked or modified to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with the applicable provisions in the Federal Property Management Regulations and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified to the extent the contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that country. See the procedures at 27.304-1(e).

(i) *Confidentiality of inventions.* The publication of information disclosing an invention by any party before the filing of a patent application may create a bar to a valid patent. Accordingly, 35 U.S.C. 205 and OMB Circular A-124 provide that Federal agencies are authorized to withhold from disclosure to the public information disclosing any invention in which the Federal Government owns or may own a right, title, or interest (including a nonexclusive license) for a reasonable time in order for a patent application to be filed. Furthermore, Federal agencies shall not be required to release copies of any document which is part of an application for patent filed with the United States Patent and Trademark Office or with any foreign patent office. The Presidential Memorandum on Government Patent Policy specifies that agencies should protect the confidentiality of invention disclosures and patent applications required in performance or in consequence of awards to the extent permitted by 35 U.S.C. 205 or other applicable laws.

27.303 Contract clauses.

In contracts (and solicitations therefor) for experimental, developmental, or research work (but see 27.304-3 regarding contracts for construction work or architect-engineer services), a patent rights clause shall be inserted as follows:

(a) (1) The contracting officer shall insert the clause at 52.227-11, Patent Rights—Retention by the Contractor (Short Form), if all the following conditions apply:

(i) The contractor is a small business concern or nonprofit organization as defined in 27.301 or, except for contracts of the Department of Defense (DOD), the Department of Energy (DOE), or the National Aeronautics and Space Administration (NASA), any other type of contractor.

(ii) No alternative patent rights clause is used in accordance with paragraphs (c) or (d) below or 27.304-2.

(2) To the extent the information is not required elsewhere in the contract, and unless otherwise specified by agency supplemental regulations, the contracting officer may modify paragraph (f) of the clause to require the contractor to do one or more of the following:

(i) Provide periodic (but not more frequently than annually) listings of all subject inventions required to be disclosed during the period covered by the report.

(ii) Provide a report prior to the closeout of the contract listing all subject inventions or stating that there were none.

(iii) Provide notification of all subcontracts for experimental, developmental, or research work.

(iv) Provide, upon request, the filing date, serial number and title; a copy of the patent application; and patent number and issue date for any subject invention in any country in which the contractor has applied for patents.

(v) Furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(3) If the acquisition of patent rights for the benefit of a foreign government is required under a treaty or executive agreement or if the agency head or a designee determines at the time of contracting that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement, the contracting officer shall use the clause with its Alternate I.

(b) (1) The contracting officer shall insert the clause at 52.227-12, Patent Rights—Retention by the Contractor (Long Form), if all the following conditions apply:

(i) The contractor is other than a small business firm or nonprofit organization.

(ii) No alternative clause is used in accordance with paragraph (c) or (d) below or 27.304-2.

(iii) The contracting agency is one of those excepted under subdivision (a)(1)(i) above.

(2) If the acquisition of patent rights for the benefit of a foreign government is required under a treaty or executive agreement or if the agency head or a designee determines at the time of contracting that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement, the contracting officer shall use the clause with its Alternate I.

(c) (1) The contracting officer shall insert the clause at 52.227-13, Patent Rights—Acquisition by the Government, if any of the following conditions apply:

(i) No alternative clause is used in accordance with subparagraph (c)(2) or paragraph (d) below or 27.304-2.

(ii) The work is to be performed outside the United States, its possessions, and Puerto Rico by contractors that are not small business firms, nonprofit organizations as defined in 27.301, or domestic firms. For purposes of this subparagraph, the contracting officer may presume that a contractor is not a domestic firm unless it is known that the firm is not foreign owned, controlled, or influenced. (See 27.304-4(a) regarding subcontracts with U.S. firms.)

(2) Pursuant to their statutory requirements, DOE and NASA may specify in their supplemental regulations use of a modified version of the clause at 52.227-13 in contracts with other than small business concerns or nonprofit organizations.

(3) If the acquisition of patent rights for the benefits of a foreign government is required under a treaty or executive agreement or if the agency head or a designee determines at the time of contracting that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement, the contracting officer shall use the clause with its Alternate I.

(d) (1) If one of the following applies, the contracting officer may insert the clause prescribed in paragraph (a) or (b) above as otherwise applicable; agency supplemental regulations may provide another clause and specify its use; or the contracting officer shall insert the clause prescribed in paragraph (c) above:

(i) The contract is for the operation of a Government-owned research or production facility.

(ii) There are exceptional circumstances and the agency head determines that restriction or elimination of the right to retain title to any subject invention will better promote the policy and objectives of Chapter 18 of Title 35 of the United States Code.

(iii) It is determined by a Government authority which is authorized by statute or executive order to conduct foreign intelligence or counterintelligence activities that restriction or elimination of the right to retain any subject invention is necessary to protect the security of such activities.

(2) Any determination under subdivision (1)(ii) above will be in writing and accompanied by a written statement of facts justifying the determination. The statement of facts will contain such information as the agency deems relevant and, at a minimum, will (i) identify the organization involved, (ii) describe the extent to which agency action restricted or eliminated the right to retain title to a subject invention, (iii) state the facts and rationale supporting the agency action, (iv) provide supporting documentation for those facts and rationale, and (v) indicate the nature of any objections to the agency action and provide any documentation in which those objections appear. In the case of contracts with small business concerns or nonprofit organizations, a copy of each such determination and written statement of facts will be sent to the Comptroller General of the United States within 30 days after the award of the applicable funding agreement. In the case of contracts with small business concerns, copies will also be sent to the Chief Counsel for Advocacy of the Small Business Administration.

(e) To qualify for the clause at 52.227-11, a prospective contractor may be required by the agencies excepted under subdivision (a)(1)(i) above to certify that it is either a small business firm or a nonprofit organization. If one of these agencies has reason to question the status of the prospective contractor, the agency may file a protest in accordance with 13 CFR 121.3-5 if small business firm status is questioned or require the prospective contractor to furnish evidence of its status as a nonprofit organization.

(f) The Alternates to the clauses at 52.227-11, 52.227-12, and 52.227-13, as applicable, may be modified by deleting the reference to future treaties or agreements or by otherwise more narrowly defining classes of future treaties or agreements. It may also be modified to make clear that the rights granted to the foreign government or international organization may be for additional rights beyond a license or sublicense if so required by the applicable treaty or international agreement. For example, in some cases exclusive licenses or even assignment of title in the foreign country involved might be required. In addition, the Alternate may be modified to provide for direct licensing by the contractor of the foreign government or international organization.

27.304 Procedures.

27.304-1 General.

(a) *Greater rights determinations.* Whenever the contract contains the clause at 52.227-13, Patent Rights—Acquisition by the Government, the contractor (or an employee-inventor of the contractor after consultation with the contractor) may request greater rights to an identified invention within the period specified in such clause. Requests for greater rights may be granted if the agency head or designee determines that the interests of the United States and the general public will be better served thereby. In making such determinations, the agency head or designee shall consider at least the following objectives:

(1) Promoting the utilization of inventions arising from federally supported research and development.

(2) Ensuring that inventions are used in a manner to promote free competition and enterprise.

(3) Promoting public availability of inventions made in the United States by United States industry and labor.

(4) Ensuring that the Government obtains sufficient rights in federally-supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions.

(b) *Retention of rights by inventor.* If the contractor does not elect to retain title to a subject invention, the agency may consider and, after consultation with the contractor, grant requests for retention of rights by the inventor. Retention of rights by the inventor will be subject to the conditions in paragraph (d) (except subparagraph (d)(1)), subparagraph (f)(4), and paragraphs (h), (i), and (j) of the applicable Patent Rights—Retention by the Contractor clause.

(c) *Government assignment to contractor of rights in Government employees' inventions.* When a Government employee is a coinventor of an invention made under a contract with a small business firm or nonprofit organization, the agency employing the coinventor may transfer or reassign whatever right it may acquire in the subject invention from its employee to the contractor, subject to the conditions of 35 U.S.C. Chapter 18 and OMB Circular A-124.

(d) *Additional requirements.* (1) If it is desired to have the right to require any of the following, the contract shall be modified to require the contractor to do one or more of the following:

(i) Provide periodic (but not more frequently than annually) listings of all subject inventions required to be disclosed during the period covered by the report.

(ii) Provide a report prior to the closeout of the contract listing all subject inventions or stating that there were none.

(iii) Provide notification of all subcontracts for experimental, developmental, or research work.

(iv) Provide upon request, the filing date, serial number and title; a copy of the patent application; and patent number and issue date for any subject invention in any country in which the contractor has applied for patents.

(v) Furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(2) To the extent provided by such modification (and automatically under the terms of the clauses at 52.227-12 and -13), the contracting officer may require the contractor to—

(i) Furnish a copy of each subcontract containing a patent rights clause (but if a copy of a subcontract is furnished under another clause, a duplicate shall not be requested under the patent rights clause);

(ii) Submit interim and final invention reports listing subject inventions and notifying the contracting officer of all subcontracts awarded for experimental, developmental, or research work;

(iii) Submit information regarding the filing date, serial number and title, and, upon request, a copy of the patent application, and patent number and issue date for any subject invention in any country for which the contractor has retained title; and

(iv) Submit periodic reports on the utilization of a subject invention or on efforts at obtaining utilization that are being made by the contractor or its licensees or assignees.

(3) The contractor is required to deliver to the contracting officer an instrument confirmatory of all rights to which the Government is entitled and to furnish the Government an irrevocable power to inspect and make copies of the patent application file. Such delivery should normally be made within 6 months after filing each patent application, or within 6 months after submitting the invention disclosure if the application has been previously filed.

(e) *Revocation or modification of contractor's minimum rights.* Before revocation or modification of the contractor's license in accordance with 27.302(h)(2), the contracting officer will furnish the contractor a written notice of intention to revoke or modify the license, and the contractor will be allowed 30 days (or such other time as may be authorized by the contracting officer for good cause shown by the contractor) after the notice to show cause why the license should not be revoked or modified. The contractor has the right to appeal, in accordance with applicable provisions in the Federal Property Management Regulations and agency licensing regulations, any decisions concerning the revocation or modification.

(f) *Modification, waiver, or omission of rights of the Government or obligations of the contractor.* (1) In contracts not subject to 35 U.S.C. Chapter 18, an agency may modify, waive, or omit, in whole or in part, any of the rights of the Government or obligations of the contractor described in 27.302(c) through (h) if the agency head or designee determines at the time of contracting (i) that the interests of the United States and the general public will be better served thereby as, for example, where this is necessary to obtain a uniquely or highly qualified contractor, or (ii) that the contract involves cosponsored, cost sharing, or joint venture research and development, and the contractor, cosponsor, or joint venturer is making a substantial contribution of funds, facilities, or equipment to the work performed under the contract.

(2) Any modification, waiver, or omission of the rights of the Government shall be in writing and accompanied by a written statement of facts justifying the determination. Inasmuch as these rights are normally considered the minimum rights necessary to protect the interests of the United States and the general public under the policy and objectives of 27.302(a)(1), such statement must specifically—

(i) Describe the extent to which the Government's rights are to be modified, waived, or omitted;

(ii) State the facts and rationale for such modification, waiver, or omission; and

(iii) Include a statement as to why the interests of the United States and the general public will be better served by such modification, waiver, or omission under the policy and objectives of 27.302(a)(1), with particular emphasis on (A) ensuring that the Government obtains sufficient rights to meet its needs competitively and at the lowest cost when relinquishing the Government's royalty-free license rights, (B) protecting the public against nonuse or unreasonable use of inventions arising out of the contract when relinquishing march-in rights intended to prevent suppression of such inventions and to assure their availability to meet health or safety needs or regulatory requirements, and (C) promoting the public availability of such inventions through commercialization by United States industry and labor.

(g) *Exercise of march-in rights.* The following procedures shall govern the exercise of the march-in rights set forth in 35 U.S.C. 203, paragraph (j) of the Patent Rights—Retention by the Contractor clauses, and subdivision (c)(1)(ii) of the Patent Rights—Acquisition by the Government clause:

(1) When the agency receives information that it believes might warrant the exercise of march-in rights, before initiating any march-in proceeding in accordance with the procedures of subparagraph (2) below, it shall notify the contractor in writing of the information and request informal written or oral comments from the contractor. In the absence of any comments from the contractor within 30 days the agency may, at its discretion, initiate the procedures below. If a comment is received, whether or not within 30 days, then the agency shall, within 60 days after it receives the comment, either initiate the procedures below or notify the contractor, in writing, that it will not pursue march-in rights based on the information about which the contractor was notified.

(2) A march-in proceeding shall be initiated by the issuance of a written notice by the agency head or a designee to the contractor and its assignee or exclusive licensee, as applicable, stating that the Government has determined to exercise march-in rights. The notice shall state the reasons for the proposed march-in in terms sufficient to put the contractor on notice of the facts upon which the action is based, and shall specify the field or fields of use in which the Government is considering requiring licensing. The notice shall advise the contractor, assignee, or exclusive licensee of its rights as set forth in 33.011 and in any supplemental agency regulations or procedures. The determination to exercise march-in rights shall be made by the contracting officer, as a final decision for purposes of the Contract Disputes Act in accordance with 33.011.

(3) These procedures shall also apply to the exercise or march-in rights against inventors receiving title to subject inventions under 35 U.S.C. 202(d) and, for that purpose, the term

"contractor" as used herein shall be deemed to include the inventor.

(4) The contractor, assignee, or exclusive licensee will not be required to grant a license and the Government will not grant any license until after either (i) 90 days from the date of the contractor's receipt of the contracting officer's decision, if no appeal of the decision has been made to a Board of Contract Appeals and if no action has been brought under 41 U.S.C. 609 within that time, or (ii) the board or court has made a final decision, in cases when an appeal or action has been brought within 90 days of the contracting officer's decision.

(h) *Licenses and assignments under contracts with nonprofit organizations.* If the contractor is a nonprofit organization, the clause at 52.227-11 provides that certain contractor actions require agency approval, as specified below. Agencies shall provide procedures for obtaining such approval.

(1) Rights to a subject invention in the United States may not be assigned without the approval of the contracting agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions and which is not, itself, engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention (provided that such assignee will be subject to the same provisions as the contractor).

(2) The contractor may not grant exclusive licenses under United States patents or patent applications in subject inventions to persons other than small business firms for a period in excess of the earlier of—

(i) Five years from first commercial sale or use of the invention; or

(ii) Eight years from the date of the exclusive license excepting that time before regulatory agencies necessary to obtain premarket clearance, unless on a case-by-case basis the contracting agency approves a longer exclusive license. If exclusive field of use licenses are granted, commercial sale or use in one field of use will not be deemed commercial sale or use as to other fields of use, and a first commercial sale or use with respect to a product of the invention will not be deemed to end the exclusive period to different subsequent products covered by the invention.

27.304-2 Contracts placed by or for other Government agencies.

The following procedures apply unless agency agreements provide otherwise:

(a) When a Government agency requests another Government agency to award a contract on its behalf, the request should explain any special circumstances surrounding the contract and specify and furnish the patent rights clause to be used. Normally, the clause will be in accordance with the policies and procedures of this subpart. If, however, the request states that a clause of the requesting agency is required (e.g., because of statutory requirements, a deviation, or exceptional circumstances) that clause shall be used rather than those of this subpart.

(1) If the request states that an agency clause is required and the work to be performed under the contract is not severable and is funded wholly or in part by the agency, then that agency clause and no other patent rights clause shall be included in the contract.

(2) If the request states that an agency clause is required, and the work to be performed under the contract is severable and is only in part for the requesting agency, then the work which is on behalf of the requesting agency shall be identified in the contract, and the agency clause shall be made applicable to that portion. In such situations, the remaining portion of the work (for the agency awarding the contract) shall likewise be identified and the appropriate patent rights clause (if required) shall be made applicable to that remaining portion.

(3) If the request states that an agency clause is not required in any resulting contract, then the appropriate patent rights clause shall be used, if a patent rights clause is required.

(b) Where use of the specified clause, or any modification, waiver, or omission of the Government's rights under any provisions therein, requires a written determination, the reporting of such determination, or a deviation, if any such acts are required in accordance with 27.303(d)(2), 27.304-1(f)(2), or 1.4, it shall be the responsibility of the requesting agency to make such determination, submit the required reports, and obtain such deviations, in consultation with the contracting agency, unless otherwise agreed between the contracting and requesting agencies. However, a deviation to a specified clause of the requesting agency shall not be made without prior approval of that agency.

(c) The requesting agency may require, and provide instructions regarding, the forwarding or handling of any invention disclosures or other reporting requirements of the specified clauses. Normally the requesting agency shall be responsible for the handling of any disclosed inventions, including the filing of patent applications where the Government receives title, and the custody, control, and licensing thereof, unless provided otherwise in the instructions or other agreements with the contracting agency.

27.304-3 Contracts for construction work or architect-engineer services.

(a) If a solicitation or contract for construction work or architect-engineer services has as a purpose the performance of experimental, developmental, or research work or test and evaluation studies involving such work and calls for, or can be expected to involve, the design of a Government facility or of novel structures, machines, products, materials, processes, or equipment (including construction equipment), it shall include a patent rights clause selected in accordance with the policies and procedures of this Subpart 27.3.

(b) A solicitation or contract for construction work or architect-engineer services that calls for or can be expected to involve *only* "standard types of construction" to be built by previously developed equipment, methods, and processes shall not include a patent rights clause. The term "standard types of construction" means construction in which the distinctive features, if any, in all likelihood will amount to no more than—

(1) Variations in size, shape, or capacity of otherwise structurally orthodox and conventionally acting structures or structural groupings; or

(2) Purely artistic or esthetic (as distinguished from functionally significant) architectural configurations and designs of both structural and nonstructural members or groupings, which may or may not be sufficiently novel or meritorious to qualify for design protection under the design patent or copyright laws.

27.304-4 Subcontracts.

(a) The policies and procedures covered by this subpart apply to all contracts at any tier. Hence, a contractor awarding a subcontract and a subcontractor awarding a lower-tier subcontract that has as a purpose the conduct of experimental, developmental, or research work is required to determine the appropriate patent rights clause to be included that is consistent with these policies and procedures. Generally, the clause at either 52.227-11, 52.227-12, or 52.227-13 is to be used and will be so specified in the patent rights clause contained in the higher-tier contract, but the contracting officer may direct the use of a particular patent

rights clause in any lower-tier contract in accordance with the policies and procedures of this subpart. For instance, when the clause at 52.227-13 is in the prime contract because the work is to be performed overseas, any subcontract with a nonprofit organization would contain the clause at 52.227-11.

(b) Whenever a prime contractor or a subcontractor considers the inclusion of a particular clause in a subcontract to be inappropriate or a subcontractor refuses to accept the proffered clause, the matter shall be resolved by the agency contracting officer in consultation with counsel.

(c) It is Government policy that contractors shall not use their ability to award subcontracts as economic leverage to acquire rights for themselves in inventions resulting from subcontracts.

27.304-5 Appeals.

(a) The agency official initially authorized to take any of the following actions shall provide the contractor with a written statement of the basis for the action at the time the action is taken, including any relevant facts that were relied upon in taking the action:

(1) A refusal to grant an extension to the invention disclosure period under subparagraph (c)(4) of the clauses at 52.227-11 and 52.227-12.

(2) A request for a conveyance of title to the Government under 27.302(d)(1)(i) through (v).

(3) A refusal to grant a waiver under 27.302(g), Preference for U.S. Industry.

(4) A refusal to approve an assignment under 27.304-1(h)(1).

(5) A refusal to approve an extension of the exclusive license period under 27.304-1(h)(2).

(b) Each agency shall establish and publish procedures under which any of the agency actions listed in paragraph (a) above may be appealed to the head of the agency or designee. Review at this level shall consider both the factual and legal basis for the action and its consistency with the policy and objectives of 35 U.S.C. 200-206 and this subpart.

(c) Appeals procedures established under paragraph (b) above shall include administrative due process procedures and standards for fact-finding at least comparable to those set forth in Part 13e-g of OMB Circular A-124 whenever there is a dispute as to the factual basis for an agency request for a conveyance of title under 27.302(d)(1)(i) through (v) including any dispute as to whether or not an invention is a subject invention.

(d) To the extent that any of the actions described in paragraph (a) above are subject to appeal under the Contract Disputes Act, the procedures under that Act will satisfy the requirements of paragraphs (b) and (c) above.

27.305 Administration of patent rights clauses.

27.305-1 Patent rights follow-up.

(a) It is important that the Government and the contractor know and exercise their rights in inventions conceived or first actually reduced to practice in the course of or under Government contracts in order to ensure their expeditious availability to the public and to enable the Government, the contractor, and the public to avoid unnecessary payment of royalties and to defend themselves against claims and suits for patent infringement. To attain these ends, contracts having a patent rights clause should be so administered that—

(1) Inventions are identified, disclosed, and reported as required by the contract, and elections are made;

(2) The rights of the Government in such inventions are established;

(3) Where patent protection is appropriate, patent applications are timely filed and prosecuted by contractors or by the Government;

(4) The rights of the Government in filed patent applications are documented by formal instruments such as licenses or assignments; and

(5) Expeditious commercial utilization of such inventions is achieved.

(b) If a subject invention is made under funding agreements of more than one agency, at the request of the contractor or on their own initiative, the agencies shall designate one agency as responsible for administration of the rights of the Government in the invention.

27.305-2 Follow-up by contractor.

(a) *Contractor procedures.* If required by the applicable clause, the contractor shall establish and maintain effective procedures to ensure its patent rights obligations are met and that subject inventions are timely identified and disclosed, and when appropriate, patent applications are filed.

(b) *Contractor reports.* Contractors shall submit all reports required by the patent rights clause to the contracting officer or other representative designated for such purpose in the contract. Agencies may, in their implementing instructions, provide specific forms for use on an optional basis for such reporting.

27.305-3 Follow-up by Government.

(a) Agencies shall maintain appropriate follow-up procedures to protect the Government's interest and to check that subject inventions are identified and disclosed, and when appropriate, patent applications are filed, and that the Government's rights therein are established and protected. Follow-up activities for contracts that include a clause referenced in 27.304-2 shall be coordinated with the appropriate agency.

(b) The contracting officer administering the contract (or other representative specifically designated in the contract for such purpose) is responsible for receiving invention disclosures, reports, confirmatory instruments, notices, requests, and other documents and information submitted by the contractor pursuant to a patent rights clause. If the contractor fails to furnish documents or information as called for by the clause within the time required, the contracting officer shall promptly request the contractor to supply the required documents or information and, if the failure persists, shall take appropriate action to secure compliance. Invention disclosures, reports, confirmatory instruments, notices, requests, and other documents and information relating to patent rights clauses shall be promptly furnished by the contracting officer administering the contract (or other designee) to the procuring agency or contracting activity for which the procurement was made for appropriate action.

(c) Contracting activities shall establish appropriate procedures to detect and correct failures by the contractor to comply with its obligations under the patent rights clauses, such as failures to disclose and report subject inventions, both during and after contract performance. Ordinarily a contractor should have written instructions for its employees covering compliance with these contract obligations. Government effort to review and correct contractor compliance with its patent rights obligations should be directed primarily towards contracts that, because of the nature of the research, development, or experimental work or the large dollar amount spent on such work, are more likely to result in subject inventions significant in number or quality, and towards contracts when there is reason to believe the contractors may not be complying with their contractual obligations. Other contracts may be reviewed using a spot-check method, as feasible. Appropriate follow-up procedures and activities may include the investigation or review of selected contracts or contractors by those qualified in patent and technical matters

to detect failures to comply with contract obligations.

(d) Follow-up activities should include, where appropriate, use of Government patent personnel—

(1) To interview agency technical personnel to identify novel developments made in contracts;

(2) To review technical reports submitted by contractors with cognizant agency technical personnel;

(3) To check the Official Gazette of the United States Patent and Trademark Office and other sources for patents issued to the contractor in fields related to its Government contracts; and

(4) If additional information is required, to have cognizant Government personnel interview contractor personnel regarding work under the contract involved, observe the work on site, and inspect laboratory notebooks and other records of the contractor related to work under the contract.

(e) If it is determined that a contractor or subcontractor does not have a clear understanding of the rights and obligations of the parties under a patent rights clause, or that its procedures for complying with the clause are deficient, a post-award orientation conference or letter should ordinarily be used to explain these rights and obligations (see Subpart 42.5). When a contractor fails to establish, maintain, or follow effective procedures for identifying, disclosing, and, when appropriate, filing patent applications on inventions (if such procedures are required by the patent rights clause), or after appropriate notice fails to correct any deficiency, the contracting officer may require the contractor to make available for examination books, records, and documents relating to the contractor's inventions in the same field of technology as the contract effort to enable a determination of whether there are such inventions and may invoke the withholding of payments provision (if any) of the clause. The withholding of payments provision (if any) of the patent rights clause or of any other contract clause may also be invoked if the contractor fails to disclose a subject invention. Significant or repeated failures by a contractor to comply with the patent rights obligation in its contracts shall be documented and made a part of the general file (see 4.801(c)(3)).

27.305-4 Conveyance of invention rights acquired by the Government.

(a) Agencies are responsible for those procedures necessary to protect the Government's interest in subject inventions. When the Government acquires the entire right, title, and interest in an invention by contract, this is normally accomplished by an assignment either from each inventor to the contractor and from the contractor to the Government, or from the inventor to the Government with the consent of the contractor, so that the chain of title from the inventor to the Government is clearly established. When the Government's rights are limited to a license, there should be a confirmatory instrument to that effect.

(b) The form of conveyance of title from the inventor to the contractor must be legally sufficient to convey the rights the contractor is required to convey to the Government. Agencies may, by supplemental instructions, develop suitable assignments, licenses, and other papers evidencing any rights of the Government in patents or patent applications, including such instruments as may be required to be recorded in the Statutory Register or documented in the Government Register maintained by the U.S. Patent and Trademark Office pursuant to Executive Order 9424, February 18, 1944.

27.305-5 Publication or release of invention disclosures.

(a) In accordance with the policy at 27.302(i), to protect their mutual interests, contractors and the Government should cooperate in deferring the publication or release of invention disclosures until the filing of the first patent application, and use their best efforts to achieve prompt filing when publication or release may be imminent. The Government will, on its part and to the extent authorized by 35 U.S.C. 205, withhold from disclosure to the public any invention disclosures reported under the patent rights clauses of 52.227-11, 52.227-12, or 52.227-13 for a reasonable time in order for patent applications to be filed. The policy in 27.302(i) regarding protection of confidentialify shall be followed.

(b) The Government will also use reasonable efforts to withhold from disclosure to the public for a reasonable time other information disclosing a reported invention included in any data delivered pursuant to contract requirements; *provided*, that the contractor notifies the agency as to the identity of the data and the invention to which it relates at the time of delivery of the data. Such notification must be to both the contracting officer and any patent representative to which the invention is reported, if other than the contracting officer.

27.306 Licensing background patent rights to third parties.

(a) A contract with a small business firm or nonprofit organization will not contain a provision allowing the Government to require the licensing to third parties of inventions owned by the contractor that are not subject inventions unless such provision has been approved by the agency head and written justification has been signed by the agency head. Any such provision will clearly state whether the licensing may be required in connection with the practice of a subject invention, a specifically identified work object, or both. The agency head may not delegate the authority to approve such provisions or to sign justifications required for such provisions.

(b) The Government will not require the licensing of third parties under any such provision unless the agency head determines that the use of the invention by others is necessary for the practice of a subject invention or for the use of a work object of the contract and that such action is necessary to achieve the practical application of the subject invention or work object. Any such determination will be on the record after an opportunity for a hearing, and the contractor shall be given notification of the determination by certified or registered mail. The notification shall include a statement that any action commenced for judicial review of such determination must be brought by the contractor within 60 days after the notification.

SUBPART 27.4—RIGHTS IN DATA AND COPYRIGHTS

27.401 General.

It is necessary for Government departments and agencies, in order to carry out their missions and programs, to acquire or obtain access to many kinds of data developed under or used in performing their contracts. Such data are required in order to obtain competition among suppliers; to meet acquisition needs; to ensure logistic support; to fulfill certain responsibilities for disseminating and publishing the results of their activities; to ensure appropriate use of the results of research, development, and demonstration activities; and to meet other programmatic and statutory requirements. At the same time, the Government recognizes that its contractors may have a property right or other valid economic interest in certain data resulting from private investment, and that the protection from unauthorized use and disclosure of this

data, and other data made available to the Government for use, is required in order to preclude the compromise of such property right or economic interest, jeopardizing the contractor's commercial position, and impairment of the Government's ability to obtain access to or use of such data. Protecting this data is therefore necessary to encourage qualified contractors to participate in Government programs and apply innovative concepts to such programs. Specific agency regulations shall be framed in light of the above considerations to strike a balance between the Government's need and the contractor's economic interest.

SUBPART 27.5—RESERVED

SUBPART 27.6—FOREIGN LICENSE AND TECHNICAL ASSISTANCE AGREEMENTS

27.601 General.

Agencies shall provide all necessary rules and regulations as are required for the proper application of the laws and policies of the U.S. Government regarding—

(a) Elimination in agreements between domestic concerns and foreign governments or foreign concerns of charges for the use of patents in which the U.S. Government has a royalty-free license or of charges in agreements for the use of data that the U.S. Government has a right to use and disclose to others, that is in the public domain, or that was acquired by the U.S. Government with the unrestricted right to use, duplicate, or disclose and to have or permit others to do so;

(b) Foreign license and technical assistance agreements between the U.S. Government and United States domestic concerns;

(c) Guidance on negotiating contract prices and terms concerning patents and data, including royalties, in contracts between the U.S. Government and a foreign government or foreign concern; and

(d) Regulations and guidance on controls on the exportation of data relating to certain designated items, such as arms or munitions of war, and guidance on reviews of agreements involving such data (see 22 CFR 124).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205-18 [Amended]

16. In subsection 31.205-18, paragraphs (c)(1)(i) and (c)(1)(v) are amended by changing "$4 million" to read "$4,400,000", and paragraph (c)(1)(ii) is amended by changing "$500,000" to read "$550,000".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

17. The table of contents for Part 52 is amended by adding the following entries:

* * * * *

52.227-1 Authorization and Consent.
52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement.
52.227-3 Patent Indemnity.
52.227-4 Patent Indemnity—Construction Contracts.
52.227-5 Waiver of Indemnity.
52.227-6 Royalty Information.
52.227-7 Patents—Notice of Government Licensee.
52.227-8 Reporting of Royalties (Foreign).
52.227-9 Refund of Royalties.
52.227-10 Filing of Patent Applications—Classified Subject Matter.
52.227-11 Patent Rights—Retention by the Contractor (Short Form).
52.227-12 Patent Rights—Retention by the Contractor (Long Form).
52.227-13 Patent Rights—Acquisition by the Government.

* * * * *

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

18. The titles and text of subsections 52.222-40 through 52.222-44 are removed and reserved.

19. In paragraph (b) of the contract clause at subsection 52.225-9, the last sentence is revised to read as follows:

52.225-9 Buy American Act—Trade Agreements Act—Balance of Payments Program.

* * * * *

(b) * * * Contractors may not supply a foreign end product with a total value of $161,000 or more unless the foreign end product is a designated country end product (see FAR 25.401), or unless a waiver is granted under section 302 of the Trade Agreements Act of 1979 (see FAR 25.402(b)).

* * * * *

52.227 [Removed]

20. Section 52.227 [Reserved] is removed.

21. Subsections 52.227-1 through 52.227-13 are added to read as follows:

52.227-1 Authorization and Consent.

As prescribed at 27.201-2(a), insert the following clause:

AUTHORIZATION AND CONSENT
(APR 1984)

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed $25,000; however, omission of this clause from any subcontract, under or over $25,000, does not affect this authorization and consent.

(End of clause) (R 7-103.22 1961 JAN)

Alternate I (APR 1984). The following is substituted for paragraph (a) of the clause:

(a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.

(R 7-302.21 1964 MAR)

Alternate II (APR 1984). The following is substituted for paragraph (a) of the clause:

(a) The Government authorizes and consents to all use and manufacture in the performance of any order at any tier or subcontract at any tier placed under this contract for communication services and facilities for which rates, charges, and tariffs are *not* established by a government regulatory body, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the contractor or a subcontractor with specifications or written provisions forming a part of this contract or with specific written instructions given by the Contracting

Officer directing the manner of performance.

(R 7-1702.5(a) 1971 APR)

52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement.

As prescribed at 27.202-2, insert the following clause:

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (APR 1984)

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) The Contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the dollar amount set forth in 13.000 of the Federal Acquisition Regulation (FAR).

(End of clause) (R 7-103.23 1965 JAN)

52.227-3 Patent Indemnity.

Insert the following clause as prescribed at 27.203-1(b), 27.203-2(a), or 27.203-4(a)(2)as applicable:

PATENT INDEMNITY (APR 1984)

(a) The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.

(b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to (1) an infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor, (2) an infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or (3) a claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

(End of clause) (R 7-104.5 1975 JUN)

Alternate I (APR 1984). The following paragraph (c) is added to the clause:

(c) This patent indemnification shall not apply to the following items:

.....

[*Contracting Officer list and/or identify the items to be excluded from this indemnity*]

(R 7-104.5(a) 1964 SEP)

Alternate II (APR 1984). The following paragraph (c) is added to the clause:

(a) This patent indemnification shall cover the following items:.....

[*List and/or identify the items to be included under this indemnity*] (R 7-104.5(a) 1964 SEP)

Alternate III (APR 1984). The following paragraph is added to the clause:

( ) As to subcontracts at any tier for communication service, this clause shall apply only to individual communication service authorizations over $5,000 issued under this contract and covering those communications services and facilities (1) that are or have been sold or offered for sale by the Contractor to the public, (2) that can be provided over commercially available equipment, or (3) that involve relatively minor modifications.

(R 7-1701.10 1971 APR)

52.227-4 Patent Indemnity—Construction Contracts.

As prescribed at 27.203-5, insert the following clause:

PATENT INDEMNITY—CONSTRUCTION CONTRACTS (APR 1984)

Except as otherwise provided, the Contractor agrees to indemnify the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of performing this contract or out of the use or disposal by or for the account of the Government of supplies furnished or work performed under this contract.

(End of clause) (R 7-602.16 1964 JUN)

Alternate I (APR 1984) Designate the first paragraph as paragraph(a) and add the following to the basic clause as paragraph (b):

(b) This patent indemnification shall not apply to the following items:

[*Contracting Officer specifically identify the item to be excluded*]

(R 7-602.16(b) 1966 APR)

NOTE: Exclusion from indemnity of specified, identified patents, as distinguished from items, is the exclusive prerogative of the agency head or designee (See 27.203-6).

52.227-5 Waiver of Indemnity.

As prescribed at 27.203-6, insert the following clause:

WAIVER OF INDEMNITY (APR 1984)

Any provision or clause of this contract to the contrary notwithstanding, the Government hereby authorizes and consents to the use and manufacture, solely in performing this contract, of any invention covered by the United States patents identified below and waives indemnification by the Contractor with respect to such patents:

.....

.....

[*Contracting Officer identify the patents by number or by other means if more appropriate*].

(End of clause) (AV 7-104.5(b) 1955 JAN)

52.227-6 Royalty Information.

As prescribed at 27.204-2, insert the following provision:

ROYALTY INFORMATION (APR 1984)

(a) *Cost or charges for royalties.* When the response to this solicitation contains costs or charges for royalties totaling more than $250, the following information shall be included in the response relating to each separate item of royalty or license fee:

(1) Name and address of licensor.

(2) Date of license agreement.

(3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable.

(4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable.

(5) Percentage or dollar rate of royalty per unit.

(6) Unit price of contract item.

(7) Number of units.

(8) Total dollar amount of royalties.

(b) *Copies of current licenses.* In addition, if specifically requested by the Contracting Officer before execution of the contract, the offeror shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents.

(End of provision) (R 7-2003.42 1961 AUG)

Alternate I. (APR 1984) Substitute the following for the introductory portion of paragraph (a) of the basic clause:

When the response to this solicitation covers charges for special construction or special assembly that contain costs or charges for royalties totaling more than $250, the following information shall be included in the response relating to each separate item of royalty or license fee:

(R 7-1710.12)

52.227-7 Patents—Notice of Government Licensee.

As prescribed at 27.204-3(c), insert the following provision:

PATENTS—NOTICE OF GOVERNMENT LICENSEE (APR 1984)

The Government is obligated to pay a royalty applicable to the proposed acquisition because of a license agreement between the Government and the patent owner. The patent number is ..... [*Contracting Officer fill in*], and the royalty rate is ..... [*Contracting Officer fill in*]. If the offeror is the owner of, or a licensee under, the patent, indicate below:

( ) Owner ( ) Licensee

If an offeror does not indicate that it is the owner or a licensee of the patent, its offer will be evaluated by adding thereto an amount equal to the royalty.

(End of provision) (R 7-2003.15 1974 APR)

52.227-8 Reporting of Royalties (Foreign).

As prescribed at 27.204-4, insert the following clause:

REPORTING OF ROYALTIES (FOREIGN) (APR 1984)

(a) If this contract is in an amount that exceeds 50,000 United States dollars, the Contractor shall report in writing to the Contracting Officer while performing this contract the amount of royalties paid or to be paid by the Contractor directly to others in performing this contract. The Contractor shall also (1) furnish in writing any additional information relating to such royalties as may be requested by the Contracting Officer and (2) insert a provision similar to this clause in any subcontract at any tier that involves an amount in excess of the equivalent of 50,000 United States dollars.

(b) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like for the use of or for rights in patents or patent applications.

(End of clause) (R 7-104.8 1966 OCT)

52.227-9 Refund of Royalties.

As prescribed at 27.206-2, insert the following clause. In solicitations and contracts with an incentive fee arrangement, change "price" to "target cost and target profit" wherever it appears.

REFUND OF ROYALTIES (APR 1984)

(a) The contract price includes certain amounts for royalties payable by the Contractor or subcontractors or both, which amounts have been reported to the Contracting Officer.

(b) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this contract or any subcontract hereunder.

(c) The Contractor shall furnish to the Contracting Officer, before final payment under this contract, a statement of royalties paid or required to be paid in connection with performing this contract and subcontracts hereunder together with the reasons.

(d) The Contractor will be compensated for royalties reported under paragraph (c) above, only to the extent that such royalties were included in the contract price and are determined by the Contracting Officer to be properly chargeable to the Government and allocable to the contract. To the extent that any royalties that are included in the contract price are not in fact paid by the Contractor or are determined by the Contracting Officer not to be properly chargeable to the Government and allocable to the contract, the contract price shall be reduced. Repayment or credit to the Government shall be made as the Contracting Officer directs.

(e) If, at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of the royalties included in the final contract price as adjusted pursuant to paragraph (d) above, the Contractor shall promptly notify the Contracting Officer of that fact and shall reimburse the Government in a corresponding amount.

(f) The substance of this clause, including this paragraph (f), shall be included in any subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds $250.

(End of clause) (V 7-104.8(b) 1968 FEB)

52.227-10 Filing of Patent Applications—Classified Subject Matter.

As prescribed at 27.207-2, insert the following clause:

FILING OF PATENT APPLICATIONS—CLASSIFIED SUBJECT MATTER (APR 1984)

(a) Before filing or causing to be filed a patent application in the United States disclosing any subject matter of this contract classified "Secret" or higher, the Contractor shall, citing the 30-day provision below, transmit the proposed application to the Contracting Officer. The Government shall determine whether, for reasons of national security, the application should be placed under an order of secrecy, sealed in accordance with the provision of 35 U.S.C. 181-188, or the issuance of a patent otherwise delayed under pertinent United States statutes or regulations. The Contractor shall observe any instructions of the Contracting Officer regarding the manner of delivery of the patent application to the United States Patent Office, but the Contractor shall not be denied the right to file the application. If the Contracting Officer shall not have given any such instructions within 30 days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

(b) Before filing a patent application in the United States disclosing any subject matter of this contract classified "Confidential," the Contractor shall furnish to the Contracting Officer a copy of the application for Government determination whether, for reasons of national security, the application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent United States statutes or regulations.

(c) Where the subject matter of this contract is classified for reasons of security, the Contractor shall not file, or cause to be filed, in any country other than in the United States as provided in paragraphs (a) and (b) of this clause, an application or registration for a patent containing any of the subject matter of this contract without first obtaining written approval of the Contracting Officer.

(d) When filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter and shall promptly furnish to the Contracting Officer the serial number, filing date, and name of the country of any such application. When transmitting the application to the United States Patent Office, the Contractor shall by separate letter identify by agency and number the contract or contracts that require security classification markings to be placed on the application.

(e) The Contractor agrees to include, and require the inclusion of, this clause in all subcontracts at any tier that cover or are likely to cover classified subject matter.

(End of clause) (R 7-104.6 1969 DEC)

52.227-11 Patent Rights—Retention by the Contractor (Short Form).

As prescribed at 27.303(a), insert the following clause:

PATENT RIGHTS—RETENTION BY THE CONTRACTOR (SHORT FORM) (APR 1984)

(a) *Definitions.*

"Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

"Subject invention" means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this contract.

"Practical application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

"Made", when used in relation to any invention, means the conception or first actual reduction to practice of such invention.

"Small business firm" means a small domestic business concern as defined at Section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

"Nonprofit organization" means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any domestic nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(b) *Allocation of principal rights.* The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) *Invention disclosure, election of title, and filing of patent applications by Contractor.*

(1) The Contractor shall disclose each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to the Contracting Officer shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the Contracting Officer, the Contractor shall promptly notify the Contracting Officer of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(2) The Contractor shall elect in writing whether or not to retain title to any such invention by notifying the Federal agency within 12 months of disclosure; *provided*, that in any case where publication, on sale, or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period of election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor shall file its initial patent application on an elected invention within 2 years after election or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to the Contracting Officer, election, and filing may, at the discretion of the funding Federal agency, be granted.

(d) *Conditions when the Government may obtain title.* The Contractor shall convey to the Federal agency, upon written request, title to any subject invention—

(1) If the Contractor fails to disclose or elect the subject invention within the times specified in paragraph (c) above, or elects not to retain title (the agency may only request title within 60 days after learning of the Contractor's failure to report or elect within the specified times);

(2) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) above; *provided*, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) above, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country; or

(3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) *Minimum rights to contractor.* (1) The Contractor shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title except if the Contractor fails to disclose the subject invention within the times specified in paragraph (c) above. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of

the funding Federal agency except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in the Federal Property Management Regulations and agency licensing regulations (if any). This license shall not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed 30 days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations (if any) and the Federal Property Management Regulations concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(f) *Contractor action to protect the Government's interest.* (1) The Contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) convey title to the Federal agency when requested under paragraph (d) above, and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) above. The Contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor shall notify the Federal agency of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the contract) awarded by (identify the Federal agency). The Government has certain rights in this invention."

(g) *Subcontracts.* (1) The Contractor shall incude this clause (52.227-11 of the Federal Acquisition Regulation (FAR)), suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or nonprofit organization. The subcontractor shall retain all rights provided for the Contractor in this clause, and the Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to those matters covered by this clause.

(h) *Reporting utilization of subject inventions.* The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceedings undertaken by the agency in accordance with paragraph (j) of this clause. To the extent data or information supplied under this paragraph is considered by the Contractor, its licensee, or assignee to be privileged and confidential and is so marked, the agency agrees that, to the extent permitted by law, it shall not disclose such information to persons outside the Government.

(i) *Preference for United States industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in rights.* (1) The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in FAR 27.304-1(g) to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, the Federal agency has the right to grant such a license itself if the Federal agency determines that—

(i) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(ii) Such action is necessary to alleviate health or safety needs which are not reasonaby satisfied by the Contractor, assignee, or their licensees;

(iii) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(iv) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) *Special provisons for contracts with nonprofit organizations.* If the Contractor is a nonprofit organization, it agrees that—

(1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions and which is not, itself, engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention (provided, that such assignee will be subject to the same provisions as the Contractor);

(2) The Contractor may not grant exclusive licenses under United States patents or patent applications in subject inventions to persons other than small business firms for a period in excess of the earlier of—

(i) Five years from first commercial sale or use of the invention; or

(ii) Eight years from the date of the exclusive license excepting that time before regulatory agencies necessary to obtain premarket clearance, unless on a case-by-case basis, the Federal agency approves a longer exclusive license. If exclusive field-of-use licenses are granted, commercial sale or use in one field of use will not be deemed commercial sale or use as to other fields of use, and a first commercial sale or use with respect to a product of the invention will not be deemed to end the exclusive period to different subsequent products covered by the invention;

(3) The Contractor shall share royalties collected on a subject invention with the inventor; and

(4) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education.

(l) *Communications.* Reserved.

(End of clause) (R 7-302.23(h) 1981 JUL)

Alternate I (APR 1984). Add the following sentence at the end of paragraph (b) of the basic clause:

The license shall include the right of the Government to sublicense foreign governments and international organizations pursuant to the following treaties or international agreements: .....* or pursuant to any future treaties or agreements with foreign governments or international organizations.

[*Contracting Officer complete with the names of applicable existing treaties or international agreements. The above language is not intended to apply to treaties or agreements that are in effect on the date of the award but are not listed.]

(R 7-302.23(b) 1981 JUL)

52.227-12 Patent Rights—Retention by the Contractor (Long Form)

As prescribed at 27.303(b), insert the following clause:

PATENT RIGHTS—RETENTION BY THE CONTRACTOR (LONG FORM) (APR 1984)

(a) *Definitions.*

"Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

"Subject invention" means any invention of the Contractor conceived or first actaully reduced to practice in the performance of work under this contract.

"Practical application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

"Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

"Small business firm" means a domestic small business concern as defined at Section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

"Nonprofit organization" means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any domestic nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(b) *Allocation of principal rights.* The Contractor may elect to retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor elects to retain title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) *Invention disclosure, election of title, and filing of patent applications by Contractor.* (1) The Contractor shall disclose each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or within 6 months after the Contractor becomes aware that a subject invention has been made, whichever is earlier. The disclosure to the Contracting Officer shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the Contracting Officer, the Contractor shall promptly notify the Contracting Officer of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(2) The Contractor shall elect in writing whether or not to retain title to any such invention by notifying the Federal agency at the time of disclosure or within 8 months of disclosure, as to those countries (including the United

States) in which the Contractor will retain title; *provided*, that in any case where publication, on sale, or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period of election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor shall file its initial patent application on an elected invention within 1 year after election or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor shall file patent applications in additional countries (including the European Patent Office and under the Patent Cooperation Treaty) within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to the Contracting Officer, election, and filing may, at the discretion of the funding Federal agency, be granted, and will normally be granted unless the Contracting Officer has reason to believe that a particular extension would prejudice the Government's interest.

(d) *Conditions when the Government may obtain title.* The Contractor shall convey to the Federal agency, upon written request, title to any subject invention—

(1) If the Contractor elects not to retain title to a subject invention;

(2) If the Contractor fails to disclose or elect the subject invention within the times specified in paragraph (c) above (the agency may only request title within 60 days after learning of the Contractor's failure to report or elect within the specified times);

(3) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) above; *provided*, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) above, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country; or

(4) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) *Minimum rights to Contractor.* (1) The Contractor shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title except if the Contractor fails to disclose the subject invention within the times specified in paragraph (c) above. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the funding Federal agency except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in the Federal Property Management Regulations and agency licensing regulations (if any). This license shall not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical applciation in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed 30 days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations and the Federal Property Management Regulations concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(f) *Contractor action to protect the Government's interest.* (1) The Contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) convey title to the Federal agency when requested under paragraph (d) above and subparagraph (n)(2) below, and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) above. The Contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor shall notify the Federal agency of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the contract) awarded by (identify the Federal agency). The Government has certain rights in this invention."

(5) The Contractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and

other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(6) The Contractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on the subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party.

(7) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period and certifying that all subject inventions have been disclosed or that there are no such inventions.

(ii) A final report, within 3 months after completion of the contracted work, listing all subject inventions or certifying that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(8) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and no more frequently than annually, a listing of the subcontracts that have been awarded.

(9) In the event of a refusal by a prospective subcontractor to accept one of the clauses in subparagraph (g)(1) or (2) below, the Contractor (i) shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter and (ii) shall not proceed with such subcontracting without the written authorization of the Contracting Officer.

(10) The Contractor shall provide, upon request, the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and patent number and issue date for any subject invention for which the Contractor has retained title.

(11) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(g) *Subcontracts.* (1) The Contractor shall incude the clause at 52.227-11 of the Federal Acquisition Regulation (FAR), suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or nonprofit organization. The subcontractor shall retain all rights provided for the Contractor in this clause, and the Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The Contractor shall include this clause (FAR 52.227-12) in all other subcontracts, regardless of tier, for experimental, developmental, or research work.

(3) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to those matters covered by this clause.

(h) *Reporting utilization of subject inventions.* The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceedings undertaken by the agency in accordance with paragraph (j) of this clause. To the extent data or information supplied under this paragraph is considered by the Contractor, its licensee or assignee to be privileged and confidential and is so marked, the agency agrees that, to the extent permitted by law, it shall not disclose such information to persons outside the Government.

(i) *Preference for United States industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assigneee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in rights.* The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in FAR 27.304-1(g) to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, the Federal agency has the right to grant such a license itself if the Federal agency determines that—

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees,; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) *Special provisions for contracts with nonprofit organizations.* Reserved.

(l) *Communications.* Reserved.

(m) *Other inventions.* Nothing contained in this clause shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(n) *Examination of records relating to inventions.* (1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintains the procedures required by subparagraphs (f)(2) and (f)(3) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer determines that an inventor has not disclosed a subject invention to the Contractor in accordance with the procedures required by subparagraph (f)(5) of this clause, the Contracting Officer may, within 60 days after the determination, request title in accordance with subparagraphs (d)(2) and (d)(3) of this clause. However, if the Contractor establishes that the failure to disclose did not result from the Contractor's fault or negligence, the Contracting Officer shall not request title.

(3) If the Contracting Officer learns of an unreported Contractor invention which the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to the agency for a determination of ownership rights.

(4) Any examination of records under this paragraph shall be subject to appropriate conditions to protect the confidentiality of the information involved.

(o) *Withholding of payment (this paragraph does not apply to subcontracts).* (1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of the contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to subparagraph (f)(5) above;

(ii) Disclose any subject invention pursuant to subparagraph (c)(1) above;

(iii) Deliver acceptable interim reports pursuant to subdivision (f)(7)(i) above; or

(iv) Provide the information regarding subcontracts pursuant to subparagraph (f)(6) above.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of subject inventions required by subparagraph (c)(1) above, an acceptable final report pursuant to subdivision (f)(7)(ii) above, and all past due confirmatory instruments.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

(End of clause) (R 7-302.23(b) 1981 JUL)

Alternate I (APR 1984). Add the following sentence at the end of paragraph (b) of the basic clause:

The license shall include the right of the Government to sublicense foreign governments and international organizations pursuant to the following treaties or international agreements: .....* or pursuant to any future treaties or agreements with foreign governments or international organizations.

[*Contracting Officer complete with the names of applicable existing treaties or international agreements. The above language is not intended to apply to treaties or agreements that are in effect on the date of the award but are not listed.]

(R 7-302.23(h) 1981 JUL)

52.227-13 Patent Rights—Acquisition by the Government.

As prescribed at 27.303(c), insert the following clause:

PATENT RIGHTS—ACQUISITION BY THE GOVERNMENT (APR 1984)

(a) *Definitions.*

"Invention," as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

"Subject invention," as used in this clause, means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this contract.

"Practical application," as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(b) *Allocations of principal rights.* (1) *Assignment to the Government.* The Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the Contractor under subparagraph (b)(2) and paragraph (d) below.

(2) *Greater rights determinations* (i) The Contractor, or an employee-inventor after consultation with the Contractor, may retain greater rights than the nonexclusive license provided in paragraph (d) below, in accordance with the procedures of paragraph 27.304-1(a) of the Federal Acquisition Regulation (FAR). A request for a determination of whether the Contractor or the employee-inventor is entitled to retain such greater rights must be submitted to the Head of the Contracting Agency or designee at the time of the first disclosure of the invention pursuant to subparagraph (e)(2) below, or not later than 8 months thereafter, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. Each determination of greater rights under this contract normally shall be subject to paragraph (c) below, and to the reservations and conditions deemed to be appropriate by the Head of the Contracting Agency or designee.

(ii) Upon request, the Contractor shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and patent number and issue date for any subject invention in any country for which the Contractor has retained title.

(iii) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(c) *Minimum rights acquired by the Government.* (1) With respect to each subject invention to which the

Contractor retains principal or exclusive rights, the Contractor agrees as follows:

(i) The Contractor hereby grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency).

(ii) The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in FAR 27.304-1(g) to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, the Federal agency has the right to grant such a license itself if the Federal agency determines that—

(A) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(B) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(C) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(D) Such action is necessary because the agreement required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(iii) The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify.. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceedings undertaken by the agency in accordance with subdivision (ii) above. To the extent data or information supplied under this section is considered by the Contractor, its licensee, or assignee to be privileged and confidential and is so marked, the agency agrees that, to the extent permitted by law, it will not disclose such information to persons outside the Government.

(iv) The Contractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party.

(v) The Contractor agrees to provide for the Government's paid-up license pursuant to subdivision (i) above in any instrument transferring rights in a subject invention and to provide for the granting of licenses as required by subdivision (ii) above, and for the reporting of utilization information as required by subdivision (iii) above, whenever the instrument transfers principal or exclusive rights in a subject invention.

(2) Nothing contained in this paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(d) *Minimum rights to the Contractor.* (1) The Contractor is hereby granted a revocable nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Contractor fails to disclose the subject invention within the times specified in subparagraph (e)(2) below. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the funding Federal agency except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in the Federal Property Management Regulations and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations and the Federal Property Management Regulations concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(4) When the Government has the right to receive title, and does not elect to secure a patent in a foreign country, the Contractor may elect to retain such rights in any foreign country in which the Contractor elects to secure a patent, subject to the Government's rights in subparagraph (c)(1) above.

(e) *Invention identification, disclosures, and reports.* (1) The Contractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall incude the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request,

the Contractor shall furnish the Contracting Officer a description of such procedures for evalution and for determination as to their effectiveness.

(2) The Contractor shall disclose each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within 6 months after the Contractor becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor shall promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(3) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period, and certifying that all subject inventions have been disclosed (or that there are not such inventions) and that the procedures required by subparagraph (e)(1) above have been followed.

(ii) A final report, within 3 months after completion of the contracted work, listing all subject inventions or certifying that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(4) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (2) above.

(5) The Contractor agrees subject to FAR 27.302(i) that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) *Examination of records relating to inventions.* (1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintains the procedures required by subparagraphs (e)(1) and (4) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention which the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) *Withholding of payment (this paragraph does not apply to subcontracts).* (1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to subparagraph (e)(1) above;

(ii) Disclose any subject invention pursuant to subparagraph (e)(2) above;

(iii) Deliver acceptable interim reports pursuant to subdivision (e)(3)(i) above; or

(iv) Provide the information regarding subcontracts pursuant to subparagraph (h)(4) below.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of subject inventions required by subparagraph (e)(2) above, and acceptable final report pursuant to subdivision (e)(3)(ii) above, and all past due confirmatory instruments.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) *Subcontracts.* (1) The Contractor shall include this clause (suitably modified to identify the parties) in all subcontracts, regardless of tier, for experimental, developmental, or research work. The subcontractor shall retain all rights provided for the Contractor in this clause, and the Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor—

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(3) In the case of subcontracts at any tier, the agency, subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to those matters covered by this clause.

(4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract,

and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(i) *Preference for United States industry.* Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Government upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(End of clause) (R 7-302.23(a) 1981 JULY)

Alternate I (APR 1984). Add the following sentence at the end of subdivision (c)(1)(i) of the basic clause:

The license will include the right of the Government to sublicense foreign governments and international organizations pursuant to the following treaties or international agreements: .....* or pursuant to any future treaties or agreements with foreign governments or international organizations.

[*Contracting Officer complete with the names of applicable existing treaties or international agreements. The above language is not intended to apply to treaties or agreements that are in effect on the date of the award but are not listed.]

(R 7-302.23(a) 1981 JUL)

PART 53—FORMS

53.203 [Amended]

22. In section 53.203, the reference to "DJ–1500" is removed from the title, and paragraph (b) is removed and reserved.

53.222 [Amended]

23. In section 53.222, the references to "98, 98a" are removed from the title, paragraph (a) is removed and reserved, and paragraph (b) is amended by removing "and 22.1009".

53.303 [Amended]

24. Section 53.303 is amended by removing Form DJ–1500, Identical Bid Report For Procurement.

Appendix A

Note.—The following appendix will not appear in the Code of Federal Regulations.

BILLING CODE 6820-61-M

OFFICE OF THE UNDER SECRETARY OF DEFENSE

WASHINGTON D.C. 20301

RESEARCH AND ENGINEERING

21 FEB 1984

Honorable Donald E. Sowle
Administrator
Office of Federal Procurement Policy
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Sowle:

We are enclosing herewith a copy of the Memorandum of Understanding for FAR Maintenance executed by James T. Brannan, Director, Defense Acquisition Regulatory Council and William B. Ferguson, Chairman, Civilain Agency Acquisition Council and concurred in by the appropriate executives of DoD, GSA, and NASA. This memorandum provides a uniform and orderly basis for the processing of FAR cases and orderly maintenance of the FAR.

Sincerely,

MARY ANN GILLEECE
Deputy Under Secretary
(Acquisition Management)

ALLAN W. BERES
Assistant Administrator
for Acquisition Policy

S. J. EVANS
Assistant Administrator
for Procurement

MEMORANDUM OF AGREEMENT FOR FAR MAINTENANCE

RECOMMENDATIONS FOR FAR CHANGES

- Military Services, Defense Agencies, other components of the Department of Defense, and NASA shall submit recommendations for change to the DAR Council.
- Other Executive agencies governed by the FAR shall submit recommendations for change to the CAA Council.
- The others (e.g. the public and agencies not covered by the FAR) may submit recommendations for change to either Council.
  - -- Matters that may affect defense and civilian acquisition equally should be submitted to the FAR Secretariat who will refer it to the cognizant Council for consideration of the establishment of a FAR Case in accordance with the attached listing.
  - -- Matters primarily involving civilian agency aquisition may be submitted to the CAA Council.
  - -- Matters primarily involving defense acquisition may be submitted to the DAR Council.

ESTABLISHING A FAR CASE

- Either Council receiving a recommendation for a change may establish a FAR case after receiving concurrence of the other Council.
- A Council establishing a FAR case shall obtain a FAR case number from the FAR Secretariat. The FAR Secretariat shall examine the list of open FAR cases and advise whether an existing FAR case covers the same subject matter.
- A Council receiving a recommendation for change pertaining to the subject matter of an open FAR case shall consult with the other Council before establishing a FAR case; if appropriate, the new recommendation may be incorporated into the existing FAR case and may be transferred to the other Council for processing.
- A Council establishing a FAR case shall give the other Council an opportunity to provide a representative to work on the development of the case.
- A Council receiving a recommendation for change shall communicate, as necessary, with the proponent to obtain sufficient information to establish or develop the FAR case.

- A Council receiving a recommendation for change which it believes would more appropriately be processed by the other Council may request the other Council to establish it as a FAR case.

PROCESSING A FAR CASE

- The Council processing a FAR case shall keep the other Council advised of any significant change in scope or direction from the original recommendation for change.

- The Council processing a FAR case shall periodically keep the FAR Secretariat advised of the current status of the case.

- The Council processing a FAR case shall obtain the concurrence of the other Council in any proposed resolution, including rejection of the recommendation.

- The Council processing a FAR case shall respond to information requests concerning the case.

- The Council providing final concurrence shall forward the approved coverage to the FAR Secretariat for publication.

- The FAR Secretariat shall not publish a change or notice of proposed change in the Federal Register until both Councils concur.

RESOLVING DISAGREEMENTS

- When the two Councils cannot agree on the resolution of a FAR case, the matter shall be forwarded to the Deputy Under Secretary of Defense for Acquisition Management, DoD; the Assistant Administrator for Acquisition Policy, GSA; and the Assistant Administrator for Procurement, NASA for resolution. In the event an agreement cannot be reached within 30 days for reasons pertaining to substantive differences, the matter shall be deemed a disagreement in accordance with Public Law 98-191.

JAMES T. BRANNAN
Director
Defense Acquisition
Regulatory Council

WILLIAM B. FERGUSON
Chairman
Civilian Agency
Acquisition Council

CONCUR:

DoD GSA NASA

FAR APPORTIONMENT LISTING

PART	ASSIGNMENT
1	Both
2	As applicable
3	CAAC
4	CAAC except 4.4
5	CAAC
6	Reserved
7	DARC
8	CAAC except 8.3 (Both)
9	Both
10	DARC
11	DARC
12	CAAC
13	Both
14	CAAC
15	DARC
16	DARC
17	DARC except 17.6
18	Reserved
19	DARC
20	CAAC
21	Reserved
22	CAAC
23	CAAC
24	CAAC
25	DARC
26	Reserved
27	Both
28	CAAC except 28.3
29	DARC
30	DARC
31	DARC
32	DARC
33	Both
34	DARC
35	DARC
36	Both
37	CAAC
38	CAAC
39	CAAC
40	Reserved
41	Reserved
42	DARC
43	CAAC
44	DARC
45	DARC
46	DARC
47	DARC
48	DARC
49	DARC
50	DARC
51	CAAC
52	As applicable
53	As applicable

This list is subject to modification by agreement of both Councils.

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11	Acquisition and Distribution of Commercial Products
15	Contracting by Negotiation
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19	Small Business and Small Disadvantaged Business Concerns
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53	Forms

This list is subject to modification by agreement of both Councils.

* These parts have a shared community of interest and a case will be established on a case-by-case basis in accordance with procedures established in this Memorandum of Agreement.

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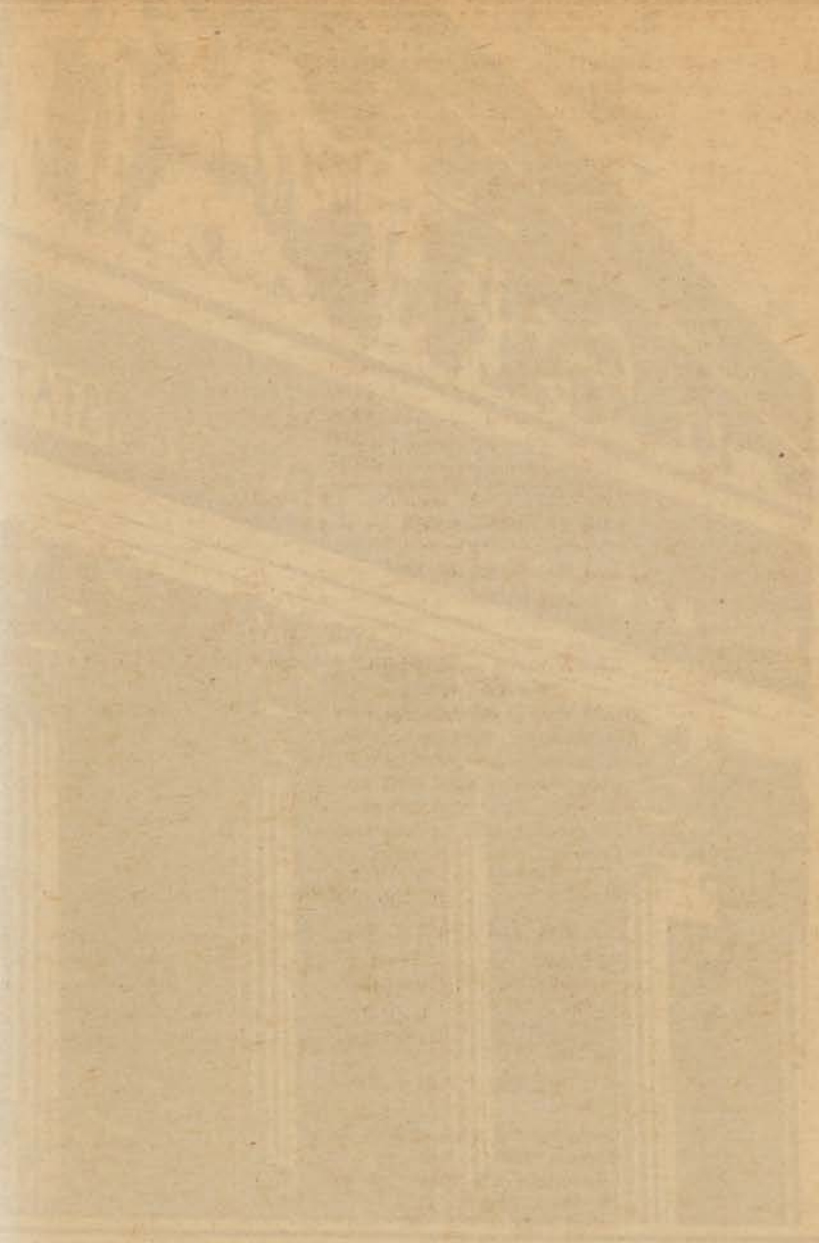
H.J. Res. 454 / Pub. L. 98-245

Honoring the contribution of blacks to American independence. (Mar. 27, 1984; 98 Stat. 111) Price: $1.50

S.J. Res. 250 / Pub. L. 98-246

Declaring the week of May 7 through May 13, 1984, as "National Photo Week". (Mar. 27, 1984; 98 Stat. 113) Price: $1.50



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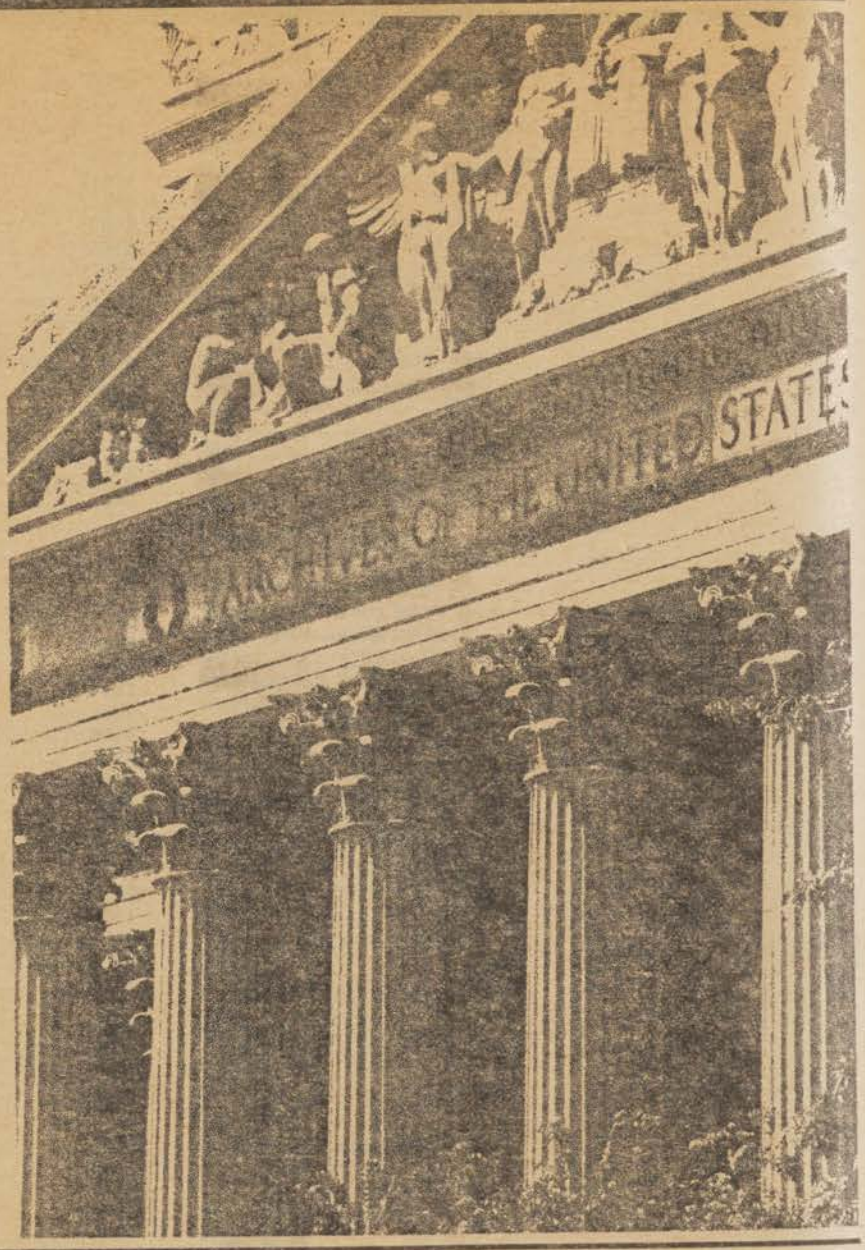

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