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U.S. GOVERNMENT
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14

10-1-84
Vol. 49 No. 191
Pages 38525-38926

federal register

Monday
October 1, 1984

465-623
G.S.A.

Selected Subjects

Administrative Practice and Procedure
Interstate Commerce Commission

Archives and Records
General Accounting Office

Authority Delegations (Government Agencies)
Transportation Department

Aviation Safety
Federal Aviation Administration

Bridges
Coast Guard

Endangered and Threatened Species
National Oceanic and Atmospheric Administration

Fisheries
National Oceanic and Atmospheric Administration

Gift Taxes
Internal Revenue Service

Government Procurement
Defense Department
General Services Administration
National Aeronautics and Space Administration

Grant Programs—Agriculture
Agriculture Department

Hazardous Waste
Environmental Protection Agency

CONTINUED INSIDE

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

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

Selected Subjects

Income Taxes
Internal Revenue Service

Loan Programs—Agriculture
Commodity Credit Corporation

Marine Safety
Coast Guard

Maritime Carriers
Federal Maritime Commission

Marketing Agreements
Agricultural Marketing Service

Medical Devices
Food and Drug Administration

Motor Carriers
Interstate Commerce Commission

Organization and Functions (Government Agencies)
Animal and Plant Health Inspection Service

Pipelines
Interstate Commerce Commission

Postal Service
Postal Service

Prisoners
Prisons Bureau

Privacy
Federal Mine Safety and Health Review Commission

Radio Broadcasting
Federal Communications Commission

Savings and Loan Associations
Federal Home Loan Bank Board

Surface Mining
Surface Mining Reclamation and Enforcement Office

Television Broadcasting
Federal Communications Commission

Vessels
Panama Canal Commission

Vocational Rehabilitation
Education Department

Water Pollution Control
Environmental Protection Agency

Contents

Federal Register
Vol. 49, No. 191
Monday, October 1, 1984

The President
EXECUTIVE ORDERS
38525 Hazardous duty incentive pay (EO 12488)

Executive Agencies

Agency for International Development
NOTICES
Authority delegations:
38718 Regional Assistant Administrators et al.; source, origin and nationality for procurement
Meetings:
38718 International Food and Agricultural Development Board

Agricultural Marketing Service
RULES
38530 Almonds grown in California

Agriculture Department
See also Agricultural Marketing Service; Animal and Plant Health Inspection Service; Commodity Credit Corporation; Federal Grain Inspection Service; Soil Conservation Service.
RULES
38533 Grants and cooperative agreements with nonprofit organizations; lobbying provisions

Air Force Department
NOTICES
Meetings:
38694 Scientific Advisory Board

Animal and Plant Health Inspection Service
RULES
Organization, functions, and authority delegations:
38529 Management and Budget, Deputy Administrator

Arts and Humanities; National Foundation
NOTICES
Meetings:
38720 Humanities Panel

Coast Guard
PROPOSED RULES
Drawbridge operations:
38656 Louisiana
38672 Fire protection regulations; advance notice
Regattas and marine parades:
38655 Lake Havasu Classic
38654 Pompano Beach 22nd Annual Christmas Boat Parade
NOTICES
Meetings:
38781 Lower Mississippi River Waterway Safety Advisory Committee

Commerce Department
See also International Trade Administration; National Oceanic and Atmospheric Administration.
NOTICES
Procurement:
38694 Commercial or industrial activities, performance; review schedule (OMB A-76 implementation) (2 documents)

Commodity Credit Corporation
RULES
Loan and purchase programs:
38532 Sugar beets and sugarcane

Defense Department
See also Air Force Department.
RULES
38549, 38599, 38605 Defense Acquisition Regulations; amendments (DAC 84-1, 84-2, 84-3) (3 documents)
PROPOSED RULES
Federal Acquisition Regulation (FAR):
38680 Competition in contracting requirements

Education Department
PROPOSED RULES
Special education and rehabilitative services:
38656 Rehabilitation Amendments of 1984; implementation
NOTICES
Senior Executive Service:
38695 Performance Review Board; membership

Energy Department
See Federal Energy Regulatory Commission.

Environmental Protection Agency
PROPOSED RULES
Hazardous waste:
38786 Ground-water testing and monitoring activities and mandatory use of test method for evaluating solid waste
Hazardous waste program authorizations:
38671 New Hampshire
Water pollution control; National pollutant discharge elimination system:
38812 New NPDES permits and non-process wastewater dischargers; draft application forms
NOTICES
38702 Agency information collection activities under OMB review
Meetings:
38703 Science Advisory Board
Toxic and hazardous substances control:
38703 Premanufacture notices review period extensions

Federal Aviation Administration
RULES
Airworthiness directives:
38536 Alexander Schleicher
38534 Boeing
38536 British Aerospace
38537 Gulfstream Aerospace Corp.
38538 Control zones
38539 Control zones and transition areas
38539 Transition areas

PROPOSED RULES
Airworthiness directives:
38643 McDonnell Douglas
38644 Transition areas

Federal Communications Commission
RULES
Radio stations; table of assignments:
38544 Arkansas
38545, 38548 California (2 documents)
38545 Colorado
38546 Kansas
38544 Michigan
38546 Texas
38547 Utah
Television stations; table of assignments:
38548 California
PROPOSED RULES
Radio stations; table of assignments:
38674 New York
Television stations; table of assignments:
38676, 38678 California (2 documents)
38673 Colorado and New Mexico
38679 Nevada

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
38703 New York
Radiological emergency; State plans:
38704 South Carolina and North Carolina

Federal Energy Regulatory Commission
RULES
Oil pipelines:
38540 Transfer of regulations from ICC; effective date change
NOTICES
Hearings, etc.:
38695 Appalachian Power Co., et al.
38702 Modesto Irrigation District (2 documents)

Federal Grain Inspection Service
NOTICES
Agency designation actions:
38682 California and Washington
38683 Illinois, Indiana, and Wyoming
38682 Nebraska and New York

Federal Home Loan Bank Board
RULES
Federal Savings and Loan Insurance Corporation:
38924 Brokered deposits; limitations on deposit insurance; effective date deferred; final rule and request for comments
38924 Brokered deposits; limitations on institutions with low net worth; interim rule extended and request for comments

Federal Maritime Commission
RULES
38544 Freight forwarders, independent ocean; licensing; correction
38836 Maritime carriers and related activities in domestic offshore commerce; technical changes
Shipping Act of 1984:
38544 Marine terminal operations and passenger vessels; correction
NOTICES
38704 Agreements filed, etc.

Federal Mine Safety and Health Review Commission
RULES
38542 Privacy Act; implementation
NOTICES
38782 Meetings; Sunshine Act
38705 Privacy Act, systems of records

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
38705 Bancorp Hawaii Inc.
38706 FNB Financial Services Corp. et al.
38782 Meetings; Sunshine Act (2 documents)

Fish and Wildlife Service
RULES
Endangered and threatened species:
38900 Listing, delisting, and reclassification of species, and critical habitat designations
Hunting:
38642 Refuge specific hunting regulations; correction

Food and Drug Administration
PROPOSED RULES
Medical devices:
38645 Exemption from preemption of State and local requirements for hearing aids; Hawaii
38646 Exemption from preemption of State and local requirements for hearing aids; Hawaii; hearing
NOTICES
Animal drugs, feeds, and related products:
38706 Drug stability, liquid feed supplements; draft guidelines; availability and inquiry

General Accounting Office
RULES
38527 Public disclosure of GAO records

General Services Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
38680 Competition in contracting requirements

Health and Human Services Department
See Food and Drug Administration; National Institutes of Health; Public Health Service.

Indian Affairs Bureau
NOTICES
38714 Agency information collection activities under OMB review

Interior Department
See also Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau; Minerals Management Service; National Park Service; Surface Mining Reclamation and Enforcement Office.
NOTICES
38712 Privacy Act; systems of records

Internal Revenue Service
RULES
Estate and gift taxes:
38540 Annual gift tax exclusion and unlimited exclusion for medical and educational transfers
Income taxes:
38920 Commodities and options dealers; special election to be S corporation under Tax Reform Act of 1984; temporary

International Development Cooperation Agency
See Agency for International Development.

International Trade Administration
NOTICES
Antidumping:
38687 Titanium sponge from Japan
38684 Titanium sponge from United Kingdom
Meetings:
38684 Electronic Instrumentation Technical Advisory Committee

Interstate Commerce Commission
RULES
Practice and procedure:
38613 Non-attorney practitioners' examinations; schedule change
Tariffs and schedules:
39614 Oil pipelines; regulations transferred to FERC; effective date change
39614 Publication, posting and filing for all carriers; consolidation and revision

Justice Assistance, Research, and Statistics Office
NOTICES
38719 Incarcerated Mariel-Cubans, State reimbursement program

Justice Department
See also Justice Assistance, Research, and Statistics Office; Prisons Bureau.
NOTICES
Pollution control; consent judgments:
38718 District of Columbia

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
38714 Coal preference right lease application, Colorado
Public lands for State indemnity selection applications:
38715 Colorado
Sale of public lands:
38715 Oregon

Minerals Management Service
NOTICES
Outer Continental Shelf; development operations coordination:
38717 Superior Oil Co.

National Aeronautics and Space Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
38680 Competition in contracting requirements
NOTICES
Meetings:
38720 Space and Earth Science Advisory Committee

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards, etc.:
38610 Tire standards and regulations; technical amendments
PROPOSED RULES
38648 National Driver Register; procedures for transition to new automated system

National Institutes of Health
NOTICES
Meetings:
38707 Dental Research Programs Advisory Committee
38708, 38709 National Cancer Institute (2 documents)
38708, 38709 National Heart, Lung, and Blood Institute (2 documents)
38709 National Institute of Allergy and Infectious Diseases
38707 National Institute of Child Health and Human Development
38709 National Institute of Environmental Health Sciences
38708 National Institute on Aging
38707 Research Resources National Advisory Council

National Oceanic and Atmospheric Administration
RULES
Endangered and threatened species:
38900 Listing, delisting, and reclassification of species, and critical habitat designations
Tuna, Atlantic fisheries:
38641, 38642 Bluefin tuna (2 documents)
NOTICES
Fishery conservation and management:
38693 Foreign fishing permit applications
Meetings:
38693 Marine Fisheries Advisory Committee
38692 Mid-Atlantic Fishery Management Council (2 documents)
38692 New England Fishery Management Council

National Park Service
NOTICES
Environmental statements; availability, etc.:
38717 Lower Sheenjek Wild and Scenic River Study, Alaska
38718 Squirrel Wild and Scenic River Study, Alaska

National Science Foundation
NOTICES
Meetings:
38721 Regulatory Biology Advisory Panel

Nuclear Regulatory Commission
RULES
Practice rules, and production and utilization facilities, domestic licensing:
38534 Financial qualifications requirements for electric utilities applying for operating licenses; elimination of review; correction
PROPOSED RULES
Rulemaking petitions:
38643 Edison Electric Institute et al.; correction

NOTICES
38723 Agency information collection activities under OMB review
Applications, etc.:
38722 General Public Utilities Nuclear Corp.
38722 Houston Lighting & Power Co., et al.
38722 Philadelphia Electric Co.
Environmental statements, availability, etc.:
38721 Connecticut Yankee Atomic Power Co.
38722 Tuskegee Institute
38723 Regulatory guides; issuance, availability, and withdrawal

Panama Canal Commission
PROPOSED RULES
Shipping and navigation:
38660 Vessels, inspection and registration; metric standards for motorboat equipment

Personnel Management Office
NOTICES
Excepted service:
38724 Schedules A, B, and C; positions placed or revoked; consolidated list

Postal Rate Commission
NOTICES
Post office closings; petitions for appeal:
38761 Wisconsin

Postal Service
RULES
International Mail Manual:
38543 New Zealand; Express Mail Service
PROPOSED RULES
Domestic Mail Manual:
38661 Business Reply Mail
NOTICES
38762 International postal rates and fees

Prisons Bureau
RULES
Inmate control, custody, and care, etc.:
38914 Inmate work and performance pay program

Public Health Service
NOTICES
38710 Privacy Act; systems of records

Securities and Exchange Commission
NOTICES
Hearings, etc.:
38778 Middle South Utilities, Inc., et al.
38779 New England Power Co. (2 documents)
Self-regulatory organizations; proposed rule changes:
38778 Boston Stock Exchange

Small Business Administration
NOTICES
Disaster loan areas:
38780 North Carolina
38780 Interest rates; quarterly determinations

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
38684 Wolf-Creek Highlands Watershed, Colorado

State Department
NOTICES
38780 Passports, foreign; validity; Algeria et al.

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program submission; various States:
38874 Tennessee
PROPOSED RULES
Permanent program submission; various States:
38653 Colorado

Tennessee Valley Authority
NOTICES
38782 Meetings; Sunshine Act

Transportation Department
See also Coast Guard; Federal Aviation Administration; National Highway Traffic Safety Administration.
RULES
Organization, functions, and authority delegations:
38609 Federal Highway Administrator; Surface Transportation Assistance Act of 1978, delegation clarification

Treasury Department
See Internal Revenue Service.

Separate Parts in This Issue

Part II
38786 Environmental Protection Agency

Part III
38812 Environmental Protection Agency

Part IV
38836 Federal Maritime Commission

Part V
38874 Department of the Interior, Office of Surface Mining Reclamation and Enforcement

Part VI
38900 Department of the Interior, Fish and Wildlife Service and Department of Commerce, National Oceanic and Atmospheric Administration

Part VII
38914 Department of Justice, Bureau of Prisons

Part VIII
38920 Department of the Treasury, Internal Revenue Service

Part IX
38924 Federal Home Loan Bank Board

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR
Executive Orders:
11157 (Amended by EO 12488)....38525
12488....38525

4 CFR
81....38527

7 CFR
371....38529
981....38530
1435....38532
3015....38533

10 CFR
2....38534
50....38534
Proposed Rules:
20....38643

12 CFR
563....38924
564....38924

14 CFR
39 (4 documents)....38534–38537
71 (3 documents)....38538, 38539
Proposed Rules:
39....38643
71....38644

18 CFR
341....38540
342....38540
343....38540
344....38540
345....38540
346....38540
347....38540

21 CFR
Proposed Rules:
808 (2 documents)....38645, 38646

23 CFR
Proposed Rules:
Ch. III....38648

26 CFR
18....38920
25....38540

28 CFR
545....38914

29 CFR
2705....38542

30 CFR
942....38874
Proposed Rules:
906....38653

33 CFR
Proposed Rules:
100 (2 documents)....38654, 38655
117....38656

34 CFR
Proposed Rules:
361....38656
362....38656
366....38656
369....38656
373....38656
379....38656
385....38656
386....38656
389....38656

35 CFR
Proposed Rules:
121....38660

39 CFR
10....38543
Proposed Rules:
111....38661

40 CFR
Proposed Rules:
122....38812
260....38786
261....38786
264....38786
265....38786
270....38786
271 (2 documents)....38671, 38786

46 CFR
510....38544
515....38544
550....38836
552....38836
553....38836
555....38836
558....38836
559....38836
560....38836
561....38836
562....38836
564....38836
566....38836
568....38836
569....38836
Proposed Rules:
Subchapter D (30–40)....38672
Subchapter H (70–89)....38672
Subchapter I (90–106)....38672

47 CFR
73 (9 documents)....38544–38548
Proposed Rules:
73 (5 documents)....38673–38679

48 CFR
Ch. 2 (3 documents)....38549, 38599, 38605
Proposed Rules:
5....38680
6....38680
14....38680
15....38680

49 CFR
1....38609
571....38610
574....38610
575....38610
1103....38613
1300 (2 documents)....38540, 38614
1303....38614
1304....38614
1305....38614
1306....38614
1307....38614
1308....38614
1309....38614
1310....38614
1312....38614

50 CFR
32....38642
285 (2 documents)....38641, 38642
424....38900

Federal Register
Vol. 49, No. 191
Monday, October 1, 1984

Presidential Documents

Title 3—

The President

Executive Order 12488 of September 27, 1984

Amending Executive Order No. 11157 as It Relates to Incentive Pay for Hazardous Duty

By the authority vested in me as President of the United States of America by Public Law 98–94 and Section 301(a) of Title 37 of the United States Code, and in order to define the scope of one category of hazardous duty, it is hereby ordered as follows:

Section 1. Executive Order No. 11157 of June 22, 1964, as amended, is further amended by striking out subsection (g) of Section 109 of Part I and inserting in lieu thereof the following:

"(g) The term 'duty involving the servicing of aircraft or missiles with highly toxic fuels or propellants or the testing of aircraft or missile systems (or components of such systems) during which highly toxic fuels or propellants are used' shall be construed to mean duty performed by members as a primary duty that requires (1) removal, replacement, and servicing of the emergency power unit of an aircraft with H–70 propellant (30 percent water, 70 percent hydrazine); (2) participation by those personnel performing duties described in (g)(1) who must also participate in an emergency response force, spill containment, or spill cleanup involving H–70 propellant (30 percent water, 70 percent hydrazine); (3) handling and maintaining the liquid propellants (liquid oxidizer-nitrogen tetroxide; unsymmetrical dimethyl hydrazine) used in the Titan weapon system, if such duty requires qualification in the use of the Rocket Fuel Handler's Clothing Outfit and involves (A) launch duct operations, including flow, pressurization, on-load, set-up or tear down involving propellant transfer operations; (B) set-up, installation or tear down for fuel/oxidizer flow; (C) decontamination of equipment, including, but not limited to, the Rocket Fuel Handler's Clothing Outfit; (D) venting or pressurizing missile fuel or oxidizer tanks; (E) removing or replacing missile components while missile fuel and oxidizer tanks are loaded with such propellants; (F) transferring propellants between commercial and military holding trailers, or between holding trailers and fuel/oxidizer pump rooms; or normal preventive maintenance activities including, but not limited to, seal changes; (4) handling and maintaining the propellants, unsymmetrical dimethyl hydrazine and inhibited red-fuming nitric acid, used in the LANCE missile system; (5) handling, transporting or working with toxic fuels/propellants by members assigned to the Air Force Rocket Propulsion Lab (AFRPL) who (A) directly manage and inspect the activities of crew members conducting operations involving experimental rocket propulsion systems and components; (B) directly monitor and set up measurement instruments in operational areas where contamination is suspected or may be physically present; (C) install and remove instrumentation devices from propulsion systems and components; (D) perform final test preparation and immediate safety inspection duties around pressurized, active systems during prerun and postrun test periods; or, (E) install and repair electrical systems; (6) handling, loading/unloading and transporting toxic fuels and oxidizers at the precision sled track while working with the liquid rocket sled, which uses JP–X (a mixture of jet fuel (JP–4) and unsymmetrical dimethyl hydrazine) and red-fuming nitric acid and a propulsion; or (7) involvement with other toxic substances contained in missile or aircraft weapon system fuels or propellants as determined by the Secretary concerned. The entitlement to the pay provided for in this subsection is based upon the performance of such duty which has the potential for accidental or inadvertent exposure to

highly toxic fuels or propellants or related substances and not upon actual quantifiable exposure to such substances. Therefore, neither this construction of the term nor the receipt of the pay provided for in this subsection may be construed as indicating that any person entitled to such pay has been actually exposed to highly toxic fuels or propellants or related substances contrary to the provisions of any statute, Executive order, rule, or regulation relating to health or safety which is applicable to the uniformed services."

Sec. 2. This Executive Order shall be effective as of October 1, 1983.

Ronald Reagan

THE WHITE HOUSE,
September 27, 1984.

[FR Doc. 84-26119
Filed 9-28-84; 10:58 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 49, No. 191
Monday, October 1, 1984

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

GENERAL ACCOUNTING OFFICE

4 CFR Part 81

Records; Public Availability of General Accounting Office Records

AGENCY: General Accounting Office.

ACTION: Final rule.

SUMMARY: This rule revises GAO's regulations regarding the public disclosure of GAO records. Mainly, the existing exemptions from disclosure have been rearranged and clarified to contain examples of various categories of records falling into a specific exemption. A new provision has been added to prevent disclosure of records involving work in progress. Fees have been raised to reflect current costs. Changes update Executive Order and telephone number; minor editorial changes clarify and correct.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Ms. Nola Casieri, Office of Policy, United States General Accounting Office, 441 G Street, NW., Washington, D.C. 20548 (202) 275–6172.

SUPPLEMENTARY INFORMATION: In light of GAO's experience with respect to requests for disclosure of its records, the regulations have been revised. Although GAO is not subject to the Freedom of Information Act (5 U.S.C. 522), GAO has adopted a disclosure policy which follows the spirit of the act consistent with its responsibilities to the Congress.

Section 81.3(b) has been updated as to facility name and phone number for obtaining reports published. The provision formerly in § 81.4(e) covering records originating outside GAO now appears in new § 81.5(a).

In furtherance of GAO's goal of timely work and because many of GAO's functions involve inquiries and the gathering of information on behalf of the Congress, a new provision has been added to the regulations in § 81.5(b) so that GAO's work in progress not be disrupted. This provision is also intended to prevent the premature disclosure of information which may be incomplete or inaccurate. The provision will not apply to records relating to completed work.

The existing exemptions previously found in § 81.5 have been clarified and rearranged in new § 81.6 as follows:

(1) paragraph (a) has been changed to clarify that congressional contact memoranda are exempt from disclosure unless waived by GAO's Director, Office of Policy.

(2) Paragraph (b) has been changed to refer to the current Executive Order dealing with classified documents.

(3) GAO operating rules and manuals of procedures for auditors are no longer included as examples of records relating solely to internal personnel rules and practices under paragraph (c).

(4) Paragraphs (d) and (e) have been changed to more closely conform to similar provisions currently found in the Freedom of Information Act for records specifically exempted from disclosure by statute and records containing proprietary information, respectively.

(5) Paragraphs (k) and (l) have been added to clairfy the exemption from disclosure for privileged or confidential information previously contained in § 81.5(a)(5).

Existing § 81.6 providing for a public reading facility now appears as § 81.8. Fees and charges, remaining at § 81.7, have been updated to reflect current costs. The cost of search for the first hour will be subject to charge. However, reproduction and search fees will not be assessed on amounts less than $25.

Minor editorial changes have been made throughout the regulations.

These revisions will be applicable to all requests received after the date of publication.

List of Subjects in 4 CFR Part 81

Archives and records, Freedom of information.

Accordingly, 4 CFR Part 81 is revised to read as follows:

PART 81—PUBLIC AVAILABILITY OF GENERAL ACCOUNTING OFFICE RECORDS

Sec.
81.1 Purpose and scope of part.
81.2 Administration.
81.3 Definitions.
81.4 Requests for identifiable records.
81.5 Records originating outside GAO, or records involving work in progress.
81.6 Records which may be exempt from disclosure.
81.7 Fees and charges.
81.8 Public reading facility.

Authority: 31 U.S.C. 711.

§81.1 Purpose and scope of part.

This part implements the policy of the United States General Accounting Office (GAO) with respect to the public availability of GAO records. While GAO is not subject to the Freedom of Information Act (5 U.S.C. 552), GAO's disclosure policy follows the spirit of the act consistent with its duties and functions and responsibility to the Congress. Application of this act to GAO is not to be inferred from the provisions of these regulations.

§81.2 Administration.

The administration of this part is the duty and responsibility of the Director, Office of Policy (OP), United States General Accounting Office, 441 G Street, NW., Washington, D.C. 20548, and to that end the Director shall promulgate such supplemental rules or regulations as may be necessary.

§81.3 Definitions.

As used in this part:

(a) *"Identifiable"* means a reasonably specific description of a particular record sought, such as the date of the record, subject matter, agency or person involved, etc., which will permit location or retrieval of the record.

(b) *"Records"* includes all books, papers, manuals, maps, photographs, reports, and other documentary materials, regardless of physical form or characteristics under the control of GAO in pursuance of law or in connection with the transaction of public business. In the context of a request for a record or records, the term "records" refers only to a record in being and under the control of GAO. It does not include the compiling or procuring of a record. Nor does it include library or museum material made or acquired and preserved solely for reference or exhibition purposes, or extra copies of documents preserved only for convenience of reference. It is intended that GAO publications are not within the purview of this order. GAO

published reports and decisions or listing of reports should be obtained from the U.S. General Accounting Office, Information Handling and Support Facility (IHSF), P.O. Box 6015, Gaithersburg, Md. 20877, phone (202) 275–6241.

(c) *"Records Available to the Public"* means records which may be examined or copied or of which copies may be obtained, in accordance with this part, by the public or representatives of the press regardless of interest and without specific justification.

(d) *"Disclose or Disclosure"* means making available for examination or copying, or furnishing a copy.

(e) *"Person"* includes an individual, partnership, corporation, association, or public or private organization other than a Federal agency.

§ 81.4 Requests for identifiable records.

(a) A request to inspect or obtain a copy of an identifiable record of GAO must be submitted in writing to the Director, OP (see § 81.2), who will promptly acknowledge and record the request.

(b) The Director, OP, or other GAO organizational unit will promptly honor the request if no valid objection exists to the propriety of such action and the requester is willing and able to pay the prescribed fees for making the record available for inspection or copying or being provided with a copy.

(c) In the event of an objection or doubt as to the propriety of providing the requester with a copy of the record sought, every effort will be made to resolve such problems as quickly as possible, including consultation with appropriate GAO elements. If it is determined that the record should be withheld, the Director, OP, shall inform the requester in writing that the request has been denied; shall identify the material withheld; and shall explain the basis for the denial.

(d) A person whose request is denied shall be informed that further consideration of his/her request may be obtained by a letter to the Comptroller General of the United States setting forth the basis for the belief that the denial of the request was unwarranted.

§ 81.5 Records originating outside GAO, or records involving work in progress.

(a) It is the policy of GAO not to provide records from its files that originate in another agency or nonfederal organization to persons who may not be entitled to obtain the records from the originator. In such instances, requesters will be referred to the person or organization that originated the records.

(b) In order to avoid disruption of work in progress, and in the interests of fairness to those who might be adversely affected by the release of information which has not been fully reviewed to assure its accuracy and completeness, it is the policy of GAO not to provide records which are part of ongoing reviews or other current projects. In response to such requests, GAO will inform the requester of the estimated completion date of the review or project so that the requester may then ask for the records. At that time, the records may be released unless exempt from disclosure under § 81.6.

§ 81.6 Records which may be exempt from disclosure.

The public disclosure of GAO records contemplated by this part does not apply to records, or parts thereof, within any of the categories listed below. Unless precluded by law, the Director, OP, may nevertheless release records within these categories.

(a) Congressional correspondence and other papers relating to work performed in response to a congressional request (unless authorized by the congressional requester), and congressional contact memoranda.

(b) Records specifically required by an Executive Order to be kept secret in the interest of national defense or foreign policy. An example of this category is a record classified under Executive Order 12356, National Security Information.

(c) Records related solely to the internal personnel rules and practices of an agency. This category includes, in addition to internal matters of personnel administration, internal rules and practices which cannot be disclosed without prejudice to the effective performance of any agency function. Examples within the purview of this exemption are guidelines, and procedures for auditors, investigators, or examiners.

(d) Records specifically exempted from disclosure by statute provided that such statute (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(e) Records containing trade secrets and commercial or financial information obtained from a person and privileged or confidential. This exemption may include, but is not limited to, business sales statistics, inventories, customer lists, scientific or manufacturing processes or development information.

(f) Personnel and medical files and similar files the disclosure of which could constitute a clearly unwarranted invasion of personal privacy. This exemption excludes from disclosure all personnel and medical files, and all private or personal information contained in other files, which, if disclosed to the public, would amount to a clearly unwarranted invasion of the privacy of any person. An example of such other files within the exemption would be files compiled to evaluate candidates for security clearance.

(g) Investigatory files complied for law enforcement purposes.

(h) Records having information contained in or related to examination, operation, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

(i) Records containing geological and geophysical information and data (including maps) concerning wells.

(j) Inter-agency or intra-agency memoranda, letters or other materials that are part of the deliverative process. For example, this exemption includes internal communications such as GAO or other agency draft reports, and those portions of internal drafts, memoranda and workpapers containing opinions, recommendations, advice or evaluative remarks of GAO employees. This exemption seeks to avoid the inhibiting of internal communications, and the premature disclosure of documents which would be detrimental to an agency function.

(k) Records in addition to those described in paragraph (j) of this section containing information customarily subject to protection as privileged in a court or other proceedings, such as information protected by the doctor-patient, attorney-work product, or lawyer-client privilege.

(l) Unsolicited records containing information submitted by any person to GAO in confidence and records which GAO has obligated itself not to disclose. An example of records covered by this exemption would be information obtained by the GAO Fraud Referral and Investigations Group (GAO Hotline).

§ 81.7 Fees and charges.

(a) No fee or charge will be made for:

(1) Records provided under provisions of this part when the direct search and reproduction costs are less than $25.

(2) Records requested which are not found or which are determined to be exempt under provisions of this part.

(3) Staff-hours spent in resolving any legal or policy questions pertaining to the request.

(4) Copies of records including those certified as true copies, that are furnished for official use to any officer or employee of the federal government.

(5) When necessary or desirable to the performance of a function of GAO, copies of pertinent records furnished to a party having a direct and immediate interest in a matter pending before the Office.

(b) When costs are $25 or more, the fees and charges described below, will be assessed for the direct costs of search and reproduction of records available to the public under this part.

(1) The reproduction charge per page shall be 20 cents.

(2) Certification of authenticity shall be $10 for each certificate.

(3) Search for records by Office personnel:

(i) Clerical personnel—$7 an hour.

(ii) Professional personnel—$18 an hour.

(4) Other direct costs related to the request may be charged for such items as computer searches.

(c) GAO shall notify the requester and may require an advance deposit where the anticipated fees will exceed $50.

(d) Fees and charges shall be paid by check or money order payable to the U.S. General Accounting Office.

(e) Fees established by this section may be waived or reduced upon a determination by the Director, OP, that such waiver or reduction is in the public interest because furnishing the information is considered as primarily benefiting the general public. Persons seeking such waiver or reduction of fees may be required to submit a statement setting forth the intended purpose for which the records are requested or otherwise indicate how disclosure will primarily benefit the public and, in appropriate cases, explain why the volume of records requested is necessary. Determinations pursuant to this subsection are solely within the discretion of GAO.

§ 81.8 Public reading facility.

A public reading facility shall be maintained by the General Accounting Office at 441 G Street, NW., Washington, D.C. The facility, under the immediate supervision of the Chief, Legal Information and Reference Services, Office of the General Counsel, shall be open to the public from 8 a.m. to 5 p.m. except Saturdays, Sundays, and holidays.

Dated: September 25, 1984.

Charles A. Bowsher,

Comptroller General of the United States.

[FR Doc. 84-25953 Filed 9-28-84; 8:45 am]

BILLING CODE 1610-02-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 371

[Docket No. 84-404]

Organization, Functions, and Delegations of Authority

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document revises the statement of organization, functions, and delegations of authority of the Animal and Plant Health Inspection Service (APHIS) by delegating to the Deputy Administrator for Management and Budget, the authority to provide management support services for the Federal Grain Inspection Service, the Office of Transportation, the Agricultural Cooperative Service, the Packers and Stockyards Administration and the Agricultural Marketing Service as agreed upon by the agencies.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: William E. Havens, Program Manager, Classification, Employment, and Executive Resources Programs, Human Resources Division, APHIS, United States Department of Agriculture, Rm. 221, Federal Center Bldg. 6505 Belcrest Road, Hyattsville, MD 20782 (301)436-6466.

SUPPLEMENTARY INFORMATION: The Department of Agriculture is pursuing a concept of centralized administrative support functions wherever feasible within USDA Agencies. The Secretary has determined that cost-effective consolidation opportunities exist within the Marketing and Inspection Services. Thus, the Assistant Secretary for Marketing and Inspection Services has delegated authority for providing management support services for the Federal Grain Inspection Service, the Office of Transportation, the Agricultural Cooperative Service the Packers and Stockyards Administration, and the Agricultural Marketing Service to the Administrator, Animal and Plant Health Inspection Service (49 FR 29053) dated July 18, 1984. The purpose of this document is to amend the statement of organization, functions, and delegations of authority of the Animal and Plant Health Inspection Service to specifically delegate the responsibility for providing these administrative support functions to the Deputy Administrator for Management and Budget. Coupled with this delegation is the authority to take actions required by law or regulation that are necessary to providing such support services as are agreed to by the Agencies involved.

As used herein, the term management support services includes budget, finance, personnel, procurement, property management, communications, paperwork management, and related administrative services.

This rule relates to internal agency management, and therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect thereto are impractical and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by Pub. L. 96-354, the Regulatory Flexibility Act, and thus, is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 371

Organization and functions (Government agencies).

PART 371—ORGANIZATION, FUNCTIONS, AND DELEGATIONS OF AUTHORITY

Accordingly, 7 CFR 371 is amended as follows:

1. The authority citation for Part 371 reads as follows:

Authority: 5 U.S.C. 301.

Section 371.2 is amended by adding a new paragraph (e)(11) to read as follows:

§ 371.2 The Office of the Administrator.

* * * * *

(e) Deputy Administrator for Management and Budget

* * * * *

(11) Providing management support services for the Federal Grain Inspection Service, the Office of Transportation, the Agricultural Cooperative Service, the Packers and Stockyards Administration, and the Agricultural Marketing Service as agreed upon by the agencies with authority to take actions required by law or regulation. As used herein, the term management support services includes budget, finance, personnel, procurement,

property management, communications, paperwork management, and related administrative services.

* * * * *

3. Section 371.5 is amended by revising paragraphs (a) (1), (2) and (4), (b) (1) and (2), (c) (1) and (2) and (g) (1), (2) and (3) and by adding a new paragraph (b)(5) to read as follows:

§ 371.5 Administrative Management.

* * * * *

(a) * * *

(1) Participating with the Deputy Administrator for Management and Budget in the overall formulation of all administrative management policies, programs, and activities for Animal and Plant Health Inspection Service (APHIS), Agricultural Cooperative Service (ACS), and Office of Transportation (OT).

(2) Planning, providing staff leadership and administering the budget and related programs and the fiscal and related management programs necessary to meet requirements of programs and administrative activities in APHIS, ACS, and OT.

(3) * * *

(4) Assisting in developing the accounting and related financial systems necessary for APHIS, ACS, and OT. Developing procedures and instructions to implement the systems, and maintaining these systems.

(5) * * *

(b) * * *

(1) Participating with the Deputy Administrator for Management and Budget in the overall formulation of all administrative management policies, programs and activities of the Animal and Plant Health Inspection Service (APHIS), Federal Grain Inspection Service (FGIS), Agricultural Cooperative Service (ACS), Packers and Stockyards Administration (P&SA), and Office of Transportation (OT).

(2) Planning, providing staff leadership and assistance to managers and program leaders of APHIS, FGIS, ACS, P&SA and OT in the areas of EEO and Civil Rights, organization, position management, performance appraisal, position classification, salary and wage administration, recruitment and placement, employee relations, and labor management relations. Planning and providing staff leadership and assistance to managers and supervisors of APHIS, FGIS, ACS, P&SA and OT in the areas of employee development and training pertaining to executive and managerial development, supervisory, administrative and clerical training and related activities.

* * * * *

(5) Providing certain operating personnel services for APHIS, FGIS, ACS, P&SA and OT, and Agricultural Marketing Service (AMS) as agreed upon by APHIS and each agency.

(c) * * *

(1) Participating with the Deputy Administrator for Management and Budget in the overall formulation of administrative management policies, programs, and activities of the Animal and Plant Health Inspection Service (APHIS), Federal Grain Inspection Service (FGIS), Agricultural Cooperative Service (ACS), Packers and Stockyards Administration (P&SA), Office of Transportation (OT), and Agricultural Marketing Service (AMS).

(2) Planning for and providing staff leadership and operating administrative services and assistance to managers and supervisors in: real and personal property management and utilization; procurement of supplies, equipment, and services through competitive and noncompetitive procedures or from established contract sources, safety, health and environmental concerns; development, and control of forms, reports, records security, printing and distribution; mail and shuttle service; and directives management. Providing overall direction and coordination for the design and construction of facilities.

* * * * *

(g) * * *

(1) Participating with the Deputy Administrator for Management and Budget in the overall formulation of personnel, financial and administrative services policies and programs for the Animal and Plant Health Inspection Service (APHIS), Federal Grain Inspection Service (FGIS), Agricultural Cooperative Service (ACS), Packers and Stockyards Administation (P&SA), and Office of Transportation (OT).

(2) Within the provisions of applicable policies, procedures and laws, providing personnel, financial and administrative services to personnel in the Agricultural Marketing Service, APHIS, FGIS, ACS, P&SA and OT.

(3) Participating in planned management reviews. Providing assistance and advice to program officials and supervisory personnel concerning personnel, financial, and administrative problems. Providing guidance on the implementation of policies, procedures and regulations.

* * * * *

Dated: September 26, 1984.

Bert W. Hawkins,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 84-25967 Filed 9-28-84; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 981

Handling of Almonds Grown in California; Establishment of Salable, Reserve, and Export Percentages for the 1984-85 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes salable, reserve, and export percentages of 75 percent, 25 percent, and 0 percent, respectively, for marketable California almonds delivered to handlers during the 1984-85 crop year, which began July 1, 1984. This action is taken under the marketing order for almonds grown in California and is designed to promote orderly marketing conditions in view of an estimated record large 1984 almond crop.

EFFECTIVE DATE: July 1, 1984 through June 30, 1985.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447-5053.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified a "non-major" rule under criteria contained therein.

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.

It is found that good cause exists for not postponing the effective date of this action after publication in the **Federal Register** (5 U.S.C. 553). The marketing order for California almonds requires that the salable, reserve, and export percentages established for a particular crop year apply to all marketable almonds received by handlers from the beginning of that year. The 1984-85 crop year began July 1, 1984, and handlers are now receiving new crop almonds.

Notice of this action was published in the August 17, 1984, issue of the **Federal Register** (49 FR 32856) and interested

persons were afforded an opportunity to submit written comments. One comment was received in favor of the proposal and one comment was received in opposition.

The auhority to establish salable and reserve percentages is in § 981.47 of the marketing agreement and Order No. 981, both as amended (7 CFR Part 981), regulating the handling of almonds grown in California and hereinafter referred to collectively as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The percentages are based on a unanimous recommendation of the Almond Board of California, hereinafter referred to as the "Board," which works with the USDA in administering the order.

Pursuant to §§ 981.47 and 981.49 of the order, the Board based its recommendation for salable, reserve, and export percentages of 75 percent, 25 percent, and 0 percent, respectively, on estimates of marketable supply and combined domestic and export trade demand for the 1984–85 crop year. The Board's marketable supply estimate of 494 million kernel weight pounds is based on its 1984 crop estimate of 520 million pounds, minus an estimated weight loss of 26 million pounds resulting from the removal of inedible kernels by handlers and losses during manufacturing.

Trade demand is estimated at 380 million pounds—150 million pounds for domestic needs and 230 million pounds for export needs. An inventory adjustment is made to account for supplies of almonds carried in from the 1983–84 marketing year and for supplies deemed desirable to be carried out on June 30, 1985, for early season shipment during the 1985–86 crop year until the 1985 crop is available for market. After adjusting for inventory, the salable supply is calculated at 370.5 million pounds, the quantity of almonds from the 1984 estimated marketable production necessary for trade demand needs. The salable percentage of 75 percent will meet those needs.

The remaining 25 percent (123.5 million pounds) of the 1983 marketable supply must be withheld by handlers to meet their reserve obligations. The Board plans to allocate a small portion of these almonds for use chiefly in the almond butter and school lunch projects begun during the 1982–83 crop year. These long-term projects are a means for the industry to develop new markets for almonds in view of larger crops. Allocated reserve almonds also could be disposed of in other noncompetitive outlets as specified in the order or approved by the Board.

The remaining portion of the reserve will be held as a contingency for allocation at a later date. All or part of these almonds could be released to salable to augment 1984–85 or 1985–86 salable supplies if: (1) 1984 crop production is less than the estimated 520 million pounds, (2) 1984–85 combined domestic and export trade demand is greater than the estimated 380 million pounds, or (3) it appears that 1985 crop production will be insufficient to meet 1985–86 trade demand needs. The Board is required to make any recommendation to the Secretary to increase the salable percentage prior to May 15, 1985. Alternatively, the Board could use contingency reserve almonds to augment supplies for almond butter, school lunch, or other market development projects or dispose of these almonds in other noncompetitive outlets specified in § 981.66(c) of the order or as approved by the Board.

The order permits the Board to include normal export requirements with domestic requirements in its estimate of trade demand when recommending the establishment of salable, reserve, and export percentages for any crop year. For the 1984–85 crop year, estimated exports are included in trade demand, thereby making export a salable outlet rather than a reserve outlet. Because of this action, no portion of the reserve will be eligible for export to normal outlets. Thus, an export percentage of 0 is established.

A complete tabulation of the estimates and calculations used by the Board in arriving at its recommendation is as follows:

MARKETING POLICY ESTIMATES—1984 CROP

[Kernel weight basis]

	1,000,000 pounds	Percent
Estimated Production		
1. 1984 Crop	520.0	
2. Loss and Exempt—5%	26.0	
3. Marketable Supply	494.0	
Estimated Trade Shipments		
4. Domestic	150.0	
5. Export	230.0	
6. Total	380.0	
Inventory Adjustment		
7. Carryin July 1, 1984	91.8	
8. Estimated Carryover June 30, 1985	82.3	
9. Adjusiment	(9.5)	
Salable/Reserve		
10. Salable Supply (6 plus 9)	370.5	
11. Reserve Supply (3 minus 10)	123.5	
12. Salable percent (10÷3×100)		75.0
13. Reserve percent (100% minus 12)		25.0

The objective of the order's volume regulation provisions is to establish and maintain orderly marketing conditions for all California almonds. This action will help to stabilize supplies and prices as the industry faces its largest crop in history—a crop estimated to be 27.8 percent greater than the 1981 record crop of 407 million pounds and 114.9 percent greater than the small 1983 crop of 242 million pounds. World production also is expected to set a record, and sales of California almonds in export will be difficult due to unfavorable exchange rates. However, this action will still provide an estimated 462.3 million pounds of California almonds for unrestricted sales (1984 crop salable supply plus carryin from the 1983 crop) to meet increasing domestic and world almond consumption. This amount exceeds the actual 1981–82 record for delivered sales of California almonds by 42.8 percent. Further, this action could provide market stability during the 1985–86 crop year in the event that 1985 production is down. Given the cyclical tendency of almond production, this is a likely possibility according to the commenter in favor of the proposal.

For example, the commenter states that a 520 million pound crop would mean an average yield of 1,405 pounds of almonds per acre—by far the largest yield ever produced and unlikely to be repeated soon. When unusually high production occurs, the trees are stressed and their production potential for the following year is reduced.

That commenter also indicates that California will produce about 65 percent of 1984 world almond production—a larger share than usual. The commenter believes that because of this circumstance, volume regulation will mostly benefit California producers rather than foreign producers and that California will have a strong influence on the world market. Therefore, the orderly market situation expected as a result of the marketing percentage is quite important.

The commenter in opposition to the proposal favors a salable percentage of 100 percent and a reserve percentage of 0 percent. The commenter believes that a contingency reserve will cause market weakness and price uncertainty because potential buyers will hold off making purchases in anticipation that the contingency reserve will be released to salable causing prices to drop. However, this is unlikely because the contingency reserve would be released to salable only in the event that supply is insufficient to meet trade demand needs.

In support of this position, the commenter indicates that for the 1981–82 crop year, when a 25 percent reserve was established and later released to

salable, grower prices were reduced to one-half of what they were the previous year, and there was no significant impact on sales volumes. Actually, sales for 1981–82 were up 14.6 percent over 1980–81 and set a new record.

The commenter in opposition also indicates that almond sales have already been harmed by anticipation that a reserve would be established for the 1984–85 crop year. The commenter points that both current shipments and sales for future shipment were down in July 1984 from July 1983. While this is true, it is doubtful that the reason has to do with the anticipation of a reserve. July 1983 sales were unusually high because inventory was large and it was anticipated that the 1983 crop would be small. Thus, buyers were trying to obtain supplies before prices increased. This July, with a much smaller inventory and an anticipated record large 1984 crop, buyers were waiting for 1984 crop opening prices, which were expected to be lower. In mid-August, a major almond handler announced its 1984 crop opening prices, and they were significantly lower than 1983 crop opening prices.

For these reasons, the objections of the commenter are denied.

Therefore, after consideration of all relevant matter presented, including that in the notice, the Board's recommendation, and other available information, it is further found that the establishment of salable, reserve, and export percentages, as hereinafter set forth, will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 981

Marketing agreements and orders, Almonds, California.

Section 981.233 is added to Subpart—Salable, Reserve, and Export Percentages to read as follows: (This subpart and section will not appear in the Code of Federal Regulations).

PART 981—ALMONDS GROWN IN CALIFORNIA

Subpart—Salable, Reserve, and Export Percentages

§ 981.233 Salable, reserve, and export percentages for almonds during the crop year beginning July 1, 1984.

The salable, reserve, and export percentages during the crop year beginning July 1, 1984, shall be 75 percent, 25 percent, and 0 percent, respectively.

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

Dated: September 26, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 84-25983 Filed 9-28-84; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1435

Price Support Loan Program for 1983 Through 1985 Crops Sugar Beets and Sugarcane

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The interim rule governing the Price Support Loan Program for 1983 Through 1985 Crops Sugar Beets and Sugarcane, published in the **Federal Register** on October 5, 1983, (48 FR 45374), is hereby adopted as a final rule without change. This program is mandated by section 201(h) of the Agricultural Act of 1949, as amended by the Agriculture and Food Act of 1981. Under the program, the Commodity Credit Corporation (CCC) will support prices to domestic producers of the 1983 through 1985 crops of sugarcane and sugar beets through nonrecourse loans made by CCC to sugar processors.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Steve Gill, Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. Phone: (202) 447–8480.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR 1435) have been approved by the Office of Management and Budget in accordance with the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35, and have been assigned OMB Number 0560–0093.

This final rule has been reviewed under USDA procedures established in accordance with the provisions of Departmental Regulation 1512–1 and Executive Order 12291 and has been classified as a "major rule" since this action may have an annual effect on the economy of $100 million or more.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this final rule.

An Environmental Evaluation with respect to the price support loan program has been completed. It has been determined that this action is not expected to have any significant impact on the quality of the human environment. In addition, it has been determined this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The title and number of the Federal Assistance Program to which this final rule applies are: Title—Commodity Loans and Purchases, Number 10.051, as found in the Catalog of Federal Domestic Assistance.

A Final Regulatory Impact Analysis is available from Thomas W. Fink, Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. The Final Regulatory Impact Analysis describes the impact of making price support available for the 1983 through 1985 crops of sugar beets and sugarcane by means of nonrecourse loans.

Statutory Requirements

Section 201(h) of the Agricultural Act of 1949, as amended by the Agriculture and Food Act of 1981 (hereinafter referred to as the "1949 Act"), requires that price support be made available for the 1982 through 1985 crops of sugar beets and sugarcane. The price support loan program for the 1982 crop of sugar beets and sugarcane was effective October 1, 1982. The 1949 Act also provides that 1983 crop sugar, as well as 1984 and 1985 crop sugar, will be eligible for price support through a price support loan program.

Interim Rule

An interim rule setting forth the terms and conditions of the Price Support Loan Program for 1983 through 1985 Crops Sugar Beets and Sugarcane was published in the **Federal Register** on October 5, 1983, at 48 FR 45374. A comment period was provided through December 5, 1983.

General Summary of Comments

The Department has considered all comments received in developing this final rule. The Department received a total of 2 comments with respect to the interim rule; one from a sugar beet processor and one from an industrial user of sugar.

All comments received are on file and available for public inspection in Room

3627-South Building, 14th and Independence Avenue, SW., Washington, D.C., 20013.

The following is a summary of comments received and actions taken:

Comments on Major Program Provisions

I. Method of Support

A. *Provisions of the Interim Rule.* As required by the 1949 Act, the interim rule provided that the Secretary of Agriculture would support prices to domestic producers of the 1983 through 1985 crops of sugarcane and sugar beets through nonrecourse loans. The interim rule also provided that interest would not be charged upon forfeiture of the loan collateral.

B. *Comment.* A comment was received with respect to the issue as to whether interest would be charged upon forfeiture to CCC by a processor of sugar which is serving as collateral for a loan. The respondent supported a provision requiring that interest be charged upon forfeiture of the loan collateral. In addition to interest charges, the respondent recommended that processors forfeiting raw sugar to CCC in settlement of their loans be required to deliver the raw sugar from the storage location to the facility where it would normally be refined.

C. *Discussion of Comment.* The respondent argued that charging interest and transportation costs upon forfeiture of loan collateral would minimize the risk of forfeitures and potential budget outlays to the Government and would be in keeping with the Administration's commitment to market-oriented farm programs since adoption of the respondent's position would further encourage processors to market their sugar rather than forfeit it. Finally, the respondent stated that charging of interest and transportation costs would held reduce the differential between the loan rate and the Market Stabilization Price (MSP). The MSP is that price which is necessary to ensure that sugar pledged as price support loan collateral is marketed commercially rather than forfeited to CCC.

D. *Conclusion.* After careful consideration of the comment received, it has been concluded that the provisions of the interim rule should be adopted in the final rule. It has been the longstanding policy of the Department not to require the payment of interest upon forfeiture of price support loan collateral. Also, the loan rate offered to processors varies depending upon the location of the sugar pledged as loan collateral and reflects the cost of transporting the sugar from the location where it is pledged as collateral (the storage location) to the marketplace. The weighted average of these loan rates is designed to equal the announced price support rate. Thus, in the case of sugar, raw sugar located near refineries (the marketing point) may be pledged as collateral at a loan rate which is above the weighted average national loan rate while raw sugar located far from refineries may be pledged as collateral at a loan rate below the weighted average national loan rate.

Upon forfeiture, title to the loan collateral vests in CCC where the collateral is stored. If CCC seeks to sell the collateral, it must then pay the cost of transporting the collateral from the storage location to the marketplace. Under previous price support programs for sugar, processors have not been required to pay interest or transportation charges upon forfeiture of the loan collateral. There does not appear to be adequate justification for deviating from this established policy at this time.

II. Maturity of Loans

A. *Provisions of the Interim Rule.* The interim rule provided that loans will mature on the last day of the sixth month following the month in which the loan is disbursed, but in no event later than September 30 of the applicable fiscal year.

B. *Comment.* A comment was received with respect to the maturity of loans. The respondent, a sugar beet processor, stated that limiting loans to six months placed them in a difficult situation because if they obtained loans for the purpose of making payments to growers, the six-month loans would mature prior to the time when the processor is able to sell all of the sugar which is produced from sugar beets purchased from the growers. Conversely, if processors obtained loans which would mature on dates consistent with their sales pattern, then the processor would not have sufficient working capital to meet its initial payment commitments to growers. The respondent suggested that processors be given the option to extend loans beyond the six-month maturity date for a period up to nine months, but not beyond September 30 of the applicable fiscal year. The respondent also suggested that, in consideration for an extension of the maturity date, the processors would waive their right to forfeit the loan collateral during the extension period.

C. *Discussion of Comment and Conclusion.* First of all, the purpose of the price support program is to support the price of sugar beets and sugarcane rather than to finance the other contractual commitments of the processor to its growers. In addition, a loan maturity date on the last day of the sixth month in which the loan is disbursed, but no later than September 30 of the applicable fiscal year, appears to be in the best interest of CCC and the sugar industry. The final loan maturity date of September 30 is mandated by section 201(h) of the 1949 Act. If loan extensions of up to nine months were offered, such loans would mature between July and September 30. Experience with other commodities suggests that having all loans mature within a short time frame usually has a depressing effect upon the market prices of the commodity. Accordingly, the provisions of the interim rule have been retained.

List of Subjects in 7 CFR Part 1435

Loan programs/agriculture, Price support programs, Sugar.

Final Rule

Accordingly, the interim rule published at 48 FR 45374, October 5, 1983, 7 CFR §§ 1435.110–1435.123, is hereby adopted as a final rule without change.

Signed at Washington, D.C., on September 24, 1984.

Richard E. Lyng,

Acting Secretary.

[FR Doc. 84-25919 Filed 9-28-84; 8:45 am]

BILLING CODE 3410-05-M

Office of the Secretary

7 CFR Part 3015

General Provisions for Grants and Cooperative Agreements With Institutions of Higher Education, Other Nonprofit Organizations and Hospitals

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document amends 7 CFR Part 3015, Uniform Federal Assistance Regulations, by amending paragraph (b)(17) of § 3015.205, to exclude nonprofit organizations from the general requirement that USDA funds not be used for partisan or political activity purposes, since such organizations are now subject to the more specific, uniform lobbying provisions of paragraph B.21 of OMB Circular A–122, "Cost Principles for Nonprofit Organizations."

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Ms. Lyn Zimmerman, Supervisory Progam Analyst, Office of Finance and Management, USDA, Room 2117,

Auditors Building, 14th and Independence Avenue, SW., Washington, D.C. 20250. (Telephone (202) 382–1553).

SUPPLEMENTARY INFORMATION: .

Classification

This rule has been reviewed under Executive Order 12291 and it has been determined that this is not a major rule.

Regulatory Analysis

Although this rule may directly affect recipients of Federal assistance awards administered by the Department of Agriculture, it has been determined that this rule will not involve a substantial or major impact on the Nation's economy or large numbers of individuals or businesses. There will be no major increase in costs or prices to consumers, individuals, industries, Federal, State or local government agencies, or geographic regions. Additionally, John E. Carson, Director, Office of Finance and Management, has determined that it will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601–612).

Proposed Rulemaking

This rule relates to grants and other Federal assistance and, therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect thereto are impractical and contrary to the public interest and good cause is found for making this Rule effective less than 30 days after publication in the **Federal Register**. While the Department is not engaging in proposed rulemaking, any member of the public may submit comments on this rule.

Background

Effective May 29, 1984, OMB amended Circular A–122 to insert a new paragraph "B.21. Lobbying." The revision defines and makes uniform for nonprofit organizations the disallowance of costs associated with certain kinds of lobbying and political activities. In the case of USDA, the amendment to Circular A–122 became immediately effective through the cross-referencing provisions of 7 CFR 3015.193. However, § 3015.205 sets forth general provisions which apply, in whole or in part, to grants and cooperative agreements awarded by USDA to institutions of higher education, other nonprofit organizations and hospitals. These provisions include paragraph (b)(17) which requires assurance that USDA funds are not used for partisan or political advocacy purposes. The provision set forth in § 3015.205(b)(17) is broader and less precise than the terms of the A–122 lobbying amendment. Therefore, to achieve consistent treatment of the A–122 lobbying amendment across the Government, USDA is amending § 3015.205(b)(17) to exclude nonprofit organizations from the general requirement that USDA funds not be used for partisan or political activity purposes in order to clarify that such organizations are now subject to the more specific uniform lobbying provisions of paragraph B.21. of OMB Circular A–122.

List of Subjects in 7 CFR Part 3015

Grant programs, Agriculture, Intergovernmental relations.

PART 3015—[AMENDED]

Accordingly, 7 CFR Part 3015 is amended as follows:

1. The authority citation for Part 3015 reads as follows:

Authority: 5 U.S.C. 301.

2. In Subpart U § 3015.205(b)(17) is revised as follows:

Subpart U—Miscellaneous

§ 3015.205 General Provisions for Grants and Cooperative Agreements With Institutions of Higher Education, Other Nonprofit Organizations, and Hospitals.

* * * * *

(b) *Assurances and Compliance.* * * *

(17) It will establish safeguards to ensure that USDA funds are properly spent. In particular, except nonprofit organizations which are subject to the lobbying provisions of paragraph B.21. of OMB Circular A–122, it will assure that funds are not used for partisan or political activity purposes.

* * * * *

Issued at Washington, D.C.

Approved: September 26, 1984.

John J. Franke, Jr.,

Assistant Secretary for Administration.

John R. Block,

Secretary of Agriculture.

[FR Doc. 84–25981 Filed 9–28–84; 8:45 am]

BILLING CODE 3410–90–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 50

Elimination of Review of Financial Qualifications of Electric Utilities in Operating License Review and Hearings for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule eliminating financial qualification review and findings for electric utilities that are applying for operating licenses for utilization facilities if the utility is a regulated public utility or is authorized to set its own rates. The final rule also restates a requirement for financial qualification review and findings for electric utilities that are applying for construction permits.

FOR FURTHER INFORMATION CONTACT: Carole F. Kagan (202–634–1493).

SUPPLEMENTARY INFORMATION: In FR Doc. 84–24085 appearing on page 35747 in the issue of Wednesday, September 12, 1984, make the following correction:

Page 35751, first column, second complete paragraph, change the words "strong indications" to "some indication".

Approved: September 25, 1984.

John C. Hoyle,

Assistant Secretary.

[FR Doc. 84–25985 Filed 9–28–84; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83–NM–92–AD Amdt. 39–4923]

Airworthiness Directives: Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires inspection and repair, as necessary, of the Body Station (BS) 1016 aft pressure bulkhead, on certain Boeing Model 737 series airplanes. This action is necessary to detect corrosion and cracking. There have been numerous reports of corrosion, two of which have resulted in the loss of cabin pressure. Severe corrosion and cracking could result in sudden loss of cabin pressure.

DATES: Effective November 5, 1984.

ADDRESSES: The Boeing Service Bulletin specified in this AD may be obtained upon request from Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton A. Holmes, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office, FAA, Northwest

Mountain Region, 9010 East Marginal Way South, Seattle, Washington; telephone (206) 431–2926. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring inspection and modification of the aft pressure bulkhead at Body Station (BS) 1016 on certain Boeing Model 737 Series airplanes was published in the **Federal Register** on December 27, 1983 (48 FR 56958). The comment period closed on February 13, 1984.

The proposal was prompted by numerous reports of corrosion and cracking in the lower lobe of the aft fuselage pressure bulkhead at Body Station 1016. In three cases the pressure bulkhead ruptured and cabin pressure was lost. Although the pressure web typically ruptures allowing a relatively slow loss of cabin pressure, in at least one report, both web and stiffeners were found severely corroded. Loss of both the web and stiffeners can result in sudden loss of cabin pressure.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received.

One commenter objected to the 90 day limit for accomplishment of the initial inspection and suggested a limit of 120 days, cosistent with the manufacturer's service bulletin. The FAA agrees, and accordingly, the AD has been changed to require a 120 day threshold for the initial inspection.

Another commenter requested that credit be given for previous accomplishment of the required inspection without the drain hole enlargement and that operators be allowed to defer drain hole enlargement following initial inspection. The final rule does allow credit for inspections accomplished within the last 21 months, and Revision 1 to the manufacturer's service bulletin allows deferment of the drain hole enlargement until the next "C" check. The FAA concurs with the drain hole modification deferment and the final rule is written accordingly.

Several commenters suggested that the repeat interval for inspection of the forward surface of the Body Station 1016 be increased from the proposed two year interval. The FAA disagrees. In addition to detecting corrosion as early as possible, another objective of this inspection is to insure that the drain hole remains unobstructed and that the leveling compound remains intact. Two year intervals have been specified as a reasonable repeat cycle in other airworthiness directives, such as AD 82–01–09 (47 FR 1111), which are intended to detect corrosion in the lower fuselage lobe. Finally, Paragraph F of the rule allows extension of the repeat interval providing the extension can be substantiated.

Four remaining commenters had no objection to the rule as proposed and indicated they had either accomplished the proposed inspection or would have no difficulty in its accomplishment.

It is estimated that 180 airplanes of U.S. registry will be initially affected by the proposed AD, and that approximately 8 manhours are required to perform the necessary inspections. Based on an average labor cost of $40 per manhour, the total cost to the U.S. fleet for accomplishment of the inspections is $57,600. For these reasons, this rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Rule

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) by adding the following new Airworthiness Directive (AD):

Boeing: Applies to Model 737 airplanes, certificated in all categories with more than 20,000 flight hours or 7 years time in service, whichever occurs first. Compliance is required as indicated. To ensure the continuing structural integrity of the aft pressure bulkhead, accomplish the following:

A. Within 120 days after the effective date of this AD, unless already accomplished within the last 21 months, visually inspect the B.S. 1016 pressure bulkhead for cracks and corrosion in accordance with Boeing Service Bulletin 737–53–1075, Revision 1, dated September 2, 1983, or later FAA approved revisions. Remove any obstruction to the drain hole in the frame chord and replace any deteriorated leveling compound as noted in the service bulletin. Treat the area of inspection with corrosion inhibitor, BMS 3–23, or equivalent.

B. Accomplish the drain hole enlargement specified in the service bulletin, within one year following the effective date of this amendment.

C. If cracking or corrosion is found, prior to further flight, repair in accordance with: (1) Boeing Service Bulletin 737–53–1075, Revision 1, dated September 2, 1983, or (2) a method approved by the Manager, Seattle Aircraft Certification Office, Northwest Mountain Region, Seattle, Washington.

D. Repeat the visual inspections and corrosion inhibitor treatment of paragraph A, above, at intervals not to exceed 2 years time in service.

E. Aircraft may be ferried to a maintenance base for repair in accordance with FAR 21.197 and 21.199.

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

G. Upon request of the operator, an FAA Maintenance Inspector, subject to prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of an operator, if the request contains substantiating data to justify the adjustment period.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may also be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington.

This amendment becomes effective November 5, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430 and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model 737 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption **FOR FURTHER INFORMATION CONTACT.**

Issued in Seattle, Washington, on September 21, 1984.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 84–25875 Filed 9–28–84; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 83-ANE-20; Amdt. No. 39-4871]

Airworthiness Directives; Alexander Schleicher Models ASW 15 and ASW 15 B Series Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection and replacement if needed, or reinforcement of the bellcrank that activates the elevator on Alexander Schleicher Models ASW 15 and ASW 15 B sailplanes. This AD is needed to prevent bellcrank fatigue failures and possible loss of elevator control during flight.

DATE: Effective—October 1, 1984.

SUMMARY: Incorporation by Reference approved by the Director of the **Federal Register** on October 1, 1984.

Compliance schedule—As prescribed in body of the AD.

ADDRESSES: The applicable technical notes may be obtained from Alexander Schleicher Segelflugzeubau, D-6416 Poppenhausen, Federal Republic of Germany. Copies of each of the technical notes are contained in the Rules Docket at the Office of Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Chris Christie, Manager, Aircraft Certification Staff, Europe, Africa, and Middle East Office, Federal Aviation Administration, c/o American Embassy, Brussels, Belgium, telephone 513.38.30; or Cheryl McCabe, ANE-152, Boston Aircraft Certification Office, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7329.

SUPPLEMENTARY INFORMATION: There have been reports of cracks in the bellcrank mechanism which actuates the elevator of the Alexander Schleicher ASW 15 and ASW 15 B sailplanes. Cracks in the bellcrank can lead to fatigue failure with the possible result of loss of elevator control. One such failure occurred in fight in Germany on an ASW 15 sailplane and the probable cause was determined to be a crack in the bellcrank, which resulted in fatigue failure. Since this condition is likely to develop on other sailplanes of the same type design, an AD is being issued which requires an initial and thereafter repetitive inspection of the bellcrank on ASW 15 and ASW 15 B sailplanes for cracks, and replacement or reinforcement of the bellcrank if cracks are found. Approximately 37 sailplanes will be affected by the requirement of this AD for an estimated cost impact of $40,700 or $1,100 per sailplane.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference.

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 AD.

Alexander Schleicher: Applies to Models ASW 15 and ASW 15 B sailplanes, certificated in any category.

Compliance is required as indicated, unless already accomplished.

To prevent elevator bellcrank failure due to fatigue, accomplish the following:

(a) Within the next 10 takeoffs or 25 hours time-in-service, whichever occurs first, unless already accomplished within the last 90 takeoffs or 75 hours time-in-service, and thereafter at intervals of 100 takeoffs or 100 hours time-in-service, whichever occurs first, visually inspect the bellcrank for cracks in accordance with Item 1 of the Instructions of Alexander Schleicher Technical Note No. 21 (TN No. 21), dated November 24, 1981.

(1) If no cracks are found, reconnect and re-rig the rudder following the manufacturer's instructions contained in TN No. 21.

(2) If cracks are found, prior to further flight, replace the bellcrank in accordance with Item 2 of TN No. 21. Use repair instruction "A" of the technical manual for the applicable ASW 15 type sailplane. Thereafter, at intervals of 100 takeoffs or 100 hours time-in-service, whichever occurs first, perform the inspection required by Item 1 above.

(b) In lieu of replacement of the bellcrank, reinforcement of the bellcrank and modifications of the fin spar and root rib may be accomplished in accordance with Item 2 of the action required of Alexander Schleicher Technical Note No. 22 (TN No. 22), dated November 1, 1982. After reinforcement of the bellcrank in accordance with TN No. 22, the repetitive inspection of this AD is no longer required and TN No. 21 is no longer applicable.

The Alexander Schleicher Technical Notes No. 21 dated November 24, 1981, and No. 22 dated November 1, 1982, identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 522(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Alexander Schleicher Segelflugzeubau, D-6414 Poppenhausen, Federal Republic of Germany. These documents may also be examined at the Office of Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

Alternate inspections, adjustment of the inspection interval, or other actions which provide an equivalent level of safety must be approved by the Manager, Brussels Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, Brussels, Belgium, telephone 513.38.30.

This amendment becomes effective October 1, 1984.

(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 determined that this regulation only involves a total of 37 sailplanes at an approximate cost of $40,700 or $1,100 per sailplane. Therefore, I certify that this action—(1) Is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **FOR FURTHER INFORMATION CONTACT.**

Note.—The incorporation by reference provisions of this document were approved by the Director of the **Federal Register** on October 1, 1984. The referenced technical notes are available at the **Federal Register.**

Issued in Burlington, Massachusetts, on May 14, 1984.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 84-25876 Filed 9-28-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-18-AD; Amdt. 39-4924]

Airworthiness Directives: British Aerospace Model DH-114 Heron Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires modification of the horizontal stabilizer upper pick-up eyebolt holes and replacement of the eyebolts on all British Aerospace Model DH-114 Heron series airplanes. One case of in-service eyebolt failure has been reported. The upper eyebolts are the main attachment points for the upper spar chord of the horizontal stabilizer. Failure of these

eyebolts could lead to separation of the stabilizer.

EFFECTIVE DATE: November 5, 1984.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Inc., Box 17414, Dulles International Airport, Washington, D.C. 20041, or may also be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION: The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of an unsafe condition on Model DH-114 airplanes which must be corrected by complying with British Aerospace Technical News Sheet No. F.21.

There has been one reported case in which a horizontal stabilizer upper pick-up eyebolt was found fractured. Investigation revealed that fatigue was the cause of the failure. An adverse tolerance build-up may have caused the fatigue failure. British Aerospace Technical News Sheet No. F.21 requires the removal and discarding of existing pick-up eyebolts, modification to the eyebolt holes to eliminate mismatch, and the installation of new pick-up eyebolts.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring accomplishment of the previously mentioned inspections and modifications was published in the **Federal Register** on June 29, 1984 (49 CFR 26748). The comment period closed on August 20, 1984, and interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received.

It is estimated that 45 U.S. registered airplanes will be affected by this AD, that it will take approximately 40 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Replacement parts are estimated at $400 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $90,000. For these reasons, this rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected.

Therefore, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

List of Subjects: 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

British Aerospace, Inc.: Applies to Model DH-114 Heron series 2A, 2DA, and 2X airplanes certificated in all categories. Compliance is required as indicated. To prevent fatigue failure of the tailplane upper pick-up eyebolts, accomplish the following within 90 days after the effective date of this AD, unless already accomplished:

A. Remove the eyebolts, modify the eyebolt holes, and install new eyebolts in accordance with paragraphs 4.1, 4.2, and 4.3, respectively, of British Aerospace Aircraft Group Technical News Sheet No. F.21, Issue 1, dated January 8, 1979.

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

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

This amendment becomes effective November 5, 1984.

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Model DH-114 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the regulatory docket. A copy may be obtained by contacting the person identified under the caption **FOR FURTHER INFORMATION CONTACT.**

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 41 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington, on September 21, 1984.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-25874 Filed 9-28-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-CE-29-AD; Amdt. 39-4925]

Airworthiness Directives; Gulfstream Aerospace Corp., Models 690, 690A, 690B, 690C, 690D, 695, and 695A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Gulfstream Aerospace Corporation (GAC) Models 690, 690A, 690B, 690C, 690D, 695, and 695A airplanes. A manufacturing defect has been found on some Barry Wright Corporation engine isolator assemblies installed on these airplanes which could prevent proper bolt preload and result in fatigue induced premature fracture of the isolator assembly thru-bolt. If the right-hand side isolator assembly fails the engine mount system would be capable of supporting only 55 percent of limit load. This action will reduce the risk of engine separation from the airframe due to failure of the engine isolator assemblies.

EFFECTIVE DATE: October 8, 1984.

Compliance: Within next 50-hours' time-in-service after the effective date of this AD.

ADDRESSES: The applicable service bulletin may be obtained from: Gulfstream Aerospace Corporation, Wiley Post Airport, P.O. Box 22500, Oklahoma City, Oklahoma 73123 or the Rules Docket, FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Efrain E. Esparza, Airframe Engineer Airplane Certification Branch, ASW-150, FAA, Southwest Region, P.O. Box 1689, Fort Worth, Texas 76101; Telephone 817-877-2077.

SUPPLEMENTARY INFORMATION: There have been 35 reports of Barry Wright Corporation defective engine mount isolators. Of these, four failed while installed on Gulfstream Aerospace Corporation 690 or 695 series airplanes. The rest were found to be defective during routine inspections and in spares stock. If loss of a critical isolator

assembly occurs, the engine mount system can only support up to 55 percent of the limit load expected in service and a catastrophic failure resulting in engine separation is possible. Since the condition described herein is likely to exist on other airplanes of the same type design an AD is being issued applicable to all GAC Models 690, 690A, 690B, 690C, 690D, 695, and 695A, which have Barry Wright Corporation engine isolators installed. The AD requires a one-time inspection to check for defective isolators and, if necessary, replacement of defective isolators in accordance with Gulfstream Aerospace Corporation Service Bulletin (SB) 201 issued May 11, 1984. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of 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 document 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 regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption **ADDRESSES** at the location identified.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

Gulfstream Aerospace Corporation: Applies to Models 690 and 690A, (S/Ns 11001 through 11284 which have had engine isolator assemblies replaced after July 28, 1975); 690A (S/Ns 11285 through 11344); 690B (S/Ns 11350 through 11566), 690C (S/Ns 11600 through 11732); 690D (S/Ns 15001 through 15033 and 15037); 695 (S/Ns 95000 through 95084); 695A (S/Ns 96001 through 96061, 96063 through 96072, 69075, 97078, 96085, and 96088) airplanes certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent failure of the engine mount systems accomplish the following:

(a) Within 50 hours' time-in-service after the effective date of this AD, inspect and modify, if required, the engine mount systems in accordance with Gulfstream Aerospace Corporation Service Bulletin SB 201 issued May 11, 1984.

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

(c) An equivalent method of compliance with this AD may be used if approved by the Manager, Airplane Certification Branch, ASW-150, FAA, Southwest Region, Post Office Box 1689, Fort Worth, Texas 76101; Telephone (817) 877-2070.

(Secs. 313(a), 601 and 603 of the 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, Jan. 12, 1983); § 11.89 of the Federal Aviation Regulations (14 CFR 11.89))

This amendment becomes effective on October 8, 1984.

Issued in Kansas City, Missouri, on September 21, 1984.

Murray E. Smith,

Director, Central Region.

[FR Doc. 84-25873 Filed 9-28-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-ASW-35]

Alteration and Designation of Control Zones: Lawton, OK, and Fort Sill, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will alter the control zone at Lawton, OK, and designate a control zone at Fort Sill, OK. The intended effect of the amendment is to provide controlled airspace for aircraft executing standard instrument approach procedures (SIAPs) to the Lawton Municipal Airport and Henry Post AAF. This amendment is necessary since the Lawton Airport Traffic Control Tower (ATCT) will assume weather reporting for the Lawton Municipal Airport; however, the ATCT is a part-time facility and Henry Post AAF will be responsible for making the required weather reports when the Lawton ATCT is closed. Since this weather reporting will be made at two different airports, during the hours specified, action is necessary to designate separate control zones for each airport.

EFFECTIVE DATE: 0901 G.m.t., December 20, 1984.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 877-2463.

SUPPLEMENTARY INFORMATION:

History

On August 3, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the control zone at Lawton, OK, and designate a control zone at Fort Sill, OK (49 FR 31076).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will be required for Lawton, OK, and Fort Sill, OK, since weather reports will be available at the Lawton Municipal Airport during the time the Lawton ATCT is operational, this weather will govern the control zone at the Lawton Municipal Airport. When the Lawton ATCT is closed, the weather taken at Henry Post AAF will govern the control zone at Fort Sill, OK. This method of operation will require designation of separate control zones for the two airports. However, the two control zones will not be effective at the same time.

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

List of Subjects in 14 CFR Part 71

Control zones, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.171 of Part 71 of

the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

Lawton, OK [Revised]

Within a 5-mile radius of the Lawton Municipal Airport (latitude 34°34'00" N., longitude 98°24'58" W.) and within a 5-mile radius of Henry Post AAF (latitude 34°39'03" N., longitude 98°24'00" W.) and within 2.5 miles each side of the 180° bearing of the Post Nondirectional Radio Beacon (NDB) extending from the 5-mile radius area of Henry Post AAF to 9.5 miles south of the Post NDB; and within 2 miles each side of the 179° bearing of the Trail NDB extending from the Henry Post AAF 5-mile radius area to the Trail NDB, excluding that airspace within R-5601A when the restricted area is activated. This control zone is effective during the specific dates and times established in advance by a notice to airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Fort Sill, OK [New]

Within a 5-mile radius of the Henry Post AAF (latitude 34°39'03" N., longitude 98°24'00" W.), and within 2.5 miles each side of the 180° bearing of the Post NDB extending from the 5-mile radius area to 9.5 miles south of the Post NDB; and within 2 miles each side of the 179° bearing of the Trail NDB extending from the 5-mile radius area to the Trail NDB, excluding that airspace within R-5601A when the restricted area is activated. This control zone is effective from 2100 local time to 0700 local time.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)) (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, Jan. 12, 1983)); and 14 CFR 11.69)

Issued in Fort Worth, TX, on September 14, 1984.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 84-25870 Filed 9-28-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-ASW-34]

Alteration of Transition Area: Fairview, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will alter the transition area at Fairview, OK. The intended effect of the amendment is to provide controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Fairview Airport. This amendment is necessary since a review of the designated airspace revealed the controlled airspace is improperly described as being from the surface and there is an error in the extension of the 700-foot transition area.

EFFECTIVE DATE: 0901 G.m.t., December 20, 1984.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 877-2463.

SUPPLEMENTARY INFORMATION:

History

On August 3, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area at Fairview, OK (49 FR 31075).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations is required at Fairview, OK, since a review of the designated airspace revealed the airspace is improperly described from a vertical standpoint and the bearing from the nondirectional radio beacon (NDB) is not correct.

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

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

Fairview, OK [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Fairview Airport (latitude 36°17'24" N., longitude 98°28'32" W.) and within 3 miles each side of the 007° bearing of the NDB (latitude 36°17'14" N., longitude 98°28'39" W.) extending from the 5-mile radius area to 8.5 miles north of the NDB.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in Fort Worth, TX, on September 14, 1984.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 84-25869 Filed 9-28-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-ASW-32]

Alteration of Transition Area and Control Zone; Temple, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will alter the transition area and control zone at Temple, TX. The intended effect of the amendment is to provide additional controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Draughon-Miller Municipal Airport. This amendment is necessary since there is a new SIAP being developed using the back course of the instrument landing system localizer to Runway 33.

EFFECTIVE DATE: 0901 G.m.t., December 20, 1984.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 877-2463.

SUPPLEMENTARY INFORMATION:

History

On August 3, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Temple, TX, transition area and control zone (49 FR 31077).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Sections 71.171

and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will be required at Temple, TX, since there is a proposed SIAP to Runway 33 using the back course of the ILS system at the Draughon-Miller Municipal Airport.

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

List of Subjects in CFR Part 71

Control zones, Transition areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) are amended as follows:

§ 71.171

Temple, TX [Revised]

Within a 5-mile radius of the Draughon-Miller Municipal Airport (latitude 31°09'08" N., longitude 97°24'27" W.), and within 2.5 miles west and 3.5 miles east of the north localizer course extending from the 5-mile radius area to 15.5 miles north of the airport and 1.5 miles each side of the south localizer course extending from the 5-mile radius area to 6 miles south of the airport. This control zone is effective during the specific dates and times established in advance by a notice to airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

§ 71.181

Temple, TX [Amended]

by adding:

; and within 3 miles each side of the south localizer course extending from the 7-mile radius area to 17 miles south of the airport.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in Fort Worth, TX, on September 14, 1984.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 84-25868 Filed 9-28-84; 8:45 am]

BILLING CODE 4910-13-M

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]

Final Rule-Correction

Issued: September 26, 1984.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule, correction, change of effective date.

SUMMARY: On March 23, 1984, the Federal Energy Regulatory Commission (FERC) issued a final rule in Docket No. RM83-78-000, 49 FR 12898 (March 30, 1984) (Order No. 367), transferring oil pipeline regulations from Title 49 to Title 18 of the *Code of Federal Regulations.* On June 27, 1984, the FERC postponed the effective date of the new Part 341, 18 CFR Part 341. (49 FR 27117, June 29, 1984). This document again postpones effective date of the new Part 341.

EFFECTIVE DATE: The effective date for 18 CFR Part 341 is October 30, 1984. The effective date for 18 CFR Parts 342, 343, 344, 345, 346, and 347 remains July 2, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph R. Hartsoe, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION: On March 23, 1984, the Interstate Commerce Commission (ICC) in conjunction with the Federal Energy Regulatory Commission (FERC) redesignated 49 CFR Part 1300 as 18 CFR Part 341, effective July 2, 1984. The ICC changed the effective date of this redesignation to October 2, 1984, 49 FR 27117 (June 29, 1984). Recently, the ICC once again changed the effective date of this redesignation to October 30, 1984. Since the FERC cannot redesignate 49 CFR Part 1300 without the concurrence of the ICC, the effective date of 18 CFR Part 341 is changed to October 30, 1984.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25967 Filed 9-28-84; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 25

[T.D. 7978]

Transitional Rule for Increased Annual Gift Tax Exclusion and Unlimited Exclusion for Certain Transfers

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the annual gift tax exclusion and the unlimited exclusion for certain medical and educational transfers under section 2503 of the Internal Revenue Code of 1954. Changes to the applicable law made by the Economic Recovery Tax Act of 1981 are reflected in this document. These regulations provide the public with the guidance needed to comply with that Act.

DATES: The regulations are effective for gifts made after December 31, 1981.

FOR FURTHER INFORMATION CONTACT: Ada S. Rousso of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:LR:T: 202-566-4336, not a toll free call).

SUPPLEMENTARY INFORMATION:

Background

On January 6, 1984, the Federal Register published proposed amendments to the Estate and Gift Tax Regulations (26 CFR Part 25) under section 2503 of the Internal Revenue Code of 1954 (49 FR 896) reflecting changes to the law made by section 441 of the Economic Recovery Tax Act of 1981 (Pub. L. 97-34, 95 Stat. 319).

Section 441(a) of the Economic Recovery Tax Act of 1981 increased the annual gift tax exclusion to $10,000 per donee for gifts made during calendar year 1982 and subsequent years. See § 25.2503-2(a) and 48 FR 40373.

Section 441(b) of the Act added section 2503(e) to the Code. Section 2503(e) and § 25.2503-6 generally provide that amounts paid on behalf of any individual as tutition to certain

educational organizations or as payment for medical care to any person who provides medical care with respect to that individual will not be considered transfers subject to the gift tax. This exclusion is permitted without regard to the relationship between the donor and donee. A clarifying change was made in the regulations which clarifies that transportation expenses are also within the scope of § 25.2503–6.

A public hearing was neither held nor requested. However, two comments suggesting changes were received. After consideration of the comments regarding the proposed amendments, those proposed amendments as revised by this document are adopted by this Treasury decision.

Summary of Comments

Section 25.2503–2(d) provides a transitional rule which states that the increase in the annual gift tax exclusion from $3,000 to $10,000 (as enacted by section 441(a) of the Economic Recovery Tax Act of 1981) for gifts made during calendar year 1982 and subsequent years does not apply to powers of appointment granted under certain instruments created before September 12, 1981. One commentor suggested adding an example (3) to § 25.2503–2(e) providing for a power of appointment granted in a trust that refers to "any available annual gift tax exclusion", thus indicating that the creator of the trust did not intend limiting the power to $3,000. Because the facts of example (2) of § 25.2503–2(e) already provide for a power of appointment granted in a trust that refers to section 2503(b) as amended at any time, the final regulations do not adopt the suggested revision. Example (2) is intended to reflect an expressed intent on the part of the grantor not to limit the power to $3,000.

The second commentor suggested that a transfer to a trust from an individual for the purpose of paying tuition to an educational organization on behalf of another individual should qualify for the unlimited exclusion from the gift tax under section 2503(e). That section provides that transfers to educational organizations described in section 170(b)(1)(A)(ii) qualify for the unlimited exclusion from the gift tax. In response to that comment, an example illustrating the exclusion for tuition payments has been added to § 25.2503–6(c). That example illustrates that a transfer to an irrevocable trust which is complete for gift tax purposes will not qualify for the unlimited exclusion for tuition expenses.

Special Analyses

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although a notice of proposed rulemaking which solicited public comments was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirement of 5 U.S.C. 553 did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these regulations is Ada S. Rousso of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR Part 25

Gift taxes.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 25 is amended as follows:

PART 25—[AMENDED]

Paragraph 1. Section 25.2503–2 is amended by adding paragraphs (d) and (e), immediately after paragraph (c), to read as set forth below.

§ 25.2503–2 Exclusions from gifts.

* * * * *

(d) *Transitional rule.* The increased annual gift tax exclusion as defined in section 2503(b) shall not apply to any gift subject to a power of appointment granted under an instrument executed before September 12, 1981, and not amended on or after that date, provided that: (1) The power is exercisable after December 31, 1981, (2) the power is expressly defined in terms of, or by reference to, the amount of the gift tax exclusion under section 2503(b) (or the corresponding provision of prior law), and (3) there is not enacted a State law applicable to such instrument which construes the power of appointment as referring to the increased annual gift tax exclusion provided by the Economic Recovery Tax Act of 1981.

(e) *Examples.* The provisions of paragraph (d) of this section may be illustrated by the following examples:

Example (1). A executed an instrument to create a trust for the benefit of B on July 2, 1981. The trust granted to B the power, for a period of 90 days after any transfer of cash to the trust, to withdraw from the trust the lesser of the amount of the transferred cash or the amount equal to the section 2503(b) annual gift tax exclusion. The trust was not amended on or after September 12, 1981. No state statute has been enacted which construes the power of appointment as referring to the increased annual gift tax exclusion provided by the Economic Recovery Tax Act of 1981. Accordingly, the maximum annual gift tax exclusion applicable to any gift subject to the exercise of the power of appointment is $3,000.

Example (2). Assume the same facts as in example (1) except that the power of appointment granted in the trust refers to section 2503(b) as amended at any time. The maximum annual gift tax exclusion applicable to any gift subject to the exercise of the power of appointment is $10,000.

Par. 2. Section 25.2503–6 is added to read as follows:

§ 25.2503–6 Exclusion for certain qualified transfer for tuition or medical expenses.

(a) *In general.* Section 2503(e) provides that any qualified transfer after December 31, 1981, shall not be treated as a transfer of property by gift for purposes of chapter 12 of subtitle B of the Code. Thus, a qualified transfer on behalf of any individual is excluded in determining the total amount of gifts in calendar year 1982 and subsequent years. This exclusion is available in addition to the $10,000 annual gift tax exclusion. Furthermore, an exclusion for a qualified transfer is permitted without regard to the relationship between the donor and the donee.

(b) *Qualified transfers*—(1) *Definition.* For purposes of this paragraph, the term "qualified transfer" means any amount paid on behalf of an individual—

(i) As tuition to a qualifying educational organization for the education or training of that individual, or

(ii) To any person who provides medical care with respect to that individual as payment for the qualifying medical expenses arising from such medical care.

(2) *Tuition expenses.* For purposes of paragraph (b)(1)(i) of this section, a qualifying educational organization is one which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. See section 170(b)(1)(A)(ii) and the regulations

thereunder. The unlimited exclusion is permitted for tuition expenses of full-time or part-time students paid directly to the qualifying educational organization providing the education. No unlimited exclusion is permitted for amounts paid for books, supplies, dormitory fees, board, or other similar expenses which do not constitute direct tuition costs.

(e) *Medical expenses.* For purposes of paragraph (b)(1)(ii) of this section, qualifying medical expenses are limited to those expenses defined in section 213(d) (section 213(e) prior to January 1, 1984) and include expenses incurred for the diagnosis, cure, mitigation, treatment or prevention of disease, or for the purpose of affecting any structure or function of the body or for transportation primarily for and essential to medical care. In addition, the unlimited exclusion from the gift tax includes amounts paid for medical insurance on behalf of any individual. The unlimited exclusion from the gift tax does not apply to amounts paid for medical care that are reimbursed by the donee's insurance. Thus, if payment for a medical expense is reimbursed by the donee's insurance company, the donor's payment for that expense, to the extent of the reimbursed amount, is not eligible for the unlimited exclusion from the gift tax and the gift is treated as having been made on the date the reimbursement is received by the donee.

(c) *Examples.* The provisions of paragraph (b) of this section may be illustrated by the following examples.

Example (1). In 1982, A made a tuition payment directly to a foreign university on behalf of B. A had no legal obligation to make this payment. The foreign university is described in section 170(b)(1)(A)(ii) of the Code. A's tuition payment is exempt from the gift tax under section 2503(e) of the Code.

Example (2). A transfers $100,000 to a trust the provisions of which state that the funds are to be used for tuition expenses incurred by A's grandchildren. A's transfer to the trust is a completed gift for Federal gift tax purposes and is not a direct transfer to an educational organization as provided in paragraph (b)(2) of this section and does not qualify for the unlimited exclusion from gift tax under section 2503(e).

Example (3). C was seriously injured in an automobile accident in 1982. D, who is unrelated to C, paid C's various medical expenses by checks made payable to the physician. D also paid the hospital for C's hospital bills. These medical and hospital expenses were types described in section 213 of the Code and were not reimbursed by insurance or otherwise. Because the medical and hospital bills paid in 1982 for C were medical expenses within the meaning of section 213 of the Code, and since they were paid directly by D to the person rendering the medical care, they are not treated as transfers subject to the gift tax.

Example (4). Assume the same facts as in example (2) except that instead of making the payments directly to the medical service provider, D reimbursed C for the medical expenses which C had previously paid. The payments made by D to C do not qualify for the exclusion under section 2503(e) of the Code and are subject to the gift tax on the date the reimbursement is received by C to the extent the reimbursement and all other gifts from D to C during the year of the reimbursement exceed the $10,000 annual exclusion provided in section 2503(b).

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: September 14, 1984.

Ronald A. Pearlman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 84-25984 Filed 9-28-84; 8:45 am]

BILLING CODE 4830-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2705

Privacy Act of 1974; Final Regulations for Implementation

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: The following regulations drafted in accordance with section (f) of 5 U.S.C. 552a, Privacy Act of 1974, are hereby adopted by the Commission. The purposes of these regulations are to establish procedures by which an individual can determine if the Commission maintains a system of records which include a record pertaining to that individual and also to establish procedures for individual access to the records for purposes of review, amendment and/or correction.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Catherine Sands Hiler, (202) 653-5625.

Signed this 24th day of September 1984.

Catherine Sands Hiler,

Executive Director.

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published on pages 30666-30667 of the **Federal Register** of July 31, 1984, and invited comments for 30 days ending August 30, 1984. No written comments were received. One oral comment was received, thoroughly discussed, and the concerns were satisfied with no further action requested.

List of Subjects in 29 CFR Part 2706

Privacy Act.

Part 2706 is hereby added to Title 29 of the Code of Federal Regulations to read as follows:

PART 2705—PRIVACY ACT IMPLEMENTATION

Sec.

2705.1 Purpose and scope.
2705.2 Definitions.
2705.3 Procedures for requests pertaining to individuals' records in a records system.
2705.4 Times, places, and requirements for the identification of the individual making a request.
2705.5 Access of requested information to the individual.
2705.6 Request for correction or amendment to the record.
2705.7 Agency review of request for correction or amendment of the record.
2705.8 Appeal of an initial adverse agency determination on correction or amendment of the record.
2705.9 Disclosure of record to a person other than the individual to whom the record pertains.
2705.10 Fees.

Authority: 5 U.S.C. 552a: Pub. L. 93-579.

§ 2705.1 Purposes and scope.

The purposes of these regulations are to:

(a) Establish a procedure by which an individual can determine if the Federal Mine Safety and Health Review Commission, hereafter the "Commission", maintains a system of records which includes a record pertaining to the individual; and

(b) Establish a procedure by which an individual can gain access to a record pertaining to him or her for the purpose of review, amendment and/or correction.

§ 2705.2 Definitions.

For the purpose of these regulations—

(a) The term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) The term "maintain" includes maintain, collect, use of disseminate;

(c) The term "record" means any item, collection or grouping of information about an individual that is maintained by the Commission, including, but not limited to, his or her employment history, payroll information, and financial transactions and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as social security number.

(d) The term "system or records" means a group of any records under control of the Commission from which

information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual; and

(e) The term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

§ 2705.3 Procedure for requests pertaining to individuals' records in a records system.

An individual shall submit a request to the Executive Director to determine if a system of records named by the individual contains a record pertaining to the individual. If a record pertaining to the individual does exist in the specified system of records and the individual wishes to review that record he or she shall submit a request to the Executive Director of the Commission which states the individual's desire to review his or her record.

§ 2705.4 Times, places, and requirements for the indentification of the individual making a request.

An individual making a request to the Executive Director of the Commission pursuant to § 2705.3 shall present a written request at the Commission Office, 1730 K Street NW., Room 612, Washington, DC 20006, on any business day between the hour of 8:30 a.m. and 5:00 p.m. The individual submitting the request should present himself or herself at the Commission's offices with a form of identification which will permit the Commission to verify that the individual is the same individual as contained in the record requested.

§ 2705.5 Access to requested information to the individual.

As soon as practicable after verification of identity the Commission shall disclose to the individual the information contained in the record which pertains to that individual.

§ 2705.6 Request for correction or amendment to the record.

The individual shall submit a written request to the Executive Director which states the individual's desire to correct or to amend his or her record and details the specific corrections or amendments sought. This request is to be made in accord with provisions of § 2705.4.

§ 2705.7 Agency review of request for correction or amendment of the record.

Within ten working days of the receipt of the request to correct or to amend the record, the Executive Director will acknowledge in writing such receipt and promptly either—

(a) Make any correction or amendment to that portion of the record which the individual believes is not accurate, relevant, timely, or complete; or

(b) Inform the individual of the Executive Director's refusal to correct or to amend the record in accordance with the request, and the procedures established by the Commission for the individual to request a review of that refusal.

§ 2705.8 Appeal of an initial adverse Commission determination on correction or amendment of the record.

An individual who disagrees with the refusal of the Executive Director to correct or to amend his or her record may submit a request for a review of such refusal to the Chairman, Federal Mine Safety and Health Review Commission, 1730 K Street NW., Room 610, Washington, D.C. 20006. The Chairman will, not later than thirty working days from the date on which the individual requests such review, complete such review and make final determination unless, for good cause shown, the Chairman extends such thirty-day period. If, after his or her review, the Chairman also refuses to correct or to amend the record in accordance with the request, the Individual may file with the Commission a concise statement setting forth the reasons for his or her disagreement with the refusal of the Commission and may seek judicial review of the Chairman's determination under 5 U.S.C. 552a(g)(1)(A).

§ 2705.9 Disclosure of record to a person other than the individual to whom the record pertains.

The Commission will not disclose a record to any individual other than the individual to whom the record pertains without receiving the prior written consent of the individual to whom the record pertains, unless the disclosure has been listed as a "routine use" in the Commission's notices of its system of records, or falls within one of the special disclosure situations listed in the Privacy Act of 1974 (5 U.S.C. 552a(b)).

§ 2705.10 Fees.

If an individual requests copies of his or her record, he or she will be charged a reasonable fee, excluding the cost of any search for review of the record, in advance of receipt of the pages.

[FR Doc. 84-25924 Filed 9-28-84; 8:45 am]

BILLING CODE 6735-01-M

POSTAL SERVICE

39 CFR Part 10

Express Mail International Service to New Zealand

AGENCY: Postal Service.

ACTION: Final action on Express Mail International Service to New Zealand.

SUMMARY: Pursuant to an agreement with the postal administration of New Zealand, the Postal Service intends to begin Express Mail International Service with New Zealand at postage rates indicated in the tables below. Service is scheduled to begin on October 29, 1984.

EFFECTIVE DATE: October 29, 1984.

FOR FURTHER INFORMATION CONTACT: Leon W. Perlinn, (202) 245-4414.

SUPPLEMENTARY INFORMATION: By a notice published in the **Federal Register** on August 27, 1984 (49 FR 33901), the Postal Service announced that it was proposing to begin Express Mail International Service to New Zealand. Comments were invited on published rate tables, which are proposed amendments to the International Mail Manual (incorporated by reference in the Code of Federal Regulations, 39 CFR 10.1) and which are to become effective on the date service begins. No comments were received.

Accordingly, the Postal Service states that it intends to begin Express Mail International Service with New Zealand on October 29, 1984 at the rates indicated in the tables below.

List of Subjects in 39 CFR Part 10

Postal service, Foreign relations.

NEW ZEALAND.—INTERNATIONAL EXPRESS MAIL

Custom designed service [1] [2]		On demand service [2]	
Weight not over (pounds)	Rate	Weight not over (pounds)	Rate
1	$29.00	1	$21.00
2	33.50	2	25.50
3	38.00	3	30.00
4	42.50	4	34.50
5	47.00	5	39.00
6	51.50	6	43.50
7	56.00	7	48.00
8	60.50	8	52.50
9	65.00	9	57.00
10	69.50	10	61.50
11	74.00	11	66.00
12	78.50	12	70.50
13	83.00	13	75.00
14	87.50	14	79.50
15	92.00	15	84.00
16	96.50	16	88.50
17	101.00	17	93.00
18	105.50	18	97.50
19	110.00	19	102.00
20	114.50	20	106.50
21	119.00	21	111.00
22	123.50	22	115.50

[1] Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a

Service Agreement providing for tender by the customer at a designated Post Office.

[3] Pickup is available under a Service Agreement for an added charge of $5.60 for each pickup stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pickup charge.

A transmittal letter making these changes in the pages of the International Mail Manual will be published in the **Federal Register** as provided in 39 CFR 10.3 and will be transmitted to subscribers automatically.

(39 U.S.C. 401, 404, 407)

W. Allen Sanders,

Associate General Counsel, Office of General Law Administration.

[FR Doc. 84-25853 Filed 9-28-84; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL MARITIME COMMISSION

46 CFR Part 510

[Docket No. 84-19]

Licensing of Ocean Freight Forwarders

Correction

In FR Doc. 84-24312 beginning on page 36296 in the issue of Friday, September 14, 1984, make the following corrections:

§ 510.11 [Corrected]

1. On page 36299, in the second column, in § 510.11 (a)(2), in the third line, "§ 510.4" should read "§ 510.14".

§ 510.23 [Corrected]

2. On page 36302, in the third column, in § 510.23(C), in the 21st line, "(b)" should read "(2)".

§ 510.25 [Corrected]

3. On page 36303, in the second column, in § 510.25, in the text of the certification, paragraph designated "2", in the second line, "name and firm" should read "name of firm".

Billing Code 1505-01-M

46 CFR 515

[Docket No. 84-18]

The Shipping Act of 1984; Final Rules for Marine Terminal Operations and Passenger Vessels

Correction

In FR Doc. 84-24313 beginning on page 36303 in the issue of Friday, September 14, 1984, make the following correction on page 36305: In the second column, in § 515.6(d)(2), in the first line, "mans" should read "means".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 83-1203; RM-4528]

FM Broadcast Station in Stephenson, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Channel 257A to Stephenson, Michigan, as that community's first FM service, in response to a request filed by David Schaberg.

EFFECTIVE DATE: November 27, 1984.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner or Stan Schmulewitz, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Stephenson, Michigan); MM Docket No. 83-1203, RM-4528.

Adopted: September 17, 1984.
Released: September 21, 1984.

By the Chief, Policy and Rules Division.

1. The Commission herein considers its *Notice of Proposed Rule Making*, 48 FR 52336, published November 17, 1983, proposing the assignment of Channel 257A to Stephenson, Michigan, as that community's first FM service, in response to a petition filed by Robert A. Sherman ("petitioner"). Petitioner filed comments in response to the *Notice* advising that he is no longer supportive of the proposal. However, we also received comments from David Schaberg, in which he expressed interest in the proposal and indicated his intention to apply for the channel, if assigned. No oppositions to the proposal were received.

2. In view of the fact that the proposed assignment could provide a first local FM service to Stephenson, Michigan, the Commission believes the public interest would be served by the assignment of Channel 257A to that community.

3. A staff engineering study reveals that Channel 257A can be assigned to Stephenson consistent with the minimum distance separation requirements of § 73.207(a) of the Commission's Rules. Additionally, since the proposed assignment is within 320 kilometers (200 miles) of the common U.S.-Canada border, concurrence of the Canadian government was obtained.

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective November 27, 1984, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended to include the community listed below, as follows:

City	Channel No.
Stephenson, MI	257A

5. It is further ordered, That this proceeding is terminated.

6. For further information concerning the above, contact Nancy V. Joyner or Stanley Schmulewitz, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-25894 Filed 9-28-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-1231; RM-4541]

FM Broadcast Station Camden, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein, at the request of Gary D. Terrell, assigns Channel 237A to Camden, Arkansas, as that community's second FM service.

EFFECTIVE DATE: November 27, 1984.

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

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau. (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and order

(Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Station (Camden, Arkansas) (MM Docket No. 83-1231, RM-4541)

Adopted: Sept. 17, 1984.

Released: September 21, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 48 FR 53728, published November 29, 1983, proposing the assignment of Channel 237A to Camden, Arkansas, as that community's second FM service. The Notice was adopted in response to a petition filed by Gary D. Terrell ("petitioner"). Supporting comments were filed by petitioner reaffirming his intention to apply for the channel, if assigned. Comments were filed by Camden Radio, Inc. ("Camden"), licensee of Stations KAMD and KWEH(FM), Camden, Arkansas.

2. Camden raises the question of whether a station on Channel 237A could provide city grade service to the community from the restricted site of 5.7 miles (9.1 km) specified in the *Notice*. However, a Class A station can be expected to provide city grade coverage (3.16 m V/m) up to a distance of 8 miles. Here Camden's comments provide no information (terrain factor, unavailability of property, etc.) which would give us reason to doubt the feasibility of city grade service being provided by Channel 237A from a distance of 5.7 miles.

3. The Commission believes the public interest would be served by the assignment of FM Channel 237A to Camden, Arkansas, in order to provide a second FM service to the community. The assignment can be made in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules, provided the transmitter is located 5.7 miles (9.1 km) south of the community to avoid short-spacing to FM Station KJKK (Channel 237A). Murfressboro, Arkansas, and Station KADL (Channel 235), Pine Bluff, Arkansas.[1]

PART 73—[AMENDED]

§ 73.606 [Amended]

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective November 27, 1984, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended to include the community listed below, as follows:

[1] As this petition was filed before December 16, 1983, the "10-mile buffer" provided for by the new rules adopted in BC Docket No. 80-90, 49 FR 10260, published March 20, 1984 does not apply. Therefore Station KADL (Channel 235), Pine Bluff, Arkansas does not receive the "10-mile buffer zone" in the direction of Camden.

City	Channel No.
Camden, AR	237A, 246

5. It is further ordered, That this proceeding is terminated.

6. For further information contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-25895 Filed 9-28-84; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84-16; RM-4627]

FM Broadcast Station in Ukiah, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns FM Channel 290 to Ukiah, California, as that community's third FM channel, in response to a petition filed by Theodore S. Storck.

EFFECTIVE DATE: November 27, 1984.

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

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations (Ukiah, California) (MM Docket No. 84-16, RM-4627).

Adopted: September 17, 1984.

Released: September 21, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has under consideration the *Notice of Proposed Rule Making*, 49 FR 3886, published January 31, 1984, proposing the assignment of Class B FM Channel 290 to Ukiah, California, as that community's third FM channel. The *Notice* was issued in response to a petition filed by Theodore S. Storck ("petitioner"). Petitioner filed comments affirming his interest in the assignment. No oppositions to the proposal were received.

2. The Commission believes that the public interest would be served by the assignment of FM Channel 290 to Ukiah, California, in order to provide a third FM channel to the community. The assignment can be made in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

PART 73—[AMENDED]

§ 73.202 [Amended]

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective November 27, 1984, the FM Table of Assignments, § 73.202(b) of the Rules is amended with regard to the following community:

City	Channel No.
Ukiah, CA	233, 277, 290

4. It is further ordered, That this proceeding is terminated.

5. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau (202) 634–6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-25889 Filed 9-28-84; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 83-1343; RM-4606]

FM Broadcast Station in Aspen, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Channel 296A to Aspen, Colorado, as that community's second FM service, at the request of Nae Kyung Kim.

EFFECTIVE DATE: November 27, 1984.

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

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations (Aspen, Colorado) (MM Docket No. 83-1343, RM-4606).

Adopted: September 17, 1984.
Released: September 21, 1984.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 49 FR 465, published January 4, 1984, proposing the assignment of Channel 296A to Aspen, Colorado, as that community's second local FM service. The *Notice* was adopted in response to a petition filed by Nae Kyung Kim ("petitioner"). Supporting comments were filed by petitioner reaffirming his intention to apply for the channel, if assigned. No comments in opposition to the proposal were received.

2. The Commission believes that the public interest would be served by the assignment of FM Channel 296A to Aspen, Colorado, in order to provide a second local FM service to the community. The assignment can be made in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules.

PART 73—[AMENDED]

§ 73.202 [Amended]

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective November 27, 1984, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended for the following city:

City	Channel No.
Aspen, CO	249A, 296A

4. It is further ordered, That this proceeding is terminated.

5. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 Stat. as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-25892 Filed 9-28-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-1294; RM-4549]

FM Broadcast Station in Eureka, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns FM Channel 228A to Eureka, Kansas, as that community's first local assignment, at the request of Frederick E. Miller.

EFFECTIVE DATE: November 27, 1984.

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

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations, (Eureka, Kansas) MM Docket No. 83-1294, RM-4549).

Adopted: September 17, 1984.
Released: September 21, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 48 FR 55591, published December 14, 1983, seeking comments on the proposed assignment of Channel 228A to Eureka, Kansas, as that community's first local FM allocation, at the request of Frederick E. Miller ("petitioner"). The channel can be assigned in compliance with the Commission's minimum distance separation and other technical rules.[1] The petitioner filed comments reiterating his intention to apply for the channel, if assigned. No other comments were received.

PART 73—[AMENDED]

§ 73.202 [Amended]

2. We believe the assignment of Channel 228A at Eureka to be in the public interest, as it could provide that community its first local FM service. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered That effective November 27, 1984, the FM Table of Assignments, § 73.202(b) of the Rules, is amended with respect to the community listed below, to read as follows:

City	Channel No.
Eureka, KS	228A

3. It is further ordered, That this proceeding is terminated.

4. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-25896 Filed 9-28-84; 8:45 am]

BILLING CODE 6712-01-M

[1] It is noted that the assignment will infringe upon the 16 kilometer buffer of Station KYEZ, Channel 229 at Salina, Kansas. However, as the petition for rule making was filed prior to March 1, 1984, the date on which the buffer zone was established, it is not necessary that such protection be afforded. See, *Memorandum Opinion and Order*, BC Docket 80-90 FR 10260, published March 20, 1984, and Public Notice, *Implementation of BC Docket 80-90, The Commission Does Not Contemplate a General Freeze*, Mimeo No. 1306, December 9, 1983.

47 CFR Part 73

[MM Docket No. 84-270; RM-4598]

FM Broadcast Station in Pittsburg, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Channel 276A to Pittsburg, Texas, in response to a petition filed by Charles D. Hagen and Steven Milner as that community's first local FM broadcast service.

EFFECTIVE DATE: November 27, 1984.

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

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations (Pittsburg, Texas) (MM Docket No. 84-270, RM-4598).

Adopted: September 17, 1984.
Released: September 21, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 11689, published March 27, 1984, in response to a petition filed by Charles D. Hagen and Steven Milner ("petitioners"), proposing the assignment of FM Channel 276A to Pittsburg, Texas, as its first local FM broadcast service. Petitioners have filed supporting comments reaffirming their intention to apply for the channel, if assigned. No comments in opposition to the proposal were received.

2. The Commission believes that the public interest would be served by the assignment of FM Channel 276A to Pittsburg, Texas, since it could provide a first local FM broadcast service to that community. The assignment can be made in compliance with the minimum distance separation requirements of § 73.207 of the Rules with a site restriction 7.6 miles northwest of Pittsburg, Texas. The site restriction would prevent short spacing to FM Station KJCS on Channel 277 in Nacogdoches, Texas, and FM Station KOSY on Channel 273 in Texarkana, Texas.

PART 73—[AMENDED]

§ 73.202 [Amended]

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and 0.61 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective November 27, 1984, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended for the following city:

City	Channel No.
Pittsburg, TX	276A

4. It is further ordered, That this proceeding is terminated.

5. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)
Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–25888 Filed 9–28–84; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 83–19; RM–4212]

FM Broadcast Station in Bringam City, UT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein at the request of Brigham City Broadcasting Company substitutes Class C Channel 295 for Channel 296A and modifies the license of Station KFRZ at Brigham City, Utah, to specify operation on the new FM channel. In addition, in response to other expressed interests, Channel 264 is assigned to Brigham City. The action could provide Brigham City with its first and second wide-area coverage FM stations.

EFFECTIVE DATE: November 27, 1984.

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

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order

(Proceeding Terminated)

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations, (Brigham City, Utah) MM Docket No. 83–19, RM–4212).

Adopted: September 17, 1984.
Released: September 21, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 48 FR 4697, published February 2, 1983, proposing the substitution of FM Class C Channel 295 for Channel 296A at Brigham City, Utah. The petitioner, Brigham City Broadcasting Company, Inc., also requested that its license for Station KBUH–FM (now KFRZ) be modified to specify operation on the new channel.[1] The petitioner submitted comments and reply comments reiterating its intention to operate on the higher-powered channel, if assigned. Comments expressing an interest in operating on Channel 295 were also filed by Georgiana Miyagishima, Stephen L. Hughes, and Melanie Kay Hughes.

2. Petitioner's reply comments point out that Channels 248 and 264 can be assigned to Brigham City, in addition to Channel 295. Therefore, it requests that its license be modified to specify Channel 295 and that Channels 248 and 264 be assigned to enable the other parties expressing interest to file for the additional FM channels. Our engineering study shows that only Channel 264 is available for assignment with a site restriction of 11.4 miles northeast. Channel 248 is unavailable for assignment due to short-spacing to Channel 247 at Blackfoot, Idaho.[2]

3. The Commission's recent action in MM Docket 83–1148 [3] provides for the modification of an existing station's license in rule making if the Commission can assign an additional channel of equal class to satisfy the stated interests of other parties. Therefore, in light of the continuing interest by the petitioner as well as interest expressed by three other parties, we are herein assigning Channels 264 and 295 to Brigham City. Additionally, we will modify the license of Station KFRZ–FM to specify operation on Channel 295. This action will enable Brigham City to receive a first and second wide-area coverage service.

PART 73—[AMENDED]

§ 73.202 [Amended]

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective November 27, 1984, the FM Table of Assignments, § 73.202(b) of the Rules, is amended with regard to the following community:

City	Channel No.
Brigham City, UT	264, 295

5. It is further ordered, That pursuant to section 316(a) of the Communications Act of 1934, as amended, the license of Station KFRZ–FM, Brigham City, Utah, IS MODIFIED to specify operation on Channel 295 subject to the following conditions:

(a) At least 30 days before operating on Channel 295, the licensee shall submit to the Commission a minor

[1] The license for Station KBUH–FM was transferred to First National Broadcasting Corporation (BALH–820831GF). Brigham City Broadcasting states that the sale was consummated on March 15, 1983. The call letters have been changed to KFRZ.

[2] The licensee of KLCE–FM was authorized to operate on Channel 247 in lieu of Channel 249A at Blackfoot, Idaho, by *Report and Order* in MM Docket 83–269, adopted August 29, 1983.

[3] *Report and Order*, MM Docket 83–1148, adopted July 26, 1984, 49 FR 34007, published August 28, 1984.

change application for a construction permit (Form 301);

(b) Upon grant of the construction permit, program tests may be conducted in accordance with § 73.1620;

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.301 of the Commission's Rules.

6. It is further ordered, That this proceeding is terminated.

7. For further information contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–25893 Filed 9–28–84; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 84–271; RM–4501]

TV Broadcast Station in Bakersfield, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF TV Channel 48 to Bakersfield, California as that community's fifth television assignment in response to a petition filed by Stephen J. Mewhort.

EFFECTIVE DATE: November 27, 1984.

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

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), table of assignments TV Broadcast Stations (Bakersfield, California) (MM Docket No. 84–271, RM–4501).

Adopted: September 17, 1984.
Released: September 21, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 11690, published March 27, 1984, proposing the assignment of UHF TV Channel 48 to Bakersfield, California, as that community's fifth television channel assignment. The *Notice* was adopted in response to a petition filed by Stephen J. Mewhort ("petitioner"). Petitioner has filed supporting comments reaffirming his intention to apply for the channel, if assigned. No oppositions or other comments expressing an interest in the proposal were received.

2. The channel can be assigned in compliance with the Commission's minimum distance separation and other requirements with a site restriction of 2.7 miles north of Bakersfield to avoid a short spacing to the construction permit issued for Station KTIE, Channel 63, Oxnard, California.

PART 73—[AMENDED]

§ 73.606 [Amended]

3. We believe the public interest would be served by assigning UHF TV Channel 48 to Bakersfield, California, since it could provide a fifth television service to that community. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective November 27, 1984, the Television Table of Assignments, § 73.606(b) of the Rules, is amended with respect to the community listed below, to read as follows:

City	Channel No.
Bakersfield, CA	17, 23–, 29, *39–, 48

4. It is further ordered, That this proceeding is terminated.

5. For further information concerning the above, contact D. David Weston, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–25890 Filed 9–28–84; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 83–1143; RM–4565]

FM Broadcast Station in Woodlake, CA

AGENCY: Federal Communications Commission.

ACTION: Final action.

SUMMARY: Action taken herein, at the request of Eric R. Hilding, assigns Class B FM Channel 281 to Woodlake, California, as that community's first FM channel.

EFFECTIVE DATE: November 27, 1984.

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

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations, (Woodlake, California) (MM Docket No. 83–1143, RM–4565).

Adopted: September 17, 1984.
Released: September 21, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 48 FR 51652, published November 10, 1983, proposing the assignment of Class B FM Channel 281 to Woodlake, California, as that community's first FM channel. The *Notice*, was adopted in response to a petition filed by Eric R. Hilding ("petitioner"). Petitioner filed comments reaffirming his interest in the proposed channel, if assigned. Comments were filed by Western Sun Communications ("WSC"), licensee of Station KMGX(FM), Channel 279, Hanford, California, to which petitioner filed reply comments.

2. WSC, in its comments, expressed concern over the close spacing between Station KMGX and the proposed site for Channel 281. WSC stated that the proposed site restriction may not provide KMGX sufficient flexibility in any future relocation of its own facilities to improve service.

3. Petitioner stated in his reply comments that WSC's comments were simply a "redefinition" of the FCC Rules which permit the proposed assignment.

4. The Commission believes that the public interest would be served by the assignment of FM Channel 281 to Woodlake, California, in order to provide a first FM service to the community. The assignment can be made in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules, with a site restriction of 2.1 miles (3.4 Km) southeast of the community to avoid short-spacing to KMGX (Channel 279), Hanford, California.[1]

[1] Under rules adopted in the *Report and Order*, BC Docket No. 80–90, 94 FCC 2d 152 (1983), recons. *Memorandum Opinion and Order*, 49 FR 10260, published March 20, 1984, the spacing between 2nd adjacent Class B channels has been increased. However, because the petition was filed before March 1, 1984, the new spacing requirements do not apply.

PART 73—[AMENDED]

§ 73.202 [Amended]

5. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective November 27, 1984, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended for the following city:

City	Channel No.
Woodlake, CA	281

6. It is further ordered, That this proceeding is terminated.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-25897 Filed 9-28-84; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Ch. 2

[Defense Acquisition Circular 84–1]

DoD FAR Supplement

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: Defense Acquisition Circular (DAC) 84–1 amends the DoD FAR Supplement with respect to foreign acquisitions; options; technical data, other data, computer software, and copyrights; and provides a policy statement on the use of Defense and Standard Forms after April 1, 1984.

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: J. Brannan, Director, Defense Acquisition Regulatory Council, OUSDRE(AM) (DARS), OUSDRE(M&RS), Room 3D139, Pentagon, Washington, D.C. 20301–3062, telephone (202) 697–7266.

SUPPLEMENTARY INFORMATION:

Background

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

The initial publication of the DoD FAR Supplement was contained in Part II, Volume 49, No. 59, of the **Federal Register** (49 FR 11302) of March 26, 1984.

Interested parties may submit proposed revisions to this Supplement directly to the DAR Council.

List of Subjects in 48 CFR Ch. 2

Government procurement.

James T. Brannan,

Director Defense Acquisition Regulatory Council.

Defense Acquisition Circular

[Number 84–1]

March 1, 1984.

All DoD FAR Supplement and other directive material contained in this Defense Acquisition Circular is effective April 1, 1984.

Defense Acquisition Circular (DAC) 84–1 amends the DoD FAR Supplement and prescribes procedures to be followed. The following is a summary of the amendments and procedures:

Item I—Foreign Acquisition

Incorporated into the 1984 Edition of the DoD FAR Supplement is Part 225, Foreign Acquisition.

Item II—Subpart 217.2, Options

Subpart 217.2, Options, has been revised to clarify coverage and to align it to Part 225 of the DoD FAR Supplement. Appropriate changes have been made to the clauses in 252.217.

Item III—227.4, Technical Data, Other Data, Computer Software, and Copyrights

Subpart 227.4, Technical Data, Other Data, Computer Software, and Copyrights, is published in its entirety in this circular and became effective on April 1, 1984. Subpart 227.4 relocates into one subpart the textual material currently in the DAR relating to technical data, computer software, and copyrights.

Item IV—Policy Statement on the Use of Defense and Standard Forms after April 1, 1984

Unless otherwise required by the terms of a solicitation or contract, Standard Forms prescribed by the FAR shall be used.

When a DD Form subsequently superseded by a Standard Form in the FAR is required by the terms of a contract and use of a Standard Form would be in the Government's best interest, the contracting officer is authorized to enter into an appropriate mutual agreement with the contractor to use the Standard Form.

When DD Forms continue to be required for contract performance, DoD activities should assure that sufficient stocks are retained. Special care is required because many are being phased out of the supply system.

When new Standard Forms are prescribed and on hand, there may nevertheless be some rare instances when continued use of a superseded DD Form may be indicated for reasons of economy or severe administrative hardship. An example might be very large quantities of a high use rate form at an installation. Authority to approve continued use of the superseded form is hereby delegated to the Departments, provided that authority shall not be redelegated below the level of the Head of the Contracting Activity (HCA). Continued use may be approved for no longer than six months and must be on a form-by-form basis. This authority shall expire on December 31, 1984.

When new Standard Forms cannot be obtained from the GSA for use by April 1, 1984, local reproduction of the form is authorized until GSA stocks are available, if an appropriate determination is made on a form-by-form basis by the staff officer responsible for procurement at the activity. Each such determination shall be limited to a 60-day period, but may be renewed.

Adoption of Amendments

Therefore, the DoD FAR Supplement contained in 48 CFR Chapter 2 is amended as set forth below.

1. The authority citation for Chapter 2 reads as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

PART 217—SPECIAL CONTRACTING METHODS

2. Section 217.203 is revised to read as follows:

217.203 Solicitations.

(a)(S–70) When the contracting officer either knows or anticipates that the option may be appropriate to fulfill Foreign Military Sales (FMS) commitments, the solicitation shall notify contractors of the Government's intent in this regard and shall identify the FMS country (countries) and its (their) requirements.

(S–71) When the contracting officer either knows or anticipates that an option may be appropriate to fulfill FMS requirements but the specific country or countries are not identified, the solicitation shall advise contractors that

the U.S. Government will subsequently identify the foreign country for the purpose of negotiating any equitable price adjustment for cost or profit considerations attributable to the option if exercised for FMS requirements (see 217.208(S–70)(2).

(S–72) Such notification shall not be placed in solicitations for the establishment or replenishment of DoD inventories or stocks or acquisitions made under DoD Cooperative Logistics Support Arrangements.

(g)(2) The Chief of the Contracting Office is the person authorized to make the approval cited in FAR 17.203(g)(2).

217.206 [Removed]

3. Section 217.206 is removed.

4. Section 217.208 is revised to read as follows:

217.208 Solicitation Provisions and Contract Clauses.

(S–70) *FMS Option.*

(1) When the contracting officer either knows or anticipates that a contract option may be exercised to fulfill FMS requirements (see 225.7309) and the parties are able to negotiate a price in advance, insert the clause at 252.217–7000, Exercise of Option to Fulfill Foreign Military Sales Commitments, if a clause at FAR 52.217–6, –7, –8, or –9 is included in the contract.

(2) When the contracting officer either knows or anticipates that a contract option may be exercised to fulfill FMS requirements (see 225.7309) and the parties are unable to negotiate any additional cost or profit considerations attributable to Foreign Military Sales until a specific country or countries are subsequently identified, the clause at 252.217–7001, Exercise of Option to Fulfill Foreign Military Sales Commitment, (Alt. 1) shall be inserted if a clause at FAR 52.217–6, –7, –8, –9 is included in the contract.

5. A new Part 225 is added to read as follows:

PART 225—FOREIGN ACQUISITION

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

225.000 Scope of part.

This part supplements FAR Part 25 and provides special guidance (including pricing guidance) for Military Assistance Program acquisitions and Foreign Military Sales; procedures to promote liaison with overseas activities and compliance with government-to-government agreements for acquisition from foreign contractors; and procedures for the solicitation and evaluation of offers of defense equipment which are qualifying country end products.

225.001 Definitions.

As used through this part, the words and terms defined in this paragraph shall have the meanings set forth below, unless a different definition is prescribed for a specific subpart.

"Defense cooperation agreement country end product" means an item listed in the defense cooperation country agreement and produced in that country.

"A defense cooperation country" is a foreign country which has a defense cooperation agreement and for which a Determination and Findings (D&F) was made by the Secretary of Defense waiving the Buy American Act restrictions for a list of mutually agreed items. These countries are listed at 225.7501.

"Defense cooperation country offer" means an offer of a defense cooperation country end product, including transportation to destination.

"Defense equipment" means any equipment, item of supply, component, or end product purchased by the Department of Defense.

"Domestic concern" means an incorporated concern incorporated in the United States or an unincorporated concern having its principal place of business in the United States. (In the context of this part, "concern" refers to a prospective or actual contractor. Thus, a contract with a foreign subsidiary or foreign branch or business office of a U.S. corporation would not be a contract with a domestic concern. Conversely, a contract executed by a foreign salesman or agent on behalf of a domestic concern would nevertheless be a contract with a domestic concern since the basic contractual and legal responsibility resides with the domestic concern.)

"Domestic end product" means (i) an unmanufactured end product which has been mined or produced in the United States; or (ii) an end product manufactured in the United States if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50% of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (i) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality; or (ii) as to which the Secretary concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act (FAR 225.102(a)(3)).

"FMS/Offset arrangement country" means an offer of a FMS/offset arrangement country end product, including transportation to destination.

"FMS/Offset arrangement country" is a foreign country which has an offset arrangement negotiated in conjunction with a Foreign Military Sale and which arrangement provides for obtaining a waiver of the Buy American Act restrictions on a case-by-case basis. These countries are listed at 225.7310(a).

"FMS/Offset arrangement country end product" means (i) an unmanufactured end product mined or produced in a FMS/Offset arrangement country; or (ii) an end product manufactured in a FMS/Offset arrangement country if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50% of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty, whether or not duty is in fact paid.

"Foreign concern" means a concern that is not a domestic concern.

"Participating country" is a NATO country which has a Memorandum of Understanding (MOU) or similar agreement with the U.S., and for which a blanket D&F was made by the Secretary of Defense waiving the Buy American Act restrictions. These countries are listed at 225.7401.

"Participating country end product" means (i) an unmanufactured end product mined or produced in a participating country; or (ii) an end product manufactured in a participating country if the cost of its qualifying country components and its components mined, produced, or manufactured in the United States exceeds 50% of the cost of all its components. The cost of components shall include transportation to the place of incorporation into the end product and any duty, whether or not duty is in fact paid.

"Participating country offer" means an offer of a participating country end product, including transportation to destination.

"Qualifying country" means any country defined as a defense

cooperation country, a FMS/Offset arrangement country, or a participating country.

"Qualifying country component" means (i) an item mined, produced, or manufactured in a participating country or in a FMS/Offset arrangement country when the applicable D&F has been made waiving the Buy American Act restrictions; or (ii) any item listed in a defense cooperation country agreement.

"Qualifying country end product" means (i) a participating country end product; (ii) a FMS/Offset arrangement country end product when the applicable D&F has been made waiving the Buy American Act restrictions; or (iii) a defense cooperation country agreement listed item.

"Qualifying country offer" means an offer to a qualifying country end product, including transportation to destination.

"Source" (when restricted by such words as foreign, domestic, qualifying country, etc.) refers to the actual manufacturer or producer of the end product or component (product may encompass a report).

"United States" means the States, the District of Columbia, Puerto Rico, and possessions. It does not include leased bases or trust territories.

Subpart 225.1—Buy American Act—Supplies

225.102 Policy.

(S–70) *Buy American Act requirements.* Except as provided in this section, the Buy American Act requires that in the acquisition of supplies, only domestic end products shall be acquired for public use in the United States. In determining whether an end product is a domestic end product, only the end product and its components shall be considered. The act and its implementation by E.O. 10582 and the Balance of Payments Program require the use of evaluation factors specified in 225.105.

(1) *Use outside the United States.* The restrictions of the Buy American Act do not apply to articles, materials, or supplies for use outside the United States. However, the Balance of Payments Program is not so restricted. In order to uniformly implement the Balance of Payments Program worldwide, the preferences and procedures of the Buy American Act for soliciting and awarding contracts for supplies and applicable services have been extended as a matter of policy to acquisition of supplies and applicable services for use outside the United States.

(2) *Unreasonable cost or inconsistency with the public interest.* The restrictions of the Buy American Act and the Balance of Payments Program do not apply when it is determined by the Secretary concerned that the cost of a domestic end product would be unreasonable, or that acquisition of a domestic end product would be inconsistent with the public interest.

(3) *Nonavailability in the United States.* The Buy American Act does not apply to (i) end products of a class or kind which the Government has determined are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality; or (ii) components of end products manufactured in the United States or a qualifying country if the component is of a class or kind determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. Certain items determined to be exempt under these exceptions are set forth in FAR 25.108(d)(1).

(4) *Commissary resale.* The provisions of the Buy American Act do not apply to supplies purchased specifically for commissary resale. However, nonsubsistence items of foreign origin purchased for resale in domestic commissaries must meet the evaluation criteria in this subpart.

(S–71) A nonavailability determination is not required for end products or components listed in (S–72) below or in FAR 25.108(d)(1). Otherwise, acquisitions of foreign end products or components on the basis of nonavailability shall be made only after a determination of nonavailability has been made and the acquisition is approved.

(1) At a level above the contracting officer, if the amount involved is estimated not to exceed $25,000;

(2) By the chief of the contracting office concerned, if the acquisition is estimated not to exceed $25,000;

(3) By the head of the contracting activity (HCA) or his immediate deputy, or in the case of the Defense Advanced Research Projects Agency (DARPA), the Director, DARPA, if the acquisition is estimated not to exceed $2 million; or

(4) By the Secretary of the Department concerned, or his designee at a level no lower than an HCA, if the acquisition is estimated to exceed $2 million.

In making such determination, and granting such approval, the feasibility of foregoing the requirement or providing a U.S. substitute shall be considered.

(S–72) Acquisitions in the following categories may be made without determinations or approvals otherwise required by this subsection.

(1) Spare and replacement parts, if the acquisition must be restricted to the original manufacturer or his supplier.

(2) Foreign drugs by the Defense Personnel Support Center when the Chief of the Division of Technical Operations, Directorate of Medical Materiel, has determined that only the requested foreign drug will fulfill the requirements.

(S–73) *Balance of payments program requirements.* The 50% evaluation factor in favor of domestic offers, implemented in 225.105, is an interim measure designed to alleviate the impact of DoD expenditures on the Nation's balance of international payments. The Department of Defense does not expect to use the 50% factor beyond the time when the U.S. balance of payments deficit is corrected.

(1) Although the evaluation procedures in 225.105 reduce overseas dollar expenditures resulting from defense acquisition at an acceptable increase in budgetary costs, this result is an average and overall result rather than one precisely obtained in each case. This is so because, both under the Buy American Act and as a matter of administrative practicability, items are classified absolutely as "foreign" or "domestic" and varying degrees within each class are not recognized. However, deviations (see FAR Subpart 1.4) from the evaluation procedures of 225.105 should be considered for acquisitions over $250,000 when it is anticipated that the low domestic offer will involve relatively substantial foreign expenditures or that the low foreign offer will involve relatively substantial Comestic expenditures. Any request for such a deviation should be made sufficiently in advance of solicitation to permit the solicitation to describe the evaluation procedure that will be used. Such deviations require the advance approval of the Under Secretary of Defense for Research and Engineering (USDRE) or his designee.

225.103 Agreements with certain foreign governments.

(See Subparts 225.73, 225.74 and 225.75.)

225.105 Evaluating offers.

In lieu of the procedures set forth in FAR 25.105, the following procedures are applicable to the Department of Defense.

(S–70) In accordance with the Buy American Act, the Secretary of Defense has determined that where the procedures in (S–71) below result in the acquisition of foreign end products, the acquisition of domestic end products would be (i) unreasonable in cost or (ii) inconsistent with the public interest.

(S–71) Except as provided in paragraphs (S–71), (S–73) and (S–74) below, offers shall be evaluated so as to give preference to domestic offers as follows:

(1) Each nonqualifying country offer of defense equipment (but see exception (ii) below) shall be adjusted for purposes of evaluation either by excluding any duty from the nonqualifying country offer and adding 50% of the offer (exclusive of duty) to the remainder, or by adding to the nonqualifying country offer (inclusive of duty) a factor of 6% of that offer, whichever results in the greater evaluated price, except that a 12% factor shall be used instead of the 6% factor if (i) the firm submitting the low acceptable domestic offer is a small business concern, or a labor surplus area concern, or both; (ii) small purchase procedures are not used; and (iii) any contract award to a domestic concern which would result from applying the 12% factor, but which would not result from applying the 6% or 50% factor, would not exceed $100,000. If an award for more than $100,000 would be made to a domestic concern if the 12% factor is applied, but would not be made if the 6% factor or 50% factor is applied, the matter shall be submitted to the Secretary of the Department concerned for decision as to whether the award to the small business or labor surplus area concern would involve unreasonable cost or inconsistency with the public interest. If the foregoing procedure results in a tie between a nonqualifying country offer, as evaluated, and a domestic offer, award shall be made on the latter. In other instances, use the tie-breaking procedures in 214.407–6. When more than one line item is offered in response to a solicitation, the appropriate factor shall be applied on an item-by-item basis, except that the factor may be applied to any group of items as to which the solicitation specifically provides that award may be made on a particular group of items.

(2) In the event that a domestic offer, a qualifying country offer, and a nonqualifying country offer compete for defense equipment, the qualifying country offer shall be evaluated without applying the price differentials of this paragraph, whereas the nonqualifying country offer shall be subject to the price differentials (see Example E below). However, in the event the low domestic offer exceeds the evaluated price of the nonqualifying country offer, all foreign offers shall be evaluated as if no domestic offer was submitted (see Example F below). In the event a qualifying country offer competes against a nonqualifying country offer and no domestic offer is submitted, they shall be evaluated on an equal basis (see Example G below).

(S–72) The following examples illustrate how the procedure in (S–71) above should be applied. Throughout these examples, "domestic offer—large" means a domestic offer which is not from a small business or labor surplus area concern; "domestic offer—small" means a domestic offer which is from either a small business concern or a labor surplus area concern, or both.

Example A

Nonqualifying Country Offer, including duty of $4,500 ..... $14,500
Domestic Offer—Large 15,100
Domestic Offer—Small 15,110

Award on Domestic Offer—Large. Domestic Offer—Small is out because it is not the low acceptable domestic offer. Nonqualifying Country Offer, if adjusted by the 50% factor, would be $14,500 less $4,500 duty (i.e., $10,000), plus 50% of $10,000 (i.e., $5,000), or $15,000; but if adjusted by the 6% factor, it would be $14,500 plus 6% of $14,500 (i.e., $870), or $15,370; therefore, the 6% factor is added, and the Domestic Offer—Large is the low evaluated offer.

Example B

Nonqualifying Country Offer, including duty of $2,000 ..... $12,000
Domestic Offer—Large 15,000

Award on Domestic Offer—Large. Nonqualifying Country Offer, adjusted by 50% factor, is $15,000; adjusted by 6% factor, it is $12,720. Therefore, Nonqualifying Country Offer is evaluated at $15,000, resulting in a tie and consequent award on the Domestic Offer—Large.

Example C

Nonqualifying Country Offer, including duty of $3,500 ..... $13,500
Domestic Offer—Large 17,000
Domestic Offer—Small 15,100

Award on Domestic Offer—Small. Nonqualifying Country Offer, adjusted by 50% factor, is $15,000; adjusted by 12% factor, it is $15,120. Therefore, it is evaluated at $15,120, resulting in award on the Domestic Offer—Small.

Example D

Nonqualifying Country Offer, including duty of $70,000 ..... $270,000
Domestic Offer—Large 310,000
Domestic Offer—Small 302,000

Submit the case to the Secretary of the Department concerned. Nonqualifying Country Offer, adjusted by 50% factor, is $300,000; adjusted by 12% factor, it is $302,400; adjusted by 6% factor, it is $286,200. Therefore, Domestic Offer—Small is in line for possible award only because of the bidder's small business or labor surplus area status. But since the contract award would exceed $100,000, the matter requires Secretarial decision.

Example E

Nonqualifying Country Offer, including duty of $2,000 ..... $8,000
Domestic Offer—Large 10,500
Domestic Offer—Small 8,900
Qualifying Country Offer 8,800

Award on Qualifying Country Offer. Nonqualifying Country Offer, adjusted by 50% factor, is $9,000; adjusted by 12% factor, it is $8,960. Therefore, it is evaluated at $9,000. The qualifying country offer receives the award because it is evaluated without adjustment and is the lowest offer.

Example F

Nonqualifying Country Offer, including duty of $2,000 ..... $8,000
Domestic Offer—Large 10,000
Domestic Offer—Small 9,500
Qualifying Country Offer 8,800

Award on Nonqualifying Country Offer. Nonqualifying Country Offer, adjusted by 50% factor, is $9,000; adjusted by 12% factor, it is $8,960. Therefore, it is evaluated at $9,000 which is still lower than both domestic offers. Accordingly, the qualifying and nonqualifying country offers are evaluated on an equal basis as if the domestic offers had never been submitted, and the award is made on the nonqualifying country offer.

Example G

Nonqualifying Country Offer $10,000
Qualifying Country Offer 11,500

Award on Nonqualifying Country Offer. Since there is no domestic offer, the nonqualifying country and qualifying country offers are evaluated on an equal basis, and the award is made on the nonqualifying country offer.

(S–73) When a qualifying country offer is received for defense equipment listed in 225.7405 or FAR 8.203, rejection of that offer in the interest of protecting the domestic mobilization base is required, except when the quantity for which the offer is made has been identified as a quantity in excess of that required to maintain the U.S. defense mobilization base for those items. In those instances when it has been determined prior to

solicitation that the item is not to be supplied from any foreign source, offerors shall be so notified in the solicitation. When rejection of a qualifying country offer is contemplated for reasons of national interest or for mobilization base considerations and the defense equipment involved is not listed in 225.7405 or FAR 8.203, a copy of the proposed decision shall be forwarded to OUSDRE(AM) (International Acquisition), 10 working days in advance of issuance of the rejection.

(S–74) When proposed awards are submitted for Secretarial decision pursuant to (S–71) above, each submission shall include a copy of each offer being considered for award, the date the offer expires, including extensions, a copy of the abstract of bids or proposals, and a statement justifying the proposed awards. Submissions should be forwarded to allow 21 days for processing and Secretarial consideration, unless the nature of the item or market conditions indicate the need for processing in a shorter time.

(S–75) When performing the evaluation in (S–71) above for items for civil works activities, offers of qualifying country end products shall not be subject to the 50% evaluation factor of the Balance of Payments Program, but shall be subject to the 6% and 12% evaluation factors of the Buy American Act, unless a specific waiver of the Buy American Act is otherwise obtained for that acquisition through the procedures of this subpart.

225.107 Acquisition from or through other government agencies.

Balance of Payments evaluation procedures are not applicable to transactions described in FAR 25.107 (a), (b) and (c).

(S–70) Defense activities have the responsibility for compliance with the Buy American Act and Balance of Payments evaluation procedures when they purchase a foreign end item from (1) a mandatory Federal Supply Schedule which includes a domestic end product; or (2) a nonmandatory Federal Supply Schedule.

(S–71) Defense activities purchasing items of equipment and supplies for civil works projects for use in the United States by civil agencies or departments shall not apply the Balance of Payments Program 50% evaluation factor when evaluating offers; only the evaluation factors of the Buy American Act, as implemented by Executive Order 10582, dated 17 December 1954, shall be applied.

(S–72) In the case of coordinated acquisition under Part 208, compliance with the Buy American Act and Balance of Payments evaluation procedures is the responsibility of the Contracting Department, except when the Requiring Department specifies a foreign end product; in which case, the determination that the domestic end product is not available, including consideration of foregoing the acquisition or providing a U.S. substitute, shall be the responsibility of the Requiring Department.

225.108 Excepted articles, materials, and supplies.

(a) Pursuant to the Buy American Act, it has been determined that the articles, materials, and supplies listed in FAR 25.108(d)(1) and below, when purchased as end items or components, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. When required to be incorporated into (i) an end product or construction material manufactured in the United States, or (ii) a qualifying country end product or construction material, these items or components may be regarded as being of domestic origin. (For construction material, see FAR 25.2.)

(d)(1) Sperm oil.

(d)(S–70) *Scrap.* Scrap generated in, collected in, and prepared for processing in the United States, shall be considered as of domestic origin.

225.109 Solicitation provisions and contract clauses.

(a)(S–70) The provision at 252.225–7000, Buy American-Balance of Payments Program Certificate, shall be used in lieu of the provisions at FAR 52.225–1, Buy American Certificate, and FAR 52.225–6, Balance of Payments Program Certificate, and shall be inserted in any solicitation which includes the clause at 252.225–7001.

(a)(S–71) For small purchases using DD Form 1155, the provision at 252.225–7000 shall be used with the clause, Foreign Supplies, on DD Form 1155r. When so used, the provision may be modified by inserting a period after "* * * products" in paragraphs (b)(i), (b)(ii), and (b)(iii) and then deleting the balance of the respective sentences.

(b) When quotations are obtained orally, vendors shall be informed that only domestic and qualifying country end products shall be acceptable, other than those items which have been excepted either on a blanket or an individual basis, or the price of the offered foreign end product meets the evaluation criteria in 225.105.

(d)(S–70) The clause at 252.225–7001, Buy American Act and Balance of Payments Program, shall be used in lieu of the clauses at FAR 52.225–3, Buy American Act-Supplies, and FAR 52.225–7, Balance of Payments Program. The contracting officer shall insert the clause at 252.225–7001 in all solicitations and contracts (i) not utilizing small purchase procedures, (ii) which do not contain the clause at 252.225–7006, and (iii) for supplies and for services, which services require the furnishing of supplies (e.g. the leasing of equipment), except as cited in 225.302(S–72)(1).

(d)(S–71) For small purchases using DD Form 1155, the clause at 252.225–7001 may be inserted in lieu of the clause, Foreign Supplies, on DD Form 1155r.

(d)(S–72) The contracting officer shall insert the clause at 252.225–7002, Qualifying Country Sources as Subcontractors, whenever the clause at 252.225–7001 or the clause 252.225–7006 is used in the solicitation or contract.

(S–70) *Solicitation of offers.* Solicitations shall state that the specific information as to articles, materials, and supplies excepted from these procedures (see 225.108(d)(1)) is available to prospective contractors upon request. When only domestic end products are acceptable, the solicitation shall so state.

Subpart 225.2—Buy American Act—Construction Materials

225.202 Policy.

(a) (1) and (2) The restrictions of the Buy American Act do not apply when it is determined by the Secretary concerned that the use of a particular domestic construction material would (i) unreasonably increase the cost, or (ii) be impracticable. When proposed awards are submitted for approval, each submission shall include a description of the materials, including unit and quantity, estimated costs, location of the construction project, name and address of the proposed contractor, and a detailed justification of the impracticability of using domestic materials. Submissions shall allow 21 days for processing, unless the nature of the item or market conditions indicate the need for processing in a shorter time.

(a)(3) The Buy American Act does not apply to articles, materials, and supplies of a class or kind determined to be not mined, produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality. Certain construction materials determined to be exempt under this exception are set

forth in FAR 25.108(d)(1). Purchase of nondomestic construction material on the basis of "nonavailability," when the material is not listed in FAR 25.108(d)(1), shall be made only if the determination for the purchase and use of such material is approved by:

(i) The Secretary of the Department concerned, if the cost of such materials is estimated to exceed $100,000;

(ii) The Head of the Contracting Activity or his immediate deputy, if the cost of such materials is estimated not to exceed $100,000;

(iii) The principal staff officer responsible for procurement within the contracting activity (or in the Air Force, within the major air command) concerned, if the cost of such materials is estimated not to exceed $10,000; or

(iv) An official at a level above the contracting officer, if the cost of such materials is estimated not to exceed $2,500. Before granting such approval or making such determination, the feasibility of foregoing the requirement or providing a United States substitute shall be considered. When proposed awards are submitted for approval, each submission shall include a description of the materials, including unit and quantity, estimated costs, location of the construction project, name and address of the proposed contractor, and a detailed justification of the impracticability of using domestic materials. Submissions shall allow 21 days for processing, unless the nature of the item or market conditions indicate the need for processing in a shorter time.

(S–70) *Panamanian materials for use in the Canal Zone.* In accordance with the Memorandum of Understanding ancillary to the Treaty with the Republic of Panama, signed 25 January 1955, articles, materials, and supplies that are mined, produced, or manufactured in Panama and are purchased for use in the Canal Zone are excepted from the Buy American Act.

225.205 Solicitation provision and contract clause.

(S–70) *Nondomestic construction material.* When a determination has been made that certain construction materials may be used without regard to The Buy American Act, the clause at 252.225–7003, Nondomestic Construction Materials, shall be included in the contract by the contracting officer, and the excepted item shall be listed therein. When this clause is used, the contracting officer shall place in the contract file a copy of the signed approval, and a copy thereof shall be available for public inspection.

Subpart 225.3—Balance of Payments Program

225.300 Scope of subpart.

This subpart implements the Department of Defense balance of Payments Program with respect to all acquisitions of (a) services which require the furnishing of end items (e.g., leasing of equipment) and supplies required for use outside the United States, except petroleum and Military Assistance Program acquisitions (see 225.72), and Foreign Military Sales (see 225.73); and (b) scientific and technical knowledge, resulting in dollar expenditures outside the United States and Canada. However, the exception regarding Military Assistance Program and FMS acquisitions does not apply to 225.370. Defense requirements as to the use of U.S. Flag vessels, which effect the Balance of Payments Program, are set forth in FAR 47.5.

225.302 Policy.

(a) It is the policy of the Department of Defense to implement the Balance of Payments Program using evaluation procedures similar to those which implement the Buy American Act.

(S–70) *Prohibition against fragmenting acquisitions.* As to those provisions of this subpart which state dollar limitations below which exceptions permitting the purchase of foreign items may be made if certain conditions are satisfied, requirements aggregating more than any such limitations shall not be broken into separate purchases which are less than such limitations merely for the purpose of allowing such exceptions.

(S–71) *Real property construction, repair, and maintenance.* All projects for construction, repair, and maintenance of real property outside the United States must be approved in accordance with DoD Directive 7060.4 (AR–37–43; AFR 85–6/AFM 86–1; NAVFACINST 7020.6). Contracts for such projects will require that specified U.S. materials will be used or that Government materials and equipment will be furnished, only when the cost of the U.S. items (including transportation and handling costs) does not exceed the cost of foreign items plus 50%. A differential greater than 50% may be used when specifically authorized in the project approval.

(S–72) *Exceptions.*

(1) Acquisitions of end products (including construction materials) and applicable services for use outside the United States should be made in the following cases without regard to the origin of the end products. In these cases, the provision at 252.225–7000 and the clauses at 252.225–7001 and 252.225–7002 shall not be used.

(i) *Treaty or executive agreement*—Acquisitions required to be made from indigenous sources pursuant to a treaty or executive agreement between governments.

(ii) *Small purchases*—Acquisitions by contracting officers located outside the United States, which are estimated not to exceed $25,000 in foreign costs.

(iii) *Perishable subsistence*—Acquisitions of perishable subsistence items when it is determined that delivery from the United States would destroy or significantly impair their quality at the point of consumption. The determination shall be made prior to acquisition by the individuals designated in (a)(S–72)(2)(i) below or their immediate deputies, except that this authority may be redelegated for acquisitions estimated not to exceed $500,000 in foreign cost. A determination is not required for the acquisition of perishable subsistence items for commissary resale.

(iv) *Panamanian products used in Panama*—Acquisitions of articles, materials or supplies that are mined, produced, or manufactured in Panama when acquired by, and for use of, U.S. Forces in Panama.

(v) *Services*—Services which do not primarily involve the acquisition of equipment or supplies.

(vi) *Certain food items*—Acquisition of bananas, tea, coffee, spices, herbs, sugar, cocoa, cream of tartar, tapioca, and coconut.

(vii) *Miscellaneous*—Acquisition of the requirements listed below, *Provided,* they do not duplicate or replace an existing organic service capability.

(A) All items on the list at FAR 25.108(d)(1);

(B) Utilities, including gas, water, electricity, steam, sewage, refuse collection and disposal;

(C) Maintenance and repair of, and acquisition of spare parts for, foreign-manufactured vehicles, equipment, machinery and system; *Provided,* in the case of parts, That this exception applies only if the acquisition must be restricted to the original manufacturer or his supplier in accordance with FAR 15.213;

(D) Industrial gases;

(E) Brand drugs specified by the Defense Medical Materiel Board;

(F) The following bulk construction materials: sand, gravel and other soil materials, stone, concrete masonry units; and fired brick;

(G) Overhaul and repair of vessels, aircraft, and vehicles which are home-ported/stationed/deployed overseas and which, because of their operating commitments, cannot return to the

United States or to U.S.-operated repair facilities;

(H) Ice (wet or dry);

(I) Books, pamphlets, newspaper, magazines, periodicals, and printed briefs and films not printed in the United States and for which there are no substitutes of U.S. origin which are intended for use in the Department of Defense Overseas Dependents Schools; and

(J) Ready-mixed asphalt and portland cement concrete; *Provided,* That foreign cost is estimated not to exceed $10,000.

(viii) *Excess and near-excess foreign currencies*—Acquisitions made with excess or near-excess foreign currencies when acquisition costs are in accordance with 252.7604.

(ix) *Commissary resale*—Purchases of subsistence items of foreign origin which are intended for resale in overseas commissary stores.

(x) *Nonavailability in the United States*—Acquisitions as to which it is determined in advance by the individuals designated in (a)(S–72)(2) below that (A) the requirements can only be filled by foreign end products because U.S. end products are not available per se, or are not available within the time required to meet urgent military requirements directly related to maintaining combat capability, the health and safety of DoD personnel, or to protect property, and (B) that it is not feasible to forego filling the requirements or to provide a U.S. substitute for it. This authority is not intended for use in making repetitive supply acquisitions or acquisitions of total annual supply requirements of items available in the United States but not available within the time required.

(xi) *Unreasonable cost*—Acquisitions, other than those covered in (i) through (x) above where United States end products or services are available and the difference between the domestic cost and the foreign cost exceeds 50% of the foreign cost, if so determined in advance by the individuals designated in (a)(S–72)(2) below.

(2) The individuals listed below, and their immediate deputies are designated to make the determinations required by (a)(S–72)(1) (iii), (x), and (xi) above.

(i) For acquisitions estimated not to exceed $2 million in foreign cost, except that this authority may be redelegated to other individuals specifically designated for this purpose for acquisitions estimated not to exceed $500,000:

Department of the Army—

Director for Requirements and Acquisition U.S. Army Materiel Development and Readiness Command;
Commander in Chief, U.S. Army, Europe; and DCSLOG, U.S. Army, Europe;
Commander, Eighth U.S. Army Chief of Staff, Eighth U.S. Army;
Chief, U.S. Army Security Agency;
Commander, Corps of Engineers Command;
Commander, U.S. Army, Japan;

Department of the Navy—

Commander-in-Chief, U.S. Naval Forces, Europe;
Commander, U.S. Naval Forces, Japan;
Commander, U.S. Naval Forces, Philippines;
Chief of Naval Material;
Commander-in-Chief, U.S. Atlantic Fleet;
Commander, Naval Logistics Command, Pacific Fleet;
Commander, Military Sealift Command (MSC);
Commandant, U.S. Marine Corps;
Commander, Naval Facilities Engineering Command;
Commanding General, III Marine Amphibious Force;

Department of the Air Force—

Commander, U.S. Air Forces in Europe;
Commander, Pacific Air Force;
Commander, Military Airlift Command (MAC);
Commander, Air Force Logistics Command;
Commander, Air Force Systems Command;
Commander, Strategic Air Command;
Commander, Tactical Air Command;
Commander, Air Force Communications Command;
Commander, Space Command;

Defense Logistics Agency—

Executive Director, Contracting;

Defense Communications Agency—

Director;

(ii) For acquisitions estimated to exceed $2 million in foreign cost—Secretary of the Department concerned.

(3) Acquisition of scientific and technical knowledge resulting in expenditures outside the United States and Canada shall be made only in the following cases:

(i) Those set forth in (a)(S–72)(1) (i), (ii), and (viii) above;

(ii) When it is determined in advance, by the individuals designated in (a)(S–72)(4) below, that the requirement can only be filled by foreign end products or services and that it is not feasible to forego filling the requirement or to provide a U.S. substitute for it; and

(iii) Acquisitions other than those covered in (a)(S–72)(3) (i) and (ii) above when U.S. end products or services are available, and the difference between the domestic cost and the foreign cost exceeds 50% of the foreign cost as determined by the individuals designated in (a)(S–72)(4) below. Whenever practicable, such acquisitions shall be made on a cost-sharing basis or other arrangement designed to limit any adverse effect on the balance of payments. Policy questions concerning such arrangements should be directed to the Under Secretary of Defense for Research and Engineering.

(4) The individuals listed below and their immediate deputies are designated to make the determinations required by (a)(S–72)(3) (ii) and (iii) above.

(i) For acquisitions estimated not to exceed $2 million in foreign cost, except that this authority may be redelegated to individuals specifically designated for this purpose for acquisitions estimated not to exceed $100,000:

Department of the Army—

Commanding General, Army Materiel Development and Readiness Command;
Commander, Corps of Engineers Command;
Surgeon General, Army Medical Corps;
Chief of Research, Development and Acquisition;

Department of the Navy—

Chief of Naval Research;
Commander, Naval Air Systems Command;
Commander, Naval Electronics Systems Command;
Commander, Naval Sea Systems Command;
Chief, Bureau of Medicine and Surgery;
Commander, Naval Supply Systems Command;
Chief of Naval Development;
Oceanographer of the Navy;
Commander, Naval Facilities Engineering Command;
Military Sealift Command;
DC/S Installations and Logistics Department Headquarters, U.S. Marine Corps;

Department of the Air Force—

Commander, Air Force Systems Command;
Commander, Air Force Logistics Command;

Defense Agencies—

Director, Advance Research Projects Agency;
Director, Defense Nuclear Agency;
Director, Defense Communications Agency;
Director, Defense Intelligence Agency.

(ii) For acquisitions estimated to exceed $2 million in foreign cost—Secretary of the Department concerned, or the Under Secretary of Defense for Research and Engineering in the case of agencies set forth in (a)(S–72)(4)(i).

(5) Complete documentation justifying acquisitions under (a)(S–72)(1) and (3) above shall be prepared except for acquisitions made pursuant to (a)(S–72) (1)(ii) and (1)(vi). Such documentation shall be prepared by requiring activities, furnished in requests for determination submitted to the individuals listed in (a)(S–72) (2) and (4) above, and included in the contract file.

(S–73) *Construction materials.* Purchase of materials, equipment, and supplies for construction overseas shall generally be the responsibility of the contractor performing the work; but where necessary to comply with foreign law, or to avoid taxation, or to obtain

other advantages, purchase may be by the United States. Contracting Officers shall consider savings that may be obtained by exemptions from import and other taxes and, to the extent economical, shall take advantage of tax exemptions available under existing agreements. See 229.402–70. In specifying materials, supplies, and equipment for construction in foreign countries, contracting officers shall make maximum use of foreign currencies available for the project, shall encourage the use of American materials, equipment, and supplies and shall obtain the maximum feasible competition from indigenous, other foreign and American suppliers.

225.303 Procedures.

Except as provided in 225.302(d), proposed acquisitions of supplies and applicable services for use outside the United States shall be accomplished in accordance with the evaluation procedures in (b) below.

(a) *Solicitation of offers.* When quotations are obtained orally, vendors shall be informed that only domestic and qualifying country end products shall be acceptable other than those items which have been excepted either on a blanket or an individual basis or the price for the nonqualifying country end item meets the evaluation criteria in (b) below. When only domestic end products are acceptable, the solicitation shall so state.

(b) *Evaluation.*

(1) In accordance with the Balance of Payments Program, when these procedures result in the acquisition of foreign end products, the acquisition of domestic end products is deemed unreasonable in cost or inconsistent with the public interest. Except as provided herein and in 225.105, offers shall be evaluated so as to give preference to domestic offers as follows:

(i) Each nonqualifyng country offer of defense equipment (but see exception in (b)(1)(ii) below) shall be adjusted for purposes of evaluation by increasing such offer by 50%. If the foregoing procedure results in a tie between a nonqualifying country offer, as evaluated, and a domestic offer, award shall be made on the latter. In all other instances, use the tie-breaking procedures in FAR 14.407–6.

(ii) In the event that a domestic offer, a qualifying country offer, and a nonqualifying country offer compete for defense equipment, the qualifying country offer shall be evaluated without applying the price differentials of this paragraph, whereas the nonqualifying country offer shall be subjected to the price differentials (see Example A below). However, in the event the low domestic offer exceeds the evaluated price of the nonqualifying country offer, all foreign offers shall be evaluated as if no domestic offer was submitted (see Example B below). In the event a qualifying country offer competes against a nonqualifying country offer and no domestic offer is submitted, they shall be evaluated on an equal basis (see Example C below).

(2) The following examples illustrate how the procedure in (b)(1) above should be applied.

Example A

Nonqualifying Country Offer	$6,000
Domestic Offer	8,900
Qualifying Country Offer	8,800

Award on qualifying country offer. The nonqualifying country offer, adjusted by 50% factor is $9,000. The qualifying country offer receives the award because it is evaluated without adjustment and is the lowest offer.

Example B

Nonqualifying Country Offer	$6,000
Domestic Offer	9,500
Qualifying Country Offer	8,800

Award on nonqualifying country offer. Nonqualifying country offer, adjusted by 50% factor is $9,000. It is still lower than the domestic offer. Accordingly, the qualifying and nonqualifying country offers are evaluated on an equal basis as if the domestic offer had never been submitted and the award is made on the nonqualifying country offer.

Example C

Nonqualifying Country Offer	$10,000
Qualifying Country Offer	11,500

Award on nonqualifying country offer. Since there is no domestic offer, the nonqualifying country and qualifying country offers are evaluated on an equal basis, and the award is made on the nonqualifying country offer.

225.304 Excess and near-excess foreign currencies.

(See Subpart 225.76.)

225.305 Solicitation provision and contract clauses.

(c) *Clauses.* The contracting officer shall insert the clause at 252.225–7004, Identification of Expenditures in the United States, under the conditions set forth at 252.370 (see 252.109 for use of clauses at 252.225–7000, 252.225–7001, and 252.225–7002).

225.370 Identification of expenditures in the United States.

DoD balance of payment reporting instructions require the reporting of the amount of acquisitions of U.S. end products and services accomplished under these regulations. The following provisions are designed to facilitate such reporting by cognizant accounting and disbursing officers. In implementing these provisions, it is essential that there be appropriate liaison between acquisition, accounting, and disbursing personnel at each activity involved.

(a) Except as provided in (b) below, the clause at 252.225–7004, Identification of Expenditures in the United States, shall be included in each contract in excess of $25,000 that—

(1) Requires the contractor to furnish U.S. end products, except that the clause in 252.225–7004 is not required if the contractor is a domestic concern and the Government will take title to the end products within the United States; or

(2) In the case of a contract for construction, repair or maintenance of real property, or for services, to be performed outside the United States, either—

(i) Requires the contractor to acquire specified materials, equipment, or services from U.S. sources (whether or not the contractor is a domestic concern), or

(ii) Is with a contractor who is a domestic concern (whether or not specified items must be acquired from U.S. sources).

(b) In lieu of the clause specified at (a) above, the following statement may be placed prominently on the face of each such contract, where the contracting officer considers that greater accuracy will be achieved or that inclusion of the contract clause is impracticable:

U.S. Expenditures for:

U.S. end products— ———% of each invoice.

U.S. services— ———% of each invoice.

Transportation on U.S. carriers— ——— % of each invoice. (See DoD FAR Supplement 252.225–7004 for definitions)

(c) Contracts and purchase orders of $25,000 or less, which otherwise meet the criteria in (a) above for including the clause at 252.225–7004, shall have the statement in (b) above placed prominently on their face.

Subpart 225.4—Purchases under the Trade Agreements Act of 1979

225.401 Definitions.

"Designated country." Add Israel to the list of designated countries shown in FAR 25.401.

"Eligible product" means a designated country end product listed at 225.403(S–70).

225.402 Policy.

(b) There shall be no purchase of a foreign end product listed in 225.403(S-70) with a total value at or above that specified in the FAR which is not a designated country end product except as provided below:

(1) National interest exceptions must be approved on a case-by-case basis. An exception request with supporting rationale shall be submitted in accordance with Departmental procedures to DUSDRE (AM) or designee.

(2) End products from countries listed at 225.7310(a) and 225.7401, and from countries at 225.75 are limited to those items listed on appropriate annexes.

225.403 Exceptions.

(d) This exception includes purchases from foreign sources where prohibited by the Department of Defense Annual Appropriations Act (see 225.7002). The products listed at 225.403(S-70) generally do not come under this exception, but in the event a Department considers an individual acquisition of such a listed product to be a purchase "indispensable for national security or national defense purposes," and appropriate for exclusion from the provisions of this subpart, a request with supporting rationale shall be submitted in accordance with Departmental procedures for approval by DUSDRE(AM) or designee.

(S-70) List of Eligible Products. The following list is arranged according to Federal Supply Classifications. If an item is not, within an FSC listed below, FAR Subpart 25.4 does not apply.

FSC Category/Description

22—Railway equipment
23—Motor vehicles, trailers, and cycles (except 2350 and buses under 2310)
24—Tractors
25—Vehicular equipment components
26—Tires and tubes
29—Engine accessories
30—Mechanical power transmission equipment
32—Woodworking machinery and equipment
34—Metalworking machinery (except 3408, 3410-3419, 3426, 3433, 3441-3443, 3446, 3448, 3449, 3460, 3461)
35—Service and trade equipment
36—Special industry machinery (except 3069)
37—Agricultural machinery and equipment
38—Construction, mining, excavating, and highway maintenance equipment
39—Materials handling equipment
40—Rope, cable, chain and fittings
41—Refrigeration and air conditioning equipment
42—Fire fighting, rescue and safety equipment
43—Pumps and compressors
44—Furnance, steam plant and drying equipment (except 4470)
45—Plumbing, heating and sanitation equipment
46—Water purification and sewage treatment equipment
47—Pipe, tubing, hose and fittings
48—Valves
49—Maintenance and repair shop equipment (except 4920-4927), 4931-4935, 4960)
52—Measuring tools
53—Hardware and abrasives
54—Prefabricated structures and scaffolding
55—Lumber, millwork, plywood and veneer
56—Construction and building materials
61—Electric wire, and power and distribution equipment
62—Lighting fixtures and lamps
63—Alarm and signal systems
65—Medical, dental, and veterinary equipment and supplies
66—Instruments and laboratory equipment (except aircraft clocks under 6645)
67—Photographic equipment
68—Chemical and chemical products
69—Training aids and devices
70—General purpose ADPE, software, supplies and support equipment
71—Furniture
72—Household and commercial furnishings and appliances
73—Food preparation and serving equipment
74—Office machines, visible record equipment and ADP equipment
75—Office supplies and devices
76—Books, maps, and other publications
77—Musical instruments, phonographs, and home type radios
78—Recreational and athletic equipment
79—Cleaning equipment and supplies
80—Brushes, paints, sealers and adhesives
81—Containers, packaging and packing supplies (except 8140)
8460—Luggage
85—Toiletries
87—Agricultural supplies
88—Live animals
91—Fuels, lubricants, oils and waxes
93—Nonmetallic fabricated materials
94—Nonmetallic crude materials
96—Ores, minerals and their primary products
99—Miscellaneous

225.404 Labor surplus area set-asides.

(See 252.220-7000 and 252.220-7001.)

225.405 Procedures.

(d) This requirement does not apply to offshore procurements or to Defense Fuel Supply Center post, camp, or station overseas requirements. (See 225.501.)

225.407 Solicitation provision and contract clause.

(a) (1) The provision, Buy American-Trade Agreements-Balance and Payments Program Certificate, at 252.225-7005, shall be used in all solicitations in which the Buy American Act, Trade Agreements Act, and the Balance of Payments Program clause at 252.225-7006 is used. This provision is to be used in lieu of that at FAR 52.225-8.

(a)(2) The clause at 252.225-70-6, Buy American Act, Trade Agreements Act, and the Balance of Payments Program, shall be used in lieu of the clause at FAR 52.225-9 and shall be inserted along with the clause at 252.225-7002, Qualifying Country Sources as Subcontractors, in all solicitations and contracts subject to the Trade Agreements Act. The clause at 252.225-7006 may also be used in lieu of the clause at 252.225-7001.

Subpart 225.5—Payment in Local Foreign Currency

225.501 Policy.

(a) Offshore contracts with local firms will be priced and paid in local currency unless (i) there exists a Status of Forces Agreement providing for payment in U.S. currency; or (ii) the use of local currency is determined to be inequitable, and the use of U.S. currency is authorized at a level above the contracting officer. An example of a situation where pricing and paying in dollars may be appropriate or necessary would be a contract requiring significant purchases in the United States (see 225.76).

Subpart 225.6—Customs and Duties

225.600 Scope of subpart.

This subpart sets forth policies and procedures for excepting from import duty certain supplies that are imported into the United States in connection with Defense contracts. Ordinarily, duty is payable for the importation of non-Defense supplies obtained outside the United States. Two exemptions to this rule are available to the Department of Defense: "Emergency purchases of war materials abroad" by a Military Department may be imported duty-free pursuant to Schedule 8, Part 3, Item No. 833.00, Tariff Schedules of the United States; and certain supplies (not including equipment) for vessels or

aircraft operated by the United States may be imported duty-free pursuant to 19 U.S.C. 1309. This subpart prescribes the uses and limits of these two exceptions. This subpart does not deal with or affect the evaluation of offers of foreign supplies as set forth elsewhere in Part 225. Although the procedures of this subpart may require or permit duty-free entry to be accorded foreign supplies in a given case, this in itself neither precludes nor requires the inclusion of duty in evaluating an offer of such supplies.

225.602 Policy.

The issuance of duty-free entry certificates in appropriate situations will result in important savings to military appropriations. Such certificates must be limited to carefully selected situations lest they result in unanticipated profits to contractors, especially under fixed-price-type contracts, and involve the Government in administrative expenses outweighing any possible savings to military appropriations. It is DoD policy to use duty-free entry certificates whenever there is *reasonable assurance* that advantages in the form of savings to military appropriations will outweigh the administrative and other costs of processing duty-free entry certificates and of maintaining controls to verify that the full benefit of the certificates inures to the Government. A contractor which has been awarded a fixed-price-type contract based on providing a domestic end product or component cannot subsequently furnish a foreign end product or component (including a qualifying country end product or component) and receive a duty-free entry certificate in accordance with FAR 52.225–10 without an appropriate reduction in contract price.

225.603 Procedures.

(a) *General.*

(S–70) When a prime contract involving foreign supplies contains the clause in FAR 52.225–10 and the prime contractor sends a notification of a purchase of foreign supplies under the cotract to the Contract Administration Office (CAO) designated in the contract, the CAO will verify that the prime contract includes the Duty-Free Entry clause for items identified or items to be identified later; and in the latter case, that the contracting officer has agreed to furnish a duty-free entry certificate for the items identified in exchange for a reduction in contract price in the amount of duty which would be payable if duty-free entry certificates were not issued pursuant to the provisions of this clause. The CAO will then forward the notification to Commander, Defense Contract Administration Services Management Area, New York, 60 Hudson Street, New York, NY 10013. The notification will be forwarded as an enclosure to the information provided in the format shown below.

To: Commander, DCASMA, New York, Attn: Transportation Officer

Contract —— issued to ———— (Contractor).

Enclosed is a contractor notification of the purchase of foreign supplies. Verfication has been made that:

( ) The prime contract includes the clause at FAR 52.225–10, Duty-Free Entry for the items identified on the enclosed notification.

( ) The prime contract includes the Clause at FAR 52.225–10, Duty-Free Entry and the Contracting Officer has agreed to furnish a duty-free entry certificate for the items identified in exchange for an appropriate reduction in contract price.

The contract is expected to be completed by ————.

Signature ————————————

Title ————————————

(S–71) When the Government agrees to execute duty-free entry certificates for supplies, in accordance with the clause in FAR 52.225–10, the contractor shall be notified that the foreign supplier is to include on the bill of lading (or other shipping document) the information required to be inserted on such documents as provided in the clause. Failure to include such information on the bill of lading (or other shipping document) will result in the shipment being treated as a shipment without benefit of free entry under Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States.

(S–72) Upon receipt of a request for duty-free entry, the designated Government representative shall promptly prepare the required Customs Forms and execute the duty-free entry certificate in accordance with (S–73) below and forward 2 copies of Customs Form 7501 and one copy of Customs Form 7501A to the District Director of Customs submitting the request.

(S–73) The duty-free entry certificate referred to in this paragraph shall be printed, stamped, or typed on the face of Customs Form 7501 or attached thereto in the following form:

(Date) ————————————

I certify that the acquisition of this material constituted an emergency purchase of war material abroad by the (indicate Department) and it is accordingly requested that such material be admitted free of duty pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States.

(Name) ————————————

(Title) ————————————

(Title of Government representative who has been designated to execute free entry certificates for the above-named Department)

(Organization) ————————————

(c) *Immediate entry and release.* Immediate release permits, executed on Customs Forms 3461 (Application for Special Permit for Delivery of Perishable and Other Articles, Immediate Delivery of Which is Necessary), entitle all shipments qualifying as "emergency purchases" of war material abroad to be released immediately by the District Directors of Customs at the various ports of entry, prior to and pending the filing of Customs Forms 7501 and 7501A and a duty-free entry certificate. The existence of an immediate release permit on file at a port of entry does not dispense with the necessity of filing Customs Forms 7501 and 7501A and appropriate duty-free entry certificates. Each Department shall designate the individuals responsible for issuance of Immediate Release Permits.

225.604 Exempted supplies.

225.604–70 Emergency purchase of war materials abroad.

(a) Any acquisition of foreign supplies constitutes "an emergency purchase of war material" if:

(1) The supplies comprise—

(i) Weapons, munitions, aircraft, vessels, or boats;

(ii) Agricultural, industrial, or other supplies used in the prosecution of war or for the national defense; or

(iii) Supplies, including components or equipment, necessary for the manufacture, production, processing, repair, servicing, or operation of supplies within (a)(1) (i) or (ii) above; and

(2) The acquisition—

(i) Is made in time of war or during a national emergency;

(ii) Is made because of a shortage of domestic supply, pursuant to a decision that the supplies are necessary for the adequate maintenance of the Armed Services;

(iii) Is made for the use of U.S. forces abroad or U.S. vessels in foreign waters; or

(iv) Consists of captured enemy war material, materials requisitioned by U.S. forces abroad, or materials rebuilt from other materials owned by, or turned over to U.S. forces, or materials loaned or given to a Military Department of the U.S. Government under exchange agreements with foreign governments.

(b) *Requirements.*

(1) To assure that the policy of 225.602 is carried out for emergency purchases of war materials abroad, the clause at

FAR 52.225–10 shall be used in each negotiated contract in excess of $100,000, unless the minimum dollar limits in FAR 25.605 apply. Notwithstanding these dollar limits, the clause may be inserted in any other negotiated contract when the contracting officer determines that to do so would further the policy in 225.602 and would be consistent with the limitations in (b)(2) below, and in any such case the dollar figure in paragraphs (b)(1) and (i)(2) of the clause in FAR 52.225–10 may be reduced appropriately.

(2) Duty-free entry certificates shall be issued as required by contracts containing any of the contract clauses described in FAR 25.605. Consistent with 225.602, duty-free entry certificates may be issued in connection with any other contract for an "emergency purchase of war material" that falls within one of the following categories:

(i) Direct purchases abroad regardless of whether title passes at point of origin or at destination in the United States, *Providing*, the contract states that the final price is exclusive of duty;

(ii) Purchases abroad by a Government prime contractor under a cost-reimbursement type contract or by a cost-reimbursement type subcontractor (where no fixed-price prime or fixed-price subcontract intervenes between the purchaser and the Government), regardless of whether title passes at point of origin or at destination in the United States. If a fixed-price prime or fixed-price subcontract intervenes, the criteria stated in (b)(2)(iii) below should be followed; and

(iii) Purchases abroad by a fixed-price contractor, a fixed-price subcontractor, or a cost-type subcontractor where a fixed-price prime contract, or fixed-price subcontract intervenes; *Provided* (A) the fixed-price prime contract and, where applicable, fixed-price subcontract prices are, or are amended to be, exclusive of duty; (B) the prime contractor and, where applicable, the subcontractors concerned certify that the supplies so purchased are to be delivered to the Government or incorporated in Government-owned property or in an end product to be furnished to the Government, and that the duty will be paid if such supplies or any portion thereof are utilized for other than the performance of the Government contract or disposed of other than for the benefit of the Government in accordance with the contract terms; and (C) such acquisition abroad is authorized by the terms of the prime contract, the applicable subcontract, or by the contracting officer. In any such case, the procedures required by the clauses prescribed in FAR 25.605 shall be followed to the extent practicable.

225.604–71 Supplies for vessels or aircraft operated by the United States.

(a) Subject to the considerations prescribed in FAR 25.602, a duty-free entry certificate may be issued when "certain supplies (not including equipment)" are purchased for vessels or aircraft operated by the United States. As used in this paragraph, the term "certain supplies (not including equipment)" includes articles known as "stores," such as food, medicines and toiletries, and, in addition, all consumable articles necessary and appropriate for the propulsion, operation, and maintenance of the vessel or aircraft, such as fuel, oil, gasoline, grease, paint, cleansing compounds, solvents, wiping rags, and polishes. It does not include portable articles necessary and appropriate for the navigation, operation or maintenance of the vessel or aircraft and for the comfort and safety of the persons on board, such as rope, bolts and nuts, bedding, china and cutlery, which are included in the term "equipment." The procedures to be followed in the issuance of such certificates shall be prescribed by the respective Departments.

(b) The duty-free entry certificate referred to in this paragraph shall be printed, stamped, or typed on the face of Customs Form 7501, or attached thereto, and shall be executed by a duly designated officer or civilian official of the appropriate Department in the following form:

(Date) _____

I certify that the acquisition of this material constituted a purchase of supplies by the United States for vessels or aircraft operated by the United States, and is admissible free of duty pursuant to 19 U.S.C. 1309.

(Name) _____
(Title) _____
(Organization) _____

225.605 Contract clause.

(a)(70) *Duty-free entry for specified items.* Within the limits of 225.604, the clause in FAR 52.225–10 and the clause at 252.225–7007 shall be used when the contracting officer knows at the time of execution of the contract that foreign supplies (other than those for which duty-free entry is to be accorded pursuant to (S–72) below on which the estimated aggregated duty exceeds $1,000) are to be imported into the United States, its possessions, or Puerto Rico, in connection with performance of the contract.

(S–71) *Duty-free entry for items not identified in the contract.* Within the limits of 225.604–70(b), the clause at FAR 52.225–10 shall be used unless the contracting officer anticipates that, in connection with the performance of the contract, neither the prime contractor nor any first-tier subcontractor will make any purchase of foreign supplies in excess of $10,000 that would not be covered by the clause prescribed in (S–72) below.

(S–72) *Duty-free entry—qualifying country end products and components.* The clause in 252.225–7008 shall be inserted in all contracts for supplies and in all contracts for services involving the furnishing of supplies, except that it need not be inserted in the case of simplified small purchase procedures and in contracts for supplies exclusively for use outside the United States.

Subpart 225.7—Restrictions on Certain Foreign Purchases

225.703 Exceptions.

(b) For other than small purchases, an exception shall be approved by the Secretary of the Department concerned. Before granting an exception for other than small purchases, the Secretary concerned shall obtain the advice of the Assistant Secretary of Defense (International Security Affairs); however, such advice is not required for emergency purchases, or where supplies are not available from any other source and substitute supplies are not acceptable.

Subpart 225.8—International Agreements and Coordination

225.800 Scope of subpart.

This subpart concerns the applicability of international agreements other than those in Subparts 225.73, 225.74, 225.75, and coordination with overseas commands and activities in purchasing from foreign sources.

225.801 International agreements.

Treaties and international agreements in effect between the United States and governments receiving military and economic aid under the Foreign Assistance Act of 1961, affect acquisition in foreign countries. Copies of international agreements are filed with the United States European Command covering existing agreements in the United Kingdom of Great Britain and Northern Ireland, Western European countries, North Africa, and in the Middle East. Agreements with countries in the Pacific and Far East are filed with the United States Pacific Command (CINCPAC). Military Assistance Advisory Groups, Naval Missions, and Joint United States Military Aid Groups normally have

copies of the agreements applicable to the countries concerned.

225.870 Coordination with overseas commands and activities.

When it has been determined that an acquisition will be made from a foreign contractor, overseas contracting offices shall be utilized to the maximum practical extent. Contracting offices not within the command jurisdiction of a unified or specified command, anticipating placement of contacts with foreign contractors, shall maintain liaison with the appropriate component commander during preaward negotiations and postaward administration. When an acquisition may result in a requirement for logistical support of contractor employees or additional Government employees in an overseas location, the contracting officer shall insure that the contract file includes documentation reflecting specific advance approval for such commitment from the appropriate component commander.

Subpart 225.9—Omission of Examination of Records Clause

225.903 Conditions for omission.

(b) A determination of the Secretary under FAR 225.903(a)(2) does not require the concurrence of the Comptroller General or his designee. However, when a determination is the basis for exclusion of the Examination of Records by Comptroller General clause, the statute requires that a written report be furnished to the Congress. This report, which shall explain the reasons for the determination, shall be submitted in triplicate by the Department of Defense component concerned, to the Director for Information Operations and Reports, Washington Headquarters Services, Washington, DC 20301 (see also 225.7203).

225.904 Determination and findings.

Request for determination and findings for exclusion ordinarily will be initiated by the contracting officer. The report shall consist of a letter submitted through normal acquisition channels, addressed to the Secretary, setting forth all the facts necessary to arrive at an appropriate determination and findings.

Subpart 225.70—Appropriations Act Restrictions

225.7000 Scope of subpart.

This subpart implements the Defense Appropriations Act restriction on the availability of appropriated funds for the acquisition of any article of food, clothing, cotton, wool, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, specialty metals, or hand or measuring tools. However, reference should be made to the current Department of Defense Appropriations Act as a check on the current applicability of such restriction. This subpart also implements the restriction on acquisition of foreign buses contained in Section 404 of Pub. L. 90–500 (see 225.7006), the restriction on R&D contracting with foreign sources contained in Section 744 of Pub. L. 92–570 (see 225.7007), the restriction for the construction of major components of the hull or superstructure of any naval vessel or the construction of any naval vessel in foreign shipyards (see 225.7005), and the restriction on acquisition of manual typewriters which were manufactured by facilities located within states which are signatories of the Warsaw Pact (see 225.7004). Nothing herein shall affect the applicability of the Buy American Act or the Balance of Payments Program.

225.7001 Definitions.

As used in this subpart, the following terms have the meaning set forth below.

"Hand or Measuring Tools", means those tools listed in Federal Supply Classifications 51 and 52 respectively.

"Possessions", As used in the phrase "United States or its possessions," includes Puerto Rico.

"United States" means the States and the District of Columbia.

"Specialty metals" means:

(a) Steels where the maximum alloy content exceeds one or more of the following limits: manganese, 1.65%; silicon, 0.60%; or copper, 0.60%; or which contains more than 0.25% of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

(b) Metal alloys consisting of nickel, iron-nickel and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10%;

(c) Titanium and titanium alloys; or

(d) Zirconium and zirconium base alloys.

225.7002 Restriction on food, clothing, fabrics, and specialty metals.

Except as provided in (a) below, contracting activities shall not acquire supplies consisting in whole or in part of any food, clothing, cotton, wool, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, or coated synthetic fabric, which have not been grown or produced in the United States or its possessions; or specialty metals, including stainless steel flatware which have not been melted in steel manufacturing facilities located within the United States or its possessions, but this does not restrict the acquisition of cotton or wool reprocessed or reused in the United States or its possessions or of foods manufactured or processed in the United States or its possessions.

(a) *Exceptions.* The following exceptions apply:

(1) Acquisitions outside the United States in support of combat operations;

(2) Acquisitions by vessels in foreign waters;

(3) Emergency acquisitions or acquisitions or perishable foods by establishments located outside the United States for the personnel attached thereto;

(4) Acquisitions of those supplies listed in FAR 25.108(d)(1) as to which the list does not make this subpart expressly applicable;

(5) Small purchases (for the purpose of this exception, a small purchase shall mean an acquisition action, as distinguished from a single line item, involving a total dollar amount not in excess of $10,000);

(6) Acquisitions of end items incidentally incorporating cotton or wool, of which the estimated value is not more than 10% of the total price of the end item; *Provided,* That the estimated value does not exceed $10,000 or 3% of the total price of the end item, whichever is greater;

(7) Any articles of food or clothing or any form of cotton, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, coated synthetic fabric, or wool, as to which the Secretary concerned has determined that a satisfactory quality and sufficient quantity grown or produced in the United States or its possessions cannot be acquired as and when needed at U.S. market prices;

(8) Supplies purchased specifically for commissary resale (see 225.102(70)(4));

(9) Purchases of specialty metals or any item incorporating specialty metals, as to which the Secretary concerned or his authorized designee has determined that a satisfactory quality and sufficient quantity melted in the United States or its possessions cannot be acquired as and when needed at U.S. market prices;

(10) Purchases of specialty metals below the prime contract level for programs other than those for aircraft, missile and space systems, ships, tank-automotive, weapons, and ammunition; and

(11) Purchases of specialty metals or chemical warfare protective clothing when such purchases are necessary to comply with agreements with foreign

governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the U.S. Government or U.S. firms under approved programs serving defense requirements, or when such acquisition is in furtherance of an agreement with a qualifying country.

(b) *Preference for certain domestic commodities.* The contracting officer shall insert the clause at 252.225–7009, Preference for Certain Domestic Commodities, in all solicitations expected to have, and all small purchases and contracts which do have, a value of $10,000 or more.

(c) *Preference for domestic wool.*

(1) The Secretaries have determined that to the extent that application of the procedures in this subparagraph results in the acquisition of any articles of wool (except mohair) not grown, reprocessed, reused, or produced in the United States or its possessions, a satisfactory quality and sufficient quantity of such articles grown, reprocessed, reused, or produced in the United States or its possessions cannot be acquired as and when needed at U.S. market prices.

(2) Offers for supplies of which wool is a part will be solicited on the following alternative bases:

(i) Manufactured in the United States or its possessions from domestic wool;

(ii) Manufactured in the United States or its possessions from foreign wool; and

(iii) Manufactured in the United States or its possessions from a blend of (percent) domestic wool and (percent) foreign wool.

(3) For each solicitation for supplies of which wool is a component part or end product, the contracting officer will insert the clause at 252.225–7010, Domestic Wool Prefence. The evaluation factor will be computed in accordance with (c)(6) below, and the amount of the factor will be inserted in place of the blank in (c) of the provision at 252.225–7010.

(4) If, on the date of opening of offers, the average market price of domestic wool of usable grades is no more than 10% above the average of the prices of representative types and grades of domestic wools in the wool category that includes the wool required by the specifications (see (c)(6) below), which prices reflect the current incentive price as established by the Secretary of Agriculture, and if reasonable offers have been received for the advertised quantity offering 100% domestic wools, the contract will be awarded for domestically produced articles using 100% domestic wools, and the procedure set forth in (c) (5) and (6) below will be disregarded.

(5) In the evaluation of offers under this subpart, an evaluation factor computed in accordance with (c)(6) below will be added to that portion of the offered price that represents foreign wool to be furnished or used in performance of the contract, and award will be made accordingly. In the event that tie offers result from such evaluation, award will be made to the offeror proposing to furnish or use the most domestic wool.

(6) The evaluation factor to be used under (c)(5) above will be 10% of the average of the following prices of representative types and grades of domestic wools within that one of the following categories which includes the wool required by the specifications. (The following prices reflect the current incentive price of $0.62 per pound grease basis converted to grade and type clean basis.)

Representative type and grade	Price clean basis per pound dollars
Group 1—Grades 60's and Finer	
Category 1—Staple, Average and Good French Combing (worsted type)	
The average of the following grades:	
Territory Original Bag Wool: Average and Good French Combing, 64's and finer	1.7748
Graded Territory and Texas Wool: Staple and Good French Combing, One-half Blood, 60's/62's	1.6946
Graded Fleece Wool:	
Staple and Good French Combing, 64's and finer	1.7862
Staple and Good French Combing, One-half Blood, 60's/62's	1.6259
Category 2—Short Average and Good French Combing and Clothing (woolen type)	
The average of the following grades:	
Territory Original Bag Wool: Short, French Combing and Clothing, fine (64's, not to exceed 15% of 60's/62's)	1.5801
Graded Territory and Texas Wool: Average and Good French Combing, One-half Blood, 60's and 62's	1.6145
Graded Fleece Wool:	
Average and Good French Combing, 64's and finer	1.7061
Average and Good French Combing, One-Half Blood, 60's/62's	1.5343
Group 2—Grades 50's–60's	
Category 3—Staple and Good French Combing (worsted)	
The average of the following grades:	
Graded Territory and Texas Wool:	
Staple and Good French Combing, Three-eighths Blood, 56's/58's	1.3646
Staple and Good French Combing, 50's/48's, One-quarter Blood	1.3397
Graded Fleece Wool:	
Staple and Good French Combing, Three-Eighths Blood, 56's/58's	1.3626
Staple and Good French Combing, 50/s48's, One-Quarter Blood	1.2710
Category 4—Average French Combing (woolen type)	
The average of the following grades:	
Graded Territory and Texas Wool:	
Average French Combing, Three-eighths Blood, 56's/58's	1,3053
Average French Combing, 50's/48's, One-quarter Blood	1.2023
Graded Fleece Wool:	
Average French Combing, Three-eighths Blood 56's/58's	1.2137
Average French Combing, 50's/48's, One-quarter Blood	1.0878
Group 3—Grades Below 50's	
Category 5—Staple and Good French	
The average of the following grades:	
Graded Fleece Wool:	
Low One-quarter Blood, 46's, 4 inches or more in length	1.1565
Common and Braid, 44's/36's, 5 inches or more in length	1.0763

(7) See Subpart 225.76 for procedures for using U.S.-owned foreign currency for payment of contracts for foreign-end products.

225.7002 Preference for domestic specialty metals.

(d)(1) The contracting officer shall insert the clause at 252.225–7011, Preference for Domestic Specialty Metals (Major Programs), in all solicitations and contracts over $10,000 that call for the delivery to the Government of an article containing specialty metals within the following six major classes of programs: aircraft, missile and space systems, ships, tank-automotive, weapons, and ammunition.

(2) The contracting officer shall insert the clause at 252.225–7012, Preference For Domestic Specialty Metals, in all solicitations and contracts over $10,000, other than those covered by the clause in (d)(1) above, calling for the delivery of an article that contains specialty metals.

225.7003 Restriction on domestic hand or measuring tools.

Pub. L. 97–377 and subsequent laws appropriating funds for the Department of Defense have provided restrictions on the acquisition of hand or measuring tools. The contracting officer shall insert the clause at 252.225–7013, Preference for Domestic Hand or Measuring Tools, in all small purchases of $10,000 or more and in all contracts calling for delivery of hand or measuring tools.

225.7004 Restriction on sources for manual typewriters.

Public Law 97–377 provides that none of the funds available to the Department of Defense shall be available of the procurement of manual typewriters which were manufactured by facilities located within States which are Signatories to the Warsaw Pact.

225.7005 Restriction on the hull and superstructure of naval vessels.

Each year the Department of Defense Appropriations Authorization Act contains the Burns-Tollefson Amendment which reads:

"*Provided*, That none of the funds herein provided for the construction or conversion of any naval vessel to be constructed in shipyards in the United States shall be expended in foreign shipyards for the construction of major components of the hull or superstructure of such vessel: *Provided further*, That none of the funds herein provided shall be used for the construction of any naval vessel in foreign shipyards".

This Amendment is incorporated into the Department of Defense Appropriations Act each year and is located under "Shipbuilding and Conversion, Navy".

225.7006 Restriction on acquisition of foreign buses.

(a) Section 404 of the Act of September 20, 1968 (Pub. L. 90–500), the Department of Defense Appropriation Authorization Act for Fiscal Year 1969, provides that:

"No funds authorized for appropriation for the use of the Armed Forces of the United States under the provisions of this Act or the provisions of any other law shall be available for the purchase, lease, rental, or other acquisition of multipassenger motor vehicles (buses) other than multipassenger motor vehicles (buses) manufactured in the United States, except as may be authorized by regulations promulgated by the Secretary of Defense solely to insure that compliance with this prohibition will not result in either an uneconomical procurement action or one which would adversely affect the national interests of the United States."

(b) The objective of this statutory provision is to assure that only buses manufactured in the United States shall be used to satisfy requirements of United States Armed Forces located throughout the world for bus transportation, where such buses are available and where their use would not be uneconomical or contrary to the national interests of the United States. It should be applied whether the buses are purchased, leased, rented, or made available under contracts for transportation services. The use of foreign manufactured buses is authorized where the Head of the Contracting Activity determines that the use of U.S.-manufactured buses would be uneconomical or would adversely affect the national interests of the United States. However, foreign buses may be acquired without such determination in the following circumstances:

(1) When U.S.-manufactured buses are not available in time to satisfy requirements which cannot be postponed, foreign-manufactured buses may be used for a temporary period of time but not to exceed the lead time required for acquisition and delivery of U.S.-manufactured buses.

(2) When the requirement for buses is of a temporary nature to meet a special but nonrecurring requirement or where a recurring requirement is sporadic and infrequent, foreign-manufactured buses may be used for the temporary periods of time not to exceed the period of time needed to meet the nonrecurring or the recurring infrequent requirement.

(3) When foreign-manufactured buses are made available at no direct or indirect acquisition cost to the U.S. Government, foreign-manufactured buses may be used.

225.7007 Restriction on R&D contracting with foreign sources.

(a) Section 744 of the Defense Appropriations Act for FY 1973 (Pub. L. 92–570) provides that no funds appropriated for the Department of Defense are available for entering into any contract or agreement with any foreign corporation, organization, person, or other entity for the performance of research and development in connection with any weapon system or other military equipment for the Department of Defense when there is a U.S. corporation, organization, person, or other entity equally competent to carry out such research and development and willing to do so at a lower cost.

(b) The above provision does not change the rules for the selection of research and development contractors set forth in FAR Part 35. However, when a U.S. and a foreign source are considered equally competent, the contracting officer will make a determination as to which of the sources will provide the services required at the lowest estimated cost to the Government.

Subpart 225.71—Canadian Purchases

225.7101 Mutual Canadian-American interests.

(a) Because of the close geographical proximity of the United States and Canada, and because of the mutual interest of both nations in the defense of North America, various steps have been taken during and since World War II to coordinate their economic efforts in the common defense, so as to achieve:

(1) Greater integration of military production;

(2) Greater standardization of military equipment;

(3) Wider dispersal of production facilities;

(4) Establishment of supplemental sources of supply; and

(5) Greater flow of defense supplies and equipment between the two countries.

Accordingly, it is DoD policy to seek the best possible coordination of the material programs of Canada and the United States and to assure Canada a fair opportunity to share in the production of military equipment and material involving programs of mutual interest to Canada and the United States and in the research and development connected therewith. Accomplishment of these purposes requires (i) the exemption of the restrictions of the Balance of Payment Program and the Buy American Act with respect to acquisitions for public use of supplies mined, produced, or manufactured in Canada in the manner prescribed in Subparts 225.1 and 225.3; and (ii) the Canadian Commercial Corporation, in placing contracts with Canadian or U.S. concerns, to insert suitable provisions in such contracts, obtaining for the Department of Defense the same production rights, data and information that the Department of Defense would obtain for itself pursuant to the FAR and this supplement if the Department were placing the contracts with U.S. concerns.

225.7102 Agreement with the Government of Canada.

(a) The agreement, dated 27 July 1956, as amended 17 December 1956, 31 May 1957, 6 January 1961, and 15 October 1962, between the Department of Defense Production (Canada) and the Department of Defense (see Appendix T Subpart 2), sets forth policies and provides for the implementation of procedures with respect to all contracts for supplies and services placed with the Canadian Commercial Corporation (an agency of the Government of Canada) on or after 1 October 1956.

(b) Subsequent to the execution of the agreement referred to in (a) above, the reorganization of the Canadian Government's departments and agencies vested the contracting authority of the former Canadian Department of Defense Production in the Department of Supply and Services. Pursuant to that reorganization, the authority of the Department of Defense Production to enter into cooperative development projects under the Memorandum of Understanding (see Appendix T) is vested in the Canadian Department of Industry, Trade and Commerce.

(c) This agreement and associated enabling provisions permit Canadian firms, including Canadian Crown corporations, a fair opportunity to participate in the production of defense equipment and material involving

defense programs of interest to both nations.

(d) A contract with a supplier or contractor located in Canada should normally be made with and administered through the Canadian Commercial Corporation. (See 225.7104(b).)

(e) In connection with contracts placed with the Canadian Commercial Corporation, the Department of Supply and Services (Canada) provides without charge to the Defense Departments and Agencies, among other things, such contract administration services as cost and pricing analysis, industrial security, accountability and disposal of Government property, production expediting, compliance with Canadian labor laws, processing of termination claims and disposal of termination inventory, customs documentation, processing of disputes and appeals, and such other related contract administration functions as may be required with respect to the Canadian Commerical Corporation contract with the Canadian supplier. Additionally, in connection with such contracts, audits, when required, are performed by the Audit Services Bureau, Department of Supply and Services (Canada), and the Department of National Defence (Canada) provides inspection personnel, services and facilities, at no charge to the Defense Departments and Agencies.

225.7104 Procedures for Candian purchases.

(a) *Bidding procedures.*

(1) *Solicitation of Canadian firms.*

(i) Except as provided in (a)(1)(ii) below, Canadian firms shall be included on bidders mailing lists and comparable source lists only upon request by the Canadian Commercial Corporation. Such requests shall be forwarded by the Canadian Commerical Corporation to the activity having acquisition responsibility for the supplies or services involved.

(ii) Canadian planned producers under the Industrial Readiness Planning Program shall be included on bidders mailing lists for their planned items (see FAR 14.205–1).

(iii) Solicitations shall be sent directly to Canadian firms appearing on the appropriate bidders mailing lists. A complete copy of the solicitation and a listing of Canadian firms solicited shall be sent to the Canadian Commercial Corporation, Export Supply Centre, Ottawa, Ontario, KIA–OS6, Canada.

(iv) Upon request by the Canadian Commercial Corporation, solicitations shall be furnished to it even though no Canadian firms were solicited.

(v) Small purchases (see FAR Part 13) normally should be handled directly with Canadian firms and not through the Canadian Commercial Corporation.

(2) *Submission of offers.*

(i) As indicated in 225.7104(b) below, the Canadian Commercial Corporation should normally be the prime contractor. In order to indicate its acceptance of offers by individual Canadian companies, the Canadian Commercial Corporation issues a letter supporting the Canadian offer and containing the following information: name of the Canadian offeror; confirmation and endorsement of the offer in the name of the Canadian Commercial Corporation; and a statement that the Corporation shall subcontract 100% with the offeror.

(ii) When a Canadian offer cannot be processed through the Canadian Commercial Corporation in time to meet the bid-opening requirement or the closing date for receipt of proposals, the Corporation is authorized to permit Canadian firms to submit offers directly; *Provided,* That the Canadian offer and the Canadian Commercial Corporation endorsement are both received by the contracting officer prior to bid opening or the closing date for receipt of proposals.

(iii) All formally advertised bids shall be submitted by the Canadian Commercial Corporation in terms of U.S. currency. Contracts placed as a result of such formal competitive bidding shall not be subject to adjustment for losses or gains resulting from fluctuation in exchange rates.

(iv) All offers and quotations submitted by the Canadian Commercial Corporation, except those in which competition is obtained, shall be in terms of Canadian currency. However, the Corporation may, at the time of submitting the offer, elect to quote and receive payment in terms of U.S. currency; in which event, contracts arising thereform shall provide for payment in U.S. currency and shall not be subject to adjustment for losses or gains resulting from fluctuation in exchange rates.

(b) *Contracting procedures.*

(1) Individual contracts covering purchases from suppliers located in Canada, except as noted in (b)(2) below, shall be made with the Canadian Commercial Corporation, which has offices located at the Export Supply Centre, 11 Laurier Avenue, Hull, Quebec, Canada (mail address—Canadian Commercial Corporation, Export Supply Centre, Ottawa, Ontario, K1A–0S6 Canada), and at 245 Massachusetts Avenue NW., Washington, DC 20008. Contracts should normally be awarded to and administered through the Export Supply Centre Office in Hull, and all payments under such contracts awarded to the Canadian Commercial Corporation shall be made to that office. Under contracts with the Canadian Commercial Corporation, direct communication with the Canadian supplier is authorized and encouraged in connection with all technical aspects of the contract; *Provided,* however, That the approval of the Corporation shall be obtained on any matters involving changes to the contract.

(2) The general policy in (b)(1) above need not be followed for purchases negotiated for experimental, developmental, or research work under FAR 15.205 or FAR 15–211, unless the contract is for a project under the Defense Development Sharing Program; purchases negotiated under FAR 15.202 for public exigency; purchases negotiated under FAR 15.203 for small purchases; or purchases made by U.S. Defense activities located in the Dominion of Canada.

(3) Prices in the contracts shall identify the type of currency; i.e., United States or Canadian. When contracts provide for payment in Canadian currency, the contract price shall be quoted in terms of Canadian dollars and shall identify the amount by the initials CN; e.g., $1,647.23CN. The contract shall clearly indicate on its face the US/Canadian conversion rate at the time of award and the US dollar equivalent of the Canadian dollar contract amount.

(c) *Administration procedures.*

(1) The following policy and procedures are applicable only to cost-reimbursement type contracts with Canadian contractors:

(i) On contracts with the Canadian Commercial Corporation (CCC), audits are automatically arranged by the Department of Supplies and Services (DSS) Canada (see 225.7102). Audit reports are furnished to DSS. Upon advice from DSS, the CCC will certify the invoice and forward it with Standard Form 1034 (Public Voucher) to the ACO for further processing (see 242.803(a)) and transmittal to the disbursing officer.

(ii) On contracts placed directly with Canadian firms, audits are requested by the ACO from the Audit Services Bureau (ASB), Ottawa, Ontario, Canada. Invoices are approved by the ASB/DSS auditor on a provisional basis pending completion of the contract and final audit. These invoices, accompanied by Standard Form 1034 (Public Voucher) are forwarded to the ACO for further processing (see 242.803(a)) and transmittal to the disbursing officer.

Periodic advisory audit reports are furnished directly to the ACO.

(d) *Termination procedures.* The Canadian Commercial Corporation will continue to administer contracts that may be terminated by the U.S. contracting officer and settle all Canadian subcontracts in accordance with the policies, practices, and procedures of the Canadian Government in the termination and settlement of Department of Defence Production (Canada) contracts. The U.S. agency administering the contract with the Canadian Commercial Corporation shall render such services as are required by the Canadian Commercial Corporation with respect to settlement of any subcontracts placed in the United States, including disposal of inventory. The settlement of such U.S. subcontracts shall be in accordance with this regulation.

(e) *Acceptance of canadian supplies.* Under f.o.b.-origin contracts with the Canadian Commercial Corporation where inspection has been performed by the Department of National Defence (Canada), pursuant to paragraph 6 of the Letter of Agreement (see Appendix T), acceptance of supplies or services which are in accordance with the terms of the contract, shall be made by the Department of National Defense (Canada) on behalf of the Defence Departments and Agencies. Signing of the acceptance certificate on the applicable United States Department of Defense inspection and acceptance form shall be considered satisfactory evidence for payment purposes.

(f) *Industrial security.* Industrial Security for Canada shall be in accordance with 225.7403(d) and pursuant to the United States-Canada Industrial Security Agreement of 31 March 1952, as amended.

225.7105 Contract administration.

(a) When services are requested from the Defense Contract Administration Services on contracts to be performed in Canada, the request shall be directed to: DCASMA, Ottawa, 6th Floor, Canadian Building, 219 Laurier Avenue, West, Ottawa, Ontario, Canada (KIA0S5).

(b) When contract administration is performed in Canada by Defense Contract Administration Services, the paying office activity to be named in the contract for disbursement of DoD funds (DoD Department Code: 17-Navy; 21-Army; 57-Air Force; 97-All other DoD components), whether payment is in Canadian or U.S. dollars, shall be: Disbursing Office, Defense Contract Administration, Services Region, Cleveland, 1240 East 9th Street, Anthony J. Celebrezze Federal Building, Cleveland, Ohio 44199.

Subpart 225.72—Military Assistance Program Acquisitions

225.7200 Scope of subpart.

This subpart implements the Military Assistance Program portion of the Foreign Assistance Act of 1961 (Section 604, 22 U.S.C. 2354) and the policies set forth in the President's Determination under Section 604(a) of the said act (Memorandum of October 18, 1961) and in Executive Order 10973 dated 3 November 1961.

225.7201 Statutory requirements.

(a) Section 604(a) of the Foreign Assistance Act of 1961, as implemented, provides that funds made available under the Act shall not be used for acquisition outside the United States except:

(1) To acquire items required for military assistance which are not produced in the United States;

(2) To make local purchases for administrative purposes;

(3) To use local currency available for military assistance purposes; or

(4) Where the Assistant Secretary of Defense (ISA) certifies that exclusion of acquisition outside the United States would seriously impede attainment of Military Assistance Program objectives.

(b) Where a MAP order involves acquisition covered by a certification issued in accordance with (a)(4) above, the Director of Military Assistance, Office of the Assistant Secretary of Defense (International Security Affairs), will specify in the order that the Military Department is authorized to contract offshore.

225.7202 Procedures.

The following procedures apply to all contracts for the Military Assistance Program (other than those excepted pursuant to 225.7201) citing funds authorized by the Foreign Assistance Act of 1961, or citing funds made available under Department of Defense Appropriation Acts when it is known at the time of acquisition that the items being acquired are to fill existing Military Assistance Program orders and that DoD appropriations are to be reimbursed from Foreign Assistance Act funds. The requirements of this paragraph do not apply to issues from DoD inventories or to replenishment of such inventories.

(a) *Method of purchase.* Acquisition for the Military Assistance Program shall be restricted to domestic concerns and to U.S. end products as defined in 252.225-7016. Except for this restriction on solicitation, acquisition shall be made by formal advertising, wherever practicable. Subject to the limitations prescribed in FAR 15.1 and pursuant to the authority of 10 U.S.C. 2304(a), acquisition may be effected by negotiation under any appropriate exception of 10 U.S.C. 2304(a). The Foreign Assistance Act of 1961 shall not be used as authority to negotiate under 10 U.S.C. 2304(a)(17).

(b) *Certificate.* When the acquisition is solely to fill existing Military Assistance Program orders, the solicitation shall so state. When the acquisition consists of both Military Assistance Program items and Non-Military Assistance Program items, the solicitation shall clearly designate the Military Assistance Program items. In either instance, the solicitation shall require that each offer for end products include either the certificate at 252.225-7000 or the certificate at 252.225-7005 and the certificate at 252.225-7015.

225.7203 Exemptions from examination of records requirement.

(a) *General.* Military Assistance Program purchases authorized to be made outside the United States under the Foreign Military Sales Act of 1968, as amended, and the Arms Export Control Act of 1976, as amended, are exempt (Executive Order No. 11223, dated 12 May 1965) from the requirement for examination of records by the Comptroller General (10 U.S.C. 2313(b) and Section 3(b), Pub. L. 85-804) in the following circumstances:

(1) Contracts with foreign contractors (including foreign governments) to be performed outside the United States; and

(2) Contracts, and amendments and modifications thereof, entered into pursuant to Pub. L. 85-804 (see FAR Part 50), *Provided,* That the Department concerned shall make a determination that it is impracticable to include the Examination of Records clause or to obtain compliance therewith; such determinations may be made by any officer or official authorized to approve contracts, and amendments and modifications thereof, pursuant to FAR Part 50.

(b) Notwithstanding the exemptions permitted above, the contracting officer, where practicable, shall include the Examination of Records clause in contracts covered in (a)(1) above.

225.7204 Department of Defense audit and records.

Contracts exempted under 225.7203(a)(1) from the requirement for examinaton of records by the

Comptroller General shall nevertheless include the clause at FAR 52.214-26, Audit—Formal Advertising or at FAR 52.215-2, Audit—Negotiation, as appropriate, in accordance with the requirement of that paragraph.

225.7205 Contract provision and clause.

(a) The provision at 252.225-7015, United States Products Certificate (Military Assistance Program), shall be inserted in all solicitations which, in whole or in part, are subject to this Subpart 225.72 under the conditions at 225.7202(b).

(b) The clause at 252.225-7016, United States Products (Military Assistance Program), shall be inserted by the contracting officer in all solicitations and contracts which call for end products which, in whole or in part, are subject to this Subpart 225.72, unless excepted pursuant to 225.7201 and in all solicitations which include the provisions at 252.225-7015.

Subpart 225.73—Acquisitions for Foreign Military Sales

225.7300 Scope of subpart.

This subpart sets forth policies and procedures applicable to acquisitions made for the purpose of Foreign Military Sales (FMS) pursuant to the Arm Export Control Act. It does not apply to Foreign Military Sales made from inventories or stocks, to acquisitions for replenishment of inventories or stocks, or acquisitions made under DoD Cooperative Logistics Supply Support Arrangements. An FMS Agreement is an accepted Letter of Offer and Acceptance which is the document by which the U.S. Government agrees to sell defense articles and services to a foreign government or international organization.

225.7301 Applicable statutory provisions.

(a) *Contract Administration.*

(1) Pursuant to Section 22 of the Arms Export Control Act (Pub. L. 90-629, as amended) the Department of Defense is authorized to enter into contracts for purposes of resale to foreign countries or international organizations.

(2) The Act provides in part that:

(i) The President may, without requirement for charge to any appropriation or contract authorization otherwise provided, enter into contracts for the acquisition of defense articles or defense services for sale for U.S. dollars to any foreign country or international organization if such country or international organization provides the U.S. Government with a dependable undertaking (A) to pay the full amount of such contract which will assure the U.S. Government against any loss on the contract; and (B) to make funds available in such amounts and at such times as may be required to meet the payments required by the contract and any damages and costs that may accrue from the cancellation of such contract, in advance of the time such payments, damages, or costs are due. Interest shall be charged on any net amount by which any such country or international organization is in arrears under all of its outstanding unliquidated dependable undertakings, considered collectively. The rate of interest charged shall be a rate not less than a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding short-term obligation of the United States as of the last day of the month preceding the net arrearage and shall be computed from the date of net arrearage.

(ii) The President may, if he determines it to be in the national interest, issue letters of offer under Section 22 of the Arms Export Control Act, as amended, which provides for billing upon delivery of the defense article or rendering of the defense service and for payment within 120 days after the date of billing. This authority may be exercised, however, only if the President also determines that the emergency requirements of the purchaser for acquisition of such defense articles and services exceed the ready availability to the purchaser of funds sufficient to make payments on a dependable undertaking basis and submits both determinations to the Congress together with a special emergency request for authorization and appropriation of additional funds to finance such purchases under this Act.

(b) *Commercial Availability.* DoD policies and procedures with respect to commercial availability are contained in the Military Assistance and Sales Manual (DoD Manual 5105.38-M), Part III, Chapter H, entitled *Commercial Availability*, published by the Defense Security Assistance Agency. (See DoD Manual 5105.38-M.)

225.7302 Applicability.

The FAR and this supplement shall apply to all purchases and contracts made the Department of Defense in support of Foreign Military Sales.

225.7303 Preparation of DoD offer and acceptance, DD form 1513.

(a) DD Form 1513 lists the items and/or services, estimated costs, the terms and conditions of sale, and provides for the foreign government's signature to indicate acceptance.

(b) *Procedures.*

(1) In connection with each Foreign Military Sale expected to involve a contract in excess of $10,000 which cannot be placed on the basis of price competition (as, for example, when the foreign customer has designated only one source as acceptable), before the Department of Defense furnishes prices for information purposes to potential foreign customers, prices, delivery and other relevant information shall be requested from the prospective source, and such request shall state that it is for information for the purpose of a potential Foreign Military Sale and shall identify the customer.

(2) As a general rule on FMS programs requiring new acquisitions, the contracting officer should participate in the preparation of Price and Availability Data to support the tendering of the DoD Offer and Acceptance (DD Form 1513) by the U.S. Government to foreign countries and international organizations. In addition to the identification and review of sales commissions and fees, the contracting officer shall request contractors to identify in advance of the DoD Offer and Acceptance any unusual provisions or deviations, particularly those proposed for the contract which could affect the prices quoted. Such unusual contractual requirements shall also be identified in the submittal of the price and availability data to the Departmental activity responsible for providing the DoD Offer and Acceptance to the foreign country. If the Departmental activity expands, modifes or does not accept such requirements, the contractor shall be advised prior to the submission of the offer to the foreign country.

225.7304 Pricing acquisitions for foreign military sales.

(a) *General.* When the Department of Defense undertakes purchasing for sale to a foreign country which has committed itself to bear the cost of the acquisition, the Department of Defense assumes responsibility to see to it that no more than a fair price is paid for the acquisition. Accordingly, FMS contracts shall be priced on the same principles and with the same care as are used in pricing normal defense contracts. This does not mean that prices of normal defense contracts for an item are automatically applicable to FMS contracts for the same item. On the contrary, application to FMS contracts of the pricing principles established by FAR Part 15 and FAR Part 31 may require pricing results that differ from normal defense contract prices for the same item because certain kinds of

costs may reasonably and allocably arise in different amounts for the former than for the latter. In this regard, known FMS requirements shall be separately identified in solicitations.

(b) *Commercial sales to foreign customers.* If the contractor has made sales of an item to foreign customers under comparable conditions, including quantity and delivery, the pricing of FMS contracts shall be in accordance with FAR Part 15.

(c) *Cost of doing business with a foreign government or an international organization.*

(1) In pricing FMS contracts, where non-U.S. Government prices as described in (b) do not exist, recognition should be given to costs of doing business with a foreign government or international organization (even though the form of the transaction is a defense purchase for the purpose of FMS) whenever comparable costs of doing business with the United States would be recognized in pricing normal defense contracts. Thus, recognition should be given to reasonable and allocable costs, even though such costs might not be recognized in the same amounts in pricing normal defense contracts. Examples of such costs include, but are not limited to, the following:

(i) Selling expenses (not otherwise limited by FAR Part 31); e.g.:

(A) Maintaining international sales and service organizations;

(B) Sales commissions and fees in accordance with FAR Subpart 3.4;

(C) Sales promotions, demonstrations, and related travel for the purposes of sales to foreign governments; however, such costs shall not be recovered against U.S. Government contracts for U.S. Government requirements. These expenses may be recovered; *Provided,* That when required by paragraph 123.16 of the International Traffic in Arms Regulations (ITAR) (22 CFR Part 121), such promotion or demonstration has received U.S. Government approval.

(D) Configuration studies and related technical services undertaken as a direct selling effort to a foreign country.

(ii) Product support and postdelivery service expenses; e.g.:

(A) Operations or maintenance training, training or tactics films, manuals, or other related data;

(B) Technical field services provided in a foreign country related to accident investigations, weapon system problems, operations/tactics enhancement, and related travel to foreign countries.

(iii) Costs associated with the implementation of DoD offset arrangements.

(iv) Costs that are the subject of advance understanding, in accordance with the appropriate provisions of FAR Part 31, or where the advance understanding places a limit on the amounts of cost that will be recognized allowable in defense contract pricing, and the understanding contemplated that it will apply only to DoD contracts for the U.S. Government's own requirements (as distinguished from contracts for FMS).

(2) Costs that are not allowable under FAR Part 31 are not allowable in pricing FMS contracts.

(3) The provisions of Section 203, Pub. L. 91–441, do not apply to contracts for Foreign Military Sales. Therefore, the ceiling limitations or the formula constraints on bid and proposal (B&P) costs incorporated in Part 231, and on independent research and development (IR&D) costs incorporated in Part 231 shall not be applicable to contracts for Foreign Military Sales. IR&D and B&P costs allowed on contracts for Foreign Military Sales shall be limited to their allocable share of the total expenditures. In pricing contracts for Foreign Military Sales, the best estimate of reasonable costs shall be used in forward pricing. Actual expenditures, to the extent that they are reasonable, shall be used in determining final cost.

(4) Pursuant to Section 21(e)(1)(A) of the Arms Export Control Act, as amended, the United States shall make appropriate charges for administrative services in order to recover the estimated cost of administration of sales made under the Arms Export Control Act.

(d) *Government-to-government agreements.* In the event a government-to-government agreement between the United States and a foreign government, for the sale, coproduction, or cooperative logistic support of a specifically defined weapon system, major end item or support item, contains language in conflict with the provisions of (a) through (c) above, the language of the government-to-government agreement shall prevail.

225.7305 Sales commissions and contingent fees on foreign military sales.

(a) *Scope.* This section provides policies and procedures for determining the applicability and allowability of sales commissions and contingent fees on FMS purchases. It supplements the policies contained in 225.7304(c)(1)(i), FAR Part 31, and FAR Subpart 3.4.

(b) *Policy.* Sales commissions and contingent fees are allowable under defense contracts; *provided;* that, in accordance with FAR Part 31 and FAR Subpart 3.4, the commissions or fees are paid to a bona fide employee or a bona fide established commercial or selling agency maintained by the prospective contractor (hereinafter referred to as contractor) for the purpose of securing business (but see 225.7305(f)). For FMS, it is extremely difficult for the Department of Defense to verify the services rendered or the value of services by bona fide employees or bona fide established commercial or selling agencies. Therefore, it is the policy of the Department of Defense that the allowable cost of sales commission and contingent fees (as defined in FAR Subpart 3.4) anticipated to be included in FMS contracts is limited to $50,000, and such fees or commissions shall be made known to the purchasing government prior to or in conjunction with the submission of the DoD Offer and Acceptance (DD Form 1513) to that government.

(c) *DoD offer and acceptance procedures.*

(1) In submitting an Offer and Acceptance to a foreign government which is known to contain a sales commission or fee, the Department of Defense will include:

(i) The name and address of the sales representative;

(ii) The estimate of the proposed fee, along with a statement as to the percentage of sale involved if such fee is based on a percentage of the sale price; and

(iii) A statement indicating one of the following, whichever is applicable:

(A) Appropriate officials within the U.S. Department of Defense considered the fee to be fair and reasonable;

(B) In the event only a portion of the proposed fee is considered fair and reasonable, a statement to this effect, together with the rationale therefor; or

(C) The U.S. Department of Defense cannot determine reasonableness of the proposed fee. The notification in the Offer and Acceptance may also include the contractor's explanation of or justification for the proposed charge, together with any other data which may be requested by the purchasing government.

(2) The Offer and Acceptance also will include a statement to the effect that acceptance of the offer by the purchasing government, after receipt of the appropriate notification outlined above, will constitute that government's approval of the sales commission or fee involved. No fee shall be accepted by the Department of Defense if disapproved by the purchasing government.

(3) There may be occasions, as when FMS requirements are to be fulfilled by

competitive acquisitions, when it is not possible to determine prior to presentation of the Offer and Acceptance whether or not the price to be paid for material or services will include sales commissions and fees. In such cases, the purchasing government will be notified (by DoD officials responsible for presentation of the Offer and Acceptance) as soon as possible if subsequent contract negotiations indicate that a sales representative's charges will be claimed by the contractor. This notification will include the information outlined in (c)(1) above, along with an indication that the Department of Defense will determine whether or not to accept such costs as a valid charge to the contract, unless contrary notification is received from the purchasing government within 30 days of the date of the notification.

(4) If in making the determination required by FAR Subpart 3.4 and (d)(3), the responsible contracting official determines that a sales representative is not bona fide for reasons other than reasonableness of fee, no Offer and Acceptance will be tendered pending withdrawal by the prospective contractor of the fee for such sales representative from his proposal.

(d) *Applicability and allowability of sales commissions or fees.*

(1) When a contracting officer is requested to obtain price and availability data from a contractor to support the tendering of an Offer and Acceptance, he shall require the contractor to identify the amount of any sales commissions or fees. Allowable costs for sales commissions or fees applicable to contracts for FMS shall not exceed $50,000 per contract (including all modifications and subcontracts thereto) for each foreign customer served by that contract. Although commissions and fees may be less than $50,000 per contract, all such commissions and fees must be justified and supported, based on the criteria in (d)(2) below. If deviations to this policy are considered necessary, FAR 1.4 shall apply. In addition, sales commissions or fees shall not be allowed for follow-on spares provided under DoD Cooperative Logistic Supply Support Arrangements.

(2) In order to provide the appropriate notice and advice regarding sales commissions and fees to a foreign government at the time an Offer and Acceptance is submitted, the contracting officer except with respect to those contracts excluded in FAR Subpart 3.4, shall:

(i) Require the contractor to submit a Contractor's Statement of Contingent or Other Fees (Standard Form 119) (including any such fees claimed by subcontractors);

(ii) Determine under FAR Subpart 3.4 whether a bona fide employee or agency relationship exists (for the purposes of FMS, the definition in FAR Subpart 3.4 of improper influence also extends to officials of the foreign government);

(iii) Require the contractor to submit a breakdown of the fee related to the services performed by the sales representative. Even though a bona fide employee or agency relationship is determined to exist, the basic test of reasonableness for the purposes of making the statement required by 225.7305(c)(1)(iii) is an assessment of the services provided, or to be provided, compared to the amount of the fee. In addition to the fee breakdown of services, a comparative analysis may be made of the proposed fee/commission with recent payment for comparable services under commercial sales (non-FMS) of the same or similar items, and sales commissions and fees allowed on previous FMS sales of comparable scope and dollar amounts. In analyzing the fee, consideration should be given to whether the sale is the initial or follow-on sale because the effort for follow-on sales of additional quantities, spares and support equipment would not normally be as great as the effort for the initial sale.

(3) The PCO shall make a determination with respect to a bona fide employee or agency relationship and reasonableness of the commission or fee (i.e., one of the 225.7305(c)(1)(iii) fee statements), subject to the approval of the chief of the contracting office.

(e) *Contracting procedures relating to sales, commissions and fees.* If, after notification by DOD officials responsible for presentation of the Offer and Acceptance to a foreign government as required by (c) above, the foreign government disapproves the fee, or a portion of the fee, the contracting officer shall notify the prospective contractor and request withdrawal of the fee for the sales representative from the proposal. Should the contractor refuse to withdraw the fee, the Department of Defense will notify the foreign government that the Department of Defense is unable to purchase the items or services from that contractor.

(f) *Special country requests with respect to sales commissions and fees.* Pursuant to DoD Manual 5105.38–M (Military Assistance and Sales Manual), Letters of Offer and Acceptance for requirements for the governments of Australia, Taiwan, Egypt, Greece, Iran, Israel, Japan, Jordan, Republic of Korea, Kuwait, Pakistan, Philippines, Saudi Arabia, Turkey, Thailand, United Arab Emirates, or Venezuela (Air Force) are required to provide that all U.S. Government contracts resulting from the Letters of Offer shall prohibit the payment of sales commission and fee unless such payments have been identified and payment thereof approved in writing by the government involved before contract award. Therefore, the contracting officer shall on behalf of these purchasers, insert the clause at 252.225–7017, Limitation of Sales Commissions and Fees for Foreign Governments, in all solicitations and contracts for FMS requirements unless such payment has been approved.

225.7306 Recovery of nonrecurring costs.

(a) *Policy.* It is the policy of the Department of Defense to recover a fair share of its investment in nonrecurring costs related to defense products, and/or a fair price for its contribution to the development of related technology, when such products are sold and when technology relating to the manufacture of the products is sold or licensed to a foreign government, international organization, foreign commercial firm, or domestic organization. Furthermore, in selected cases, it is DoD policy to recover, on behalf of a foreign government or international organization, a fair share of the nonrecurring costs for a special feature or product paid by the foreign government or international organization under a foreign military sales case when subsequent customers purchase the same specialized feature.

(b) *Applicability.*

(1) This policy applies to those products and technologies for which investment costs equal or exceed $5 million for any of the following:

(i) nonrecurring research, development, test, and evaluation (RDT&E) costs to develop defense products and related technology. The determination of RDT&E costs shall be based upon the current and predecessor models of an item or equipment.

(ii) nonrecurring production costs.

(iii) RDT&E and nonrecurring production costs for special features under a foreign military sale, when requiested by the FMS customer and agreed to by the U.S. Government.

(2) In the event an end item contains one or more components which individually meet the above thresholds, recoupment will be made on a component when sold separately.

(3) In the case of product sales, if the dollar threshold is met for either nonrecurring RDT&E or production costs, recoupment for both categories of investment costs will be charged.

(c) *Procedures.* Charges shall be computed and assessed by the DoD officials responsible for presentation of the DD Form 1513. Such charges shall not be included in the contractor's proposed price.

225.7307 Source selection.

(a) Purchases for FMS customers shall be implemented under normal acquisition and contract management procedures set forth in the FAR and this supplement, and other directives. However, the FMS customer may request that a defense article or defense service be obtained from a particular prime source. In such cases, FAR 15.210 provides authority to negotiate on a sole source basis. The FMS customer may also request that a sole source subcontract be placed with a particular firm. The contracting officer shall honor requests for sole source prime and subcontracts from the FMS customer as specified in the Letter of Agreement or other written direction by the military sales oganization.

(b) Representatives of the FMS customer shall not be permitted to direct the deletion of names of firms from bidders mailing lists or slates of proposed A–E firms. They may, however, suggest that certain firms be included. Contracting offices shall not accept directions from the FMS customer as to source selection decisions or contract terms (other than the special contract provisions and warranties referred to in Condition A.2 of the DD Form 1513), nor shall the FMS customer be permitted to interfere with a prime contractor's placement of his subcontracts. Requests by the FMS customer for rejection of any bid or proposal shall not be honored unless the rejection is justified on the basis of reasons which would be sufficient in the case of a purchase by the Department of Defense to meet its own needs.

225.7308 Limitation of liability.

In acquisitions for FMS, the foreign purchaser shall be advised that the appropriate Limitation of Liability clause(s) (see FAR Subpart 46.8) is included in the FMS contract (see Condition C on the DD Form 1513). If the foreign customer does not agree to assume the risk for loss or damage as provided in the clause(s) and objects to the inclusion of such clause(s) in the Offer and Acceptance, the contractor shall be so advised. The costs of necessary insurance, if any, to be obtained by the contractor to cover such risk of loss or damage shall be considered in establishing the FMS contract price of such items.

225.7309 Exercise of options for foreign military sales.

Exercising an option to satisfy an FMS requirement may introduce the need to consider changes to costs and profit attributable to pricing differences between U.S. and FMS contract requirements. Such consideration may also be necessary if the option is already identified for FMS but it is exercised for country B requirements instead of the country A requirements to which it was priced. In order to provide for and better permit the inclusion of priced options in the contract and their subsequent exercise for FMS requirements whether or not the specifics are fully known at the time of award, the contracting officer should consider the use of the clauses prescribed at 217.207(70).

225.7310 Implementation of offset arrangements negotiated pursuant to foreign military sales agreements.

(a) *Scope.* This section sets forth policies and procedures concerned with the fulfillment of Department of Defense offset arrangements negotiated pursuant to an FMS agreement. An "FMS/offset arrangement" is that which is negotiated pursuant to an FMS agreement wherein the Department of Defense agrees to place on a contractural basis and consistent with the guidance in 225.7310(b)(2), a certain percentage of the FMS agreement dollar value or a stated dollar objective in that country with which the FMS agreement has been negotiated. The purpose of an FMS/offset arrangement is to fulfill commitments negotiated pursuant to an FMS agreement. Australia, Belgium, Denmark, Netherlands, Norway, and Switzerland have FMS/offset arrangements negotiated pursuant to FMS agreements. However, Belgium, Denmark, Netherlands, and Norway are also participating NATO countries and are accorded preferences under Subpart 225.74.

(b) *General.*

(1) Since May 4, 1978, it has been DoD policy not to enter into government-to-government offset agreements because of the inherent difficulties in negotiating and implementing such arrangements. Exceptions to this policy must be approved by the Secretary of Defense or his Deputy and will only be made when there is no feasible alternative to ensure the successful completion of FMS transactions considered to be of significant importance to the national security interests of the United States.

(2) When authorized, offset provisions typically require the Military Departments or U.S. prime contractors, or both, to identify items for which foreign sources may obtain contracts up to a specified offset level and in accordance with the terms and conditions of the particular DoD offset agreement. Normally, FMS/offset arrangements should be negotiated prior to the FMS agreement Offer and Acceptance in order that the Department of Defense and its prime contractors will have an opportunity to assess in advance the DoD's or contractor's ability to fulfill the FMS/offset arrangement, and include in the offer those DoD and contractor costs associated with such arrangements.

(3) If an exception is granted pursuant to paragraph (b)(1) above, the policy of the Department of Defense is that the domestic concerns involved in the FMS and the foreign customer will make suitable arrangements to fulfill an FMS/offset arrangement. Only if it is determined that the FMS offset arrangement cannot be fulfilled in this fashion will the Department of Defense seek to fulfill the offset commitments through other defense purchases. When practical, the U.S. prime contractor shall be contacted and coordination obtained prior to the Government's committing the U.S. prime contractor's participation.

(4) The Defense Security Assistance Agency (DSAA) acts as the focal point within the Executive Branch for interagency coordination on offset policy in consultation with the Office of the Assistant Secretary of Defense (International Security Affairs), from which DSAA derives overall policy guidance. The Office of the Under Secretary of Defense for Research and Engineering (OUSDRE) is responsible for matters pertaining to the fulfillment of the offset portion of FMS agreements. General information regarding the existence of FMS/offset arrangements with particular countries or implementation of such arrangements may be obtained by submitting inquiries through the Departments to the Director for International Acquisition, OUSDRE(AM).

(c) *Procedures.*

(1) Whenever an FMS agreement involves a single major weapon system, the Department responsible for acquisition of the weapon system will be responsible for managing any resulting FMS/offset arrangement. If an FMS agreement involves the sale of items from two or more Departments, OUSDRE may either direct that one Department be responsible for coordinating the implementation of the FMS/offset arrangement, or apportion responsibility for managing the offset program among two or more Departments. Such management

includes (i) the development of special contractual provisions consistent with (c)(4) below; (ii) the consideration of other DoD contract items for competition by foreign sources (to the extent other defense purchasing is involved or becomes necessary); and (iii) the obtaining of appropriate exemptions by the Secretary of the purchasing Department concerned from the Buy American Act under FAR 25.102, the Balance of Payments Program, duty and other applicable acquisition restrictions on a purchase-by-purchase basis of defense equipment. (See sample Determination and Findings set forth in (c)(2)(i) below for the exemption of the Buy American Act.) Even though a Military Department or Defense Agency is not responsible for the management of a certain FMS/offset arrangement, it will consider, for competitive acquisitions, offers of defense equipment from FMS/offset arrangement country sources.

(2) Solicitation of FMS/offset arrangement country sources shall be accomplished using procedures like those set forth in 225.7403(a)(1) for participating countries (see also 225.402(b)). When soliciting sources outside the United States, international air mail shall be utilized where security classification permits. See 214.202–1, FAR 14.203–1, and FAR 15.408(c). For the purpose of evaluating an FMS/offset arrangement country offer, it shall be treated as if it were a participating country offer and evaluated in accordance with 225.7403(a)(3). If after such evaluation, it is clear that the FMS/offset arrangement country offer is low or otherwise eligible for award, the contracting officer shall request from the Secretary of the Department concerned the appropriate exemptions for the acquisition as set forth in (2)(i) below. The list set forth at 225.7405 shall also apply to FMS/offset arrangement countries as shall 225.402(b).

(i) To obtain an exemption, under FAR 25.102, of the Buy American Act, the contracting officer shall process a Determination and Findings for the signature of the Secretary of the Department or Agency concerned. The Determination and Findings shall be substantially as follows for end items, or modified as necessary for components.

Service or Agency Exemption of the Buy American Act (41 U.S.C. 10a–d) Determination and Findings

Upon the basis of the following findings and determination which I hereby make in accordance with the provisions of FAR 25.102, acquisition of an (FMS/offset arrangement country) (describe item) may be made as provide below.

Findings

1. The (Contracting Acitvity) proposes to purchase ————, under contract number ——, mined, produced or manufactured in (country of origin). The total estimated cost of this acquisition is ——.

2. The United States Government (USG) and the Government of ———— have entered into an FMS/offset arrangement whereby the Government of ———— will purchase US defense articles and services and the USG, through the Department of Defense (DoD), if necessary, will offer potential DoD requirements suitable for purchase of (FMS/offset arrangement country) defense items.

3. The Agreement provides that competitive offers (FMS/offset arrangement country) end products will be evaluated by the Department of Defense without imposing any price differential under the Buy American Act or Balance of Payments Program and without taking applicable U.S. customs and duties into consideration so that (FMS/offset arrangement country) items may better compete, for sales of defense equipment to the Department of Defense. In addition, the Agreement stipulates that acquisitions of (FMS/offset arrangement country) items must fully satisfy Department of Defense requirements for performance, quality, and delivery and shall cost the Department of Defense no more than would comparable U.S. source or other foreign source defense equipment eligible for award.

4. In other to achieve the above objectives, the solicitation contained the Buy American Act and Balance of Payments Program clause, 252.225–7001, or the Buy American Act, Trade Agreements Act, and the Balance of Payments Program clause, 252.225–7006 which state that an exemption from the application of the Buy American Act may be granted by the Secretary of the Department concerned. Offers were solicited from other sources and the offer received for an (FMS/offset arrangement country end item) is found to be acceptable.

Determination

Pursuant to the Buy American Act (41 U.S.C. 10a–d), I hereby determine that it is inconsistent with the public interest to apply the restrictions of the Buy American Act to the proposed offer.

(Date)————————————

(Secretary of Department)

(3) To assure that the policy of 225.602 is carried out regarding the issuance of duty-free entry certificates, the contracting officer shall include the clauses at FAR 52.225–10, Duty-Free Entry, and 252.225–7007, Supplies to be Accorded Duty-Free Entry, in contracts which either contribute, or anticipate to contribute, to the fulfillment of an FMS/offset arrangement.

(4) The clause set forth at 252.225–7018, Offset Arrangement, shall be used in a contract when the domestic concern involved in the Foreign Military Sale has accepted responsibility for accomplishing any portion of an FMS/offset arrangement. (Paragraph (a) of the clause should be modified as necessary to state any special terms and conditions of the FMS/offset arrangement, such as competitive prices or otherwise, period of offset accomplishment, special type nature of offset required, and so forth.

(5) When an FMS/offset arrangement program is structured to provide offset potential on a number of DoD purchases, as opposed to only within the prime FMS contracts, DoD solicitations which contemplate proposals of FMS/offset arrangement country end products should indicate that the price evaluation of offers will be accomplished without the application of the Buy American Act or the Balance of Payments Program differentials or duty, which would otherwise be applied to the price evaluation in accordance with other paragraphs of this Part 225. If on the basis of such evaluation, an offeror proposing an end product from an FMS/offset arrangement country source is low, the matter will be forwarded to the Secretary of the Department for consideration as to whether it would be in the public interest to exempt the end product from the restrictions of the Buy American Act (see FAR 25.102) and the Balance of Payments Program regulations. FMS/offset arrangement country sources, in competing for DoD purchases under a DoD FMS/offset program, must be responsive to the terms and conditions of DoD solicitations unless otherwise specifically provided for in the FMS/offset arrangement with the FMS/offset arrangement country. DoD contracting activities must also comply with all other laws and regulations governing foreign purchases, such as security restrictions and disclosure of information to foreign nationals.

(6) In a general FMS/offset arrangement which contemplates foreign competition with U.S. sources for defense contracts (as opposed to one structured to be accomplished within the FMS prime contracts for that sale), the preferable procedure is to require the foreign government to propose, from time to time, specific defense-related items which appear susceptible to competition by companies in that country. When such proposals are made, the foreign government will include the names and addresses of the foreign sources which that foreign government considers qualified to perform the work. However, in order to ensure fulfillment of the FMS/offset arrangement within the specified time limits, the Departments are also expected to exercise initiative in seeking out items

which might be suitable for such foreign competition and in making arrangements through the foreign government, if necessary, to identify suitable sources.

225.7311 Use of Government production and research property on work for foreign governments or international organizations.

(See 45.405.)

225.7312 Exclusionary policies and practices of foreign governments.

All contracts for the purchase of goods or services for Military Assistance Programs (MAP), International Military Educational Training (IMET), and Foreign Military Sales (FMS) shall include the clause in 252.225–7019, Exclusionary Policies and Practices of Foreign Governments.

225.7313 Nonapplicability of rates.

Nonapplicability of rates under 49 U.S.C. Section 10721 (formerly "Section 22 Rates").

(See FAR 47.104–2.)

225.7314 Specific FMS/offset agreements.

Specific FMS/Offset Agreements are included in Appendix T, Subpart 1.

Subpart 252.74—Purchases From NATO Participating Country Sources

225.7400 Scope of subpart.

This subpart implements the Memoranda of Understanding (MOU) between the United States and participating countries.

225.7401 Policy.

In order to increase the defense capabilities of NATO through more efficient cooperation in the field of research and development, production, and acquisition of defense equipment, the United States has entered into Memoranda of Understanding with Canada, the Federal Republic of Germany, the Government of Italy, the United Kingdom of Great Britain and Northern Ireland (U.K.), the Government of Norway, the Kingdom of the Netherlands, the Government of Portugal, the Government of Belgium, the Government of Denmark, the Government of France, the Government of Turkey, the Government of the Grand Duchy of Luxembourg, and the Government of Spain. The objective of each MOU is to facilitate the defense of North America and Europe so as to achieve:

(a) Greater cooperation in research, development, acquisition, and production

(b) The most rational use of their respective industrial, economic, and technological resources;

(c) The greatest attainable military capability at the lowest possible cost; and

(d) Greater standardization and interoperability of their weapon systems.

Accordingly, it is DoD policy to seek the best possible coordination of the materiel program between the participating countries and the United States and to ensure that sources from participating countries are provided every opportunity to compete on a fair and equal basis with U.S. sources for research and development and for production contracts consistent with 225.7402(b). Accomplishment of this policy requires exemption of foreign acquisition restrictions with respect to all items of defense equipment from participating countries. (See also 225.402(b).)

225.7402 MOUs with NATO participating countries.

(a) The MOUs set forth acquisition policies with respect to defense equipment from sources in participating countries.

(b) *Applicability.* This subpart applies except where restricted by (1) provisions of U.S. National Disclosure Policy (NDP), DoD Directive 5230.11; (2) U.S. defense mobilization base requirements as specified in 208.73, 208.74, and 208.75; (3) U.S. laws or regulations (e.g., the annual DoD Appropriations Act (Subpart 225.70); and (4) U.S. Industrial Security Requirements.

225.7403 Procedures for purchases from participating countries.

(a) *Solicitation procedures.*

(1) *Solicitation of sources in participating countries.*

(i) Participating country sources shall be included on bidders mailing lists and comparable source lists upon request by such sources in accordance with the procedures in FAR 14.205. Requests of this nature should be forwarded by participating country sources to the activity having acquisition responsibility for the supplies involved.

(ii) The normal criteria for soliciting and making awards under FAR Part 19 for small business concerns and FAR Part 20 for labor surplus area firms shall be utilized without regard to the fact that there are potential participating country sources for the end product, except items developed under the U.S./Canadian Development Sharing Program. Offers of a foreign end product shall not be considered on any acquisition, or part thereof, identified for the exclusive participation for such firms.

(iii) Solicitations shall be sent directly to participating country sources appearing on the appropriate bidders mailing list except when restricted by 225.105, 225.7402(b), 225.7405 and (ii) above. In addition, Canadian sources shall also be solicited through the Canadian Commercial Corporation in accordance with 225.7104. When solicitation destinations are outside the United States, international air mail shall be utilized where security classification permits (see FAR 14.202 and FAR 14.203).

(iv) Upon request, solicitations shall be furnished to the embassy or other designated place or representative of the participating country.

(v) If unusual technical or security requirements would preclude the acquisition of otherwise acceptable defense equipment from participating country sources, the need for such requirements should be specifically reviewed. Under no circumstances will unusual technical or security requirements be imposed solely for the purpose of precluding the acquisition of defense equipment from participating countries.

(vi) Participating country sources shall not be automatically excluded from submitting offers because their supplies have not been tested and evaluated by a Department. Departments which find it necessary to limit solicitations to sources whose items have been service tested and evaluated by the department shall make provision for considering supplies from participating country sources which have been tested and accepted by the participating country for service use, subject to U.S. confirmatory test, if necessary. Where it appears that these provisions might adversely delay service programs, the concurrence of the Department of Defense Acquisition Executive, USDRE, shall be obtained prior to exclusion of the participating country item from consideration. Sufficiency of participating country service testing should be considered on a case-by-case basis. When confirmatory tests of participating country end products are deemed necessary by the department, U.S. test and evaluation standards, policies, and procedures shall apply.

(vii) Subject to 225.7402(b), industry representatives from a participating country shall be permitted to attend symposia, program briefings, prebid conferences (FAR 14.207 and FAR 15.409), and like meetings which address U.S. defense equipment needs and

requirements. When practical, these meeting should be structured so as to allow attendance by representatives of participating country concerns.

(2) *Submission of offers.* Participating country sources competing for DoD requirements must be responsive to the terms and conditions of DoD solicitations.

(3) *Evaluation of offers from participating country sources.*

(i) In furtherance of the objectives set forth in 225.7401, the Secretary of Defense has determined that it is inconsistent with the public interest to apply the restrictions of the Buy American Act and the Balance of Payments Program with respect to acquisition of defense equipment (for items for civil works activities, see 225.105(75)) which is mined, produced, or manufactured in a participating country.

(ii) In accordance with the above, offers of participating country end products shall be evaluated without the application of the price differentials normally applied pursuant to the Buy American Act and Balance of Payments Program requirements contained in 225.105 and Subpart 225.3. This exemption shall further include the following consideration: In the event that a domestic offer, a participating country offer, and a nonqualifying country offer compete for defense equipment, the participating country offer shall be evaluated without applying the price differentials of 225.105, whereas the nonqualifying country offer shall be subjected to the price differentials. (See 225.105(72), Example E.) However, in the event that the low domestic offer exceeds the evaluated price of the nonqualifying country offer, all foreign offers shall be evaluated as if no domestic offer was submitted. (See 225.105(72), Example F.) In the event that a participating country offer competes against a nonqualifying country offer and no domestic offer is submitted, the participating country offer shall be evaluated on an equal basis with the nonqualifying country offer. (See 225.105(72), Example G.) Participating countries are listed at 225.7401.

(iii) As to any end product that is manufactured in the United States, all components from participating countries are treated as components mined, produced, or manufactured in the United States for the purpose of determining whether the end product is a domestic source end product.

(iv) In keeping with the policy to enhance cooperation with the participating countries, U.S. duty-free entry shall be accorded supplies from participating countries by the issuance of duty-free entry certificates. Offers of defense equipment from participating country sources shall be evaluated without application of duty. Such duty-free entry shall be accorded whenever such supplies are acquired at a prime contract or at a subcontract level. (See also 225.602 for postaward circumstances of fixed-price type contracts.) The resulting contract shall include the appropriate clause(s) referenced in 225.605.

(v) If, when evaluated in accordance with the above, an offer of a participating country end product is determined to be from the lowest, responsive, responsible offeror, the cognizant contracting officer shall normally proceed to make award to that offeror. However, there is no restriction on the authority or responsibility of the cognizant Secretary to restrict acquisitions to domestic sources or reject an otherwise acceptable offer from a participating country source in those instance where such restriction or rejection is considered necessary for reasons of the national defense.

(b) *Subcontracting with participating country sources.* In reviewing prime contractor subcontracting procedures, the contracting officer shall assure that the prime contract does not preclude participating country sources from competing for subcontracts, except when restricted by national security interest reasons or mobilization base considerations.

(c) *Required clause.* As prescribed at 225.109(d)(S–72), the clause at 252.225–7002, Qualifying Country Sources as Subcontractors, shall be inserted in solicitations and contracts.

(d) *Industrial security for participating countries.* Required procedures designed to safeguard classified defense information which may be necesary for the performance of contracts awarded to participating country sources are set forth in the DoD Industrial Security Regulation DoD 5220.22–R (implemented for the Army by AR 380–131; for the Navy by OPNAV Instruction 5540.8E; for the Air Force by AFR 205–4; for the Defense Logistics Agency by DLAM 8500.1; for the Defense Communications Agency by DCA Inst. 240–50–7; and for the Defense Mapping Agency by DMA Inst. 5520.22).

225.7404 Contract administration.

When contract administration services are requested on contracts to be performed in participating countries, except Canada, the request should be directed to the cognizant activity in accordance with DoD 4105.59–H, Section II, Part 2 (DoD Directory of Contract Administration Services Components). Contract administration services required with respect to DoD subcontracts placed by participating country sources, except Canada in the United States will be arranged by the cognizant activity in accordance with DoD 4105.59H, Section II, Part 2 (DoD Directory of Contract Administration Services Components).

225.7405 List of excluded items.

The policies and procedures of this subpart do not apply to offers of the following items of defense equipment unless the quantity being acquired is greater than that required to maintain the U.S. defense mobilization base. This restriction does not apply to Canadian Planned Producers. Items may be added to or deleted from the list from time to time. Information concerning this list may be obtained from OUSDRE(AM), International Acquisition. (See also Subparts 208.73, 208.74, and 208.75.)

Navy

Fuzes, Safe and Arm Devices, and Similar Items
- MK–13 Safe and Arm Device
- MK–13 Triggering Device
- MK–17 Safe and Arm Device
- MK–33 Safe and Arm Device
- MK–330 Fuze
- MK–334 Fuze
- MK–404 Fuze
- MK–407 Fuze
- FMU–109 Fuze

Missiles and Missile Components
- AIM–7F Sparrow Missile Guidance and Controls Section
- MK–58 Rocket Motors
- MK–71 Warhead Metal Parts

AIM–9L Sidewinder Missile
- Guidance and Control Section
- MK–36 Rocket Motors
- DSU–15 Target Detector
- AN/WDU–17 Warhead
- MK 1 Wing and ANM/BSU–32 Fins

Trident I (C–4) Missile System
- Guidance and Control System
- MK–5 Electronic Assemblies (EA)
- MK–5 Inertial Measurement Unit Electronics (IMUE) and Monitor Component Assembly (MCA)
- Backfit of Poseidon (C–3) SSBNs

Flares
- MK–46 Flares, Infrared Decoy

Sonobuoys and Components
- AN/SSQ–36
- AN/SSQ–41B
- AN/SSQ–53A
- AN/SSQ–57A
- AN/SSQ–62

Ship Gun Systems
- MK–75 Gun Mounts

Submarine Systems
- Type 18B/D Periscope System
- TR 155 K 33 Transducers

Military Sealift Cargo
- Ocean Transportation and Services

Air Force

MAC Commercial Airlift
GAU-8/A and 30mm Ammo

Defense Logistics Agency

Textiles—Worsted

Army

L.A.P., manufacturing and testing of projectiles (5.56 mm through 8 inch), mines, dispensers, rockets, pyrotechnic devices, grenades, demolition charges, small arms ammunition and components, fuzes and components containing mechanical timing devices)
TOW Missile and Launcher
2.75 Rocket Items
- LAP Motor
- Fin & Nozzle Assembly
- Stabilizer Rod
- Felt Washer
- Ring Charge Support
- O Ring
- Metal Spacer
- Intervelometer
- Igniter
- Motor Tube
- Seal Rings
- Disc Charge Support
- Spacer Charge Support
- Lockwire
- Launcher
- Fin Blades

Projectile Metal Parts for Cartridge 105mm (Beehive)
Projectile M406, M107—155mm
Projectile M509—8 inch
Projectile M735
Projectile M735, Metal Parts and Cores
Projectile M718, M141
155mm Cannister, XM625, XM626:
- Projectile Metal Parts for Cartridge 90mm

255mm Projectile, AT M718/M741 (RAAM):
- Component, Electronic Assemblies

Cartridge Case M118, M14B4
Fuze:
- M1 Delay
- MK-1
- MK-30
- MK-38 Energizer
- MK-40 Energizer
- MK-54
- MK-73-13
- MK-339-1/Inert
- MK-379
- MK-393/403
- MK-404
- MK-407
- FM-54B
- M19
- M42/46
- M62A2
- M91A2
- M84A1
- M114 S&A
- M118 S&A
- M201A1
- M213
- M19E1
- M223
- M228
- M427/M423
- M494/571
- M505A3
- M505
- M509A2
- M564
- M565
- M567 (Comp Pts/Rewk)
- M577/M582
- M578
- M578 (Comp Pts)
- M732:
  - Elec Head Final Assembly
  - Detonator
  - Power Supply
  - Sleeve
  - Elec Timer, W/IC
  - M904E3

Casing Burster Warhead, M156
Assy M258, M170
- Body Assy and Base Plug, M404
- Bomb, M117A1E1
- Launcher Rocket 2AU 68A/A
- Warhead Flechets WDU 4A/A
- M18 Mine Program Blasting Cap, Firing Device, Metal Parts, Test Sets
- Laser Range Finder VVG-2 and M21 for Solid State Ballistic Computer for M60 Series Tank
- Limited Light Sight
- MX-9644 Image Intensifier Tube 25mm
- MX-7845 Image Intensifier Tube (1st generation)
- MX-8501 Image Intensifier Tube (1st generation)
- BA-4386 Battery
- AN/PVS-4 Night Vision Sights
- AN/PVS-5 Night Vision Goggles
- AN/PVS-5A Night Vision Goggles
- AN/VVS-2 Viewer
- AN/VSS-3 Searchlight
- Common Module Program (Thermal Imaging System) Tactical Night Vision Systems—
  - AN/TAS-4
  - AN/TAS-5
  - AN/TAS-6
  - GLLD/TAS-4
- Machine Gun M240
- Machine Gun M240 Spare Parts
- Electronic Time Fuze XM587E2/XM724
- Power Supply PS127
- Fuze Setter XM36E1
- Tank Thermal Sights AN/VSG-2
- Night Vision Goggles AN/PVS-5A
- Image Intensifier Assembly MX-9916-UV
- Battery, Dry BA-4386
- Maintenance of idle portions of 21 GOCO facilities
- Consolidated Facilities Scranton AAP
- Hydraulic Turbine (Civil Works)

225.7406 Specific reciprocal memoranda of understanding with NATO participating countries.

Specific reciprocal memoranda of understanding with NATO participating countries are included in Appendix T, Subpart 2.

Subpart 225.75—Purchases From Defense Cooperation Country Sources

225.7500 Scope of subpart.

This subpart implements the defense cooperation agreements made by the United States pursuant to other than Foreign Military Sales agreements.

225.7501 Policy.

In order to increase their respective defense capabilities through more efficient cooperation in the research and development, production, and acquisition of defense equipment, the United States and the Governments of Israel and Egypt have entered into a defense cooperation agreement. The purpose of this agreement is to promote the most cost-effective and rational use of defense appropriations of the United States and the defense cooperation country. Accordingly, it is Department of Defense policy to achieve the best possible coordination of the materiel programs between such countries and the United States and to ensure that sources in defense cooperation countries are provided the opportunity to compete on a fair and equal basis with U.S. sources for selected research and development, production and service contracts subject to the restrictions of 225.7402(b). Accomplishment of this policy requires the exemption of certain Buy National laws and foreign acquisition restrictions with respect to selected defense equipment purchased from defense cooperation country sources. For the purposes of solicitation and evaluation of such selected defense equipment, offers of defense cooperation country end products shall be treated as if they were participating country end products, except as provided in 225.402(b).

225.7502 Procedures.

(a) *Solicitation procedures.* Defense cooperation country sources shall be solicited as if they were sources from participating countries. The procedures set forth at 225.7403(a)(1) shall apply.

(b) *Submission of offers.* Defense cooperation country sources competing for DoD requirements must be responsive to the terms and conditions of DoD solicitations. The Buy American Act and the Balance of Payments Program restrictions are waived only for items listed in appropriate annexes to the agreements with the defense cooperation country. However, the absence of an item from the defense equipment list is without prejudice to the authority of the Secretary to determine in any individual case that application of the restrictions to that item would be inconsistent with the public interest. Copies of these lists may be obtained from the Director for International Acquisition, OUSDRE(AM).

(c) *Evaluation procedures.* Defense cooperation country offers shall be evaluated as if they were participating

country offers. The procedures set forth at 225.7403(a)(3)(ii) shall apply.

(d) *Other procedures.* Contracting procedures, industrial security procedures and contract administration procedures for defense cooperation country sources shall be conducted as if they were sources from participating countries. The procedures and policies set forth at 225.7403(c), 225.7404, and 225.7405, and throughout this regulation shall apply.

225.7503 Specific memoranda of understanding with defense cooperation countries.

Specific memoranda of understanding with defense cooperation countries are included in Appendix T, Subpart 3.

Subpart 225.76—Use of U.S.-Owned Foreign Currency for Payments

225.7600 Scope of subpart.

This subpart implements the Government's policy that U.S.-owned foreign currency be used when feasible in payment of purchases in foreign countries.

(a) This subpart applies to acquisitions of supplies, services, or construction for use outside the United States.

(b) This subpart does not apply to acquisitions (1) funded from Special Foreign Currency Program Appropriations; or (2) made under Subpart 225.1.

225.7601 Definitions.

As used in this subpart, the following terms have the meanings set forth below:

"Excess Foreign Currency" means currency that has been determined by the Department of the Treasury to be in excess of foreseeable requirements of the U.S. Government. Countries in which the United States owns excess foreign currency are listed in 225.7607(a).

"Near-Excess Foreign Currency" means currency that has been determined by the Department of the Treasury to be above the immediate requirements of the U.S. Government. Countries in which the United States owns near-excess foreign currency are listed in 225.7607(b).

"U.S. Dollar Content" means the U.S. dollar cost to an offeror for domestic source end products or services (including costs of transportation furnished by U.S. flag carriers) imported directly from the United States and to be used in performance of a contract, as certified by the offeror.

"U.S.-Owned Foreign Currency" means currency of a foreign country which currency is:

(a) Owned by the United States;

(b) Determined excess or near-excess by the United States Department of the Treasury;

(c) Available in the country of issuance to pay obligations of the United States within that country; and

(d) Disbursed by the United States Treasury Disbursing Officer in the country concerned, either directly to the contractor or to the military disbursing officer, as appropriate.

225.7602 Procedures.

(a) Except as provided in (c) below, when supplies, services, or construction for use outside the United States are to be purchased, the solicitation shall contain the provision in 252.225-7020, Option to Award and Pay in United States Owned Foreign Currency, when it can reasonably be expected that (1) contracts will be performed in whole or in part in a country in which there is U.S.-owned foreign currency; or (2) a contractor (domestic or foreign) may be willing to accept U.S.-owned foreign currency in payment in whole or in part.

(b) Failure to state a price in U.S.-owned foreign currency, either in whole or in part, shall not in itself cause an offer to be considered nonresponsive to a solicitation.

(c) Requests for quotations for purchases described under small purchase procedures for delivery within a country in which there is U.S.-owned foreign currency shall be limited to be the local trade area of that country; and, to the extent feasible within the criteria in 225.7606, shall require quotations to be stated only in the U.S.-owned foreign currency of that country.

225.7603 Evaluating offers.

(a) *Conversion for evaluation purposes.* For purposes of evaluation, offers expressed in whole or in part in U.S.-owned foreign currency shall be converted to show their equivalency in U.S. dollars at the rate of exchange used by U.S. disbursing officers for such currency on the date set for receipt of offers.

(b) *Excess foreign currency offers.* Subject to (d) below and to the award limitations in 225.7604, reference for acceptance of offers in excess foreign currency or in combinations of excess foreign currency and U.S. dollars shall be in the following order, even though the offer preferred may not be the lowest in price:

(1) The lowest responsive offer in whole in an excess foreign currency. If equal low offers are received and one or more contain a U.S. dollar content which is not required to be paid in U.S. dollars, that offer which contains the greatest U.S. dollar content shall be preferred.

(2) When the only responsive offers in excess foreign currency also contain a U.S. dollar content for which payment in U.S. dollars is required and is limited to that content, that offer which results in the lowest expenditure of U.S. dollars.

(3) When the only responsive offers in excess foreign currency also require payment in part in U.S. dollars which are not limited to the U.S. dollar content, that offer which results in the lowest expenditure of U.S. dollars. If equal low offers are received and one or more contain a U.S. dollar content and others contain no U.S. dollar content, that offer which contains the greatest U.S. dollar content shall be preferred.

(4) When responsive offers in combinations described in (b) (2) and (3) above are received, the lowest offer evaluated under (b)(2) above.

(5) When responsive offers are received in U.S. dollars only, the lowest such offer. If equal low offers are received and one or more contain a U.S. dollar content, that offer which contains the greatest U.S. dollar content shall be preferred.

(c) *Near-excess foreign currency offers.* The lowest responsive offer in whole or in part in a near-excess foreign currency which does not exceed the lowest responsive offer in U.S. dollars shall be preferred over the U.S. dollar offer. Offers in excess foreign currency shall always be preferred over offers in near-excess foreign currency.

(d) *Consideration of combination offers.* When responsive offers received include some which are priced only in U.S. dollars and others in combinations of U.S. dollars and excess or near-excess foreign currency, a combination offer shall not be considered for award if the U.S. dollar amount of that offer exceeds the dollar amount of the lowest responsive offer in U.S. dollars only.

(e) *Evaluation Table.* The following table illustrates the evaluation of offers received in whole in excess foreign currency, in combinations of excess foreign currency and U.S. dollars, and in U.S. dollars only.

Evaluation Table

Offers received are priced in U.S. dollars and "X" Country's rupees. Applicable exchange rate assumed for this table is 3 rupees equal 1 dollar.

Offers	In excess currency only	In combination excess currency—U.S. dollars	In U.S. dollars only	In U.S. dollars as converted (see 6-1105.1)	U.S. dollars content	Preference	
						For award	See footnote
1	360R			$120 ($20+$80)	0	1	3
2		60R+$80		$100 ($6+$95)	0	6	4
3		18R+$95		$101 ($20+$90)	0	None	4
4		60R+$90		$110	0	7	4
5			$94	$94	0	9	5
6	450R			$150 ($20+$90)	$50	2	3
7		60R+$90		$110	$90	4	4
8			$94	$94	$50	8	5
9	450R			$150 ($20+$80)	0	3	3
10		60R+$80		$100	$50	5	4

Notes to Evaluation Table

1. All offers are assumed to be responsive.
2. The lowest offer in U.S. dollars only is $94. Therefore, $141 ($94.00 plus $47) is the maximum amount for which the contracting officer has authority to award without referral under 225.7604(b).
3. Offers 1, 6, and 9 are entirely in excess foreign currency and are given first consideration. Offer 1, being the lowest, is preferred for award. In the absence of Offer 1, Offer 6 would be preferred because it contains a U.S. dollar content of $50. In the absence of Offers 1 and 6, Offer 9 would be preferred. In accepting Offer 1, 6, or 9, the DoD Appropriation would be charged $94 (see 225.7604(a)). Before Offer 6 or 9 could be accepted, they would require referral under 225.7604(b).
4. Offers 2, 3, 4, 7, and 10 are combination offers and would be given consideration in the absence of Offers 1, 6, and 9, or in the absence of Offer 1 and in case Offers 6 and 9 were not approved by higher authority after referral under 225.7604(b). Offer 7 would be preferred over Offers 2, 3, 4, and 10 because it contains a U.S. dollar content and the part to be paid in U.S. dollars is limited to that content. In the absence of Offer 7, Offer 10 would be preferred over Offers 2, 3, and 4 because it contains a U.S. dollar content of $50, and, although the part to be paid in U.S. dollars is more than that content, it would result in the least expenditure of U.S. dollars. In the absence of Offers 7 and 10, Offer 2 would be preferred over Offers 3 and 4 because it would result in the least expenditure of United States dollars. In the absence of Offers 2, 7, and 10, Offer 4 would be preferred. Offer 3 could not be considered for award because the U.S. dollar amount ($95) exceeds the lowest offer in U.S. dollars ($94) (see 225.7604(d)).
5. Offers 5 and 8 are entirely in U.S. dollars and would be given consideration in the absence of all other offers or in the absence of all other offers except 6 and 9 and in case those offers were not approved by higher authority after referral under 225.7604(b). Offer 8 would be preferred to Offer 5 because it contains a U.S. dollar content of $50.

225.7604 Awards.

(a) *Basis.* Award shall be made in accordance with (b) and (c) below. When unreasonable overpricing in relation to the U.S. dollar cost or the normal local foreign currency cost to non-DoD users of the same or similar items exists, the proposed acquisition shall be referred to higher authority.

(b) *Awards by the contracting officer.* The contracting officer shall have authority to award contracts as follows:

(1) To the offeror submitting the lowest responsive offer in whole or in part in excess foreign currency when that offer does not exceed the lowest responsive offer in U.S. dollars by more than 50% and the lowest responsive offer in U.S. dollars does not exceed $50,000; (Note: The cost to the DoD Appropriation shall be the lowest responsive offer in U.S. dollars. The additional cost will be assumed by the Department of the Treasury.)

(2) To the offeror submitting the lowest responsive offer in whole or in part in near-excess foreign currency, when that offer does not exceed the lowest responsive offer in U.S. dollars;

(3) To the offeror submitting the lowest responsive offer entirely in U.S. dollars; Provided, That payment in U.S. dollars is authorized under 225.7606.

(c) *Awards requiring approval by higher authority.*

(1) The contracting officer shall refer the proposed acquisition to the appropriate official listed in (c)(3) below when:

(i) The lowest responsive offer in excess foreign currency exceeds the lowest responsive U.S. dollar offer by more than 50%, regardless of the U.S. dollar cost of the contract;

(ii) The lowest responsive U.S. dollar offer exceeds $50,000; or

(iii) The lowest responsive offer in near-excess foreign currency exceeds the lowest responsive offer in U.S. dollars.

(2) The contracting officer shall refer the case expeditiously describing, as a minimum, the acquisition involved; the number of offers received in each currency category; the lowest responsive offer in U.S. dollars; the date or dates the offers will expire; and recommending the offer, if any, that should be accepted.

(3) The Secretaries of the Military Departments, the Under Secretary of Defense for Research and Engineering, the Directors of Defense Agencies, and the Assistant Secretary of Defense (Comptroller), or their designees, shall determine whether a proposed acquisition described in (a) above shall be made payable in U.S.-owned foreign currency or in U.S. dollars.

225.7605 Determinations of nonfeasibility and contract certifications.

(a) At the time of award, the contracting officer shall determine whether payment in U.S.-owned foreign currency is feasible.

(b) When the contracting officer determines that it is not feasible under one of the criteria in 225.7606 to use U.S.-owned foreign currency for payment of a contract, he shall execute a Contract Certification in the following format.

Contract Certification

I hereby certify that it is not feasible to make payment under this contract in the country of ———— in the amount of $——— from U.S.-owned foreign currency for the reason stated. (Cite the applicable criterion.)

(Signature) ————————————

(Type Name and Title of Contracting Officer)

(c) When U.S.-owned foreign currency and U.S. dollars are combined for payment of a contract, the dollar amount shown in the Contract Certification shall be that amount which is to be paid in U.S. dollars.

(d) The original and one copy of each Contract Certification shall be furnished to the disbursing officer designated to make payments under the contract; and one signed copy shall be filed with the contract. Other distribution may be made in accordance with Departmental instructions.

225.7606 Criteria for nonfeasibility determinations.

The following criteria shall be used in determining that payment of contracts in whole or in part in U.S.-owned foreign currency is not feasible:

(a) The Department of the Treasury is not holding excess or near-excess foreign currency in the country concerned.

(b) The contract is to be awarded in a foreign country where there is U.S.-owned foreign currency but where a treaty, executive agreement, or law of the country concerned requires payments to be made in U.S. dollars.

(c) Responsive offers require payment in U.S. dollars in whole or in part.

(d) The only responsive offers received require payment entirely in U.S. dollars.

(e) The acquisition is for a compelling need and of such urgency that serious injury to the U.S. Government would likely be incurred if payment in excess or near-excess foreign currency were to be insisted upon.

(f) Offers in excess or near-excess foreign currency were unreasonably overpriced in relation to the U.S. dollar cost or the normal local foreign currency cost to non-Department of Defense users of the same or similar items or services and payment in U.S. dollars has been authorized by the proper authority under 225.7604(c)(3).

225.7607 Excess and near-excess foreign currency countries.

(a) The Department of the Treasury holds excess foreign currency in the following countries:

Country	Currency
Burma	Kyat.
Guinea	Franc.
India	Rupee.
Pakistan	Rupee.
Poland	Zloty.

(b) The Department of the Treasury holds near-excess foreign currency in the following countries:

Country	Currency
Taiwan	Taiwan Dollar.
Yugoslavia	Dinar.

(c) Changes in the currency position of the countries in which excess and near-excess foreign currency is held are disseminated periodically by the Departments to their disbursing officers.

225.7608 Contracts with domestic concerns.

The clause in 252.225-7021, Acquisition and Use of Excess and Near-Excess Currency, shall be included in any contract with a domestic concern when the contracting officer anticipates the contract will be performed in any U.S.-owned foreign currency country.

6. A new Part 227 is added to read as follows:

PART 227—PATENTS, DATA, AND COPYRIGHTS

Subpart 227.4—Technical Data, Other Data, Computer Software, and Copyrights

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

227.400 Scope of subpart.

(a) This subpart set forth the Department of Defense policies, procedures, implementing instructions, solicitation provisions, and contract clauses relating to rights in technical data, other data, computer software, and copyrights as well as to requirements for the acquisition of technical data and computer software. This subpart also sets forth policies, procedures, implementing instructions, solicitation provisions, and contract clauses pertaining to data, copyrights, and restricted designs unique to the acquisition of construction and architect-engineer services.

(b) Specific information concerning requirements for the acquisition of computer software is found in DoD Directive 5000.19-L, Volume II, "Acquisition Management Systems and Data Requirements Control List".

(c) This subpart does not encompass rights in computer software acquired under GSA authorized ADP Schedule Pricelist contracts. Such rights are governed by the terms of the GSA contracts.

227.401 Definitions.

"Commercial computer software", as used in this subpart, means computer software which is used regularly for other than Government purposes and is sold, licensed, or leased in significant quantities to the general public at established market or catalog prices.

"Computer", as used in this subpart, means a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on the data, or a device that operates on analog data by performing physical processes on the data.

"Computer data base", as used in this subpart, means a collection of data in a form capable of being processed and operated on by a computer.

"Computer program", as used in this subpart, means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs, and ADPE maintenance/diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or be designed to satisfy the requirements of a particular user.

"Computer software", as used in this subpart, means computer programs and computer data bases.

"Computer software documentation", as used in this subpart, means technical data, including computer listings and printouts, in human-readable form which (a) documents the design or details of computer software, (b) explains the capabilities of the software, or (c) provides operating instructions for using the software to obtain desired results from a computer.

"Data", as used in this subpart, means recorded information, regardless of form or characteristic.

"License rights", as used in this subpart (SBIR program contracts only), means rights to use, duplicate, or disclose technical data or computer software, in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only. License rights do not grant to the Government the right to have or permit others to use technical data or computer software for commercial purposes.

"Limited rights", as used in this subpart, means rights to use, duplicate, or disclose technical data in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data, be (a) released or disclosed in whole or in part outside the Government, (b) used in whole or in part by the Government for manufacture, or in the case of computer software documentation, for reproduction of the computer software, or (c) used by a party other than the Government, except for:

(1) Emergency repair or overhaul work only, by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work, *provided* that the release or disclosure thereof outside the Government shall be made subject to a prohibition against further use, release or disclosure; or

(2) Release to a foreign government, as the interest of the United States may require, only for information or evaluation within such government or for emergency repair or overhaul work by or for such government under the conditions of (1) above.

"Limited rights", as used in this subpart (SBIR program contracts only), means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data, be (a) released or disclosed in whole or in part outside the Government, (b) used in whole or in part by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software, or (c) used by a party other than the Government.

"Restricted rights", as used in this subpart, means rights that apply only to computer software, and include, as a minimum, the right to—

(a) Use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the

computer may be transferred by the Government;

(b) Use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(c) Copy computer programs for safekeeping (archives) or backup purposes; and

(d) Modify compute software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights.

In addition, restricted rights include any other specific rights not inconsistent with the minimum rights in (1) through (4) above that are listed or described in a contract or described in a license or agreement made a part of a contract.

"Technical data", as used in this subpart, means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, or engineering work; or be usable or used to define a design or process or to procure, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design type documents; or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications and related information, and computer software documentation. Technical data does not include computer software or financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

"Technical data", as used in this subpart (SBIR program contracts only), means recorded information, regardless of form or characteristic, of a scientific or technical nature. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications and related information, and computer software documentation. Technical data does not include computer software or financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

"Unlimited rights", as used in this subpart, means rights to use, duplicate, or disclose technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

227.402 Copyrights.

(a) In general, the copyright law gives an owner of copyright the exclusive rights to—

(1) Reproduce the copyrighted work in copies or phonorecords;

(2) Prepare derivative works;

(3) Distribute copies or phonorecords to the public;

(4) Perform the copyrighted work publicly; and

(5) Display the copyrighted work publicly.

(b) In view of the exclusive rights in paragraphs (a) (1) through (5) above, any technical data, other data, or computer software that is protected under the copyright law is not in the public domain, even though it may have been published, because acts inconsistent with these rights may not be exercised without a license from the copyright owner.

(c) Department of Defense policy affords the contractor ownership of copyright in any work of authorship first prepared, produced, originated, developed, or generated under a contract, unless the work is designated a "special work" in which case ownership and control of the work is retained by the Government and the contractor is precluded by the terms of the contract from asserting any rights or claim to copyright in the work. Department of Defense policy also requires that the contractor grant to the Government and authorize the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes in any work of authorship (other than a "special work") first prepared, produced, originated, developed, or generated and, in addition, requires that the contractor grant to the Government and authorize the Government to grant to others the same license in any work of authorship acquired by the Government under the contract (not first prepared) in which the copyright is owned by the contractor.

(d) Under the clause at 252.227–7013, Rights in Technical Data and Computer Software, the contractor grants to the Government and authorizes the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes, under any copyright owned by the contractor in any technical data or computer software prepared for or acquired by the Government under the contract. Under the clause at 252.227–7020, Rights in Data—Special Works, any work first produced in the performance of the contract becomes the sole property of the Government, and the contractor agrees not to assert any rights or establish any claim to copyright in such work. Under this clause, the contractor similarly grants to the Government and authorizes the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes in any portion of a work which is not first produced in the performance of the contract but in which copyright is owned by the contractor and which is incorporated in the work furnished under the contract.

(e) Under both of these clauses at 252.227–7013 and 252.227–7020, unless written approval of the contracting officer is obtained, the contractor also agrees not to include in any work prepared, produced, originated, developed, generated, or acquired under the contract, any work of authorship in which copyright is not owned by the contractor without acquiring for the Government and those acting by or on behalf of the Government a nonexclusive, paid-up, worldwide license for Government purposes in the copyrighted work.

227.403 Acquisition of rights in technical data.

227.403–1 Background.

(a) *Government's interest in technical data.* The Government has extensive needs for many kinds of technical data. Its needs may well exceed those of private commercial customers. For defense purposes, millions of separate equipment and supply items, ranging from standard to unique types, must be acquired, operated, and maintained, often at points remote from the source of supply. Functions requiring varied kinds of technical data include training of personnel, overhaul and repair, cataloging, standardization, inspection and quality control, packaging, and logistics operations. Technical data resulting from research and development contracts must be obtained, organized and disseminated to many different users. Finally, the Government must make technical data widely available in the form of contract specifications in order to obtain competition among its suppliers, and thus further economy in Government procurement.

(b) *Contractor's interest in technical data.* Commercial organizations have a valid economic interest in technical data pertaining to items, components, or processes which they have developed at their own expense. Such technical data

is often closely held because its disclosure to competitors could jeopardize the competitive advantage it was developed to provide. Public disclosure of such technical data can cause serious economic hardship to the originating company.

(c) *The balancing of interests.*

(1) It is apparent that there is no necessary correlation between the Government's need for technical data and its contractors' economic interest therein. However, in balancing the Government's requirements for technical data against the contractor's interest in protecting his technical data, it should be recognized that there may be a considerable identity of interest. This is particularly true in the case of innovative contractors who can best be encouraged to develop at private expense items of military usefulness where their rights in such items are scrupulously protected.

(2) It is equally important that the Government foster successful contractual relationships and encourage a ready flow of data essential to Government needs by confining its acquisitions of technical data to cases of actual need. Certainly the Government must not be barred from bargaining and contracting to obtain such technical data as it needs, even though that technical data may normally not be disclosed in commercial practice. Moreover, when the Government pays for research and development work which produces new knowledge, products, or processes, it has an obligation to foster technological progress through wide dissemination of the new and useful information derived from such work and where practicable to provide competitive opportunities for supplying the new products and utilizing the new processes.

(3) At the same time, acquiring, maintaining, storing, retrieving, and distributing technical data in the vast quantities generated by modern technology is costly and burdensome for the Government. For this reason alone, it would be necessary to control closely the extent and nature of technical data procurement. Such control is also necessary to insure Government respect for its contractors' economic interest in technical data relating to their privately developed items. The policies and procedures of this subsection are framed in the light of these considerations.

227.403-2 Policy.

(a) *General.*

(1) It is the policy of the Department of Defense to acquire only such technical data rights as are essential to meet Government needs.

(2) In deciding whether to acquire technical data for further acquisitions so that all such acquisitions can be made on a competitive basis to the maximum practicable extent, the provisions of this section shall govern.

(b) *Unlimited rights technical data.* Technical data in the following categories shall be acquired with unlimited rights:

(1) Technical data resulting directly from performance of experimental, developmental, or research work which was specified as an element of performance in a Government contract or subcontract;

(2) Technical data necessary to enable others to manufacture end-items, components and modifications, or to enable them to perform processes, when the end-items, components, modifications or processes have been, or are being, developed under Government contracts or subcontracts in which experimental, developmental or research work was specified as an element of contract performance, except technical data pertaining to items, components or processes developed at private expense;

(3) Technical data prepared or required to be delivered under any Government contract or subcontract and constituting corrections or changes to Government-furnished data;

(4) Technical data pertaining to end-items, components or processes, prepared or required to be delivered under any Government contract or subcontract, for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data, e.g., specification control drawings, catalog sheets, envelope drawings, etc.);

(5) Manuals or instructional materials prepared or required to be delivered under a Government contract or subcontract for installation, operation, maintenance or training purposes; and

(6) Technical data which is in the public domain or has been or is normally released or disclosed by the contractor or subcontractor without restriction on further disclosure. "In the public domain" means available to the public without copyright or other restriction of any kind.

(c) *Limited rights technical data.*

(1) Except as provided in paragraph (b) above, unpublished technical data pertaining to items, components or processes developed at private expense will be acquired with limited rights, *Provided* that the data is identified as limited rights data in accordance with paragraph (b)(2) of the clause at 252.227-7013, Rights in Technical Data and Computer Software. Unpublished, as applied to technical data and computer software documentation, means that which has not been released to the public nor been furnished to others without restriction on further use or disclosure.

(2) It should be clearly understood that the above statement of policy is a recital of rights to be acquired in technical data. Neither the foregoing statement of technical data rights policy, nor its implementing paragraphs (b) (1) and (2) of the clause at 252.227-7013, Rights in Technical Data and Computer Software, establishes technical data requirements for a particular contract. It should also be noted that technical data pertaining to items, components or processes developed at private expense may be called for, required, or otherwise furnished under paragraphs (b) (1), (3), (4), (5), and (6) above and, as such, it will be acquired with unlimited rights. Contract clauses and the schedule establish the form and type of technical data to be furnished; the categories into which such technical data fall, determine the rights to be obtained by the Government to use or publish such technical data.

(d) *Predetermination of rights in technical data.*

(1)(i) When the Government needs technical data with unlimited rights, any data which the offeror intends to deliver with limited rights pursuant to paragraph (c) above should be identified prior to contract award, if feasible, and an agreement with respect thereto shall be incorporated in the contract. This procedure is called predetermination of rights in technical data.

(ii) The procedure may be initiated by the contracting officer or an offeror during the negotiation of a negotiated contract. In order to be productive, the procedure should apply only to that technical data for which rights may practicably be identified. Although the agreement may also cover technical data to be delivered with unlimited rights, in no case shall the procedure be used to require the contractor to furnish, with unlimited rights, technical data which he is entitled to furnish with limited rights under the policy in paragraph (c) above. The contracting officer shall consult his counsel as fully as possible in determining whether to use the procedure and in connection with the various steps of the procedure.

(2) Any agreements reached shall be incorporated in the Schedule of the contract directly or by reference and shall describe specifically the technical data which may be furnished with

limited rights pursuant to paragraph (c) above. The contracting officer may, however, review the technical data asserted to be limited rights data to determine whether to invoke the procedures of paragraph (f) below to negotiate to purchase unlimited rights in any of the technical data, or adopt some alternative such as to—

(i) Delete or modify the requirement for the technical data in which the Government would need unlimited rights if it were ordered, or

(ii) Modify the specifications so as not to require or permit the use of the item, component or process covered by the limited rights data; or

(iii) Include a contractual option to acquire unlimited rights.

(3) When the predetermination of rights in technical data procedure is to be used, include the provision at 252.227-7014, Predetermination of Rights in Technical Data, in the Request for Proposals.

(4) If completion of predetermination proves impracticable before award or if contractual requirements relating to design or technical data items are changed during the course of a contract, an appropriate provision shall be included in the contract, requiring the contractor to complete the identification of limited rights with respect to that technical data listed in the solicitation for which predetermination was proposed, or to identify limited rights technical data relating to the changed requirements.

(e) *Subcontracts.* It is the policy of the Department of Defense that prime contractors and higher-tier subcontractors shall not use their power to award subcontracts as economic leverage to acquire rights in the technical data of their subcontractors for themselves. Accordingly, a subcontractor who would have the right pursuant to paragraph (c) above to furnish technical data with limited rights, may furnish such limited rights data directly to the Government rather than through the prime contractor.

(f) *Specific acquisition of unlimited rights in technical data.*

(1) Notwithstanding paragraph (c) above or any other provision of this subsection the Government may acquire unlimited rights in any limited rights technical data by means of negotiation with an individual contractor or subcontractor, or as a part of a competition among several contractors or subcontractors. Such individual negotiation or competition may be conducted either by the Government, or upon Government request by the prime contractor or higher-tier subcontractor. Such unlimited rights in technical data shall be stated in the contract schedule as a separate item and shall be separately priced. Unlimited rights in technical data shall not be acquired under this paragraph unless it is determined after a finding upon a documented record that—

(i) There is a clear need for reprocurement of the item, component, or process to which the technical data pertains;

(ii) There is no suitable item, component or process of alternate design or availability;

(iii) The item or component can be manufactured or the process performed through the use of such technical data by other competent manufacturers, without the need for additional technical data which cannot be purchased reasonably or is not readily obtained by other economic means; and

(iv) Anticipated net savings in reprocurements will exceed the acquisition cost of the technical data and rights therein.

(2) The analysis and findings referred to in paragraph (b)(1) above shall specifically identify each item, component or process and the particular technical data therefor which is to be purchased.

(3) When all technical data is to be acquired under any contract with unlimited rights in accordance with the findings of paragraph (f)(1) above, the clause at 252.227-7015, Rights in Technical Data—Specific Acquisition, shall be used.

(4)(i) In addition to the acquisition of unlimited rights in technical data as authorized in paragraph (f)(1) above, there will be situations when it is in the best interest of the Government to acquire from subcontractors repair parts or components by direct sale to the Government.

(ii) The clause at 252.227-7017, Rights in Technical Data—Major System and Subsystem Contractor, may be used in contracts for major systems or major subsystems involving estimated program expenditures in excess of $50 million of RDT&E funds or in excess of $200 million of production funds. When this clause is used, any compensation the contractor requires for the right the subcontractor will have to use his limited rights, technical data shall be included in the price of the prime contract. Also, the Government shall have the right to purchase such items direct from manufacturing subcontractors without the payment, either directly of any fee or royalty to the prime contractor, or as part of the purchase price, for use of the prime contractor's technical data.

(iii) For the purpose of applying the foregoing policy, the following definitions shall be utilized: A major system is a composite of equipment, skills, and techniques capable of performing and/or supporting an operational role which required or will require research, development, test and evaluation investment or design, development, test and evaluation investment estimated in excess of $50 million or total production investment estimated in excess of $200 million. A major subsystem is a major functional part of a major system (as defined above) which is essential to operational completeness. Examples are: airframe, propulsion, armament, guidance, and communication. A major system or major subsystem contractor includes an associate contractor defined as a prime contractor to the Government for developing and/or producing subsystems, equipment, or components meeting specifications prepared by a contractor performing one or more of the functions of systems engineering for a major system (as defined above).

(g) *Notice of certain limited rights.*

(1) Whether or not the procedure of paragraph (d) above for predetermination of rights in technical data is used, if continuing information is desired under a contract about a contractor's intention to use in the performance of the contract any item, component, or process for which technical data would be subject to limited rights in accordance with the policy of paragraph (c) above, the contractor may be required to advise the contracting officer of this fact promptly (see paragraph 227.412(a)(2) and Alternate I to the clause at 252.227-7013, Rights in Technical Data and Computer Software). If possible, the schedule should indicate the specific areas pertaining to which limited rights data is of concern and the notice requirement should be restricted to those areas of concern.

(2) No such advice shall be required as to items, components, or processes for which notice was previously given pursuant to the predetermination procedure in the same contract, or with respect to standard commercial items which are manufactured by more than one source of supply. No contracting officer approval under this clause is necessary for the contractor to use any item, component, or process, identified pursuant to this requirement, in the performance of the contract.

(3) If the contracting officer agrees that under the policy stated in paragraph (c) above such technical data would be subject to limited rights, he

may then determine whether to invoke the procedure of paragraph (f) above, to negotiate for the purchase of unlimited rights in such data or to adopt other suitable alternatives. The contract shall be amended to reflect any changes required by these procedures.

227.403-3 Procedures.

(a) *Deviations.* Extension of the six-month period of 227.403-3(d)(2) below shall be processed under the authority of FAR 1.403. Other deviations to 227.403 and from the clauses prescribed for use herein shall be processed in accordance with the procedures in FAR 1.404.

(b) *Establishing the Government's rights to use technical data.* All technical data specified in a contract or subcontract for delivery thereunder shall be acquired subject to the rights established in the appropriate Rights in Technical Data clauses. Except as provided in FAR 48.105 and in FAR Subpart 36.6 no other clauses, directives, standards, specifications or other implementation shall be included, directly or by reference, to enlarge or diminish such rights. The Government's acceptance of technical data subject to limited rights does not impair any rights in such data to which the Government is otherwise entitled or impair the Government's right to use similar or identical data acquired from other sources.

(c) *Marking of technical data.*

(1) Technical data delivered to the Government pursuant to any contract requirement shall be marked with the number of the prime contract, except as provided, in 227.404-2(c)(2), and the name of the contractor and any subcontractor who generated the technical data. Each piece of technical data submitted with limited rights shall also be marked with—

(i) The authorized restrictive legend,

(ii) An indication (for example, by circling, underscoring, or a note) of that portion of the piece of technical data to which the legend is applicable, and

(iii) An explanation of the indication used to identify limited rights data.

The Government shall include such identifying markings on all reproductions thereof, unless the Government cancels such markings pursuant to paragraphs (c)(2), (d)(3), or (d)(4) below.

(2) The contractor has the responsibility to assure that no restrictive markings are placed on technical data except in accordance with the "Rights in Technical Data and Computer Software" clause at 252.227-7013. Copyright notices as specified in Title 17 United States Code, Sections 401 and 402, are not considered "restrictive markings". When the clause at 252.227-7013, "Rights in Technical Data and Computer Software", is required by 227.412(a), the clause at 252.227-7018, "Restrictive Markings on Technical Data", shall also be included in the contract. The contractor's procedures required by this clause shall be reviewed periodically by the Contract Administration Office. In addition to the rights afforded to the Government by the clause at 252.227-7018, "Restrictive Markings on Technical Data", the following actions are available to insure proper marking of technical data:

(i) The procedures in paragraph (d), "Removal of Unauthorized Markings", of the clause at 252.227-7013, may be invoked if the contractor fails to follow procedures required by the clause at 252.227-7013, Rights In Technical Data and Computer Software, or fails to correct deficiencies within a specified time.

(ii) Failure to follow proper marking procedures may also be deemed to render technical data nonconforming and subject to FAR 46.102 and to withholding of payments under the "Technical Data—Withholding of Payments" clause.

(iii) When a pre-award survey is requested by the purchasing office, the quality assurance review shall include as an item of special inquiry an examination of the prospective contractor's procedures for complying with the "Restrictive Markings on Technical Data" clause.

(iv) The contractor's procedures for complying with the "Restrictive Markings on Technical Data" clause shall be reviewed when holding post-award conferences pursuant to FAR Subpart 42.

(d) *Unmarked or improperly marked technical data.*

(1) The Government shall have the right to require the contractor to furnish clear and convincing evidence of the propriety of any restrictive markings used by the contractor on data furnished to the Government under contract.

(2) Technical data received without a restrictive legend shall be deemed to have been furnished with unlimited rights. However, within six months after delivery of such data the contractor may request permission to place restrictive markings on such data at his own expense and the Government may so permit if the contractor—

(i) Demonstrates that the omission of the restrictive marking was inadvertent,

(ii) Establishes pursuant to paragraph (d)(1) above that the use of the markings is authorized, and

(iii) Relieves the Government of any liability with respect to such technical data (see 227.403-3(a)).

(3) If technical data which the contractor is not authorized by the contract to furnish with limited rights is received with restrictive markings, the technical data shall be used with limited rights pending written inquiry to the contractor. If no response to an inquiry has been received within 60 days, or if the response fails to substantiate by clear and convincing evidence that the markings were authorized, the cognizant Government personnel shall cancel or ignore such markings, notify the contractor accordingly in writing, and thereafter may use such technical data with unlimited rights.

(4) If technical data which the contractor is authorized by the contract to furnish with limited rights is received with restrictive markings not in the form prescribed by the contract, the technical data shall be used with limited rights, and the contractor shall be required by written notice to correct the markings to conform with those specified in the contract. If the contractor fails to so correct the markings within 60 days after notice, Government personnel may correct or cancel the markings, so notify the contractor in writing, and thereafter use the technical data accordingly.

(e) *Technical data furnished on a restricted basis in support of a proposal.* When the contracting officer contemplates awarding a contract on a solicited or unsolicited proposal which was offered on a restricted basis (see FAR 5.413 and FAR 15.509), he shall ascertain whether to acquire rights to use all or part of the technical data furnished with the proposal. If such rights are desired, the contracting officer shall negotiate with the offeror in accordance with the policies set forth in this 227.403. If the offeror agrees to furnish the technical data under the contract, the appropriate clause at 252.227-7013, Rights in Technical Data and Computer Software, shall be inserted in the contract, and the contract shall identify the technical data to be covered by the clause as provided by 227.410.

(f) *Delivery of technical data to foreign governments.* As provided in the definition of limited rights in 227.401, limited rights include the right of the Government to deliver the technical data to foreign governments as the national interest of the United States may require, subject to the same limitations which the Government accepts for itself. When the Government proposes to make technical data subject to limited rights available for use by a

foreign government, it will, to the maximum extent practicable, give reasonable notice thereof to the contractor or subcontractor who generated the technical data and whose name appears thereon.

227.404 Acquisition of rights in computer software.

227.404-1 Policy.

(a) The Government shall have unlimited rights in:

(1) Computer software resulting directly from or generated as part of the performance of experimental, developmental, or research work specified as an element of performance in a Government contract or subcontract;

(2) Computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract;

(3) Computer data bases, prepared under a Government contract, consisting of: (i) information supplied by the Government (ii) information in which the Government has unlimited rights, or (iii) information which is in the public domain;

(4) Computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished software; or

(5) Computer software which is in the public domain or has been or is normally furnished by the contractor or subcontractor without restriction.

(b) When the Government has unlimited rights in computer software in the prossession of a contractor, no payment will be made for rights of use of such software in performance of Government contracts or for the later delivery to the Government of such computer software, *provided* however, that the contractor shall be entitled to compensation for converting the software into the prescribed form for reproduction and delivery to the Government.

(c) It is Department of Defense policy to acquire only such rights to use, duplicate, and disclose computer software developed at private expense as are necessary to meet Government needs. Such rights should be designed to allow the Government flexibility while, at the same time, adequately preserving the rights of the contractor. Computer software developed at private expense may be purchased or leased. Restrictions may be negotiated with respect to the right of the Government to use, duplicate, or disclose computer programs or computer data bases developed at private expense. As a minimum, however, the Government shall have the rights provided in the definition of restricted rights in 227.401.

(d) Patented or copyrighted computer software will not be subject to any agreement prohibiting the Government from infringing a patent or copyright. Title 28, United States Code, Section 1498 provides that the Government is liable only for reasonable compensation for use of a patented invention or for infringement of copyright. However, see 227.711.

(e) When computer software is developed at private expense and acquired with restricted rights, the associated computer software documentation will be acquired with limited rights to the extent provided in the definition of limited rights in 227.401, and will not be used for preparing the same or similar computer software.

(f) Commercial computer software and related documentation developed at private expense may be leased, or a license to use may be purchased, by the Government subject to the restrictions in (b)(3)(i) of the clause at 252.227-7013, Rights in Technical Data and Computer Software.

227.404-2 Procedures.

(a) *Deviations.* All requests for deviations from this 227.404 shall be submitted to the DAR Council in accordance with the procedures in FAR 1.404.

(b) *General.*

(1) Except as provided at 252.227-7031, Data Requirements, any computer program or computer data base to be purchased under a contract shall be listed on the Contract Data Requirements List (DD Form 1423). Also, if a contract requires the conversion of data to machine-readable form, the editing or revision of existing programs, or the preparation or computer software documentation, the products of this work, if required to be delivered, shall be included on the DD Form 1423.

(2) The clause at 252.227-7013, Rights in Technical Data and Computer Software, shall be included in every contract under which computer software may be originated, developed, or delivered. That clause establishes the circumstances under which the Government secures unlimited rights inboth technical data and computer software, limited rights in technical data, and restricted rights in computer software. In negotiated contracts where the clause at 252.227-7013, Rights in Technical Data and Computer Software, is required, the provision at 252.227-7019, Identificationof Restricted Rights Computer Software, shall be included in the solicitation.

(3) Contracts under which computer software developed at private expense is procured or leased shall explicitly set forth the rights necessary to meet Government needs and restrictions applicable to the Government as to use, duplication and disclosure of the software. Thus, for example, such software may be needed, or the owner of such software will only sell or lease it, for specific or limited purposes such as for internal agency use, or for use in a specific activity, installationor service location. In any event, the contract must clearly define any restrictions on the right of the Government to use such computer software, but such restrictions will be acceptable only if they will permit the Government to fulfill the need for which such software is being procured. The recital of restrictions may be complete within itself or it may reference the contractor's license or other agreement setting forth restrictions. If referencing is employed, a copy of the license or agreement must be attached to the contract. The minimum rights are provided in the Rights in Technical Data and Computer Software clause at 252.227-7013, and need not be included in the recital.

(4) When computer software developed at private expense is modified or enhanced as a necessary part of performing a contract, only that portion of the resulting product in which the original product is recognizable will be deemed to be computer software developed at private expense to which restricted rights may attach.

(5) The scope of the restrictions on or, conversely, the scope of the use which the Government is permitted to make of such software shall be taken into account in determining the reasonableness of the contract price for the computer software.

(c) *Computer software subject to restricted rights.*

(1) Because of the widely-varying restrictions which are likely to be encountered in the purchase or lease of computer software developed at private expense, a standard recital setting forth specific restrictions and rights suitable for all cases is not feasible. If the standard set of restrictions and rights set forth in 227.404-1(f) for commercial computer software is not appropriate, personnel are urged to consult counsel in any case in which the proposed contractor requests the Government to accept other restrictions on the use of such software.

(2) To apprise user personnel of the restrictions on use, duplication or

disclosure agreed to by the Government with respect to such software sold or leased to the Government, the contractor is required to place the following legend on such software:

Restricted Rights Legend

Use, duplication or disclosure is subject to restrictions stated in Contract No. ———— with ———— (Name of Contractor).

For commercial computer software and documentation, the contract number may be omitted and replaced by "paragraph (b)(3)(B) of the Rights in Technical Data and Computer Software clause at 252.227–7013", and the contractor's address added. The Government shall include the same restrictive markings on all its reproductions of the computer software unless the Government cancels such markings pursuant to the procedures in 227.403–3(d).

(3) A statement setting forth the restrictions imposed on the Government to use, duplicate, and disclose computer software subject to restricted rights is required to be prominently displayed in human-readable form in the computer software documentation. The reference to the Rights in Technical Data and Computer Software clause in the Restricted Rights Legend on commercial computer software and documentation satisfies this requirement.

(4) Except as provided in paragraph (b) above, computer programs, computer data bases, and computer software documentation delivered to the Government pursuant to a contract requirement must be identified with the number of the prime contract and the name of the contractor.

(5) All markings (notice, legends, identifications, etc.), concerning restrictions on the use, duplication, or disclosure of computer software required or authorized by the terms of the contract under which delivery is made are required to be in human-readable form that can be readily and visually perceived and, in addition may be in machine-readable form as appropriate and feasible under the circumstances. Such markings shall be affixed by the contractor to the computer software prior to delivery of the software to the Government.

(6) The human-readable markings may be applied to card decks, magnetic tape reels, or disc packs. This may be, in the case of a card deck, on a notice card even though the cards of the deck do not contain printed material; in the case of a card deck packaged in a container intended as a permanent receptacle for the cards, on the container; in the case of a tape, on the tape reel or on the surface of the leader and trailer of the tape; and in the case of a disc pack, on the hub of the disc.

(d) *Unmarked or improperly marked computer software.*

(1) No restrictive markings shall be placed upon computer software unless restrictions are set forth in the contract prior to delivery of the software. Copyright notices as specified in Title 17, United States Code, Sections 401 and 402 are not considered "restrictive markings". The Government may require the contractor to identify the contractual provision setting forth such restrictions before accepting computer software with restrictive markings. If computer software is received with restrictive markings, and there is a question whether it is authorized by the contract to be furnished with restricted rights, it shall be used subject to the asserted restrictions pending written inquiry to the contractor. If no response to an inquiry has been received within 60 days, or if the response fails to identify the restrictions set forth in the contract, the cognizant Government personnel shall cancel or ignore the markings, notify the contractor accordingly in writing, and thereafter use the software with unlimited rights.

(2) Computer software received without a restrictive legend shall be deemed to have been furnished with unlimited rights. However, the contractor may request permission to place restrictive markings on such software at his own expense, and the Government may so permit, if the contractor establishes that the markings are authorized by the contract and demonstrates that the omission was inadvertent. Failure of the contractor to mark such computer software prior to delivery to the Government shall relieve the Government of liability for any use, duplication or disclosure of such computer software.

(3) If computer software authorized by the contract to be furnished with restrictions is received with restrictive markings not in the form prescribed by the contract, the software should be used in accordance with the restrictions provided for in the contract and the contractor shall be required by written notice to correct the markings to conform with those specified in the contract. If the contractor fails to correct the markings within 60 days after notice, Government personnel may correct the markings, and so notify the contractor.

227.405 Contracts for acquisition of special works.

(a) The clause at 252.227–7020, Rights in Data—Special Works, shall be used in all contracts for special works, including technical data and computer software, where ownership and control by the Government is desired, for example, in contracts—(1) primarily for the production of audiovisual works including motion pictures or television recordings with or without accompanying sound, or for the preparation of motion picture scripts, musical compositions, sound tracks, translations, adaptations, and the like; (2) for histories of the respective Departments for services or units thereof; (3) for works pertaining to recruiting, morale, training, or career guidance; (4) for surveys of Government establishments; (5) for works pertaining to the instruction or guidance of Government officers and employees in the discharge of their official duties; and (6) primarily for production of technical reports, studies, or similar documents.

(b) Contracts for audiovisual works may include limitations in connection with music licenses, talent releases, and the like which are consistent with the purpose for which the works are acquired.

227.406 Contracts for acquisition of existing works.

(a) *Off-the-shelf purchase of books and similar items.* Notwithstanding the instructions of any other paragraphs in this part, no contract clause contained in this part need be included in contracts for the separate, sole procurement of data, other than motion pictures, in the exact form in which such material exists prior to the initiation of a request for purchase (such as the off-the-shelf purchases of existing products) unless the right to reproduce such technical data is an objective of the contract.

(b) *Purchase of existing audiovisual works.*

(1) The clause at 252.227–7021, Rights in Data—Existing Works shall be used in contracts exclusively for the procurement of existing motion pictures, television recordings, or other audiovisual works. The contract may set forth limitations consistent with the purposes for which the material covered by the contract is being procured. Examples of these limitations are—(i) means of exhibition or transmission; (ii) time; (iii) type of audience; and (iv) geographical location. Paragraph (c) of the clause should be modified to make the indemnity coextensive with the rights acquired under paragraph (b) of the clause as limited by the contract.

(2) In contracts which call for the modification of existing motion pictures, television records, or other audiovisual works through editing, translation, or

addition of subject matter, the clause at 252.227–7020, Rights in Data—Special Works, appropriately modified, shall be used.

227.407 Contracts limiting Government's right of publication for sale to the general public.

The paragraph of Alternate II may be added to the clause at 252.227–7013, Rights in Technical Data and Computer Software, for use in contracts for research when the contracting officer determines, in consultation with counsel, as appropriate, that public dissemination of a work, or certain designated parts of a work, specified to be delivered under the contract is in the best interest of the Government and would be facilitated by the Government relinquishing its right to publish the work for sale, or to have others publish the work for sale on behalf of the Government. This paragraph shall not be used otherwise.

227.408 Architect-engineer and construction contracts.

227.408–1 General.

This section sets forth policies, procedures, implementing instructions, solicitation provisions, and contract clauses pertaining to data, copyrights, and restricted designs unique to the acquisition of construction and architect-engineer services.

227.408–2 Acquisition and use of plans, specifications, and drawings.

(a) Architectural designs and data clauses for architect-engineer or construction contracts.

(1) *Plans and specifications and as-built drawings.*

(i) Except as provided in (a)(1)(ii) below, insert the clause at 252.227–7022, Government Rights (Unlimited), in solicitations and contracts calling for architect-engineer services or in contracts for construction involving architect-engineer services.

(ii) When the purpose of a contract for architect-engineer services or for construction involving architect-engineer services is to obtain a unique architectural design of a building, a monument, or construction of similar nature, which for artistic, esthetic or other special reasons the Government does not want duplicated by anyone else, the Government may desire to acquire exclusive control of the data pertaining to such design. In those cases only where the contracting officer determines for the foregoing reasons that it is desirable to maintain exclusive control over the design and data, the clause at 252.227–7023, Drawings and Other Data to Become Property of Government, shall be used in solicitation and contracts. If the contract is for architect-engineer services, the clause at 252.227–7022 shall be deleted and the clause at 252–227–7023 substituted therefor. If the contract is for construction involving architect-engineer services, only the clause at 252.227–7023 shall be included.

(2) *Shop drawings for construction.* In acquiring shop drawings for construction, the Government shall obtain the unlimited right to use and reproduce such drawings, but shall not exclude a similar right in the designer or others. Accordingly, in solicitations and contracts calling for delivery of such drawings, insert the clause at 252.227–7033, Rights in Shop Drawings.

227.408–3 Contracts for construction supplies and research and development work.

The solicitation provisions and contract clauses in Subpart 227.4 relating to technical data, other data, computer software, and copyrights and prescribed for use in solicitation and contracts for the acquisition of other than construction or architect-engineer services are applicable when the acquisition is limited to either (a) construction supplies or materials as such, as distinguished from construction as defined in FAR 36.102; (b) experimental, developmental, or research work, or test and evaluation studies of structures, equipment, processes, or materials for use in construction; or (c) both. The right of the Government and others to use, duplicate, or disclose such technical data, other data, or computer software will be determined by the terminology of the applicable clauses in the contracts or the terminology of agreements recited-in or made part of the contracts.

227.408–4 Mixed contracts.

When solicitations and resulting contracts call for (a) supplies or materials, (b) experimental, developmental or research work, or (c) both, in addition to either construction or architect-engineer work, the solicitation provisions and contract clauses in Subpart 227.4 relating to technical data, other data, computer software, and copyrights and prescribed for use in solicitations and contracts for the acquisition of other than construction or architect-engineer services shall be included in such solicitations and resultant contracts in addition to the appropriate solicitation provisions and contract clauses prescribed for use in solicitations and contracts for construction or architect-engineer services. In such cases, the solicitations and resulting contracts shall clearly indicate which of the solicitation provisions and contract clauses apply only to the supplies or materials being acquired, or to the experimental, development, or research work, or to both, and which of the solicitation provisions and contract clauses apply only to the construction or architect-engineer work.

227.408–5 Approval of restricted designs.

(a) Specifications for construction should allow for maximum latitude in the use of various types of commercially available products, materials, equipment, or processes which will meet objective Government requirements. However, Government requirements may necessitate, or the architect-engineer may contemplate the use of structures, products, materials, equipment, or processes which are available only from a sole source. In such event, the architect-engineer should report to the contracting officer the items known to him to be sole source, and the reasons therefor, and advise the contracting officer of the extent to which such items are considered necessary to meet the Government's requirements. This will make possible timely planning and arrangements for the use of sole source items, or where appropriate, consideration of alternate items.

(b) This procedure is not intended to restrict the use of patented or copyrighted items, but is meant to give the Government an opportunity to consider whether the specifications being drawn by the architect-engineer, in regard to any one item, are unnecessarily restricted, according to objective Government requirements to a single sole source item. The procedure is primarly for use in instances where the proposed design is expected to be conventional or standard and where the design may used in subsequent acquisitions. For this purpose, the clause at 252.227–7024, Notice and Approval of Restricted Designs, may be inserted in architect-engineer contracts.

227.409 Contracts awarded under Small Business Innovation Research Program (SBIR Program).

(a) Pub. L. 97–219, "Small Business Innovation Development Act of 1982", requires certain agencies to establish a Small Business Innovation Research Program (SBIR Program). The public law also includes terminology providing for "retention of rights in data generated in the performance of the contract by the small business concern". The Small Business Administration (SBA) issued

Policy Directive No. 65–01 on 19 November 1982 to provide policy direction for the conduct of the Small Business Innovation Research Programs within the federal agencies. The policy directive was issued pursuant to the authority contained in the public law.

(b) In the policy directive, the SBA in essence recommended that, except for program evaluation, agencies should protect technical data and computer software generated under an SBIR Program contract (funding agreement) for a period of two years from the completion of the contract under which the technical data and computer software were generated, unless the agencies obtained permission to disclose such data and software from the contractor. The SBA also recommended that, effective at the conclusion of the two-year period, the Government shall have a royalty-free license in the technical data and computer software for Government use. The SBA further recommended that the contractor, with prior written permission of the contracting officer, be afforded ownership of copyright in technial data and computer software generated under an SBIR Program contract and that the contractor be allowed to publish (subject to national security considerations, if any) such data and software. The policy directive considered it appropriate that the Government should receive a royalty-free license under any copyright and that each publication should contain an appropriate acknowledgement and disclaimer statement.

(c) The clause at 252.227–7025, Rights in Technical Data and Computer Software (SBIR Program), incorporates the coverage recommended by the SBA policy directive and shall be included in all contracts awarded under the SBIR Program in which technical data or computer software is required to be prepared, originated, developed, generated, or delivered. The clause differs basically from the clause at 252.227–7013, Rights in Technical Data and Computer Software, in that it incorporates a new category of rights defined as license rights. This new category permits certain technical data and computer software generated under an SBIR Program contract to be delivered with a license rights legend thereon. The clause thus permits technical data to be acquired under a contract with license rights, unlimited rights, or limited rights; and computer software to be acquired with license rights, unlimited rights or restricted rights. The clause is limited to use solely in contracts awarded under the SBIR Program.

227.410 Acquisition of technical data and computer software.

227.410–1 General.

(a) *Policy.*

(1) Technical data and computer software is expensive to prepare in the required form and to maintain and update. Every effort, therefore, should be made to avoid placing a requirement upon a contractor to prepare and deliver technical data or software unless the need is positively determined. By delaying the delivery of technical data or software until needed for a specific purpose, storage requirements within DoD of technical data and computer software items are reduced, the handling of technical data and software superseded by updated versions is greatly decreased and the purchase of technical data or software which may become obsolete by pending hardware changes is minimized.

(2) Economy in the purchase of technical data and software and the probability of greater currency may be achieved by deferring the delivery, and in some cases deferring the ordering, of technical data or software until an operational need is determined, or until stability of design or production is reached during contract performance. The application of the deferred delivery and deferred ordering principles, as explained further, should be made only after a careful evaluation on a case-by-case basis of the anticipated operational uses of technical data or computer software and any other relevant considerations. When it is expected that technical data or computer software may be required, but the precise need at time of contracting has not been determined, deferred ordering will be used to avoid the cost of preparation but allow the ordering of the technical data or software at some point downstream in contract performance should the need arise. When the need but not the time of delivery can be determined, deferred delivery will be used. When deferred delivery is used, it is expected that the contractor will price the technical data and software at the time of contracting and incur the cost of preparation prior to the call for delivery. Therefore, it is important that deferred ordering rather than deferred delivery be used where the need for technical data or software is doubtful. Whether the technique of deferred delivery or deferred ordering is used, the receipt of technical data or software by the Government should be scheduled to be in phase with a specific and planned use of the technical data or software.

(b) Deferred delivery refers to the practice of timing the delivery of technical data or computer software specified in a contract to a firm, operational need. This technique should be used only when a technical data or software requirement can be determined at the time of contracting and therefore is specified on the DD Form 1423, but the time or place of delivery is not firm. The dates for the delivery of data and software should be scheduled to coincide with the needs of the Government. The contractor, however, must be notified sufficiently in advance of a delivery date to enable him to provide the technical data or software in specified form on time. Thus, in any contract the Government may defer the delivery of all or any portion of the technical data or computer software specified in the contract until actual need can be economically determined. The Government may require the contractor to deliver any such data or software, or portions thereof, at any time during the performance of the contract or within two years from either acceptance of all items (other than data and software) under the contract or termination of the contract, whichever is later. However, the contractor's obligation to deliver technical data pertaining to any item obtained from a subcontractor shall cease two years after the date on which he accepts the item. The Government's rights in deferred delivery data and software are as prescribed in the contract under which the data or software is to be delivered. When the delivery of technical data or computer software is to be deferred, the clause at 252.227–7026, "Deferred Delivery of Technical Data or Computer Software", shall be included in the contract.

(c) Deferred ordering refers to delaying the ordering of technical data or computer software generated in the performance of the contract until such time as a need can be established and the requirements can be specifically identified for delivery under the contract. In many instances it is difficult to determine during solicitation and negotiation stages exactly what data or software is needed. The information available at these stages may suggest the need for some data or software but further information may be needed to identify the specific data or software items. In such situations, and also when it is desired to delay the ordering of technical data or computer software until such time as the production design becomes firm, the clause at 252.227–

7027, Deferred Ordering of Technical Data or Computer Software, is appropriate. The requirement for technical data or computer software under these circumstances is not listed on the DD Form 1423 until the specific need is determined. Whenever the clause at 252.227–7027, Deferred Ordering of Technical Data or Computer Software, is used, the clause at 252.227–7013, Rights in Technical Data and Computer Software, shall also be included. When data or software items are ordered, the delivery dates shall be negotiated and the contractor shall be compensated for converting the data or software into the prescribed form, for reproduction and delivery to the Government. Compensation to the contractor shall not include the cost of generating such data or software since it was generated in the performance of work for which the Government has already agreed to pay the contractor.

227.410–2 Requirement for technical data certification.

The provision at 252.227–7028, Requirement for Technical Data Certification, shall be included in a solicitation that may result in a negotiated contract when information is needed to establish whether an offeror has delivered or is obligated to deliver to the Government under any contract or subcontract the same or substantially the same technical data included in the offer (see 215.406 and FAR 15.406–5(a)). This solicitation provision requires the offeror to submit with the offer a certification as to whether the same or substantially the same technical data that is included in the offer has been delivered or is obligated to be delivered to the Government under any contract or subcontract. If so, the offeror will be required to identify one such contract or subcontract under which such technical data was delivered or will be delivered, and the place of such delivery.

227.410–3 Identification of technical data.

(a) The contractor is required to include on technical data delivered under a contract his name, the contract number and the name of any subcontractor who generated any part of such data. If technical data were marked, for example, in the manner permitted by paragraph (b)(2) of the clause at 252.227–7013, Rights in Technical Data and Computer Software, such marked data would comply with the requirements of the clause identified in (b) below and need not be further identified pursuant to this clause. The marking requirement provides the basis for identifying the rights of the contractor and the Government in technical data.

(b) To insure that technical data is fully identified as to its source, the clause at 252.227–7029, Identification of Technical Data, shall be made a part of any contract under which technical data is to be delivered.

227.410–4 Technical data—withholding of payment.

(a) Timely delivery of technical data is particularly important to the operation and maintenance of equipment as well as competitive procurement of follow-on quantities of contract items and of items broken out from an assembly or equipment. The clause at 252.227–7030, Technical Data—Withholding of Payment, is designed to assure timely delivery of technical data. The clause permits a withholding not exceeding 10 percent of the total contract price or amount, but the contracting officer may specify a lesser amount in the contract if circumstances warrant. A case-by-case determination as to the amount to be withheld shall be made by the contracting officer after considering the estimated value of the technical data to the Government. No amount shall be withheld when the failure to make timely delivery arises out of causes beyond the control and without the fault or negligence of the contractor.

(b) Withholding action under paragraph (b) of the clause should be taken only when the contractor has failed to make timely deliveries of acceptable technical data on other contracts or if the Contracting Officer has information which would cause him to anticipate late delivery of technical data or delivery of deficient technical data. The amount of withholding should be based on the estimated value of the technical data to the Government.

227.410–5 Warranties of technical data.

The factors contained in 246.703, Criteria for Use, shall be considered in deciding whether to provide for warranties of technical data delivered under contracts calling for technical data. The basic technical data warranty clause is set forth at 252.246–7001, Warranty of Data. There are two alternates to the basic clause. The basic clause and the appropriate alternate should be selected in accordance with 246.770.

227.410–6 Data requirements.

(a) The clause at 252.227–7031, Data Requirements, shall be included in all solicitations and contracts, except that the clause need not be included in—

(1) Any contract, of which the aggregate amount involved does not exceed $25,000 and in any blanket purchase agreement and purchase order utilizing the DD Form 1155 (however, the DD Form 1423 shall be used with orders issued under a basic ordering agreement);

(2) Any contract awarded to a contractor outside the United States, except those under Subpart 225.71, Canadian Purchases;

(3) Any research or exploratory development contract when reports are the only deliverable item(s) under the contract;

(4) Any service type contract, when the contracting officer determines that the use of the DD Form 1423 (Contract Data Requirements List) is impractical for use with respect to records prepared by a contractor in performing operation and maintenance under the contract;

(5) Any contract under which construction and architectural drawings and specifications are the only deliverable items;

(6) Any contract for commercial items when the only deliverable data is such an item, or would be packaged or furnished with such items in accordance with customary trade practices; or

(7) Any contract for items containing material which, by virtue of its potentially dangerous nature, requires controls to assure adequate safety to life and property, when the only deliverable data is the Materials Safety Data Sheet (MSDS) submitted in compliance with Federal Standard 313A and the clause at FAR 52.223–3, Hazardous Material Identification and Material Safety Data, and when such clause is included in the contract.

(b) The clause at 252.227–7031, Data Requirements, states that the contractor is required to deliver only the data items listed on the DD Form 1423 and the data items identified in and deliverable under any contract clause of Subpart 252.2 and FAR Subpart 52.2 made a part of the contract.

(c) Other than the data items falling within the exceptions set forth in paragraph (a) above, and the data items identified in and deliverable under any contract clause of Subpart 252.2 and FAR Subpart 52.2 made a part of the contract, the requirement for delivery of any data items under the contract can be established only by listing the data items on the DD Form 1423 (see 253.270). The clause at 252.227–7031, Data Requirements, shall be inserted in all contracts in which the DD Form 1423 is used. The DD Form 1423 need not be used to list data or software requirements in any of the contracts falling within the exceptions set forth in paragraph (a) above.

227.411 Contracts with foreign sources to be performed outside the United States.

Normally, the clause at 252.227–7032, rights in Technical Data and Computer Software (Foreign), is used in solicitations and contracts with foreign sources, except that the clause shall not be used in contracts for special works (see 227.405), contracts for existing works (see 227.406), or contracts for Canadian purchases (see Subpart 225.71, Canadian Purchases). This clause should be inserted when the Government is to acquire unlimited rights in all technical data, including reports, drawings and blueprints, and all computer software, specified to be delivered to the Government. The clause at 252.227–7013, Rights in Technical Data and Computer Software, shall be inserted when the same rights are to be obtained as would be obtained if contracting with United States firms. Notwithstanding 227.403–3(a) and 227.404–2(a), the clause may be modified to meet the requirements necessary for and peculiar to the foreign procurement, *provided* it agrees with the policies and principles of 227.403–2 and 227.404–1.

227.412 Solicitation provisions and contract clauses.

(a)(1) The contracting officer shall insert the basic data clause at 252.227–7013, Rights in Technical Data and Computer Software, in solicitations and contracts when technical data is specified to be delivered or computer software may be originated, developed, or delivered, *provided* that such clause shall not be used in solicitations and contracts—

(i) When all technical data to be delivered is to be acquired with unlimited rights pursuant to the policy at 227.403–2(f) in which case the clause at 252.227–7015, Rights in Technical Data—Specific Acquisition, shall be used;

(ii) When existing works are to be acquired in accordance with 227.406;

(iii) When special works are to be acquired in accordance with 227.405;

(iv) When the work will be performed by foreign sources outside the United States, its territories, possessions, or Puerto Rico, in which case the clause at 252.227–7032, rights in Technical Data and Computer Software (Foreign) applies;

(v) When performance will be limited solely to architect-engineer services or construction, in which case either the clause at 252.227–7022, Architect-Engineer Work—Unlimited Rights, or the clause at 252.227–7023, Architect-Engineer Work—Sole Property Rights, applies; and

(vi) When the contract is awarded under the DoD Small Business Innovation Research Program (SBIR Program), in which case the clause at 252.227–7025, Rights in Technical Data and Computer Software (SBIR Program), applies.

(2) The contracting officer shall use the clause with its Alternate I in accordance with the policy at 227.403–2(g).

(3) The contracting officer shall use the clause with its Alternate II under the circumstances specified at 227.407.

(b) The contracting officer shall insert the provision at 252.227–7014, Predetermination of Rights in Technical Data, in solicitations when the procedure of 227.403–2(d) is to be used.

(c) The contracting officer shall insert the clause at 252.227–7015, Rights in Technical Data—Specific Acquisition, in solicitations and contracts when all technical data is to be acquired with unlimited rights in accordance with 227.403–2(f) (1), (2), and (3). The clause shall also be included in subcontracts when the Government has determined to acquire all technical data with unlimited rights from a subcontractor in accordance with the authority and findings of 227.403–2(f) (1), (2), and (3). The clause shall not be used under any other circumstances.

(d) The contracting officer, in order to prevent any misinterpretation of the scope of the clause at 252.227–7013, Rights in Technical Data and Computer Software, in the contract, may insert the clause at 252.227–7016, Contract Schedule Items Requiring Experimental, Developmental, or Research Work, in solicitations and contracts when the solicitations and contracts, in whole or in part, call for experimental, developmental, or research work as an element of performance.

(e) The contracting officer may insert the clause at 252.227–7017, rights in Technical Data—Major System and Subsystem Contracts, in solicitations and contracts for major systems or major subsystems under the circumstances specified at 227.403–2(f)(4) (i), (ii), and (iii).

(f) The contracting officer shall insert the clause at 252.227–7018, Restrictive Markings on Technical Data, in all solicitations and contracts in accordance with 227.403–3(c)(2).

(g) The contracting officer shall insert the provision at 252.227–7019, Identification of Restricted Rights Computer Software, in solicitations and contracts in accordance with 227.404–2(b)(2).

(h) The contracting officer shall insert the clause at 252.227–7020, Rights in Data—Special Works, in solicitations and contracts as required by 227.405.

(i) The contracting officer shall insert the clause at 252.227–7021, Rights in Data—Existing Works, in solicitations and contracts as required by 227.406.

(j) The contracting officer shall insert the clause at 252.227–7022, Government Rights (Unlimited) in solicitations and contracts in accordance with 227.408–2(a)(1)(i).

(k) The contracting officer shall insert the clause at 252.227–7023, Drawings and Other Data to Become Property of Government, in solicitations and contracts in accordance with 227.408–2(a)(1)(ii).

(l) The contracting officer shall insert the clause at 252.227–7024, Notice and Approval of Restricted Designs, in solicitations and contracts in accordance with 227.408–5.

(m) The contracting officer shall insert the clause at 252.227–7025, Rights in Technical Data and Computer Software (SBIR Program), in solicitations and contracts in accordance with 227.409.

(n) The contracting officer shall insert the clause at 252.227–7026, Deferred Delivery of Technical Data on Computer Software, in solicitations and contracts in accordance with 227.410–1(b).

(n) The contracting officer shall insert the clause at 252.227–7026, Deferred Delivery of Technical Data or Computer Software, in solicitations and contracts in accordance with 227.410–1(b).

(o) The contracting officer shall insert the clause at 252.227–7027, Deferred Ordering of Technical Data or Computer Software, in solicitations and contracts in accordance with 227.410–1(c).

(p) The contracting officer shall insert the provision at 252.227–7028, Requirement for Technical Data Certification, in solicitations in accordance with 227.410–2.

(q) The contracting officer shall insert the clause at 252.227–7029, Identification of Technical Data, in all solicitations and contracts in accordance with 227.410–3.

(r) The contracting officer shall insert the clause at 252.227–7030, Technical Data—Withholding of Payment, in solicitations and contracts in accordance with 227.410–4.

(s) The contracting officer shall insert the clause at 252.227–7031, Data Requirements, in solicitations and contracts, in accordance with 227.410–6.

(t) The contracting officer shall insert the clause at 252.227–7032, Rights in Technical Data and Computer Software (Foreign), in solicitations and contracts in accordance with 227.411.

(u) The contracting officer shall insert the clause at 252.227–7033, Rights in Shop Drawings, in solicitation and

contracts in accordance with 227.408–2(a)(2).

PART 252—SOLICITATION PROVISIONS AND CONTROL CLAUSES

7. Section 252.217–7000 is revised to read as follows:

252.217–7000 Exercise of Option to Fulfill Foreign Military Sales Commitments.

As prescribed at 217.208(S–70)(1), insert the following clause:

Exercise of Option To Fulfill Foreign Military Sales Commitments (Apr 1984)

The U.S. Government may exercise the option or options under the option clause of this contract to fulfill Foreign Military Sales commitments undertaken by the U.S. Government on behalf of a foreign country.

(End of clause)

8. Section 252.217–7001 is added to read as follows:

252.217–7001 Exercise of Option To Fulfill Foreign Military Sales Commitments (Alt. 1).

As prescribed at 217.208(70)(2), insert the following clause:

Exercise of Option To Fulfill Foreign Military Sales Commitments (Alt. 1) (Apr 1984)

The U.S. Government may exercise the option or options under the option clause of this contract to fulfill Foreign Military Sales commitments undertaken by the U.S. Government on behalf of a foreign country. At the date of exercise of the option, the U.S. Government will identify the foreign country for the purpose of negotiating an equitable price adjustment for any cost or profit considerations attributable to Foreign Military Sales requirements in section 225.7304 and paragraph 215.905–1(b)(7)(iii)(E) of the DoD FAR Supplement. Failure to agree to such an equitable adjustment shall be treated as a dispute within the meaning of the clause of this contract titled "DISPUTES".

(End of clause)

9. Sections 252.225–7000 through 252.225–7021 are added to read as follows:

252.225–7000 Buy American—Balance of Payments Program Certificate.

As prescribed at 225.109(a)(S–70), insert the following provision:

Buy American—Balance of Payments Program Certificate (Oct 1980)

(a) The offeror hereby certifies that each end product, except the end products listed below, is a domestic end product (as defined in the clause entitled "Buy American Act and Balance of Payments Program") and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

EXCLUDED END PRODUCTS

Line item No.	Country of origin
(List as necessary)	

(b) Offers will be evaluated by giving certain preferences to domestic end products and foreign qualifying country end products over foreign nonqualifying country end products. In order to obtain such preferences in the evaluation of each excluded end product listed in (a) above, it is necessary that offerors identify and certify, below, those excluded end products identified above that are qualifying country end products or they will be deemed nonqualifying country end products. Offerors must certify by inserting the applicable line item numbers in the appropriate brackets:

(i) The offeror certifies that the following supplies qualify as "participating country end products" as that term is defined in the clause entitled "Buy American Act and Balance of Payments Program."

_____

(Insert line item no.)

(ii) the offeror certifies that the following supplies qualify as "FMS/offset arrangement country end products" as that term is defined in the clause entitled "Buy American Act and Balance of Payments Program," if the Government makes the necessary waivers.

_____

(Insert line item no.)

(iii) The offeror certifies that the following supplies qualify as "defense cooperation country end products" as that term is defined in the clause entitled "Buy American Act and Balance of Payments Program."

_____

(Insert line item no.)

(iv) The offeror certifies that the following supplies qualify as "designated country end products" as that term is defined in the clause entitled "Buy American Act, Trade Agreements Act, and Balance of Payments Program".

_____

(Insert line item no.)

(c) Offers will be evaluated in accordance with the policies and procedures of FAR Part 25 and DoD FAR Supplement Part § 225.

(End of Certificate)

252.225–7001 Buy American Act and the Balance of Payments Program.

As prescribed at 225.109(d)(S-70), insert the following clause:

Buy American Act and Balance of Payments Program (Oct 1980)

(a) This clause implments the Buy American Act (41 U.S.C. Section 10a–d) and the Department of Defense Balance of Payments Program by providing a preference to domestic end products over foreign end products, except for certain foreign end products which meet the requirements for classification as qualifying country end products. For the purpose of this clause—

(i) "Components" means those articles, materials, and supplies directly incorporated into end products.

(ii) "Qualifying country component" means (A) an item mined, produced, or manufactured in a participating country or in an FMS/Offset arrangement country when the applicable D&F has been made waiving the Buy American Act restrictions; or (B) any item listed in a defense cooperation country agreement.

(iii) "End products" means those articles, materials, and supplies to be acquired for public use under the contract. As to a given contract, the end products are the items to be delivered to the Government, as specified in the contract, including supplies to be acquired by the Government for public use in connection with service contracts but excluding installation and other services to be performed after delivery.

(iv) "Domestic end product" means (A) an unmanufactured end product which has been mined or produced in the United States, or (B) an end product manufactured in the United States if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall also be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (A) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or (B) as to which the Secretary concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(v) "Foreign end product" means an end product other than a domestic end product.

(vi) "Qualifying country end product" means (A) a participating country end product; (B) an FMS/Offset arrangement country end product when the applicable Determination and Findings has been made waiving the Buy American Act restrictions; or (C) a defense cooperation country agreement listed item.

(vii) "Participating country end product" means (A) an unmanufactured end product mined or produced in a participating country, or (B) an end product manufactured in a participating country if the cost of its qualifying country components and its components mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty whether or not duty is, in fact, paid.

(viii) "FMS/Offset arrangement country end product" means (A) an unmanufactured end product mined or produced in an FMS/

offset arrangement country, or an end product manufactured in an FMS/offset arrangement country if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty whether or not duty is, in fact, paid. To obtain the waivers necessary to accord preferential treatment for an FMS/offset arrangement country end product, see the procedures at DoD FAR Supplement 225.7310(c)(2)(i).

(ix) "Defense cooperation country end product" means an item listed in the defense cooperation country agreement and produced in that country.

(b) The Contractor agrees that there will be delivered under thsis contract only domestic end products *unless*, in its offer, it specified delivery of foreign end products in the clause entitled "Buy American Act and Balance of Payments Program Certificate." An offer certifying that a qualifying country end product will be supplied requires the Contractor to supply a qualifying country end product or, at the Contractor's option, a domestic end product. An offer based on supplying a nonqualifying country end product, if accepted, will permit the Contractor to supply a product without regard to the requirements of this clause.

(c) Offers will be evaluated in accordance with the policies and procedures of FAR Part 25 and DoD FAR Supplement Part 225.

(End of clause)

252.225-7002 Qualifying country sources as subcontractors.

As prescribed at 225.109(d)(S-72), insert the following clause:

Qualifying Country Sources as Subcontractors (Oct 1980)

No qualifying country source (DoD FAR Supplement 225.001), subject to the restrictions set forth in DoD FAR Supplement 225.74, or U.S. source is to be precluded from competing for subcontracts.

(End of clause)

252.225-7003 Nondomestic construction materials.

As prescribed at 225.205(S-70), insert the following:

Nondomestic construction materials (Oct 1966)

The requirements of the clause of this contract entitled "Buy American Act" do not apply to the item set forth below.

(Insert list here)

(End of clause)

252.225-7004 Identification of expenditures in the United States.

(a) As prescribed at 225.305(c), insert the following clause:

Identification of Expenditures in the United States (Oct 1966)

(a) On each invoice, voucher, or other request for payment under this contract, the Contractor shall identify that part of the requested payment which represents estimated expenditures in the United States. Identification shall consist of stating the full amount of the payment requested, subdivided into the following categories:

1. United States end products—expenditures for material and equipment manufactured or produced in the United States, excluding transportation;

2. United States services—expenditures for services performed in the United States, including charges for overhead, other indirect costs, and profit;

3. Transportation on United States carriers—expenditures for transportation furnished by United States flag, ocean, surface, and air carriers; and

4. Expenditures not identified under 1, 2, and 3 above.

(b) If this contract is principally for supplies or if the Contractor is not an incorporated concern incorporated in the United States, or an unincorporated concern having its principal place of business in the United States, the amounts identified under (a)1, (a)2, and (a)3 above will be limited to payments made pursuant to the requirements either of the "United States Products and Services" clause, if any, or of any other specific provision of this contract that obligates the Contractor to procure certain materials, equipment, transportation, or services from United States sources.

(c) The identification of expenditures required under (a) above may be expressed either as dollar amounts or as percentages applicable to the total amount of the request for payment.

(d) The identification will be based on reasonable estimates by the Contractor. Nothing in this clause requires the establishment or maintenance of detailed accounting records or gives the United States Government any right to audit the Contractor's books or records.

(End of clause)

252.225-7005 Buy American Act—Trade Agreements Act—Balance of Payments Program Certificate.

As prescribed at 225.407(a)(1), insert the following provisions:

Buy American act—Trade agreements act—Balance of Payments Program Certificate (Apr. 1984)

(a) The offeror hereby certifies that each end product, except the end products listed below, is a domestic end product (as defined in the clause entitled "Buy American Act, Trade Agreements Act, and Balance of Payments Program"), and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

EXCLUDED END PRODUCTS

Line item No.	Country of origin
(List as necessary)	

(b) Offers will be evaluated by giving certain preferences to domestic end products, qualifying country end products, and designated country end products over other end products. In order to obtain such preferences in the evaluation of each excluded end product listed in (a) above, it is necessary that offerors identify and certify, below, those excluded end products identified above that are qualifying country end products or designated country end products, or they will be deemed neither qualifying country end products nor designated country end products. Offerors must certify by inserting the applicable line item numbers in the appropriate brackets.

(i) The offeror certifies that the following supplies qualify as "participating country end products" as that term is defined in the clause entitled "Buy American Act, Trade Agreements Act, and Balance of Payments Program".

(Insert line item No.)

(ii) The offeror certifies that the following supplies qualify as "FMS/Offset arrangement country end products" as that term is defined in the clause entitled "Buy American Act, Trade Agreements Act, and Balance of Payments Program," if the Government makes the necessary waivers.

(Insert line item No.)

(iii) The offeror certifies that the following supplies qualify as "defense cooperation country end products" as that term is defined in the clause entitled "Buy American Act, Trade Agreements Act, and Balance of Payments Program."

(Insert line item No.)

(iv) The offeror certifies that the following supplies qualify as "designated country end products" as that term is defined in the clause entitled "Buy American Act, Trade Agreements Act, and Balance of Payments Program".

(Insert line item No.)

(c) Offers will be evaluated in accordance with the policies and procedures of FAR Part 25 and DoD FAR Supplement Part 225.

(End of Certificate)

252.225-7006 Buy American Act, Trade Agreements Act, and the Balance of Payments Program.

As prescribed at 225.407(a)(2), insert the following clause:

Buy American Act, Trade Agreements Act, and the Balance of Payments Program (Apr. 1984)

(a) This clause implements the Buy American Act (41 U.S.C. Section 10a–d), the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.), and the Department of Defense Balance of Payments Program by providing a preference to domestic end products over foreign end products, except for certain foreign end products which meet the requirements for classification as qualifying country end products or as designated country end products. For the purpose of this clause—

(i) "Components" means those articles, materials, and supplies incorporated directly into the end products.

(ii) "Qualifying country component" means (A) an item mined, produced, or manufactured in a participating country or in an FMS/Offset arrangement country when the applicable D&F has been made waiving the Buy American Act restrictions; or (B) any item listed in a defense cooperation country agreement.

(iii) "End product" means those articles, materials, and supplies to be acquired for public use under the contract.

(iv) "Domestic end product" means (A) an unmanfactured end product which has been mined or produced in the United States, or (B) an end product manufactured in the United States if the cost of its qualifying country components, and its components which are mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall also be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (A) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or (B) as to which the Secretary concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(v) "Foreign end product" means an end product other than a domestic end product.

(vi) "Qualifying country end product" means (A) a participating country end product; (B) an FMS/Offset arrangement country end product when the applicable Determination and Findings has been made waiving the Buy American Act restrictions; or (C) a defense cooperation country agreement listed item.

(vii) "Participating country end product" means (A) an unmanufactured end product mined or produced in a participating country, or (B) an end product manufactured in a participating country if the cost of its qualifying country components and its components mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty whether or not duty is, in fact, paid.

(viii) "FMS/Offset arrangement country end product" means (A) and unmanufactured end product mined or produced in an FMS/Offset arrangement country, or (B) an end product manufactured in an EMS/Offset arrangement country if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty whether or not duty is, in fact, paid. To obtain the waivers necessary to accord preferential treatment for an FMS/Offset arrangement country end product, see the procedues at DoD FAR Supplement 225.7310(c)(2)(i).

(ix) "Defense cooperation country end product" means an item listed in the defense cooperation country agreement and produced in that country.

(x) "Designated country end product" means an article that (A) is wholly the growth, product, or manufacture of the designated country, or (B) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidential to its supply; *Provided*, That the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

(b) The Contractor agrees that there will be delivered under this contract only domestic end products *unless*, in its offer, it specified delivery of foreign end products in the clause entitled Buy American Act, Trade Agreements Act, and Balance of Payments Program Certificate. An offer certifying that a qualifying country end product or a designated country end product will be supplied requires the Contractor to supply a qualifying country end product, a designated country end product, whichever is certified, or, at the Contractor's option, a domestic end product. An offer based on supplying a nonqualifying country end product, if accepted, will permit the Contractor to supply a product without regard to the requirements of this clause; however, Contractors may not supply an end product listed at DoD FAR Supplement 225.403(S–70) with a total value at or above that specified in FAR Subpart 25.4 from a country not listed at FAR 25.401, except as provided at DoD FAR Supplement 225.402(b).

(c) Offers will be evaluated in accordance with the policies and procedures of FAR Part 25 and DoD FAR Supplement Part 225.

(End of clause)

252.225–7007 Supplies to be accorded duty-free entry.

As prescribed at 225.605(a)(S–70), insert the following clause:

Supplies To Be Accorded Duty-Free Entry (Dec 1965)

In accordance with paragraph (a) of the clause entitled "Duty-Free Entry," the following supplies are hereby identified as supplies to be accorded duty-free entry:

(End of clause)

252.225–7008 Duty-free entry—qualifying country end products and supplies.

As prescribed at 225.605(a)(S–72), insert the following clause:

Duty-Free Entry—Qualifying Country End Products and Supplies (Jan 1981)

(a) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price on account of duty with respect to—

(i) All end items which constitute "qualifying country end products" (as defined in DoD FAR Supplement 225.001) to be delivered under this contract; and

(ii) All supplies (including, without limitation, raw materials, components, and intermediate assemblies) produced or made in qualifying countries, which are to be incorporated in the end items to be delivered under this contract: *Provided*, That such end items are manufactured in the United States or in a qualifying country, except supplies imported into the United States prior to the date of this contract or, in the case of supplies imported by a first or lower tier subcontractor hereunder, prior to the date of the subcontract.

(b) The Contractor warrants that all such qualifying country supplies, for which duty-free entry is to be claimed, are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract and that duty shall be paid by the Contractor to the extent that such supplies, or any portion thereof (if not scrap or salvage) are diverted to nongovernmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

(c) The Government agrees to execute duty-free entry certificates and to afford such assistance as appropriate in order to obtain the duty-free entry of qualifying country end products as to which the shipping documents bear the notation specified in paragraph (d) below, except as the Contractor may otherwise agree.

(d) All shipping documents submitted to customs, covering qualifying country end products or supplies for which duty-free entry is to be claimed, shall bear the following information:

(i) Government prime contract number;

(ii) Identification of carrier;

(iii) The notation: "United States Department of Defense Duty-Free Entry To Be Claimed pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, kindly release the shipments under 8.59CR and notify Commander, Defense Contract Administration Services Management Area, New York, 60 Hudson Street, New York, NY 10013, who will execute

Customs Forms 7501 and 7501A and the Duty-Free Entry Certificate."

(iv) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and

(v) Estimated value in U.S. dollars.

(e) The Contractor agrees to instruct the foreign supplier to prepare a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry.

(f) The Contractor agrees to notify the Contract Administration Office (CAO) in writing of any purchase by the Contractor of qualifying country supplies that are to be imported into the United States for delivery to the Government or for incorporation in end items to be delivered to the Government under the contract. Such notice shall be furnished to the CAO immediately upon the award by the Contractor to the qualifying country supplier. The notice shall identify (i) the qualifying country, (ii) the contract number, and (iii) the scheduled delivery date(s).

(g) This clause shall not apply to purchases of qualifying country supplies in connection with this contract if (i) such qualifying country supplies are identical in nature with supplies purchased by the Contractor or any subcontractor hereunder in connection with his commercial business; and (ii) it is not economical or feasible to account for such supplies so as to assure that the amount of such supplies for which duty-free entry is claimed pursuant to this clause does not exceed the amount thereof purchased in connection with this contract.

(h) The Contractor agrees to insert the substance of this clause, including this paragraph (h) in all subcontracts for supplies hereunder that exceed $2,500. Each such subcontract shall require the subcontractor to identify this contract by its contract number on any shipping documents submitted to Customs covering supplies for which duty-free entry is to be claimed pursuant to this clause.

(End of clause)

252.225-7009 Preference for certain domestic commodities.

As prescribed at 225.7002(b), insert the following clause:

Preference for Certain Domestic Commodities (Oct 1980)

The Contractor agrees that there will be delivered under this contract only such articles of food, clothing, cotton, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, coated synthetic fabric, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles) as have been grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico; *Provided*, That (i) this clause shall have no effect to the extent that the Secretary has determined that a satisfactory quality and sufficient quantity of such articles cannot be acquired as and when needed at U.S. market prices; (ii) nothing herein shall preclude the delivery, under this contract, of foods which have been manufactured or processed in the United States, its possessions, or Puerto Rico; and (iii) this clause shall not apply to chemical warfare protective clothing produced in qualifying countries (see DoD FAR Supplement Part 225).

(End of clause)

252.225-7010 Domestic Wool Preference.

As prescribed at 225-7002(c)(3), insert the following clause:

Domestic Wools Preference (Mar 1958)

(a) It is Congressional policy that, in Department of Defense procurements, preference shall be given to wool grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico, to the extent that articles containing such wool can be procured as and when needed at United States market prices.

(b) If, on the date of opening of bids or evaluation of proposals, the average market price of domestic wool of usable grades (as reported by grade and type in the four issues of the Department of Agriculture "Market News" immediately preceding the date of bid opening or evaluation of proposals) is not more than ten percent (10%) above the average of the prices (for usable grades and types) which reflect the current incentive price established by the Secretary of Agriculture, award will be made only on bids or proposals offering domestically produced articles of which the wool component is one hundred percent (100%) domestic wool: *Provided*, That such bids or proposals are considered reasonable and otherwise acceptable.

(c) If, on the date of opening of bids or evaluation of proposals, the average market price of domestic wool of usable grades (as reported by grade and type in the four issues of the Department of Agriculture "Market News" immediately preceding the date of bid opening or evaluation of proposals) is more than ten percent (10%) above the average of the prices (for usable grades and types) which reflect the current incentive price, or to the extent that the Government's requirement cannot be filled by awards based on paragraph (b) hereof, there will be added to each bid or proposal offering articls of which the wool component is one hundred percent (100%) foreign wool, an evaluation factor of $—— per yard or per item, and there will be added to each bid or proposal offering articles of which the wool component is a blend of domestic and foreign wool that part of the evaluation factor which is in direct proportion to the percentage of foreign wool to be used, and award will be made to the low acceptable bidder.

(d) For the purposes of (b) and (c) above, the average market price of domestic wool of usable grades shall be the average market price of the representative types and grades set forth in DoD FAR Supplement 225.7002(c)(6) within that one of the categories therein set forth which includes wool which would meet the specifications, and the average of the prices which reflect the current incentive price established by the Secretary of Agriculture shall be the average of the prices set forth in 225.7002(c)(6) for that category.

(e) While bids or proposals offering articles using foreign wool may be considered and evaluated, as stated above, all stages of manufacturing of wool (whether foreign or domestic) must be performed in the United States, its possessions, or Puerto Rico, as required by the contract clause entitled "Preference for Certain Domestic Commodities." This requirement is satisfied as to wool noils, reprocessed or reused wool if the reprocessing (i.e., garnetting or combing) and ensuring manufacture is performed in the United States, its possessions or Puerto Rico.

(f) The Secretary has determined that, to the extent that any foreign wool is used under an award made pursuant to paragraph (c) hereof, a satisfactory quality and sufficient quantity of domestic wool cannot be procured as and when needed at United States market prices.

(End of clause)

252.225-7011 Preference for domestic specialty metals (major programs).

As prescribed at 225.7002(d)(1), insert the following:

Preference for Domestic Specialty Metals (Major Programs) (Oct 1980)

(a) The Contractor agrees that any specialty metals (as hereinafter defined) incorporated in articles delivered under this contract will be melted in the United States, its possessions, or Puerto Rico; *Provided*, That this clause shall have no effect to the extent that (i) the Secretary or his designee has determined that a satisfactory quality and sufficient quantity of such articles cannot be acquired as and when needed at U.S. market prices; (ii) the acquisition is for a qualifying country end product; or (iii) the acquisition is necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the U.S. Government or U.S. firms under approved programs serving defense requirements.

(b) For the purposes of this clause, the term "specialty metals" means:

(i) Steels, where the maximum alloy content exceeds one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent or which contains more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

(ii) Metal alloys consisting of nickel, iron-nickel and cobalt base alloys containing a total of other alloying metals (except iron) in excess of ten percent (10%);

(iii) Titanium and titanium alloys; or

(iv) Zirconium and zirconium base alloys.

(c) The Contractor agrees to include this clause, including this paragraph (c), in every subcontract or purchase order issued hereunder, unless he knows that the item being purchased contains no specialty metals.

(End of clause)

252.225-7012 Preference for domestic specialty metals.

As prescribed at 225.7002(d)(2), insert the following clause:

Preference for Domestic Specialty Metals (Oct 1980)

(a) The Contractor agrees that any specialty metals (as hereinafter defined) furnished by it or purchased by it for direct incorporation in any article delivered to the Government under this contract shall have been melted in the United States, its possessions, or Puerto Rico; *Provided*, That this clause shall have no effect to the extent that (i) the Secretary or his designee determines that a satisfactory quality and sufficient quantity of such articles cannot be acquired as and when needed at U.S. market prices; (ii) the acquisition is for a qualifying country end product; or (iii) the acquisition is necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purpose of offsetting sales made by the U.S. Government or U.S. firms under approved programs serving defense requirements.

(b) For the purposes of this clause, the term "specialty metals" means:

(i) Steels where the maximum alloy content exceeds one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent or which contains more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

(ii) Metal alloys consisting of nickel, iron-nickel and cobalt base alloys containing a total of other alloying metals (except iron) in excess of ten percent (10%);

(iii) Titanium and titanium alloys; or

(iv) Zirconium and zirconium base alloys.

(End of clause)

252.225-7013 Preference for domestic hand measuring tools.

As prescribed at 225.7003, insert the following clause:

Preference for Domestic Hand or Measuring Tools (Apr 1984)

The Contractor agrees that there will be delivered under this contract only such hand or measuring tools as have been produced in the United States or its possessions.

(End of clause)

252.225-7014 [Reserved]

252.225-7015 United States Products Certificate (Military Assistance Program).

As prescribed at 225.7205(a), insert the following provision:

United States Products Certificate (Military Assistance Program) (Dec 1962)

To the extent that the Government specifies the items being purchased are in implementation of the Military Assistance Program, the bidder or offeror hereby certifies that each such item furnished will be a United States end product (as defined in the contract clause entitled "United States Products"); that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States; and that he is a domestic concern.

(End of provision)

252.225-7016 United States Products (Military Assistance Program).

As prescribed at 225.7205(b), insert the following clause:

United States Products (Military Assistance Program) (Dec 1962)

(a) To the extent that the Government specifies the items being purchased are in implementation of the Military Assistance Program, the Contractor agrees that there will be delivered under this contract only United States end products.

(b) For the purpose of this clause:

(i) "Components" means those articles, materials, and supplies, which are directly incorporated in end products.

(ii) "End products" means those articles, materials, and supplies which are acquired under this contract for public use; and

(iii) A "United States end product" means—

(A) An unmanufactured end product which has been mined or produced in the United States; and

(B) An end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(End of clause)

252.225-7017 Limitation of sales commissions and fees for foreign Governments.

As prescribed at 225.7305(f), insert the following clause:

Limitation of Sales Commissions and Fees for Foreign Governments (Oct 1980)

Unless the sales commission and fee have ben identified and payment thereof has been approved in writing by the Government of ————* before contract award, the following provisions, as appropriate, shall apply.

(a) For firm-fixed-priced contracts or fixed-price contracts with economic price adjustment:

"The Contractor certifies that the contract price (including any subcontracts awarded hereunder) does not include any direct or indirect costs of sales commissions or fees for contractor sales representatives for the solicitation or promotion or otherwise to secure the conclusion of the sale of any of the supplies or services called for by this contract to the Government of ————*."

(b) For all other types of contracts:

"Notwithstanding any other provision of this contract, any direct or indirect costs of sales commissions or fees for contractor (or subcontractor) sales representatives for the solicitation or promotion or otherwise to secure the conclusion of the sale of any of the supplies or services called for by this contract to the Government of ————* shall be considered as an unallowable item of cost under this contract."

* Name of foreign country.

(End of clause)

252.225-7018 Offset arrangement.

As prescribed at 225.7310(c)(4), insert the following clause:

Offset Arrangement (Oct 1980)

(a) The contractor is responsible under the contract for arranging with representatives of the Government of ————*, under ————**, dated ————, for participation by sources in ————*, for a minimum of (*percentage or dollar value*) of the value of this prime contract. This offset requirement may be fulfilled either by subcontracts under this contract or through other business the Contractor may choose to place in ————*. (Commercial business will not be considered for duty-free entry.) All contractural arrangements to be entered into in accordance with this clause must be submitted to the Contracting Officer for determination as to whether such arrangements fulfill the offset requirement. Special conditions relating to the offset requirement are as follows:

———————————————

———————————————

(b) The Contractor will provide the following information to the Contracting Officer within 30 calendar days after the completion of each calendar quarter during the term of the contract:

(i) Subcontract or other solicitations offered to ————* industry (Items, dollar value, date of solicitation, and identification of sources);

(ii) Subcontract or orders placed with ————* sources—

(A) Item

(B) Value

(C) Contracting officer

(D) Competitive or noncompetitive

(E) Date of subcontract

(F) Identification of subcontractor

(iii) Status of deliveries under subcontracts placed with ————* sources.

(c) None of the provisions of this clause shall relieve the Contractor of the need to comply with the International Traffic in Arms Regulations, the Industrial Security Manual, or other laws and regulations governing foreign acquisition and disclosure of information to foreign nationals.

(d) The substance of this provision shall be placed in all subcontracts awarded to U.S. companies which appear to offer a significant opportunity for lower tier subcontracting with ————* sources under ————**.

* Insert name of foreign country.

** Insert offset agreement number or other description.

(End of clause)

252.225-7019 Exclusionary Policies and Practices of Foreign Governments.

As prescribed at 225.7312, insert the following clause:

Exclusionary Policies and Practices of Foreign Government (Jan 1977)

No person, partnership, corporation, or other entity performing functions pursuant to this contract, shall, in employing or assigning personnel to participate in the performance of any such function, whether in the United States or abroad, take into account the exclusionary policies or practices of any foreign government where such policies or practices are based on race, religion, national origin, or sex.

(End of clause)

252.225-7020 Option to award and pay in foreign currency.

As prescribed at 225.7602(a), insert the following provisions:

Option to Award and Pay in Foreign Currency (Apr 1974)

(a) Offerors are required to state their price in United States dollars. Such price may also be stated wholly in the currency of the countries listed in the Schedule, or in a combination of United States dollars and the currency of any of the listed countries.

(b) Offerors shall state separately the United States dollar content, if any, in United States dollars. The term "United States dollar content" means the United States dollar cost to an offeror for United States end products or services (including costs of transportation furnished by United States flag carriers) imported directly from the United States and to be used in performance of a contract, as certified by the offeror.

(c) The Contracting Officer reserves the right to award to that responsive offeror willing to accept payment in whole or in part in a currency of any of the listed countries and whose offer is considered the most advantageous to the United States Government, even though the total price of the accepted offer may be more than the price of an offer received in United States dollars.

(End of provision)

252.225-7021 Acquisition and use of excess and near-excess currency.

As prescribed at 225.7608, insert the following clause:

Acquisition and Use of Excess and Near-Excess Currency (Dec 1967)

The Contractor shall not expend United States dollars for the performance of this contract in any of the countries set forth in the Schedule of this contract for the purchase of currency of such countries or for the purchase of goods or services needed for performance under this contract. The Contractor shall purchase all such currencies from United States disbursing officers in such countries at the rates of exchange used by such officers at the times of purchase.

(End of clause)

10. Sections 252.227-7013 through 252.227-7033 are added to read as follows:

252.227-7013 Rights in technical data and computer software.

As prescribed at 227.412(a)(1), insert the following clause:

Rights in Technical Data and Computer Software (May 1981)

(a) *Definitions.* "Commercial Computer Software", as used in this clause, means computer software which is used regularly for other than Government purposes and is sold, licensed or leased in significant quantities to the general public at established market or catalog prices.

"Computer", as used in this clause, means a data processing device capable for accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on the data, or a device that operates on analog data by performing physical processes on the data.

"Computer Data Base", as used in this clause, means a collection of data in a form capable of being processed and operated on by a computer.

"Computer Program", as used in this clause, means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers interpreters, data management systems, utility programs, sort-merge programs, and ADPE maintenance/diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or designed to satisfy the requirements of a particular user.

"Computer Software", as used in this clause, means computer programs and computer data bases.

"Computer Software Documentation", as used in this clause, means technical data, including computer listings and printouts, in human-readable form which (1) documents the design or details of computer software, (2) explains the capabilities of the software, or (3) provides operating instructions for using the software to obtain desired results from a computer.

"Limited Rights", as used in this clause, means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data be (1) released or disclosed in whole or in part outside the Government, (2) used in whole or in part by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software, or (3) used by a party other than the Government, except for:

(1) Emergency repair or overhaul work only, by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work, *provided* that the release or disclosure thereof outside the Government shall be made subject to a prohibition against further use, release or disclosure; or

(2) Release to a foreign government, as the interest of the United States may require, only for information or evaluation within such government or for emergency repair or overhaul work by or for such government under the conditions of (1) above.

"Restricted Rights", as used in this clause, means rights that apply only to computer software, and include, as a minimum, the right to—

(1) Use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(2) Use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(3) Copy computer programs for safekeeping (archives) or backup purposes; and

(4) Modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights.

In addition, restricted rights include any other specific rights not inconsistent with the minimum rights in (1) through (4) above that are listed or described in this contract or described in a license or agreement made a part of this contract.

"Technical Data", as used in this clause, means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work, or be usable or used to define a design or process or to procure, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents, or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications and related information, and computer software documentation. Technical data does not include computer software or financial, administrative, cost and pricing, and management data or other information incidental to contract administration.

"Unlimited Rights", as used in this clause, means rights to use, duplicate, or disclose technical data, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) *Government rights.*

(1) *Unlimited rights.* The Government shall have unlimited rights in:

(i) Technical data and computer software resulting directly from performance of experimental, developmental or research work which was specified as an element of performance in this or any other Government contract or subcontract;

(ii) Computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract;

(iii) Computer data bases, prepared under a Government contract, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain;

(iv) Technical data necessary to enable manufacture of end-items, components, and modifications, or to enable the performance of processes, when the end-items, components, modifications or processes have been, or are being, developed under this or any other Government contract or subcontract in which experimental, developmental or research work is, or was specified as an element of contract performance, except technical data pertaining to items, components, processes, or computer software developed at private expense (but see subdivision (b)(2)(ii) below).

(v) Technical data or computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished data or computer software;

(vi) Technical data pertaining to end-items; components or processes, prepared or required to be delivered under this or any other Government contract on subcontract, for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data, e.g., specification control drawings, catalog sheets, envelope drawings, etc.);

(vii) Manuals or instructional materials prepared or required to be delivered under this contract or any subcontract hereunder for installation, operation, maintenance or training purposes;

(viii) Technical data or computer software which is in the public domain, or has been or is normally released or disclosed by the Contractor or subcontractor without restriction on further disclosure; and

(ix) Technical data or computer software listed or described in an agreement incorporated into the schedule of this contract which the parties have predetermined, on the basis of subparagraphs (i) through (viii) above, and agreed will be furnished with unlimited rights.

(2) *Limited rights.* The Government shall have limited rights in:

(i) Technical data, listed or described in an agreement incorporated into the Schedule of this contract, which the parties have agreed will be furnished with limited rights; and

(ii) Unpublished technical data pertaining to items, components or processes developed at private expense, and unpublished computer software documentation related to computer software that is acquired with restricted rights, other than such data as may be included in the data referred to in subdivisions (b)(1)(i), (v), (vi), (vii), and (viii) above. The word *unpublished*, as applied to technical data and computer software documentation, means that which has not been released to the public nor been furnished to others without restriction on further use or disclosure. For the purpose of this definition, delivery of limited rights technical data to or for the Government under a contract does not, in itself, constitute release to the public.

Limited rights shall be effective provided that only the portion or portions of each piece of data to which limited rights are to be asserted pursuant to subdivisions (2) (i) and (ii) above are identified (for example, by circling, underscoring, or a note), and that the piece of data is marked with the legend below in which is inserted:

A. the number of the prime contract under which the technical data is to be delivered,

B. the name of the Contractor and any subcontractor by whom the technical data was generated, and

C. an explanation of the method used to identify limited rights data.

Limited Rights Legend

Contract No. ——— ———
Contractor: ——— ———

Explanation of Limited Rights Data Identification Method Used

———

———

Those portions of this technical data indicated as limited rights data shall not, without the written permission of the above Contractor, be either (A) used, released or disclosed in whole or in part outside the Government, (B) used in whole or in part by the Government for manufacture or, in the case of computer software documentation, for preparing the same or similar computer software, or (c) used by a party other than the Government, except for: (1) emergency repair or overhaul work only, by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work, *provided* that the release or disclosure hereof outside the Government shall be made subject to a prohibition against further use, release or disclosure; or (2) release to a foreign government, as the interest of the United States may require, only for information or evaluation within such government or for emergency repair or overhaul work by or for such government under the conditions of (1) above. This legend, together with the indications of the portions of this data which are subject to such limitations shall be included on any reproduction hereof which includes any part of the portions subject to such limitations.

(3) *Restricted rights.*

(i) The Government shall have restricted rights in computer software, listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights, *provided*, however, notwithstanding any contrary provision in any such license or agreement, the Government shall have the rights is included in the definition of "restricted rights" in paragraph (a) above. Such restricted rights are of no effect unless the computer software is marked by the Contractor with the following legend:

Restricted Rights Legend

Use, duplication or disclosure is subject to restrictions stated in Contract No. —— with —— (Name of Contractor) ——.

and the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. The Contractor may not place any legend on computer software indicating restrictions on the Government's rights in such software unless the restrictions are set forth in a license or agreement made a part of this contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to such computer software shall relieve the Government of liability with respect to such unmarked software.

(ii) Notwithstanding subdivision (i) above, commercial computer software and related documentation developed at private expense and not in public domain may, if the Contractor so elects, be marked with the following Legend:

Restricted Rights Legend

Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subdivision (b)(3)(ii) of the Rights in Technical Data and Computer Software clause at 252.227-7013.

———

(Name of Contractor and Address)

When acquired by the Government, commercial computer software and related documentation so legended shall be subject to the following:

(A) Title to and ownership of the software and documentation shall remain with the Contractor.

(B) User of the software and documentation shall be limited to the facility for which it is acquired.

(C) The Government shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime contractors, subcontractors and agents of the Government who have the Government's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the Government to use software, documentation, or information therein, which the Government may already have or obtains without restrictions.

(D) The Government shall have the right to use the computer software and doumentation with the computer for which it is acquired at any other facility to which that computer may be transferred; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to

copy computer programs for safekeeping (archives) or backup purposes; and to modify the software and documentation or combine it with other software, *provided*, that the unmodified portions shall remain subject to these restrictions.

(E) If the Contractor, within sixty (60) days after a written request, fails to substantiate by clear and convincing evidence that computer software and documentation marked with the above Restricted Rights Legend are commercial items and were developed at private expense, or if the Contractor fails to refute evidence which is asserted by the Government as a basis that the software is in the public domain, the Government may cancel or ignore any restrictive markings on such computer software and documentation and may use them with unlimited rights. Such written requests shall be addressed to the contractor as identified in the Restricted Rights Legend.

(4) No legend shall be marked on, nor shall any limitation or restriction on rights of use be asserted as to, any data or computer software which the Contractor has previously delivered to the Government without restriction. The limited or restricted rights provided for by this paragraph shall not impair the right of the Government to use similar or identical data or computer software acquired from other sources.

(c) *Copyright.*

(1) In addition to the rights granted under the provisions of paragraph (b) above, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world, of the scope set forth below, under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the Government under this contract, to reproduce the work in copies or phonorecords, to distribute copies or phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes. With respect to technical data and computer software in which the Government has unlimited rights, the license shall be of the same scope as the rights set forth in the definition of "unlimited rights" in paragraph (a) above. With respect to technical data in which the Government has limited rights, the scope of the license is limited to the rights set forth in the definitions of "limited rights" in paragraph (a) above. With respect to computer software which the parties have agreed in accordance with subparagraph (b)(3) above will be furnished with restricted rights, the scope of the license is limited to such rights.

(2) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data or computer software prepared for or acquired by the Government under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified in subparagraph (c)(1).

(3) As between the Contractor and the Government, the Contractor shall be considered the "person for whom the work was prepared" for the purpose of determining authorship under Section 201(b) of Title 17, United States Code.

(4) Technical data delivered under this contract which carries a copyright notice shall also include the following statement which shall be placed thereon by the Contractor, or should the Contractor fail, by the Government: This material may be reproduced by or for the U.S. Government pursuant to the copyright license under the clause at 252.227-7013 (date).

(d) *Removal of unauthorized markings.* Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may correct, cancel, or ignore any marking not authorized by the terms of this contract on any technical data or computer software furnished hereunder if:

(1) the Contractor fails to respond within sixty (60) days to a written inquiry by the Government concerning the propriety of the markings, or

(2) the Contractor's response fails to substantiate, within sixty (60) days after written notice, the propriety of limited rights markings by clear and convincing evidence, or of restricted rights markings by identification of the restrictions set forth in the contract.

(e) *Limitation on charges for data and computer software.* The Contractor recognizes that the Government or a foreign government with funds derived through the Military Assistance Program or otherwise through the United States Government may contract for property or services with respect to which the vendor may be liable to the Contractor for charges for the use of technical data or computer software on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for data or computer software which the Government has a right to use and disclose to others, which is in the public domain, or which the Government has been given without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproductions, handling, mailing, and similar administrative costs incident to the furnishing of such data or computer software. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts, or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

(f) *Acquisition of data and computer software from subcontractors.*

(1) Whenever any technical data or computer software is to be obtained from a subcontractor under this contract, the Contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's or the Contractor's rights in that subcontractor data or computer software which is required for the Government.

(2) Technical data required to be delivered by a subcontractor shall normally be delivered to the next-higher tier contractor. However, when there is a requirement in the prime contract for data which may be submitted with limited rights pursuant to subparagraph (b)(2) above, a subcontractor may fulfill such requirement by submitting such data directly to the Government rather than through the prime Contractor.

(3) The Contractor and higher-tier subcontractors will not use their power to award subcontracts as economic leverage to acquire rights in technical data or computer software from their subcontractors for themselves.

(End of clause)

ALTERNATE I (MAY 1981)

As prescribed at 227.412(a)(2), add the following paragraph to the basic clause:

Notice of certain limited rights

(h)(1) Unless the Schedule provides otherwise, and subject to (2) below, the Contractor will promptly notify the Contracting Officer in writing of the intended use by the Contractor or a subcontractor in performance of this contract of any item, component or process for which technical data would fall within subparagraph (b)(2) above.

(2) Such notification is not required with respect to:

(i) standard commercial items which are manufactured by more than one source of supply; or

(ii) items, components or processes for which such notice was given pursuant to predetermination of rights in technical data in connection with this contract.

(3) Contracting Officer approval is not necessary under this clause for the Contractor to use the item, component or process in the performance of the contract. (APR 1972)

ALTERNATE II (MAY 1981)

As prescribed at 227.412(a)(3), add the following paragraph to the basic clause:

( ) Publication for sale. If, prior to publication for sale by the Government and within the period designated in the contract or task order, but in no event later than 24 months after delivery of such data, the Contractor publishes for sale any data (1) designated in the contract as being subject to this paragraph and (2) delivered under this contract, and promptly notifies the Contracting Officer of these publications, the Government shall not publish such data for sale or authorize others to do so. This limitation on the Government's right to publish for sale any such data so published by the Contractor shall continue as long as the data is protected as a published work under the copyright law of the United States and is reasonably available to the public for purchase. Any such publication shall include a notice identifying this contract and recognizing the license rights of the Government under subparagraph (c)(1) of this clause. As to all such data not so published by the Contractor, this paragraph shall be of no force or effect.

252.227-7014 Predetermination of rights in technical data.

As prescribed at 227.412(b), insert the following provision:

Predetermination of Rights in Technical Data (Jul 1976)

(a) The offeror is requested to identify in his proposal which of the below listed data (including data to be furnished in whole or in part by a subcontractor) when delivered, he intends to identify as limited rights data in accordance with paragraph (b) of the "Rights in Technical Data and Computer Software" clause of this Solicitation. This identification need not be made as to data which relate to standard commercial items which are manufactured by more than one source of supply.

(The solicitation should list here that technical data or portions thereof with respect to which the Government proposes use of the predetermination procedure. Data which clearly comes within subparagraph (b)(1) of the "Rights in Technical Data and Computer Software" clause and would therefore be acquired with unlimited rights should not be listed.)

(b) Limited rights data may be identified as such, pursuant to paragraph (a) above only if it pertains to items, components or processes developed at private expense. Nevertheless, it cannot be so identified if it comes within subparagraph (b)(1) of the "Rights in Technical Data and Computer Software" clause. At the request of the Contracting Officer or his representative, the offeror agrees to furnish clear and convincing evidence that the data which will be so identified comes within the definition of limited rights data.

(c) The listing of a data item in paragraph (a) above does not mean that the Government considers such item to come within the definition of limited rights data.

(End of provision)

252.227-7015 Rights in technical data—specific acquisition.

As prescribed at 227.412(c), insert the following clause:

Rights in Technical Data—Specific Acquisition (Mar 1979)

(a) *Definition.* Technical Data means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be unable or used to define a design or process or to procure, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design type documents; or computer printouts. Examples of technical data include research and engineering data, engineering drawings,and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and documentation related to computer software. Technical data does not include computer software or financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

(b) *Government rights.* The Government may duplicate, use and disclose in any manner and for any purpose whatsoever, and have others so do, all or any part of the technical data delivered by the Contractor to the Government under this contract.

(c) *Copyright.*

(1) In addition to the rights granted under the provisions of (b) above, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the Government under this contract, to reproduce the work in copies or phonorecords, to distribute copies of phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes.

(2) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data prepared for or acquired by the Government under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified in subparagraph (c)(1) above.

(3) As between the Contractor and the Government, the Contractor shall be considered the "person for whom the work was prepared" for the purpose of determining authorship under Section 201(b) of Title 17, United States Code.

(4) Technical data delivered under this contract which carries a copyright notice shall also include the following statement which shall be placed thereon by the Contractor, or should the contractor fail, by the Government: This material may be reproduced by or for the U.S. Government pursuant to the copyright license under the clause at 252.227-7015 (date).

(d) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(e) *Limitation on charges for data.* The Contractor recognizes that the Government, or a foreign government with funds derived through the Miliary Assistance Program or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the Contractor for charges for the use of technical data on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived throughout the Military Assistance Program or otherwise through the United States Government, charges for data which the Government has a right to use and disclose to others, which is in the public domain, which the Government has been given without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproduction, handling, mailing, and similar administrative costs incident to the furnishing of such data. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts, or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

(End of clause)

252.227-7016 Contract schedule items requiring experimental, developmental, or research work.

As prescribed at 227.412(d), insert the following clause:

Contract Schedule Items Requiring Experimental, Developmental, or Research Work (Mar 1975)

For purposes of defining the nature of the work and the scope of rights in data granted to the Government pursuant to the "Rights in Technical Data and Computer Software" clause of this contract, it is understood and agreed that items (list applicable schedule line items or sub-line items or data exhibit numbers) require the performance of experimental, developmental, or research work. This clause does not constitute a determination as to whether or not any data required to be delivered under this contract falls within the definition of limited rights data.

(End of clause)

252.227-7017 Rights—in technical data major system and subsystem contracts.

As prescribed at 227.412(e), insert the following clause:

Rights in Technical Data—Major System and Subsystem Contracts (Nov 1971)

The Contractor agrees that he will neither incorporate any provision in his subcontracts nor enter into any agreement, written or oral, either directly or indirectly, with subcontractors which has or may have the effect of prohibiting subcontractor sales directly to the Government of any supplies, like those manufactured or services like those furnished by such subcontractor under this contract or any follow-on production contract, or under any contract for parts or components of supplies furnished under this or any follow-on production contract. The Contractor further agrees that all data, including data in which the Government may not have unlimited rights, furnished or otherwise made available by the Contractor for use by subcontractors to furnish such supplies or services, will be furnished to such subcontractors without payment to the Contractor of any fee, royalty or other charge by the subcontractor or the Government for use by such subcontractors in furnishing such supplies or services for sale directly to the Government. For the purpose of this paragraph, the term "fee, royalty or other charge" shall not include within its meaning fees, royalties of charges for reasonable returns on use of patents.

(End of clause)

252.227-7018 Restrictive markings on technical data.

As prescibed at 227.412(f), insert the following clause:

Restrictive Marking on Technical Data (Mar 1975)

(a) The Contractor shall have, maintain, and follow throughout the performance of this contract, procedures sufficient to assure that restrictive markings are used on technical data required to be delivered hereunder only when authorized by the terms of the "Rights in Technical Data and Computer Software" clause of this contract. Such procedures shall be in writing. The Contractor shall also maintain a quality assurance system to assure compliance with this clause..

(b) As part of the procedures, the Contractor shall maintain (1) records to show how the procedures of paragraph (a) above were applied in determining that the markings are authorized, as well as (2) such records as are reasonably necessary to show pursuant to subparagraph (d)(2) of the "Rights in Technical Data and Computer Software" clause that restrictive markings used in any piece of technical data delivered under this contract are authorized.

(c) The Contractor shall, within sixty (60) days after award of this contract, identify in writing to the Contracting Officer by name or title the person(s) having the final responsibility within Contractor's organization for determining whether restrictive markings are to be placed on technical data to be delivered under this contract. The Contractor hereby authorizes direct contract between the Government and such person(s) in resolving questions involving restrictive markings.

(d) The Contracting Officer may evaluate or verify the Contractor's procedures to determine their effectiveness. Upon request, a copy of such written procedures shall be furnished. The failure of the Contracting Officer to evaluate or verify such procedures shall not relieve the Contractor of the responsibility for complying with paragraphs (a) and (b) above.

(e)(1) If the Contractor fails to make a good faith effort to institute the procedures of paragraphs (a) and (b) above, any limited rights markings on technical data delivered under this contract may be cancelled or ignored by the Contracting Officer. The Contracting Officer shall give written notice to the Contractor of the action taken, including identification of the data on which markings have been cancelled or ignored, and thereafter may use such data with unlimited rights.

(2) The Contracting Officer may give written notification to the Contractor of any failure to maintain or follow the established procedures, or of any material deficiency in the procedures, and state a period of time not less than thirty (30) days within which the Contractor shall complete corrective action. If corrective action is not completed within the specified time, restrictive markings on any technical data being prepared for delivery or delivered under this contract during that period shall be presumed to be unauthorized by the terms thereof and the Contracting Officer may cancel or ignore such markings if the Contractor is unable to substantiate the markings in accordance with the procedures of paragraph (d) of the clause at 252.227-7013, "Rights in Technical Data and Computer Software".

(f) Notwithstanding any provisions of this contract concerning inspection and acceptance, the acceptance by the Government of technical data with restrictive legends shall not be construed as a waiver of any rights accruing to the Government.

(g) This clause, including this paragraph (g), shall be included in each subcontract under which technical data ia required to be delivered. When so inserted, "Contractor" shall be changed to "Subcontractor".

(End of clause)

252.227-7019 Identification of restricted rights computer software.

As prescribed at 227.412(g), insert the following provision:

Identification of Restricted Rights Computer Software (Apr 1977)

The offeror's attention is called to the requirement in the "Rights in Technical Data and Computer Software" clause that any restrictions on the Government concerning use or disclosure of computer software which was developed at private expense and is to be delivered under the contract must be set forth in an agreement made a part of the contract, either negotiated prior to award or included in a modification of the contract before such delivery. Therefore, the offeror is requested to identify in his proposal to the extent feasible any such computer software which was developed at private expense and upon the use of which he desires to negotiation restrictions, and to state the nature of the proposed restrictions. If no such computer software is identified, it will be assumed that all deliverable computer software will be subject to unlimited rights.

(End of clause)

252.227-7020 Rights in data—special works.

As prescribed at 227.412(h), insert the following clause:

Rights in Data—Special Works (Mar 1979)

(a) The term "works" as used herein includes literary, musical, and dramatic works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings; and works of similar nature. The term does not include financial reports, cost analyses, and other information incidential to contract administration.

(b) All works first produced in the performance of this contract shall be the sole property of the Government, which shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under Section 201(b) of Title 17, United States Code, and the Government shall own all of the rights comprised in the copyright. The Contractor agrees not to assert or authorize others to assert any rights, or establish any claim to copyright, in such works. The Contractor, unless directed to the contrary by the Contracting Officer, shall place on any such works delivered under this contract the following notice:

c (*Year date of delivery*) United States Government as represented by the Secretary of (*department*). All rights reserved.

In the case of a phonorecord, the c will be replaced by P.

(c) Except as otherwise provided in this contract, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world (1) to reproduce in copies or phonorecords, to prepare derivative works, to distribute copies or phonorecords, and to perform or display publicly any portion of a work which is not first produced in the performance of this contract but in which copyright is owned by the Contractor and which is incorporated in the work furnished under this contract, and (2) to authorize others to do so for Government purposes.

(d) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in any works prepared for or delivered to the Government under this contract any works of authorship in which copyright is not owned by the Contractor or the Government without acquiring for the Government any rights necessary to perfect a license of the scope set forth in paragraph (c) above.

(e) The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents and employees acting for the Government, against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity, arising out of the creation, delivery, or use of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in such works.

(f) Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any license of other right otherwise granted to the Government under any patent.

(g) Paragraphs (c) and (d) above are not applicable to material furnished to the Contractor by the Government and incorporated in the work furnished under the contract; *Provided*, such incorporated material is identified by the Contractor at the time of delivery of such work.

(End of clause)

252.227-7021 Rights in data—existing works.

As prescribed at 227.412(i), insert the following clause:

Rights in Data—Existing Works (Mar 1979)

(a) The term "works" as used herein includes literary, musical, and dramatic works; pantomines and choreographic works; pictorial, graphic and sculptural works; motion pictures and other audiovisual works; sound recordings; and works of a similar

nature. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) Except as otherwise provided in this contract, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world (1) to distribute, perform publicly, and display publicly the works called for under this contract and (2) to authorize others to do so for Government purposes.

(c) The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents, and employees acting for the Government, against any liability, including costs and expense, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity arising out of the creation, delivery, or use, of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in same works.

(End of clause)

252.227-7022 Government rights (unlimited).

As prescribed at 227.412(j), insert the following clause:

Government Rights (unlimited) (Mar 1979)

(a) The Government shall have unlimited rights, in all drawings, designs, specifications, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyright laws. The Contractor for a period of three years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

(End of clause)

252.227-7023 Drawings and other data to become property of Government.

As prescribed at 272.412(k), insert the following clause:

Drawings and Other Data To Become Property of Government (Mar 1979)

All designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of the Government and may be used on any other design or construction without additional compensation to the Contractor. The Government shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under Section 201(b) of Title 17, United States Code. With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Contractor for a period of three years after completion of the project agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of all works beyond such period.

(End of clause)

252.227-7024 Notice and approval of restricted designs.

As prescribed at 227.412(l), insert the following clause:

Notice and Approval of Restricted Designs (Apr 1984)

In the performance of this contract, the Contractor shall, to the extent practicable, make maximum use of structures, machines, products, materials, construction methods, and equipment that are readily available through Government or competitive commercial channels, or through standard or proven production techniques, methods, and processes. Unless approved by the Contracting Officer, the Contractor shall not produce a design or specification that requires in this construction work the use of structures, products, materials, construction equipment, or processes that are known by the Contractor to be available only from a sole source. The Contractor shall promptly report any such design or specification to the Contracting Officer and give the reason why it is considered necessary to so restrict the design or specification.

(End of clause)

252.227-7025 Rights in technical data and computer software (SBIR Program).

As prescribed at 227.412(m), insert the following clause:

Rights in technical Data and Computer Software (SBIR Program) (Apr 1984)

(a) *Definitions.* "Computer Data Base", as used in this clause, means a collection of data in a form capable of being processed and operated on by a computer.

"Computer Program", as used in this clause, means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or designed to satisfy the requirements of a particular user.

"Computer Software", as used in this clause, means computer programs and computer data bases.

"Computer Software Documentation", as used in this clause, means technical data, including computer listings and printouts, in human-readable form which (1) documents the design or details of computer software, (2) explains the capabilities of the software, or (3) provides operating instructions for using the software to obtain desired results from a computer.

"License Rights", as used in this clause, means rights to use, duplicate, or disclose technical data or computer software, in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only. License Rights do not grant to the Government the right to have or permit others to use technical data or computer software for commercial purposes.

"Limited Rights", as used in this clause, means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data be (1) released or disclosed in whole or in part outside the Government, (2) used in whole or in part by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software, or (3) used by a party other than the Government.

"Restricted Rights", as used in this clause, means rights that apply only to computer software, and include, as a minimum, the right to:

(1) Use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(2) Use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(3) Copy computer programs for safekeeping (archives) or backup purposes; and

(4) Modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights.

In addition, restricted rights include any other specific rights not inconsistent with the minimum rights in (1) through (4) above that are listed or described in this contract or described in a license or agreement made a part of this contract.

"Technical Data", as used in this clause, means recorded information regardless of form or characteristic, of a scientific or technical nature. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications and related information, and computer software documentation. Technical data does include computer software or financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

"Unlimited Rights", as used in this clause, means rights to use, duplicate, or disclose technical data or computer software, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) *Government rights.*

(1) *License rights.* For a period of two (2) years (or such other period as may be authorized by the Contracting Officer for good cause shown) after the delivery and acceptance of the last deliverable item under this contract the Government shall have limited rights and, after the expiration of the two-year period, shall have license rights in:

(i) Technical data and computer software resulting directly from performance of experimental, developmental, or research work which was specified as an element of performance in this contract or any subcontract hereunder;

(ii) Computer software required to be originated or developed under this contract

or any subcontract hereunder, or generated as a necessary part of performing this contract or any subcontract hereunder;

(iii) Technical data necessary to enable manufacture of end-items, components and modifications, or to enable the performance of processes, when the end-items, components, modification or processes have been, or are being, developed under this contract or any subcontract hereunder in which experimental, developmental or research work is, or was specified as an element of contract performance, except technical data pertaining to items, components, processes, or computer software developed at private expense (but see subdivision (b)(2)(i) below);

(iv) Technical data or computer software prepared or required to be delivered under this contract or any subcontract hereunder and constituting corrections or changes to Government-furnished data or computer software;

(v) Technical data pertaining to end-items, components or processes, prepared or required to be delivered under this contract or any subcontract hereunder for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data, e.g., specification control drawings, catalog sheets, envelope drawings, etc.);

(vi) Manuals or instructional materials prepared or required to be delivered under this contract or any subcontract hereunder for installation, operation, maintenance, or training purposes; and

(vii) Any other technical data or computer software prepared or required to be delivered under this contract or any subcontract hereunder, other than technical data furnished with limited or unlimited rights pursuant to subparagraph (b) (2) and (4) below or computer software furnished with restricted or unlimited rights pursuant to subparagraphs (b) (3) and (4) below.

License Rights shall be effective with respect to the technical data identified in subdivisions (b)(1) (i), (iii), (iv), (v), (vi), and (vii) above only if each piece of data is marked with the License Rights Legend below in which is inserted the number of the prime contract under which the data is to be delivered, the name of the contractor and any subcontractor by whom the data was generated, and the period in which the data is subject to limited rights and shall be effective with respect to the computer software identified in subdivisions (b)(1) (i), (ii), and (iv) and (vii) above only if each unit of software is marked with an abbreviated License Rights Legend reciting that the use, duplication, or disclosure of the software is subject to the same license rights restrictions included in the same contract (identified by number) with the same Contractor (identified by name):

License Rights Legend

Contract No. ———
Contractor or subcontractor: ———

For a period of two (2) years after the delivery and acceptance of the last deliverable item under this contract, this technical data shall not, without the written permission of the above Contractor, be either (A) used, released or disclosed in whole or in part outside the Government, (B) used in whole or in part by the Govenment for manufacture, or (C) used by a party other than the Government. After the expiration of the two (2) year period, the Government may use, duplicate, or disclose the data, in whole or in part and in any manner, for Government purposes only, and may have or permit others to do so for Government purposes only. All rights to use or duplicate the data in whole or in part for commercial purposes are retained by the Contractor, and others to whom this data may be disclosed agree to abide by this commercial purposes limitation. The Government assumes no liability for use or disclosure of the data by others for commercial purposes. This legend shall be included on any reproduction of this data, in whole or in part.

(2) *Limited rights.* The Government shall have limited rights in:

(i) Unpublished technical data pertaining to items, components or processes developed at private expense, and unpublished computer software documentation related to computer software that is acquired with restricted rights, other than such data as may be included in the data referred to in subdivisions (b)(1) (i), (iv), (v), and (vi) above. The word *unpublished*, as applied to technical data and computer software documentation, means that which has not been released to the public nor been furnished to others without restriction on further use or disclosure. For the purpose of this definition, delivery of limited rights technical data to or for the Government under a contract does not, in itself, constitute release to the public.

Limited Rights shall be effective with respect to the technical data mentioned in subdivision (b)(2)(i) above only if each piece of data is marked with the Limited Rights Legend below in which is inserted the number of the prime contract under which the data is to be delivered and the name of the Contractor and any subcontractor by whom the data was generated:

Limited Rights Legend

Contract No. ———
Contractor or subcontractor: ———

This technical data shall not, without the written permission of the above contractor, be either (A) used, released or disclosed in whole or in part outside the Government, (B) used in whole or in part by the Government for manufacture, or (C) used by a party other than the Govenment. This legend shall be included on any reproduction of this data, in whole or in part.

(3) *Restricted rights.* The Government shall have restricted rights in privately developed computer software, listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights, *provided*, however, notwithstanding any contrary provision in any such license or agreement, the Government shall have the rights included in the definition of "restricted rights" in paragraph (a) above. Such restricted rights are of no effect unless the computer software is marked by the Contractor with the following legend:

Restricted Rights Legend

Use, duplication or disclosure is subject to restrictions stated in Contract No. ——— with ——— (Name of Contractor).

and the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. The Contractor may not place any legend on computer software indicating restrictions on the Government's rights in such software unless the restrictions are set forth in a license or agreement made a part of this contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to such computer software shall relieve the Government of liability with respect to such unmarked software.

(4) *Unlimited rights.* The Government shall have unlimited rights in:

(i) Technical data or computer software required to be prepared or delivered under this contract or any subcontract hereunder that was previously delivered or previously required to be delivered to the Government under any contract or subcontract with unlimited rights;

(ii) Technical data or computer software that is in the public domain or has been or is normally released or disclosed by the Contractor or any subcontractor without restriction on further use or disclosure; and

(iii) Computer data bases, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain.

(5) No legend shall be marked on, nor shall any limitation or restriction on rights of use be asserted as to, any technical data or computer software which the Contractor or any subcontractor has previously delivered to the Government without restriction. The license, limited to restricted rights provided for by this paragraph (b) shall not impair the right of the Government to use similar or identical technical data or computer software acquired from other sources.

(c) *Copyright.*

(1) The Contractor is hereby granted permission to assert or establish claim to or ownership of copyright in any work of authorship prepared for or acquired by the Government under this contract. In addition to the rights granted under the provisions of paragraph (b) above, the Contractor hereby grants to the Government a nonexclusive, irrevocable, paid-up license throughout the world of the scope set forth below, under any such copyright to reproduce the work in copies or phonorecords, to distribute copies or phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes. All published works for which claim to or ownership of copyright has been asserted or established shall contain an appropriate credit line identifying Government support. With respect to technical data and computer software in which the Government has license rights or unlimited rights the license shall be of the same scope as the rights set forth in the definitions of "license rights" and "unlimited rights" in paragraph (a) above.

With respect to technical data in which the Government has limited rights, the scope of the license is limited to the rights set forth in the definition of "limited rights" in paragraph (a) above. With respect to computer software which the parties have agreed in accordance with paragraph (b)(3) above will be furnished with restricted rights, the scope of the license is limited to such rights.

(2) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data or computer software prepared for or acquired by the Government under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified in subparagraph (c)(1).

(3) As between the Contractor and the Government, the Contractor shall be considered the "person for whom the work was prepared" for the purpose of determining authorship under Section 201(b) of Title 17, United States Code.

(4) Technical data delivered under this contract which carries a copyright notice shall also include the following statement which shall be placed thereon by the Contractor, or should the Contractor fail, by the Government:

This material may be reproduced by or for the U.S. Government pursuant to the copyright license under the clause at 252.227-7025 (date).

(d) *Removal of unauthorized markings.* Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may correct, cancel, or ignore any marking not authorized by the terms of this contract on any technical data or computer software furnished hereunder, if:

(1) The Contractor fails to respond within sixty (60) days to a written inquiry by the Government concerning the propriety of the markings;; or

(2) The Contractor's response fails to substantiate, within sixty (60) days after written notice, the propriety of limited rights markings by clear and convincing evidence, or of restricted rights markings by identification of the restrictions set forth in the contract.

In either case, the Government shall give written notice to the Contractor of the action taken.

(e) *Omitted markings.* Technical data and computer software delivered to the Government without any of the legends or markings specified in paragraph (b) above or that are not copyrighted shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the use, duplication, or disclosure of such data and software. However, to the extent the data and software have not been disclosed without restriction outside the Government, the Contractor may request, within six (6) months after delivery of such data and software, permission to place restrictive legends on such data and software at the Contractor's expense and the Government may so permit if the Contractor:

(1) Demonstrates that the omission of the restrictive legends was inadvertent;

(2) Establishes pursuant to paragraph (d) above that the use of the markings is authorized; and

(3) Acknowledges that the Government has no liability with respect to the use or disclosure of such data and software that was received prior to the addition of the restrictive markings.

(f) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(g) *Acquisition of data and computer software from subcontractor.*

(1) Whenever any technical data or computer software is to be obtained from a subcontractor under this contract, the Contractor shall use this same clause in the subcontract, without alternation, and no other clause shall be used to enlarge or diminish the Government's or the Contractor's rights in that subcontractor data or computer software which is required for the Government.

(2) Technical data required to be delivered by a subcontractor shall normally be delivered to the next higher-tier Contractor. However, when there is a requirement in the prime contract for data which may be submitted with limited rights pursuant to subparagraph (b)(2) above, a subcontractor may fulfill such requirement by submitting such data directly to the Government rather than through the prime Contractor.

(3) The Contractor and higher-tier subcontractors will not use their power to award subcontracts as economic leverage to acquire rights in technical data or computer software from their subcontractors for themselves.

(End of clause)

252.227-7026 Deferred delivery of technical data or computer software.

As prescribed at 227.412(n), insert the following clause:

Deferred Delivery of Technical Data or Computer Software (Nov. 1974)

The Government shall have the right to require, at any time during the performance of this contract, within two (2) years after either acceptance of all items (other than data or computer software) to be delivered under this contract or termination of this contract, whichever is later, the delivery of any technical data or computer software item identified in this contract as "deferred delivery" data or computer software. The obligation to furnish such technical data required to be prepared by a subcontractor and pertaining to an item obtained from him shall expire two (2) years after the date Contractor accepts the last delivery of that item from that subcontractor for use in performing this contract.

(End of clause)

252.227-7027 Deferred ordering of technical data or computer software.

As prescribed at 227.412(o), insert the following clause:

Deferred Ordering of Technical Data or Computer Software (Nov. 1974)

In addition to technical data or computer software specified elsewhere in this contract to be delivered hereunder, the Government may, at any time during the performance of this contract or within a period of three (3) years after acceptance of all items (other than technical data or computer software) to be delivered under this contract or the termination of this contract, order any technical data or computer software (as defined in the "Rights in Technical Data and Computer Software" clause of this contract) generated in the performance of this contract or any subcontract hereunder. When such technical data or computer software is ordered, the Contractor shall be compensated for converting the data or computer software into the prescribed form, for reproduction and delivery. The obligation to deliver such technical data of a subcontractor and pertaining to an item obtained from him shall expire three (3) years after the date the contractor accepts the last delivery of that item from that subcontractor under this contract. The Government's rights to use said data or computer software shall be pursuant to the "Rights in Technical Data and Computer Software" clause of this contract.

(End of clause)

252.227-7028 Requirement for technical data certification.

As prescribed at 227.412(p), insert the following provision:

Requirement for Technical Data Certification (Apr. 1974)

The offeror shall submit with his offer a certification as to whether he has delivered or is obligated to deliver to the Government under any contract or subcontract the same or substantially the same technical data included in his offer; if so, he shall identify one such contract or subcontract under which such technical data was delivered or will be delivered, and the place of such delivery.

(End of provision)

252.227-7029 Identification of technical data.

As prescribed at 227.412(q), insert the following clause:

Identification of Technical Data (Mar. 1975)

Technical Data (as defined in the "Rights in Technical Data and Computer Software" clause of this contract) delivered under this contact shall be marked with the number of this contract, name of Contractor, and name of any subcontractor who generated the data.

(End of clause)

252.227-7030 Technical data—withholding of payment.

As prescribed at 227.412(r), insert the following clause:

Technical Data—Withholding of Payment (Jul. 1976)

(a) If "Technical Data" (as defined in the clause of this contract entitled "Rights in Technical Data and Computer Software"), or

any part thereof, specified to be delivered under this contract, is not delivered within the time specified by this contract or is deficient upon delivery (including having restrictive markings not specifically authorized by this contract), the Contracting Officer may until such data is accepted by the Government, withhold payment to the Contractor of ten percent (10%) of the total contract price or amount unless a lesser withholding is specified in the contract. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Contractor's failure to make timely delivery or to deliver such data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Contractor.

(b) After payments total ninety percent (90%) of the total contract price or amount and if all technical data specified to be delivered under this contract has not been accepted, the Contracting Officer may, withhold from further payment such sum as he considers appropriate, not exceeding ten percent (10%) of the total contract price or amount unless a lesser withholding limit is specified in the contract.

(c) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract.

(End of clause)

252.227-7031 Data requirements.

As prescribed at 227.412(s), insert the following clause:

Data Requirements (Apr. 1972)

(a) Data means recorded information, regardless of form or characteristics.

(b) The Contractor is required to deliver only the data items listed on the DD Form 1423 (Contract Data Requirements List) and data items identified in and deliverable under any contract clause of FAR Subpart 52.2 and Subpart 252.2 made a part of the contract.

(End of clause)

252.227-7032 Rights in technical data and computer software (foreign).

As prescribed at 227.412(t), insert the following clause:

Rights in Technical Data and Computer Software (Foreign) (Jun. 1975)

The United States Government may duplicate, use, and disclose in any manner for any purposes whatsoever, including delivery to other governments for the furtherance of mutual defense of the United States Government and other governments, all technical data including reports, drawings and blueprints, and all computer software, specified to be delivered by the Contractor to the United States Government under this contract.

(End of clause)

252.227-7033 Rights in shop drawings.

As prescribed at 227.412(u), insert the following clause:

Rights in Shop Drawings (Apr. 1966)

(a) Shop drawings for construction means drawings, submitted to the Government by the Construction Contractor, subcontractor or any lower tier subcontractor pursuant to a construction contract, showing in detail (i) the proposed fabrication and assembly of structural elements and (ii) the installation (i.e., form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

(End of clause)

[FR Doc. 84-25957 Filed 9-28-84; 8:45 am]
BILLING CODE 3810-01-M

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48 CFR Ch. 2

[Defense Acquisition Circular 84-2]

DoD FAR Supplement

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: Defense Acquisition Circular (DAR) 84-2 amends the DoD FAR Supplement with respect to Certificates of Appointment; synopses; design to cost; industrial preparedness production planning; debarment, suspension, and ineligibility; acquisition and distribution of commercial products; use of Optional Forms 347 and 348 for small purchases; procurement of parts; special contracting methods; independent research and development (IR&D) and bid and proposal (B&P) costs; contract administration; value engineering; pricing adjustment; profit; set-asides for small business; and special termination costs.

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT:
J. Brannan, Director, Defense Acquisition Regulatory Council, OUSDRE(AM) (DARS), OUSDRE(M&RS), Room 3D139, Pentagon, Washington, D.C. 20301-3062, telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION:

Background

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

The initial publication of the DoD FAR Supplement was contained in Part II, Volume 49, No. 59, of the **Federal Register** (49 FR 11302) of March 26, 1984.

Interested parties may submit proposed revisions to this Supplement directly to the DAR Council.

List of Subjects in 48 CFR Ch. 2

Government procurement.

James T. Brannan,
Director, Defense Acquisition Regulatory Council.

Defense Acquisition Circular

[Number 84-2]

March 5, 1984

All DoD Supplement and other directive material contained in this Defense Acquisition Circular is effective April 1, 1984.

Defense Acquisition Circular (DAC) 84-2 amends the DoD FAR Supplement and prescribes procedures to be followed. The following is a summary of the amendments and procedures:

Item I—Certificates of Appointment

An additional provision (201.603-3, Appointment) is added to ensure that contracting officer warrants issued under the Armed Services Procurement Regulation and Defense Acquisition Regulation are continued in full effect after transition to the Federal Acquisition Regulation.

Item II—Synopses

A revision is made to 205.202(v) to correct references to the FAR. Also, 205.205(c)(2) is revised to remove the word "not" (a publication error) from the first line of this subparagraph.

Item III—Design to Cost

Subparagraph 207.103(f)(1)(i)(B) is revised to include a reference to DoD Directive 4245.3, "Design to Cost," which replaced the previously cited DoD Directive 5000.28 on April 6, 1983.

Item IV—Industrial Preparedness Production Planning

A new section 208.070 has been established to provide the general policy statement on the Industrial Preparedness Production Planning Program which was previously found at 1-2200 and 1-2206 of the DAR.

Item V—Debarment, Suspension, and Ineligibility

Section 209.405 is revised by adding a new paragraph (c) which clearly establishes that a debarred or suspended contractor (including an agent or individual) is excluded from conducting business with the Department of Defense as an agent or representative of another contractor during the period of disqualification. The addition also conforms with FAR 9.403 which defines a contractor, in part,

as "any individual or other legal entity that . . . conducts business with the Government as an agent or representative of another contractor."

Item VI—Acquisition and Distribution of Commercial Products

Coverage is added to Part 211 pertaining to the acquisition of commercial products.

Item VII—Use of Optional Forms 347 and 348 for Small Purchases

Subsection 213.505–2 of the DoD FAR Supplement, Agency Order Forms in Lieu of Optional Forms 347 and 348, has been changed to make it clear that the DD Form 1155 and the Standard Form 44 are the only forms authorized for use in accomplishing small purchases. Further, it should be noted that the use of the word "should" in FAR 13.505–2(b)(1) means that the guidance contained therein is not mandatory. For example, the "Termination for Convenience" clause in DD Form 1155r does not apply unless the appropriate block is checked for Additional General Provisions. Clauses not prescribed in accordance with 213.502–2 of the DoD FAR Supplement shall not be used.

Item VIII—Procurement of Parts

A new subparagraph 217.7203(e), pertaining to limitations on price increases (spare parts), has been added to the current coverage on procurement of parts, pursuant to the 1984 DoD Authorization Act, Public Law 98–94.

Item IX—Special Contracting Methods

A new Subpart 217.74, Contracts with Requirements for Provisioned Items, is added to incorporate the coverage formerly found in DAR 4–300.

Item X—Independent Research and Development (IR&D) and Bid and Proposal (B&P) Costs

Coverage is added revising the threshold requiring advance agreements for IR&D and B&P Costs. Also added is a subparagraph pertaining to the "potential relationship" test for IR&D and B&P Costs allocated to DoD contracts.

Item XI—Contract Administration

Subpart 242.3 is corrected at 242.302(a)(S–71) to include language conforming to prior DAR coverage, 1–406(c)(lxiii).

Item XII—Value Engineering

In accordance with Secretary of Defense memorandum of 29 August 1983, Subject: Spare Parts Acquisition, 248.201(a) has been added to require inclusion of a Value Engineering Incentive clause in all contracts for spare parts and repair kits, for other than standard commercial parts, of $25,000 or more.

Item XIII—Pricing Adjustment

Changes are made to 215.804–8 and 252.215–7000 to correct coverage in the supplement and to eliminate duplicate coverage.

Item XIV—Profit

Editorial corrections are made to the coverage at 215.902 to change the word "equitable" to "inequitable" on the fourth line in subparagraph (a)(1)(ii), and to include in the same subparagraph (ii), coverage which was inadvertently omitted.

Item XV—Set-Asides for Small Business

Section 219.501 is amended to clarify coverage concerning acquisition of A&E services (military construction projects over $85,000), and to conform its content to the OUSDRE(AM) memorandum of December 22, 1983, Subject: Architectural and Engineering Services. Related changes are made to 219.801 and 236.600.

Item XVI—Special Termination Costs

Subparagraph 249.7003(a)(2) is revised to correct an omission in the supplement which resulted in the loss of criteria for determining when a contract would contain the special termination cost clause. This revision essentially conforms the language to that previously stated in DAR 8–712.

Item XVII—Editorial Correction

Section 207.604 is amended to reflect the addition of the format referenced in 207.604(f)(1) which was omitted from the 1984 Edition of the DoD FAR Supplement.

Adoption of Amendments

Therefore, the DoD FAR Supplement contained in 48 CFR Chapter 2 is amended as set forth below.

1. The authority citation for Chapter 2 reads as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

PART 201—FEDERAL ACQUISITION SYSTEM

201.304 [Amended]

2. Section 201.304 is amended by removing the reference "(a)" in paragraph (b)(2) and inserting in its place "FAR 1.304(a)."

3. Section 201.603–3 is added to read as follows:

201.603–3 Appointment.

Certificates of Appointment which were issued under the purview of the Armed Services Procurement Regulation and its successor, the Defense Acquisition Regulation, will have the same effect as if they had been issued under the Federal Acquisition Regulation.

PART 205—PUBLICIZING CONTRACT ACTIONS

4. Section 205.202 is amended by revising paragraph (v) to read as follows:

205.202 Exceptions.

The following need not be publicized in the Synopsis:

* * * * *

(v) Procurement to be made by an order placed under an existing contract covered by FAR 16.5 or under a mandatory Federal Supply Schedule (see FAR 38.101(b));

* * * * *

5. Section 205.205 is amended by revising paragraph (c)(2) to read as follows:

205.205 Special situations.

* * * * *

(c)(2) A notice of procurements with fees expected to be less than $10,000, or to be made outside the United States, its possessions, or Puerto Rico, shall be displayed at the contracting office and need not be publicized in the *Commerce Business Daily.*

* * * * *

PART 207—ACQUISITION PLANNING

6. Section 207.103 is amended by revising paragraph (f)(1)(i)(B) to read as follows:

207.103 Agency-head responsibilities.

* * * * *

(f)(1) *Design-to-cost criteria and thresholds.*

(i) * * *

(B) To the acquisition of systems, subsystems, and components below the thresholds for major defense systems to the extent prescribed in DoD 4245.3, "Design to Cost", and in accordance with Departmental procedures.

* * * * *

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

7. Section 208.070 is added to read as follows:

208.070 Industrial preparedness production planning.

(a) *Scope of subpart.* This subpart establishes uniform procurement policy guidance and procedures for the Department of Defense in planning with industry for the establishment and retention of industrial base capability essential to national defense for production during periods of national emergencies.

(b) *Definitions.*

"Emergency (National)" means a condition declared by the President or Congress by virtue of powers previously vested in them which authorizes certain emergency actions to be undertaken in the national interest. Actions to be taken may include partial or total mobilization of national resources.

"Industrial Base" means that part of the total privately-owned and Government-owned industrial production and maintenance capacity of the United States, its territories and possessions, as well as capacity located in Canada, expected to be available during emergencies to manufacture and repair items required by the military services.

"Industrial Preparedness Planning" means planning designed to maintain an adequate industrial base to support DoD requirements for selected essential military items in a national emergency.

"Planned (or Planning) Item" means any item selected for industrial preparedness planning under the criteria of DoD Instruction 4005.3, "Industrial Preparedness Production Planning Procedures."

"Planned Producer" means an industrial firm which has indicated its willingness to produce specified military items in a national emergency by completing an Industrial Preparedness Program Production Planning Schedule (DD Form 1519).

(c) *General.* The Industrial Preparedness Production Planning (IPPP) program is conducted jointly among DoD components and industry to provide a means for correlating industrial capabilities and military requirements for the orderly retention, improvement, and rapid application of industrial capability to military production during an emergency.

(d) *Policy.*

(1) The Department of Defense will conduct Industrial Preparedness Production Planning to assure capability for the sustained production of essential military items to meet the needs of the U.S. and Allied Forces during an emergency.

(2) In planning for the production of selected items, preference shall be given to the use of privately-owned facilities, so as to minimize the need for Government investment. Government-owned production facilities will be included in the industrial base only when:

(i) Private industry is unable or unwilling to provide the facilities necessary to support DoD requirements; or

(ii) They are determined to be necessary for reasons of national security or to assure a quick response capability to meet fluctuating or job lot demands.

(3) Current procurements will be integrated, when applicable, with Industrial Preparedness Production Planning requirements.

(e) *Limitations.*

(1) Industrial Preparedness Production Planning will be limited to those weapon systems and items selected by the Military Departments and DLA in accordance with policy established in DoDI 4005.3, "Industrial Preparedness Production Planning Procedures."

(2) Industrial Preparedness Production Planning with foreign sources, except Canada, is prohibited.

(f) *Existing authority affecting the industrial base.* Specific authority under current contracting procedures to accomplish industrial planning actions includes the following:

(1) Leasing of Government-owned property to planned emergency producers under the authority of the Military Leasing Act of 1947 as codified in 10 U.S.C. 2667;

(2) Purchases in the interest of national defense or industrial preparedness (see FAR 15.217);

(3) Obtaining Jewel Bearings, Miniature and Instrument Ball Bearings, Precision Components for Mechanical Time Devices and High Purity Silicon (see FAR 8.2, and 208.73, 208.74 and 208.75 of this supplement).

(4) Use of multiyear contracts (see FAR 17.1 and 215.217);

(5) Providing Government production and research property to contractors (see FAR 45.302-1); and

(6) Preservation of domestic industrial base (see FAR Part 25).

(g) *Applicable procedures.* To assure the most effective planning approach, each DoD component will determine the specific type and depth of Industrial Preparedness Production Planning for each planning item. One or more of the authorities listed above may be appropriate to accomplish a particular planning action. Specific procedures as applicable to a current procurement action include:

(1) Solicitation of Planned Producers in all procurements over $10,000 of items for which they have signed industrial preparedness agreements (but see FAR Subpart 19.5 and 220.7003 of this supplement as pertain to partial set-asides for small business and labor surplus);

(2) Use negotiation procedures under FAR 15.217 to effect an industrial planning requirement; and

(3) When determined necessary by the applicable DoD component, award of individual service contracts may be awarded for accomplishing industrial planning efforts for selected essential military items. These efforts may include but are not limited to the maintenance of Government-owned industrial facilities (real and personal property); including production data packages; and

(4) When it is determined necessary to contract for an Industrial Preparedness Production Planning effort, and an item selected for such planning is being procured, a line item for the planning services and data will be included in the contract schedule. The schedule shall describe in detail the required end items of supply, the specific services, and data by separate line items (see 204.71).

PART 209—CONTRACTOR QUALIFICATIONS

8. Section 209.405 is amended by adding paragraph (c) to read as follows:

209.405 Effect of listing.

* * * * *

(c) Debarred or suspended contractors are also excluded from conducting business with the Government as agents or representatives of other contractors.

9. A new Part 211 is added to read as follows:

PART 211—ACQUISITION AND DISTRIBUTION OF COMMERCIAL PRODUCTS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

211.002 Policy.

Contracting activities may use purchase descriptions which allow offerors to furnish commercial products and allow the Government to use commercial distribution systems whenever these products or distribution systems satisfy the Government's needs, but only if not prohibited by 211.005(b) below.

211.005 Acceptability.

When using funds appropriated by the 1983 DoD Supplemental Appropriation Act or the 1984 DoD Appropriations Act, no solicitation shall impose a requirement that in order to be eligible

to submit a bid or an offer on a contract to be let for the supply of commercial or commercial-type products, a small business concern must demonstrate that its product is accepted in the commercial market (except to the extent that may be required to evidence compliance with the Walsh-Healey Public Contracts Act) or satisfy any other prequalification to submitting a bid or an offer for the supply of any such product. Under this prohibition, solicitations may not exclude small business concerns from being considered for award, whether or not former suppliers under detailed specifications, solely because the product of the small business does not meet the definition of a "commercial product" or "commercial-type product" in FAR 11.001.

PART 213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

10. Section 213.505–2 is amended by revising paragraph (S–70) to read as follows:

213.505–2 Agency order forms in lieu of Optional Forms 347 and 348.

(S–70) Negotiated purchases of supplies, nonpersonal services and construction not in excess of $25,000 may be effected by using DD Form 1155, Order for Supplies or Services/Request for Quotations, and its ancillary forms. (Optional Forms 347 and 348 are not authorized for use in the Department of Defense.) Standard Form 44, Purchase Order-Invoice-Voucher, may also be used for material and nonpersonal services purchases not in excess of $2,500.

* * * * *

PART 215—CONTRACTING BY NEGOTIATION

11. Section 215.804–8 is amended by revising paragraph (S–70) and removing paragraph (S–71) as follows:

* * * * *

215.804–8 Contract clauses.

* * * * *

(S–70) The clause at 252.215–7000, Aggregate Pricing Adjustment, shall be included in all solicitations and contracts which include a clause at FAR 52.215–23, FAR 52.215–24, or at FAR 52.215–25. The Contracting Officer may insert a lesser dollar amount, if appropriate.

12. Section 215.902 is amended by revising paragraph (a)(1)(ii) to read as follows:

215.902 Policy.

(a)(1) * * *

(ii) If the contracting officer makes a written determination that the pricing situation meets any of the circumstances set forth above and that application of the manufacturing weighted guidelines will result in an inequitable profit objective, other methods for establishing the profit objective may be used. These methods shall be supported in a manner similar to that used in the weighted guidelines (profit factor breakdown and documentation of profit objectives); however, investment or other factors that would not be applicable to the contract shall be excluded from the profit objective determination. It is intended that the methods will result in profit objectives for noncapital intensive contracts that are below those generally developed for capital intensive contracts.

PART 217—SPECIAL CONTRACTING METHODS

13. Section 217.7203 is amended by adding paragraph (e) to read as follows.

§ 217.7203 Procurement of parts.

* * * * *

(e) *Limitations on price increases.*

(1) Pursuant to the 1984 DoD Authorization Act, Pub. L. 98–94, and except as provided in (e)(2) below, the contracting officer shall not award a contract for any centrally managed spare or replacement part when the price of such part has increased by 25 percent or more at any time within the most recent 12-month period.

(2) The purchase of such part is permitted notwithstanding a price increase of 25 percent or more provided the contracting officer certifies in writing to the head of a contracting activity before the purchase is made that:

(i) The contracting officer has evaluated the price of such part and concluded that the increase in the price of such part is fair and reasonable, or

(ii) The national security interests of the United States require that such part be purchased despite the increase in price of such part.

(3) If necessary to augment a price history for the requirements of this paragraph (e), purchasing offices may require that vendors supply price and quantity data for previous orders of the spare or replacement part, if any, as part of their response to a solicitation.

(4) The fact that a particular price has not increased by 25 percent in no way relieves the contracting officer of the responsibility for obtaining a fair and reasonable price.

14. A new Subpart 217.74 (sections 217.7400 through 217.7403) is added to read as follows:

Subpart 217.74—Contracts with Requirements for Provisioned Items

217.7400 Scope of subpart.

This subpart sets forth contract requirements and procedures to be followed with respect to the provisioning process.

217.7401 Definitions.

"Provisioned Item" means any support-type item selected throught provisioning procedures to support an end item or equipment. Support-type items include (but are not limited to) spares, repair parts and special support equipment.

"Provisioned Items Order" means an unpriced order issued under a contract which sets forth the Government's requirements for provisioned items. (Provisioned items for which firm prices have been established are procured by supplemental agreement or by separate contract.)

"Provisioning Activity" means that organization of a using Military Service, or that organization delegated by a using Service, which is resonable for the selection of, and the determination of requirements for, provisioned items.

"Provisioning Procedure" means the contract specification which sets forth the general requirements governing the acquisition of provisioned items and related documentation. It includes various optional provisioning techniques and formats for provisioning lists and data which the Government may elect to use on a particular contract. It also prescribes the sequence and timing of events to be followed and the responsibilities of the Government and the contractor in the provisioning process.

"Provisioning Requirements Statement" means the contractual document by which the Government notifies the contractor of the specific provisioning requirements selected from available options, as applicable to a particular contract. It normally includes instructions such as the provisioning method to be used; the range of provisioning technical documentation and data including the form and schedule of submission, number of copies and distribution instructions; the type and location of provisioning conferences; sample article requirements; the delivery schedule and packaging and marking requirements for provisioned items, and contractor requirements for provisioning screening.

"Provisioning Technical Documentation" means the documentation furnished by contractors to a provisioning activity for use in the identification, determination of initial requirements and cataloging of items to be procured. It generally includes provisioning lists, priced spare parts lists, and EDP cards and tapes. Engineering drawings or sketches supported by item descriptions (which include technical characteristics) are referred to as supplementary provisioning technical documentation.

217.7402 Procurement requirements.

(a) *Contract requirements.* Contracts which contain Provisioning Procedures shall specify the functions of the provisioning process to be performed under the contract and the activities responsible for performing these functions. Further, such contracts shall:

(1) Include a Provisioning Requirements Statement or specify a time (e.g., days after award) for its incorporation in the contract by contract modification; revisions to the Provisioning Requirements Statement shall also be incorporated by contract modification;

(2) Provide on the DD Form 1423 a time schedule or milestones for the delivery of provisioning technical documentation or for the subsequent incorporation thereof in the contract by contract modification;

(3) Require a flow-down of the appropriate provisioning technical documentation requirement in subcontracts and purchase orders where the documentation is to be prepared by subcontractors;

(4) Specify, if applicable, procedures for contractor interim release of long lead time items and include ordering and funding instructions for such items. (Such instructions shall require the contractor to advise the PCO or Provisioning activity within 30 days as to the items released, their estimated cost and the effective date of release.);

(5) Provide a time-frame for contractors to furnish price quotations for Provisioned Items Orders, which normally shall not exceed 60 days from receipt of the order;

(6) Specify exhibit identifiers applicable to the contract line/subline items (see 204.7105);

(7) Specify the activity designated to issue Provisioned Items Orders, i.e., PCO, Provisioning Activity or ACO. (When it is anticipated that more than one department will place Provisioned Items Orders against the contract, the requirements for provisioned items of each department shall be stated as separate contract line items.);

(8) Include procedures for processing changes in quantities of items ordered, including cancellations.

(b) *Issuance of provisioned items orders.* Provisioned Items Orders shall be issued on Standard Form 30, Amendment of Solicitation/Modification of Contract, and numbered in accordance with 204.7004–3.

(1) The term PROVISIONED ITEMS ORDER, in capital letters and underscored, shall be entered in Block 14.

(2) The appropriate exhibit identifier(s) for all attached exhibits shall be entered in Block 14.

(3) The order shall obligate funds to cover the estimated price of the items being ordered. Individual estimated prices will be shown for each exhibit line item on the copy(ies) of the Provisioned Items Order to be provided to the accounting and payment office(s).

(4) The Provisioned Items Order, or other form of contract modification, shall be used to effect decreases in quantities of items ordered, including cancellation.

(5) Upon receipt of advice from the contractor, as provided in (a)(4) above, the contracting officer will normally within 30 days issue an order covering the interim released items or notify the contractor to cancel the items.

(6) Orders shall be given the same distribution as the basic contract (see FAR 4.2) except that the distribution of voluminous spares/repair parts exhibits may be curtailed to the extent determined by the PCO and provided that the required copies, complete with exhibits, are forwarded to the Contract Administration Office and the payment office.

217.7403 Contract administration requirements.

(a) *Provisioning conferences.* The PCO or Provisioning Activity shall give the Contract Administration Office (CAO) timely notice of conferences on provisioning matters. The CAO shall: (1) Insure that the contractor understands the basic provisioning requirements of the contract and that all applicable publications are available to the contractor; (2) coordinate, as necessary, with the contractor and the PCO or Provisioning Activity to determine the types of and schedules for provisioning conferences required, e.g., guidance meetings, long lead time items conferences, source coding meetings, etc.; and (3) assist, if required, in the development of conference agenda. When requested by the PCO or Provisioning Activity or when otherwise considered necessary for effective contract administration, the CAO shall be represented at provisioning conferences.

(b) *Monitoring by the Contract Administration Office.* The CAO shall monitor each contract which contains requirements for provisioning technical documentation and provisioned items, as follows:

(1) Prepare and maintain a check list of events in the provisioning process, including schedules for use in monitoring such events;

(2) Review contractor progress in the preparation of provisioning technical documentation and, on request of the PCO or Provisioning Activity, inspect such documentation for format and content;

(3) Insure that the contractor invokes the prime contract provisioning technical documentation requirements in subcontracts and purchase orders when the subcontractor is charged with preparation of any documentation;

(4) Advise the PCO or Provisioning Activity, in accordance with FAR 42.11 of provisioning technical documentation delivery delays or other related problems;

(5) Insure contractor compliance with the contract requirements relative to the assignment of National Stock Numbers;

(6) Insure that the contractor adheres to the criteria established by the contract for the release of long lead time items.

(c) *Negotiating and executing supplemental agreements.* The ACO shall accomplish negotiation of prices and execution of supplemental agreements within 180 days after receipt of the Provisioned Items Order *provided* that, when time in excess of 60 days is allowed for submission of price quotations (see 217.7402(a)(5)), the 180 day period shall be adjusted accordingly. He also shall maintain records to reflect the status of Provisioned Items Orders as to adequacy of obligated funds, due dates for price quotations, and actions taken to obtain additional funds or deobligate excess funds.

(1) In the process of negotiating prices, the ACO shall:

(i) Determine the acceptability of pricing methods proposed by the contractor;

(ii) Verify that items and quantities contained in proposals are identical to those ordered, clarifying, as appropriate, any variances with the PCO or Provisioning Activity; and

(iii) Avail himself of data from similar contracts with the contractor, making use of audit records and information available from the PCO or Provisioning Activity. Price negotiation policies and

techniques set forth in FAR 15.8 shall be followed, including the record of price negotiations required by FAR 15.808.

(b) When delivery dates are not proposed by the PCO or Provisioning Activity or, when proposed delivery dates cannot be met by the contractor, the ACO shall coordinate the negotiated schedule with the PCO or Provisioning Activitity prior to the execution of the supplemental agreement.

(c) Supplemental Agreements shall be used to increase quantities of priced items and to definitize Provisioned Items Orders. Supplemental Agreements which definitize Provisioned Items Orders may incorporate multiple orders, or portions of orders when such action is not inconsistent with the provisions of the applicable contract.

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

15. Section 219.501 is amended by adding paragraphs (S–70), (S–71), (S–72), and (S–73) to read as follows:

219.501 General.

* * * * *

(S–70) Architectural and engineering services and construction design contracts in the amount of $85,000 and over for military construction projects shall not be set-aside for small business. Indefinite delivery and indefinite quantity contracts for architectural and engineering services that are set-aside for small business shall not exceed, for the total of orders placed under the contract, $85,000.

(S–71) Every proposed acquisition for construction, including maintenance and repairs, in excess of $5,000 and under $2 million (except dredging under $1 million) shall be considered individually, as though the Small Disadvantaged Business Utilization Specialist had initiated a set-aside request, and the procedures of DoD FAR Supplement 219.505 shall apply.

(S–72) Every proposed acquisition of $2 million or more for construction or $1 million or more for dredging, shall be considered on an individual acquisition basis under FAR Subpart 19.502–2.

(S–73) Every proposed acquisition for A–E services and construction design under $85,000 for military construction projects shall be considered individually, as though the Small and Disadvantaged Business Utilization Specialist had initiated a set-aside request, and the procedure of DoD FAR Supplement 219.505 shall apply.

219.505 [Amended]

16. Section 219.505 is amended by correctly designating paragraphs (d), (e), and (f) as paragraphs (c), (d) and (e).

17. Section 219.801 is added to read as follows:

219.801 General.

(b)(1) Architectural and engineering services and construction design contracts in the amount of $85,000 and over for military construction projects shall not be awarded under the 8(a) Program.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

18. Section 231.205–18 is amended by adding paragraphs (c)(1) and (2) to read as follows:

231.205–18 Independent Research and Development and Bid and Proposal Costs.

* * * * *

(c) * * *

(1) For DoD contracts, the amount of $4,400,000 is to be substituted for the dollar thresholds in FAR 31.205–18(c)(1)(i) and FAR 31.205–18(c)(1)(v) and the amount of $550,000 is to be substituted for the dollar thresholds in FAR 31.205–18(c)(1)(ii).

(2) The total amount of IR&D/B&P costs allocated to DoD contracts shall not exceed the total of expenditures for IR&D/B&P projects with a potential relationship to a military function or operation. For contracts which do not provide for cost determinations on a historical basis, the requirement will be considered to have been met if the estimated IR&D/B&P costs allocated to the contract do not exceed its proportionate share of the total estimated costs of IR&D/B&P with a potential relationship to a military function or operation. IR&D/B&P costs will be considered to satisfy the potential relationship requirement when the contractor can demonstrate that the effort under a proposed contract or grant would have a potential relationship to a military function or operation. The potential relationship of IR&D/B&P will be determinated by the contracting officer, and the results of the determination will be made available to the contractor. For additional allowability requirements affecting Foreign Military Sales (FMS) contracts, see 225.7304.

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

19. Section 236.600 is added to read as follows:

236.600 Scope of subpart.

Architectural and engineering services and construction design contracts in the amount of $85,000 and over for military construction projects shall not be set-aside for small business. Those under $85,000 shall be considered individually, as though the Small and Disadvantaged Business Utilization Specialist had initiated a set-aside request, and the procedures of FAR Subpart 19.505 shall apply.

PART 237—SERVICE CONTRACTING

237.7001 [Amended]

20. Section 237.7001(c) is amended by adding "(FSR)" after the words "Field Service Representatives."

PART 242—CONTRACT ADMINISTRATION

21. Section 242.302 is amended by revising paragraph (a)(S–71) to read as follows:

242.302 Contract administration functions.

(a) * * *

(S–71) Perform post award surveillance of contractor progress toward demonstration of Cost/Schedule Control Systems to meet the Cost/Schedule Control Systems Criteria, provide assistance in the review and acceptance of contractors' Cost/Schedule Control Systems, and perform post acceptance surveillance to ensure continuing operation of contractors' accepted systems. The contracting officer shall insert the clauses at 252.242.7001, Notice of Cost/Schedule Control Systems, and 252.242.7002, Cost/Schedule Control Systems, when required by DoDI 7000.2.

22. A new Part 248 is added to read as follows:

PART 248—VALUE ENGINEERING

Subpart 248.2—Contract Clauses

248.201 Clauses for supply or service contracts.

(a) *General.* Supply or service contracts for spare parts and repair kits of $25,000 or more, for other than standard commercial parts, shall contain a VE incentive clause (see FAR 48.201(b)).

(5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301)

PART 249—TERMINATION OF CONTRACTS

23. Section 249.7003 is amended by

revising paragraph (a)(2) to read as follows:

249.7003 Special termination costs.

(a) * * *

(2) The contract is estimated to require total RDT&E financing in excess $25 million or total production investment in excess of $100 million;

* * * * *

270.604 Contractor documentation.

SUGGESTED PURCHASE/LEASE ANALYSIS FORMAT

ADP System

As of

Date

ADPS Components	Qty.	Vendor	Avg. Monthly Rental (A)/ Lease (B)	Instal. Date	Useful Life (C)	Orig. Purchase Price	Equity (D)	(7–8) Current Purchase Price	Other Vendors Purchase Price	Residual Value (E)	(9–11 or 10–11) Owner Depreciation Costs	Other Costs (F)	(12+13) Total Owner Costs	(4×6) Total Rental/ Lease Costs (G)	(15–14) Differential (H)
	2	3	4 1	5	6	7	8	9	10	11	12	13	14	15	16

(A) Includes projected extra shift where necessary.
(B) Includes other costs (taxes, maintenance, insurance, etc.)
(C) Documentation must be provided and attached per ASPR 3–1100.3 or 215–205.48, as applicable.
(D) Accrued equity on rented/leased equipment (accumulated rental credits).
(E) Residual value forecast at end of useful life.
(F) Includes taxes, maintenance, insurance, selling costs, lease cancellation costs, etc.
(G) When considering annual justification for retention of existing ADPE capacity and the need to continue leasing, only the remaining rental costs to be paid under the lease should be shown.
(H) If lease is favorable, bracket differential figures.

[FR Doc. 84–25959 Filed 9–28–84; 8:45 am]

BILLING CODE 3810–01–M

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

24. Section 252.215–7000 is revised to read as follows:

252.215–7000 Aggregate pricing adjustment.

As prescribed at 215.804–8 (S–70), insert the following clause:

Aggregate Pricing Adjustment (Apr 1984)

In determining whether a pricing adjustment is expected to exceed $500,000, the term "pricing adjustment" shall mean "the aggregate increases and/or decreases in cost plus applicable profits".

(End of clause)

25. Section 270.604 is amended by adding the following table at the end of the section.

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48 CFR Ch. 2

[Defense Acquisition Circular 84–3]

DoD FAR Supplement

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: Defense Acquisition Circular (DAC) 84–3 amends the DoD FAR Supplement with respect to Federal Supply Schedules; bill of materials; notice of radioactive materials; contract clauses and provisions (matrix listings); and patents, data and copyrights.

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: J. Brannan, Director, Defense Acquisition Regulatory Council, OUSDRE(AM) (DARS), OUSDRE(M&RS), Room 3D139, Pentagon, Washington, D.C. 20301, telephone (202) 697–7266.

SUPPLEMENTARY INFORMATION:

Background

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

The initial publication of the DoD FAR Supplement was contained in Part II, Volume 49, No. 59, of the **Federal Register** (49 FR 11302) of March 26, 1984.

Interested parties may submit proposed revisions to this Supplement directly to the DAR Council.

List of Subjects in 48 CFR Chapter 2

Government procurement.

James T. Brannan,

Director, Defense Acquisition Regulatory Council.

Defense Acquisition Circular

[Number 84–3]

March 15, 1984

All DoD FAR Supplement and other directive material contained in this Defense Acquisition Circular is effective April 1, 1984.

Defense Acquisition Circular (DAC) 84–3 amends the DoD FAR Supplement and prescribes procedures to be followed. The following is a summary of the amendments and procedures:

Item I—Federal Supply Schedules

The list of Federal Supply Schedules mandatory for use (formerly at DAR 5–102.3) has been updated and replaces the list now appearing at 208.404–70.

Item II—Bill of Materials

Subsection 210.004–70, Requiring Bills of Material, has been added to the coverage pertaining to Specifications, Standards and Other Purchase Descriptions. The coverage now conforms to former DAR coverage. Also added is the clause at 252.210–7004, entitled Bill of Material.

Item III—Notice of Radioactive Materials

Section 223.303 has been modified to include coverage requiring the clause now placed at 252.223–7000, Notice of Radioactive Materials. This material was inadvertently omitted from the 1984 Edition of the DoD FAR Supplement.

Item IV—Contract Clauses and Provisions (Matrix Listings)

Subparagraph 252.101(e)(2)(ii) is added to provide clarifiction in those instances where FAR Matrix listings contain direction for location of a provision or clause that is contrary to the UCF coverage at 214.201 and 215.406.

Item V—Patents, Data, and Copyrights

Part 227 has been revised to include a "flowdown" provision to subcontractors for the clause at FAR 52.227–11. Portions of Part 236, Construction and Architect-Engineer Contracts, Subpart 237.74, Communication Services, and related clauses have been deleted in light of coverage in the new Part 27, Patents, of the FAR.

Adoption of Amendments

Therefore, the DoD FAR Supplement contained in 48 CFR Chapter 2 is amended as set forth below.

1. The authority citation for Chapter 2 reads as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202; DoD Directive 5000.35, DoD FAR Supplement 201.301.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Section 208.404–70 is revised to read as follows:

208.404–70 Applicability of listed federal supply schedules.

Supplies and services covered by the Federal Supply Schedules listed herein are mandatory in whole or in part upon some element of the Department of Defense. Some of the Federal Supply Schedules listed include classes unrelated to the Federal Supply Group which indentifies the Schedule. To aid in locating an item in the mandatory Schedules, the classes included in each Schedule have been listed. The Remarks column states exceptions to the mandatory provisions of the Schedule when applicable. (But see 208.470–6 for mandatory use of GSA Term Contracts for maintenance, repair, rehabilitation and reclamation of personal property.) The Schedules should be checked for complete details concerning the exceptions.

Mandatory National.

Schedule identification	FSC class	Schedule title	Remarks
25 I	2520, 2530, and 2540	VEHICULAR EQUIPMENT COMPONENTS—tire chains and clutch facings	
26 II	2610	PNEUMATIC TIRES AND INNER TUBES—Highway, off-highway industrial, pursuit/emergency high speed passenger, and agriculture.	
26 IV A	2630	TIRES—industrial, solid and cushion	
35 IV A	3510	APPLIANCES—household and commercial washing machines, electric; and drying tumblers, electric and gas.	
36 II	3610, and 3615	SPECIAL INDUSTRY MACHINERY—lithographic printing plates (masters) and solutions; spirit duplication, thermal process; printing, duplicating, and bookbinding equipment; and pulverizing, pulping, and shredding machines.	Except Special Item Nos. 51–1, 51–1–1, 51–1–3, 51–2, 51–46, 51–106, 51–107, 51–108, 51–110, 51–111, 51–113, 51–114, 51–125, 51–125–1, and 51–126.
36 IV	3610	SPECIAL INDUSTRY MACHINERY—copying equipment, supplies and services	Except Special Item Nos. 51–43, 51–44, 51–45, 51–52, 51–53, and 51–54.
37 I A	3730	AGRICULTURAL EQUIPMENT—Cattleguards	
37 II A	3750	LAWN AND GARDEN EQUIPMENT—lawn mowers, mowers, shredders, edgers, trimmers, roto-tillers, broadcast spreaders, sprayers, vacuums, sweepers, tractors, and accessories.	
41 I A	4120	AIR CONDITIONING EQUIPMENT—domestic use window units	
41 III A	4110	APPLIANCES—household refrigerator and refrigerator freezers	
41 III B	4110	REFRIGERATION EQUIPMENT—drinking water dispensers, mechanically cooled.	
45 VII A	4520	PLUMBING AND HEATING EQUIPMENT—domestic water heaters, gas and electric.	
45 VIII A	4540	PLUMBING AND SANITATION EQUIPMENT—household garbage disposers, ⅓ and ½ horsepower.	
49 I A	4910 and 4940	MAINTENANCE AND REPAIR SHOP EQUIPMENT—hydraulic jacks, heat guns, auger machines.	
51 I A	5130, 5133, and 5180	HAND AND POWER TOOLS—pneumatic, hydraulic, powder actuated, gasoline engine, and special purpose drill bits.	
51 II A	5130	HAND AND POWER TOOLS—electric	
51 IV	5110, 5120, 5136, 5140, and 5210	HAND AND POWER TOOLS—nonpowered tools	
56 I B	5620	GLASS—safety glass, laminated, for "m" series trucks	
61 I	6140	BATTERIES—6 or 12 volt lead-acid automotive storage	
61 III	6135	BATTERIES—dry cell	Except Index Nos. 5 and 13–22.
62 I	6230	LIGHTING FIXTURES AND LAMPS—household and quarters use	
62 III	6240, 6250, and 6750	ELECTRIC LAMPS—flourescent and incandescent, and fluorescent adapters	
62 and 67	6240 and 6750	LAMPS—electrical and photographic	
66 I B	6650 and 6675	INSTRUMENTS AND LABORATORY EQUIPMENT—electronic distance measuring equipment and magnifiers.	Except Air Force.
66 II A	6630	INSTRUMENTS AND LABORATORY EQUIPMENT—blood analysis systems, dilutors, pipettes, electrophoresis equipment.	Do.
66 II B	6515, 6630, 6640, and 8125	INSTRUMENTS AND LABORATORY SUPPLIES—glass, plastic, and metal laboratory ware; laboratory distillation and demineralizing systems; vena puncture products for blood specimen collection; and prescription bottles.	
66 II C	6630, 6640, and 6650	INSTRUMENTS AND LABORATORY EQUIPMENT—microscopes, centrifuges, pH meters, microtomes, stirrers, shakers, stereoscopes, monoculars, and titrators/titration systems.	
66 II E	6670	INSTRUMENTS AND LABORATORY EQUIPMENT—laboratory balances, precision scales and accessories.	
66 II G	6625	INSTRUMENTS AND LABORATORY EQUIPMENT—graphic recording instruments.	Except Air Force.
66 II J	6625	INSTRUMENTS AND LABORATORY EQUIPMENT—measuring and test instruments.	Do.
66 II H	5915, 5985, and 6625	INSTRUMENTS AND LABORATORY EQUIPMENT—amplifiers, microwave and low frequency instruments, and RF components.	Do.
66 II K	6625	INSTRUMENTS AND LABORATORY EQUIPMENT—power supplies and components.	Do.
66 II L	6625	INSTRUMENTS AND LABORATORY EQUIPMENT—transducers, and servomechanisms.	Do.
66 II M	6625, 6630, and 6650	INSTRUMENTS AND LABORATORY EQUIPMENT—spectrophotometers, densitometers, liquid scintillation systems, multi-channel pulse height analyzers, spectrometers, photometers, and polarograph analysis equipment.	Do.
66 II N	6630, 6635, 6640, and 6650	INSTRUMENTS AND LABORATORY EQUIPMENT—analyzers, chromatographs, colony counters, blood analysis systems dilutors, pipetters, electrophoresis equipment, and image analysis systems.	Do.

Schedule identification	FSC class	Schedule title	Remarks
66 II O	4110, 6530, 6636, and 6640	INSTRUMENTS AND LABORATORY EQUIPMENT—laboratory apparatus, and laboratory and clinical refrigerators and freezers.	
66 II P	6640	INSTRUMENTS AND LABORATORY EQUIPMENT—laboratory and pharmacy furniture.	
66 II S	6630, 6640, and 6670	INSTRUMENTS AND LABORATORY EQUIPMENT—Glassware and Scales	
67 II B	6635, 6750, 6720, and 6740	PHOTOGRAPHIC SUPPLIES—film, chemicals, and photographic paper	
67 IV B	6720, 6730, 6740, 6750, and 6760	MICROPHOTOGRAPHIC EQUIPMENT AND SUPPLIES—cameras, projectors, printers, developing and duplicating equipment, and chemicals, film, and paper.	Except SIN's 21-12-4a, b and c, 21-21, 21-21a, 21-22, 21-22a, 21-40, and 21-41.
68 III E and F	6830	CHEMICALS AND CHEMICAL PRODUCTS—refrigerant fluorocarbons and sulfur hexafluoride.	
68 III G	6830	CHEMICALS AND CHEMICAL PRODUCTS—helium	
68 III H	6830	CHEMICALS AND CHEMICAL PRODUCTS—fire extinguishing fluorocarbons	
71 I A	7105	HOUSEHOLD AND QUARTERS FURNITURE—ranch style	
71 I B	7105	HOUSEHOLD AND QUARTERS FURNITURE—danish style	Except SIN's 29 through 38.
71 I C	7105	HOUSEHOLD AND QUARTERS FURNITURE—traditional style	
71 I D	7105	HOUSEHOLD AND QUARTERS FURNITURE—dormitory and quarters	Except items 1-57 and 92-100.
71 I E	7105	HOUSEHOLD AND QUARTERS FURNITURE—upholstered (performance tested) furniture.	
71 I G	7105	HOUSEHOLD AND QUARTERS FURNITURE—rattan	
71 II A, B, and C	7110	OFFICE FURNITURE—executive traditional, unitized and contemporary, wood	
71 II D	7110	OFFICE FURNITURE—filing cabinets, shelf files, card files, insulated files and card size files (for desk use); file cabinets, tabulating machine card size.	
71 II E	7110	OFFICE FURNITURE—Systems Furniture	
71 II F	7110	OFFICE FURNITURE—Systems Furniture	
71 III A	7110 and 7195	MISCELLANEOUS FURNITURE—classroom, auditorium and theatre seating	
71 III B	7195	MISCELLANEOUS FURNITURE—library, wood or metal	
71 III C	7125	MISCELLANEOUS FURNITURE—storage cabinets for forms and flammable liquids.	
71 III D	7110 and 7125	MISCELLANEOUS FURNITURE—mail sorting and distribution equipment, modular cabinets for high and low density storage, and molded plastic/corrugated storage bins.	
71 III E	7110	MISCELLANEOUS FURNITURE—insulated and uninsulated security filing cabinets, safes, vault doors, and map and plan files.	
71 III F	6530, 7105, 7210, and 7230	MISCELLANEOUS FURNITURE—hospital patient room	Except items 482-7 and 482-8.
71 III H	7105 and 7110	MISCELLANEOUS FURNITURE—multi-purpose seating	
71 III J	7125	MISCELLANEOUS FURNITURE—steel vertical blueprint filing cabinets, roll drawing files, and high-density movable shelf filing cabinet systems.	
71 III K	7125	MISCELLANEOUS FURNITURE—special purpose	
71 III L	7110	MISCELLANEOUS FURNITURE—cafeteria and food service	
71 III M	7195	MISCELLANEOUS FURNITURE—acoustical partitions, speech privacy partitions, and vertical surface panels.	Except items 500-2, 500-3, and 500-4.
71 III N	7045 and 7110	MISCELLANEOUS FURNITURE—ADP furniture, storage and transportation items.	
71 III O	7105 and 7195	MISCELLANEOUS FURNITURE—folding chairs and tables	
71 V B	7110 and 7125	OFFICE FURNITURE—key cabinets	
71 V D	7105 and 7110	OFFICE AND FIELD FURNITURE—office furniture; map and plan filing cabinets and folding tables; modular steel field office furniture: filing cabinets, desk top, and end folding table.	
71 XIV A	7110, 7125, and 7195	SHOP FURNITURE—desks, benches, and tables	
71 XXVII A	6230, 7105, 7110, and 7195	FURNITURE—office and household, centurion by Federal Prison Industries	
71 XXVII B	7110	OFFICE FURNITURE—contemporary centurion by Federal Prison Industries	
72 I A and D	7220	HOUSEHOLD AND COMMERCIAL FURNISHINGS—carpets, special purpose carpets, rugs, carpet tiles, and carpet cushions.	Not mandatory for use aboard vessels.
72 I B	7220	HOUSEHOLD AND COMMERCIAL FURNISHINGS—floor coverings; tile, linoleum, and vinyl sheet.	Do.
72 I E	7220	HOUSEHOLD AND COMMERCIAL FURNISHINGS—mats and matting; entrance-way, interlocking modular, resilient open construction and anti-static types.	Do.
72 II	7230 and 8305	HOUSEHOLD AND COMMERCIAL FURNISHINGS—window shades: cloth vinyl, and fiberglass.	Not mandatory for FSC 8305.
73 IV A	7310	APPLIANCES—household gas ranges	
73 IV B	7310	APPLIANCES—household and commercial electric ranges	
73 V A	7320	APPLIANCES—household dishwashing machines	
74 I A	7430	OFFICE MACHINES—electronic typewriters, visual display preparation devices, sound reduction equipment and electric typewriter supplies.	
74 I B	7430	OFFICE MACHINES—typewriters, electric, single element	
74 I C	7450	OFFICE MACHINES—dictating and transcribing equipment	
74 II and III	6845, 7420, and 7490	OFFICE MACHINES—adding, calculating, cash registers, time measuring instruments, miscellaneous office machines.	
74 II A	7420	OFFICE MACHINES—Calculators, desk top nonprogrammable	
74 V	7430	OFFICE MACHINES—manual typewriters—portable and nonportable	
75 I C	7530 and 9310	OFFICE SUPPLIES—special use paper: engineering and draftsman papers—graph, drawing, tracing, overlay plastic sheets, cardboard and paper embossing; index sheet sets for looseleaf binders; paperboard, drawing; and labels for automatic data processing.	
75 I D	7530	OFFICE SUPPLIES—plotting paper, supplies; and recording paper	
75 II A	3540, 7510, 7520, 7690, and 7530	OFFICE SUPPLIES—pencils, leads, tape label marking, chart supplies, and/or letters and figures, sorters, desk correspondence, file suspended folders, plastic book jackets, plastic organizers and sorters, out-of-typewriter correction material, labels, price marking equipment, data binders, binders, looseleaf, typewriter ribbons, word processing ribbons, correction tape, computer ribbons, computer printout ruler, plastic copy holder, and print wheels.	
75 II B	3540, 7510, and 7520	OFFICE SUPPLIES—looseleaf binders, label tape, pamphlet files, multistrike typewriter ribbons, typewriter correction tape, pressure sensitive adhesive tape, correctable typewriter ribbons, plastic desk trays, lead holders, document protector, typist copyholders, gummed tape dispensers, file drawer frames, stapling machines, bristol cardboard, labeling machines.	
75 IV A and B	7520	OFFICE SUPPLIES—rubber stamps	
75 IV C	7520	OFFICE SUPPLIES—pre-inked rubber stamps	
75 V	7530	OFFICE SUPPLIES—envelopes: mailing, printed and plain	Madatory except for plain envelopes for use in the District of Columbia.
75 VII	7540	OFFICE SUPPLIES—U.S. Government national credit card	

Schedule identification	FSC class	Schedule title	Remarks
75 VIII A	7530	OFFICE SUPPLIES—cards: tabulating, aperture, and copy	
75 X	7530	OFFICE SUPPLIES—xerographic paper	
75 XI	7530	OFFICE SUPPLIES—xerographic paper and thermal copy paper	
75 XII	7530	OFFICE SUPPLIES—electrographic paper	
76 I	7610 and 7640	PUBLICATIONS—dictionaries, encyclopedias, other reference books and pamphlets, maps, atlases, charts, and globes.	
76 II	7610, 7630, and 7670	PUBLICATIONS—law, tax, and reporting periodicals, microfilm library systems	Except SIN's 37-5, 6, and 7.
77 I	7740	AUDIO AND VIDEO SUPPLIES—phonograph records, 8-track tape cartridges, and cassettes.	
77 III	7105 and 7730	AUDIO AND VIDEO EQUIPMENT—televisions, radios, phonographs and video cassette recorders.	
78 I A	7810	ATHLETIC AND RECREATIONAL EQUIPMENT—outdoor equipment	
78 I B	7810, 7820, and 7830	ATHLETIC AND RECREATIONAL EQUIPMENT—indoor recreational and gymnasium equipment.	
78 I C	7830	ATHLETIC AND RECREATIONAL EQUIPMENT—outdoor recreational equipment.	
79 I A	7910	CLEANING EQUIPMENT AND SUPPLIES—vacuum cleaners, carpet shampooers, floor polishing and scrubbing machines.	
79 I B	7910	CLEANING EQUIPMENT AND SUPPLIES—vacuum cleaners, carpet shampooers, floor polishing and scrubbing machines.	
79 II A	7930	CLEANING EQUIPMENT AND SUPPLIES—liquid and powdered dishwashing compounds with contractor supplied, installed and maintained accessory dispensing systems.	
79 III A	7930	CLEANING EQUIPMENT AND SUPPLIES—liquid and powdered laundry detergents with contractor supplied, installed and maintained accessory dispensing systems.	
80 II A	8010	PAINT—gloss and semi-gloss latex, interior	
81 I A	8135	PACKAGING AND PACKING SUPPLIES—cushioning material	
81 II A	8135	PACKAGING AND PACKING SUPPLIES—steel and nonmetallic strapping	
99 VI A	9910	TROPHIES AND AWARDS—trophies, awards, plaques, pins and ribbons	
99 V A	9905	RECRUITING AID PROMOTIONAL MATERIAL	For requirements of recruiting commands only.
733	7339	TRANSCRIPTS—stenographic reporting services	

In addition to these National Federal Supply Schedules, there are Regional Schedules (chiefly covering various services) which are mandatory in the region covered. Activities should check with local GSA Region offices for listings of regional schedules applicable in their area.

PART 210—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

3. Section 210.001 is added to read as follows:

210.001 Definitions.

"Bill of Materials" means a report by a supplier which specifies the quantities of various materials required to produce a designated quantity of supplies of a particular kind.

4. Section 210.004–70 is added to read as follows:

210.004-70 Requiring bills of material.

A bill of materials with respect to all or part of the supplies to be furnished pursuant to a contract, shall be required only if the contracting officer shall determine that such bill is necessary to develop materials or components requirements for production and maintenance programs, for industrial mobilization purposes, or for other specified purposes. In such event, the contract shall specify, with respect to such bill, the following:

(i) The supplies or parts thereof to be covered by the bill of materials;

(ii) The type of bill or bills (detailed, modified, expanded summary, or abbreviated summary) to be furnished, with applicable instructions;

(iii) The compensation to be paid the contractor for furnishing such bill and any revisions thereto, or a statement that the price of the item to which the bill relates includes compensation for the furnishing of such bill;

(iv) The number and kind of copies of such bill to be furnished; and

(v) Delivery dates. The contract shall also include the clause required by 210.011 (S–72). When a bill of materials is procured by contract separate from the supplies to which such bill of materials relates, such contract shall include such of the terms mentioned above as may be appropriate and shall specifiy that the bill of materials shall be furnished on DD Forms 346 and 347 if applicable, or authorized reproductions thereof. The contractor shall not be required to obtain data for the bill of materials in greater detail from a subcontractor than he is to furnish under the terms of the above clause.

5. Section 210.011 is amended by adding paragraph (S–72) to read as follows:

210.011 Solicitation provisions and contract clauses.

* * * * *

(S–72) The contracting officer shall insert the clause at 252.210–7004 as required by 210.004–70.

6. A new Part 223 is added to read as follows:

PART 223—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

Subpart 223.3—Hazardous Material Identification and Material Safety Data

223.303 Contract clause.

(S–70) The contracting officer shall insert the clause at 252.223–7000, Notice of Radioactive Materials, in all contracts for items, components thereof, and materials which are radioactive in which the radioactivity per gram is greater than 0.002 microcuries. Such contracts include, but are not limited to, contracts for aircraft, ammunition, missiles, vehicles, electronic tubes, instrument panel gauges, compasses and identification markers.

(5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301)

PART 227—PATENTS, DATA, AND COPYRIGHTS

7. Part 227 is amended by adding new Subpart 227.3 (sections 227.304–1 and 227.304–4) to read as follows:

Subpart 227.3—Patent Rights Under Government Contracts

227.304-1 General.

Interim and final invention reports and notification of all subcontracts for experimental, developmental, or research work (FAR 27.304–1(d)(ii)) may be submitted on DD Form 882.

227.304-4 Subcontracts.

The contracting officer shall insert the clause at 252.227-7034, Patents-Subcontracts, in solicitations and contracts containing the clause at FAR 52.227-11, Patent Rights—Retention by the Contractor (Short Form).

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

8. Section 236.570 is revised to read as follows:

236.570 Additional clauses.

Sections 236.571 through 236.574 present additional clauses for insertion in contracts for construction and architect-engineer services.

236.575-236.578 [Removed]

9. Sections 236.575 through 236.578 are removed.

PART 237—SERVICE CONTRACTING

237.7413 [Amended]

10. Section 237.7413 is amended by removing and reserving paragraphs (a)(2) and (b)(1).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

11. Section 252.101 is amended by adding paragraphs (e) and (e)(2)(ii) to read as follows:

252.101 Using Part 52.

* * * * *

(e) *Matrices.*

(2)(ii) In the event of an obvious conflict between the matrix location listing and FAR 14.201 or 15.406, the latter shall govern.

* * * * *

12. Section 252.210-7004 is added to read as follows:

252.210-7004 Bill of materials.

As prescribed at 210.011(S-72), insert the following clause:

Bill of Materials (Apr 1955)

(a) With respect to the supplies to be delivered pursuant to the contract, for which a Bill of Materials is required, the Contractor shall furnish a Bill of Materials in the required number of copies on Department of Defense Forms 346 and 347 if applicable, or authorized reproductions thereof, in accordance with the instructions specified in the Schedule.

(b) The Contractor shall furnish to the Government, at such intervals as designated in the Schedule, revised pages of the Bill of Materials incorporating the effect of any changes, pursuant to the clause hereof entitled "Changes", in the quantity of any material or part, or any other information contained in the Bill of Materials, or a statement that no revision is necessary. A final revision, or statement that no revision is necessary, shall be furnished upon completion of performance of the contract.

(c) The Bill of Materials and all revisions or statements subsequent thereto, shall be subject to inspection and acceptance by the Government.

(End of clause)

13. Section 252.223-7000 is added to read as follows:

252.223-7000 Notice of radioactive materials.

As prescribed at 223.303 (S-70), insert the following clause:

Notice of Radioactive Materials (Apr 1974)

(a) The Contractor shall notify the Contracting Officer or his designee, in writing (—*—) days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either (i) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, and set forth in Title 10 CFR, in effect on the date of this contract, or (ii) other radioactive material not requiring specific licensing in which the radioactivity per gram is greater than 0.002 microcuries. Such notice shall specify the part or parts of the items which contain such radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (BOB No. 38-R027).

(b) All items, parts or subassemblies which contain radioactive materials in which the radioactivity per gram is greater than 0.002 microcuries and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD-1458 in effect on the date of the contract.

(End of clause)

* The Contracting Officer shall insert the number of days required in advance of delivery of the item or completion of the servicing to assure that appropriate licenses are obtained or safeguards are taken when licenses are not required.

14. Section 252.227-7034 is added to read as follows:

252.227-7034 Patents-subcontracts.

As prescribed at 227.304-4, insert the following clause:

Patents-Subscontracts (Apr 1984)

The Contractor will include the clause at FAR 52.227-12, Patent Rights—Retention by the Contractor (Long Form) suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by other than a small business firm or nonprofit organization.

(End of clause)

252.236-7019 through 252.236-7052 [Removed]

15. Sections 252.236-7019, 252.236-7050, 252.236-7051, and 252.236-7052 are removed.

252.237-7401 [Removed]

16. Section 252.237-7401 is removed and reserved.

252.237-7405 [Removed]

17. Section 252.237-7405 is removed and reserved.

18. Section 252.249-7000 is amended by adding paragraph (a)(5) to read as follows:

252.249-7000 Special termination costs.

(a) * * *

(5) Costs in categories (a) (1), (2), (3), and (4) above to which subcontractors may be entitled in the event of termination.

* * * * *

[FR Doc. 84-25958 Filed 9-28-84; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-196]

Organization and Delegation of Powers and Duties; Clarification

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This amendment clarifies a limitation on the delegation to the Federal Highway Administrator under the Surface Transportation Assistance Act of 1978.

DATE: The effective date of this amendment is October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, C-50, Department of Transportation, Washington, DC 20590, (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 DOT's delegation under the Surface Transportation Assistance Act of 1978 was published, the delegation to the Federal Highway Administrator (49 CFR 1.48(c)(1)) was expressed in a manner that has caused some confusion:

Whether the limitation "as it relates to matters within the primary responsibility of the Federal Highway Administrator" applied only to "Title IV" (now "Title IV, as amended") or to all sections of that statute delegated to the Highway Administrator. The limitation was intended, and has been implemented, to apply only to Title IV; this amendment clarifies that.

List of Subjects in 49 CFR Part 1

Authority delegations (government agencies), Organization and functions (government agencies).

In consideration of the foregoing, § 1.48 of Part 1 Title 49, Code of Federal Regulations, is mended by revising paragraph (c)(1), and the introductory language of § 1.48 is printed for the convenience of the reader, to read as follows:

§ 1.48 Delegations to Federal Highway Administrator.

The Federal Highway Administrator is delegated authority to—

* * * * *

(c) Administer the following laws relating generally to highways:

(1) Sections 105, 107(c)–(e), 123 (a) and (b), 124(c), 126(d)–(g), 138(c), 140–145, 147–154, 167, and 171, and Title IV, as amended (as it relates to matters within the primary responsibility of the Federal Highway Administrator), of the Surface Transportation Assistance Act of 1978, Pub. L. 95–599, 92 Stat. 2689; and sections 502–504, Title V, of the Highway Revenue Act of 1978.

* * * * *

(49 U.S.C. 322; 49 CFR 1.57(1))

Issued in Washington, DC, on September 26, 1984.

Rosalind A. Knapp,

Acting General Counsel.

[FR Doc. 84–26061 Filed 9–28–84; 9:00 am]

BILLING CODE 4910–62–M

National Highway Traffic Safety Administration

49 CFR Parts 571, 574, and 575

[Docket No 84–11; Notice 1]

Corrections of Errors in Code of Federal Regulations

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Technical amendment.

SUMMARY: This agency has discovered several errors in the most recent edition of Title 49 of the Code of Federal Regulations, with respect to NHTSA's tire standards and regulations. This notice corrects those errors, so that the replacement for this edition of the Code of Federal Regulations will be accurate. All of the affected provisions have previously appeared in correct form in the **Federal Register**, so no new obligations or duties are imposed on any party as a result of these corrections.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Stephen Kratzke, Office of Chief Counsel, NHTSA, 400 Seventh Street, SW., Washington, D.C. 20590 (202–426–2992).

SUPPLEMENTARY INFORMATION: There are a number of errors in the October 1, 1983 version of Title 49 of the Code of Federal Regulations, relating to this agency's tire standards and regulations. To ensure that the next revision of the Code of Federal Regulations contains accurate versions of these standards and regulations, this notice sets forth the correct versions of these requirements. The errors in the current Code of Federal Regulations include:

(1) The omission of Figure 2 and the omission of certain values in Tables I–A, I–B, and I–C of Standard No. 109;

(2) The omission of Table I from Standard No. 110; and

(3) Several typographical errors in the Uniform Tire Quality Grading Standards of § 575.104.

Additionally, as a result of the interim final rule and permanent final rule on voluntary tire registration both amending the definition section of Part 574, the next revision of Title 49 of the Code of Federal Regulations would have contained identical definitions of the term "independent" at § 574.3(c) (1) and (2). To avoid this duplication, this notice sets forth all of § 574.3(c) as it should appear.

Publication of the correct versions of these requirements imposes no duties or responsibilities on any party, nor does it alter any existing obligations. The correct version of all of these requirements has appeared in the **Federal Register** at one time or another, following the adoption of these requirements as final rules. For the tables and figures omitted from Standards No. 109 and 110, see 32 FR 15792, at 15794, 15798, and 15799; November 16, 1967. For the Part 574 definitions, see 49 FR 4755, at 4760; February 8, 1984. For the Uniform Tire Quality Grading Standards language, see 43 FR 30542; July 17, 1978 and 43 FR 50438; October 30, 1978. This notice simply ensures that the public will have correct copies of the tire requirements in Title 49 of the Code of Federal Regulations. Accordingly, the NHTSA finds for good cause that notice and opportunity for comment are unnecessary, and these corrections are effective as soon as this notice is published.

In consideration of the foregoing, Title 49 of the Code of Federal Regulations is amended by making the following changes:

PART 571—[AMENDED]

§ 571.109 [Amended]

1. In § 571.109 Standard No. 109; New pneumatic tires—passenger cars, Figure 2 is added at the end of the standard, appearing after Figure 1 and before Figure 2a as follows:

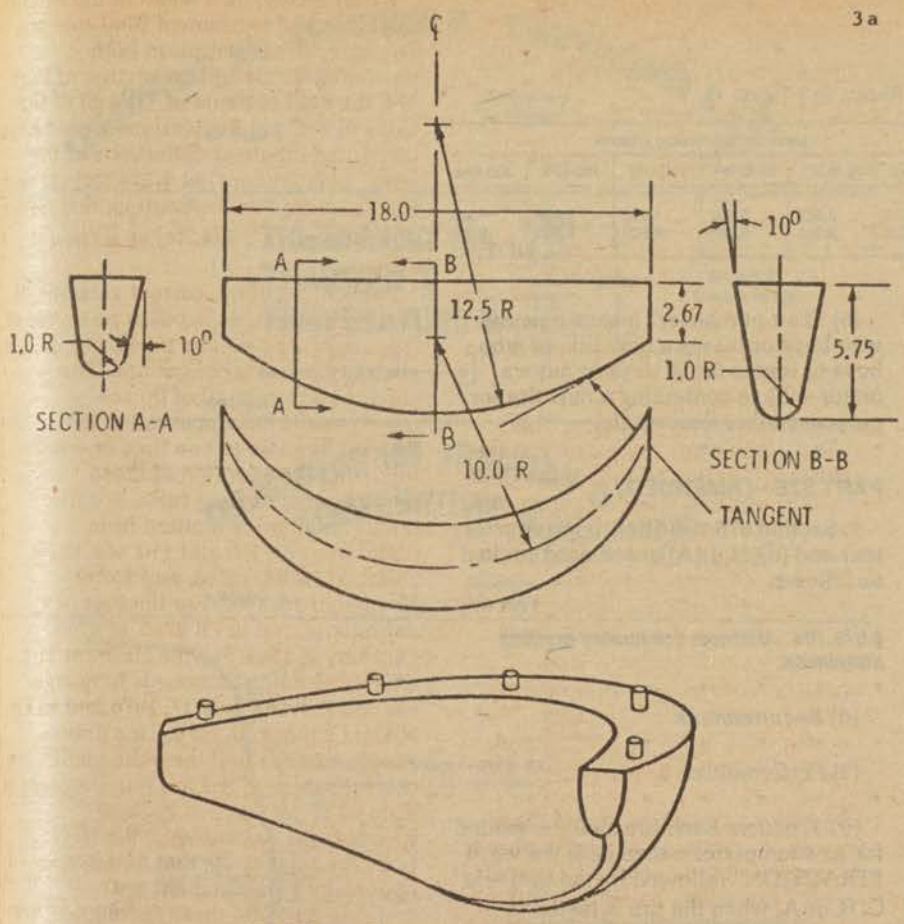

FIGURE 2 — Diagram of Bead Unseating Block Dimensions in Inches

2. Table I–A in Appendix A to § 571.109 is revised to read as follows:

TABLE I–A—FOR BIAS PLY TIRES WITH DESIGNATED SECTION WIDTH OF 6 INCHES AND ABOVE

Cord material	Maximum permissible inflation					
	32 lb/in²	36 lb/in²	40 lb/in²	240 kPa	280 kPa	300 kPa
Rayon (in-lbs)	1,650	2,574	3,300	1,650	3,300	1,650
Nylon or polyester (in-lbs)	2,600	3,900	5,200	2,600	5,200	2,600

3. Table I–B in Appendix A to § 571.109 is revised to read as follows:

Table I–B.—FOR BIAS PLY TIRES WITH DESIGNATED SECTION WIDTH BELOW 6 IN.

Cord material	Maximum permissible inflation					
	32 lb/in²	36 lb/in²	40 lb/in²	240 kPa	280 kPa	300 kPa
Rayon (in-lbs)	1,000	1,875	2,500	1,000	2,500	1,000
Nylon or polyester (in-lbs)	1,950	2,925	3,900	1,950	3,900	1,950

4. Table I–C in Appendix A to § 571.109 is revised to read as follows:

TABLE I–C—FOR RADIAL PLY TIRES

Size designation	Maximum permissible inflation					
	32 lb/in²	36 lb/in²	40 lb/in²	240 kPa	280 kPa	300 kPa
Below 160 mm (in-lbs)	1,950	2,925	3,900	1,950	3,900	1,950
160 mm or above (in-lbs)	2,600	3,900	5,200	2,600	5,200	2,600

5. A new Table I is added at the end of § 571.110, to read as follows:

§ 571.110 Standard No. 110; Tire selection and rims.

* * * * *

TABLE I.—OCCUPANT LOADING AND DISTRIBUTION FOR VEHICLE NORMAL LOAD FOR VARIOUS DESIGNATED SEATING CAPACITIES

Designated seating capacity, number of occupants	Vehicle normal load, number of occupants	Occupant distribution in a normally loaded vehicle
2 through 4	2	2 in front.
5 through 10	3	2 in front, 1 in second seat.

PART 574—TIRE IDENTIFICATION AND RECORDKEEPING

6. Section 574.3(c) is revised to read as follows:

§ 574.3 Definitions.

* * * * *

(c)(1) "Independent" means, with respect to a tire distributor or dealer, one whose business is not owned or controlled by a tire manufacturer or brand name owner.

(2) "Mileage contract purchaser" means a person who purchases or leases tire use on a mileage basis.

(3) "New tire brand name owner" means a person, other than a new tire manufacturer, who owns or has the right to control the brand name of a new tire or a person who licenses another to purchase new tires from a new tire manufacturer bearing the licensor's brand name.

(4) "Retreaded tire brand name owner" means a person, other than a retreader, who owns or has the right to control the brand name of a retreaded tire or a person who licenses another to purchase retreaded tires from a retreader bearing the licensor's brand name

(5) "Tire purchaser" means a person who buys or leases a new tire, or who buys or leases for 60 days or more a motor vehicle containing a new tire for purposes other than resale.

* * * * *

PART 575—[AMENDED]

7. Section 575.104(d)(2)(ii) introductory text and (d)(2)(ii)(A) are revised to read as follows:

§ 575.104 Uniform tire quality grading standards.

* * * * *

(d) *Requirements.*

* * * * *

(2) *Performance.*

* * * * *

(ii) *Traction.* Each tire shall be graded for traction performance with the word "TRACTION" followed by the symbols C, B, or A, when the tire is tested in accordance with the conditions and procedures specified in paragraph (f) of this section.

(A) The tire shall be graded C when the adjusted traction coefficient is either:

* * * * *

8. Section 575.104(f)(2)(x) is revised to read as follows:

* * * * *

(f) *Traction grading conditions and procedures.*

* * * * *

(2) *Procedure.*

* * * * *

(x) Compute a candidate tire's adjusted traction coefficient for concrete (μ_c) by the following formula:

μ_c = Measured candidate tire coefficient for concrete + 0.35
− Measured standard tire coefficient for concrete

* * * * *

9. Figure 1 following § 575.104 is revised to appear as follows:

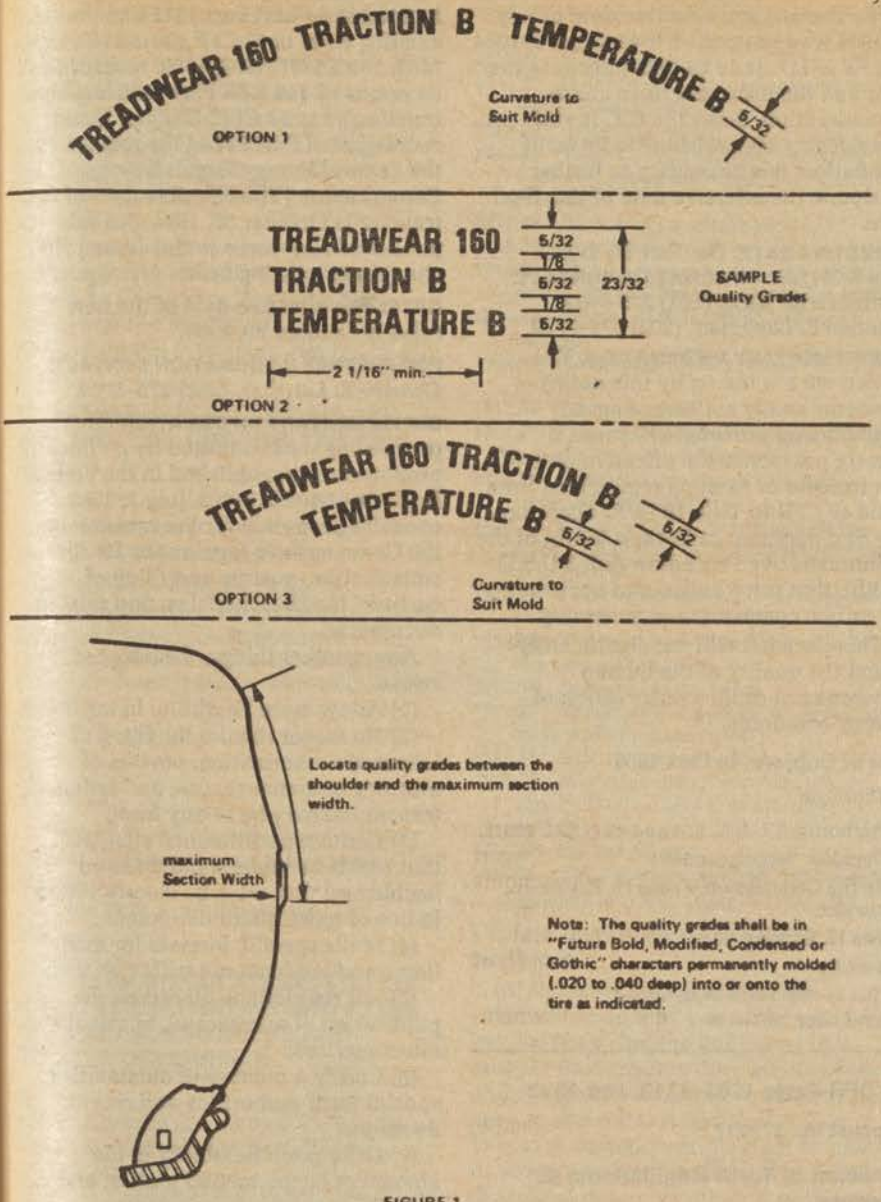

FIGURE 1

10. The first paragraph following Figure 5 is revised to read as follows:

* * * * *

In this graph, $xG5J$, $y_{j(j=0, 1, \ldots 8)}$ are the individual data points representing the tread depth measurements (the overall average for the tire with 6 measurements in each tire groove) at the beginning of the test (after break-in) and at the end of each 800-mile segment of the test.

* * * * *

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407), delegation of authority at 49 CFR 1.50.)

Issued on September 26, 1984.

Howard M. Smolkin,

Acting Administrator.

[FR Doc. 84-26001 Filed 9-28-84; 8:45 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1103

[Ex Parte No. 55 (Sub-54)]

Changes to Rules Governing Scheduling of ICC Non-Attorney Practitioners' Examinations

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: Due to a decrease in the number of applicants for the examination, the Commission is amending its rules which specify the schedule for the non-attorney practitioners' examination. The examination will now be held on an annual basis and will be administered on the second Tuesday in July.

DATES: Effective on October 31, 1984.

FOR FURTHER INFORMATION CONTACT: Darlene Proctor, Office of the Secretary, (202) 275-7233.

SUPPLEMENTARY INFORMATION: On July 2, 1984, the Commission issued proposed rules to amend 49 CFR 1103.3(g), which states that examinations will be conducted twice a year on the first Tuesday in June and December of each year [49 FR 28276, July 11, 1984]. The proposed rules would reduce the frequency of the examination to once a year, on the third Tuesday of June.

The Commission received only one comment on the proposed rules. That comment, from an ICC Practitioner, suggested the exam be scheduled in July instead of June since most colleges are ending their year and conducting exams during the same time period as our proposed schedule. We have no strong preference for either month and agree that July would be more convenient to applicants. We will therefore administer the exam on the second Tuesday in July of each year. We will also amend the time period for filing applications to improve administrative processing of the applications. An application for the exam will now be submitted between January and May 15 of the year in which the examination is to be taken.

The Code of Federal Regulations is amended to reflect these changes as shown in Appendix A of this decision.

This action does not affect the quality of the human environment or the conservation of energy resources.

Small entities will not be affected significantly by this action.

(49 U.S.C. 10308 and 10321; 5 U.S.C. 559)

List of Subjects in 49 CFR Part 1103

Administrative practice and procedure.

Decided: September 24, 1984.

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

Commissioners Lamboley and Strenio did not participate.

James H. Bayne,

Secretary.

Appendix

PART 1103—[AMENDED]

In 49 CFR 1103.3, paragraphs (c) and (g) are revised to read as follows:

§ 1103.3 Persons not attorneys-at-law—qualifications and requirements for practice before the Commission.

* * * * *

(c) *Application for admission.* An application filed pursuant to this rule under oath for admission to practice shall be submitted between January and May 15 of the year in which the examination is to be taken. The application is to be completed in full on the form provided by the Commission, and shall be addressed to the Secretary, Interstate Commerce Commission, Washington, DC 20423, to the attention of the room number indicated on the form.

* * * * *

(g) *Time and place of examination.* The examination will be conducted once a year on the second Tuesday in July. Notice of the time and place to appear for the examination will be mailed to qualifying applicants approximately 30 days prior to the date of the examination.

* * * * *

[FR Doc. 84-25943 Filed 9-28-84; 8:45 am]

BILLING CODE 7035-01-M

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49 CFR Part 1300

[No. 37321]

Revision of Tariff Regulations, All Carriers; Change of Effective Date

AGENCY: Interstate Commerce Commission.

ACTION: Final Rule Change of Effective Date.

SUMMARY: In this proceeding the Interstate Commerce Commission (ICC) proposed a revision and consolidation of its regulations in 49 CFR Parts 1300 to 1310 (48 FR 31265, July 1983). New regulations would be located at 49 CFR Part 1312 and 49 CFR 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. At 49 FR 12914, 3-3-84, the ICC issued a notice 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. The original effective date of July 2, 1984 was postponed to October 2, 1984 (48 FR 27117, June 29, 1984) because the ICC had the proposed rules under consideration. Since the ICC is still considering the revisions to its tariff regulation, it is necessary to further postpone the effective date of this final rule.

EFFECTIVE DATE: October 30, 1984.[1]

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, (202) 275-7428 Charles E. Langyher, (202) 275-7739.

SUPPLEMENTARY INFORMATION: The action we are taking by this notice concerns solely matters of agency practice and procedure because it merely postpones the effective date of the transfer of existing regulations from Title 49 CFR to Title 18 CFR. 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.

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

List of Subjects in Part 1300

Pipeline.

Authority: 5 U.S.C. 553 and 49 U.S.C. 10321.

Decided: September 1984.

By the Commission, Reese H. Taylor, Jr., Chairman.

James H. Bayne,

Secretary.

[FR Doc. 84-25944 Filed 9-28-84; 8:45 am]

BILLING CODE 7035-01-M

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49 CFR Parts 1303-1310, and 1312

[Docket No. 37321]

Revision of Tariff Regulations, all Carriers

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is revising its rules governing the construction, filing, and posting of tariffs and related documents. In reviewing the existing rules, we considered that many related more to substance than form, and did not allow sufficient flexibility for carriers to publish innovative rates and services. Many of the existing rules failed to reflect the statutory changes since 1980. The new rules will be located at 49 CFR Part 1312 and the existing rules in 49 CFR Parts 1303, 1304, 1305, 1306, 1307, 1308, 1309, and 1310 will be removed. (49 CFR Part 1300 has been transferred to 18 CFR, Chapter I, and redesignated Part 341 at the request of the Federal Energy Regulatory Commission). (The effective date of the transfer is October 30, 1984. See rule published elsewhere in this issue.) No changes to existing tariffs are required.

DATE: The effective date of the new rules is October 30, 1984.

FOR FURTHER INFORMATION CONTACT: Charles E. Langher, (202) 275-7739.

SUPPLEMENTARY INFORMATION: This proceeding was instituted by a notice of proposed rules, published in the **Federal Register** at 48 FR 31265, July 7, 1983, to consider proposals for the revision of the Commission's regulations for the construction, posting and filing of carriers' tariffs, schedules, and related documents.

Among other things, the adopted rules:

(1) Allow more flexibility in tariff size;

(2) No longer require the filing of letters of authorization, powers of attorney or concurrences, and letters of transmittal may be in any form;

(3) Contain performance standards that tariffs be understandable and legible and that rates be clearly stated in lieu of more restrictive rules;

(4) Make specific formats for many items and contents of tariffs optional;

(5) Lift restrictions placed on the publication of accessorial, terminal and other services;

(6) Codify a number of outstanding special tariff authorities and recent decisions;

(7) Offer more flexibility in the amount of supplemental matter; and

(8) Ease posting requirments.

In our NPR in this proceeding we indicated that 49 CFR Parts 1301 and 1302 were affected by this action. However, upon review we have determined that those parts, unlike the other parts, do not contain tariff publishing rules of general application. Further, 49 CFR Part 1301 was removed in Ex Parte No. 356 (Sub-No. 3), *Rail General Exemption Authority—Long and Short Haul Transportation*, at 48 FR 9649, March 8, 1984. Consequently, we have deleted reference to 49 CFR Parts 1301 and 1302 in this notice.

The Federal Energy Regulatory Commission (FERC) uses 49 CFR Part 1300 in its regulation of oil pipeline rates, charges and provisions. FERC requested that this Commission transfer Part 1300 from Title 49 of the CFR to

[1] The FERC is publishing a technical correction contemporaneously with this notice that postpones the effective date for transfer of the rules for the establishment of rates or charges for the transportation of oil by pipeline from Title 49 to Title 18 of the CFR.

Title 18 of the CFR, instead of removing it from the CFR entirely and we did so effective October 30, 1984.

Additional information is contained in the Commission's decision. For a copy of it write to: TS Infosystems, Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (D.C. Metropolitan area) or toll free (800) 424-5403.

This notice is issued under the authority of section 10762 of the Interstate Commerce Act (49 U.S.C. 10762) and section 553 of the Administrative Procedure Act (5 U.S.C. 553).

List of Subjects in 49 CFR Parts, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, and 1312

Buses, Freight forwarders, Maritime carriers, Motor carriers, Passenger vessels, Pipelines, Railroads.

Decided: September 24, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio. Commissioners Lamboley and Strenio did not participate.

James H. Bayne

Secretary.

Appendix

Chapter X of Title 49 of the Code of Federal Regulations is amended as follows:

1. Part 1312 is added to read as follows:

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS, SCHEDULES AND RELATED DOCUMENTS

Sec.

1312.1 Introduction and general provisions.
1312.2 Applications for special tariff authority.
1312.3 Size of paper and where to send tariff publications and other documents.
1312.4 Filing tariffs.
1312.5 Posting requirements.
1312.6 Furnishing copies of tariff publications.
1312.7 Form and printing.
1312.8 ICC tariff designations.
1312.9 Codes for identification of places.
1312.10 Powers of attorney, concurrences, transfer of agent.
1312.11 Tariffs issued by joint agents not applicable to contract carriers or freight forwarders.
1312.12 Title page of original tariffs.
1312.13 Contents of tariffs.
1312.14 Statement of rates and fares.
1312.15 Routing not applicable to freight fowarder or contract carriers.
1312.16 Sectional tariffs.
1312.17 Amendments
1312.18 Supplements.
1312.19 Cancellation of tariffs and transfer of provisions.
1312.20 Transfer of operations—change in name and control.
1312.21 Suspended matter.
1312.22 Rates or other provisions prescribed by the Commission.
1312.23 Expiration dates.
1312.24 Tariffs listing carriers' operating authority applicable to motor carriers of property.
1312.25 Participating carrier tariffs.
1312.26 Rate basis tariffs.
1312.27 Classification, exceptions, rules, dangerous articles and station list tariffs.
1312.28 Accessorial, terminal and other services.
1312.29 Rates and liability based on value provisions.
1312.30 Distance rates.
1312.31 Commodity rates determined by the use of rate base numbers.
1312.32 Application of rates from or to intermediate points.
1312.33 Class rates from or to unnamed points applicable only to motor carriers of property.
1312.34 Continuous service rates applicable only to motor carriers of property.
1312.35 Time-volume rates applicable only to passenger carriers.
1312.36 Seasonal water rates.
1312.37 Export and import traffic and joint rates with ocean carriers.
1312.38 Substitution of service.
1312.39 Miscellaneous provisions which may be filed on less than statutory notice.
1312.40 Claims rules.
1312.41 Contracts and contract summaries.

Authority: 49 U.S.C. 10762; 5 U.S.C. 553.

§ 1312.1 Introduction and general provisions.

(a) *Purpose.* Tariffs are for the information and the use of the general public. They shall be published in a manner that ensures they are readable and that their terms and conditions are easy to understand and apply. The Commission reserves the right to reject or strike any tariff publication or other document not in compliance with law, or to require that it be modified, corrected or reissued. Rejection or striking of tariffs will be handled consistent with due process of law.

(b) *Definitions.* For the purpose of this part—

(1) "Act" means the Interstate Commerce Act, as amended.

(2) "Agent" means a person, association or corporation authorized to publish and file rates and provisions for a carrier's account in tariffs published in the agent's name.

(3) "Agent tariff" means a tariff filed in the name of an agent.

(4) "Basing fare" means a fare used for constructing a through fare for transportation from one point to another over a route for which no through, one-factor fare (other than basing fare) is published.

(5) "Bound tariff" means a tariff consisting of two or more sheets bound at the left edge in pamphlet or book form or a single-sheet tariff.

(6) "Carrier" means a common carrier, contract carrier or freight forwarder subject to the Act. It also means an ocean carrier participating in joint tariff provisions with carriers subject to the Act.

(7) "Carrier's tariff" means a tariff filed in the name of a carrier.

(8) "Class I," "Class II," and "Class III," carriers are as defined in the Commission's Uniform System of Accounts Part 1240 of this title.

(9) "Classification" means a publication containing a list of commodities, the classes to which they are assigned for the purpose of applying class rates, and governing rules and regulations.

(10) "Class rate" means a rate which applies to commodities according to the class assigned in a classification, a tariff of exceptions to a classification, or in a class rate tariff.

(11) "Class tariffs" are those which contain class rates.

(12) "Commission" means the Interstate Commerce Commission.

(13) "Commodity rate" means a rate published to apply to commodities specifically named or described in the tariff in which the rate is published or in a separate commodity list.

(14) "Commodity tariffs" are those which contain commodity rates.

(15) "Common carrier" means all common carriers and freight forwarders subject to the Act.

(16) "Commutation fare" means a charge for a specified number of trips (more than a single round trip) or for an unlimited number of trips within a certain period of time, which, on a per trip basis is less than the normal rate.

(17) "Item" means a tariff provision of any kind bearing an "item number" designation.

(18) "Joint rate" means a rate that applies over the lines or routes of two or more carriers made by an agreement between the carriers, effected by a concurrence or power of attorney.

(19) "Joint tariffs" are those which contain joint rates.

(20) "Local rate" means a rate that applies over the lines or routes of one carrier only.

(21) "Local tariffs" are those which contain local rates.

(22) "Looseleaf page amendment" means a single sheet published as an amendment (not a supplement) to a looseleaf tariff.

(23) "Looseleaf tariff" means a tariff consisting of looseleaf pages.

(24) "Motor common carriers of property" means all motor common carriers of property subject to the Act, except passenger carriers having authority to transport property in the same vehicle with the passengers.

(25) "Ocean carrier" means a vessel-operating common carrier by water regulated by the Federal Maritime Commission, and engaged in foreign commerce as defined in the Shipping Act of 1916.

(26) "Original tariff" means the tariff as originally filed excluding amendments.

(27) "Post" refers to the public availability of filed tariffs.

(28) "Proportional rate" means a rate published to apply only to traffic having a prior movement, a subsequent movement, or both.

(29) "Proportional tariffs" are tariffs containing proportional rates.

(30) "Rate" means a rate, fare or charge.

(31) "Round-trip excursion" means the transportation of passengers by motor vehicle on an excursion between points on the regularly operated route of a common carrier, but does not embrace special or charter operations.

(32) "Segment" means a separate tariff provision of any kind set apart by use of a number or letter designation (other than an item designation), or by employment of line or space separations.

(33) "Suburban service" means the transportation of passengers (over a regular route, in the case of motor common carriers) between places or communities, the limits of which are not more than 75 air miles apart.

(34) "Supplement" means a single sheet, or two or more sheets bound at the left edge in pamphlet or book form, identified as a supplement and published to amend or cancel a tariff.

(35) "Tariff" means a publication containing rates, classification ratings, rules, regulations, or other provisions, as amended, filed in a carrier's or an agent's name. (The term does not include rate tenders or quotations issued under section 10721 of the Act (see Part 1330 of this title)).

(36) "Tariff publication" means an original tariff, a supplement, or a looseleaf page amendment.

(37) "Through rate" means the total rate from point of origin to destination. It may be a local rate, a joint rate, or a combination of separately established rates.

(c) *Application.* (1) These regulations govern the construction, publication, filing, and posting of —

(i) Any tariff filed under the Act;

(ii) Any tariff which contains a through route and a joint rate, or a provision governing the application of a through route or joint rate, over the lines of a common carrier on the one hand, and a nonvessel or vessel operating ocean carrier, on the other hand, for the transportation of property between any place in the United States and any place in a foreign country.

(2) Some of the regulations in this part do not apply to tariffs of all types of carriers. These regulations state either that they do not apply to tariffs of specific types of carriers or that they apply only to tariffs of specific types of carriers.

(3) These regulations are to be liberally construed. The absence of specific approval of particular practices or provisions does not imply disapproval of them.

(4) Special permission to depart from any of these rules may be requested. See § 1312.2.

(d) *Intrastate provisions.* (1) Tariffs may include provisions having intrastate application if they are distinguished from the interstate provisions. Tariffs may be identified as joint filings with State regulatory bodies.

(2) Rates to be used between points in one State, which are also to be used in making combination through rates for interstate shipments, shall be filed with the Commission and posted for public inspection, and they may be changed only in accordance with the provisions of the Act.

(e) *Information-only provisions.* Provisions for information purposes only may be included in a tariff. They must be clearly marked. Such material may include tariffs covering transportation not subject to economic regulation by the Commission, and advertising and promotional material.

(f) *Carrier liability.* The tender of a tariff and its receipt by the Commission does not relieve the carriers of liability for violations of the Act, other laws or the Commission's regulations.

§ 1312.2 Applications for special tariff authority.

(a) *Applications may be filed.* Applications for special tariff authority to depart from the regulations of this part may be filed if in accordance with the provisions of this section.

(b) *Authority will not be issued to modify formal decisions.* Special tariff authority will not be issued to modify a formal decision of the Commission. Any request to modify a formal decision shall be filed in accordance with the Commission's Rules of Practice (Subchapter B of this chapter).

(c) *Who may file.* Applications may only be filed by the carrier(s) or agent(s) who has authority to file the proposed tariff publication for which relief is requested. An agent or carrier may request relief which would have application broader than the carrier's account.

(d) *Payment of fee.* Payment of the fee in the amount and manner required by Part 1002 of this chapter shall accompany the application except that carriers or agents using the monthly tariff filing fee payment system may also pay these fees monthly.

(e) *Copies and numbering.* The original and one copy of the application (including amendments and exhibits) shall be filed. Applications shall be consecutively numbered by the applicant.

(f) *Content of application.* (1) All involved tariff publications shall be identified, including supplement and looseleaf page numbers, with specific reference to provisions by item, section, or page numbers.

(2) If the proposal involves the publishing of rates, all points involved shall be sufficiently identified.

(3) If the proposal involves rules, the wording of the rules shall be furnished.

(4) The application shall show how the proposed change is to be published, i.e., by republication of tariff matter, or by publication of a statement.

(5) The reasons and justification for the proposal shall be stated.

(6) If relief is requested from notice requirements, the reasons why that notice cannot or should not be given shall be stated.

(7) Applications requesting authority to change, cancel or postpone matter which is the subject of a protest or petition for investigation or suspension shall certify that the protestants have been notified by telegram or telephone. The application shall also state whether or not the protestants have registered objections to the proposal. See § 1312.40(e).

(g) *Telegraphic request.* When, because of an emergency, special tariff authority is requested by telegram, the telegram shall state the pertinent facts. The fee, if not paid monthly, shall be sent not later than the next working day.

(h) *Appeals to special tariff authority decisions may be filed.* See 49 CFR 1118.4.

(i) *Authority to reject publication.* The granting and use of special tariff authority does not limit the Commission's jurisdiction over the content of the tariff, or any of the Commission's powers with respect to the tariff.

§ 1312.3 Size of paper and where to send tariff publication and other documents.

Except as authorized in § 1312.30(c) (Distance Guides), tariff publications and other documents shall be prepared on durable paper, measuring not more than 8½ x 11 inches, and shall be sent to:

Interstate Commerce Commission, Bureau of Traffic—Section of Tariffs, Washington, D.C. 20423.

Packages containing tariff publications shall be prominently marked "Tariffs." Packages containing applications for special tariff authority to depart from these rules shall be prominently marked "Special Tariff Authority Application."

§ 1312.4 Filing tariffs.

(a) *Number of copies and fees for filing.* Carriers and agents shall send 2 copies of each tariff publication for official filing, unless the Commission requests more. When a tariff publication is published in more than one agent's name, only two copies of the publication are required. An agent's or carrier's tariff publication containing joint rates or provisions constitutes a sufficient filing for each of the participating carriers. It is not required that 2 copies be filed in the name of each agent. Fees shall be paid in accordance with Part 1002.

(b) *Letters of transmittal.* (1) A letter of transmittal shall be sent in the same package with the tarriff publication(s).

(2) A letter of transmittal shall be signed by the person issuing the tariff or an athorized representative. Authorizations shall not be filed with the Commission unless specifically requested or the existence of such authorization is questioned in a challenge to the tariff. Absent challenge, the Commission will assume agents have the necessary authority from their principals.

(3) If one transmittal letter is used to cover more than one package of tariff publications, the letter shall state the number of packages. The original letter shall be sent in one package and a copy of the letter sent with each of the other packages.

(4) If a receipt is desired, mark the letter "Receipt Requested" and send an extra copy of the letter with a postage paid, self-addressed return envelope. Do not enclose loose stamps.

(5) Letters of transmittal must contain the certification required by § 1312.6.

(6) When a tariff publication containing rates on household goods as defined in § 1056.1(b)(1) of this title is published for the account of household goods carriers as defined in § 1056.1(b) or for motor carriers of property to effect a general increase or decrease under the Ex Parte No. MC–82 procedures, on not less than 45 days' notice, the letter shall so indicate.

(7)(i) The letter of transmittal accompanying each tariff publication which contains a rate, charge, or provision which the carrier wishes to have filed pursuant to zone of rate freedom provisions of 49 U.S.C. 10708(d)(1) applicable to motor common carriers of property and freight forwarders, shall indicate this by including an appropriate statement.

(ii) If the application of the proposed rate, charge, or provision would result in an increase in charges, the letter shall state that the proposed increase in the aggregate is not more than 15 percent above that in effect 1 year prior to the effective date of the proposed increase.

(iii) If the application of the proposed rate, charge, or provision would result in a reduction in charges, the letter shall state that the proposed reduction in the aggregate shall be no more than 15 percent below the lesser of that in effect on July 1, 1980 (or the date, if after July 1, 1980, on which a rate, charge, or provision first became effective for a service not provided by the freight forwarder, or the carrier, on July 1, 1980), or that in effect 1 year prior to the effective date of the proposed reduction.

(iv) The carrier or freight forwarder will also be required in the letter to certify that the rates or provisions do not exceed the amount allowed by Section 10708(d)(3) (A or B); and that the rates or provisions fall within the 15 percent zone; also, if the rate is more than 15 percent above the rate in effect one year earlier, to include in the statement whether the proposed rate has been subject to general rate increases during the previous year, what percent increase was taken, the bureaus which published the increase, and the effective date.

(v) The letter need not identify the number of the item (or page) and tariff in which the rate, charge, or provision may be found that was in effect one year prior to the date of the proposed rate, or on July 1, 1980, or later, as appropriate. However, if the rate is protested, the forwarder or carrier, in its reply to the protest, must make such identification.

(vi) This percentage shall be increased or decreased, as the case may be, by the percentage change in the Producers Price Index, as published by the Department of Labor that has occurred during the one-year period prior to the effective date of the proposed rate.

(8) The letter of transmittal accompanying each tariff publication which contains a fare, rate, charge, or provision which the carrier wishes to have considered pursuant to the zone of rate freedom provisions of 49 U.S.C. 10708(d)(4) applicable to motor common carriers of passengers shall indicate this by including an appropriate statement.

(i) If application of the proposed fare, rate, charge, or provision would result in an increase in charges, the letter shall state that the proposed increase in the aggregate is not more than 10 percent above that in effect one year prior to the effective date of the proposed increase. On November 19, 1983, the figure increased to 15 percent. On November 19, 1984, the figure increased to 20 percent. When only some increases are within the zone, they should be designated individually.

(ii) If the application of the proposed fare, rate, charge, or provision would result in a reduction in charges, the letter shall state that the proposed reduction in the aggregate shall be no more than 20 percent below the lesser of that in effect on November 19, 1982 (or, in the case of any charges which the carrier or carriers first establish after such date for a service not provided by the carrier or carriers on such date, such charge on the date such charge first becomes effective) or the charge in effect one year prior to the effective date. On November 19, 1983, the figure changed to 25 percent; and, on November 19, 1984, the figure changes to 30 percent. When only some decreases are within the zone, they should be designated individually.

(iii) After November 19, 1985, the Commission may not investigate, suspend, revise, or revoke any rate proposed by a motor common carrier of passengers on the grounds that such rate is unreasonable on the basis that it is too high or too low, unless the proposed rate is established collectively in accordance with the procedures of an agreement approved by the Commission under 49 U.S.C. 10706(b). After November 19, 1985, statements required in the immediate preceding two paragraphs above shall no longer be required. In publishing and filing a tariff under 49 U.S.C. 10762, the carrier shall disclose whether such rate is the result of collective ratemaking procedures pursuant to an agreement approved by the Commission under 49 U.S.C. 10706(b).

(iv) If a fare, rate, charge, or provision filed under the zone of rate freedom provisions of 49 U.S.C. 10708(d)(4) is protested, the carrier shall, in its reply to the protest, identify the number of the item (or page) and tariff in which the fare, rate, charge, or provision may be found that was in effect one year prior

to the effective date of the proposed rate, or on November 19, 1982, or both, as appropriate.

(c) *Tariff publications not consecutively numbered or lettered.* A tariff publication submitted for filing, which is not in sequence, shall be accompanied by an explanation.

(d) *Concurrences and powers of attorney.* Concurrences and powers of attorney shall not be filed with the Commission. However, a carrier may not participate in a tariff issued in the name of another carrier or an agent unless a power of attorney or concurrence has been executed. Absent effective concurrences or powers of attorney, tariffs are void as a matter of law. Should a challenge to a tariff be made on this basis, carriers will be required to submit the necessary proof. See also § 1312.10.

(e) *Period of notice required.* (1) As a general rule, tariff publications shall be filed on statutory notice; i.e.:

(i) For railroad tariffs:

(A) 20 days for rates or provisions published in connection with new service or changes resulting in increased rates or decreased value of service;

(B) 10 days for changes resulting in decreased rates or charges or changes resulting in neither increases nor reductions;

(C) For contracts and contract summaries filed pursuant to 49 U.S.C. 10713 see § 1312.41; and,

(D) 45 days for publications naming surcharges or cancelling joint rates under 49 U.S.C. 10705a;

(ii) For all other carriers:

(A) 30 days, except 10 days for tariffs naming reduced fares on special or charter passenger operations.

(B) For independently set rates of motor common carriers and freight forwarders the rule generally is 1 day's notice for reductions and 7 workdays' for increases see § 1312.39(f) for details.

However, numerous exceptions authorizing shorter notice are contained in these rules, and special permission for shorter notice may also be requested.

(2) Notice means the number of days a publication shall be on file with the Commission prior to its effective date. The date the publication is received by the Commission is the 1st day of notice.

(f) *Return of tariffs by the Commission.* The Commission will not return a tariff publication unless it is formally rejected (see paragraph (g) of this section) or under the following circumstances:

(1) The package containing the tariff publication arrives with postage or other delivery charges due; or

(2) The tariff publication which the Commission receives is missing an essential part; or

(3) A carrier or agent requests returns before the effective date and subscribers are promptly notified.

(g) *Rejection of tariff publication.* A tariff publication submitted for filing may be rejected by the Commission if the publication—

(1) Fails to give lawful notice of changes in rates or provisions which it proposes to establish;

(2) Fails to meet the requirements of the regulations in this part; or

(3) Violates any decision or order of the Commission or of a court.

When a tariff publication is rejected, the party who tendered it will be furnished a written explanation of reasons. The rejected tariff publication ordinarily will be returned, but the Commission may retain copies for its own use. Appeals of the rejection may be filed.

§ 1312.5 Posting requirements.

(a) *General posting requirements.* (1) Each carrier shall maintain, at its principal office, a complete set of its tariffs (proposed and effective) and those to which it is a party.

(2) Each carrrier shall also maintain some or all tariffs at other locations, as may be useful. Carriers shall provide information regarding all locations where tariffs may be viewed.

(3) At all points where tariffs are posted, they shall be made available for inspeciton by any person during carrier's normal business hours. The tariffs shall be accessible and readable. The carrier shall also post, in a conspicuous place in these locations, a notice, in large print, which contains a statement that the tariffs are available for public inspection.

(4) At all other carrier business offices, the carrier shall display a notice advising the public of the location of the nearest available tariff file. The notice shall be in large print and posted in a conspicuous place. In addition, the carrier shall, upon request, make particular tariffs available at that location as soon as possible but not later than within 20 days, or provide the sought information orally if satisfactory to the requestor.

(5) Any publication referred to in a tariff must be posted with that tariff.

(b) *Exceptions to the posting requirements.* (1) Class III carriers shall maintain at their principal office a complete set of all tariffs filed in their own behalf covering rates, charges and services performed within the limits of their operation. Tariffs in which Class III carriers are listed as participants can be made available at their principal office or in the tariff file of their principal connecting carrier(s).

(2) A motor common carrier of passengers, which participates in an agent's routing tariff, only has to post the title page of the routing tariff, the sections naming joint routes with connecting carriers, and any other rules or provisions necessary for an understanding of that carrier's routing.

(3) Circus or show outfit tariffs (see § 1312.39(e)) need not be posted.

(4) If any tariff maintained pursuant to paragraphs (a) (1) and (2) of this section has not been used for a substantial length of time the posting of that tariff, including its reissues, may be discontinued at that station until such time as a request is made to the carrier's agent to have it reposted. It shall then be reposted within 20 days.

(c) *Notice of proposed increases in passenger fares.*

(1) Motor and rail common carriers of passengers proposing to increase commutation or suburban service fares—

(i) By tariff publication, shall comply with the provisions of paragraphs (c) (3), (5), (7), (8), and (9) of this section; or

(ii) By petition to the Commission prior to filing tariff publications, shall comply with the provisions of paragraphs (c) (3), (4), (6), and (8) of this section.

(2) Motor and rail common carriers of passengers proposing to increase regular route service fares other than commutation or suburban service fares—

(i) By tariff publication, shall comply with the provisions of paragraphss (c) (3), (5), and (10) of this section; or

(ii) By petition to the Commission prior to the filing of tariff publications, shall comply with the provisions in paragraphs (c) (3), (4), and (6) of this section.

(3) A notice shall be displayed at a conspicuous place at each station where tariffs containing the fares to be increased are required to be posted and, in 2 conspicuous places, one in the forward and one in the rear section of each vehicle engaged in the service for which the increase is proposed. The notice shall be printed in type sufficiently large to be read under ordinary conditions by passengers seated in the vehicle. Each notice shall be either one sign at least 240 square inches in size or two signs at least 120 square inches in each size.

(4) The notice shall—

(i) Describe briefly the increases proposed, the transportation service for which they are proposed and the points affected;

(ii) State that interested persons may file objections with the Commission; and

(iii) State that information regarding the Commission's rules of practice may be obtained by writing the Secretary of the Commission.

(5) The notice shall be displayed at the same time a tariff publication containing the proposed increased fares is filed with the Commission and shall remain displayed until—

(i) The carrier withdraws its request;

(ii) The Commission suspends the increase; or

(iii) The increase becomes effective.

(6) The notice shall be displayed at the same time a petition is filed with the Commission requesting authority to increase fares or to file a tariff publication containing proposed increased fares. The notice shall remain displayed until the Commission acts on the petition.

(7) The carrier shall send a copy of the notice by first-class mail to the Governor and any State and County agency responsible for passenger service in all affected states and counties.

(8) As to each municipality affected by the proposal which has a population of 25,000 or more, the carrier shall send a copy of the notice—

(i) To all daily newspapers published in the municipality having a circulation of 25,000 or more; or if none,

(ii) To the daily newspaper having the largest circulation; or, if there is no daily newspaper,

(iii) To the weekly newspaper having the largest circulation.

(9) The notice shall read substantially as follows:

Notice of Increased Fares for Commuter or Suburban Service

(Name of carrier)

This carrier has filed tariffs with the Interstate Commerce Commission proposing increases in fares effective (Date) ———— for (Here, describe briefly the kind of transportation, points or localities affected, and the increase proposed.)

———

———

Anyone may file a complaint challenging the increase by writing to the Interstate Commerce Commission, Washington, D.C. 20423.

The complaint should include the reasons you object to the increase and should be mailed (Here, show "in time to reach the Commission 12 days before the effective date shown above", unless the increase has been filed on less than 30 days' notice by a motor carier or 20 days' notice by a railroad. If the latter, show "as soon as possible."

———

———

At the same time the compliant is sent to the Commission a copy must also be sent to this carrier's general office. (Here, show the street address, city, state, zip code and telephone number of the carrier's general office.)

———

———

Further information is on file at the regional and district offices of the Commission; at our stations, agencies, or offices where tickets are sold and tariffs containing the proposed increases are required to be posted; and at our general office. A copy of this proposal and statement of justification has been mailed to the Governor and to the appropriate State and County agencies in all states and counties affected by the proposal.

(10) The notice shall read substantially as follows:

Notice of Increased Fares for Regular Route Service

(Name of carrier)

This carrier has filed tariffs with the Interstate Commerce Commission proposing increases in fares effective (Date) ———— for (Here, describe briefly the kind of transportation, the points or localities affected, and the increase proposed.)

———

———

Anyone may protest the increase by writing to the Interstate Commerce Commission, Washington, D.C. 20423. The protest should include the reasons you object to the increase and should be mailed (Here, show "in time to reach the Commission 12 days before the effective date shown above", unless the increase has been filed on less than 30 days' notice by a motor carrier or 20 days' notice by a railroad. If the latter, show "as soon as possible."

———

———

At the same time the protest is sent to the Commission a copy must also be sent to this carrier's general office. (Here, show the street address, city, state, zip code and telephone number of the carrier's general office.)

———

———

§ 1312.6 Furnishing copies of tariff publications.

(a) *Definitions.* (1) "Subscriber," as used in this section, means any party other than carrier participants in the tariff that is voluntarily furnished, or any party that requests that it be furnished, one or more copies of a particular tariff with or without subsequent amendments or reissues to that tariff.

(2) "Short-notice publication," as used in this section, means an entire tariff publication authorized to be filed without notice or on notice of less than 10 days.

(b) *Sending new publications to subscribers.* (1) The publishing carrier or agent shall send each newly-issued tariff, supplement, or loose-leaf page as requested to each subscriber by first-class mail, or other means requested in writing by the subscriber.

(2) Newly-issued tariffs, supplements, or loose-leaf pages other than short-notice publications, shall be sent to each subscriber not later than the time the copies for official filing are sent to the Commission.

(3) New short-notice publications shall be sent to each subscriber within 5 calendar days of the date the copies for offical filing are sent to the Commission.

(4) Carriers or agents may, if acceptable to a subscriber, furnish only specific portions of original tariffs and amendments affecting those portions.

(c) *Certification.* The letter of transmittal accompanying the copies to the Commission shall contain the following certification:

I certify that compliance with 49 CFR 1312.6 has been [in the case of short-notice publications "will be"] made."

(d) *Charges.* (1) The charge for copies of tariff publications sent to subscribers shall be reasonable and identical.

(2) No charge may be made (not even for the cost of sending the publication) for any publication that is rejected by the Commission.

(e) *Notice of rejection.* If a publication is rejected, the subscribers shall be notified.

§ 1312.7 Form and printing.

(a) *Form, durability and method of printing.* Tariff publications shall be in the English language, and shall be legible and durable for the life of the tariff.

(b) *General rules.* (1) Except for the title page, and except as otherwise authorized, all pages shall be consecutively numbered using Arabic numerals.

(2) Pages intentionally left blank shall so state.

(3) Reasonable margins shall be provided at a bound edge.

(c) *Bound tariffs.* Bound tariff publications of two or more sheets shall be permanently bound. Stapling is acceptable.

(d) *Looseleaf tariffs.* (1) Original and revised pages shall be so designated. Numbering in sectional tariffs may use letter or number prefixes and suffixes after "original" or "revised", provided the system is explained. See § 1312.17 for rules governing identification of amendments.

(2) Each page shall show the name of the issuing carrier or agent and the complete mailing address. Ocean carriers filing tariffs jointly with this Commission and the Federal Maritime

Commission shall show the name officially recognized by that agency.

(3) Each page shall show the issued date and the general effective date. With the original issue of the looseleaf tariff, issued and effective dates need be shown only on the original title page, not on each original page. The name of the month shall be spelled out, followed by the day and year by number. If the page contains matter (including reissued matter) effective upon a date other than the general effective date, the notation "(Except as otherwise provided)" shall be shown directly with the general effective date.

(e) *Items and numbering systems.* (1) Numbering systems shall be understandable and not duplicative.

(2) Original tariffs shall allow sufficient unused item numbers to allow for expansion.

(3) If two or more items contain related subject matter, or one or more items are subordinate to another, compound numbers (an original number followed by a hyphen or decimal, then a new series of numbers, i.e., Item 400, Item 400–1, Item 400–2 or Item 400, Item 400.1, Item 400.2) are permitted. Compound numbers may be used in amendments if new matter has to be added, provided the initial number (item 400 in the example) has not already been used in a compound number series.

(4) Sections of a tariff or notes outside or inside of items shall be numerically or alphabetically designated. Item numbers for class rate tables, if assigned, shall be in numerical sequence.

§ 1312.8 ICC tariff designations.

(a) *ICC designation.* The ICC designation is—

(1) The characters "ICC"; followed by

(2) The tariff, carrier or agent code; followed by

(3) The tariff number.

(b) *ICC designations to be shown on tariff publications.* (1) The ICC designation shall be shown on the title page of all new or reissued tariff publications.

(2) Tariffs published to apply on emergency movements authorized under section 10928 of the Act may be filed without the carrier code if the carrier has not been issued a code. For example, a motor carrier's tariff may show a designation "ICC 900" if no code has been assigned and the number "900" has not been previously used. The tariffs shall, however, fully comply with all other requirements of this section.

(c) *Assignment of tariff, carrier and agent codes.* (1) Tariff, carrier and agent codes shall consist of a minimum of two and a maximum of four alphabetical characters.

(2) The codes shall be assigned by the transportation industry as follows:

Railroads: Executive Committee, Western Railroad Association, Suite 1200, 222 Riverside Plaza, Chicago, IL 60606

Freight Forwarders: Freight Forwarders Tariff Bureau, Inc., 140 Cedar St., New York, NY 10006

Water Carriers: Waterways Freight Bureau, Suite 402, 1334 G St., NW., Washington, DC 20005

Motor Carriers: (Passenger and Property), National Motor Freight Traffic Association, Inc., 1616 P St., NW., Washington, DC 20036

The fee assessed, if any, may be no more than the processing cost.

(3) Only one code shall be assigned to each carrier or agent, except as authorized in paragraphs (c)(5) and (6) of this section.

(4) A court appointed receiver, trustee, executor, administrator, assignee, etc., who assumes possession and operating control of a carrier's lines, in whole or in part, shall use the old carrier's code. In all other cases where the regulations in this part require the filing of an adoption notice, the code of the new carrier shall be used on the adoption notice and on all original tariffs filed thereafter in the new carrier's name. If a carrier's or agent's name is changed without a change in ownership of the carrier or identity of the agent, a new code shall be assigned, unless the Commission authorizes the use of the same code. (Exception: A code assigned for use on a specific tariff of an agent shall continue to be used on that tariff.)

(5) Consideration shall be given to requests for the assignment of specific codes for classifications and other governing tariffs, issued by agents, which have a substantial nationwide application for a substantial number of participating carriers. Whenever possible, the assigned code shall coincide with the first letter of the primary words in the title of the tariff. Only one code shall be assigned to a tariff.

(6) Consideration shall be given to requests for assignment of an extra code(s) to a carrier. The additional code(s) shall be constructed by the use of the base code assigned to the carrier, together with an appropriate letter suffix. In no case shall the code exceed four characters. If the base code consists of four characters, the letter suffix shall be added to the first three characters of the base code.

(7) The industry shall file with the Commission in tariff form a list of the assigned alphabetical codes and the names of the carriers and agents to which they are assigned. The tariff shall be amended every 3 months if the list has changed during that period. The amendments shall show the changes, additions and cancellations made during that period. The tariff shall comply with the amendment limitations provided in § 1312.17 of this part. Partial amendments to the list may be shown in each supplement, and more than one partial amendment may be in effect at the same time.

(d) *Tariff numbers.*

(1) A tariff number assigned to a tariff shall consist of not more than four numerals. For rail general increase master tariffs, the number may be the letter "X" followed by the docket number of the ex parte proceeding.

(2) For property tariffs of rail carriers, the first digit or letter shall conform to the following grouping:

First digit or letter of tariff Nos.	Types of tariffs
1	Class rate tariffs.
2	Class exceptions tariffs.
3	General commodity rate tariffs (i.e., numerous unrelated commodities).
4	Specific commodity rate tariffs (e.g., iron or steel articles).
5	Routing guide tariffs.
6	Governing tariffs (all kinds).
7	Reserved.
8 or 9	Miscellaneous tariffs (e.g., switching, special service, terminal service).
X	May be used for master tariff of general increases.

(3) For tariffs of motor common carriers of property other than household goods carriers the first digit shall conform to the following grouping:

First digit of tariff Nos.	Types of tariffs
1	Governing publications of all kinds; adoption notices.
2	Commodity rate tariffs.
3	Combined class and commodity rate tariffs.
4	Commodity column or distance rate tariffs.
5	Class rate tariffs.
6	Miscellaneous tariffs (those not included in any other category).
7	Import and export tariffs (tariffs assigned this digit shall contain only import or export, or both, provisions).
8	Reserved for future assignment.
9	Tariffs containing rates or provisions covering emergency movements authorized by this Commission under section 10928 of the Act.

Any tariff assigned any first digit other than 7 may contain some, but not solely import or export provisions.

(4) When a tariff could be construed as being of more than one type because of the provisions it contains, the governing factor in assignment of the digit or letter will be the category that represents the principal portion of the contents or which signifies its primary purpose.

(5) The first digit of a tariff number assigned to tariffs of motor carriers of passengers or water carriers of proper y

containing rates or provisions covering emergency movements authorized by the Commission under section 10928 of the Act shall be "9".

(6) For all tariffs not governed by paragraphs (d) (2), (3), (4), or (5) of this section, the carrier or agent shall assign groupings for each of the particular types of tariffs involved, and the number assigned to a tariff shall conform to that grouping.

(7) The assigned number will remain the same from reissue to reissue of the tariff. The first time a tariff is issued, its tariff number shall not have a letter suffix. The first reissue of the tariff shall have the letter suffix A, the next reissue B, and so on through Z, after which the letter suffix A will again be used and the process repeated. A carrier or agent may not use any number on its tariffs that differs in any respect from that used in the ICC designation, and whole numbers (not fractional or decimal) shall be used.

(e) *Use in tariffs.* A tariff which refers to another tariff shall identify the other tariff by its ICC designation and name the issuing carrier or agent.

(f) *ICC designations; rejected tariffs.* When the ICC designation of a rejected tariff does not include a letter suffix, the designation on the tariff issued in its place shall bear the letter suffix A. When the ICC designation of a rejected tariff includes a letter suffix, the designation on the tariff issued in its place shall bear the next consecutive letter suffix. The rejected tariff may not be referred to in any subsequent tariffs as having been amended, canceled, or withdrawn, but the tariff which is published in its place shall bear the following notation:

Issued in place of (here identify the rejected tariff), rejected by the Commission.

§ 1312.9 Codes for identification of places.

(a) *Definition.* As used in this part, the term "code for identification of places" means any numeric or alphabetic system used to represent, or identify, places, points, facilities, or locations.

(b) *Use.* Codes for identification of places may be used instead of, or in addition to, the naming of places, points, facilities, or locations; provided that an explanation of the code is contained in the same tariff using the code, or in a separate tariff specifically named as a governing publication.

§ 1312.10 Powers of attorney, concurrences, transfer of agent. [See also § 1312.4(d)]

(a) *Powers of attorney.* Powers of attorney may be given by a carrier to a carrier or an agent for the purpose of publishing and filing tariffs. A power of attorney may be given by Class III rail carriers to larger carriers with which they connect or by rail subsidiaries to parent rail carriers authorizing the larger or parent rail carriers to publish tariffs, to give and receive concurrences, and to give powers of attorney to agents on behalf of the Class III or subsidiary rail carrier. The power may be as broad or limited as expressed in the document, and alternate agents may be named. Powers of attorney shall not be filed at the Commission, but shall be maintained and produced if requested by any person. Revocation or amendment of the power of attorney should be reflected through lawfully published tariff revisions effective concurrently. In the event of failure to so revise the applicable tariff or tariffs, the rates in such tariff or tariffs will remain applicable until lawfully changed. If the scope of a power of attorney is questioned by any person, the document shall be produced.

(b) *Concurrences.* (1) A concurrence is used to show that one carrier has agreed to participate in joint rates or provisions published in a tariff filed by another carrier or agent. A concurrence does not give a carrier authority to publish local rates or provisions for the carrier issuing the concurrence. If two or more carriers execute powers of attorney to the same agent, it is not necessary for those carriers to exchange concurrences.

(2) Concurrences shall not be filed with the Commission, but shall be maintained and produced if requested. Revocation or amendment of the concurrence should be reflected through lawfully published tariff revisions effective concurrently. In the event of failure to do so, the rates in such tariff remain applicable until lawfully changed. If the concurrence is questioned, the document shall be produced by any person.

(c) *Transfer of authority from one agent to another.* When a new agent is to take over all effective tariffs of another agent (including where a name of a corporation is changed), powers of attorney shall be appropriately amended.

(d) *Take-over publications.* (1) When an agent is appointed to take over an agency, or when an alternate agent takes over the duties of the principal agent, the new or alternate agent shall immediately issue a supplement to each of the superseded agent's effective tariffs. Instead of showing an effective date on the title page, the following statement or one to similar effect shall be shown:

On and after [date the authority was transferred], this publication is the issue of [new or alternate agent's name].

(2) In the case of a new agent, only the carriers that have issued new powers of attorney may be shown in the take-over publication as participants. All other carriers previously shown as participants shall be shown as canceled either by listing each and stating its participation is canceled or by showing the following statement or one to similar effect at the beginning of the list:

The following is the list of carriers participating in this tariff as of [take-over date]. All carriers previously shown as participants but not shown are canceled.

(3) A take-over supplement shall remain in effect for the life of the tariff, except the list of participating carriers may be amended.

(4) A take-over supplement is exempt from the provisions of § 1312.18 limiting the number and volume of supplements.

(5) Where joint-agent publications (see § 1312.11) are involved, there are four major situations:

(i) The issuing agent is taken over by an agent not already shown as joining in the publication.

(ii) A joint agent is taken over by an agent other than the issuing agent.

(iii) A joint agent is taken over by the issuing agent; or

(iv) The issuing agent is taken over by a joint agent shown on the publication.

(A) In the case of paragraph (d)(5)(i), the new agent issues the take-over supplement.

(B) In the case of paragraph (d)(5)(ii), the issuing agent of the tariff issues the supplement showing the name of the new agent for the one taken over.

(C) In the case of paragraph (d)(5)(iii), the issuing agent of the tariff issues the supplement, with the former agent and its ICC designation deleted.

(D) In the case of paragraph (d)(5)(iv), the new agent becomes the issuing agent, issues the take-over supplement, with the former issuing agent and its ICC designation deleted. In each case, the supplement shall contain only matter necessary to explain the action with the list of participating carriers, if any, appropriately amended.

(6) Amendments (including the take-over supplement) filed by the new agent to tariffs issued by the former agent shall, in connection with the ICC designation, show that they are in the series of the former agent.

(7) New tariffs issued by the new agent shall be in the new agent's own ICC designation series. If a new tariff cancels a tariff taken over by the new agent, the cancellation shall indicate the series of the tariff canceled.

(8) An alternate agent, after take over, shall continue to use the ICC

designation series of the former agent, and shall, in connection with the ICC designation, identify it by name of the former agent.

§ 1312.11 Tariffs issued by joint agents not applicable to contract carriers or freight forwarders.

(a) *May be filed.* Two or more agents may issue a tariff(s). Each agent shall act only for carriers who have given it powers of attorney or who have given concurrences to carriers issuing powers of attorney. Each agent need not obtain powers of attorney from all participating carriers. Each carrier shall be shown as participating under authority given to one of the issuing agents.

(b) *Title pages and looseleaf pages.* The title page of each original joint issue tariff and supplement and each joint issue looseleaf page—

(1) May show a separate ICC designation in the series of each agent; and

(2) Shall show at the bottom—

(i) "Issued By" followed by the name, title, and mailing address of the principal agent or issuing party; and

(ii) Below that, "Jointly With" followed by the name, title, and mailing address of the other agent(s) joining in the issue.

For bound tariffs only, the names, addresses, and ICC designations of agents other than the principal agent may be shown on the reverse side of the title page of the tariff publication instead of on the title page. Except as provided in § 1312.10, an agent may be added or deleted as an issuing party only by reissue of the tariff. In either case, the former tariff shall be canceled only by supplement.

(c) *List of participating carriers.* Any list of carriers participating in the tariff shall be arranged as provided in § 1312.13 and shall be published in—

(1) The tariff itself;

(2) A separate jointly issued participating carrier tariff; or

(3) Each issuing agent's separate participating carrier tariff.

§ 1312.12 Title page of original tariffs.

(a) *Title page required.* Original tariffs shall have a title page which contains at a minimum the information required by paragraphs (b) through (k) of this section.

(b) *ICC designation and cancellation notice.* The tariff's ICC designation shall be shown. Immediately under it, the ICC designation of the tariff(s) being canceled, if any. If there are numerous tariffs being canceled, the ICC designations of those tariffs may be shown—

(1) If a bound tariff, on the first page after the title page which contains tariff matter; or

(2) If a looseleaf tariff, on the first page after the "check sheet(s)," or, if the "correction number, checkoff" type of check sheet is also employed, the first page following that. If the cancellations are not shown on the title page, reference to the location of the listing of the canceled tariffs should be shown.

(c) *Looseleaf tariffs.* The title page of an original looseleaf tariff shall be designated as an "Original Title page."

(d) *Name and certificate number.* The name of the issuing carrier or agent and complete mailing address shall be shown. Ocean carriers filing tariffs jointly with this Commission and the Federal Maritime Commission shall show the name officially recognized by that agency. The name of the carrier shall be followed by the number of its certificate or permit, if any. Sub numbers of certificates and permits need not be shown. If the agent is a corporation or association, its name shall be shown. If the agent is an individual, the association's name (if any) for whom the agent acts may also be shown.

(e) *Type of rates or fares, modes of transportation and territorial application—rate or fare tariffs.* (1) (This paragraph applies to water and motor passenger contract carriers.) The title page shall state that the tariff is a "Contract Carrier Schedule of Minimum Rates [or "Fares"] and Charges Applying On", and show a short, specific description of the commodities, or types of fares, and the territory covered.

(2) (This paragraph applies to common carriers.) A tariff naming rate shall provide the following information:

(i) The type of rates, the modes of transportation, and the territory covered. The terms local, joint, proportional, and distance shall be used to identify the rates.

(ii) Tariffs shall use appropriate terms to identify the rates in the tariff as specifically as possible; for example: export, import, coastwise, intercoastal, assembling, distribution, class, commodity, commodity-column (column-commodity), passenger, commutation, truckload, carload, trainload, less-than-truckload, less-than-carload, or any quantity.

(iii) Each mode of transportation shall be identified, such all-rail, all-motor, motor-water, motor-rail or rail-motor-water routes.

(f) *Governing tariffs.* A classification, a rules tariff or another type of governing tariff shall show a brief descripition of the tariff and its contents.

(g) *Nomenclature for tariff.* A brief reference (e.g., "Iron and Steel Tariff," "Charter Coach Tariff"), by which the tariff can be readily identified may be shown.

(h) *Reference to item containing a list of governing tariffs.* A tariff governed by one or more other tariffs shall refer to the item containing the list of the governing tariffs, in the following manner:

For governing publications, see Item ——.

(i) *Tariffs issued under decision, order or other authority.* A reference to the decision or order by number, or a reference to the regulation by section number, and the number of days' notice (where less than statutory notice is authorized) shall be shown if the entire tariff—

(1) Is issued to comply with a mandatory decision of the Commission or an order of a court requiring a specific action;

(2) Is issued under authority of a permissive decision allowing less than statutory notice or departure from tariff publishing regulations; or

(3) Is published under a regulation of this part permitting less than statutory notice or departure from an outstanding decision, or both.

(j) *Issue and effective dates.* The issue date and the general effective date shall be shown. If a tariff contains matter (including reissued matter) effective upon a date other than the general effective date, show the following directly with the general effective date: "(except as otherwise provided)."

(k) *Expiration dates.* A tariff that is to expire with a given date shall show the following or similar notation: "This tariff, as amended, expires with [here show date of expiration], unless sooner canceled, changed, or extended."

§ 1312.13 Contents of tariffs.

(a) *General requirements.* No provision may be published in tariff publications which exceeds the carrier's operating authority. An original tariff shall contain the provisions required by paragraphs (b) through (l) of this section. Any matter not specifically prohibited may be included.

(b) *Checksheets—looseleaf tariffs only.* A checksheet, may be used to list in numerical order the numbers of the original looseleaf pages comprising the tariff. (This page shall always show an updated listing of each page and supplement and shall accompany the pages and supplements being filed.) If the tariff uses the "correction number, check-off" type of checksheet as looseleaf page amendments are filed, it

must be accompanied by in numerical order, a list of correction numbers beginning with No. 1. See § 1312.17 Amendments.

(c) *Participating carriers.* (1) (This paragraph does not apply to carriers' local tariffs.) Unless a separate participating carrier's tariff is filed, a list of the participating carriers shall be provided, showing the names of the carriers; the city and state of the principal office of the carrier; and the lead docket number of each carrier's operating authority, if any.

(2) A carrier may not without authorization file local rates or provisions to apply for another carrier not joint rates or provisions to which it is not a party.

(d) *Statement of operating authority in rate tariffs.* (This paragraph does not apply to railroad, pipeline or passenger carriers.) The operating authority under which rates are published shall be clearly shown in the tariff containing the rates, in a referred to "scope tariff" (see § 1312.24) or in a rules tariff.

(e) *Governing tariffs.* (1) A list of governing tariffs shall be shown, along with the type of tariff, its issuing agent or carrier, and its ICC designation.

(2) Governing publications shall be on file with the Commission except that rules published in the CFR and other publications containing standardized codes or terms that are published by the Federal government and available from the government need not be reproduced, only referenced.

(3) Governing publications shall not result in conflicting rates, charges or provisions.

(f) *Rules and other provisions which govern the tariff.* (1) Rules or provisions stating conditions which in any way affect the rates named in the tariff shall be published either in the rate tariff under the heading "Governing Provisions" or other tariffs. A provision affecting a particular item or rate shall be specifically referred to. Provisions affecting more than one but not all of the rates in the tariff or applying for only some of the participating carriers may be included with explanatory statements.

(2)(i) Each rule or regulation shall be given a separate number. Where the following subjects are to be provided for in rail tariffs, the rules covering them shall bear the titles indicated and be assigned the item numbers indicated. If a title includes subjects not treated in the rule, those subjects may be eliminated from the title.

Item and Title
5 Description of Governing Classification, Exceptions and Rules Tariffs
10 Station List and Conditions
15 Explosives, Dangerous Articles
20 Reference to Tariffs, Items, Notes, Rules, etc.
25 Terminal or Transit Privileges or Services
30 Perishable Freight
35 Transfer Between Connecting Carriers
40 Consecutive Numbers
45 Capacities and Dimension of Cars
50 Combination Rates
55 Substitution of Motor Service for Rail or Water Service
60 National Service Order Tariff
65 Proportional Rates—application
70 Alternation
75 Method of Canceling Items
80 Intermediate Application—origin
85 Intermediate Application—destination
100 Method of Denoting Reissued Matter in Supplements
105 Straight or Mixed CL Application

For motor tariffs, the list is as follows:

Item and Title
100 Governing Publications
110 to 119 Definitions
150 Application of Tariff
160 to 290 Application of Rates
299 Absorptions
300 Advancing Charges
305 Advertising on Carrier Equipment
310 Advertising or Premiums
315 to 335 Allowances
340 Arbitraries or Differentials
345 Arrival Notice and Undelivered Freight
350 Assembling or Distributing Freight
360 Bills of Lading
370 Bulk Freight
381 Cancellation of Items
382 Cancelling Original and Revised Pages, Except the Title Page
390 Capacity Loads
405 Carrier Trade Names
407 to 419 Claims, Loss and Damage
420 Classification of Articles—General
421 Classification by Analogy
422 Classification of Combined Articles
423 Classification of Loose Articles
424 Classification of Parts or Pieces of a Complete Article
426 Classification of Reconditioning Bags
428 Classification of Various Documents Included with Freight
430 COD shipments
435 Collection of Charges
440 Commercial Zones
455 Consecutive Numbers
460 Consolidation of Shipments
465 Containers
470 Control and Exclusive Use of Vehicles
480 Customs or In-Bond Freight
490 Density
500 Detention—Vehicles With Power Units
501 Detention—Vehicles Without Power Units
502 Detention—LTL or AQ Shipments
503 Detention—Prearranged Scheduling
510 Distances
520 Equipment
530 Expedited Service
535 Expiration Dates
540 Explosives and Other Dangerous Articles
550 Export, Import, Coastwise or Intercoastal Freight
560 Extra Labor
565 Fractions
566 Handling Freight Not Adjacent to Vehicle
568 Heavy or Bulky Freight
570 Impracticable Operations
575 Light or Bulky Freight
578 Loading by Consignor—Unloading by Consignee
580 Marking or Tagging Freight
595 Maximum Charge
600 Meat Hooks or Racks
610 Minimun Charge
640 Mixed Shipments—LTL
645 Mixed Shipments—TL or Vol.
647 Notification Prior to Delivery
650 Operating Rights
660 Order-Notify Shipments
670 Over Dimension Freight
675 Over Weight Shipments
680 to 689 Packing or Packaging
710 Pallets, Platform or Skids
720 Payment of Charges
730 Peddler Truck Shipments
740 Permits, Special
750 Pickup or Delivery Service
753 Pickup or Delivery Service—Private Residence
754 Pickup or Delivery Service—Sundays or Holidays
755 Pickup or Delivery Service—Saturdays
756 Pickup or Delivery Service—Saturdays, Sundays, or Holidays
765 Precedence of Rates
766 Precedence of Rules
770 Prepayment
780 Prohibited or Restricted Articles
784 Proof of Delivery
800 Proportional Rates
810 Protective Service
820 Reconsignment or Diversion
830 Redelivery
845 Reference to Tariffs, Schedules
846 Reissued Matter, Method of Treating
848 Released Value
850 Reporting Charge
860 Returned, Undelivered Shipments
880 Sealing of Trucks
881 Section 10721 Tenders
883 Shipments Tendered as a Truckload
885 Single Shipment Pickup
887 Sorting or Segregating
890 Special Services
900 Stopoffs
910 Storage
920 Substitution of Service
940 Terminal Areas
950 Terminal Charges at Ports
957 Tolls
959 Transfer of Lading
960 Transfer of Service
970 Transit Privileges or Services
980 Unnamed Points
985 Vehicle Furnished But Not Used
990 Weighing and Weights
992 Weight Verification
995 Weights—Gross Weights and Dunnage
997 Weights—Minimum Weight Factor

(ii) A carrier or agent may assign a title and number of its choosing for matter not listed, provided the title and number chosen do not conflict with those listed.

(iii) If a title does not properly identify a rule's content, qualifying words, phrases or subtitles may be added. When qualifying words or phrases are used, the prescribed title shall be followed by a dash and the added words. Subtitles or references to excepted classification rules shall follow the title.

(iv) When a rule is split into two or more parts, the prescribed item number may be subdivided. The first part of the rule (which shall contain the general rule, if any) must be assigned the prescribed item number without a numerical suffix. Each subdivision shall be assigned a compound number, which shall be constructed by use of the prescribed number followed by a decimal or a hyphen, then a new series of numbers, for example: item 70.1, or 70–1, in numerical sequence. Each subdivision must show the prescribed title.

(v) Exceptions to a rule may be included in the general rule or arranged in items immediately following the rule to which exception is taken. In the latter case, exception items are to use the standard item number of the general rule followed by a suffix—for example, exceptions to item 85 would use items 85.1, 85.2, etc., or 85–1, 85–2, etc.

(vi) Tariffs subject to the provisions contained in § 1312.37 are not subject to the requirements of this paragraph.

(3) Governing provisions should be given brief, but descriptive, titles.

(4) Tariffs containing rates for the transportation of dangerous articles (hazardous materials) may reproduce the Department of Transportation's regulations governing the acceptance and transportation of those articles refer to a separate tariff which contains the regulations, or refer to the CFR location of the governing rules.

(5) Rules and regulations of passenger carriers concerning their practices, procedures and regulations for the sale, honoring, exchange, validation, refund, and time limits for usage of tickets shall be published in the fare tariffs, or the fare tariff shall refer to a separate tariff containing these provisions.

(g) *Exceptions to class ratings.* (1) The exceptions to class ratings in a classification or exceptions tariff applying only for the rates published in one tariff shall be published in that tariff, be clear, be published in a separate section, be arranged in the same order, describe the commodity in the same words, or as close as possible, used in the classification, and use the generic heading, if any, used in the classification, and indicate the quantity application.

(2) Different class ratings on the same article or commodity based on different minimum quantities may be published if the class ratings are published in one item.

(3) An exception class rating may be published to apply on the movement of a plant to a new location without naming each article to be transported, provided application is clear.

(h) *Exceptions to classification or exceptions tariff rules.* (1) Exceptions to rules in a classification or exceptions tariff applying only for the rates published in one tariff, should be published in that tariff, in the "Governing Provisions" section [but see § 1312.27(b)] and shall—

(i) Be arranged in the same order as they appear in the classification;

(ii) Unless the exception is to make the rule (or part of the rule) not applicable, be complete in themselves by republication of the complete rules, section or other identifiable unit affected;

(iii) Identify the classification rule (and exceptions tariff rule, if any) and the part being changed;

(iv) Republish the entire rule if relatively small;

(v) If the exception is to make the rule (or portion of the rule) not applicable, identify the rule or portion affected.

(i) *Application for individual carriers.* Tariffs shall contain statements indicating the proper application of the rates and provisions for particular carriers.

(j) *Statements of rates and fares.* Rate tariffs shall contain a statement of rates applicable for the transportation of the articles on which rates are named. Fare tariffs shall contain a statement of fares applicable for the transportation of passengers which the tariff is intended to cover. Tariffs must be presented in a manner that allows all tariff users to have knowledge of the exact rate of fare applicable to any given shipment.

(k) *Statement of routes.* A clear statement of routes over which the published rates apply shall be shown, prepared in accordance with the provisions of § 1312.15.

(l) *Explanation of reference marks, notes, and abbreviations.* (1) Reference marks, abbreviations and note references used in a tariff shall be explained either in the item to which they apply or in a separate item. Use shall be consistent throughout the tariff unless the deviation is specifically explained. See also §§ 1312.17 and 1312.18.

(2) Standard carrier codes may be included as part of the List of Participating Carriers if one is published within the tariff, provided a statement to that effect is included under the explanation of abbreviations.

(3) In addition to U.S. Postal Service State name abbreviations and acronyms of Federal agencies, the following commonly used abbreviations are acceptable without explanation.

Abbreviation	Explanation
&	and
AFB	Air Force Base
a.m.	ante meridien
Ave	Avenue
Blvd	Boulevard
Bldg	Building
br	branch
Bros	Brothers
¢	cents
CFR	Code of Federal Regulations
Co	Company
Corp	Corporation
cu	cubic
cwt	100 pounds
Cy	County
d/b/a/	doing business as
$	dollars
E	East
etc	et cetera
e.g.	for example
Ft	Fort
ft or '	foot, feet
gal	gallon
i.e.	that is
in or "	inch, inches
Inc.	Incorporated
Jct	Junction
lb	pound
Ltd	Limited
mfg	manufacturing
Mt	Mount, Mountain
N	North
No.	Number
oz	ounce
%	percent
p.m.	post meridien
PO	Post Office
Rd	Road
S	South
St	Street
US	United States
wt	weight
W	West

(4) The following reference marks (symbols) are suggested for use.

° or (R) or *R* to denote reductions

–° or (A) or *A* to denote increases

– or (C) or *C* to denote changes which result in neither increases nor reductions in charges

° or (N) or *N* to denote no change in rate [fare] (see § 1312.17(f)).

+ to denote intrastate application only

[ ], □, δ, or ( ), to denote reissued matter (see § 1312.17(g).

(5) New or added matter (matter that does not actually change the application of published rates) on which the prescribed reference marks in this paragraph would not be appropriate may be indicated as "New," "Addition," "Add" or bear a properly explained reference mark of the carrier's or agent's choice.

§ 1312.14 Statement of rates and fares.

(a) *Shall be clear and explicit.* (1) Rates, fares, and provisions shall be clearly stated and arranged in a

systematic manner which establishes the rate, charge or attendant provisions for each service offered or performed by the serving carrier. Rates and charges shall be explicitly stated per unit in U.S. dollars or cents. A rate for a given service may be expressed as a definite percentage of another explicitly stated rate in the same or other tariffs. The disposition of fractions and other tariff elements required to determine the applicable rate, charge or provision shall be clearly explained. Tariffs of water and motor passenger contract carriers shall provide an explicit statement of the minimum rates, fares, or charges actually maintained. Rates may be stated in any measurable unit. Rates may be stated as applying e.g., per car, per vehicle, per mile, per vehicle-mile, per container, per package, per passenger, per unit of time or other variable unit, provided the measure of the service is fixed by defining the unit specifically, or in maximum terms, such as a stated maximum weight of contents permitted per vehicle or container of a certain maximum cubic capacity or measurement, or stated maximum dimensions or weight per individual package. Rates for rail, water, and motor passenger service (including one-way, roundtrip, commutation, etc.) may be stated per passenger or other identifiable unit. Rates based on quantity shall be stated as having any quantity, less-than-truckload, truckload, less-than-carload, carload, trainload, volume or any other clearly defined quantity application.

(2) (This paragraph only applies to transportation of property by railroads.) Rates may be shown as applying from or to "all points" in a State to territory located on the lines of the carrier parties to the tariff, without naming the points in the tariff, provided the tariff is governed by a station list tariff or otherwise adequately describes the territorial scope. Points may be excepted from the application of the rates by listing them. Intermediate point rules (§ 1312.33) may not be used in connection with origin or destination points provided in accordance with this paragraph, as to do so would be redundant.

(3) Rates may be published to apply from or to a named plant site, construction site, or other site, if its location is identified. Rates may be published for the account of a specifically named shipper or receiver.

(b) *Arbitraries.* A tariff may provide rates from or to designated points by the addition or deduction of arbitraries or differentials to or from rates in the tariff from or to named base points. Provision for this shall be shown either in a separate item in the same tariff, which shall specifically name the base point and clearly and definitely state the manner in which the arbitraries or differentials shall be applied, or in a separate rate basis tariff.

(c) *Class rates.* Class rate tariffs shall provide a rate for class ratings shown in the classification or exceptions tariff except class rates for certain classes may be omitted provided there is a statement that the next lower class or the next higher class (not both) for which rates are published shall be used.

(d) *Alternation and precedence of rates, and maximum charges.* Alternation of rates is permitted. The extent of alternation must be clearly defined by explicitly delineating the levels of rates subject to alternation. For example:

—Rates named in Section 2 of this tariff alternate with rates named in Sections 3 and 4 of this tariff.

—Rates named in this tariff alternate with rates named in tariff ———, issued by ———.

—Commodity rates named in Section of — of this tariff alternate with class rates named in tariff ———, issued by ————; alternation extends to class rates as discounted through use of discount provisions named in tariff ———, issued by ————.

(e) *Mixed shipments.* If two or more commodities are listed in connection with a rate or rating application, there shall be a clear statement as to whether the rate or rating applies only on straight shipments, on a specific mixture of the articles, or on straight or mixed shipments. If one or more of the commodities are to be subject to a rate or a minimum quantity or both, different from the others, how the minimum charge per mixed shipment is to be determined shall be clearly stated. This is also required if two or more rates or ratings, based on different minimum quantities, are provided for the same commodity. Where different rates or ratings are so provided, there shall be a statement published explaining how the deficit, if any, in the applicable minimum weight shall be rated.

(f) *Commodity rates.* Except as otherwise provided in paragraphs (g), (h) and (i) of this section, when commodity rates are established, the commodity description shall be specific and the rates may not be applied to analogous articles unless so provided. As far as possible, uniform commodity descriptions should be used in all tariffs.

(g) *Generic terms.* Rates, tariffs, or sections of tariffs may be published to apply commodities without naming the individual articles by publication of an appropriate description.

(h) *Reference to items or lists for commodities or descriptions.* (1) Commodity rate items may contain rates on a number of articles without naming the articles in the item by use of a generic term and reference to an item (not a rate item) in the tariff or in a separate tariff (sufficiently identified on its title page) which contains a complete list of the articles (and minimum weights, if any). The list shall bear a commodity caption (for example "Packinghouse products, namely"), which shall be worded the same as the generic term used in the rate item, and the commodities in each list shall be arranged alphabetically.

(2) The rate item may except certain commodities in the list.

(3) A rate tariff may refer to a classification instead of, or in addition to, a separate list tariff for description of articles on which rates published by reference to generic terms will apply. The reference may be restricted to the descriptions in certain identified items under the generic heading used. A rate item may refer to classification items for a detailed description, and for governing conditions, if the commodity term used in the rate item embraces the commodities in the classification items. The rate tariff shall clearly indicate the application of notes, qualifying conditions and other matter published in connection with the classification items.

(i) *Application of aggregate of intermediate rates and combination rates.* (1) Except where a carrier elects to permit alternation, when a rate, whether local or joint, from origin to destination has been established via a route as a "one-factor rate," it becomes the only legal rate for through transportation via that route, whether it is greater or less than the aggregate of intermediate rates, if any.

(2) The lowest combination of rates applicable via the route of movement is the legal rate if no one-factor rate is in effect. The combination shall be treated as a unit from origin to destination.

Note.—This section does not require equalizing via one route or gateway the combination of rates applicable over another route or via a different gateway.

(j) *Proportional rates.* (This paragraph does not apply to contract carriers or freight forwarders.) Tariffs containing proportional rates shall clearly show their application. If a proportional rate is intended for use on traffic destined to a restricted territory or points, the territory shall be clearly defined.

(k) *Tank-line gauge books and equipment register.* When rates are published with minimum weights dependent upon, for example, the length of the car used, or the marked cubical or gallon capacity of the car used, that measurement or mark becomes an intergral part of the rate and carriers shall file tariffs showing the numbers, dimensions, capacities, and ownership of freight cars, and other information required by law to be filed with respect to such cars. The information may be published in separate publications and be filed by duly authorized agents. Successive issues and amendments may be made effective on 1 day's notice.

§ 1312.15 Routing not applicable to freight forwarders or contract carriers.

(a) *Routing to be specified.* Except as authorized in paragraph (b) of this section, the routing to be used shall be specified in a complete and clear manner, identifying each carrier and the point of interchange in proper order from origin to destination. For motor carriers, highway numbers need not be listed.

(b) *Open routing.* (This paragraph applies to tariffs of railroads.) Routing may be provided by publishing a statement substantially as follows in the rate tariff:

The rates in this tariff apply over all routes made by use of the lines of any of the carriers parties to this tariff, except as otherwise specifically provided on pages ——, in individual rate items, or in connection with individual rates.

The exceptions may be stated either by showing that the rate applies only via specified routes (affirmative routing), or by showing that the rate does not apply via specified routes (negative routing). Affirmative routing may be shown in a routing guide, but negative routing may not.

(c) *Where to publish routes.* The routes shall be published in the rate tariff, in a separate routing tariff or tariffs (a "routing guide"), or in a separate routing tariff or tariffs which are governed by an explanation of routes tariff or tariffs. Routes may be published in both rate tariffs and routing tariffs.

(d) *Notations in tariff publications.* (1) A routing guide shall contain the following or similar statement on its title page:

The routes in this tariff may be used only when rate tariffs provide for their application.

(2) If all of the routes are provided in the rate tariff, the following or similar notation shall be shown in the rate tariff under the heading "Routing Instructions":

The rates in this tariff apply only via the routes specified on pages [or "in items"].

(3) If all of the routes are provided in the routing guide, the following or similar notation (with appropriate tariff reference) shall be shown in the rate tariff under the heading "Routing Instructions":

The rates in this tariff apply only via the routes specified in [here show ICC designation] for carrier parties to this tariff.

(4) If the rate tariff contains routing and also refers to a routing guide, an appropriate notation shall be published in the rate tariff under the heading "Routing Instructions." The notation shall clearly state the circumstances when the routing in the rate tariff applies and when the routing in the routing guide applies.

(e) *Number of routing guides.* A rate may not be subject to more than one routing guide except—

(1) Joint rates of a rail subsidiary or a Class III rail carrier with two or more connecting or parent rail carriers may refer to the routing guides of each of the connecting or parent carriers;

(2) If territorial routing guides are published, an interterritorial rate may refer to one guide for each of the separate territories involved; and

(3) Reference may be made to separate routing guides of any of the participating carriers for internal routing over each of the carrier's lines.

(f) *Combined routing guide/participating carrier tariff.* A routing guide may be combined with a participating carrier tariff, or a combined participating carrier and points of service tariff, provided the routing provisions are separate and the requirements of this section are otherwise complied with.

(g) *Emergency routing clause.* The following provision or one of similar effect may be published under the heading "Routing Instructions" in connection with joint rates on property:

Emergency Routing

The joint rates in this tariff apply via the routes and through the transfer points authorized in this tariff, except:

When, because of pronounced traffic congestion (not an embargo), detours or other similar emergencies, or through carriers' error, carriers forward shipments by other transfer points of the same carriers or over the lines of other carriers parties to this tariff, the rate specified in this tariff will apply if it results in lower charges than the otherwise applicable rate over the actual route of movement.

(h) *Cancellation of or surcharges to joint routes or rates.* (This paragraph applies only to rail carriers.) Cancellations of joint rates or routes or surcharges to them under the authority of 49 U.S.C. 10705a shall have a clear statement to that effect in the tariff publication.

§ 1312.16 Sectional tariffs.

Tariffs may be arranged in "sections" to separate different kinds of rates or provisions, provided the sections are consecutively numbered or lettered and differentiation among sections is clear.

§ 1312.17 Amendments.

(a) *How made.* An amendment is a change in, addition to, or cancellation from a tariff. Supplements are tariff publications to be used to amend bound tariffs (see § 1312.18) and new or revised pages are tariff publications to be used to amend looseleaf tariffs (see paragraph (d) of this section). Supplements may also be used to amend looseleaf tariffs as provided in paragraph (d)(16) of this section.

(b) *Lists of participating carriers.* (This paragraph does not apply to participating carrier tariffs.)

(1) In bound tariffs, the list shall be amended by—

(i) Publishing a complete new list containing all changes and canceling the prior list; or

(ii) Publishing a cumulative list of all changes, alphabetically arranged either by code or carrier name, and the statement: "The list of participating carriers is as shown in the tariff except for the following changes." Only one cumulative list may be in effect at one time. A carrier's participation shall be canceled by showing the carrier's complete name, together with the word "Cancel" or other suitable provision. Changes shall be carried forward in subsequent amendments to the list as reissued matter.

(2) In a looseleaf tariff, the list shall be amended either by (i) republication of the page(s) on which the list appears, indicating the cancellations, additions and changes. The canceled carriers' names shall be republished on a separate page(s) at the end of the list, indicating when the cancellation was first effective, until all provisions in the tariff referring specifically to the carrier(s) have been removed from the effective pages. The pages containing the list shall refer to the page(s) containing the list of canceled carriers; or (ii) reissuing the affected page(s) with an appropriate symbol to show elimination of a carrier.

(3) Concurrent with the cancellation of a carrier from the participating carrier list, all provisions specifically referring to that carrier shall be appropriately amended unless—

(i) The cancellation is in connection with the publication of a complete adoption of the rates of that carrier by another (see § 1312.20); or

(ii) The method permitted in paragraph (b)(4) of this section is used.

(4) A carrier's participation may be canceled by publishing a blanket cancellation notice directly with the list of participating carriers, and referring to the notice when canceling the carrier's name from the list. If this method is used, all provisions specifically referring to that carrier shall be amended as soon as possible. During the interim, an item or provision which specifically refers to that carrier may not be republished unless the reference is concurrently removed.

(c) *Amendments to bound tariffs.* (1) Provisions shall be amended by publication of the entire item or segment in a supplement, except as otherwise authorized.

(2) When an item is to be amended, the new item shall be given the same number with a letter suffix, starting with the letter A, continuing through Z, then starting with AA, BB, and so on. Except as provided in paragraph (c)(3) of this section, the new item shall specifically cancel all uncanceled items in the same series. For example: "Item 40–A cancels Item 40"; "Item 40–C cancels Item 40–B and Item 40–A" (if Item 40–A had not been canceled previously).

(3) Items need not specifically cancel the previous items in the same series if the tariff contains a rule explaining the process in which items are superseded. For example, the rule may provide that the use of the next letter suffix automatically cancels the prior item. The rule shall be maintained for the life of the tariff. Specific cancellation shall be made of items containing rates or provisions under suspension or held in force by reason of suspension.

(4) When provisions of a numbered segment, other than an item, are to be amended, the new segment shall be given the same number, without a suffix, and specifically cancel all prior uncanceled segments bearing the same number. The cancellation shall be made by referring to the segment number and its location, i.e., "Section 3, cancels Section 3 on pages 50–56 of the tariff."

(5) When the provisions of an unnumbered segment are to be amended or canceled, the previous segment shall be canceled by clearly indicating the matter and referring to its location.

(6) Amendment in part without bringing forward the item or segment in its entirety, may be made of items or segments containing only—

Tables of contents;
Lists of—participating carriers, commodities, or points of service;
Indexes of—commodities, origins, or destinations;
Statements of carriers' operating authorities;
Explanations of—routing, abbreviations, reference marks, or notes;
Package descriptions; or
Tables of—rates, rate base numbers, or other figures comprising more than two pages.

(7) If a reference mark in a rate table is amended, the rates need not be republished provided the changed reference is explained in the explanation of reference marks and a list of items that use the mark is included.

(8) When amending a figure at the intersection of a headline and sideline point of tables of rates, rate base numbers or other figures, either the entire vertical column or entire horizontal column of figures in which the change appears shall be reproduced. In no case, however, shall the format of the tables be changed during the life of the tariff.

(9) Partial amendments shall be published so that it is clear what matter is being added, changed or canceled.

(10) The following notation or one to similar effect shall be shown with a partial amendment of an item or segment containing station index numbers:

The index numbers of stations in this supplement correspond with the index numbers of the same stations shown on pages —— to ——, inclusive, of the tariff, with the following additions and deletions.

(11) Additions to an item may be published without bringing forward the entire item by stating, e.g., "Refer to item 100 and add . . . ."

(12) Canceled matter may not be reproduced in an item or segment effecting a cancellation except to the extent necessary to identify the subject matter.

(13) An expiration or cancellation statement of an entire item or segment shall be treated the same as any other reissued matter in subsequent supplements.

(14) If part or all of the matter in an item or segment is transferred to another tariff or to a different location in the same tariff, that item or segment shall—

(i) Be revised in the regular manner; and

(ii) Show where the transferred matter will thereafter be found.

(d) *Amendments to looseleaf tariffs.* (1) New pages added at the end of the tariff shall be designated as "Original" and consecutively numbered beginning with the number following the number of the last page of the original tariff.

(2) Other new pages shall be designated as "Original" and given the same number as an existing page (if the tariff contains pages printed on both sides of the sheet, use the higher number) followed by a single suffix letter, in alphabetical sequence starting with "A". No other system or variation may be used.

(3) Both sides of a sheet shall be given page numbers when adding new pages to a tariff containing pages printed on both sides of the sheets. If one side is intentionally left blank, the page shall contain a statement to that effect.

(4) Amendment of a title page shall be made by reprinting it and giving it a revision number. The first amendment shall be designated as "1st Revised Title Page", and so on in consecutive numerical order. Revised title pages shall show the following under their effective dates: "Original Tariff effective (here show the effective date of the original tariff)." The revised page shall specifically cancel all the uncanceled title pages to the same tariff. The cancellation shall be shown with the new designation, for example, "1st Revised Title Page cancels Original Title Page."

(5) (This paragraph does not apply to title pages.)

(i) Amendment of a page shall be made by reprinting it and giving it a revision number. The first amendment shall be designated as "1st Revised Page ——," and so on in consecutive numerical order. Suffixes or prefixes may be used. See § 1312.7(b). The revised page designations shall be shown in the same corner as original page designations are shown.

(ii) If the pages being amended are to a tariff which contains pages printed on both sides of the sheets, both sides of the sheets shall be reprinted. If changes are not being made in the tariff matter on one side of the sheet, the following notation shall be shown with the new revision number: "Change in revision number —— only."

(iii) Except as provided in paragraph (d)(7) of this section, revised pages shall cancel all uncanceled pages in the same series. The cancellation shall be shown with the new designation, for example, "2nd Revised Page 10 cancels 1st Revised Page 10."

(6) If a page is rejected, its designation (i.e., "original", "1st Revised", etc.) may not be used again in that page series. The rejected page may not be referred to on a subsequent page as having been canceled, amended or withdrawn. The page issued in its place shall use the next revision number and bear the following:

Issued in place of [here identify the rejected page], rejected by the Commission.

(7) Pages, other than title pages, need not specifically cancel previous pages in the same series if the tariff contains the following statement or one to similar effect:

Unless otherwise provided, amendment of a page will be made by reprinting the page and showing a revision number. The revision numbers will be used in consecutive numerical order beginning with "1st Revised Page". A revised page cancels any uncanceled revised or original pages which bear the same page number.

The statement shall be maintained for the life of the tariff. Specific cancellation shall be made of pages containing rates or provisions under suspension or held in force by reason of suspension.

(8) Except as otherwise authorized, looseleaf tariffs may not be further amended when the number of sheets (including check sheets) containing canceled pages would exceed six times the number of sheets (including check sheets) containing effective pages. This limitation may be exceeded if necessary to comply initially with a Commission decision or if specifically authorized.

(9) If a revised page omits rates or other provisions which had been shown on the page it cancels, the disposition of the omitted matter shall be indicated. If the matter is transferred to another tariff or to another page in the same tariff, that shall be stated. If transferred to another page, the page to which it is transferred shall contain the following notation directly with the transferred matter—

For [here state whether rates, rules, provisions, etc., as appropriate] previously in effect, see page(s) ——.

or an explanation of the transfer in some other manner. If matter is canceled or expired and not transferred, the page shall so indicate, identifying the canceled or expired matter only to the extent necessary to show what is affected.

(10)(i) If five or more pages of a tariff are to be reissued at one time with the same effective date to cancel all provisions or to transfer all provisions to other pages, the reissue and the cancellation may be accomplished by a single printing, showing the individual cancellations. (If for a tariff which has pages printed on both sides of the sheets, this method may only be used when both pages of any particular sheet are being canceled or transferred.)

(ii) The reissued matter shall clearly show the designation of the page(s) to which matter is being transferred. See paragraph (d)(9) of this section.

(iii) Where the page designation for that tariff would otherwise appear (i.e., the upper left-hand or upper right-hand corner), the following shall be shown, completed:

Revised Page ——————————
Cancels Page ——————————

(iv) The automatic cancellation provisions of paragraph (d)(7) of this section may not be used with this procedure.

(v) This procedure may not be used when new or other provisons are to be substituted on the pages. However, the pages may be subsequently reissued individually in the regular manner.

(11) The check sheet (see § 1312.13(b)) shall be reissued and filed with the filing of any amendment. The revised check sheet shall—

(i) List all effective pages in numerical sequence;

(ii) Show the latest designation of each page;

(iii) Indicate those pages which have been revised or added since the previous check sheet;

(iv) Indicate those pages or supplements which contain only matter under suspension or held in force by reason of suspension; and

(v) List all effective, or filed and yet to be effective, supplements.

(12) If the "correction number, check off" type of check sheet is used, looseleaf page amendments issued and filed at one time shall show the same correction number. The first filing shall bear correction No. 1, the second correction No. 2, and so on in consecutive order. In lieu of the foregoing, carriers or agents utilizing the "correction, check off" type of check sheet may issue and file looseleaf page amendments with sequentially numbered correction numbers. An explanation of the correction numbering system shall be given.

(13) Supplements (except supplements canceled by other supplements of like or similar character or content) shall be canceled by reissue of the check sheet containing the updated list of pages, adding the words "also cancels Supplement No. —" immediately following the words "cancels —— page ——".

(14) Any indexes or tables of contents shall be amended concurrently with changes in the contents of the tariff to show additions, cancellations, and changes as to points and commodities.

(15) Supplements to looseleaf tariffs may be used for the following purposes—

(i) Conversion or percentage supplements to provide general rate changes, see paragraph (j) of this section and § 1312.18(h).

(ii) Transfer or cancellation of provisions, see § 1312.19.

(iii) Suspended matter, see § 1312.21.

(iv) Seasonal rates or fares, see § 1312.36.

(v) Transfer of operations—(change in name and control), see § 1312.20.

(vi) Take-over publications (transfer of agent), see § 1312.10; or

(vii) Postponement of tariffs or tariff matter, see § 1312.39.

(e) *Reinstatement of canceled or expired provisions shall be by republication.* If provisions have been eliminated by cancellation or expiration, they may only be reinstated by republication. Rates cancelled on the erroneous belief they were obsolete may be republished on 5 days' notice.

(f) *Changes are to be indicated.* (for suggested reference marks see § 1312.13.)

(1) Changes resulting in increases which are not correctly identified may result in a Commission finding that such changes are unlawfully published and filed and therefore invalid and not collectable.

(2) When a change of the same character is made in a substantial number of rates a statement may be used in place of symbolizing each of the individual rate changes. The statement shall note the nature of the change. The statement shall be in distinctive type at the top of the title page of the publication or the top of the page(s), containing the rates, with exceptions, if any, so noted. An appropriate reference mark shall be used to indicate any other change not indicated by the general statement on the publication.

(3) When tariff matter subject to a reference mark or the wording required by this paragraph is reissued without change, the reference mark or wording shall be omitted.

(g) *Reissued matter.* (1) Matter brought forward without change from one supplement to another in the same tariff shall be designated as "Reissued" and the supplement number from which it is reissued shown, and the effective date of that supplement. Except as provided in paragraphs (g) (2) and (4) of this section, this shall be accomplished in one of the following ways:

(i) The information shall be published with the reissued matter, for example, "Reissued from Supplement 1, effective June 1, 1990", or

(ii) With the reissued matter, show in a square or substitute (see § 1312.13) the number of the supplement from which it is reissued; and

(iii) under the explanation of reference marks in the supplement, show the supplement number in the square or substitute and explain it, for example, "[1] Reissued from Supplement 1, effective June 1, 1990"; or under the explanation of reference marks in the original tariff, show the empty square or substitute, with the following or similar explanation:

Reissued from supplement bearing the number [enclosed within the square]. To determine its original effective date, see that supplement.

(2) If the reissued matter is brought forward from a supplement and its effective date had been changed by another supplement, this information shall be shown in the following manner:

Reissued from Supplement ——, effective ——, per Supplement ——.

This statement shall either be shown directly with the reissued matter, or elsewhere on the same page with the reissued matter referring to it. The number-in-the-square method or substitute may not be used in this instance.

(3) Matter in looseleaf tariffs being brought forward without change from one page to the next revision of that page shall only be referenced when republishing the cancellation of participating carriers as required by paragraph (c)(2) of this section. The reissue of the canceled carriers may be indicated by—

(i) Showing the square reference mark or substitute with the revision number of the page from which the carriers' names are being reissued; and

(ii) Publishing under the explanation of reference marks in the tariff, the following or similar note:

Reissued without change from the issue of the same page bearing the revision number [enclosed within the square]. To determine the original effective date see that revised page.

(4) If the effective date shown for a provision in the prior supplement or looseleaf page being canceled is a date later than the general effective date of the new supplement or looseleaf page in which the provision is being reissued, the number in a square reference mark or substitute may not be used. The reference to the prior supplement or looseleaf page and the later effective date shall be stated in full directly with the reissued provision.

(h) *Change in the explanation of reference marks and notes.* (This paragraph does not apply to the explanation of the reference marks used in referring to an item showing expiration dates.)

(1) A change in or cancellation of an explanation of a general reference marks or general note or of an item or other provision the explanation refers to, shall be accompanied by—

(i) The republication of all provisions which refer to the reference mark or note; or

(ii) The publication, directly with the changed or canceled explanation, item or other provision, of a list of each tariff provision which refers to the reference mark or note, identifying the provisions by item or page number, and supplement number, if any; or

(iii) The publication, directly with the changed or canceled explanation, item or other provision, of a statement generally described the effect of the change or cancellation. If this method is used, a notation shall be made at the top of the page(s) containing the change or cancellation that the page(s) contains a changed or canceled reference mark or note, or tariff provision referred to by the mark or note.

(2) If new reference marks are added, they need be explained only in the items where they apply rather than amending the original explanation of reference marks.

(3) Two explanation of reference mark provisions may be in effect where the second is used to change or add references and the first remains unchanged.

(i) *Matter issued under decision or other authority.* Amendments published under authority of a Commission decision requiring specific action or a Commission decision or regulation of this part which permits less than statutory notice or departure from outstanding requirements shall —

(1) Refer to the authority and make clear to what tariff it applies;

(2) State the number of days' notice authorized (if less than statutory notice); and

(3) Briefly identify the relief authorized.

(j) *Conversion supplements to provide general rate changes.* (This paragraph does not apply to property tariffs of railroads.) Conversion supplements are published to convert a substantial portion of the rates in a tariff, or the rates in a described category (i.e., commuter fares, truckload rates, etc.) to a higher or lower general level, without publishing the items or provisions containing the rates.

(1) The supplement shall show the base rates (i.e., the rates being changed) and the new rate.

(2) The supplement shall contain an application provision reading substantially as follows:

Except as provided in subsequent amendments to this tariff, all rates and charges in this tariff, as amended, or as may subsequently be amended, are, or will on their effective dates be, [specify whether increased or reduced] as follows for the period this supplement is in effect.

If there are exceptions to the application, reference to the location of the exceptions shall be shown. If not all of the rates are being changed, the provisions shall state the exact category of rates being changed, or list the items or sections of the tariff which contain them. Immediately following the statement, a clear and explicit application of each column of changes shall be published.

(3) The supplement shall provide the method of determining the application of the general increase or reduction on combination rates, rates made by use of arbitraries, or other multiple-factor rates.

(4) The supplement shall contain a provision stating the mathematical procedure or formula to be used in arriving at the new rates when the supplement does not include all the tariff rates and charges to be changed. The supplement shall also provide a method of disposing of resulting fractions.

(5) The base rates and new rates shall be stated in the same monetary unit as used in the tariff. If the tariff names rates in more than one monetary unit, a statement of how the change is to be applied to the remainder of the rates shall be published.

(6) The supplement may not provide for the application of one increase or reduction, and then subject the resultant rate to another rate increase or reduction.

(7) Only matter concerning the application of the conversion may be published in the supplement.

(8) The title page shall indicate whether changes are increases and/or reductions. The different categories of changes shall be appropriately referenced.

(9) Only one conversion supplement to a tariff may be in effect at one time.

(10) An exception item or note may be republished from the conversion supplement into a regular supplement of a bound tariff in order to add, eliminate or change provisions. If exceptions are published in a conversion supplement to a looseleaf tariff, they may not be amended. The exceptions, however, may be published in the tariff proper (provided the conversion supplement makes proper reference) and then amended in the regular manner.

(11) Amendments containing rates or charges becoming effective during the effectiveness of a conversion supplement shall state whether or not they are subject to the provisions of the conversion supplement or the application item, identifying the supplement or item.

(12) Part of the same general adjustment may be effected by specific publication of the rates in a companion supplement or looseleaf page amendment, provided—

(i) The issue and effective dates are the same as the conversion supplement; and

(ii) They are not made subject to the conversion supplement provisions.

(13) Conversion supplements and companion amendments are exempt from the supplemental volume provisions of § 1312.18.

(14) The provisions of this paragraph do not authorize the publication and filing of master tariffs or connecting link supplements, and conversion supplements may not be filed to tariffs which refer to a master tariff for the application of increases or reductions. Special tariff authority must be obtained for publication of master tariffs or connecting-link supplements.

(k) *Rail cost recovery increases.* Rail carriers or their agents may publish cost recovery tariffs in master tariff format to provide increases in rail rates and charges as authorized by the Commission under Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures.* The increases may apply to joint rates and single-line traffic to the extent adopted by individual carriers. A connecting-link, blanket, other supplement or general tariff item shall connect the affected tariffs to the master tariffs. All publications may be filed upon 1 day's notice, with 2-year expiration dates. Annual, accumulated master tariffs may be published to expire no later than September 30 of the second calendar year following the year in which the tariff became effective, by which date all increases shall be transferred to the base tariffs. Extension of any expiration dates may, however, be requested. The master tariffs may not be amended except that new or reduced provisions may be published upon 1 day's notice. The terms of § 1312.18 as to supplemental volume are waived. Blanket supplements shall conform to the terms of § 1312.18(h).

(l) *Supplements to transfer rate changes from master tariffs or conversion or percentage supplements into base rates.* (1) A supplement (not a conversion supplement) may be filed to a bound tariff for the purpose of incorporating in the base rates all applicable changes effected by the use of a conversion or percentage supplement or a master tariff. The supplement may contain matter from prior supplements provided those supplements are canceled.

(2) The title pages of supplements issued under authority of this paragraph shall bear an explanation note citing this paragraph.

(3) If different increases or reductions apply on related articles shown in an item or descriptive listing of commodities, the rates may be brought forward into the supplement on the basis of the increases or reductions applying to the predominant article in the item or description, provided a statement is included in the supplement that this has been done. The rate changes shall be appropriately referenced except as specified in paragraph (1)(4) of this section for exceptions concerning symbolization.

(4) Symbolization of the increases and reductions resulting from the normal rounding-off of fractions or from the use of predominant article authority may be omitted in the supplement, providing the supplement is filed on not less than 45 days' notice and the title page of the supplement also bears the following or a similar statement:

This supplement contains changed bases of rates, charges and provisions which result in increases and reductions. The supplement also contains variations in wording which result in no change in the rates and charges. These changes are not shown by the use of uniform symbols which have been omitted under authority of 49 CFR 1312.17.

(5) Supplements issued under authority of this paragraph shall be exempt from the provisions of § 1312.18 governing the volume of supplemental matter permissible.

§ 1312.18 Supplements.

(a) *Changing provisions of a bound tariff.* A supplement may be used to add, delete or change provisions of a bound tariff. General rules, in addition to rules applicable to tariffs as a whole, are provided below. In addition, certain "special supplements" are authorized, viz:

Suspension supplements, § 1312.21.
Postponing supplements, see § 1312.39.
Bridge supplements, see paragraph (f) of this section.
Blanket supplements, see paragraph (g) of this section.
Adoption supplements, see § 1312.20.
General increase or reduction supplements, see § 1312.17 (j) and (k) and paragraph (h) of this section.
Cancellation supplements, see § 1312.19.

(b) *Designation and title page requirements.* (1) Supplements to a tariff shall be consecutively numbered:

(2) If a supplement is rejected, its number may not be used again, and a supplement issued in its place shall bear the following notation with the supplement designation:

Issued in place of Supplement ——, rejected by the Commission.

(3) With the supplement identification, the publications the supplement cancels shall be shown, as follows:

Cancels Supplement(s) ——.

(4) The title page shall list all prior supplements still in effect on the effective date of the supplement, with any special supplements so indicated.

(5) A supplement may contain matter having different effective dates provided it is clearly explained on the title page.

(c) *Reference marks.* Reference may be made to an item or section in the original tariff containing the explanations. See § 1312.17 governing partial amendment of reference marks.

(d) *Updated list of items and units in effective supplements.* Supplements shall, as necessary, contain cumulative lists of items and numbered segments that have been added, changed or canceled by supplement (including partial amendments or "script-clause" amendments), together with reference to the latest supplement in which each is published.

(e) *Number of supplements, pages permitted, and duration of tariffs.* (1) Except as otherwise provided, the total number of pages of effective regular supplements may not exceed 50 percent of the number of original pages. There is no separate limit on the number of supplements.

(2) The restriction on the number of supplemental pages does not apply to a tariff which is reissued within a year, provided the following notation is shown on the title page of the original tariff:

A reissue of this tariff will become effective not later than ——.

The date of the next reissue shall be shown, and the notation may not be changed or canceled.

(3) A supplement may exceed the limitation of paragraph (e)(1) of this section if it is to comply with a Commission order and contains no other matter.

(f) *Bridge supplements.* More than one bridge supplement (a publication amending both a bound tariff and its reissue), may be in effect at one time provided the contents are separated as to each tariff and clearly identified as to

the tariff being amended showing the item or other segment of each tariff that is being added, changed or canceled. The limitations of paragraph (e)(1) of this section do not apply.

(g) *Blanket Supplements.* A blanket supplement (a common supplement issued jointly to two or more tariffs of the same carrier or agent) may be filed if, in addition to compliance with other rules—

(1) The number of copies ordinarily required for each tariff supplement is filed; and

(2) The supplement contains, under a heading "List Of Tariffs Supplemented Hereby", the number of each supplement and ICC designation of each tariff being supplemented. Any additional provisions (such as cancellation notices, items containing matter held in effect, etc.) shall be similarly shown.

(h) *Percentage supplements to provide general rate changes.* (1) A supplement, which expresses the amount of change as a percentage by which the tariff's rates and charges are to be increased or reduced, may be filed to any tariff to provide a general change in the level of all or substantially all rates and charges, or all or substantially all the rates and charges in a specific category in the tariff.

(2) The supplement shall clearly explain its application and shall state where any exceptions to its application are listed. It shall show how to compute the increased or reduced rates from the percentages shown; how to dispose of fractions; how to compute multiple-factor rates made by the use of arbitraries or other means. Only matter concerning the percentage change may be published in the supplement.

(3) The title page of a percentage supplement shall describe the nature of the changes effected by the supplement. Only one percentage supplement may be in effect at one time and shall be subject to a two-year expiration date which shall be shown on the supplement's title page. Tariff amendments containing rates or charges becoming effective during the effectiveness of a percentage supplement shall state whether they are subject to the provisions of the percentage supplement.

§ 1312.19 Cancellation of tariff and transfer of provisions.

(a) *Cancellation of an entire tariff.* (1) Except as provided in paragraph (a)(4) of this section, a tariff shall be canceled by issuing a supplement. The supplement shall—

(i) State on its title page that it cancels the tariff;

(ii) Refer by ICC designation to the tariff(s), if any, which applies in place of the canceled provisions; and

(iii) Identify provisions being transferred (not discontinued) and the tariffs to which they are being transferred.

(2) Tariff publications to which a transfer is made shall so indicate.

(3) If, in connection with transfer of provisions, a carrier is being added as a participant in an agent's tariff, carrier's name and alpha code must be added to the list of participating carriers.

(4) When the provisions of a tariff are to be transferred to a new tariff only, issued by the same carrier or agent(s), the cancellation shall be made by the new tariff by showing on its title page, or within (as provided in § 1312.12(b)), that it cancels the prior issue. If some of the provisions of the prior issue are being discontinued, the new tariff shall indicate the tariff(s) containing provisions, if any, which will apply in the place of the prior issue.

(b) *Cancellation of part of a tariff.* Cancellation of a part of a tariff shall be made by publishing amendments in the regular manner, or by a statement in a special supplement, if—

(1) The statement identifies the canceled material (by item, section, page, etc.);

(2) Matter being transferred to another tariff(s) is identified and the tariff(s) to which it is transferred is identified;

(3) Reference is made to the tariff(s) (if any) which will apply in place of the discontinued matter;

(4) Tariff publications to which matter is being transferred indicate the tariff which formerly contained the matter; and

(5) The effective date of the cancelling supplement and the publication(s) effecting any transfer is the same. The special supplement shall remain in effect for the life of the tariff, or, in the case of looseleaf tariffs, when all the affected pages have been reissued (the reissued pages shall refer to the special supplement for the initial cancellation of the involved provisions). The special supplement to a bound tariff may contain cancellations in the regular manner and is exempt from the supplemental limitations in this part. In a bound tariff, a reissue of an item or segment affected by the statement form of cancellation shall specifically cancel the prior item or segment and make reference to the special supplement for the initial cancellation.

§ 1312.20 Transfer of operations—change in name and control.

(a) *General.* (1) As used in this section—

(i) "Old carrier" refers to the carrier or party whose name is changed or whose operating authority is transferred;

(ii) "New carrier" refers to the new name of the old carrier or to the party to which the operating authority is transferred; and

(iii) "Adoption publications" refers to adoption notices, and combination adoption notices and adoption supplements.

(2) When a carrier's name is lawfully changed or its operating authority transferred, tariff adjustments must be made. The procedure to be followed depends on the particular circumstances.

(b) *Purpose of adoption notices.* (1) Adoption notices shall be filed to reflect new ownership or control when—

(i) A carrier's name is lawfully changed;

(ii) A carrier's operating authority is transferred, entirely or partially; or

(iii) A fiduciary (receiver, trustee, etc.) assumes possession and control of a carrier's property; and when the carrier wishes (for whatever period) to use the old carrier's tariffs.

(2) In addition to the adoption notice, an adoption supplement shall be filed to reflect the new carrier's adoption of the old carrier's tariff(s).

(c) *When adoption notice only is required.* The new carrier shall file an adoption notice, in its own name and in tariff form, if the old carrier has no effective tariffs of its own (or predecessor's) issue to be adopted, but does have rates or other provisions in an agent's or another carrier's tariff(s) to be adopted.

(d) *Form of adoption notice.* (1) The adoption notice shall be prepared substantially as follows (names and numbers used for illustration only):

ICC JDTI 100

John Doe Transport, Inc., Adoption Notice
[identify what is adopted and from whom]
Issued: [show date prepared]
Effective: [show date]
Issued by [identify publisher and address].

(e) *Combination adoption notice and adoption supplement.* If the old carrier has one or more effective tariffs (not adoption notices) of its own (or predecessor's) issue, the new carrier shall file, in its own name and in tariff form, a combination publication which shall serve as both its adoption notice and adoption supplement (see paragraph (o) of this section when new carrier amends old carrier's tariff in part). The publication shall be prepared as provided in paragraph (f) of this section. Two copies of the publication (serving as an adoption notice tariff)

plus two additional copies for each tariff supplemented shall be filed.

(f) *Form of combination adoption notice and adoption supplement.* (1) If filing of a combination adoption notice and adoption supplement is required under paragraph (e) of this section, and the old carrier's authority is adopted entirely, the combination publication shall be prepared as provided in paragraph (d) of this section, except—

(i) The upper right corner shall identify the publication as the new carrier's adoption notice and also as an adoption supplement to each of the old carrier's tariff(s) involved.

[Example:
Adoption Notice Tariff..... ICC JDTI 100
Adoption Supplement 8 to.....ICC ABCD 200*
*Show transferor's name]; and

(ii) The combination publication shall contain a second paragraph prepared substantially as follows:

On the effective date shown below, each tariff supplemented by this publication became the tariff of John Doe Transport, Inc., as stated in its adoption notice shown above.

(2) If filing of a combination adoption notice and adoption supplement is required under paragraph (e) of this section, and the old carrier's authority is adopted partially, the combination publication shall be prepared as shown in paragraph (f)(1) of this section, with the necessary changes to reflect partial adoption.

(3) Adoption supplements shall be assigned the next unused supplement number to the tariff supplemented. If the tariff is adopted partially, the old carrier shall reserve two supplement numbers for each new carrier, to be used for adoption and cancellation supplements (see paragraph (o) of this section for reservation of supplement numbers).

(g) *ICC designation to be used.* The ICC designation assigned to adoption notices shall be in the new carrier's series, except that adoption notices filed by a fiduciary shall be in the old carrier's series and the designation shall be identified by naming the old carrier followed by "series." If no code has been assigned, a "blank code such as "MF-A1000" may be used.

(h) *Effective date of adoption publications.* (1) The effective date of adoption publications is the date the adoption occurs. Adoption publications shall be filed promptly and, if possible, prior to the effective date of the publication.

(2) Each agent or carrier to whom the old carrier issued a concurrence or power of attorney being adopted shall be furnished a copy of the adoption publication.

(3) If the transfer of operating authority to the new carrier requires approval by the Commission, the effective date of the publication may not be prior to the effective date of the approval.

(i) *When name of old carrier need not be shown.* If a carrier re-adopts tariffs of its own issue, which had been adopted by another party, it need not identify those tariffs as being in its own series.

(j) *Temporary control.* (1) If a party's authority to assume operating control of a carrier under section 11349 of the Act is not made permanent, the old carrier shall reassume operating control by filing an adoption notice.

(2) The effective date of the adoption publication is the date the other party's authority to assume operating control of the carrier expires or is vacated.

(k) *Fiduciaries.* (1) When a fiduciary assumes possession or operating control of a carrier, tariff publications and other instruments shall show the name of the carrier, followed by the name and capacity of the fiduciary. (Also see 49 CFR 1181.5—Operations by fiduciaries.)

(2) Upon termination of the fiduciary's possession or control, the party assuming control of the carrier's property shall comply with the regulations in this section.

(l) *Concurrences and powers of attorney.* If the old carrier's operating authority is adopted entirely, its effective concurrences and powers of attorney become those of the new carrier and remain effective until canceled, revoked, or replaced by the new carrier.

(m) *Tariffs issued by other carriers or by agents.* (1) If the old carrier is listed in a participating carrier tariff, the participating carrier tariff shall be amended as provided in § 1312.25.

(2) If tariff provisions contained in a tariff not issued in the old carrier's name need to be adopted, and the tariff contains its own list of participating carriers, the tariff shall be amended on lawful notice to reflect the adoption, in the manner required by paragraphs (m)(3) and (4) of this section.

(3) If adopted entirely, the old carrier's name shall be brought forward and its participation canceled. Directly with the cancellation shall be reference to a statement substantially as follows:

[New carrier's name] by its adoption notice [ICC designation] which became effective on [date], is substituted for [old carrier's name] wherever it appears in this tariff.

(4) If adopted partially, the old carrier's name may be canceled only if there are no provisions remaining in the tariff for its account. If not already shown as a participant, the new carrier shall be added. Directly with the old carrier's name (or cancellation of its participation) shall be reference to a statement substantially as follows:

[New carrier's name] by its adoption notice [ICC designation] which became effective on [date], to the extent that they contain rates or other provisions applying [describe the authority transferred], is substituted for [old carrier's name] wherever it appears in this tariff.

(n) *Cancellation of provisions in partially adopted tariffs.*

(1) Rates or other provisions in a tariff in the old carrier's name, which apply locally and are involved in the partial transfer of authority to a new carrier, shall be canceled and published in tariffs of the new carrier's (or its agent's) issue.

(2) Items, units, or looseleaf pages may not be reissued to effect the cancellation. Instead, the cancellation shall be made by a statement substantially as follows:

Provisions formerly shown in [identify provisions by item number, segment, page, section, table, etc.] which were adopted by [new carrier's name] are canceled. Apply provisions in [identify provisions by item number, segment, page, section, table, etc.] of [issuing carrier's or agent's name and ICC designation of tariff].

(3) The cancellation statement shall be published in a special supplement to the tariff, whether bound or looseleaf, which—

(i) Shall be filed on lawful notice within 120 days of the adoption publication's effective date;

(ii) Is exempt from limitations on volume of supplemental matter imposed by this part;

(iii) Shall become effective concurrently with the establishment of corresponding provisions for the new carrier's account; and

(iv) Shall remain in effect for the life of the tariff.

(4) Rates and other provisions covering the adopted authority shall be filed on lawful notice in the new tariff(s) to become effective concurrently with the cancellation of the corresponding provisions from the old carrier's tariffs.

(o) *Reservation of supplement numbers for new carrier's use.* Two unused supplement numbers shall be reserved for each new carrier's use. One of the numbers shall be assigned to the adoption publication and the other to the cancellation supplement.

(p) *Subsequent supplements or looseleaf pages.*

(1) Subsequent supplements or looseleaf pages to adopted tariffs issued by the old carrier (or its predecessor) shall show the name of the carrier in

whose ICC designation series the tariff was issued originally, except when the old carrier re-adopts its own tariff.

(2) Subsequent supplements or pages shall be filed by—

(i) The new carrier if the tariff was adopted entirely; or

(ii) The old carrier if the tariff was adopted partially, except as provided in paragraph (n) of this section.

(q) *Describe former tariff when canceling.* When canceling tariffs issued or adopted by the old carrier, the new carrier shall identify the tariffs in the cancellation notice by—

(1) ICC designation;

(2) Issuing carrier's name; and

(3) Reference to the series in which the tariff was published, if the old carrier published tariffs in more than one series.

(r) *Adoption supplements are noncounting.* Adoption supplements are exempt from the limitations on volume of supplemental matter as contained in § 1312.18.

§ 1312.21 Suspended matter.

(a) *Effect of suspension.* When the Commission suspends one or more rate(s), provision(s) or publication(s), that suspended matter is postponed until the suspension period runs out.

(b) *Supplement required.* A supplement announcing the suspension shall be filed to the involved tariff(s). Two methods of publishing may be used. One is to issue a separate supplement for each suspension proceeding; the other is to issue a consolidated suspension supplement which contains notices of all suspension proceedings involving the tariff. Only one consolidated supplement to a tariff may be in effect at one time. The title page of either type of supplement shall—

(1) Identify the Commission's suspension docket number;

(2) Show an issue date but not an effective date; and

(3) Comply with the requirements governing tariff amendments, except as otherwise provided in this section.

(c) *Content of supplement.* The supplement shall:

(1) Identify the rates, provisions or publications which have been suspended;

(2) State that those rates, provisions or publications are "under suspension and may not be used until [here show either the date to which the matter has been suspended, or a later date, or state "this suspension notice is canceled"]";

(3) Identify the rates, provisions or publications that will apply in place of the suspended matter;

(4) Correct by statement any cancellations which would have the effect of canceling the suspended matter or the matter held in force; and

(5) Correct the listing of effective supplements on previous supplements' title pages.

(d) *Additional requirements for consolidated supplements.* (1) The consolidated supplement shall provide information for each suspension proceeding.

(2) The matter shall be amended and reissued in the regular manner, except as follows:

(i) If it is necessary to issue a publication to reflect changes in a corrected decision of the Commission, the supplement shall be reissued and explained with the appropriate changes made.

(ii) If the suspended matter is made effective, canceled, or reissued the involved matter shall be canceled (in the regular manner) in the same supplement as the change or reissue of the suspended matter.

(iii) If the suspended matter becomes effective because of the expiration of the suspension or postponement period, the explanatory matter shall be canceled (in the regular manner) in the next regular supplement to the tariff.

(e) *Additional requirements for separate suspension supplements.* (1) Separate supplements announcing individual suspensions to a bound tariff shall be canceled by the—

(i) Supplement containing the change or reissue of the suspended matter; or

(ii) By the next regular supplement if the suspended matter becomes effective because of the expiration of the suspension of postponement period.

(2) Separate supplements announcing individual suspensions to a looseleaf tariff shall be canceled by reissuing the check sheet with an effective date concurrent with the change or reissue.

(3) Suspension information may not be canceled in full unless all of the involved matter under suspension is canceled, becomes effective or is reissued.

(f) *Extension of suspension period.* If the Commission extends the suspension period, the suspension notice shall be republished, canceling the first notice, and the statements adapted to the new action taken, with reference to the facts of the first suspension. Subsequent handling of the matter shall proceed as prescribed for suspension matters in this section.

(g) *Suspended matter reissued prior to notice.* If suspended matter has been reissued prior to the filing of the explanatory notice, the notice shall cancel (by statement) the reissued matter. The cancellation statement shall have the same effective date as the reissued matter.

(h) *Changed suspended matter.* If suspended matter has been changed prior to the filing of a suspension notice, the matter shall be republished in the regular manner to remove any violation of the suspension decision, as provided in paragraph (i) of this section. Also see paragraph (k) of this section.

(i) *Reissuing suspended matter after notice.* (1) If a suspension notice has been filed, the matter under suspension and the matter held in force by reason of the suspension may be reissued (without change) in the regular manner provided the explanatory notice is brought forward from the suspension supplement.

(2) If suspended matter or matter held in force is reissued, the publication shall be made in a manner that insures that if the suspension or postponement period ends, the matter held in force is canceled or superseded by the effectiveness of the suspended matter.

(3) Original tariffs or supplements containing reissued suspended matter shall identify the suspended matter.

(j) *Postponement of suspended matter.* (1) A postponement notice may be filed at any time on 1 day's notice during the suspension period, provided—

(i) It becomes effective prior to the end of the suspension period;

(ii) It states that the postponed matter may not be used during the postponement period; and

(iii) The specific date to which the matter is postponed is shown, or the statement "postponed until this notice is canceled", is shown.

(2) Suspended matter postponed to a specific date may be further postponed if done prior to the end of the previous postponement period, and the previous notice is canceled.

(3) The postponement notice may be canceled at any time after the end of the suspension period.

(k) *Changes and cancellation during the suspension period.* Suspended matter or matter held in force may be changed or canceled during the suspension period, as follows:

(1) Suspended matter may be canceled in whole or in part on 1 day's notice if—

(i) The cancellation is to become effective prior to the end of the suspension (or postponement) period, or the effective date of a final decision in the proceeding, whichever is earlier; and

(ii) At the time of filing, all parties of record and the Office of Proceedings, Interstate Commerce Commission, Washington, DC 20423, shall be notified

(with reference to the involved docket number) of the tariff publication(s) and its effective date. The notice to the Office of Proceedings shall certify that the parties of record have been notified, and a copy of that notice (if in writing) shall be sent with the tariff publications submitted for official filing.

(2) When suspended matter is canceled, it may not be republished to become effective on less than statutory notice, absent special permission.

(3) The matter held in force shall be republished (without change) in the same publication containing, and concurrently with, the cancellation of the suspended matter if the matter held in force—

(i) Is in the same tariff as the suspended matter and was to be specifically canceled by it; or

(ii) Is in a prior issue of the tariff containing the suspended matter.

(4) Cancellation of suspended matter in a bound tariff shall be made in a supplement. Cancellation of suspended matter in a looseleaf tariff shall be made by looseleaf page amendment, unless the tariff only contains the suspended matter, then cancellation shall be made by supplement. If a tariff contains only the suspended matter (or if the suspended matter is a conversion supplement), the cancellation may be made by publishing a notice of cancellation in the supplement, and either bringing forward the matter held in force, or referring to its location.

(5) Postponement provisions shall be canceled concurrently with, and on the same notice as, the cancellation of the suspended matter. The postponement provisions shall be canceled in the same supplement as the cancellation of the suspended matter, or, if cancellation of the suspended matter is by looseleaf page amendment, by the check sheet.

(l) *Commission vacates suspension or finds suspended matter justified.* (1) If the Commission vacates a suspension or finds the matter justified, the suspended matter may be made effective on 1 day's notice, but not earlier than the effective date of the Commission's decision.

(2) Suspended matter in a bound tariff, or nonreissued suspended matter in a looseleaf tariff, may only be made effective by publishing a notice in a supplement to the tariff. Reissued suspended matter in a looseleaf tariff may only be made effective by publishing a notice on a reissue of the involved page(s). The notice shall identify the suspended matter, state the effective date, and cancel any postponement notice. If the suspended matter was to specifically cancel the matter held in force in the same tariff, or the matter held in force was to have expired, the matter held in force shall be specifically canceled with the same effective date and on the same notice.

(3) If a new tariff had provided for cancellation of another tariff, but that cancellation was nullified because of the suspension, the other tariff shall be canceled by a statement in a supplement to the new tariff. Otherwise, if a tariff contains only matter held in force by the suspension and the matter is required to be canceled, the cancellation of the tariff shall be made by supplement to that tariff.

(4) Changes or additions to a tariff containing matter held in force because of the entire suspension of another tariff may be brought forward without change into the other tariff. The publication shall be by supplement to a bound tariff and by looseleaf page amendment to a looseleaf tariff. If this is done, the tariff containing the matter held in force shall be concurrently canceled by supplement.

(m) *Suspended matter ordered canceled.* If suspended matter is ordered canceled, the cancellation may be made on 1 day's notice, unless otherwise ordered.

(n) Tariff amendments required or permitted to be filed and matter held in force under the authority of this section are, for the life of the tariff, exempt from the provisions of this part pertaining to the volume of effective supplements or looseleaf page amendments.

(o) *Reference to Commission suspension decisions.* Publications issued under authority of this section shall refer to this section and to the investigation and suspension docket number.

(p) *Court orders.* Restraining orders, injunctions, enjoinders, or other court orders having the effect of suspending the operation of tariff provisions shall, to the extent possible, be reflected in tariffs in the same manner as suspension decisions.

§ 1312.22 Rates or other provisions prescribed by the Commission.

If the Commission requires publication of certain rates or provisions, a carrier or agent shall—

(a) Publish the rate or provisions on statutory notice, unless otherwise specifically authorized, with reference in the tariff publication to the decision in the manner required by this part;

(b) Notify the Commission when the decision has been complied with, referring to the docket number of the decision (the volume and page number of any printed Commission reports shall also be shown); and

(c) Identify, in the notice of compliance, the item, page, supplement and tariff where the complying provisions are published.

§ 1312.23 Expiration dates.

(a) *How and where expiration dates are to be shown.* (1) An original tariff or a supplement may be shown to expire by placing the following on the title page: "This tariff [supplement] expires with [here show date] unless sooner canceled, changed, or extended."

(2) An expiration date of an original tariff or a prior supplement may be added or changed in a supplement by providing an explanatory statement on the title page. If the supplement is reissued, the amended or added expiration date statement shall be reissued in the regular manner.

(3) An item or other part of a tariff may be shown to expire by publishing the following statement within the item: "Expires [here show date]."

(4) Matter may also be shown to expire by referencing it with a reference mark which shall be explained as "Subject to the expiration date shown in item [here show expiration date item number]." The expiration date item, reserved for this purpose only, shall identify the matter referred to and show the expiration dates.

(b) *Extension of expiration dates.* An expiration date may be canceled or extended to a later date. However, the extension may not be made effective after the expiration date. Also see § 1312.39.

§ 1312.24 Tariffs listing carriers' operating authority applicable to motor carriers of property.

(a) A separate tariff containing a description of carriers' operating authorities (a "scope" tariff) may be filed. A "scope tariff shall contain a statement explaining that the application of rates and provisions in tariffs governed by it is limited to the extent of the carrier's operating authority published in the "scope" tariff.

(b) A description of the carrier's operating authority may not be used as a substitute for describing commodities or territories for rate application.

(c) If rate tariffs are governed by more than one scope tariff, each scope tariff shall be referred to in the rate tariff as a governing publication.

(d) A scope tariff may be combined with a participating carrier tariff, a rate basis tariff, and/or a rules tariff.

§ 1312.25 Participating carrier tariffs.

(a) *Separate tariffs may be filed by agents.* (1) An alphabetical list of carriers participating in agent's tariffs, along with a description of the underlying tariffs, may be filed in a

separate tariff (not a rate tariff). The title page of the participating carrier tariff shall state that it applies only in connection with tariffs referring to it. If the tariff governs tariffs issued jointly by two or more agents, it shall be a joint issue (see § 1312.11).

(2) Except for statements explaining the extent of carriers' participation in governed tariffs (for example, only for local hauls or only for joint hauls) the tariff may not contain provisions governing rate application.

(b) *List of carriers.* (1) The list of participating carriers shall be constructed in the manner required by this part. Carriers' code designations may be shown directly with the carriers' names.

(2) All governed tariffs in which a carrier participates shall be referred to by ICC designation directly with the carrier's name. The participation of all carriers in the participating carrier tariff may be provided by a statement, rather than listing the tariff designation directly with the carriers' name.

(c) *List of tariffs.* An agent's participating carrier tariff shall contain a current and correct list of its tariffs, including those which contain their own list of participating carriers or which are issued jointly with another agent(s). If the participating carrier tariff is a joint issue, only the tariffs of the principal agent need be listed. The tariffs shall be listed in numerical order by ICC designation, with a separate section for each agent if joint issues are involved. Each tariff listed shall be described so that its general application may be determined without examining the tariff itself.

(d) *Cancellation of participating carriers.* (1) Except as provided in paragraph (f) of this section, when a carrier's participation in a participating carrier tariff or governed tariff is canceled, all reference to the carrier in the involved tariff(s) shall be canceled.

(2) The cancellation may be accomplished either by—

(i) Amending all matter to eliminate reference to the carrier; or

(ii) Publishing a blanket cancellation notice.

The blanket cancellation shall be published in the participating carrier tariff and shall be referred to in the cancellation of the carrier's name. A provision referring to the canceled carrier may not be republished without concurrent cancellation of the reference to that carrier and all matter shall be amended as soon as possible.

(3)(i) In a bound tariff the canceled carrier's name (and reference to the blanket cancellation notice, if used) shall be carried forward as reissued matter in the list of participating carriers.

(ii) In a looseleaf tariff, the carrier's name (and reference to the blanket cancellation notice, if used) and the date the cancellation became effective shall be republished in successive issues of the list of participating carriers until all provisions referring to the carrier are amended.

(e) *Reinstatement of participating carriers.* If a carrier's participation is canceled, and reinstated at a later date, the tariff shall so explain. This explanation shall be referred to directly with the reinstated carrier's name until the participating carrier tariff is reissued.

(f) *Adoptions.*

(1) If a carrier adopts another carrier, wholly or partially, the adoption shall be announced and explained in the participating carrier tariff. This announcement shall be continued in the tariff and reissues until a carrier adopted wholly is no longer referred to in any provision of the governed tariffs, and until a carrier adopted partially is no longer referred to in those provisions in the governed tariff affected by the partial adoption.

(2) The name of a wholly adopted carrier shall be canceled from the list of participating carriers. The name of a partially adopted carrier may not be canceled from the list of participating carriers unless its remaining rates and provisions are not published in the agent's tariff(s). Reference to the adoption and the cancellation shall be continued until the participating carrier tariff is reissued.

(g) *Participating carrier tariff may include other provisions.* Provisions authorized to be published in a routing guide, points of service, and/or a "scope" tariff, may be published in a participating carrier tariff provided application of each category is clear.

§ 1312.26 Rate basis tariffs.

(a) *Separate tariffs may be filed.* Rate groups or rate bases for determination of rates between points named in the rate tariff may be filed in a separate tariff. The tariff may contain routing and operating authority provisions, waybilling instructions and divisions. No tariff may be governed by more than two rate group or rate basis tariffs, one for origin points and one for destination points.

(b) *Points and rate group or basis to be listed.* Railroad basing tariffs may list the location of each station or refer by ICC designation to a station list tariff. Directly with each point listed shall be published either its assigned rate group or reference to an item providing that information. Exceptions to the rate group may be published.

(c) *Arbitraries or differentials.* Amounts to be added to (arbitraries) or subtracted from (differentials) base rates may be published either directly with each point or in an item referred to directly with each point. Provisions governing arbitraries or differentials which differ from those governing the base rates shall be referred to directly with the arbitraries or differentials (see § 1312.14).

§ 1312.27 Classification, exceptions, rules, dangerous articles and station list tariffs.

(a) *Classification.* (1) A classification of commodities may be published as a separate tariff. The classification shall list the various commodities and assigned class of each. Whatever organization is used within the tariff shall be clear.

(2) Rules having general application may be published in a classification. The rules shall precede the itemized list of articles.

(3) The classification shall, if applicable, include a statement that exception exist and take precedence.

(b) *Exceptions tariffs.* (1) Exceptions to the classification provisions may be published in a separate tariff.

(2) Exceptions tariffs shall be published as required by the rules governing tariff content generally. The title page shall contain the following statement:

This tariff applies only in connection with tariffs referring to it by ICC designation.

(c) *Rules tariffs.* Governing provisions may be published in a separate tariff or tariffs provided the application and any exceptions are clearly explained.

(d) *Dangerous articles tariffs.* The Department of Transportation's regulations governing the acceptance and transportation of dangerous articles and hazardous materials may be reproduced and filed in a separate tariff.

(e) *Participation in governing publications.* Carriers participating in tariffs which refer to, and are governed by, separate tariffs (classifications, exceptions, rules etc.), shall also participate in those governing separate tariffs, unless specifically stated in the governed tariffs that provisions in the separate tariffs will not apply for their account. This does not require participation in local drayage tariffs or in terminal and special services tariffs applicable only for the issuing carrier. Carriers participating in a rate tariff solely to provide substituted service at another carrier's option need not

participate in the governing tariffs. See § 1312.38.

(f) *List of stations showing facilities, additions and abandonments.* (1) A tariff publication may be filed containing a list of stations with the railroad location of each, alphabetically and geographically arranged with index numbers, prepay requirements, station facilities, additions of stations, abandonments of stations, changes in names of stations, and restrictions as to acceptance and delivery of freight. No rates or charges and no matter that will in any way increase or decrease the rate or charge in tariffs making reference to this publication may be shown. Changes in the tariff may be made on not less than 1 day's notice, except that announcement of the restrictions as to the acceptance or delivery of freight shall be made effective on not less than statutory notice.

(2) Changes made on less than statutory notice under the authority of this paragraph shall state that they are so made.

(3) Rate tariffs that are to be governed by the separate tariff publication shall so state, and their application clearly explained.

(4) When a station has been abandoned as of a date specified in the tariff authorized by this section, the rates from or to the station are inapplicable and shall be eliminated in the next amendment of the rate tariffs. When the elimination is made by supplement, the following notation shall be used:

Eliminate ——— station abandoned. For effective date see [the governing tariff issued under this rule].

This notation must be continued in connection with the name of the station as long as the tariff remains effective, and indicated as a reissue from the supplement in which it was first published, but without stating the effective date of the supplement.

§ 1312.28 Accessorial, terminal and other services.

(a) *General rules.* Carriers or their agents shall publish and file with the Commission all rules and charges governing accessorial services, terminal services, allowances, absorptions, and other practices or privileges. The rules shall be published in clear terms, and the rate, if any, shall be stated separately. The amount of the charges shall be included or be readily ascertainable if the carrier is acting as collection agent for a third party or is advancing payment, e.g., as for tolls, ferry charges, and special permits.

(b) *Method of publication.* (1) Rules and charges referred to in paragraph (a) of this section may be published either in—

(i) The line-haul rate tariff;

(ii) Separate tariffs which are referred to in the rate tariff by specific ICC designation; or

(iii) Separate tariffs combined with a clause in the rate tariff which identifies the services offered in connection with the rate and indicates that other tariffs of the carrier contain the application charges.

(2) A rate tariff issued in a carrier's name may refer to their agent's terminal services tariffs as well as its own, provided application of the various tariffs is clear.

(c) *Pickup and delivery service.* (1) All carriers of property shall, as appropriate, specify whether rates include pickup and delivery and, if so, the relevant geographic area, and governing conditions.

(2) If pickup and delivery service is performed beyond the limits of the point at which the rate applies, the larger area shall be described in the rate tariff.

(3) The following applies only to motor common carriers of property.

(i) Rates from or to locations which are not generally recognized as commercial locations shall not differ from the rates applicable to a commercial location if the transportation conditions are the same.

(ii) Before attempting delivery to a non-commercial location, the carrier and consignor or consignee shall arrange a mutually agreeable date and approximate time for delivery. The arrangement for delivery may be accomplished by a consignor's notation on the bill of lading, or by oral or written agreement between the carrier and the consignee. No charges may be assessed for the initial arrangement for delivery.

(iii) If for reasons attributable to the consignee, the carrier is unable to accomplish delivery in accordance with arrangements made as provided in paragraph (c)(3)(ii) of this section, a new delivery date and approximate time shall be agreed upon, and upon redelivery under this subparagraph, a reasonable charge may be assessed to cover the costs of the original scheduling, rescheduling and redelivery.

(e) *Switching charges.* (This paragraph applies only for railroads.) (1) Carriers performing switching service on interstate shipments shall file a tariff or tariffs containing their charges for that service. The switching tariff shall name the stations, warehouses, teams or industrial tracks, or other points at which shipments will be received or delivered within the switching limits, or shall otherwise clearly define the switching limits. Charges may be published in more than one tariff, provided application of each is clear. The tariff shall explain the amount to be paid by the shipper and the amount to be absorbed, as applicable.

(2) Absorption provisions shall be published in a rate, switching or absorption tariff of the line haul carrier and all provisions on the same tariff shall be published only in one tariff, except as provided in paragraph (e)(4) of this section.

(3) The carrier whose charges are absorbed and the amount absorbed shall be stated. If charges are partially absorbed, the rate tariff shall state that the unabsorbed charges will be in addition to the line haul charges.

(4) If absorption provisions are published in a switching or absorption tariff, exceptions to those provisions may be published in rate tariff. If published, the exception and the general absorption provision shall each state that the provisions in the rate tariff are exceptions to, and apply in place of the general absorption provisions. The exceptions provisions need not name the carrier whose charges are absorbed.

§ 1312.29 Rates and liability based on value provisions.

Released rate provisions established in accordance with 49 U.S.C. 10730 shall be published in the same tariff as the matter they govern. The tariff shall, to the extent required by statute refer specifically to an action of the Commission.

§ 1312.30 Distance rates.

(a) *Distance rates may be filed.* Distance or mileage (hereafter referred to as distance) class or commodity rates may be filed.

(b) *Method of showing distances.* Distance rates may be published to apply per vehicle per mile, or other unit per mile, or by establishing a rate table or segment showing a scale of distances for which charges will be applied. If the latter method is used, a rate shall be provided for each distance. Each State or area covered by the application of the rates shall be listed. The listing may be brief but informative as to the territorial coverage.

(c) *Determination of distances.* (1) A tariff containing distance rates shall contain provisions for the determination of distances by—

(i) Publishing the distances between all locations covered by the distance rates in the tariff;

(ii) Referring to a map(s) attached to the tariff; or

(iii) Referring to a distance guide(s).

(2) If maps are referred to, the rate tariff shall include a rule specifying the manner in which distances are obtained from maps. The rule shall include a definite means for determining distances between all locations within the territorial coverage of the rates, regardless of whether or not all the locations are shown on the map and regardless of whether or not actual distances are shown between all locations.

(3) When a map to a tariff is superseded by another, the new map shall be attached to and made a part of a supplement to a bound tariff, or a looseleaf page to a looseleaf tariff, which shall specifically cancel the old map and give effect to the new.

(4) Except as provided in § 1312.13(e)(2), only distance guides officially on file with the Commission may be referred to. More than one may be referred to provided the rate tariff clearly specifies the circumstances under which each guide will apply. An agent's tariff may refer to another agent's distance guide.

(5) Distance guides shall provide distance tables or combinations of tables and maps. Tables shall provide specific distances between a substantial number of the points and be shown as having precedence over the distances determined by the use of maps. Each guide shall provide rules stating its application. The rules shall include a means for determining distances between all locations within the territorial coverage of the guide, regardless of whether all the locations are shown in the guide or whether distances are shown between all locations. If distances between certain points or areas are to be determined only through a certain gateway or interchange point, those points or areas and the gateway or interchange point shall be identified. Distance guides may exceed the maximum size limitations imposed by § 1312.3 but may not exceed 14½ by 17½ inches in size.

(6) Railroad distance rate tariffs or distance guides shall also provide:

(i) A list of the points between which the rates apply;

(ii) The shortest distances between those points;

(iii) An indication of which of those points are junction points where traffic may be interchanged without transfer of the lading; and

(iv) The names of the connecting carriers at each of those junctions.

(7) A rail carrier or its agent may file a separate tariff containing the information required by paragraph (c)(6) of this section to govern local rates. The distances shall be shown—

(i) Form each point to each point;

(ii) Form each point to each junction point; or

(iii) Form each junction point to each other junction point and from each point to the nearest junction point in each direction.

(8) An agent may file a separate tariff to govern joint rail rates. The distances shall be shown from each junction point to each other junction point and from each point to the nearest junction point in each direction. The latter distances need not be shown if the rate tariff refers to local distance tariffs of each carrier which contain the distances.

§ 1312.31 Commodity rates determined by the use of rate base numbers.

This rule applies only for common carriers of property. "Column commodity rates" or "commodity rate column" shall be the terms used in captions for, and references to, commodity rates determined by use of rate base numbers or other basing systems. The basing system shall be in the same or other tariffs.

§ 1312.32 Application of rates from or to intermediate points.

This section does not apply to freight forwarders, pipelines, contract carriers, or on irregular route motor common carrier authority.

(a) *Intermediate application of rates.* Tariffs may publish appropriate rules to provide for the application of rates from or to points located between origins and destinations from or to which the rates apply.

(b) *Rules must be complete.* The rules must be clear and complete. The rules shall give consideration to situations where branch or diverging routes or points are involved. The rules shall also specifically provide for the application or nonapplication of effective rates specifically applying from or to the intermediate points.

(c) *Intermediate point rules to be published in connection with regular-route authority.* A statement shall be published indicating under what circumstances, if any, the rules will apply for off-route points, and for points located on either side of the highway which may be served under the implied authority of the carrier's certificate.

§ 1312.33 Class rates from or to unnamed points applicable only to motor carriers of property.

(a) Class tariffs shall provide class rates for all points within the territorial coverage of the tariff which the participating carriers are authorized to serve; and which are shown on official State maps or equivalent commercial maps.

(b) If the class-rate intermediate rule is not used or will not cover all unnamed points a carrier may serve, a rule describing how to compute rates on unnamed points may be published. Application of the various rules, if more than one is used, shall be clear.

§ 1312.34 Continuous service rates applicable to passenger carriers.

(a) Rates may be filed which are published to apply when carrier's equipment is used exclusively by and in the continuous service of a single shipper during a specified period of time. All necessary definitions and conditions shall be provided.

(b) If other than regulated, interstate traffic is used to meet the continuous use requirements, the tariff shall so state and explain all requirements.

(c) Continuous service periods may not begin prior to the effective date of the tariff.

(d) The tariff shall provide for other charges if the continuous service conditions are not met. Provisions may be published for the execution of an indemnity bond to guarantee payment. If charges are required to be collected for a deficit in the minimum charge or for any time during the period the equipment is not used, it shall be clear what rate is to apply on the deficit or nonuse. Consideration shall also be given as to whether the deficit or the nonuse rate will change (e.g., through general increase) during the period.

(e) The tariff shall provide that the carriers will keep complete and accurate records of the movements, that the information in these records will be available to the shipper and where and when it will be available.

(f) The tariff shall state whether and how the rates or conditions will be revised and the procedure to use due to disabilities such as strikes, breakdown of equipment, fire, etc., identifying the disabilities and indicating the rate or condition revisions.

(g) Provisions may be published permitting discontinuance during the period for specified reasons. The provisions shall clearly state any penalty charge and the amount to be assessed for the discontinuance privilege.

(h) Retroactive application of tariff amendments is not permitted.

§ 1312.35 Time-volume rates applicable to passenger carriers.

(a) Rates may be filed which are published to apply only when a specific

quantity of freight is shipped by a consignor or received by a consignee during a specified period of time. All necessary definitions and conditions shall be provided.

(b) If other than regulated interstate traffic is used to meet the time-volume service requirements, the tariff shall so state and explain all requirements.

(c) Time/volume periods may not begin prior to the effective date of the tariff.

(d) The tariff shall provide for other charges if the time/volume conditions are not met. Provisions may be published for the execution of an indemnity bond to guarantee payment. If the tariff provides for the collection of charges on a deficit, consideration shall also be given as to whether the deficit rate will change (e.g., through general increase) during the period. If charges are required to be collected for any deficit in weight between the actual weight of a particular shipment and the minimum weight on which charges for that shipment are assessed as the volume shipments move, the tariff shall so provide.

(e) The tariff shall provide that the carrier(s) will keep complete and accurate records of the movements, that the information will be available to the shipper and where and when it will be available.

(f) The tariff shall state whether and how the minimum quantity requirements will be reduced and the procedure to use due to disabilities such as strikes, breakdown of equipment, fire, etc., identifying the disabilities and indicating the rate or condition revisions.

(g) Provision may be published permitting discontinuance for specified reasons. The provisions shall clearly state any penalty charge and the amount to be assessed for the discontinuance privilege.

(h) Retroactive application of tariff amendments is not permitted.

§ 1312.36 Seasonal water rates.

(a) *Discontinuance and restoration of service.* If tariffs contain rates applicable to water routes which are seasonally closed to navigation, they shall contain provisions governing the discontinuance and restoration of service.

(b) *Title page notation.* The title page of the tariff shall briefly state the service limitations and refer, if necessary, to specific provisions.

(c) *Supplements announcing discontinuance of service.* Only one supplement announcing discontinuance of transportation service may be effective at one time. The supplement may be filed to a bound or looseleaf tariff without regard to the supplement limits of this part, and may be filed on 1 day's notice.

(d) *Reissues.* If a tariff discontinuing service as of a specific date becomes effective after the actual date service was discontinued, the tariff shall so state, refer to the prior supplement and ICC tariff designation, and state that a further supplement announcing discontinuance of service for that season will not be filed.

§ 1312.37 Export and import traffic and joint rates with ocean carriers.

(a) *Definitions.* The term "domestic carrier" as used in this section means a common carrier by rail, motor, water, or freight forwarder subject to the Act.

(b) *Through routes and joint rates.* A domestic carrier may establish a through route and joint rate with a non-vessel or vessel operating ocean carrier for the transportation of property between any place in the United States and any place in a foreign country. Tariffs naming the through route and joint rate shall be filed with the Commission. The tariff may be filed in the name of the ocean carrier, a conference of ocean carriers, the domestic carrier or the publishing agent of the carriers.

(c) *Tariff provisions.* (1) The tariff containing the joint rates shall, in addition to complying with all of the other requirements of this part, include the division or rate to be received by the domestic carrier for its share of the revenue covering a through shipment or aggregate of shipments under the tariff.

(2) A tariff filed in the name of a conference need not show "Agent" after the name of the conference unless the conference publishes as an agent.

(3) "Cargo, N.O.S." may be used as a commodity description provided the term is clearly defined in the tariff.

(d) *Changes on less than statutory notice.* (1) The following changes may be published by amendment to the tariff to be effective on a specified date not prior to the date filed with the Commission, provided the division or rate accruing to the domestic carrier or a provision governing or affecting that division or rate does not change:

(i) A change in a published rate or other provision which results in reduction or in no change in charges. This includes a change in a rate which results in lessening or canceling a proposed (i.e. published but not yet effective) increase; and

(ii) The establishment of a rate on a specific commodity not previously named in a tariff which results in a reduction or no change in charges.

(2) Changes in charges for terminal services, canal tolls, or other additional charges may be made effective upon a specified date not prior to the date filed with the Commission, provided the charges are not under the control of the carrier or conference and the agency assessing the charges to the carrier, increases the charges without notice or without adequate notice to the carrier or conference. If a change occurs in the division, rate, or charge accruing to the domestic carrier, the amendment shall contain a statement explaining the change.

(e) *Port combination bases.* Domestic and ocean carriers may enter into joint arrangements and domestic carriers may at the same time maintain an effective rate applicable only from and to the ports, usable in combination with the ocean carriers' independently established rates. In the absence of a statement in tariffs limiting the application of export or import rates, the rates will apply. The domestic carriers may also publish in their tariffs, as information, the ocean carriers' rates that will apply to or from a foreign country in connection with the domestic carriers' rates. When this is done, the ocean carriers' rates are in no manner subject to the jurisdiction of this Commission.

(f) *Through export and import billing.* When export and import shipments are forwarded under through billing, the through bills of lading shall clearly separate the liability of the domestic carriers and the ocean carriers. The name of the domestic carrier shall appear on the face of the bill of lading when that carrier originates the shipment. Tariffs which provide for the use of a specified kind of bill of lading shall reproduce all of its terms and conditions.

§ 1312.38 Substitution of service.

Paragraphs (a), (b), (c), and (d) of this section only apply to property carriers. The provisions of this section may not be used in connection with joint rates and provisions for which concurrences are in effect unless they so provide.

(a) *Substituted service may be provided.* (1) If a rail, water, or motor carrier (hereafter referred to as Carrier A) desires to have the option to substitute the services of a carrier of a different transportation mode (hereafter referred to as Carrier B) for part of its movement of a shipment, it may do so subject to the requirements of this section.

(2) Either the rate tariff or a governing tariff shall contain the substituted service provisions.

(3) A separate tariff entitled "Substituted Freight Service Directory" may be filed, governing the rate tariff(s), provided it contains only matter relating to the substituted service.

(b) *Service conditions.* Substituted service provisions may be published if—

(1) The shipment moves on the bill of lading that would be used if Carrier A was performing the service;

(2) Carrier A assumes the responsibility for the lading while it is in the possession of Carrier B; and

(3) Movement of the lading has been made prior to, or will be made subsequent to, the service performed by Carrier B.

(c) *Tariff conditions.* The tariff provisions for substituted service shall include—

(1) The name of Carrier B;

(2) The points between which the substituted service will be performed;

(3) A statement that the rate applicable via Carrier A will apply; and

(4) A statement that the substituted service will not be performed if the shipper advises the carrier that it does not want service to be substituted. Carrier B does not need to be shown as a participant in Carrier A's rate or governing tariffs, nor in the routing provisions.

(5) When publishing substitution of trailer-on-flatcar service for motor service, tariffs need not show the rail carrier's name or points of interchange with the rail carriers.

(d) *Changes in tariff provisions.* Additions, deletions and other changes in substituted service provisions (not rates) may be made on 1 day's notice.

(e) *Optional honoring of ticket arrangements.* (This paragraph only applies to passenger carriers.) Provisions may be published affirming an agreement of two or more carriers for the acceptance by one carrier of a ticket sold over the route of another carrier. The carriers' names shall be shown, along with the names of the points between which the tickets will be honored, and any restrictions or exceptions stated.

§ 1312.39 Miscellaneous provisions which may be filed on less than statutory notice.

(a) *Restorations of carrier participation.* Amendments to restore a carrier's participation in a tariff may be filed on 5 days' notice provided the relisting of the carrier is indicated to become effective not later than the date the cancellation was published to become effective.

(b) *Amendment of participating carrier list in a classification or dangerous articles tariff.* Additions, corrections and other changes to the list of participating carriers in classifications and dangerous articles tariffs may be made on 1 day's notice. This authority may not be used to cancel the participation of a carrier.

(c) *Rates for or newly established water carrier service.* (1) (This paragraph does not apply to the transportation of passengers.) Rates and provisions applicable at, from, to or via points on new lines may be established on 10 days' notice. If the establishment of local rates under this authority results in the establishment of combination through rates, the combination through rates may be displaced by lower rates, either single factor or combination, on 10 days' notice. If class rates are initially established under this authority, lower commodity rates to displace the class rates may later be established on 10 days' notice.

(2) (This paragraph applies only to the transportation of passengers.) Rates and provisions applicable at, from or to points on new lines may be established in the first instance on 1 day's notice.

(d) *Extension of expiration dates or postponement of effective dates of comeback provisions.* Amendments to extend the expiration dates of provisions, and to postpone the effective date of comeback provisions (provisions which are paired with and published to supersede those indicated to expire with the preceding day) may be published on 1 day's notice provided no change is made in the extended or postponed provisions.

(e) *Effective Dates.* The effective date of a publication, rate, or provision may be postponed on 1 day's notice, and in statement form.

(f) *Round trip excursion fares.* (This paragraph applies only to passenger service other than special or charter operations.) Fares for a round trip excursion limited to a designated period may be established upon posting and filing the tariff with the Commission on 1 workday's notice.

(g) *Transportation of circus and show outfits.* Rates for specified movements of circuses and other show outfits may be established by filing the tariffs with the Commission on 1 day's notice. The tariffs shall publish the charges specifically, or may consist of a proper title page, containing the statement "as per copy of contract attached," with a copy of the contract attached.

(h) *Freight rate tariffs and classifications of motor common carriers of property and freight forwarders—notice for independent rate changes*—(1) *New and reduced rates.* Except as otherwise provided in paragraphs (h)(2), (4) and (5) of this section, each independently established new or changed rate, charge, rule, or other provision shall be filed with the Commission in Washington, D.C. at least 1 day before the date upon which it is to become effective.

(2) *Increased rates.* Each independently established increased rate or charge and each independently established change in a rule or other provision which effects a reduction in the value of service or increase in a rate or charge shall be filed with the Commission in Washington, D.C. at least 7 workdays before the date upon which it is to become effective.

(3) *Independently established for carrier's account.* The rate, charge, rule, or other provision shall be published either in a tariff filed in the carrier's name or under independent action instructions for only the particular carrier's account in a tariff filed in a tariff publishing agent's name.

(4) *Joint intermodal traffic.* This section does not apply to any single-factor rate, charge, rule, or other provision having application over any segment of the lines of another transportation mode.

(5) *This section supersedes others.* The provisions of this section take precedence over all the provisions of this Part 1312 that govern filing notice. The other provisions will continue to apply to filings that have been docketed with rate bureaus in advance of filing with the Commission (collectively agreed upon rate filings).

(6) *Mixed filings.* Tariffs or amendments that contain both 1-day and 7 workday filings shall be filed upon 7 workdays' notice, with the 1-day filings appropriately excepted from the 7 workday notice.

§ 1312.40 Claims rules.

Each carrier or its agent shall file with the Commission its rules and practices with respect to—

(a) The loss or damage to property (see 49 CFR Part 1005); and

(b) Overcharge, duplicate payment or overcollection of freight charges (see 49 CFR Part 1008).

The rules and regulations may be published in a rate or rules tariff, a classification, or in a separate tariff containing no other matter, or the tariff may refer to the relevant CFR provisions.

§ 1312.41 Contracts and contract summaries.

(a) *Filing and availability of contract, contract amendments, contract summaries and contract summary supplements.* (1)(i) Railroads entering into contracts for railroad transportation

services with purchasers of rail service shall file with the Commission's Section of Tariffs the original and one copy of the contract and three copies of the contract summary.

(ii) Contracts and contract summaries shall not be filed in the same package with standard tariff filings.

(iii) The confidential contract shall not be attached to the contract summary.

(iv) The envelope or wrapper containing the contract and summary shall be marked "Confidential, Rail Contract".

(v) A contract and summary shall be accompanied by a transmittal letter identifiying the submitted documents, and the name and telephone number of a contact person.

(2)(i) The contract filed under these rules will not be available for inspection by persons other than the parties to the contract and authorized Commission personnel, except by petition demonstrating a likelihood of succeeding on the merits of the complaint and that the matter complained of could not be proven without access to additional contract information. The Commission's action in any contract-disclosure matter, including a petition filed under this subparagraph is subject to the limitations imposed by 5 U.S.C. 552(b) and the Trade Secrets Act, 18 U.S.C. 1905.

(ii) A contract and its summary filed under 49 U.S.C. 10713 may be labeled "Nonconfidential." Such a designation will permit the general public to inspect the entire contract.

(3) The contract summary filed under these rules shall include the information specified in paragraph (d) of this part. The contract summary shall be made available for inspection by the general public.

(4) The contract summary filed under these rules shall not be required to be posted in any stations, but shall be made available from carriers participating in the contract upon reasonable request.

(b) *Contract and contract summary title pages.* (1) The title page of every contract and amendment shall contain only the following information:

(i) In the upper right corner, the contract number (see paragraph (c) of this section).

(ii) In the center of the page, the issuing carrier's name, followed by the word "CONTRACT" in large print.

(iii) Amendments to contracts shall also show in the upper right corner, the amendment number (see paragraph (c) of this section).

(iv) A solid one inch black border down the right side of the title page.

(v) Date of issue and date to be effective.

(2) The title page of every contract summary and supplement shall contain only the following information:

(i) In the upper right corner, the contract summary number (see paragraph (c) of this section).

(ii) In the center of the page, the issuing carrier's name, followed by the words "CONTRACT SUMMARY" in large print.

(iii) Date of issue and date to be effective.

(iv) In the center lower portion, the issuing individual's name and address.

(v) Supplements to contract summaries shall also show in the upper right corner, the supplement number (see paragraph (c) of this seciton).

(c) *Contract and contract summary numbering system.* (1) Each issuing carrier shall sequentially number the contract and contract summary it issues. The contract and contract summary identification number shall include the word "ICC," the industry standard alphabet code for the issuing railraod (limited to four letters), the letter "C", and the sequential number, with each separated by a hyphen. The following is an example: the 357th contract filed by the Milwaukee Road would have the following tariff identification number: "ICC–MILW–C–0357."

(2) Any amendment to a contract shall be reflected in a corresponding supplement to the contract summary. If the change in the contract is only in confidential matter, a statement to that effect will be made in the supplement.

(3) At the carrier's option, the carrier's tariff publishing officers may reserve blocks of numbers if tariffs are issued from different departments. An index to the blocks of reserved numbers shall be filed with the Commission.

(4) Contract amendments and contract summary supplements shall be sequentially numbered.

(d) *Content of contract summary; format.* (1) Contract summaries for agricultural commodities, forest products or paper shall contain the following terms in the order named.

(i) A list, alphabetically arranged, of the corporate names of all carriers that are parties to the contract plus their addresses for service of complaints.

(ii) The commodity or commodities to be transported under the contract.

(iii) The origin station(s) and destination station(s), including the specific port(s) (if applicable).

(iv) The duration of the contract.

(v) Rail car data by number of dedicated cars, or, at the carrier's option, car days:

(A) by major car type used to fulfill the contract or contract options:

(*1*) available and owned by the carriers listed in paragraph (a)(1)(i) of this section;

(*2*) available and leased by the carriers listed in (1)(i), with average number of bad-order cars identified;

(*3*) (optional) on order (for ownership or lease) along with delivery dates, and,

(*4*) in the event a complaint is filed involving common carrier obligation and carrier furnished cars, the carrier(s) shall immediately submit to the Commission and the complainant additional data on cars used to fulfill the challenged contract. Data shall include (by major car type used to fulfill the contract):

(*i*) total bad car orders;

(*ii*) assigned car obligations; and

(*iii*) free running cars.

(B) In addition to paragraph (d)(i)(v)(A) of this section if agricultural commodities (including forest products but not including woodpulp, wood chips, pulpwood or paper) a certified statement by the participating rail carrier/carriers:

(*1*) that the cumulative equipment total for all contracts does not exceed 40 percent of the capacity of the rail carrier's owned and leased cars by applicable major car type, and

(*2*) in the case of an agricultural shipper which originated an average 1,000 cars or more per year during the prior 3-year period by major car type, that the equipment used does not exceed 40 percent of the rail carrier's owned or leased cars used on the average by that shipper during the previous 3 years.

(C) Rail car data need not be submitted if:

(*1*) the shipper furnishes the rail cars, unless the cars are leased from the carrier; or

(*2*) the contract is restricted to certain services which do not entail car supply.

(vi) Identification of base rates or charges, movement type (e.g., single car, multiple car, unit train), a minimum volume requirement (if applicable), and a summary of escalation provisions.

(vii) *Special features.* Identification of existence (but not the terms or amount) of special features such as transit time commitments, guaranteed car supply, minimum percentage of traffic requirements, credit terms, discounts, etc.

(2) Contract summaries for other commodities or services not involving a port shall contain the information required in paragraphs (d)(1) (i), (ii), (iv), and (v) of this section. Paragraph (d)(i)(vii), Special features, shall be

applicable to the extent that service requirements are placed in the contract.

(3) Contract summaries for other commodities or services involving a port shall contain the information required in paragraphs (d)(1) (i), (ii), (iv), (v), (vi), and (vii) of this section. In addition, the port shall be named and the tariff mileage (rounded to the nearest 50 miles) shall be disclosed (or, at the contracting parties' option, the origin and destination shall be specified). The required information shall be disclosed for each movement involving multiple origins/destinations.

(4) *Format.* The contract summary and supplements shall enumerate and have each item completed. When the item does not pertain to the contract or amendment, the term "Not applicable" ("NA") shall be used.

(e) *Availability of contract summary.* Copies of contract summaries shall be available from the Commission's Contract Advisory Service and Bureau of Traffic. Copies of contract summaries shall also be available from carriers participating in the contract.

(f) *Contract implementation date.* All filed contracts (and amendments) and contract summaries (and supplements) shall be subject to the implementation provisions of 49 CFR 1039.2.

(g) *Contract approval—statutory notice.* All filed contracts (and amendments) and contract summaries (and supplements) shall provide 30 days' notice as required by 49 U.S.C. 10713(e).

PARTS 1303, 1304, 1305, 1306, 1307, 1308, 1309, AND 1310—[REMOVED]

2. Parts 1303, 1304, 1305, 1306, 1307, 1308, 1309, and 1310 are removed.

[FR Doc. 84-25945 Filed 9-28-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 31012-199]

Atlantic Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of annual adjustment to General category quota.

SUMMARY: NOAA issues this notice (1) allocating 50 short tons (st) of the 650 st General category fishery quota to the New York Bight area west of a straight line originating at a point on the southern shore of Long Island at 721° 50' W. longitude and running SSE 150° true to be used beginning September 30, 1984, and (2) allocating the balance of 89 st of the inseason adjustment amount to the General category fishery for a total annual quota of 689 st. The 50 st allocation for the New York Bight area west of the above coordinates will provide fishermen a reasonable opportunity to fish without exceeding the overall quota.

EFFECTIVE DATE: September 26, 1984.

FOR FURTHER INFORMATION CONTACT: William C. Jerome, Jr., 617-281-3600, extension 325, or David S. Crestin, 617-281-3600, extension 253.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971-971h) regulating the take of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction were published in the **Federal Register** on June 17, 1983 (48 FR 27745). They were amended by rules published in the **Federal Register** on July 24, 1984 (49 FR 29796).

Section 285.22(a) (49 FR 29796) for the *General* category provides: "If the Assistant Administrator determines (based on dealer reports, availability of giant Atlantic bluefin tuna on the fishing grounds, and any other relevant information), that variations in seasonal distribution, abundance, or migration patterns of Atlantic bluefin tuna, and the catch rate may prevent fishermen in an identified area from harvesting their share of the quota, the Assistant Administrator may set aside an allocation for such area. The amount of any allocation will not exceed the greater of 50 st or the maximum reported landings in the identified area in any of the preceding three years. The daily catch rate limit for the identified area will be set at one giant Atlantic bluefin tuna per day per vessel."

The unanticipated and unusually high catch rate of giant Atlantic bluefin tuna in the General category fishery east of a straight line originating at a point on the southern shore of Long Island at 72° 50' W. longitude (approximately the town of Moriches) and running SSE 150° true, will result in an early closure of the General category fishery. This frustrates the intent of the rules to provide fishermen throughout the range of the fishery a reasonable opportunity to fish. Early closure of the fishery will prevent the traditional giant Atlantic bluefin tuna fishery which occurs later in the season in the New York Bight area from taking place. Therefore, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined based on dealer reports that variations in seasonal distribution, abundance, and the catch rate (landings) will prevent an identified area from harvesting its share of the quota. Consequently, the Assistant Administrator hereby allocates 50 st of the 650 st General category quota to the New York Bight area west of a straight line originating at a point on the southern shore of Long Island at 72° 50' W. longitude (approximately the town of Moriches) and running SSE 150° true to be taken at the rate of one giant Atlantic bluefin tuna per day per vessel. Giant Atlantic bluefin tuna harvested under this 50 st allocation may only be landed in the area identified above, beginning September 30, 1984.

Section 285.22(a) (49 FR 29796) provides for an annual quota of 650 st of giant Atlantic bluefin tuna to be taken by vessels permitted in the General category in the regulatory area, which has been adjusted down to 600 st, as stipulated above. The Assistant Administrator is authorized under § 285.22(g) (48 FR 27745) to release amounts from the reserve for inseason adjustments to increase the quota for any fishery segment. Data reported on the catch of Atlantic bluefin tuna in the General category indicate that the quota for this category will be exceeded very shortly. Therefore, under the inseason adjustment authority, the remaining balance of 89 st of the inseason adjustment amount is hereby transferred to the General category for a new total of 689 st. This will extend the opportunity to fish in the General category for as long as possible.

Notice of this action has been mailed to all Atlantic bluefin tuna dealers and vessel owners holding a valid vessel permit for this fishery.

Other Matters

This action is taken under the authority specified at 50 CFR 285.22, and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 285

Administrative practice and procedure, Fish, Fisheries, Fishing, Imports, International operations, Penalties, Reporting and recordkeeping requirements.

(16 U.S.C. 971 *et seq.*)

Dated: September 26, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-25878 Filed 9-28-84; 11:05 am]

BILLING CODE 3510-22-M

50 CFR Part 285

[Docket No. 31012-199]

Atlantic Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of General category closure.

SUMMARY: NOAA issues this notice to close the fishery for Atlantic bluefin tuna conducted by vessels permitted in the General category in the regulatory area. Closure of this fishery is necessary because the adjusted annual catch quota of 689 short tons (st) will be attained by the effective date. Vessels permitted in the General category may continue to fish for a special 50 st quota in the special regulatory area west of a straight line originating at a point on the southern shore of Long Island at 72°50'W. longitude and running SSE 150° true. The intent of this action is to insure that the overall U.S. quota for Atlantic bluefin tuna in the Western Atlantic Ocean will not be exceeded.

EFFECTIVE DATES: The General category fishery is closed 0001 hours Eastern Daylight Time (EDT) October 1, 1984, through December 31, 1984, except that fishing by vessels in the General category may continue for the 50 st allocation for that area west of a straight line originating at a point on the southern shore of Long Island at 72°50'W. longtitude and running SSE 150° true.

FOR FURTHER INFORMATION CONTACT: William C. Jerome, Jr., 617–281–3600, extension 325, or David S. Crestin, 617–281–3600, extension 253.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971–971h) regulating the take of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction were published in the **Federal Register** on June 17, 1983 (48 FR 27745). They were amended, by rules published in the **Federal Register** on July 24, 1984 (49 FR 29796).

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), is authorized under § 285.20(b)(1) to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the total catch of Atlantic bluefin tuna will equal any quota under § 285.22. The Assistant Administrator, further, is authorized under § 285.20(b)(1) to prohibit the fishing for, or retention of, Atlantic bluefin tuna by the type of vessels subject to the quotas.

The Assistant Administrator has determined, based on the reported catch of giant Atlantic bluefin tuna, that the annual quota of 689 st, as adjusted on September 30, 1984, of giant Atlantic bluefin tuna available to vessels permitted in the General category has been attained. Therefore, fishing for, and retention of, giant Atlantic bluefin tuna by vessels in the General category must cease at 0001 hours e.d.t. on the Effective Date given above except that fishing by vessels in the General category may continue for the 50 st allocation for that area west of a straight line originating at a point on the southern shore of Long Island at 72°50'W. longitude (approximately the town of Moriches) and running SSE 150° true.

Notice of these actions has been mailed to all Atlantic bluefin tuna dealers and vessel owners holding a valid vessel permit for this fishery.

Other Matters

The effects of this closure on the participants in the fishery were considered in the design of the final regulations. This action is taken under the authority specified at 50 CFR 285.20(b)(1), and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 285

Administrative practice and procedure, Fish, Fisheries, Fishing, Imports, International operations, Penalties, Reporting and recordkeeping requirements.

(16 U.S.C. 971 *et seq.*)

Dated: September 26, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84–25928 Filed 9–26–84; 1:21 pm]

BILLING CODE 3510–22–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

Refuge Specific Hunting Regulations

Correction

In FR Doc. 84–24681 beginning on page 36736 in the issue of Wednesday, September 19, 1984, make the following corrections:

1. On page 36736, second column, first complete paragraph, in the third and eleventh lines, "special regulation" should have read "special regulations".

2. On the same page, in the same column, in the second complete paragraph, in the ninth line, insert the word "on" between "hunting" and "refuges".

3. On the same page, in the third column, in the fourteenth line from the bottom, "cetain" should have read "certain".

4. On page 36737, first column, in the third complete paragraph, last line, "the" should have read "a".

5. On the same page, third column, second complete paragraph, fifth line from the bottom, "habitate" should have read "habitat."

§ 32.12 [Corrected]

6. On page 36742, in § 32.12(e)(9), first column, third line, insert the word "and" before "gallinules".

7. On page 36743, in § 32.12(n), third column, third line, "*wildlife*" should have read "*Wild Life*".

8. On page 36748, in § 32.12(ll)(6)(i), first column, third line, "SPHW" should have read "SPWH".

9. On the same page, in § 32.12(mm)(2), in the second column, the heading should read as follows: "*Fish Springs National Wildlife Refuge.*"

10. In § 32.12(oo)(3), second column, insert the word "*National*" between "*Lake*" and "*Wildlife*", in the heading.

§ 32.22 [Corrected]

11. On page 36750, in § 32.22(e)(6), fifth line, insert the word "only" between "one day" and "pheasant".

§ 32.32 [Corrected]

12. On page 36754, in § 32.32(a)(1), third column, the sixth line should have been designated as "(i)".

13. On page 36757, in § 32.32(v), second column, first line, insert "(1)" before the word "*Hillside*". In the second line, insert a hyphen between the words "white" and "tailed".

14. On the same page, in § 32.32(v)(2), second line, "white tailed-deer" should have read "white-tailed deer".

15. On page 36758, in § 32.32(z)(1), third column, second line, "*Wildlife Refuge*" should have read "*Wildlife Range*".

16. On page 36759, in § 32.32(ff)(3), third column, second line, insert the word "and" between "elk" and "white-tailed".

17. On page 36760, in § 32.32(ii)(2)(iv), first column, first line, "the" should have read "of".

BILLING CODE 1505–01–M

Proposed Rules

Federal Register
Vol. 49, No. 191
Monday, October 1, 1984

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

[Docket No. PRM-20-15]

Edison Electric Institute (EEI) and Utility Nuclear Waste Management Group (UNWMG); Filing of Petition for Rulemaking

Correction

In FR Doc. 84-24796 beginning on page 36653 in the issue of Wednesday, September 19, 1984, make the following correction:

On page 36654, the equation in the first and second columns should have read as follows:

$$\sum_i \frac{\text{Concentration of radionuclide } i}{\text{radionuclide } i \text{ Part 20, App. E concentration}} \leq \frac{1{,}000}{\text{volume of gallons disposed of at location (gal/yr)}}$$

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-NM-99-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9 and C-9 (Military) Series Airplanes, Fuselage Numbers 1 Through 855

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) that would require rerouting of the toilet flush motor power wire harnesses in the forward and aft lavatories. This action is prompted by the discovery of a potential ignition source which is the toilet flush motor power wire harness routed over the toilet holding tank. This proposed AD is required to aid in eliminating a potential fire.

DATES: Comments must be received on or before December 20, 1984. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information also may be examined at and comments may be made to the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Gilbert L. Thompson or George Y. Mabuni, Aerospace Engineers, Systems & Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2831.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified under the caption "Availability of NPRM." All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-99-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

During the invesitgation of a DC-9-32 airplane accident involving a lavatory fire, a number of similar model airplanes were inspected. Although found not to be the cause of the fire, a potential ignition source was found on some in-service airplanes. The potential ignition source of concern is the toilet flush motor power wire harness, routed over the toilet holding tank, from the circuit breakers to the flush button and timer. This area can be contaminated with "degerm" fluid that occasionally leaks from the flexible coupling between the flush pump and toilet bowl. The wire harness contains 9 wires, four of which are powered whenever the toilet flush motor circuit breakers are closed and the 115 VAC Ground Service Bus is powered. The wire harness, as designed, is encased in insulation sleeving and is secured above the toilet tank by standoffs and clamps. An inspection of

the lavatories in approximately 180 DC-9 airplanes revealed that the wire harness, in several lavatories, was improperly maintained; standoffs and clamps were found missing, and in one case minor wire chafing was found.

This inspection revealed that the standoffs and clamps on some of the DC-9 airplanes were not reinstalled during the replacement of the flush motor pump assembly. The unsecured wire harness lying on the toilet holding tank can chafe against the components mounted on the holding tank. If the chafing damages the sleeving and the wiring insulation enough to expose the conductors to the conductive degerm fluid, the potential for ignition exists.

A survey was conducted to determine if a similar routing of the toilet flush motor power wire harness existed on any other large transport airplanes. The survey, which included Airbus Model A300; Boeing Models B707, B720, B737, B747, B757, B767; McDonnell Douglas Models DC-8, DC-9, DC-10; and Lockheed Model L-1011 airplanes, revealed that this type of routing of the subject harness exists only on DC-9 airplanes, fuselage numbers 1 through 855. The manufacturer is preparing DC-9 Service Bulletin 24-76, scheduled to be released on September 30, 1984, which will describe two changes to the installation of the lavatory pump motor power wire harness. This AD proposes to encompass only one of the changes, namely the requirement to reroute the toilet flush motor power wire harness outboard and away from the flush motor and pump assembly in the forward and aft lavatories on DC-9 airplanes, fuselage numbers 1 through 855. The new routing would be similar to that in DC-9 airplanes manufactured subsequent to fuselage number 855. Rerouting of the toilet flush motor power wire harness away from the area of the toilet holding tank occasionally contaminated by "degerm" fluid, would eliminate the potential ignition source.

Cost Estimate

It is estimated that 462 U.S. registered airplanes would be affected by this proposed AD, that it would take approximately 6.6 manhours per airplane to accomplish the required actions, and that the average labor costs would be $40 per manhour. The actual costs of modification parts are estimated to be $450 per airplane. Based on these figures, the total cost impact of this AD on the U.S. fleet is estimated to be $329,868.

For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes, fuselage numbers 1 through 855, certificated in all categories. Compliance required as indicated, unless previously accomplished.

To eliminate a potential ignition source from the forward and aft lavatories, accomplish the following:

A. Within 12 months after the effective date of this airworthiness directive (AD), reroute the toilet flush motor power wire harness in the forward and aft lavatories in accordance with the Accomplishment Instructions of McDonnell Douglas DC-9 Service Bulletin 24-76, original issue, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

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

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846. Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DC-9 and C-9 (Military) series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Seattle, Washington, on September 21, 1984.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-25872 Filed 9-28-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-ANM-13]

Proposed Establishment of Transition Area, Choteau, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a transition area at Choteau, Montana. The intended effect of the proposed action is to provide controlled airspace from 700 feet above the surface for aircraft executing a new instrument approach procedure to Choteau Airport. This action is necessary to ensure segregation of the aircraft using the approach procedures in instrument weather conditions.

DATES: Comments must be received on or before December 13, 1984.

ADDRESSES: Send comments to: Manager Airspace & Procedures Branch, ANM-530, Federal Aviation Administration, Docket No. 84-ANM-13, 17900 Pacific Highway South, C-68966, Seattle, WA 98168.

The official docket may be examined in the Regional Counsel Office.

An informal docket may also be examined during normal business hours at the Airspace & Procedures Branch, 17900 Pacific Highway South, Seattle, WA 98168.

FOR FURTHER INFORMATION CONTACT: Kathy Paul, Airspace Technician, ANM-535. The telephone number is: (206) 431-2530.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments

are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84–ANM–13." The postcard will be date-time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace & Procedures Branch, 17900 Pacific Highway South, Seattle, WA 98168 both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, at the address previously listed. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which described the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) to provide controlled airspace for the benefit of aircraft conducting instrument flight rules (IFR) activity. Establishment of the transition area at Choteau will necessitate an amendment to this subpart since there is a new IFR procedure to the Choteau Airport. Section 71.13 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

Note.—The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and for the same reasons, (4) it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 71

Transition areas, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Choteau, Montana Transition Area [New]

"That airspace extending upward from 700 feet above the surface within a 9 mile radius of Choteau NDB (47°49'30"N LAT/ 112°09'55"W LONG)."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 [49 U.S.C. 1348(a) and 1354(a)]; [49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)]; and 14 CFR 11.65.)

Issued in Seattle, Washington, on September 21, 1984.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 84–25871 Filed 9–28–84; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 808

[Docket No. 83P–0125]

Medical Devices; Opportunity for Oral Hearing on Proposed Action on Hawaii's Application for Exemption From Preemption for Hearing Aid Requirements

AGENCY: Food and Drug Administration.

ACTION: Notice of opportunity for oral hearing.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for interested persons to request an oral hearing on a proposed rule that would grant exemption from Federal preemption for certain of Hawaii's hearing aid device requirements and would deny exemption for other of its requirements. The proposed rule is published elsewhere in this issue of the **Federal Register.**

DATE: Requests for an oral hearing by October 31, 1984.

ADDRESS: Written requests to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Les Weinstein, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: Section 808.25 (21 CFR 808.25) of FDA's regulations provides procedures for processing applications for exemption from Federal preemption of State and local requirements applicable to medical devices under section 521 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360k). Section 808.25(c) provides that concurrent with the agency's determination to issue in the **Federal Register** a proposed regulation either to grant or to deny an exemption from preemption, the agency also will issue in the **Federal Register** a notice of opportunity for interested persons to request an oral hearing before FDA to present views on the application and the proposed regulation.

Elsewhere in this issue of the **Federal Register,** FDA is issuing a proposed regulation responding to an application from the State of Hawaii for exemption from preemption for section 14.1, subsections (a), (b), and (c) of chapter 451A of the Hawaii Revised Statutes. Therefore, in accordance with § 808.25(c), FDA is announcing an opportunity for interested persons to request an oral hearing on its proposal to grant exemption from Federal preemption for certain of Hawaii's hearing aid device requirements and to deny exemption for other of its requirements.

FDA advises that under § 808.25(d), any request for a hearing is required to be submitted to the Dockets Management Branch (address above) and to include an explanation of why an oral hearing, rather than submission of written comments only, is essential to the presentation of views on the application for exemption from preemption and on the proposed regulation. Further, to enable expeditious review of requests for an oral hearing and final action on the application for exemption and on the proposed rule, FDA has limited the period for requesting an oral hearing to the first 30 days of the comment period on the proposed regulation.

Under § 808.25(e), if a timely request for a hearing is made, FDA will review the request and will determine whether a hearing should be granted. If FDA determines that an oral hearing should be held, it will announce the time, date, and place of the hearing in a future issue of the **Federal Register.** The procedures that will govern any such oral hearing

are those applicable to a public hearing before the Commissioner of Food and Drugs under Part 15 of FDA's administrative practices and procedures regulations (21 CFR Part 15).

Interested persons may, on or before October 31, 1984, submit to the Dockets Management Branch (address above) written requests for an oral hearing on this matter. Two copies of any requests are to be submitted, except that individuals may submit one copy. Requests are to be identified with the docket number found in brackets in the ehading of this document. Received request may be seen in the office above between 9 a.m. and 4 p.m., Monday through Firday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 521, 90 Stat. 574 (21 U.S.C. 360k)) and under authority delegated to the Commissioner (21 CFR 5.10).

Dated: September 8, 1984

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 84-25883 Filed 9-28-84; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 808

[Docket No. 83P-0125]

Exemption From Preemption of State and Local Hearing Aid Requirements; Hawaii's Application for Exemption

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to grant exemption from Federal preemption for certain of Hawaii's hearing aid device requirements and to deny exemption for other of its requirements. This action responds to an application from the government of Hawaii. The Federal Food, Drug, and Cosmetic Act preempts State and local medical device requirements that are different from or in addition to Federal requirements. The act also provides that the agency may, by regulation, exempt State and local device requirements from preemption. Elsewhere in this issue of the **Federal Register**, FDA is announcing an opportunity for interested persons to request an oral hearing on the proposed regulation.

DATES: Comments by November 30, 1984. FDA proposes that any final regulation based on this proposal be effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Les Weinstein, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 15, 1977 (42 FR 9286), FDA published final regulations establishing requirements for professional and patient labeling for hearing aid devices (21 CFR 801.420) and conditions for sale of hearing aids (21 CFR 801.421) (approved by the Office of Management and Budget under control number 0910-0171).

Section 521(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360k(a)) contains special provisions governing the regulation of devices by States and localities. That section prescribes a general rule that after May 28, 1976, a State or political subdivision of a State may not establish or continue in effect any requirement with respect to a medical device intended for human use having the force and effect of law (whether established by statute, ordinance, regulation, or court decision), which is different from, or in addition to, any requirement applicable to such device under any provision of the act and which relates to the safety or effectiveness of the device or to any other matter included in a requirement applicable to the device under the act. Thus, since §§ 801.420 and 801.421 became effective on August 25, 1977, any State or local hearing aid requirement that is different from or in addition to the requirements with respect to professional and patient labeling and conditions for sale of hearing aids established by FDA regulations, is preempted under section 521(a) of the act.

Section 521(b) of the act provides that FDA may upon application by a State or political subdivision, and by regulation issued after notice and an opportunity for an oral hearing, exempt a State or local medical device requirement from preemption under such conditions as FDA may prescribe if the requirement is (1) more stringent than an FDA requirement applicable to the device or (2) required by compelling local conditions, and compliance with it would not cause the device to be in violation of any requirement applicable under the act.

In the **Federal Register** of May 2, 1978 (43 FR 18661), FDA published final regulations establishing procedures for considering applications for exemption form preemption (21 CFR Part 808) (approved by the Office of Management and Budget under control number 0910-0129). In § 808.1(d) of the regulations, FDA provided examples of State or local requirements that are not regarded as preempted by section 521 of the act. In accordance with the regulations, the following requirements relating specifically to hearing aids are not preempted: (1) Requirements with respect to the licensing of hearing aid dispensers, audiologists, and physicians; (2) requirements that are substantially identical to the FDA requirements governing the labeling and conditions for sale of hearing aids; and (3) requirements established by Federal, State, or local agencies governing the expenditure of public funds for purchasing hearing aids and hearing health care services for the hearing impaired.

On April 8, 1983, the State of Hawaii applied for exemption from preemption for section 14.1, subsections (a), (b), and (c) of chapter 451A of the Hawaii Revised Statutes:

Section 451A-14.1 Requirement of authorization from physician or otorhinolaryngologist; authorization records.

(a) No person engaged in the fitting and selling of hearing aids shall sell, barter, offer to sell or otherwise knowingly establish a commercial relationship with a potential purchaser without first obtaining and maintaining in his possession written authorization by a physician that the purchaser or potential purchaser has been examined by him and that he has prescribed or approved a hearing device, provided, however, that in the case of a child ten years of age or under, such written authorization must be by an otorhinolaryngologist.

(b) For the purposes of subsection (a) of this section, such written authorization must be signed by the physician or otorhinolaryngologist within ninety days prior to the date of sale, barter, offer or commencement of a commercial relationship as referred to above; provided, however, that the ninety day limit provided in this subsection shall not apply if the written authorization of the physician or otorhinolaryngologist states that a return visit of the patient is not necessary for subsequent purchases of a hearing device.

(c) Every hearing aid dealer and fitter licensed pursuant to this chapter shall keep a suitable book or file, or a microfilm of such book or file in which shall be preserved, for a period of not less than five years, every authorization by physicians or otorhinolaryngologists received pursuant to this section. The book, file, or microfilm of such authorizations shall at all times be open to inspection by the board of hearing aid dealers and fitters and other law enforcement agencies.

Section 14.1, subsection (a) of the Hawaii statute requires the hearing aid dispenser to obtain a written authorization from a physician but does not provide for a waiver of the medical evaluation by the prospective user. Section 801.421(a)(2) of FDA's regulation permits any informed adult 18 years of age or older to waive the medical evaluation requirement. Thus, subsection (a) is different from the FDA requirement and is preempted. FDA believes that adults should be permitted to waive the medical evaluation requirement if the prospective user has religious or personal objections to a medical evaluation. Therefore, FDA is proposing to deny exemption from preemption for this portion of subsection (a).

Subsection (a) also prohibits the sale of a hearing aid to a child under the age of 10 who does not have written authorization from an otorhinolaryngologist. This provision is more stringent than the Federal requirement (see § 801.421(a)). FDA believes that hearing loss in children can be treated medically or surgically more often than in adults and that otorhinolaryngologists are more knowledgeable about such treatment than are other physicians. Therefore, FDA is proposing to exempt this portion of subsection (a) from preemption.

Section 14.1, subsection (b) of Hawaii's statute requires that the medical authorization required in subsection (a) be signed within 90 days prior to the sale of a hearing aid, but provides that this 90-day limit does not apply if the authorization states that a return visit of the patient is not necessary for subsequent purchases of a hearing device. Section 801.421(a) of FDA's regulation provides that the medical evaluation shall have taken place within the preceding 6 months. Thus, subsection (b) is different from the FDA requirement and is preempted. FDA believes that the 3-month time limit is unnecessarily stringent. Moreover, the FDA requirement of medical evaluation also applies to the sale of a replacement for a worn-out or damaged hearing aid. Thus, if "subsequent purchase" includes a new sale, and not simply a warranty-type replacement of parts or substitution of one hearing aid for another, all provisions of the FDA regulation are required to be met, including a medical examination within the preceding 6 months. Therefore, FDA is proposing to deny exemption from preemption for subsection (b).

Section 14.1, subsection (c) of Hawaii's statute requires the hearing aid dispenser to keep the physician's written authorization on file for 5 years. Section 801.421(d) of FDA's regulation requires dispensers to maintain copies of medical clearance statements and waivers for only 3 years. Thus, subsection (c) is different from the FDA requirement and is preempted. FDA believes that Hawaii's more stringent requirement will assist the State in enforcing its statute and, therefore, is proposing to exempt subsection (c) from preemption.

Section 808.25 of FDA's regulations provides that, concurrent with the agency's determination to issue in the **Federal Register** a proposed regulation either to grant or to deny an exemption from preemption, the agency also will issue in the **Federal Register** a notice of opportunity for interested persons to request an oral hearing before FDA to present views on the application and the proposed regulation. Elsewhere in this issue of the **Federal Register**, FDA is issuing such a notice.

FDA advises that it previously has ruled on the applications of 20 States and the District of Columbia for exemption from preemption for their State and local hearing aid requirements (see 45 FR 67325 and 67326; October 10, 1980). Many of the written comments and much of the testimony at the oral hearing on these other applications are relevant to the Hawaii application and will be considered in the preparation of the final regulation on this application.

Executive Order 12291

FDA has carefully reviewed the proposed rule under Executive Order 12291 and concludes that it does not meet any of the criteria of a major regulation. Therefore, a regulatory impact analysis is not required. The proposal merely applies Part 808 of the regulations to an application from the Government of Hawaii. The proposal does not impose any new Federal requirements on any person. Similarly, no new requirements are established at the State level because the proposal allows part of an existing Hawaiian regulation to remain in effect while preempting other parts of that regulation.

Regulatory Flexibility Act

FDA certifies that the regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities because it does not impose any new requirements on any person. Therefore, a regulatory flexibility analysis, as provided in the Regulatory Flexibility Act, is not required.

List of Subjects in 21 CFR Part 808

Exemption of specific State requirements, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 521, 701, 52 Stat. 1055–1056 as amended, 90 Stat. 574 (21 U.S.C. 360k, 371)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), it is proposed that Part 808 be amended in Subpart C by adding new § 808.61 to read as follows:

PART 808—EXEMPTIONS FROM FEDERAL PREEMPTION OF STATE AND LOCAL MEDICAL DEVICE REQUIREMENTS

§ 808.61 Hawaii.

(a) The following Hawaii medical device requirements are enforceable, notwithstanding section 521 of the act, because the Food and Drug Administration has exempted them from preemption under section 521(b) of the act: Hawaii Revised Statutes, chapter 451A, section 14.1, subsection (a) with respect to medical examination of a child 10 years of age or under, and subsection (c).

(b) The following Hawaii medical device requirements are preempted by section 521(a) of the act, and the Food and Drug Administration has denied them exemption from preemption: Hawaii Revised Statutes, chapter 451A, section 14.1, subsection (a) to the extent that it requires a written authorization by a physician and does not allow adults to waive this requirement for personal, as well as religious, reasons, and subsection (b).

Interested persons may, on or before November 30, 1984, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 8, 1984.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 84-25884 Filed 9-28-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Ch. III

[Docket 84-02; Notice 1]

Procedures for Transition to New National Driver Register

AGENCY: National Highway Traffic Safety Administration (NHTSHA), DOT.

ACTION: Notice of proposed rulemaking..

SUMMARY: For over 20 years, the Federal Government has operated the National Driver Register (NDR), a voluntary State/Federal cooperative program to assist the States in exchanging information about the driving license records of certain individuals. The NDR is designed to address the problem that arises when chronic traffic law violators, after losing their licenses in one State, travel to and receive licenses in another State. The current NDR relies primarily on the U.S mail to receive information from the States and to respond to inquiries for the States. In 1982, Congress enacted legislation to improve the NDR by converting it to a fully automated system, enabling a State to determine, virtually instantly, whether another State has taken an adverse action against a driver license applicant. This notice proposes procedures NHTSA will follow for the orderly transition from the current NDR to the new, automated NDR.

DATES: Comments must be received by October 31, 1984. The rules will be effective upon publication of the Final Rule in the **Federal Register.**

ADDRESS: Written comments should refer to the docket number and the number of this notice and be submitted to (preferably in ten copies): Docket Section, National Highway Traffic Safety Administration, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. (Docket hours are 8 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Mr. Clayton Hatch, Chief, National Driver Register (NIS-33), 400 Seventh Street, SW., Washington, D.C. 20590 or telepone (202) 426-4800.

SUPPLEMENTARY INFORMATION: On October 25, 1982, Congress enacted legislation which called for the establishment of an improved National Driver Register to assist chief driver licensing officials of participating States in exchanging information regarding certain motor vehicle driving records. The current Register was established in 1960 and is now operated by the National Highway Traffic Safety Administration. It is computer assisted, but uses the U.S Mails to send information to and from State licensing authorities. The October 1982 legislation envisioned a fully-automated system which would provide rapid, computer-processed responses to the inquiries of the State licensing authorities. Through this new system, the States will be able to learn more quickly of adverse actions taken by other States and decide whether to grant a driver's license to an applicant. This Notice of Proposed Rulemaking identifies proposed procedures for the orderly transition to the new NDR. Comments on these procedures are invited.

Current NDR

States presently participate in the NDR by (1) providing reports of license withdrawals and denials for entry onto the NDR file, and (2) submitting names of license applicants to be checked against the NDR file to determine if a report for license withdrawal or denial is in the file from another licensing jurisdiction. State participation is voluntary and currently all States participate in some manner.

Reports of license withdrawals and denials now on file contain descriptive information about the individual (name, date of birth, sex, height, weight, etc.) and details about the adverse action taken (traffic violation for which license was withdrawn or denied, date of action, date of eligibility for license restoration and date restored when applicable).

Transmission of the data on both inquiries and reports is predominantly by mail. Upon receipt of the State-supplied information, it is processed against the computer based file generally within 24 hours from receipt. The matching of an inquiry with a record on file produces a "Probable Identification" (no identification is "positive," since the possibility exists that the individual described on the inquiry record may not be the same person identified on the NDR record of withdrawal or denial). The "Probable Identifications" are immediately mailed to the inquiring States so that they may take appropriate action. This process (from the time of State inquiry to State receipt of a "Probable Identification") generally takes a week to ten days. A response is provided only when a match occurs. In addition to allowing inquiries from State licensing agencies, the present NDR accepts requests for driver's license checks to be performed for Federal Government agencies. However, any inquiry must, by law, be in connection with the issuance or reissuance of a motor vehicle operator's license.

Need for New NDR

Many deficiencies in the present National Driver Register system have been identified over the years by the National Highway Traffic Safety Administration, the States and outside groups. The greatest problem of the current system is the length of time needed to respond to inquiries. Many States now issue a full-term license over-the-counter while the applicant is present. Although these States still send inquiries to the NDR, the results of National Driver Register file checks are received after a license has been issued. Therefore an applicant can be licensed by one State while his privilege to drive was suspended or revoked in another State. The licensing State does not learn of the adverse driving record for a week or two, at which point it is difficult to find the licensee to suspend or revoke his permit. Another problem is that NDR records are only periodically updated by the Sates and on occasion have contained inaccurate data due to transcription errors.

Aware of these shortcomings, the Nation Highway Traffic Safety Administration conducted a study in 1973 to identify program problems and their extent. The study's primary recommendation was that a rapid response service was needed and that such a capability should be developed. As a result, an effort was undertaken in March 1975, to determine system feasibility and to define and design for a rapid response system. A comprehensive survey was made of all licensing jurisdictions which showed that 41 States desired a rapid response service. Based on the determination that such a system was feasible, a plan was developed in April 1978, for the implementation of a state-of-the-art Federal/State driver record communication system. This system was identified as the "Rapid Response System". This system would have allowed States to obtain information directly from the NDR file in a matter of seconds through use of computer assisted technology. Although this approach solved the response-time problem, it did not correct other shortcomings, espcially data accuracy. A report was submitted to Congress in 1980, pursuant to the Surface Transportation Assistance Act of 1978, which outlined the problems of maintaining current and accurate data in a massive data file. The report recommended a aystem whereby the NDR serves as a conduit for retriveing

information from the State of Record (SOR) and relaying that information immediately, without interception, to the State of Inquiry (SOI). This system also solved some concerns about the privacy implications of the Federal Government retaining detailed records on certain drivers. Thus, the NDR would no longer be encumbered with high volume data handling problems and could rely directly on the State to provide information which would be as accurate and as current as the data in the State file at the time of inquiry.

New NDR

After consideration of the 1980 study, Congress enacted the NDR Act of 1982 (Pub. L. 97-364, October 25, 1982) to enhance the accuracy and effectiveness of the Register. A key feature of the legislation lies in section 203(a) which directs the Secretary of Transportation to establish and maintain a system which would enable the Secretary to "relay *without interception of the actual information* to the chief driver licensing official of a particpating State, any information provided by any chief driver licensing official of a State of record in response to such request". (Emphasis added). Further, the law requires that the content of the Federal NDR file be limited to minimal, personal identifying information. Thus, the law requires that specific information about *why* an individual's name appears in the NDR file is no longer to be retained in the Federal NDR. Rather, it is to be maintained by the State which instituted the adverse action. This change in record content underlies the shift in record custodianship from the Federal Government to the States and focuses on protecting the privacy of these records by ensuring that no central location will house all the details about adverse driver license actions taken in the States. Furthermore, the law specifies that the "Secretary shall not be responsible for the accuracy of any information relayed to the chief driver licensing official of any participating State."

The system being proposed for implementation which would comply with the mandates of the NDR Act of 1982 is similar to the Problem Driver Pointer System (PDPS) which was conceptually defined in the 1980 study.

Briefly stated, the PDPS will operate as follows:

1. A State asks the NDR to:

a. Check whether an individual who is applying for a driver's license has adverse action information on file in any other State.

b. Retrieve a summary of that information from the State which took the adverse action; and

c. Provide the summary to the inquiring State.

2. This is to be done either electronically, or until such time as the State is capable of participating electronically, through the mail.

3. The NDR file will consist only of names and other minimal identifying information about an individual who has had an adverse action taken against him or her. The information in the NDR is known as the "record".

4. If the NDR locates a record on the applicant in the files it will first provide a response to the inquiring State indicating that a record has been found. It will then obtain the adverse action information (Driver History Summary) from the State in which the action occurred and relay it, without interception, to the inquiring State.

5. If the NDR does not locate a record, it will so indicate to the State of Inquiry.

The implementation of this system in compliance with the Congressional mandate, requires significant changes to both the method of operation of the NDR and the type of data maintained. Prior to full implementation, the processes will be pilot-tested among four States (see discussion *infra*), and changes may be made as a result of what is learned during the test.

The Problem Driver Pointer System (PDPS), will use electronic "on-line interactive" and "on-line remote job entry," communication systems to replace mail as the principal means of data transmittal. "On-line interactive" means active two-way communication with a computer, allowing one to receive information from a computer file (such as the NDR file) almost immediately after it is requested. Remote job entry designates a slower automated response method. Information requests are sent in batches, usually large numbers at a time, and usually at night. The responses are then also assembled in batches. Once the entire group of requests has been acted on, all of the responses are sent back together to the requester.

Interactive service is intended to satisfy the immediate reponse needs of States which issue permanent licenses over-the-counter and electronically check their own files prior to issuance (20 States currently use this method). The Agency plans to limit the service to the processing of non-minimum age applicants requesting licenses for the first time in that jurisdication. (It is assumed that minimum age applicants are not likely to have records elsewhere and therefore do not justify interactive record checks.)

Remote job entry service is intended to be used: (1) By States not performing on-line inquiries prior to issuance of a license (either permanent or temporary) while the applicant is present; (2) by States that do not possess the equipment necessary for higher level (interactive) communications; and (3) for those inquiries not needing an immediate response (license renewals and employer requests).

As previously stated, when the system is fully implemented the NDR will no longer contain the actual adverse action data. Rather, the records will identify only that an adverse action was taken against an individual and the States where the adverse action was taken. The adverse action data will be retained by the State of Record, and not in the NDR. Thus, the chance of error is reduced significantly.

The NDR Act of 1982 expanded the categories of adverse driver licensing action which are authorized to be transmitted by the Register to include convictions for certain traffic offenses even though a license withdrawal or denial did not result. The Act directed the chief driver licensing officials in participating States to transmit a report to the NDR regarding any individual:

(1) Who is denied a motor vehicle operator's license by such State for cause;

(2) Whose motor vehicle operator's license is cancelled, revoked, or suspended by such State, for cause; or

(3) Who is convicted under the laws of such State of the following motor vehicle-related offenses or comparable offenses:

(A) Operation of a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance;

(B) A traffic violation arising in connection with a fatal traffic accident, reckless driving, or racing on the highways;

(C) Failure to render aid or provide identification when involved in an accident which results in a fatality or personal injury; or

(D) Perjury or the knowledgeable making of a false affidavit or statement to officials in connction with activities governed by a law or regulation relating to the operation of a motor vehicle.

Any report transmitted through NDR regarding an indivdual will contain the following data:

(1) The legal name, date of birth (including day, month, and year) sex, (and at the Secretary discretion) height, color of eyes, and color of hair.

(2) The name of the State transmitting such information; and

(3) The social security account number, if used by the reporting State for driver record or motor vehicle license purposes, and the motor vehicle operator's license number of such individual (if that number is different from the operator's social security account number).

This data shall be transmitted not later than 31 days after its receipt by a State motor vehicle department or 6 months after the date on which such State becomes a participating State.

The chief State driver license officials (except for individuals obtaining information on themselves pursuant to the Privacy Act) remain the only persons who have access to the NDR, i.e., all requests other than Privacy Act requests from individuals seeking information on themselves, must be made through these officials. Under the current system, chief driver licensing officials' access is restricted to information to be used for driver licensing purposes only. The NDR Act of 1982 now permits chief driver licensing officials to obtain NDR information for additional purposes and on behalf of additionally authorized users. The new law provides access as follows:

1. For purposes of State driver improvement or highway safety. The Agency plans to define the specific purposes for which the NDR information may be used under this broadened authority in each pilot State contract (See discussion of pilot test program, infra). These uses, as well as attendant procedures will be evaluated after the completion of the pilot test program at which time the Agency will seek comments on final definitions and procedures covering this provision. Until such time, requests pertaining to driver improvement or highway safety will be honored only from pilot States.

2. On behalf of the Chairman of the National Transportation Safety Board (NTSB) and the Administrator of the Federal Highway Administration, for purposes of requesting information regarding any individual who is the subject of any accident investigation conducted by NTSB or the Bureau of Motor Carrier Safety (BMCS).

Procedures have been established via agreement with the District of Columbia driver licensing officials, whereby NTSB and BMCS submit inquiries for transmittal to the District of Columbia for processing.

3. On behalf of a driver or person seeking employment as a driver with the provision that the information will be transmitted directly to the employer or prospective employer, who shall make that information available to the affected individual. Further, the law stipulates that such information shall not have been entered in the Register more than three years before the date of the request.

Definitions and procedures to be followed by the State licensing officials for transmitting such requests and for sending the NDR responses to the employer as well as the computer processing steps necessary to insure compliance with the Act's limitation that the transmitted information be no more than three years old, will be developed and tested as part of the pilot test program. Thus, requests pursuant to this section will only be accepted from the pilot States during the pilot test program period. These definitions and procedures will be evaluated after the completion of the pilot test program at which time the Agency will seek comments on final definitions and procedures covering this provision.

4. On behalf of an individual to:

a. Determine whether the NDR is providing any data regarding him or her or the accuracy of any such data, or

b. Obtain a certified copy of data provided through the NDR regarding the individual.

This information may also be obtained directly by the individual, as it is currently done, through Privacy Act requests sent directly to the NDR.

Procedures to be followed by individuals and State licensing officials pursuant to this provision will be developed and tested as part of the pilot test program. These procedures will be evaluated after completion of the pilot test program at which time the Agency will seek comments on final procedures covering this provision.

Requests from Federal agencies in connection with the issuance of permits to operate Federally owned vehicles, as are permitted under the current NDR (Pub. L. 89–563, 23 U.S.C. 313, note) will be treated differently under the new NDR. To obtain these records, Federal agencies will be required, like any other employer, to request the employee or prospective employee to arrange to have information provided to them. Until such time as the procedures for this employer access provision have been promulgated, Federal agencies will continue to submit requests directly to the NDR under current arrangements and procedures.

Pilot Test Program

Because it is desirable to evaluate the features that now appear to be essential to the PDPS concepts and to determine the extent to which the PDPS serves the needs of the States, Congress mandated that a pilot test program be conducted. The program will begin with a four-State pilot test program. Following evaluation of the results of the test, a determination will be made with respect to changes to be made in the system and possible amendments to be sought in the law. The full PDPS is to be implemented no later than October 25, 1989.

The pilot test program is intended to demonstrate the effectiveness of the referral ("pointer") and relay procedures, using electronic communications (interactive and remote job entry). All provisions of the new NDR including broadened uses, increased access and records on conviction data will be incorporated into the pilot test program. The test will therefore provide the basis for evaluations by the Congress, the States, and the Agency as well as initiate the actual PDPS operations.

Four (4) States will be selected, in accordance with the Act on the following bases:

1. Interest in participating in the program;

2. Having, at the time of selection, an intrastate, on-line driver licensing system capable of electronic transmissions to the NDR;

3. Indication of willingness to participate in a comprehensive mechanical and programmatic evaluation of the system;

4. Variance from other selected States with respect to geography and population so that the four pilot States, as a group, will be representative of varying geographical and population characteristics of the Nation.

5. Agreement to provide other States with driver record information as required in the system concepts; and

6. Variance from other selected States with respect to computer technologies and equipment.

The selection of the pilot test program States will be accomplished through a competitive procurement process. As warranted by findings in the systems design study, more detailed and additional criteria will be described in the request for proposals (RFP), scheduled to be issued later this year.

Proposal for Transition Procedures

The Act provides that a State "may become a participating State under this title by notifying the Secretary of its intention to be bound by the provisions of section 205", which prescribes the categories and content of reports to be transmitted to the NDR. Thus, participation will require, at a minimum, that a State agree to transmit reports regrading individuals whose licenses

have been denied or withdrawn, or who have been convicted of any of the offenses identified in section 205 (listed earlier).

Once the pilot test program has been assessed, the Agency will promulgate regulations establishing procedures whereby a State may make such notification. In this way, States may be brought gradually into the PDPS. A State will be allowed to participate either electronically or, until such time as capable of electronic data transmission, by mail.

The law further requires that the NDR "not maintain in the Register any report or information which was compiled under the provisions of Pub L. 86–660" (governing the present NDR operations) after October 25, 1989. Consequently, by the date a State must either be participating in the PDPS or, if still participating under the present system, cease doing so until brought into the PDPS according to the procedures to be established as referenced above.

It is important to note that during the pilot test program period and during the time that the remaining States are converting to PDPS, the NDR will continue to provide full service to all States. This will necessitate the maintenance of a dual system by the NDR, whereby it will facilitate the interrelations of both conventional (current system) and PDPS States.

Until 40% of the participating States operate under PDPS, or until October 25, 1989, whichever occurs first, all States, including PDPS States shall continue to transmit substantive information on adverse actions to the NDR. The categories of adverse actions shall be those defined in the current NDR. Conviction data will not be transmitted in substantive format. (See discussion below.) Therefore, for a period of time, PDPS States will transmit both pointer and substantive information.

After such time as 40% of the participating States or after October 25, 1989, whichever occurs first, PDPS States will be required to transmit only pointer records. As a result, when an inquiry from a non-PDPS State matches a record from a PDPS State, the State of Inquiry will be informed merely that a pointer record exists in a given State. To retrieve the substantive information the State of Inquiry must request it directly from the State of Record.

In this manner, PDPS States will not be burdened with providing dual records for an extended period of time.

As indicated above, the types of records accessible through the new NDR have been broadened to include conviction records. To fully test the system, PDPS States will submit reports based on these additional records, in pointer format only, starting with the pilot test program. These records will be made accessible to all PDPS States of Inquiry. However, we are seeking comments on the feasibility and desirability of making these conviction records available to all States.

Recognizing the length of time required before the rapid communications capability of the PDPS will be available to the vast majority of States, the Agency has determined that it can provide interim improvements that will meet the States' needs for a rapid response service. One approach under consideration is the implementation of the "Rapid Response System" (RRS) concept developed in 1978 (referenced earlier). While this sytem allows States prossessing the requisite computer capabilities to receive responses to inquiries as rapidly as under PDPS, it is markedly different from the PDPS in that it retrieves only the information currently contained in the NDR master file.

Congress, in passing the NDR Act of 1982 and requiring a system such as the PDPS, recognized the potential privacy problems arising out of inaccurate and outdated data contained in the NDR file. The Agency therefore seeks comments from all interested parties as to the desirability of providing a rapid access capability to the NDR file pending the transition to the full PDPS. In addressing the desirability of the RRS as a transition system, commenters are asked to weigh not only its substantive benefits and shortcomings but also the costs and implementation time necessary to provide this interim capability.

Another interim improvement, which is already in effect, is the Remote Job Entry system, whereby States can send and receive data over telephone lines. States using this method are able to receive responses to their inquiries in less than 24 hours.

Implementation Schedule

The following implementation schedule is proposed. Several of these dates are mandated by the Act.

Milestone	Date
1. Design of pilot test program	Apr. 25, 1984.
2. Implementation of the pilot test program.	Oct. 25, 1984.
3. Selection of pilot States	Apr. 25, 1985.
4. Completion of the pilot test program	Oct. 25, 1985.
5. Commencement of pilot test program evaluation.	Do.
6. Report of Evaluation to Congress	Oct. 25, 1986.
7. Conversion of all States to PDPS	Oct. 25, 1989.

The Agency is requesting comments from any interested parties regarding this schedule. States in particular are requested to asess this schedule in light of major procurement and file conversion efforts that would be required if they choose to participate in the NDR by using electronic communications.

Privacy Considerations

The current NDR complies with the Federal Privacy Act, as will the PDPS and any transitional NDR.

The PDPS concept presents unique enhancements of data reliability and integrity. Because all data stored at the NDR for the pointer functions will be furnished directly by the member States, the data should be more accurate and current. Further, because the size of the (pointer) file is greatly reduced, fewer data will be susceptible to recording errors.

Most NDR data is already in the public domin at the State level, and consequently is not highly sensitive. Therefore, an intensive degree of security is not required to protect individual's right to privacy. No specialized communication measures appear to be necessary for the on-line portions of the system, particularly since States have strict access controls for their own systems. Nonetheless, a detailed privacy and security plan will be prepared for the electronic NDR and will be implemented as part of the pilot test program. This will include software techniques which will be adapted to maintain security through use of passwords, log-on procedures, etc. with minimal impact on users. Details of this plan will appear in the RFP for the pilot test program.

NHTSA has analyzed the impact of this action and has determined that it is not "major" within the meaning of Executive Order 12291, but is "significant" within the meaning of Department of Transportation regulatory policies and procedures. In reaching the ultimate goal of the NDR Act of 1982, which is to have all States participating in an electronic Register, we anticipate that States will expend a considerable amount of money for computer systems. However, this upgrade may be for purposes broader than joining the NDR. Nonetheless, the Agency is not imposing any mandatory requirements on the States because participation in the NDR will remain voluntary.

As soon as practicable, the Agency will commence a pilot test program in which; (a) Problems will be identified and corrected, thus enabling the Agency to establish procedures for full implementation of the PDPS, and (b) data and other information will be

collected and analyzed for the purpose of assessing various operational and administrative aspects and features of the PDPS. When final decision concerning the NDR are made by both the Agency and Congress it will be possible to evaluate adequately the impact which the PDPS system will have upon the States.

Because there will be virtually no economic impact from this rule, a full regulatory evaluation is not necessary.

In accordance with the Regulatory Flixibility Act, the Agency has evaluated the effects of this rule on small entites. Based on that evaluation, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared.

The Agency has also analyzed this action for the purpose of the Nationl Environmental Policy Act. The Agency has determined that this action will not have any effect on the human environment. Interested persons are invited to comment on this proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15 page limit. (49 CFR 553.21). This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing data will also be considered. However, the rulemaking action may proceed at any time after that date. Any comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NITSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

(23 U.S.C. 401; delegations of authority at 49 CFR 1.50 and 501)

Issued on September 24, 1984.

Diane K. Steed,

Administrator.

Transition Procedures From Current to New National Driver Register

1. Scope

This rule provides procedures, in accordance with section 203(c)(1) of the National Driver Register Act of 1982 (Pub. L. 97–364), for the orderly transition from the system regarding the motor vehicle driving records of individuals as provided in Pub. L. 86–660, as amended, National Driver Register (current NDR) to the system established in Pub. L. 97–364 (new NDR).

2. Purpose

The purpose of this rule is to provide States with information concerning the procedures which the National Highway Traffic Safety Administration plans to follow to implement the new National Driver Register. This will ensure that participating States understand their rights and obligations during the transitional period which will commence on the effective date of this notice and will terminate on October 25, 1989.

3. Definitions

3.1. Problem Driver Pointer System (PDPS)—whereby the NDR serves as a conduit for retrieving information from the State which took adverse action against a driver (State of Record) and relaying that information, without interception, to the State requesting the information (State of Inquiry).

3.2. Pointer Record—A report containing only such data as described in section 205(b) of Pub. L. 97–364.

3.3. PDPS State—A State, which participates in the pilot test program or, after the pilot test program is completed, which participates in the PDPS, by submitting pointer records for inclusion in the NDR file and by providing information as a State of Record.

3.4. Non-PDPS State—A State which operates under the current NDR by submitting complete substantive adverse driver licensing data to the NDR.

3.5. Match—When the personal identifying information in an inquiry compares with the personal identifying information on a record in the NDR file such that there is a high probability that the individual identified on both records is the same person.

4. General Transition Procedures

4.1. Data To Be Transmitted to NDR by PDPS States.

4.4.1. The chief driver licensing official in each PDPS State shall transmit to the NDR a pointer record regarding any individual who has had adverse action taken against him as described in section 205 of Pub. L. 97–364.

4.1.2. The chief driver licensing official in each PDPS State shall transmit to the NDR the full substantive adverse action data on any individual who has had adverse action taken against him as described in Pub. L. 86–660 as amended, until such time as 40% of the participating States become PDPS States or until October 25, 1989, whichever occurs first.

4.2. Data To Be Transmitted to NDR by Non-PDPS States.

4.2.1. The chief driver licensing official in each non-PDPS State shall transmit to the NDR the full substantive adverse action data on any individual who has had adverse action taken against him as described in Pub. L. 86–660, as amended by Pub. L. 89–563, Title IV, section 401, 23 U.S.C. 313, note.

4.3. Data To Be Received by PDPS States.

4.3.1. When a match occurs with a pointer record on file from a PDPS State, the PDPS State of Inquiry will receive the pointer record response from the NDR and the adverse action information from the State of Record.

4.3.2 When a match occurs with a record on file from a non-PDPS State, the PDPS State of Inquiry will receive the full substantive record from the NDR.

4.3.3. When no match occurs, the PDPS State of Inquiry will receive a negative response from the NDR if either: (a) The inquiry was transmitted interactively, or (b) the inquiry is on behalf of an employer or an individual.

4.4. Data To Be Received by Non-PDPS States.

4.4.1. When a match occurs with a record on file from a non-PDPS State, the non-PDPS State of Inquiry will receive the full substantive record from the NDR.

4.4.2. When a match occurs with a record on file from a PDPS State, the non-PDPS State of Inquiry will receive the full substantive record which includes the personal identifying information pointer record from the NDR until such time as described in section 4.1.2, after which non-PDPS States of Inquiry will receive only pointer records.

4.4.3. Prior to the time described in section 4.1.2, when a match occurs with a record on file from a PDPS State, but a substantive record is not available from the NDR, the non-PDPS State will receive a pointer record which will

indicate to the State that only conviction data exists and that it must be obtained directly from the State of Record.

4.4.4. When no match occurs, the non-PDPS State of Inquiry will not receive any response.

4.5. Accessibility of NDR Information.

4.5.1. All requests for information from the NDR must be made by State chief driver licensing officials with the exception of requests by Federal agencies in connection with the issuance of permits to operate Federally owned vehicles.

4.5.2. All requests for information made by State chief driver licensing officials must pertain to driver licensing with the exception of requests on behalf of the Chairman of the National Transportation Safety Board and the Administrator of the Federal Highway Administration, for purposes of requesting information regarding any individual who is the subject of any accident investigation conducted by the NTSB or Bureau of Motor Carrier Safety, and requests from States participating in the pilot test program as provided in Pub. L. 97–364, 23 U.S.C. 513, note. Requests from States participating in the pilot test program may be for the purposes of State driver improvement or highway safety as defined in each pilot State contract.

[FR Doc. 84-25781 Filed 9-20-84; 4:25 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Public Comment and Opportunity for Public Hearing on Proposed Modifications of the Colorado Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule: Notice of receipt of permanent program modifications: Public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing procedures for the public comment period and for a public hearing on the adequacy of proposed amendments to the Colorado Permanent Regulatory Program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) which were submitted to OSM by Colorado for the Director's approval. The amendments pertain to notice and approval requirements and performance standards for coal exploration, permit application information requirements pertaining to soil resources and performance standards for surface mining operations relating to topsoil, sealing of drilled holes and underground openings, explosives, and the cessation of operations.

This notice sets forth the times and locations that the Colorado program and proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed at the public hearing.

DATES: Written comments from members of the public not received by 4:30 p.m. on October 31, 1984 will not necessarily be considered in the Director's decision on whether the proposed amendments satisfy the criteria for approval.

A public hearing on the proposed amendments has been scheduled for October 29, 1984. Any person interested in making an oral or written presentation at the hearing should contact Mr. Robert Hagen at the address and telephone number listed below by October 15, 1984. If no person has contacted Mr. Hagen by this date to express an interest to participate in this hearing, the hearing will not be held.

ADDRESSES: The public hearing will be held between 9:00 a.m. and 12:00 noon in room 2010, Technical Center West, Brooks Towers, 1020 15th St., Denver, Colorado. Written comments and requests for an opportunity to speak at the public hearing should be sent to Mr. Robert Hagen, Field Office Director, Office of Surface Mining Reclamation and Enforcement, New Mexico Field Office, 219 Central Avenue, N.W., Albuquerque, New Mexico 87102.

Copies of the Colorado program, the proposed modifications to the program and all written comments received in response to this notice will be available for public review at the OSM Field Office above and the OSM Headquarters office and the office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Colorado Mined Land Reclamation Division, Department of Natural Resources, 1313 Sherman Street, Denver, Colorado 82020

Office of Surface Mining, 1100 "L" Street, NW., Room 5124, Washington, D.C., Telephone: (202) 343–5351

FOR FURTHER INFORMATION CONTACT: Mr. Arthur W. Abbs, Chief, Division of State Program Assistance, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, D.C. 20240, Telephone: (202) 343–5351.

SUPPLEMENTARY INFORMATION: On February 29, 1980, OSM received a proposed regulatory program from the State of Colorado. On December 15, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of 45 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the December 15, 1980 **Federal Register** (45 FR 82173–82214).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Colorado program can be found in the December 15, 1980 **Federal Register** (45 FR 82173–82214).

On August 28, 1984, the Colorado Mined Land Reclamation Division submitted proposed program amendments for OSM's approval.

The amendments include proposed changes to the Colorado Code of Regulations as outlined below:

Section 1.04 Definitions

Paragraph (22), the definition for "Coal Exploration," is revised.

Section 2.02 General Requirements for Coal Exploration

Paragraph 2.02.1, "Scope," is revised.

Section 2.02.2 Exploration Involving Removal of 250 Tons or Less of Coal

Paragraphs 2.02.2(2) (c) and (g), pertaining to the content requirements of written notices, are revised.

Section 2.02.3 General Requirements: Exploration Involving Removal of More than 250 Tons of Coal

Paragraphs 2.02.3(1) (c)(ii) and (e), concerning the content requirements for an application for approval, are revised.

Section 2.04.9 Soil Resources Information

Paragraphs 2.04.9(1) (a)–(c), pertaining to permit application information requirements relating to soil resources, are revised.

Section 4.06 Topsoil

Paragraph 4.06.1(2), pertaining to general requirements for the handling of topsoil for surface coal mining operations, is revised.

Paragraph 4.06.2(2)(1), concerning the timing of topsoil removal, is revised.

Paragraph 4.06.2(2)(a), pertaining to the materials to be removed, is revised.

Paragraph 4.06.2(4)(a)(ii), concerning topsoil trials and tests, is revised.

Paragraphs 4.06.4 (1) and (2)(a), pertaining to topsoil redistribution, are revised.

Section 4.07 Sealing of Drilled Holes and Underground Openings

Paragraph 4.07.1(2), covering general requirements for the sealing of drilled holes and underground openings, is revised.

Paragraph 4.07.2, covering the temporary sealing of drilled holes and underground openings, is revised.

Paragraph 4.07.3(2), pertaining to the permanent sealing of holes and underground openings in aquifers, is revised.

Section 4.08 Use of Explosives

Paragraphs 4.08.3(2)(b) (i) and (ii), pertaining to the contents of the blasting schedule, are revised.

Paragraph 4.08.4(1)(b)(ii), establishing requirements for surface blasting, is revised.

Paragraphs 4.08.4 (10) and (10(a), pertaining to the maximum peak particle velocity in blasting operations, are revised.

Paragraph 4.08.5(14), pertaining to the records of blasting, is revised.

Paragraph 4.08.6(2), concerning seismographic measurements, is revised.

Section 4.21 Coal Exploration

Paragraph 4.21.1, "Scope", is revised.

Paragraph 4.21.4(1), concerning performance standards for coal exploration, is revised.

Section 4.30 Cessation of Operations

Paragraph 4.30.1(2), pertaining to the temporary cessation of operations, is revised.

The proposed amendments are available for review, in full text, at the addresses listed above. The Secretary seeks public comment on whether the proposed modifications to the Colorado permanent program listed above satisfy the criteria for approval of State program amendments at 30 CFR 732.15 and 732.17. If the Secretary determines the proposed modifications are consistent with SMCRA and no less effective than OSM's regulations, the amendments will be approved, and 30 CFR 906 modified accordingly.

Additional Determinations

1. *Compliance With the National Environmental Policy Act:* The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Compliance With the Regulatory Flexibility Act:* The Secretary has tentatively determined that this proposed rule would not have a significant economic impact on small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

3. *Compliance With Executive Order No. 12291:* On August 28, 1981, the Office of Management and Budget (OMB) granted the Office of Surface Mining exemption from sections 3, 4, 6, and 8 of Executive Order 12291 for all actions taken to approve, or conditionally approve, State regulatory program, actions, or amendments. Therefore, a Regulatory Impact Analysis and regulatory review by OMB is not needed for this program amendment.

List of Subjects in 30 CFR Part 906

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Sec. 503, Pub. L. 95–87 (30 U.S.C. 1253), unless otherwise noted.

Dated: September 24, 1984.

William B. Schmidt,

Acting Director, Office of Surface Mining.

[FR Doc. 84–25912 Filed 9–28–84; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD7 84–10]

Marine Parade; Pompano Beach 22nd Annual Christmas Boat Parade

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: Special Local Regulations are being adopted for the Pompano Beach 22nd Annual Christmas Boat Parade. The parade is scheduled to take place in all navigable waters from a center point between Lake Santa Barbara and Lettuce Lake. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations would become effective at 1830 local time on 16 December 1984 and terminate at 2200 local time on 16 December 1984.

ADDRESSES: Comments should be mailed to Commander, USCG Group Miami, 100 Macarthur Causeway, Miami Beach, FL 33139. The comments and other materials referenced in this notice will be available for inspection and copying at 100 Macarthur Causeway, Communications Center. Normal office hours are between 7:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ens. T.F. Tabrah (305) 350–4309.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (84–10) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The regulations may be changed in light of comments received. 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 if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of notice are Ens T.F. Tabrah, project officer, USCG Group Miami and LCDR K.E. Gray, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Proposed Regulations

The Pompano Beach 22nd Annual Christman Boat Parade is a 10 mile parade with approximately 75–100 boats displaying decorative lighting expected to participate. Regulations are issued by the Commander, U.S. Coast Guard Group Miami as a public service to facilitate the holding of this event, to promote maritime safety, and to reduce to a minimum interference with other vessel traffic in the area.

Economic Evaluation and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). A draft regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected and copied at the address listed under **ADDRESSES.** Copies may also be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Based upon the information in the draft evaluation, the Coast Guard certifies that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposed to amend Part 100 of Title 33, Code of Federal Regulations, by adding a temporary § 100.35–T710 to read as follows:

§ 100.35–T710 Lake Santa Barbara and Lettuce Lake Christmas Boat Parade.

(a) *Regulated area:* All navigable waters from a center point between Lake Santa Barbara and Lettuce Lake, (approximate position 26–13.2N, 080–05.9W) proceeding north in the Intracoastal Waterway to the Hillsboro Blvd. Bridge in Hillsboro Beach.

(b) *Special Local Regulations:*

(1) All vessel traffic in the regulated area will be controlled by the Patrol Commander and will proceed at 5 MPH when passing parade participants.

(2) Rule 20 of the Inland Navigation Rules Act of 1980 will be suspended for registered participants only.

(3) A succession of not less than 5 short whistle or horn blasts from a patrol vessel will be signal for any non-participating vessels to stop immediately. The display of a red distress flare from a patrol vessel will be signal for any and all vessels to stop immediately.

[46 U.S.C. 454; 49 U.S.C. 1655(b); 49 CFR 1.46(b); and 33 CFR 100.35]

Dated: September 26, 1984.

G.E. Walton,

Captain, U.S. Coast Guard Commander, USCG Group Miami.

[FR Doc. 84–25946 Filed 9–28–84; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD11 84–71]

Marine Event; Lake Havasu Classic

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: This proposed rule will establish special local regulations during the Lake Havasu Classic. This event will be held on 21 through 24 November 1984 at Thompson Bay, Lake Havasu, Arizona. Through this action the Coast Guard intends to ensure the safety of spectators and participants on navigable waters during the event.

DATE: Comments must be received on or before 15 October 1984.

ADDRESSES: Comments should be mailed to Commander (bb), Eleventh Coast Guard District, 400 Oceangate Blvd., Long Beach, CA 90822. The comments will be available for inspection and copying at the Union Bank Bldg., Suite 901, 400 Oceangate, Long Beach, California. Normal office hours are between 7:30 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LTJG Jorge Arroyo, Eleventh Coast Guard District Boating Affairs Office, 400 Oceangate, Long Beach, California 90822, Tel: (213) 590–2331.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Commenters should include their name and address, identify this notice (CGD11 84–71) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The regulations may change in light of comments received. 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 if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rule making process.

Drafting Information

The drafters of this regulation are LTJG Jorge Arroyo, Project Officer, Boating Affairs Office, Eleventh Coast Guard District and LT Joseph R. McFaul, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Proposed Regulation

The Havasu Sports Federation's "Lake Havasu Classic" will be conducted on the Colorado River beginning 21 November 1984, east of Spectator Point in Thompson Bay, Lake Havasu. This event will have 75 tunnel and pleasure/modified V-bottom outboard boats, 10 to 20 feet in length that could pose hazards to navigation. Vessels desiring to transit the regulated area may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary, since the regulated area will be opened periodically for the passage of vessel traffic.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, by adding the following section:

§ 100.35–11 84–71 Lake Havasu Classic, Lake Havasu, Arizona.

(a) *Regulated Area:* The following area may be closed intermittently to all vessel traffic. That portion of Thompson Bay, Lake Havasu, Arizona starting approximately 100 yards on a bearing of 130°T off Spectator Point, thence due north approximately 1,110 yards, thence 140°T approximately 2,200 yards, thence due west approximately 2,400 yards, then back to the starting point.

(b) *Effective Dates:* These regulations will be effective from 8:00 AM to 5:30 PM on 21 through 24 November 1984.

(c) *Special Local Regulations:* All persons and/or vessels not registered with the sponsor as participants or official regatta patrol vessels are considered spectators. The "official regatta patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol this event.

(1) No spectators shall, block, anchor, loiter in, or impede the through transit of participants or official regatta patrol vessels in the regulated area during the effective dates, unless cleared for such entry by or through an official regatta patrol vessel.

(2) When hailed and/or signaled by horn or whistle by an official regatta patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions of the designated Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(3) All vessels in close enough vicinity shall operate at a safe and prudent speed which will create a minimum wake that will not affect participants.

(4) The Patrol Commander is empowered to forbid and control the movement of vessels in the regulated area. He may terminate the marine event at any time it is deemed necessary for the protection of life and property. He may be reached on VHF Channel 16 (156.8 MHz) when required, by the call sign "PATCOM".

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

Dated: August 30, 1984.

J.I. Maloney,

Captain, U.S. Coast Guard, Commander, Eleventh Coast Guard District, Acting.

[FR Doc 84-25948 Filed 9-28-84; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[08-84-03]

Drawbridge Operation Regulations; West Pearl River, LA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At The request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change to the regulation governing the operation of the lift span bridge over the West Pearl River, mile 7.9, on U.S. Highway 90 near Pearlington, St. Tammany Parish, Louisiana by requiring that at least four hours advance notice be given for an opening of the draw. Presently, the draw is required to open on signal from 5:00 a.m. to 9:00 p.m. and on 12 hours advance notice from 9:00 p.m. to 5:00 a.m. This proposal is being made because of the infrequent requests for opening the draw. This action should relieve the bridge owner of the burden of having a person constantly available at the bridge to open the draw from 5:00 a.m. to 9:00 p.m., while still providing for the reasonable needs of navigation.

DATE: Comments must be received on or before November 15, 1984.

ADDRESSES: Comments should be mailed to Commander (obr), Eighth Coast Guard District, 500 Camp Street, New Orleans, Louisiana 70130. The comments and other materials referenced in this notice will be available for inspection and copying at the Eighth Coast Guard District, Bridge Administration Branch, Room 1115, 500 Camp Street, New Orleans, Louisiana 70130. Normal office hours are between 8:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelop.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in the light of comments received.

Drafting Information

The drafters of this notice are Perry Haynes, project officer, and steve Crawford, project attorney.

Discussion of Proposed Regulation

Vertical clearance of the bridge in the closed position is 10.0 feet above high water and 12.6 feet above low water. Navigation through the bridge consists of commercial and pleasure vessels. Data submitted by the LDOTD for the years 1983 and 1982 show that this traffic through the bridge is as follows:

(1) In 1983, between 5:00 a.m. and 9:00 p.m., the period when the bridge now has to open on signal, there were 120 bridge openings—an average of 10.0 openings per month or an average of one opening every three days. In 1982, for the same time period, there were 142 bridge openings.

(2) In both 1983 and 1982, between 9:00 p.m. and 5:00 a.m., the period when the bridge now is on 12 hours advance notice, there were virtually no openings for navigation.

Considering the few openings involved, the Coast Guard feels that the current on site attendance at the bridge is not warranted, and adoption of the four-hour advance notice for an opening will provide relief to the bridge owner, while still reasonably providing for the needs of navigation.

The advance notice for opening the draw would be given by placing a collect call at any time to the LDOTD District Office at Hammond, Louisiana, telephone (504) 345-7390.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that few vessels pass this bridge, as evidenced by the 1983 and 1982 bridge opening statistics which show that the bridge averages one opening about every three days. These vessels can reasonably give four hours notice for a bridge opening by placing a collect call to the bridge owner at any time. Mariners requiring the bridge openings are mainly repeat users and scheduling their arrival at the bridge at the appointed time should involve little or no additonal expense to them. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, by revising § 117.511(b) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.511 West Pearl River.

* * * * *

(b) The draw of the US90 bridge, mile 7.9 near Pearlington, shall open on signal if at least four hours notice is given.

(33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05-1(g)(3))

Dated: September 18, 1984.

W.H. Stewart,

Rear Admiral, U.S. Coast Guard.

[FR Doc. 84-25949 Filed 9-28-84; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Parts 361, 362, 366, 369, 373, 379, 385, 386, and 389

Rehabilitation Services Administration Programs

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to issue regulations under the Rehabilitation Act of 1973, as amended (the Act) for a variety of programs administered by the Rehabilitation Services Administration (RSA). The proposed regulations implement amendments to the Act made by Pub. L. 98-221, the Rehabilitation Amendments of 1984.

DATES: Comments must be received on or before November 15, 1984.

ADDRESSES: Comments should be addressed to: Charles Smolkin, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3418), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Charles Smolkin, (202) 732-1303.

SUPPLEMENTARY INFORMATION: The Rehabilitation Services Programs are authorized by the Rehabilitation Act of 1973, Pub. L. 93-112 (29 U.S.C. 701 *et seq.*), as amended. The programs support a wide variety of services and activities that assist in the rehabilitation of handicapped individuals.

Regulations for the programs affected by this notice were published on December 30, 1980 (45 FR 86378) and January 19, 1981 (46 FR 5410, 5416, and 5521) and are currently codified at 34 CFR Parts 361, 362, 366, 369, 373, 379, 385, 386, and 389. These proposed regulations implement miscellaneous amendments to the Act, recently made by Pub. L 98-221, the Rehabilitation Amendments of 1984. A summary of the proposed regulations follows:

Part 361—The State Vocational Rehabilitation Services Program

Section 361.150 would expand the scope of the Innovation and Expansion grant program to include projects that maximize use of technological innovations in meeting employment and training needs of handicapped youth and adults in accordance with Section 121(a)(3) of the Act.

Part 362—Project Grants and Other Assistance in Vocational Rehabilitation

Subpart F is removed because the National Center for Deaf-Blind Youths and Adults is now authorized under Title II of Public Law 98-221, as the Helen Keller National Center, rather than under the Rehabilitation Act. Subpart G is removed because evaluation projects are no longer carried out under Section 401 of the Act. These regulations are no longer needed.

Part 366—Centers for Independent Living

Section 366.20 describes the components of an annual evaluation plan that applicants for independent living centers grants would be required to include in their applications. This provision implements section 711(c)(3) of the Act.

Part 373—Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Handicapped Individuals

Section 373.10 would be revised to remove the reference to spinal cord injured individuals because section 311(a) of the Act transfers authority for spinal cord special projects and demonstrations from RSA to the National Institute for Handicapped Research.

Part 379—Projects With Industry

Section 379.2 would add State vocational rehabilitaton units to the list of eligible applicants under the Projects With Industry Program, in accordance with section 621(a)(1) of the Act.

Section 379.43 would identify the required components of an annual evaluation plan required under a Projects With Industry agreement. This provision implements section 621(a)(3) of the Act.

Part 385—Rehabilitation Training

Section 385.1(a)(1) would state that the purpose of the rehabilitation training program is to increase the number of "qualified" personnel trained to provide rehabilitation services, in accordance with an amendment to Section 304(a) of the Act.

Section 385.4(b) would define "qualified" personnel as personnel who have met existing certification and/or licensure requirements, if any, of appropriate State and/or national certification boards, in accordance with language in the Conference Report on Pub. L. 98-221.

Section 385.43 would require that all grantees that train rehabilitation counselors under Parts 386-390 include training in the applicability of section 504 of the Act or ensure that those counselors are knowledgeable in the applicability of Section 504. This provision implements Section 304(a) of the Act.

Part 386—Rehabilitation Training: Rehabilitation Long-Term Training

Section 386.1 would provide that funds for long-term training be targeted to areas of personnel shortage, in accordance with an amendment to section 304(b) of the Act.

Sections 386.1 (u) and (v) would identify independent living and client assistance as areas in which personnel may be trained, in accordance with section 304(a)(2) of the Act.

Section 386.42(a)(5) would correct an error in the current regulations to permit traineeship candidates to be enrolled in academic, as well as non-academic, study.

Part 389—Rehabilitation Continuing Education Programs

Section 389.10(c) (2) and (3) would authorize grantees to train staff of centers for independent living and client assistance programs, in accordance with section 304(a)(2) of the Act.

Finally, these proposed regulations include several technical amendments and corrections, including a revised definition of "Act" in Part 369 and elsewhere.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291.

They are not classified as major because they do not meet the criteria for major regulations established in the Order.

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. States and State agencies are not regarded as small entities under the Act. In addition, to the extent that small entities are applicants or grantees under this program, these regulations will not impose any burdens on them.

Intergovernmental Review

These programs, with the exception of 34 CFR Parts 362, 373, 379, 385, 386, and 389, are 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.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3418, Mary E. Switzer Building, 330 C Street 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.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Paperwork Reduction Act of 1980

The information collection requirements contained in these proposed regulations in § 366.20 (Part 366) and § 379.43 (Part 379) will be sent to OMB for review under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

Comments that only concern information collection requirements should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, 17th Street 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.

List of Subjects

34 CFR Part 361

Administrative practice and procedure, Education, Grant programs—education, Grant programs—social programs, Vocational rehabilitation.

34 CFR Part 362

Blind, Education, Grant programs—education, Grant programs—social programs, Manpower training programs, Research, Technical assistance, Vocational rehabilitation.

34 CFR Part 366

Education, Grant programs—social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 369

Blind, Education, Grant programs—education, Grant programs—social programs, Manpower training programs, Research, Technical assistance, Vocational rehabilitation.

34 CFR Part 373

Education, Grant programs—social programs, Vocational rehabilitation.

34 CFR Part 379

Business and industry, Education, Reporting and recordkeeping requirements, Grant programs—social programs, Vocational rehabilitation.

34 CFR Part 385

Education, Grant programs—education, Vocational rehabilitation.

34 CFR Part 386

Education, Grant programs—education, Vocational rehabilitation.

34 CFR Part 389

Education, Grant programs—education, Vocational rehabilitation.

Citation of Legal Authority

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

(Catalog of Federal Domestic Assistance No. 84.126, Basic Vocational Rehabilitation Services Program; 84.128, Special Projects; 84.130, Innovation and Expansion Grants; and 84.132, Centers for Independent Living)

T.H. Bell,

Secretary of Education.

The Secretary proposes to amend Parts 361, 362, 366, 369, 373, 379, 385, 386, and 389 of Title 34 of the Code of Federal Regulations as follows:

PART 361—THE STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

1. In § 361.1, the definition of "Act" in paragraph (c)(2) is revised to read as follows:

§ 361.1 The State vocational rehabilitation services program.

* * * * *

(c) * * *

(2) * * *

"Act" means the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*), as amended.

* * * * *

2. Section 361.150 is revised to read as follows:

§ 361.150 Purpose.

Under section 121(a) of the Act, the Secretary makes grants for the purpose of paying a portion of the cost of planning, preparing for, and initiating special programs under the State plan in order to expand vocational rehabilitation services, including—

(a) Programs to initiate or expand services to individuals with the most severe handicaps;

(b) Special programs to initiate or expand services to classes of handicapped individuals who have unusual or difficult problems in connection with their rehabilitation; or

(c) Programs to maximize the use of technological innovations in meeting the employment training needs of handicapped youth and adults.

(Sections 121(a) of the Act; 29 U.S.C. 741(a))

PART 362—PROJECT GRANTS AND OTHER ASSISTANCE IN VOCATIONAL REHABILITATION

3. The table of contents for Part 362 is amended by removing and reserving Subparts F and G.

Subpart F—[Removed and Reserved]

4. In Part 362, Subpart F (§§ 362.80-362.84) is removed and reserved.

Subpart G—[Removed and Reserved]

5. In Part 362, Subpart G (§§ 362.90-362.91) is removed and reserved.

PART 366—CENTERS FOR INDEPENDENT LIVING

6. The table of contents for Part 366 is amended by adding a new Subpart C to read as follows:

* * * * *

Subpart C—How Does One Apply for a Grant?

Sec.

366.20 What are the application requirements?

* * * * *

7. Part 366 is amended by adding a new Subpart C to read as follows:

Subpart C—How Does One Apply for a Grant?

§ 366.20 What are the application requirements?

In addition to the information required by 34 CFR 75.107, each applicant shall include in its application—

(a) An assurance that handicapped individuals will be substantially involved in policy direction and management of the center, and will be employed by the center;

(b) An assurance that the center will offer handicapped individuals a combination of independent living services, including, as appropriate, the services described in the definition of "center for independent living" in § 366.4(b); and

(c) A description of an annual evaluation plan which contains, at a minimum, the following elements:

(1) The numbers and types of handicapped individuals assisted.

(2) The extent to which individuals with varying handicapping conditions were served.

(3) The types of services provided.

(4) The sources of funding.

(5) The percentage of resources committed to each type of service provided.

(6) How services provided contributed to the maintenance of or the increased independence of handicapped individuals assisted.

(7) The extent to which handicapped individuals participate in management and decisionmaking in the center.

(8) The extent of capacity building activities including collaboration with other agencies and organizations.

(9) The extent of catalytic activities to promote community awareness, involvement, and assistance.

(10) The extent of outreach efforts and the impact of such efforts.

(11) A comparison, when appropriate, of prior year(s) activities with most recent year activities.

(Section 711(c) of the Act; 29 U.S.C. 796e(c))

PART 369—VOCATIONAL REHABILITATION SERVICE PROJECTS

8. In § 369.4, the definition of "Act" in paragraph (b) is revised to read as follows:

§ 369.4 What definitions apply to these programs?

* * * * *

(b) * * *

"Act" means the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*), as amended.

* * * * *

PART 373—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING VOCATIONAL REHABILITATION SERVICES TO SEVERELY HANDICAPPED INDIVIDUALS

9. Section 373.10 is revised to read as follows:

§ 373.10 What types of projects are authorized under this program?

Authorized activities under this program include carrying out special projects concerned with establishing programs and constructing facilities for expanding or otherwise improving vocational rehabilitation services and other rehabilitation services to handicapped individuals, especially those who are the most severely handicapped. Handicapped individuals served under this program include blind individuals, deaf individuals, and other groups of severely handicapped individuals, irrespective of age or vocational potential, identified each year by the Secretary.

(Section 311(a) of the Act; 29 U.S.C. 777a(a))

§ 373.11 [Removed and Reserved]

10. Section 373.11 is removed and reserved, and the table of contents for Part 373 is amended accordingly.

PART 379—PROJECTS WITH INDUSTRY

11. Section 379.2 is revised to read as follows:

§ 379.2 Who is eligible for assistance under this program?

Employers and profit-making and nonprofit organizations with which the Secretary may enter into an agreement include any designated State unit; industrial, business, or commercial enterprise; labor organization; employer, industrial, or community trade association; rehabilitation facility; or other agency or organization with the capacity to arrange, coordinate, or conduct training and other employment programs, and provide supportive services and assistance for handicapped individuals in a realistic work setting.

(Section 621(a)(1) of the Act; 29 U.S.C. 795g(a))

12. In § 379.43, paragraphs (k) and (l) are revised, and paragraph (m) is added, to read as follows:

§ 379.43 What general provisions are required in agreements?

Any agreement entered into must, in addition to standard provisions—

* * * * *

(k) Provide that handicapped employees will not be unreasonably segregated from other employees;

(l) Contain an agreement to make reports and to keep any records and accounts required by the Secretary and to make records and accounts available for audit purposes; and

(m) Contain a description of an annual evaluation plan which contains, at a minimum, the following elements:

(1) The numbers and types of handicapped individuals assisted.

(2) The types of assistance provided.

(3) The sources of funding.

(4) The percentage of resources committed to each type of assistance provided.

(5) The extent to which the employment status and earning power of handicapped individuals changed following assistance.

(6) The extent of capacity building activities, including collaboration with other organizations, agencies, and institutions.

(7) A comparison, when appropriate, of current activities with activities of prior years.

(Sections 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g)

PART 385—REHABILITATION TRAINING

13. The table of contents for Part 385 is amended by adding a new section heading to read as follows:

* * * * *

§ 385.43 What requirement applies to the training of rehabilitation counselors?

* * * * *

14. In § 385.1, paragraph (a)(1) is revised to read as follows. The introductory text of paragraph (a) is reprinted for the convenience of the reader.

§ 385.1 What is the Rehabilitation Training Program?

(a) The Rehabilitation Training Program is designed to—

(1) Increase the supply of qualified personnel available for employment in public and private agencies and institutions involved in the vocational rehabilitation and independent living rehabilitation of physically and mentally handicapped individuals, especially those individuals with the most severe handicaps; and

* * * * *

* * * * *

(b)* * *

15. In § 385.4, the definition of "Act" in paragraph (b) is revised to read as follows:

§ 385.4 What definitions apply to these programs?

"Act" means the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*), as amended.

* * * * *

16. In § 385.4, paragraph (b) is amended by inserting, after the definition of "Physical and mental restoration services", the following new definition:

"Qualified personnel" means personnel who have met existing certification and/or licensure requirements, if any, of appropriate State and/or national certification boards.

(H.R. (Conf.) Rep. No. 595, 98th Cong., 2nd Sess. 32 (1984))

17. Part 385 is amended by adding a new § 385.43 to read as follows:

§ 385.43 What requirement applies to the training of rehabilitation counselors?

Any grantee who provides training of rehabilitation counselors under any of the programs in 34 CFR Parts 386–390 must train those counselors in the applicability of the provisions of Section 504 of the Act or ensure that those counselors are knowledgeable in the applicability of those provisions.

(Section 304(a) of the Act; 29 U.S.C. 774(a))

PART 386—REHABILITATION TRAINING: REHABILITATION LONG-TERM TRAINING

18. Section 386.1 is amended by revising the introductory text, by removing the "and" at the end of paragraph (t), and by redesignating paragraph (u) as paragraph (w) and revising it and adding new paragraphs (u) and (v), to read as follows:

§ 386.1 What is the Rehabilitation Long-Term Training Program?

This program is designed to provide academic and non-academic training in areas of personnel shortages identified by the Secretary, which may include—

* * * * *

(u) Independent living;

(v) Client assistance; and

(w) Other fields that contribute to the rehabilitation of handicapped individuals, including homebound and institutionalized individuals and individuals with limited English-speaking ability.

(Section 304 (a) and (b) of the Act; 29 U.S.C. 774 (a) and (b))

19. In § 386.42, paragraph (a)(5) is revised to read as follows. The introductory test of paragraph (a) is reprinted for the convenience of the reader.

§ 386.42 What are the special requirements affecting the awarding of traineeships?

(a) A candidate for a rehabilitation traineeship must—

* * * * *

(5) Be entolled for academic or non-academic study in the grantee institution;

* * * * *

PART 389—REHABILITATION CONTINUING EDUCATION PROGRAMS

20. In § 389.10, paragraph (c) is revised to read as follows. The introductory text of the section is reprinted for the convenience of the reader.

§ 389.10 What types of projects are authorized under this program?

Rehabilitation Continuing Education Programs—

* * * * *

(c) Develop and conduct training programs for staff of—

(1) Private rehabilitation agencies and facilities which cooperate with State vocational rehabilitation units in providing vocational rehabilitation and other rehabilitation services;

(2) Centers for independent living; and

(3) Client assistance programs.

(Section 304(a) of the Act; 29 U.S.C. 774(a))

[FR Doc. 84-25965 Filed 9-28-84; 8:45 am]
BILLING CODE 4000-01-M

PANAMA CANAL COMMISSION

35 CFR Part 121

Inspection and Registration of Vessels

AGENCY: Panama Canal Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: By means of this document, the Panama Canal Commission is proposing to reclassify its motorboat equipment requirements to conform them to the metric dimension standards specified in the revised Rules for the Prevention of Collisions in the Panama Canal, which went into effect on April 1, 1984 (48 FR 52703).

DATE: Written comments should be submitted on or before October 31, 1984.

ADDRESSES: Send comments to: Panama Canal Commission, 425 13th Street, NW., Rm. 312, Washington, D.C. 20004 or Panama Canal Commission, Office of General Counsel, APO Miami, Florida 34011.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Secretary, Panama Canal Commission, (202) 724–0104, or Mr. John L. Haines, Jr., telephone in Balboa Heights, Republic of Panama, 52–7511.

SUPPLEMENTARY INFORMATION: By a document published on November 22, 1983 (48 FR 52703), the Panama Canal Commission made comprehensive revisions to the rules for prevention of collisions in the in the Panama Canal. The purpose of these revisions was to standardize the rules for prevention of collisions, using the International Regulations for Preventing Collisions at Sea (COLREGS) as a model and supplementing them where necessary, with rules of particular application in the Panama Canal. These revisions included the conversion of measurements from feet to meters where applicable; consequently, the classifications of motorboats and their equipment requirements as provided by 35 CFR 121.131 must also be converted to conform to the dimension standards of the various provisions of 35 CFR Part 111 which refer to motorboats and their sound and light equipment. These requirements are found in §§ 111.3(1), 111.22, 111.23, 111.30 and 111.33.

Presently § 121.131 lists five classes of motorboats based on their length in feet. It is proposed to reclassify these into four categories based on length in meters. In addition, the length and width measurements for line required on board are being converted to the metric system. The red lantern, previously required on all classes of motorboats, will not be required on motorboats 12 meters or under due to the difficulty of storing the lanterns on the smaller craft and the possibility of creating a fire hazard. Also, the summary of "Motorboat Rules and Regulations" required on board will be replaced by a copy of the *Motorboat Operators' Handbook*. Finally, the life preservers, ring buoys and fire extinguishers required by a new § 121.131(e) must be permanently marked with the name of the motorboat on which they are carried and shall be of type approved by an international regulatory body or equivalent and subject to approval by the Commission's Board of Local Inspectors.

The Commission has determined that this rule does not constitute a major rule within the meaning of Executive Order 12291 dated February 17, 1981 (47 FR 13193). The bases for that determination are, first, that the rule, when implemented, would not have an annual effect on the economy of $100 million or more per year. Secondly, the rule would not result in a major increase in costs or prices for consumers, individual industries or local governmental agencies or geographic regions. Finally, the agency has determined that implementation of the rule would not have a significant adverse effect on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises in domestic or export markets.

Further, the Commission has determined that this proposed rule is not subject to the requirements of section 603 and 604 of Title 5, United States Code, in that its promulgation will not have a significant impact on a sustantial number of small entities, and the Administrator of the Commission so certifies pursuant to 5 U.S.C. 605(b).

List of Subjects in 35 CFR Part 121

Marine safety, Navigation (water), Vessels.

Accordingly, under the authority vested in the President by Sec. 1801, Pub. L. 96–70, 93 Stat. 492 (22 U.S.C. 3811) and E.O. 12215, 45 FR 36043, it is proposed to revise 35 CFR 121.131 as follows:

Motorboats

§ 121.131 Equipment on motorboats.

(a) Motorboats less than 7 meters in length shall carry the following equipment:

2 oars or paddles.
1 whistle or other sound-producing device, hand-, mouth-, or power-operated.
1 bailer.
20 meters of manila line not less than 15 millimeters in diameter or synthetic line of comparable strength.
2 approved fire extinguishers, either 1¼ gallon foam, 4-lb CO_2 or 2-lb. dry chemical, when the engine is inboard or 1 such extinguisher when the motor is outboard.
1 combination light showing red to port and green to starboard or individual red and green sidelights.
1 stern light or all-round white light.
1 anchor with 40 meters of suitable cable.
1 red flag.
1 approved life preserver for each person carried.
1 copy of the *Motorboat Operators' Handbook*.

(b) Motorboats 7 meters or over but less than 12 meters in length shall carry the following equipment:

1 approved life ring buoy of not less than 600 millimeters outside diameter.
1 whistle, power-operated, audible at least one mile.
1 bailer.
20 meters of manila line not less than 18 millimeters in diameter or synthetic line of comparable strength.
3 approved fire extinguishers, 2 of which shall be 2½ gallon foams, 15-lb. CO_2, or 10-lb. dry chemical, and the third of which shall be 1¼ gallon foam, 4-lb. CO_2, or 2-lb. dry chemical.
1 boat hook.
1 combination light showing red to port and green to starboard or individual red and green sidelights.
1 stern light or all-round white light.
1 anchor with 40 meters of suitable cable.
1 fog bell of not less than 200 millimeters outside diameter.
1 red flag.
1 approved life preserver for each person carried.
1 copy of the *Motorboat Operators' Handbook*.

(c) Motorboats 12 meters or over and not more than 20 meters shall carry the following equipment:

2 approved life ring buoys not less than 600 millimeters outside diameter.
1 approved fog horn.
1 whistle, power-operated, audible at least 1 mile.
1 bailer.
25 meters of manila line not less than 21 millimeters diameter or synthetic line of comparable strength.
4 approved fire extinguishers, three of which shall be 2½ gallon foam, 15-lb. CO_2, or 10-lb. dry chemical, and the fourth of which shall be 1¼ gallon foam, 4-lb. CO_2, or 2-lb. dry chemical.
2 boat hooks.
1 masthead light, white, 225 degrees fixed to show the light from right ahead to 22.5 degrees abaft the beam on either side.
1 combination light showing red to port and green to starboard or individual red and green sidelights.
1 stern light, white, 135 degrees, placed as nearly as practicable at the stern, and so fixed to show the light 67.5 degrees from right aft on each side.
1 anchor with 40 meters of suitable cable.
1 fog bell, not less than 200 millimeters outside diameter.
1 red lantern.
1 red flag.
1 approved life preserver for each person carried.
1 copy of the *Motorboat Operators' Handbook*.

(d) Any cayuco less than 20 meters in length equipped with an outboard motor or motors operating in Madden Lake or Gatun Lake shall carry the following equipment:

2 oars or paddles.
1 whistle or other sound-producing device, hand, mouth or power operated.
1 bailer.
20 meters of manila line not less than 21 millimeters diameter or synthetic line of comparable strength.
1 flashlight.
1 approved life preserver for each person carried.

(e) Life preservers, ring buoys and fire extinguishers required by this section shall be of a type approved by an international regulatory body or equivalent thereto, and subject to approval by the Board of Local Inspectors, and shall be permanently marked with the name of the motorboat on which they are carried.

Dated: August 29, 1984.

D.P. McAuliffe,

Administrator, Panama Canal Commission.

[FR Doc. 84–25997 Filed 9–28–84; 8:45 am]

BILLING CODE 3640–04–M

POSTAL SERVICE

39 CFR Part 111

Business Reply Mail

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The purpose of this document is to propose a variety of changes to the regulations for Business Reply Mail (BRM) to be effective January 1, 1985. Changes are proposed for format requirements to accommodate mail processing optical character reader specifications, and changes are made throughout the Business Reply Mail section to simplify procedures and provide clearer instructions for mailers and postal personnel.

DATES: Comments must be received on or before October 31, 1984.

FOR FUTHER INFORMATION CONTACT: Dick Greene, Office of Mail Classification, Rates and Classification Department, U.S. Postal Service, Washington, D.C. 20260–5371, Telephone (202) 245–4530.

SUPPLEMENTARY INFORMATION: The present regulations regarding permits, postage and fees became effective in September, 1976. The current BRM format requirements became mandatory on May 1, 1979. Many inquiries have been received from mailers and postal personnel requesting clarification of the present regulations and guidance in other areas not covered by the regulations. Additionally, Publication 25, *A Guide To Business Mail Preparation*, which is provided to mailers and printers to assist them in making their mail compatible with postal addressing standards, has recently been revised. Changes in that publication are reflected in this proposal.

The major changes proposed to the present regulations are as follows:

917.2 Permits.

At the present time, Form 3614, *BRM Application And Annual Renewal Notice*, serves both as an application and as record of approval to distribute BRM. Also, Form 3614 allows branches or dealers authorized by the permit holder to receive the permit holder's BRM (under the same permit number) without the branches or dealers paying for a BRM permit. Form 3615, *Business Reply Mail Fee Notice*, is enclosed in Publication 115, *Business Reply Mail*, and together they have been mailed to the permit holder each year for renewal of BRM permits. This method of notifying mailers to renew permits has proven unsatisfactory because many mailers do not respond and renew their BRM permit. It is proposed, therefore, that Form 3614 will be used as both a permit application and renewal notice. Form 3614 will have a separate card for renewal notices and will be included in Publication 115 when permit applications are requested. Permit

holders will be provided Form 3544, *Post Office Receipt For Money*, as evidence of having paid for and been approved to have a BRM permit. Form 3544 is a standard receipt issued to mailers to acknowledge payments. The use of Forms 3614 and 3544 will eliminate Form 3615.

In addition, there is no clear policy at present for processing nonrenewed permits. Therefore, it is proposed in 917.22, Annual Permit Renewals and 917.23, Nonrenewed Permits, that permit holders will be furnished a renewal notice (Form 3614) by December 1; that permit holders must renew their permits by December 31; and that permit holders will be informed by certified mail of the planned disposition of their BRM if the permit is not renewed by January 10.

917.24 BRM Addressed to Agents, Branches, and Dealers

It is proposed in 917.24, Acceptance of BRM in any post office, to simplify and clarify the present regulations involving BRM addressed to agents, branches, dealers and third parties or distributed from a central office. The new regulation simply requires that the permit holder's name must be printed on the BRM whenever the permit holder's number is used by agents, branches, dealers and third parties. Post offices will not accept BRM and will require agents, branches, dealers or third parties to apply for a permit and pay the permit fee if they do not have the name of the permit holder printed above their name and address. A permit holder can distribute BRM through any post office for delivery at any post office provided the post offices involved receive a written authorization and a copy of a valid Form 3544 to cover distribution and delivery requirements. The present regulations (917.25) have proven to be confusing for both permit holders and postal personnel. It is believed that the new regulation better explains our requirements for the acceptance of BRM in any post office.

917.243 Permit Holder's Guarantee.

It is proposed in 917.243, Permit Holders Guarantee, that permit holders will not be be held liable for obvious abuses of BRM. Presently, permit holders are considered liable for BRM postage and charges regardless of the circumstances. The new regulation provides fairer treatment for mailers where BRM has been misused. Clearer instructions are also provided to postmasters for dealing with nonpayment of BRM postage and fees by agents, branches, dealers or third parties authorized by a permit holder. Current regulations (917.24) do not provide guidelines to post offices or permit holders as to postal procedures regarding refusal to pay BRM postage and charges, and when exceptions to the permit holder's postage guarantee are permissible. The new regulations provide that refusal to pay BRM postage and charges is ground for immediate revocation of the BRM permit, except in certain cases.

917.31 Zone Charges.

It is proposed in 917.31, General, that First Class Zone Rated (Priority) BRM be rated as Zone 1 if the zone cannot be determined from the cancellation or the sender's address on the BRM piece. There is no specific instruction in this matter at present and consequently arbitrary or no postage charges are being calculated. This new regulation provides the necessary guideline.

917.333 Business Reply Account.

It is proposed in 917.333, Business Reply Account, to clarify that the $75 accounting fee must be paid for separation of BRM charges and indicate the action to be taken by postmasters when a business reply account contains insufficient funds. Simply put, a permit holder who uses a business reply account will be charged the business reply accounting fee for each separate billing. If a business reply account contains insufficient funds three days after the permit holder is notified by certified mail, then the permit holder will be required to pay the BRM fees as if no accounting fee had been paid. Present regulations do not adequately explain to mailers and postal employees the requirements for accounts with insufficient funds or requests for the separate billing of postage and charges.

917.333 Two or More BRM Pieces.

It is proposed in 917.333, Two or More BRM Pieces, that BRM pieces that are permanently wrapped or fastened together should pay postage at a single piece rate. Presently, there is no clear instruction on how to charge for this kind of BRM. It is believed that mailers will benefit from reduced charges and that better service will result because post offices will no longer separate BRM pieces fastened together, thus saving handling costs.

917.34 BRM Bearing Stamps.

It is proposed in 917.34, BRM Bearing Stamps, to inform post offices that permit holders are entitled to a refund of First-Class postage (not BRM per-piece charges) when foreign or solicited stamps are affixed to BRM. Occasionally, BRM will be returned from a foreign country with foreign postage stamps affixed to it. Questions have been raised by mailers as to whether a full refund for the value of the foreign postage affixed can be received because mailers currently receive a full refund for any domestic postage affixed. The proposed regulation informs mailers that only the value of domestic postage will be refunded as foreign postal administrators receive the revenue for the item mailed and we can only refund the USPS portion of postage costs.

It is also proposed that permit holders be allowed to solicit mailers to affix postage to save permit holders the cost of postage. Presently, regulations do not take a position on this matter.

917.4 Address Alterations.

It is proposed in 917.4, Address Alterations, to inform mailers that the address on BRM cannot be altered to an address other than that of the permit holder and to stipulate that the permit holder cannot relable BRM if the new address label interferes with the Facing Identification Mark (FIM), covers the permit holder's name printed on the BRM, or if a bar code was previously printed on the item. We have found that permit holders have attempted labelling to salvage inventories of BRM and in the process have not aligned the labels to satisfy BRM format requirements necessary for mail processing equipment. The new regulations insure that such mail will be properly prepared so it may be handled efficiently.

917.5 Format.

It is proposed in 917.5, Format, to update the requirements of mail processing optical character reader specifications, as indicated in detail below, in order to ensure efficient handling of BRM mail.

917.51 General.

Section 917.51, General, has been clarified to inform mailers that all colors of ink are acceptable for BRM provided they satisfy the criteria for reflectance.

917.522 Business Reply Legend.

Section 917.522, Business Reply Legend, now authorizes only two legends: "Business Reply Mail" or "Business Reply Label". The legend "Business Reply Card" has been deleted as post offices can distinquish BRM qualifying for the card rate without the legend.

917.525 Addressing.

Section 917.525, Addressing, provides specific measurements that are now required for optical character reader acceptance. It will now be required to print complete BRM address information

in an area no lower than ⅝", nor higher than 2¼", from the bottom edge of the mail piece, and with no printing permitted within 1" of the left and right edges of the mail piece (except for the horizontal bars). There must be at least ½" clearance between the ZIP Code and the horizontal bars. Unique Zip Codes must not be printed on BRM unless they are exclusive to BRM. Company logos, if printed in the address area, must be printed no lower than the street address or the post office box line and not interfere with any required BRM format. Preprinted labels containing only delivery address information are permitted for addressing BRM.

917.526 Horizontal Bars.

Section 917.526, Horizontal Bars, states that the bars must not extend below the delivery address line. At present permit holders can print the horizontal bars to within ⅝ inch of the bottom edge of the mail piece.

917.528 Pre-Barcoded BRM.

Section 917.528, Pre-Bar Coded Business Reply Mail, introduces the specifications for bar codes. Bar coding of BRM is optional.

917.54 BRM Format Corrective Action.

Section 917.54, BRM Format Corrective Action, informs mailers and post offices of the actions required for revocation and requalification of a permit holder when incorrect BRM formats are repeatedly distributed. Presently, neither mailers nor post offices have instructions for handling incorrect BRM format.

917.55 & 917.56 Envelopes.

917.55, Envelopes, and 917.56, Window Envelopes, report requirements that were previously provided elsewhere in the DMM. It is proposed to also include the requirements in 917, Business Reply Mail, for the convenience of permit holders, envelope manufacturers and printers.

917.57 Self Mailers.

917.57, Self Mailers, clearly defines the requirements of self mailers which at present are not included in the regulations.

917.59 Business Reply Labels.

917.59, Business Reply Labels, stipulates that business reply labels cannot be used on standard letter mail and answers typical questions concerning minimum size and the height of the column of horizontal bars.

917.60 Implementation Deadline.

Section 917.60, Implementation Deadline, gives permit holders until December 31, 1985, before BRM with present format requirements will no longer quality for distribution.

Accordingly, although exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed amendments of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

Revise part 917 to read as follows:

PART 917—BUSINESS REPLY MAIL (BRM)

917.1 General.

.11 Description. BRM service enables mailers to receive First-Class Mail back from customers by paying postage only on the mail that is returned to them from their original distribution of BRM pieces. The permit holder guarantees payment of the appropriate First-Class postage plus a handling charge per piece on all returned BRM distributed under the permit holder's permit number. All BRM will be cancelled to assure that First-Class service standards are being met.

.12 Special Services. Special services (*e.g.*, insurance, registration, certified, C.O.D., return receipts) cannot be used with BRM.

.13 Distribution. Business reply cards, envelopes, self-mailers, cartons, and labels may be distributed by a valid BRM permit holder in any quantity for return to any post office in the United States and its territories and possessions, including military post offices overseas. Refer to International Mail Manual (IMM), 233.32, for international BRM requirements. Domestic BRM must not be sent to any foreign countries.

917.2 Permits.

.21 Application.

.211 Completing Forms. Completion of Form 3614, *BRM Application and Annual Renewal Notice*, appearing below, is required. Form 3614 and the annual permit fee must be submitted to the post office issuing the permit. On receipt of the application and fee, the postmaster will complete the permit portion of the form and assign the permit number. The postmaster will complete and give the customer Form 3544, *Receipt for Payment;* and provide Publication 115, *Business Reply Mail*, to the applicant. The postmaster will not return Form 3614 to the customer. (See 917.242 for exceptions when branches and dealers are involved.)

.212 Filing Forms. Post offices file Form 3614 by permit holder in alphabetical order. A copy of Form 3544 must be attached to Form 3614 as proof of payment. (*Exception:* Post offices with a large number of BRM permits may elect to file Form 3544 in permit number sequence, for cross reference purposes.)

.22 Annual Permit Renewals. A renewal notice (Form 3614) will be furnished each BRM permit holder by December 1 of each year. The permit holder must return the renewal notice and payment to the post office issuing the permit by December 31.

.23 Nonrenewed Permits. When records indicate a permit was not renewed, the permit holder will be informed in writing by certified mail that all *BRM mail will be held for ten days and then returned to sender*, if the permit is not renewed. The following methods will be followed if the permit is not renewed after the mailer has been notified in writing and ten days have elapsed:

a. BRM will be returned to the sender.

b. BRM that does not contain the sender's return address is forwarded to the nearest dead letter branch for proper handling with the endorsement "Business Reply Permit Cancelled."

c. BRM qualifying for the card rate is treated as waste (See 159).

d. Mail distributed by branches and dealers of the permit holder is returned to the post office where the permit is held for collection of postage and fees from the permit holder.

.24 Acceptance of BRM in any Post Office.

.241 Acceptance Conditions. BRM will be processed and delivered under the following conditions:

a. The permit holder's permit number, city, state, and name *must be printed on the BRM distributed.*

b. Post offices will not accept BRM for delivery and will require branches, agents or dealers to apply for a permit and pay the permit fee if branches, agents or dealers distribute BRM on behalf of a permit holder and the name of the permit holder is not printed above their name and address. Branches', agents', or dealers' names and addresses must be printed below the permit holder's name.

.242 Return Through More Than One Post Office. A permit holder can distribute BRM through any post office

for delivery at any post office. The permit holder does not have to pay an additional permit fee to distribute or return BRM through other post offices provided the permit holder submits a written authorization to the other post offices involved for the branch, agent, or dealer to receive the BRM, and the permit holder provides a copy of a valid Form 3544 (which shows the BRM permit fee was paid) to any post office that will be processing the BRM. The permit holder's written authorization must provide the name, address, and telephone number of the branch, agent, or dealer authorized to receive BRM.

.243 Permit Holder's Guarantee. The permit holder guarantees payment of postage and fees on delivery of BRM. Any concern distributing BRM under one permit for return to its branches or dealers gurantees to pay postage on any returns refused by any authorized addresses, branches or dealers. Refusal to accept and pay the required charges for BRM offered for delivery will be grounds for immediate revocation of the BRM permit. Exceptions are as follows:

a. When refusal involves branches, agents and dealers, the BRM will be forwarded to the post office issuing the original permit for collection of the refused postage and fees frm the permit holder before the BRM permit is revoked.

b. When the BRM is not use as intended by the permit holder, (*e.g.*, BRM used for mailing bricks, or malfunctioning products) and the permit holder refuses delivery of BRM *not used as intended*, the post office will treat the items as waste. The post office will not consider refusal to accept and pay BRM charges for the *not used as intended* BRM as grounds for revocation of the BRM permit.

917.3 Postage and Fees.

.31 General. There is an annual BRM permit fee. First-Class postage and a BRM per piece charge will be collected from the addresses upon delivery. An additional annual accounting fee is required for establishment of a business reply account.

.31 Zone Related BRM. All BRM must be cancelled. First-Class Zone Rated (Priority) BRM will be rated zone 1 if the zone cannot be determined from the cancellation or the sender's address on the BRM piece.

.32 Fees:

BRM annual permit and renewal fee	$40.00
BRM accounting fee	$75.00

The applicable and full BRM fee(s) must be paid each calendar year or portion thereof. Fees are not prorated. Fees are not refundable or transferable even when BRM permits of accounts are not used.

.33 Payment of Postage and Fees.

.331 General. Permit holders have three options for paying postage and fees on BRM returned: (1) in cash; (2) through a postage due account; or (3) through a business reply account.

.332 Cash or Postage Due Account. Payment may be paid in cash or through a regular postage due account as follows:

a. Amount Collected. The amount to be collected for cash or use of regular postage due account transactions is the appropriate First-Class postage, *plus a charge of 18 cents per piece.*

b. Account Fee. No business reply account fee will be charged when the regular postage due account is used. Use of a postage due account does not qualify the BRM for the lower per piece charge given permit holders with a business reply account.

c. Affixing Stamps or Meter Strips. Postage due stamps or meter strips for the amount will be affixed to the mail or to Form 3582–A, *Postage Due Bill.* The stamps must be cancelled and delivered to the addressee with the mail when the amount due is paid.

.333 Business Reply Account. A busines reply account must only be used for payment of postage and fees on BRM as follows:

a. Amount Collected. The amount to be collected for business reply account transactions is the appropriate First-Class postage, *plus a charge of 5 cents per piece.*

b. Account Fee. In addition to the annual permit and renewal fee, a separate accounting fee is charged for each business reply account at each post office where the mail is to be returned. The full fee must be paid for the whole or part of each calendar year.

c. The following conditions apply to business reply accounts:

1. Only one billing is provided for each business reply account.

2. When a permit holder distributes BRM with different addresses or post office box numbers under the same permit number in the same delivery unit and is covered by one business reply account, the BRM is separated by each different address or post office box number, but only one billing is provided for the business reply account.

3. When a permit holder with a business reply account desires a separation of charges, payment of a business reply accounting fee is required for *each* billing prepared for each separation. The permit holder pays the appropriate First-Class postage, plus a charge of 18 cents per piece, for each separation if a business reply account fee is not paid for each separation.

d. Insufficient Funds. When a business reply account contains insufficient funds to cover the amount due for postage and fees, the BRM is held and the permit holder notified by certified mail that the BRM is being held. If funds are not deposited within three days, the BRM is treated as a cash or postage due account transaction and the permit holder pays the appropriate First-Class postage plus a charge of 18 cents per piece. If funds are deposited within three days, all BRM held during the three days will be charged First-Class postage, plus 5 cents per piece.

e. BRM Addressed to Different Firms. BRM addressed to several different firms at the same delivery unit may be delivered to an agent authorized by a valid business reply permit holder. The agent will pay one business reply account fee for all the firms represented by the agent in the same delivery unit. If the agent, or any of the firms represented by the agent, desires a separation of charges, then the conditions in 917.333(c) are applicable.

.334 Two or More BRM Pieces. Two or more BRM pieces may be mailed as a single item under the following conditions:

a. The BRM pieces are identically addressed and approximately the same size or shape. They must be securely or permanently fastened together. String or rubber bands are unacceptable.

b. The weight of the combined item must not exceed the permitted maximum size of 108 inches (length and girth) or the weight limit of 70 pounds.

c. BRM postage due calculations are based on the total weight of the item and the appropriate First-Class postage plus the BRM charge for one piece.

d. When two or more BRM pieces mailed together become separated, BRM postage and fee charges are calculated for each piece.

.340 BRM Bearing Stamps.

.341 BRM with postage affixed is handled in the same manner as other BRM. No effort is made to identify or separate BRM pieces having postage affixed. Applicable postage and fees are charged without deducting the amount of any postage stamps affixed.

.342 Refunds. The 5¢ or 18¢ per BRM piece charges are not refundable. However, business reply permit holders may request a credit or refund (as provided in 147.22) for the amount of postage affixed to BRM pieces by submitting a completed Form 3533, *Application and Voucher for Refund of Postage and Fees*, to the postmaster

along with evidence of the excess postage payment for which a credit or refund is desired. Permit holders are entitled to a refund for postage affixed to BRM that may be attributed to printed endorsements which solicit mailers to help reduce permit holder postage costs. To receive refunds for postage, business reply permit holders must present to the designated office properly faced and banded packages of 100 identical BRM pieces with identical amounts of postage affixed. Exceptions to this are:

a. A postmaster may accept a package of less than 100 business reply envelopes if necessary to prevent loss or hardship to a mailer.

b. The address side of the envelope may be separated and submitted as evidence, instead of the entire envelope, provided all address sides are separated in the same manner.

.343 Foreign Postage Refunds. The permit holder is only entitled to a refund of the U.S. First-Class postage rate charged to the permit holder, not any value of the foreign postage stamps nor the BRM per piece handling charges.

917.4 Address Alterations.

.41 General. The address on BRM pieces cannot be altered to an address other than that of the permit holder. BRM items cannot be converted for any other purpose then intended by the permit holder, *even when postage is affixed.*

.42 Processing. BRM with address alterations will be processed as follows:

a. BRM qualifying for the card rate is treated as waste (see 159).

b. Other BRM pieces with altered addresses must be endorsed "Return to Sender." If the BRM does not contain a return address, it will be forwarded to the nearest dead letter branch with the endorsement "Undeliverable As Addressed."

c. The only acceptable alteration of address information on BRM would be when the centralized mark-up (CMU) or the permit holder applies a label containing the new address of the permit holder. A new address label will be unacceptable it it interferes with the Facing Identification Mark (FIM), if it covers the permit holder's name printed on the BRM; or if a bar code was previously printed on the item.

917.5 Format.

.51 General. All forms of printing are permissible provided they are legible to the satisfaction of the Postal Service. However, handwriting, typewriting or handstamping cannot be used to prepare the address side of BRM (see DMM 137 for exception on Official Mail). Printed borders are not authorized on business reply letters and cards; however, they are allowed on business reply labels and cartons and envelopes larger than 6⅛" high or 11½" long or ¼" thick. All colors of ink are acceptable provided there is at least a 30% reflectance difference throughout the red spectral range of 550 to 775 nanometers (nm) between the paper and ink.

.52 Format Elements (see Exhibit 917.52).

.521 "No Postage Necessary * * *" Endorsement. The endorsement "NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES" must be printed in the upper right corner of the face of the piece. The endorsement must not extend further than 1¾" from the right edge of the mail piece.

.522 Business Reply Legend. The appropriate BUSINESS REPLY legend must appear above the address in capital letters at least 3/16" in height. Authorized legends are:

Legend	For use on
BUSINESS REPLY MAIL	All BRM except for business reply labels. (Cards must qualify for the lower card rate—see 917.58.)
BUSINESS REPLY LABEL	The legend "BUSINESS REPLY LABEL" means that the permit holder guarantees payment of First-Class postage upon the return of mailable matter with the permit holder's business reply label. Items printed with the legend "BUSINESS REPLY MAIL" are not acceptable as labels.

.523 Permit Number. Immediately below the BUSINESS REPLY legend the words "FIRST-CLASS PERMIT NO * * *" followed by the permit number and the name of the issuing post office (city and state) must be shown in capital letters.

.524 "Postage Will Be Paid * * *" Endorsement. The legend "POSTAGE WILL BE PAID BY ADDRESSEE" must appear below the "FIRST-CLASS PERMIT NO * * *", not lower than 2¼" from the bottom edge of the BRM.

.525 Address. The complete address, including the name of the permit holder, street address, and/or post office box number, city, state, and ZIP Code must be printed directly on the mail piece. *Exception:* Preprinted labels with only delivery address information are permitted for addressing BRM. However, the permit holder's name must still be printed directly on the BRM. Permit holders are liable for the postage and fees on BRM returned with improper addressing. Mailers are encouraged, but not required, to use ZIP+4 Codes and corresponding bar codes on BRM. Other requirements are as follows:

a. The bottom line of the address must be no lower than ⅝", and the top line of the address must not be higher than 2¼", from the bottom edge of the mail piece. The space ⅝" from the bottom edge and 4½" from the right edge of the mail piece is reserved for bar codes. A clear margin void of any extraneous matter (except for the horizontal bars specified in 917.526) of at least 1" is required between the left and right edges of the mail piece and the address.

b. There must be at least ½" clearance between the ZIP Code and the horizontal bars.

c. Unique ZIP Codes, unless assigned exclusively for BRM/postage due mail, must not be used for BRM.

d. A company logo is permitted if it is located *no lower than the top of the street address or the post office box line.* The logo must not interfere with any of the required business reply endorsements.

e. The upper left corner of the address side is available for permit holder use (see Exhibit 917.52—Figure 3).

.526 Horizontal Bars. To facilitate rapid recognition of BRM, a series of horizontal bars parallel to the length of the mail piece must be printed immediately below the endorsement "NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES." The bars must be uniform in length, at least 1" long and 1/16 to 3/16 inch thick and evenly spaced. The vertical column of horizontal bars must not extend below the delivery address line, which is the line above the line containing the ZIP Code.

.527 Facing Identification Mark (FIM). FIM is a vertical bar code pattern printed at the top right portion of the address side of the BRM piece. FIM functions as an orientation mark for automatic facing and cancelling equipment. Requirements for FIM are as follows:

a. A FIM must be printed on all BRM except business reply labels, or BRM larger than 6⅛" high or 11½" long or ¼" thick. The following FIM types are applicable for BRM:

FIM B—For preprinted BRM, penalty, or franked mail *without* bar code. Prevents rejection on the facer canceller.

FIM C—For preprinted BRM and penalty or franked mail *with* bar code. Allows capture at facer canceller.

b. See Exhibit 917.52, Figure 2, for FIM printing location. Each FIM bar must be at least ½' high. Each bar must be at least .03125" (±.008" wide). Extraneous ink must not cause a bar to exceed specified limits. BRM is nonmailable when the FIM has insuffienct ink coverage, improper measurement, ink in

the space between the bars, or is either enlarged or reduced.

c. The combined effects of positional and rotational skew must be limited to ±5 degrees from the perpendicular edge of the printed FIM to the top edge of the mail piece.

d. There must be at least a 30 percent reflectance difference throughout the red spectral range of 500 nm to 775 nm between the paper and ink.

e. Additional specifications for printing the FIM pattern and bar codes are contained in Publication 25, *A Guide to Business Mail Preparation*. USPS negatives or positives and specifications must be used for printing the FIM pattern and bar code. Negatives and positives are available, free of charge, from the local post office customer service representatives.

.528 Pre-Bar Coded BRM. Bar coding permits highly reliable sortation of mail through automated bar code sorters instead of manual or mechanized methods. Pre-bar coding of BRM is optional. If BRM is pre-bar coded, these requirements must be followed:

a. FIM C must be used for pre-bar coded business reply mail.

b. Each full bar must be 0.125 ± 0.10" high. Each half bar must be 0.050 ± .010" high. All bars printed must be 0.020 ± .005" wide. The horizontal spacing of all bars must be 21 bars per inch ± 1 bar. See Exhibit 917.52 for bar code printing location.

c. Extraneous ink must not exceed 0.003" in the allowed height or width of any bar or cause space-to-background print reflectance differences (PRD) to exceed 10%.

d. The combined effects of positional and rotational skew must be limited to ± 5 degrees from the perpendicular edge of the printed bar code to the bottom edge of the mail piece.

e. There must be at least a 30% reflectance difference throughout the red spectral range of 500 nm to 775 nm between the paper and ink.

.53 BRM Format Review. Postal inspection of BRM before printing is not mandatory. However, permit holders receiving written postal approval of BRM before printing could avoid the cost of reprinting and distributing in the event of a nonmailable ruling. Postal approval of BRM requires that two BRM pieces be submitted to the post office where the permit is held or where the mail will be returned. The post office will return one BRM with written approval or required changes. The postmaster retains the other BRM piece and a copy of the written approval or required changes given to the mailer.

.54 BRM Format Corrective Action.

.541 The permit holder and authorized permit users must be notified in writing of specific errors when BRM formats do not meet current postal requirements. The *permit holder* is responsible for correcting BRM format and ensuring that future formats meet specifications.

.542 Repeated instances of incorrect BRM formats, as determined by the Postal Service, are grounds for revocation of the business reply permit. The permit holder must be notified by certified mail and allowed ten days to respond before a permit is revoked.

.543 To obtain a new permit after a BRM permit has been revoked for failure to follow BRM format requirements, a new application (Form 3614) must be completed, the required BRM permit fee must be paid, a new business reply account fee must be paid (if used) and two samples of all BRM format must be submitted to the appropriate post office for approval for the next two-year period.

.55 Envelopes.

.551 Paper envelopes used for BRM must have a minimum base weight of 20 pounds (17" χ 22", 500 sheet base). Nonpaper envelopes must be approved for mailability by the USPS Engineering Support Center, Rockville, Maryland 20852–8101.

.552 If the BRM envelope is made of paper with dark fibers, the print reflectance difference (PRD) between the fibers and the background should not exceed 10%.

.553 Envelope paper must not have phosphorescence exceeding 3.0 phosphory meter units (PMU) to avoid orientation problems in the facer canceller. Envelopes must have at least a 50% reflectance value.

.554 Half tone screenings of less than 200 dots per inch must not be used in the background of the address area of the envelope as they cause OCR interference.

.555 BRM envelopes are nonmailable when sealed with wax, clasps, string, staples, or buttons, or when all edges are not straight or when the envelope is not rectangular.

.56 Window Envelopes. A BRM window or open panel envelope must be prepared as follows:

a. The endorsements "NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES", and "POSTAGE WILL BE PAID BY THE ADDRESSEE.", the permit holder's name, horizontal bars; FIM; the legend "BUSINESS REPLY MAIL"; First-Class permit number; city, and state; and the permit holder's name *must be printed* on the *address side of the envelope.*

b. There must be at least ⅛ inch clearance and no extraneous (nonaddress) printing around the edges of the address shown in the window even when the address is moved to its full limits inside the window envelope.

c. The window must not be positioned lower than ⅝" (unless there is 4" of clear space for the printing of bar codes from the right edge of the window) or higher than 2¼" from the bottom edge of the envelope. This area is reserved for addressing and bar codes. The address showing through for addressing and bar codes. The address showing through the window must be that of the permit holder or an authorized agent/dealer and must be at least 1" from the left or right edge of the mail piece.

d. Materials covering windows must allow the address to be readable.

e. Permit holders are responsible for the postage and fees on all BRM returned if the address is incomplete or cannot be read through the window.

.57 Self-Mailers. BRM self-mailers must be rectangular, at least 0.007" thick, and contain instructions for folding and sealing. Self-mailers are nonmailable when sealed with wax, clasps, string, staples, or buttons, and when they do not have straight sides.

.58 BRM Cards. Cards must be rectangular in shape, not less than 3½ x 5" or greater than 4¼x6" and of uniform thickness not less than 0.007".

.59 Business Reply Labels.

.591 Minimum size of label with the legend "Business Reply Laebl" 2 x 3" It is not necessary to print FIM or bar codes on BR labels; however, all other BRM format requirements must be met on the label.

.592 The series of horizontal bars on business reply labels must be at least ¾" in height.

.593 Business reply labels must not be used on standard size BRM cards and envelopes.

917.6 Implementation Deadline

All BRM distributed after December 31, 1985, must comply with the format requirements contained in this section. Material complying with the prior format requirements will be unacceptable for distribution after December 31, 1985.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

(39 U.S.C. 401(2), (10), 404(a) (2), (4))

W. Allen Sanders,

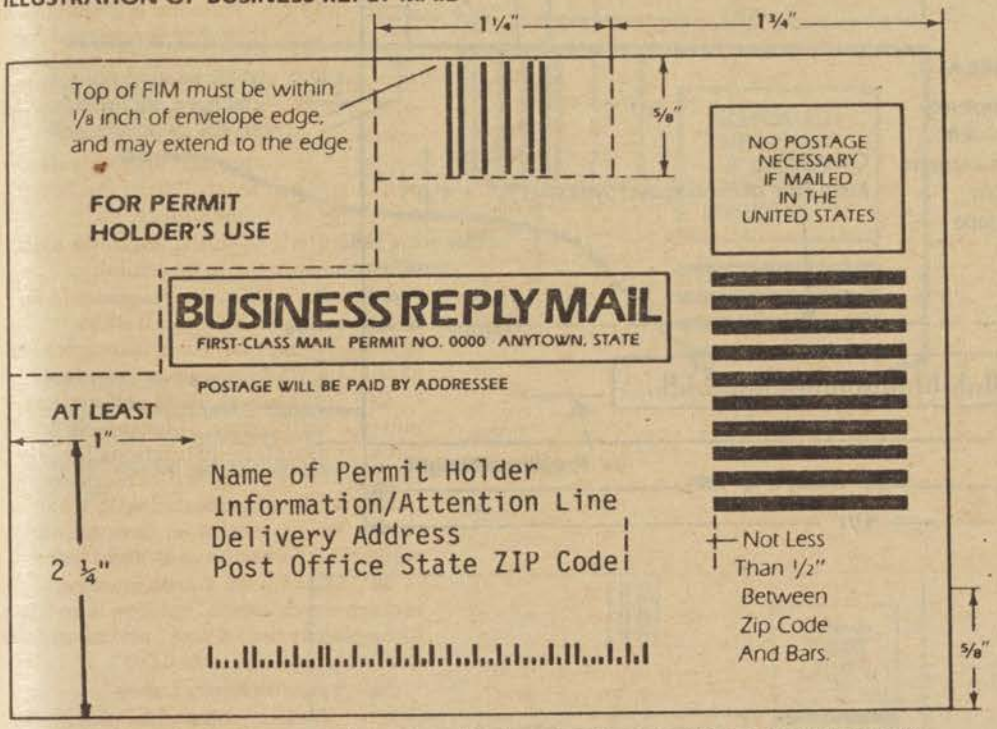
Associate General Counsel, Office of General Law and Administration.

BILLING CODE 7710-12-M

EXHIBIT 917.52 BUSINESS REPLY MAIL FORMAT REQUIREMENTS

Figure 3

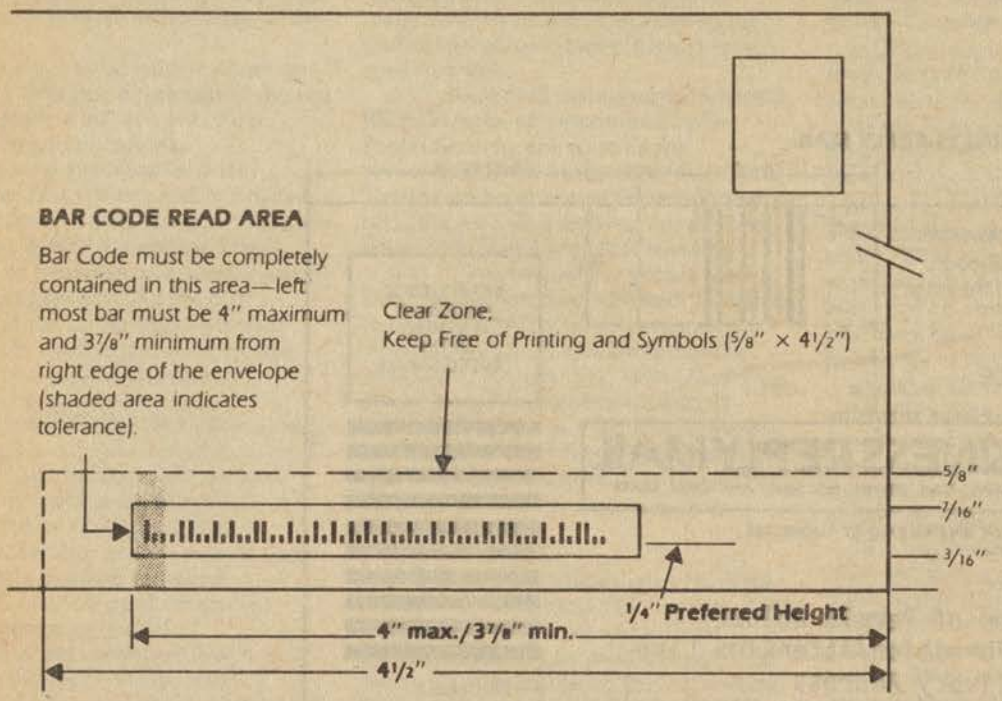
ILLUSTRATION OF BUSINESS REPLY MAIL



Horizontal identification bars must be at least 1-inch in length, and must not extend vertically below the delivery address line.

Figure 1

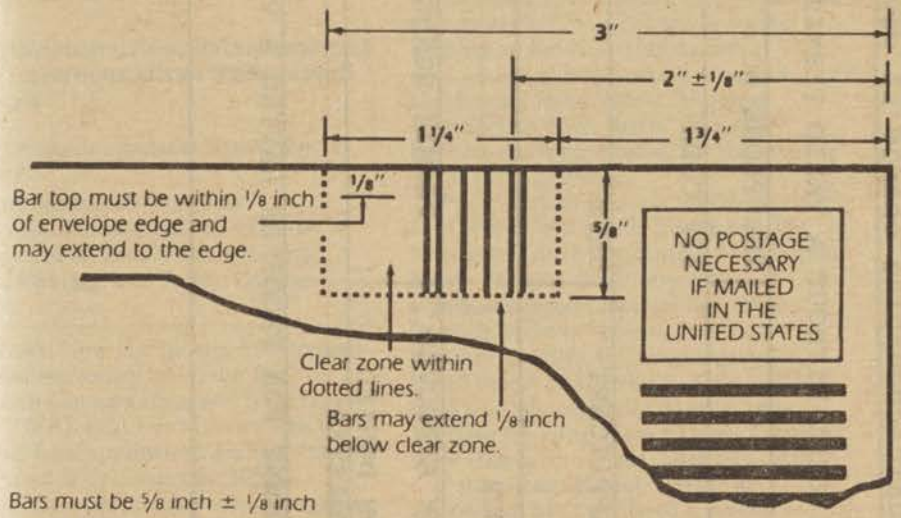
BAR CODE LOCATION



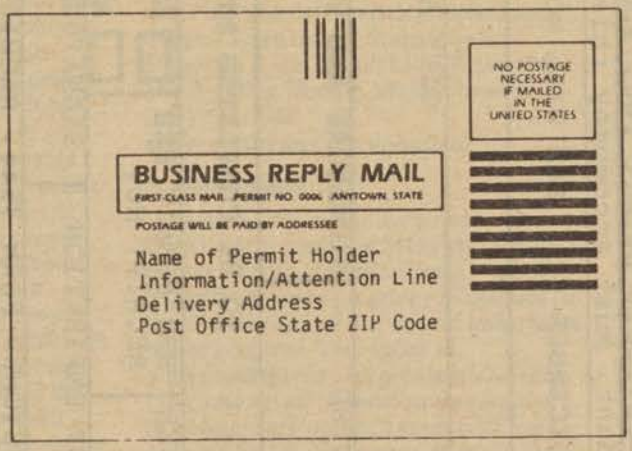
Both FIM and Bar Code must have at least 30% print reflectance differance and the combined effects of positional and rotational skew must be limited to ± degrees from the FIM or Bar Code to the top or bottom edge of the mail piece.

Figure 2

FIM LOCATION



Bars must be 5/8 inch ± 1/8 inch long. USPS supplied FIM patterns (A-B-C) are 5/8 inch long and should not be reduced or enlarged in size.



FIM B
FOR PRE-PRINTED BUSINESS REPLY PENALTY OR FRANKED MAIL WITHOUT BAR CODE PREVENTS REJECTION ON THE FACER CANCELER.

FIM C
FOR PRE-PRINTED BUSINESS REPLY PENALTY OR FRANKED MAIL WITH BAR CODE ALLOWS CAPTURE AT FACER CANCELER.

Examples are reduced from actual size.

FORM SIZE 3 7/8" X 8"

FORM 3614, BRM APPLICATION AND ANNUAL RENEWAL NOTICE

Application is made to distribute business reply cards, envelopes, self mailers, cartons, and labels prepared and mailed for return without prepayment of postage under Section 917, Domestic Mail Manual. Postage at First-Class rates and the additional per piece charge for business reply mail will be paid on all pieces returned under this privilege. Applicant agrees to prepare mailing pieces in accordance with Section 917, Domestic Mail Manual, and understands that failure to conform with those requirements may be considered basis for revocation of this permit. The annual business reply permit fee, and the annual accounting charge if payment is to be from a BRM trust account, must accompany this request.

PERMIT MUST BE RENEWED BY DECEMBER 31. BRM WILL NOT BE DELIVERED WITHOUT A VALID PERMIT.

NAME AND ADDRESS OF PERMIT HOLDER (print or type)	NAME		TELEPHONE NO.
	STREET	CITY AND STATE	ZIP CODE

POST OFFICE TO WHICH SUBMITTED (City, State and ZIP Code)	SIGNATURE AND TITLE OF APPLICANT	DATE

TO BE COMPLETED BY POSTMASTER

BRM ACCOUNT YES NO	BRM ACCOUNT FEE RECEIPT NO.	BRM PERMIT FEE RECEIPT NO.	☐ APPLICATION APPROVED ☐ APPLICATION DENIED	PERMIT NUMBER
DATE OF ISSUANCE	DATE OF EXPIRATION	SIGNATURE OF POSTMASTER		

- POSTMASTER MUST GIVE CUSTOMER FORM 3544, RECEIPT FOR PAYMENT FOR PROOF OF HAVING A VALID PERMIT.

[FR Doc. 84-25770 Filed 9-28-84; 8:45 am]
BILLING CODE 7710-12-C

ENVIRONMENTAL PROTECTION AGENCY

[OSW-FRL 2684-1]

40 CFR Part 271

New Hampshire; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Tentative Determination Application of New Hampshire for Final Authorization, Public Hearing, and Public Comment Period.

SUMMARY: New Hampshire has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed New Hampshire's application and has made the tentative decision that New Hampshire's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to grant final authorization to the State of New Hampshire to operate its program in lieu of the federal program.

New Hampshire's application for final authorization is available for public review and comment, and a public hearing will be held to solicit comments on the tentative decision if significant public interest is expressed.

DATES: If significant public interest is expressed in holding a hearing, a public hearing is scheduled for November 1, 1984. EPA reserves the right to cancel the public hearing if significant public interest in holding a hearing is not communicated to EPA by telephone or in writing by October 25, 1984. EPA will determine by October 26, 1984, whether there is significant interest to hold the public hearing. New Hampshire will participate in the public hearing held by EPA on this subject if a hearing is to be held. All written comments on New Hampshire's final authorization application must be received by the close of business on October 25, 1984.

ADDRESSES: Copies of New Hampshire's final authorization application are available during regular business hours at the following addresses for inspection:

Office of Waste Management, Health and Welfare Building, Hazen Drive, Concord, New Hampshire 03301, Contact: Charles E. Knox, (603) 271–4623

U.S. EPA Headquarters Library, PM 211A, 401 M Street SW, Washington, DC 20460, (202) 382–5926

U.S. EPA Region I Library, JFK Federal Building, Room E 121, Boston, Massachusetts 02203, Contact: Peg Nelson (617) 271–5791.

Written comments on the application and written or telephone communication of interest in EPA's holding a public hearing on the New Hampshire application must be sent to: Susan L. Hanamoto, State Waste Programs Branch, U.S. EPA, Room 1903, JFK Federal Building, Boston, Massachusetts 02203 (617) 223–1924.

If you wish to find out whether or not EPA will hold a public hearing on the New Hampshire application based upon EPA's decision that there was significant public interest in such a hearing, write or telephone after October 26, 1984, the contact person listed below or Charles E. Knox, Office of Waste Management, Health and Welfare Building, Hazen Drive, Concord, New Hampshire 03301, (603) 271–4623.

If significant public interest is expressed, EPA will hold a public hearing on New Hampshire's application for final authorization on Thursday, November 1, 1984 at 10:00 a.m. at the auditorium, Health and Welfare Building, Hazen Drive, Concord, New Hampshire.

FOR FURTHER INFORMATION CONTACT: Susan L. Hanamoto, State Waste Programs Branch, U.S. EPA, Room 1903, JFK Building, Boston, Massachusetts, (617) 223–1924.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the federal hazardous waste program. Two types of authorization may be granted. The first type, known as "interim authorization", is a temporary authorization which is granted if EPA determines that the State program is "substantially equivalent" to the Federal program (section 3006(c), 42 U.S.C. 6226(c)). EPA's implementing regulations at 40 CFR 271.121–271.137 established a phased approach to interim authorization: Phase I, covering the EPA regulations in 40 CFR Part 260–263 and 265 (universe of hazardous wastes, generator standards, transporter standards and standards for interim status facilities) and Phase II, covering the EPA regulations in 40 CFR Parts 124, 264, and 270 (procedures and standards for permitting hazardous waste management facilities). Phase II has three components. Phase IIA covers general permitting procedures and technical standards for containers, tanks, surface impoundments, and waste piles. Phase IIB covers incinerator facilities, and Phase IIC addresses landfills and and land treatment facilities.

By statute, all interim authorizations expire on January 26, 1985.

Responsibility for the hazardous waste program returns (reverts) to EPA on that date if the State has not received final authorization.

The second type of authorization is a "final authorization" that is granted by EPA if the Agency finds that the State program: (1) is "equivalent" to the Federal program, (2) is consistent with the Federal program and other State programs, and (3) provides for adequate enforcement (section 3006(b), 42 U.S.C. 6226(b)). States need not to have obtained interim authorization in order to qualify for final authorization. EPA regulations for final authorization appear at 40 CFR 271.1–271.23.

B. New Hampshire

The State on New Hampshire received Phase I interim authorization of November 3, 1981 and Phase II interim authorization, Components A and B on March 31, 1983. On November 29, 1983, the State submitted a draft application for final authorization. The official application for final authorization was submitted on June 28, 1984. Prior to submission of the application to EPA, New Hampshire held a public hearing on May 31, 1984 to solicit comments on the application. The only oral comment at the public hearing expressed support for the State to receive final authorization. This same commenter also submitted a written statement supporting the State's efforts at obtaining final authorization and endorsing a continuation of State interagency cooperation. The other written comment also supported the State's final authorization efforts and suggested changes to the regulations regarding hazardous waste mixtures, EP toxicity, exclusions, small quantity generator limits, and a small quantity transportation exemption. EPA's comments on the final authorization application were forwarded to the State on March 21, 1984. In brief, EPA requested the State to provide the following:

1. A clarification of the enforcement actions available to the State and the circumstances under which these actions would be used.

2. A clarification of the regulation that deals with transporters taking immediate and appropriate action in the event of a discharge of hazardous waste.

3. A commitment in the Memorandum of Agreement to address requests from interested persons regarding modification, revocation and reissuance, or termination of permits.

4. A commitment in the Memorandum of Agreement to require permit applications for surface impoundments, piles, land treatment units, and landfills to also include the additional information as stated in 40 CFR 264.14(c).

In the application for final authorization that was available for review prior to the State's public hearing, the State addressed each EPA comment and satisfied EPA's concerns.

Thus, EPA tentativley intends to grant final authorization to New Hampshire to operate its program in lieu of the federal program. Copies of New Hampshire's application are available for inspection and copying at the locations indicated in the "**ADDRESSES**" section of this notice.

In making its final decision, EPA will consider all public comments on the tentative determination and the measures taken by the State to address EPA's concerns. Issues raised by the public comments may be the basis for a decision to deny final authorization to New Hampshire. EPA expects to make a final decision on whether or not to approve New Hampshire's program by December 28, 1984.

It is possible that the schedule for EPA's final decision could be changed if substantial amendments are made to Vermont's application in response to public comments. This is because 40 CFR 271.5(c) provides that if the state's application materially changes during EPA's review period, the statutory review period begins again upon receipt of the revised submission. The State and EPA may also extend the review period by agreement (see 40 CFR 271.6(d)). EPA will give notice of its final decision or of a change in schedule in the **Federal Register** by December 31, 1984. That notice will include a summary of the reasons for the final decision, if made at that time, and a response to all major comments received during the public comment period.

Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization suspends the applicability of certain Federal regulations in favor of the State program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Executive Order 12291

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

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian-lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, and Confidential business information.

Authority: This notice is issued under the authority of Sections 2002(a), and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6192(a), 6926, and 6974(b).

Dated: September 7, 1984.

Paul G. Keough,

Acting Regional Administrator.

[FR Doc. 84-25937 Filed 9-28-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Subchapters D, H, and I

[CGD 83-026]

Fire Protection Regulations

AGENCY: Coat Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering changes to the fire protection regulations in 46 CFR Subchapters D, H, and I that will incorporate the 1981 set of amendments to the Safety of Life at Sea (SOLAS) 1974 Convention, update the existing fire protection regulations, and consolidate the fire protection regulations in Subchapters D, H, and I into a single new Subchapter. The Coast Guard is seeking public comment on these changes.

DATES: Comments must be received on or before November 30, 1984.

ADDRESSES: Comments should be submitted to: Commandant (G-CMC/21) (CGD 81-026), U.S. Coast Guard, Washington, D.C., 20593. Between the hours of 8:00 a.m. and 3:00 p.m., Monday through Friday, comments may be delivered to and will be available for inspection or copying at the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Donald J. Kerlin, Office of Merchant Marine Safety, telephone (202) 426-2197.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this advance notice of proposed ruelemaking by submitting written views, data, or arguments. Each comment should include the name and address of the person submitting the comment, reference the docket number (CGD 83-026), identify the specific section of the notice to which each comment applies, and include sufficient detail to indicate the basis on which each comment is made. If an acknowledgement is desired, a stamped addressed postcard should enclosed. All comments received before the expiration of the comment period will be considered before final action is taken on this notice. No public hearing is planned.

Drafting information

The principal persons involved in drafting this notice are: Mr. Donald J. Kerlin, Project Manager, Office of Merchant Marine Safety, and Mr. Michael N. Mervin, Project Attorney, Office of the Chief Counsel.

Discussion of proposed rules

The United States, as a signatory to the Safety of Life at Sea Convention, intends to enforce the regulations contained in the Convention and the amendments to the Convention. The 1981 set of amendments to the 1974 Convention became effective on September 1, 1984. The Coast Guard is considering revisions to the fire protection regulations in Subchapters D (tank vessels), H (passenger vessels), and I (cargo vessels) to reflect Chapter II-2 (Fire Protection) of the 1981 set of amendments. The Coast Guard requests comment on incorporating these amendments into the Code of Federal Regulations.

The Coast Guard has recognized that there are certain fire protection rules that have become outdated or that need modification for a variety of reasons. The Coast Guard requests comment as to which regulations may be in need of revision.

Currently the fire protection regulations for tank vessels, passenger vessels, and cargo vessels are located in three separate locations. This results in needless duplication. The Coast Guard proposes to consolidate the fire protection regulations found in Subchapters D, H, and I into a single new Subchapter. The Coast Guard requests comment as to this consolidation.

List of Subjects in 46 CFR Parts 30–40 and 70–106

Cargo Vessels, Marine Safety.

(46 U.S.C. 3306; 49 CFR 1.46)

Dated: September 26, 1984.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard Chief, Office of Merchant Marine Safety.

[FR Doc. 84-25947 Filed 9-28-84; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84-892; RM-4790; RM-4795]

TV Broadcast Stations Grand Junction, CO and Sante Fe, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the assignments of VHF Television Channels 2 and 4 to Grand Junction, Colorado, as that community's third and fourth commercial television channels. In addition, we propose the modification of the construction permit for Station KSAF–TV, Channel 2 at Sante Fe, New Mexico, changing its offset from "+" to "zero". This action was taken in response to two separate petitions filed, Contemporary Communications and by Mesa County Telecasting.

DATES: Comments must be filed on or before November 15, 1984, and reply comments on or before November 30, 1984.

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

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Notice of Proposed Rule Making and Order To Show Cause

In the matter of amendment of § 73.606(b), table of assignments, Television Broadcast Stations, (Grand Junction, Colorado and Sante Fe, New Mexico) (MM Docket No. 84–892, RM–4790, RM–4795).

Adopted: September 17, 1984.

Released: September 24, 1984.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration are two separate petitions for rule making seeking assignments of VHF Television Channels to Grand Junction, Colorado. The first, filed April 9, 1984 by Contemporary Communications, ("Contemporary") requests the assignment of Channel 2 to Grand Junction. The second, filed April 27, 1984 by Mesa County Telecasting ("Mesa") requests the assignment of Channel 4 to the same community. The assignments could provide the community with its third and fourth commercial television channels. Contemporary and Mesa both submitted information in support of their proposal and expressed their intention to apply for the channels, if assigned. The assignment of both channels can be made in compliance with the minimum distance separation requirements of § 73.610 of the Commission's Rules, with site restrictions.

2. Grand Junction (population 28,144),[1] seat of Mesa County (population 81,530) is located in western Colorado, approximately 320 kilometers (200 miles) southwest of Denver, Colorado.

3. The proposed assignment of VHF Television Channel 4 to Grand Junction requires a site restriction of 6.7 miles (10.7 Km) west of the community to avoid a short-spacing to Station KCNC–TV, Channel 4 at Denver, Colorado. As for the proposed assignment of VHF Television Channel 2, a site restriction of 6.8 miles (10.9 Km) west of the community is required to avoid a short-spacing to Station KWGN–TV, Channel 2, at Denver, Colorado. Also, in order to assign Channel 2 to Grand Junction, Station KSAF–TV (Channel 2), at Sante Fe, New Mexico is ordered to show cause herein why it should not change its offset from "+" to "zero."

4. The ultimate permittee of Channel 2 at Grand Junction is required by Commission policy to reimburse Station KSAF–TV for the reasonable costs of changing its offset.

5. In view of the fact that Grand Junction could receive its third and fourth commercial television channels, the Commission believes it would be in the public interest to seek comments on the proposal to amend the Television Table of Assignments (§ 73.606(b) of the Commission's Rules) for the following communities:

City	Channel No.	
	Present	Proposed
Grand Junction, CO	5–, 8–, and *18+.	2+, 4+, 5–, 8–, and *18+.
Sante Fe, NM	2+, *9+, 11–, and 19–.	2, *9+, 11–, and 19–.

6. Accordingly, it is ordered, That pursuant to section 316(a) of the Communications Act of 1934, as amended, New Mexico Media LTD permittee of Station KSAF–TV, Sante Fe, New Mexico, shall show cause why its permit should not be modified to specify on Channel 2 as proposed herein instead of the present Channel 2+.

7. Pursuant to § 1.87 of the Commission's Rules, New Mexico Media, may not later than November 15, 1984, request that a hearing be held on the proposed modification. If the right to request a hearing is waived, it may not be later than November 15, 1984, file a written statement showing with particularly why its application should not be modified proposed in the *Order to Show Cause*. In this case, the Commission may call on New Mexico Media to furnish additional information, designate the matter for hearing, or issue, without further proceeding, an *Order* modifying the application as provided in the *Order to Show Cause*. If the right to request a hearing is waived and no written statement is filed by the date referred to above, New Mexico Media will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final order will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

8. It is further ordered, That the Secretary shall send a copy of this *Notice of Proposed Rule Making and Order to Show Cause* by certified mail, return receipt requested, to New Mexico Media, LTD, P.O. Box 580, Sante Fe, New Mexico 87501.

9. Interested parties may file comments on or before November 15, 1984, and reply comments on or before November 30, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, follows:

Larry G. Fuss, Contemporary Communications, P.O. Box 3976, Jackson, Georgia 30233 (Petitioner)

Gary D. Terrell, Mesa County Telecasting, 32 Old Sterlington Road, Apt. 77, Monroe, LA 71203 (Petitioner)

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the*

[1] Population figures are from 1980 U.S. Census.

Commission's rules, 46 FR 11549, published February 9, 1981.

11. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner considered an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes and *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comment, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b), and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All findings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 84–25891 Filed 9–28–84; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 84–894; RM–4661; RM–4701; RM–4737]

FM Broadcast Stations in Boonville, Canajoharie, Deposit, Frankfort and Sidney, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein optionally proposes FM channel assignments to Boonville, Canajoharie, Deposit, Frankfort, and Sidney, New York, at the request of several parties. The assignments could provide each community with a first local or first wide-coverage FM service.

DATES: Comments must be filed on or before November 15, 1984, and reply comments on or before November 30, 1984.

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

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations, (Boonville, Canajoharie, Deposit, Frankfort and Sidney, New York), (MM Docket No. 84–894; RM–4661; RM–4707; RM–4737).

Adopted: September 17, 1984.

Released: September 24, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it five mutually exclusive proposals for the assignment of FM channels. DGR Communications, Inc. ("DGR"), on October 24, 1983, filed a petition seeking the assignment of Channel 235 to Deposit, New York (RM–4661). On November 22, 1983, Robert Raide, d/b/a Broadcast Facilities Company ("BFC"), filed a petition requesting the substitution of Channel 235 for Channel 265A at Sidney, New York. BFC further requests modification of its license for Station WSID (Channel 265A) to specify operation on the new channel. WTMK Broadcasting Corporation ("WTMK"), on December 23, 1983, filed a petition requesting the allocation of Channel 235 to Frankfort, New York (RM–4737).[1] In

[1] The petition for Frankfort was filed after December 16, 1983. It is being considered at this time as a conflicting proposal to two of the MM Docket 84–231 proposals.

the omnibus *Notice of Proposed Rule Making* in Docket 84–231, we proposed the assignment of Channel 236A to Boonville, New York, and Channel 232A to Canajoharie, New York. We have received a letter of intent from Atwood Broadcasting Corporation ("Atwood"), licensee of AM daytime-only Station WBRV, Boonville, for use of Channel 236A there. WAMC, Inc. ("WAMC"), licensee of noncommercial educational FM Station WAMC, Albany, New York, has expressed interest in use of Channel 232A at Canajoharie, New York, and further requests that the channel be reserved for noncommercial use. The request for Channel 235 at Frankfort conflicts with all four channel assignments and is timely filed for consideration as a counterproposal to each proposed allocation. Therefore, as stated in the *Public Notice* of July 23, 1984, setting forth all remaining proposed allocations in MM Docket 84–231, the Boonville, Canajoharie and Frankfort proposals will be considered herein.[2]

2. Deposit (population 1,887)[3] is located in Broome and Delaware Counties (population 213,648 and 46,824, respectively), approximately 45 kilometers (28 miles) east of Binghamton, New York. Sidney (population 4,861) is located in Delaware County, approximately 28 kilometers (18 miles) north of Deposit. Boonville (population 2,344) is located in Oneida County (population 253,466), approximately 54 kilometers (34 miles) northwest of Frankfort. Canajoharie (population 2,412) is located in Montgomery County (population 53,439), approximately 43 kilometers (27 miles) southeast of Frankfort. Frankfort (population 2,995) is located in Herkimer County (population 66,714), approximately 86 kilometers (53 miles) northeast of Sidney. Deposit, Boonville, Canajoharie and Frankfort have no local FM service. Sidney has Channel 265A assigned to it on which Station WSID operates.

3. The Commission has determined that alternative Class A assignments are available for assignment to Boonville and Canajoharie. Boonville can be assigned Channel 268A, with a site restriction of 1.2 kilometers (0.7 miles) east to avoid short-spacing to an application for use of Channel 269A at Pulaski, New York, and Channel 227A can be assigned to Canajoharie without any site restriction. Channel 235 is the only Class B channel which can be assigned to Sidney, Deposit and Frankfort. However, we have determined that Channel 250A can be assigned to Frankfort with a site restriction of 1.4 kilometers (0.9 miles) southeast, and if Channel 235 is assigned to Sidney, Channel 265A can then be assigned to Deposit without any site restriction.Therefore, we are seeking comments on three assignment plans. We also seek comments on whether any Class B1 channels are available for assignment to Deposit, Sidney or Frankfort and whether any party would be willing to operate on a Class A or B1 facility at Frankfort or Deposit should Channel 235 be assigned to Sidney. Interested parties should be guided in their responsive comments by the specific requests for information made herein as well as the policies concerning mutually exclusive proposals as enunciated in *Revision of FM Policies and Procedures*, 90 F.C.C. 2d 88 (1982).

4. Channel 235 can be assigned to Deposit in compliance with the Commission's minimum distance separation requirements if the transmitter is located at least 8.2 kilometers (5.1 miles) north of the community. This will avoid a short-spacing to Stations WMSP, Channel 235, Harrisburg, Pennsylvania; WZZO, Channel 236, Bethlehem, Pennsylvania; WDNH–FM, Channel 237A, Honesdale, Pennsylvania; and WLSP–FM, Channel 232A, Carbondale, Pennsylvania.[4] Channel 235 can be assigned to Sidney, and utilized at the transmitter site for Station WSID, in compliance with the Commission's minimum distance separation requirements. Channel 235 can be assigned to Frankfort without a site restriction.

5. As to the modification of license for Station WSID to specify the superior class of channel, it should be noted that if another party should indicate an interest in the Class B assignment at Sidney, the modification may not be implemented. Instead, an opportunity for the filing of competing applications, or the addition of an equivalent channel, may be provided. See *Cheyenne, Wyoming*, 62 F.C.C. 2d 63 (1976), and *Modification of FM and TV Station Licenses*, 49 FR 34007, published August 28, 1984.

6. All five communities are located within 199 miles (320 kilometers) of the U.S.-Canadian border. Therefore, the concurrence of the Canadian Government must be obtained before a channel can be assigned to any of the communities.

7. In view of the foregoing, the Commission considers it appropriate to solicit comments on the alternative amendments to the FM Table of Assignments, § 73.202(b) of the Rules, as follows:

City	Channel No.	
	Present	Proposed
Option I:		
Boonville, New York		268A
Canajoharie, New York		227A
Deposit, New York		235
Frankfort, New York		250A
Option II:		
Boonville, New York		268A
Canajoharie, New York		227A
Frankfort, New York		235
Option III:		
Boonville, New York		268A
Canajoharie, New York		227A
Deposit, New York		265A
Frankfort, New York		250A
Sidney, New York	265A	235

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before November 15, 1984, and reply comments on or before November 30, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

David J. Doherty, President, DGR Communications, Inc., 10137 Marshall Pond Road, Burke, Virginia 22015 (Deposit proponent)

Kenneth E. Satten, Esq., Wilkinson, Barker, Knauer & Quinn, 1735 New York Avenue, NW., Washington, D.C. 20006 (Counsel to Frankfort proponent)

Robert A. Woods, Esq., Malcolm G. Stevenson, Esq., Schwartz, Woods & Miller, Suite 206, the Palladium, 1325–18th Street, NW., Washington, D.C. 20036 (Counsel to Canajoharie proponent)

Lauren A. Colby, Esq., 532 Pearl Street, Frederick, Maryland 21701 (Counsel to Sidney proponent)

Harry F. Cole, Esq., Flood, Bechtel, Ward & Cole, 1000 Potomac Street, NW., Suite 402, Washington, D.C.

[2] *Public Notice, Reply Comment Date of August 22, 1984, Established in MM Docket 84–231*, 49 FR 31720, published August 8, 1984.

[3] Population figures are taken from the 1980 U.S. Census.

[4] Although the assignment would create an approximate 3 kilometers short-spacing to Stations WLSP-FM and WDNH-FM, at the site specified by the Commission for Deposit, 5.1 miles north, the proposal complies with the spacing requirements for Class B channels relative to adjacent channels which were in existence at the time the petition was filed. See *Memorandum Opinion and Order*, BC Docket 80–90, 49 FR 10260, published March 20, 1984.

20007 (Counsel to Boonville proponent)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202 (b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, 202–634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 84-25899 Filed 9-28-84; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84-895; RM-4799]

TV Broadcast Stations in Santa Catalina Island or Avalon, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of UHF TV Channel 54 to either Santa Catalina Island or Avalon, California, as its first assignment, in response to a petition filed by Jin Nok Wi. Petitioner is required to provide information to demonstrate that Santa Catalina Island is a "community" for assignment purposes or submit a statement expressing an interest in Avalon, the principal community on the Island of Santa Catalina, California.

DATES: Comments must be filed on or before November 15, 1984, and reply comments on or before November 30, 1984.

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

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcast.

Notice of Proposed Rule Making

In the matter of amendment of § 73.606(b), table of assignments, TV Broadcast Stations. (Santa Catalina Island or Avalon, California) (MM Docket No. 84–895, RM-4799)

Adopted: September 17, 1984.
Released: September 24, 1984.

By the Chief, Policy and Rules Division.

1. Before the Commission is a petition for rule making filed by Jin Nok Wi ("petitioner") requesting the allocation of UHF TV Channel 54 to Santa Catalina Island, California as its first television assignment. Petitioner states that it, or an entity of which it is a part, will apply for the channel, if assigned.

2. Santa Catalina Island (not listed in 1980 U.S. Census) in Los Angeles County (population 7,477,503) [1] is located approximately 72 kilometers (45 miles) south of Los Angeles, California. Avalon

[1] Population figures were extracted from the 1980 U.S. Census.

(population 2,022) is the principal community on the Island.

3. Petitioner states that Santa Catalina Island is a "community" with a population of 2,020 located in "Los Angeles County in the State of California." We are, however, unable to confirm that Santa Catalina Island is in fact an incorporated "community" since it is not listed as a "place" in the 1980 U.S. Census. Likewise we do not have any official recognition concerning Santa Catalina Island's population since it is excluded from the Census Report. Further, economic data with respect to Los Angeles County only was supplied by petitioner. Based upon the information before us, we are unable to make a determination that Santa Catalina Island has "community" status for assignment purposes. *See Cascade Village, Colorado*, 48 FR 19917, published May 3, 1983, and cases cited therein.

4. Section 307(b) necessitates that we require assignments to "communities" as a geographically identifiable population grouping. Generally, if a community is incorporated or listed in the U.S. Census, that is sufficient to satisfy its status. As here, the absence of such recognizable community status places the burden on the petitioner to provide the Commission with sufficient information to demonstrate that such a place is a geographically identifiable grouping which may qualify as a "community" for assignment purposes. See, *Ansley, Alabama*, 46 FR 58688 published December 3, 1981. As an alternative, the Commission has identified Avalon as the principal community on the island of Santa Catalina which can be assigned a UHF TV channel in compliance with the minimum distance separation requirements of §§ 73.610 and 73.698 of the Rules.

5. In view of the above, therefore, we believe it appropriate to further investigate and clarify this matter through the solicitation of comments. Petitioner is therefore required in its comments to express an interest in an Avalon allocation or to provide information to demonstrate how Santa Catalina Island may qualify as a "community" for assignment purposes. See *Ansley, Alabama, supra.*

6. If UHF TV channel 54 is assigned to either Santa Catalina Island or Avalon, California, it will require coordination with the Mexican government since the proposed assignment is within 320 kilometers (200 miles) of the U.S.-Mexican border.

7. Based on the above, we believe the public interest would be served by seeking comments on petitioner's request. Accordingly, it is proposed to amend the Television Table of Assignments, § 73.606(b) of the Commisssion's Rules, for the communities listed below:

City	Channel No.	
	Present	Proposed
Santa Catalina Island, California; or		54
Avalon, California		54

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

9. Interested parties may file comments on or before November 15, 1984, and reply comments on or before November 30, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Omni Communications, Inc., c/o Stanley G. Emert, Jr., One Regency Square, Suite 450, Knoxville, Tennessee 37915 (consultant to petitioner).

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply To Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

11. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 308 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 84-25898 Filed 9-28-84; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84-891; RM-4794]

TV Broadcast Station in Fort Bragg, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to assign VHF television Channel 8 to Fort Bragg, California, as that community's first local television broadcast service, in response to a petition filed by California Communications Group.

DATES: Comments must be filed on or before November 15, 1984, and reply comments must be filed on or before November 30, 1984.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner or Stanely Schmulewitz, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Proposed Rule Making

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Fort Bragg, California); MM Docket No. 84-891, RM-4794.

Adopted: September 17, 1984.
Released: September 24, 1984.

By the Chief, Policy and Rules Division.

1. A petition for rule making has been filed by California Communications Group ("petitioner") requesting the assignment of VHF television Channel 8 to Fort Bragg, California, as that community's first local television broadcast service. Petitioner states that it will apply for the channel if assigned in response to the request.

2. For Bragg (population 5,019) [1], in Mendocino County (population 66,738), is located on the California coast, approximately 230 kilometers (142 miles) northwest of San Francisco. Currently, it is devoid of any local television broadcast service. Although Channel 17 is assigned to Fort Bragg, it has been unavailable for television use since 1970 when the Commission designated UHF channels 14-20 for shared use in the land mobile communications services. See, *First Report and Order*, Docket 18261, 23 R.R. 2d 325, 343-344, 359 (1970). Accordingly, since Channel 17 is unavailable to Fort Bragg, it appears that no useful purpose would be served by retaining it in the Table. Therefore, we shall propose to delete the channel herein.

3. A staff engineering study reveals that VHF television Channel 8 can be assigned to Fort Bragg consistent with the minimum distance separation requirements of Section 73.610 of the Commission's Rules.

4. In view of the above considerations, we believe the petitioner's proposal warrants consideration since it could provide a first local television service to Fort Bragg, California. Therefore, we shall propose to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, as follows:

Channel No.	City	
	Present	Proposed
Fort Bragg, California	*17+	8-

5. The Commission's authority to institute rule making proceedings, showing required, cut-off procedures, and filing requirements are contained in the attached Appendix and are

[1] Population figures were extracted from the 1980 U.S. Census.

A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before November 15, 1984, and reply comments on or before November 30, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: National Communications Consultants, Attn: Kirk Tollett, First National Bank Building, Public Square, Sparta, TN 38583 (Consultant to Petitioner).

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Nancy V. Joyner or Stan Schmulewitz, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b)

and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceedings will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 84-25901 Filed 9-28-84; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84-893; RM-4793]

TV Broadcast Station in Las Vegas, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to assign UHF television Channel 33 to Las Vegas, Nevada, as that community's sixth commercial television broadcast service, in response to a petition filed by William A. DiMeolo.

DATES: Comments must be filed on or before November 15, 1984, and reply comments must be filed on or before November 30, 1984.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner or Stanley Schmulewitz, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Proposed Rule Making

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations (Las Vegas, Nevada); MM Docket No. 84-893, RM-4793.

Adopted: September 17, 1984.
Released: September 24, 1984.

By the Chief, Policy and Rules Division.

1. A petition for rule making has been filed by William A. DiMeolo ("petitioner"), requesting the assignment of UHF Television Channel 33 to Las Vegas, Nevada, as that community's sixth commercial television broadcast service. Petitioner states that he will apply for the channel, if assigned as proposed.

2. Las Vegas (population 164,674),[1] the seat of Clark County (population 463,087), is located in southern Nevada, approximately 400 kilometers (250 miles) northeast of Los Angeles, California.

3. A staff engineering study reveals that UHF Television Channel 33 can be assigned to Las vegas in conformity with the minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules. In a separate proceeding (Docket 84-625) we have proposed to substitute Channel 2 for Channel 3 at Las Vegas.

4. In view of the above considerations, we believe the petitioner's proposal warrants consideration since it could provide a sixth commercial television broadcast service to the community for the expression of diverse viewpoints and programming. Accordingly, the Commission proposes to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules with respect to the community listed below, as follows:

City	Channel No.	
	Present	Proposed
Las Vegas Nevada	3, 8-, *10+, 13-, 15+, and 21+.	2+, 8-, *10+, 13-, 15+, 21+, and 33+

5. The Commission's authority to institute rule making proceedings, showing required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before November 15, 1984, and reply comments on or before November 30, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Michael H. Rosenbloom, Esq., Wilner and Scheiner, 1200 New Hampshire Ave., NW., Washington, D.C. 20036 (Counsel for Petitioner).

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend*

[1] Population figures ere extracted from the 1980 U.S. Census.

§§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Nancy V. Joyner or Stanley Schmulewitz, Mass Media Bureau (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303).

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(e)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 84–25900 Filed 9–28–84; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 6, 14, and 15

Federal Acquisition Regulation (FAR); Availability and Request for Comment on Proposed Regulatory Revisions

AGENCY: Department of Defense (DOD), General Services Administration, and National Aeronautics and Space Administration.

ACTION: Notice of availability and request for comment on proposed changes to the FAR.

SUMMARY: As announced in 49 FR 29982 dated July 25, 1984, The Defense Acquisition Regulatory (DAR) Council and the Civilian Agency Acquisition Council (CAAC) are making available for public and Government agency review and comment proposed changes to the FAR to implement the Competition in Contracting Act, Title VII of Pub. L. 98–369. Copies of the draft proposal, soliciting comments on the subject, have been mailed to Government agencies, private firms, and associations.

DATE: Comment must be received on or before October 5, 1984.

ADDRESS: The proposed changes are available at and comments are to be submitted to the General Services Administration; FAR Secretariat (VR), 18th & F Streets, NW., Room 4041, Washington, D.C. 20405.

FOR FURTHER INFORMATION CONTACT: Roger M. Schwartz, Director, FAR Secretariat, (202) 523–4755.

SUPPLEMENTARY INFORMATION: The Competition in Contracting Act of 1984 substantially changes the basic statutes underlying the Federal procurement system. Agencies will be required to achieve full and open competition by soliciting sealed bids or requesting competitive proposals or use other competitive procedures, unless a statutory exception permits other than full and open competition. Among its major provisions, the Act imposes new justification, approval, and notice requirements for contracts employing other than full and open competition; requires appointment of a competition advocate; codifies the General Accounting Office bid protest process; and provides statutory authority for the General Services Board of Contract Appeals to resolve protests regarding

automatic data processing procurement. Solicitations issued after 31 March 1985 must comply with the requirements of the Act.

List of Subjects in 48 CFR Parts 5, 6, 14, 15

Government procurement.

(40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c))

Roger M. Schwartz,

Director, FAR Secretariat.

[FR Doc. 84-26092 Filed 9-28-84; 9:01 am]

BILLING CODE 6820-01-M

Notices

Federal Register
Vol. 49, No. 191
Monday, October 1, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Designation Renewal of Hastings Grain Inspection, Inc. (NE) and New York State Department of Agriculture and Markets (NY)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Hastings Grain Inspection, Inc. (Hastings), and New York State Department of Agriculture and Markets (New York), as official agencies responsible for providing official services under the U.S. Grain Standards Act, as amended (Act).

EFFECTIVE DATE: November 1, 1984.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation do not apply to this action.

The May 1, 1984, issue of the **Federal Register** (49 FR 18586) contained a notice from the Federal Grain Inspection Service (FGIS) announcing that Hastings' and New York's designations terminate on October 31, 1984, and requesting applications for designation as the agency to provide official services within each specified geographic area. Applications were to be postmarked by May 31, 1984.

Hasting and New York were the only applicants for each respective designation.

FGIS announced the names of these applicants and requested comments on same in the July 2, 1984, issue of the **Federal Register** (49 FR 27189). Comments were to be postmarked by August 16, 1984.

One favorable comment was received regarding Hastings' designation renewal; no comments were received regarding New York's.

FGIS has evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act (7 U.S.C. 71 *et seq.*), and in accordance with section 7(f)(1)(B), has determined that Hastings and New York are able to provide official services in the respective geographic areas for which their designations are being renewed. Each assigned area is the entire geographic area, as previously described in the May 1 **Federal Register** issue.

Effective November 1, 1984, and terminating October 31, 1987, Hastings and New York are responsible to provide official inspection services in their respective specified geographic areas.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency to conduct official inspection services and where the agency and one or more of its licensed inspectors are located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring a licensed inspector to all locations within its geographic area.

Interested persons may contact the Regulatory Branch, specified in the address section of this notice, to obtain a list of an agency's specified service points. Interested persons also may obtain a list of the specified service points by contacting the agency at the following address:

Hastings Grain Inspection, Inc., 306 East Park Street, Hastings, NE 68901

New York State Department of Agriculture and Markets, Building 8, State Campus, Albany, NY 12235

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: September 18, 1984.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 84–25772 Filed 9–28–84; 8:45 am]
BILLING CODE 3410–EN–M

Request for Comments on Designation Applicants in the Geographic Areas Currently Assigned to California Department of Food and Agriculture (CA) and Washington Department of Agriculture (WA)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the areas currently assigned to California Department of Food and Agriculture (California) and Washington Department of Agriculture (Washington).

DATE: Comments to be postmarked on or before November 15, 1984.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Management Branch, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The August 6, 1984, issue of the **Federal Register** (49 FR 31310) contained a notice from the Federal Grain Inspection Service requesting applications for designation to perform official services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act), in the areas currently assigned to the official agencies.

Applications were to be postmarked by September 5, 1984.

California and Washington, the only applicants for each respective designation, requested designation for the entire geographic area currently assigned to each of those agencies.

This notice provides interested persons the opportunity to present their comments concerning the applicants for designation. All comments must be submitted to the Information Resources Management Branch, Resources Management Division, specified in the address section of this notice, and postmarked not later than November 15, 1984.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the Federal Register, and the applicants will be informed of the decision in writing.

(Sec. 8, Sec. 9, Pub. L. 94–582, 90 Stat. 2873, 2875 (7 U.S.C. 79, 79a))

Dated: September 18, 1984.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 84-25773 Filed 9-28-84; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants to Perform Official Services in the Geographic Areas Currently Assigned to Gibson City Grain Inspection Department (IL), Indianapolis Grain Inspection & Weighing Service, Inc. (IN), and Wyoming Department of Agriculture (WY)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as amended (Act), official agency designations shall terminate not later than triennially and may be renewed in accordance with the criteria and procedures prescribed in the Act. This notice announces that the designation of three agencies will terminate, in accordance with the Act, and requests applications from parties, including the agencies currently designated, interested in being designated as the official agency to conduct official services in the geographic area currently assigned to each specified agency. The official agencies are Gibson City Grain Inspection Department, Indianapolis Grain Inspection & Weighing Service, Inc., and Wyoming Department of Agriculture.

DATE: Applications to be postmarked on or before October 31, 1984.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act (7 U.S.C. 71 *et seq.*, at 79(f)(1)) specifies that the Administrator of the Federal Grain Inspection Service (FGIS) is authorized, upon application by any qualified agency or person, to designate such agency or person to perform official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area. Donald Swanstrom, doing business as Gibson City Grain Inspection Department (Gibson City), Routes 47 and 9, P.O. Box 20, Gibson City, IL 60936; Indianapolis Grain Inspection and Weighing Service, Inc. (Indianapolis), 4804 East Michigan Street, Indianapolis, IN 46201; and Wyoming Department of Agriculture, 2219 Carey Avenue, Cheyenne, WY 82001, were each designated under the Act as an official agency to perform inspection functions on April 1, 1982.

Each agency's designation terminates on March 31, 1985. Section 7(g)(1) of the Act states, generally, that official agencies' designations shall terminate no later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Gibson City, in the State of Illinois, pursuant to section 7(f)(2) of the Act, and which is the area that may be assigned to the applicant selected for designation, is the following:

Bounded on the North by the northern Livingston County line from the ICG Railroad line;

Bounded on the East by the Livingston County line; the Ford County line; the southern Ford County line west to Interstate 57; Interstate 57 south to State Route 136;

Bounded on the South by State Route 136 west to a point approximately 10 miles west of the eastern Mclean County line; and

Bounded on the West from this point through Arrowsmith to Pontiac along a straight line running north and south which intersects with the ICG Railroad line northeast to the northern Livingston County line.

The following location, outside of the foregoing contiguous geographic area is presently assigned to Gibson City and is part of this geographic area assignment: Farm Service, Arrowsmith, McLean County.

An exception to the described geographic area is the following location situation inside Gibson City's area which has been and will continue to be serviced by Bloomington Grain Inspection Department; Bunge Corporation, Pontiac, Livingston County.

The geographic area presently assigned to Indianapolis, in the State of Indiana, pursuant to section 7(f)(2) of the Act, and which is the area that may be assigned to the applicant selected for designation, is the following: Bartholomew; Brown; Hamilton, south of State Route 32; Hancock; Hendricks; Johnson; Madison, west of State Route 13 and south of State Route 132; Marion; Monroe; Morgtan; and Shelby Counties.

The geographic area presently assigned to Wyoming, pursuant to section 7(f)(2) of the Act, and which is the area that may be assigned to the applicant selected for designation, is the entire State of Wyoming, except the geographic area assigned to Denver Grain Exchange Association, as follows: Goshen County, Platte County, and these locations in Laramie County: Albin Elevator, Albin; Farmers Coop, Burns; Carpenter Elevator, Carpenter; Pillsbury Company, Egbert; and Pine Bluffs Feed and Grain, Pine Bluffs.

Interested parties including Gibson City, Indianapolis, and Wyoming are hereby given opportunity to apply for designation as the official agency to perform the official services in the geographic areas, as specified above, under the provisions of section 7(f) of the Act and § 800.196(b) of the regulations issued thereunder. Designations in the specified geographic areas are for the period beginning April 1, 1985, and ending March 31, 1988. Parties wishing to apply for designation should contact the Regulatory Branch, Compliance Division, at the address listed above for forms and information.

Applications submitted and other available information will be considered in determining which applicant will be

designated to provide official services in a geographic area.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: September 18, 1984.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 84–25774 filed 9–28–84; 8:45 am]

BILLING CODE 3410–EN–M

Soil Conservation Service

Wolf Creek-Highlands Watershed, CO

AGENCY: Soil Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Wolf Creek-Highlands Watershed, Prowers County, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. Sheldon G. Boone, State Conservationist, Soil Conservation Service, Diamond Hill Complex, Bldg. A, 3rd Floor, 2490 West 26th Avenue, Denver, CO 80211, telephone (303) 964–0295.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Sheldon G. Boone, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include installing the land treatment practices of conservation tillage systems and terrace systems on non-irrigated cropland.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. The basic data developed during the environmental evaluation are on file and may be reviewed by contacting. Mr. Sheldon G. Boone.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Executive Order 12372 regarding State clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: September 24, 1984.

Kenneth A. Pitney,

Assistant State Conservationist.

[FR Doc. 84–25969 Filed 9–28–84; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

Electronic Instrumentation Technical Advisory Committee; Partially Closed Meeting

The Electronic Instrumentation Technical Advisory Committee was initially established on October 23, 1973, and rechartered on January 5, 1984, in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

Time and Place: October 18, 1984 at 9:30 a.m., Herbert C. Hoover Building, Room 3407, 14th Street and Constitution Avenue, NW., Washington, D.C. The meeting will continue to its conclusion on October 19, 1984, in Room 3708, Herbert C. Hoover Building.

Agenda: The Committee will begin with an open meeting to invite public comments with regards to existing commodity or techonlogy controls. The commodities and technologies that falls under the responsibilities of the Committee are those relating to the following Commodity Control List (CCL) entries:

1510, 1516, 1522, 1529, 4529, 1531, 1533, 1534, 1541, 1560, 1561, 1564, 1568, 1572, 1584, 1585, 1587, 6598

Invited comments will be restricted to these or substantially related items.

In particular the Committee would like to invite public evidence of foreign available equipment (or technology) falling within the above mention CCL entries. Information is desired relating to equipment (or technologies) produced or available in the following country groups:

a. Proscribed countries (East Bloc Countries)

b. Non-COCOM free world countries.

Specific information is needed on:

1. Manufactures and country of origin,
2. Product's capabilities and features,
3. Product availability and price,
4. Proof of delivery of products in sufficient quantity and quality, and
5. Location where the Electronic Instrumentation Technical Advisory Committee can obtain a sample for evaluation.

The Committee is generally concerned with future regulatory levels and changes needed to existing commodity and technology regulation levels. Public comments should be formulated to support changes in either commodity or technology control level. Request specifically oriented to individual license application should not be presented at this time.

Following the open session the Committee will meet in executive session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

SUPPLEMENTARY INFORMATION: A Notice of Determination to close meeting or portions of meetings of the Committee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on February 6, 1984, in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202–377–4217. For further information contact Mrs. Margaret A. Cornejo 202–377–2583.

Dated: September 25, 1984.

Milton, M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 84–25916 Filed 9–28–84; 8:45 am]

BILLING CODE 3510–DT–M

[A–412–013]

Titanium Sponge From the United Kingdom: Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that titanium sponge from the United Kingdom is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and the ITC will determine, within 45 days of publication of this notice, whether a U.S. industry is materially injured, or is threatened with material injury, by imports of this merchandise. We have directed the U.S.

Customs Service to continue to suspend the liquidation of all entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice and to require a cash deposit or bond for each such entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice. We have decided, however, to exclude those entries being imported in fulfillment of the sale to the General Services Administration for the National Defense Stockpile made during the period of investigation from suspension of liquidation and any bonding or deposit requirements.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: John J. Kenkel, 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) 377–3965.

Final Determination

We have determined that titanium sponge from the United Kingdom is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act).

We have found that the foreign market value of titanium sponge exceeded the United States price on the single sale made during the period of investigation. The margin on this sale amounted to 109.06 percent.

Case History

On November 28, 1983, we received a petition from RMI Company on behalf of the domestic titanium sponge industry. In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the petitioner alleged that imports of titanium sponge from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening material injury to, a United States industry. The petition also alleged that sales of the subject merchandise were being made at less than the cost of production. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on December 16, 1983 (48 FR 56817). On January 12, 1984, the ITC determined that there is reasonable indication that imports of titanium sponge from the United Kingdom are materially injuring a U.S. industry.

On January 13, 1984, we mailed an antidumping questionnaire to Billiton (U.K.) Ltd., the exporter of the merchandise. An extension of time to respond was granted, and on March 2, 1984, we received the response to the questionnaire.

The respondent declined to provide essential cost information requested. Therefore, based on best information available, we preliminarily determined on May 7, 1983, that titanium sponge was being sold at less than fair value (49 FR 20042). The estimated dumping margin was 93.91 percent. The respondent has continued to refuse to cooperate in this investigation.

A hearing was held on August 14, 1984, to allow the parties an opportunity to address the issues arising in this investigation.

Scope of the Investigation

The merchandise covered by this investigation is titanium sponge. The term "titanium sponge" covers titanium sponge, unwrought, as currently provided for in item 629.1420 and of the *Tariff Schedules of the United States Annotated* (TSUSA) and which may enter the United States under item number 833 of the TSUSA for certified government importations for the National Defense Stockpile. Titanium sponge is a porous, brittle metal that has a high strength-to-weight ratio and is highly ductile. It is an intermediate product used to produce titanium ingot, slab, billet, bar, plate and sheet.

This investigation covers the period from June 1 to November 30, 1983. Deeside Titanium Co. Ltd. is the only known U.K. producer that exports the subject merchandise to the United States.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 776(b) of the Act, we used the best information available to represent the United States price because the respondent refused to provide the Department with an adequate response to our questionnaire. Therefore, we calculated the purchase price for Deeside based on the information provided in the petition, which is the best information otherwise available.

We deducted from the purchase price the petitioner's estimates for ocean freight, U.S. port and inland freight costs and insurance costs incurred in delivering the product.

Foreign Market Value

We declared the respondent to be nonresponsive because it did not provide requested cost information that we needed to conduct our investigation. In accordance with section 776 of the Act, we used the best information available. The petitioner alleged that sales in the home market were at prices below the cost of producing titanium sponge. Therefore, the best information available is constructed value based on the cost estimate provided in the petition. The petitioner added 10 percent to its cost estimate for general expenses, and the statutory eight percent profit to its estimate of the sum of cost of production and general expenses in order to obtain a constructed value in accordance with section 773(e)(1) of the Act. We made an adjustment to foreign market value for the petitioner's estimate for commissions.

Petitioner's Comments

Comment 1: Petitioner claims that the respondent has not provided the Department with even the most basic data needed for an analysis of the cost of production of Deeside Titanium Co., Ltd. Accordingly, the data submitted by the petitioner is the "best information available."

DOC Position: We agree. The period of investigation is June 1 through November 30, 1983. The respondent refused to provide cost of production information for this period, despite repeated requests. Accordingly, we have used best information available as provided in the petition.

Comment 2: Petitioner contends that the Department should use exporter's sale price instead of purchase price to calculate the United States price because Billiton Metals, Inc. (the U.S. seller) is related to Billiton (U.K.) Ltd. (the exporter).

DOC Position: We disagree. Exporter's sales price is used to determine United States price when the sale is made after importation. Here, the merchandise was sold to the General Services Administration (GSA) prior to its importation by a U.S. company, Billiton Metals, Inc. (BMI). Therefore, we calculated the dumping margin predicated on purchase price.

Comment 3: Petitioner claims that antidumping duties should be applied to dumped articles classified under Tariff

Schedules of the United States item 833.00.

DOC Position: See our response to respondent's comment six.

Respondent's Comments

Comment 1: Respondent argues that the period of investigation should be 1984 instead of 1983 because that is when Deeside intended to produce the titanium sponge destined for the United States.

DOC Position: We disagree. The Department determines whether the respondent sold the merchandise at less than fair value by comparing the price at the time of sale to home market sales. If the home market is not viable, the Department then uses third country sales. If neither of these markets is viable the constructed value is used for comparison. Deeside had a home market sale and third country sales during 1983. To determine the viability of the home market or third country sales we cannot use 1984 costs to determine if sales were above the cost-of-production. 1983 sales must be compared to the actual costs incurred to produce the merchandise to determine if the sales price could recover all costs. When comparing sales to cost, it is apparent that 1983 sales could not be compared to 1984 costs.

Comment 2: Respondent contends that the Department is required to accept and verify all information relevant to the investigation. In addition, the information submitted by the respondent is the best available.

DOC Position: We disagree. The respondent has submitted 1984 cost data, rather than the 1983 data requested by the Department. When relevant data are not provided, we will neither accept nor verify nonrelevant data. Respondent has misconstrued the meaning of the term of art, "best information available." To reach a determination, we use the questionnaire responses. Where the respondent does not cooperate, we use the best information otherwise avaiable. We usually dismiss the entire response when the respondent submits only partial information because the selection of information submitted may be self-serving. The only information on cost of production for the period under investigation was submitted by the petitioner. Thus, it is the best information available.

Comment 3: Respondent argues that there have been no sales at less than fair value because the producer has priced the product so as to recoup its capital expenditures and labor learning curve losses over a reasonable period of time in anticipation of rising demand.

DOC Position: We could not address this issue because respondent did not provide the requested cost information.

Comment 4: Respondent states that the Department should respect the confidentiality agreement among its shareholders and, therefore, not penalize it for its non-response to certain questions.

DOC Position: The shareholders' confidentiality agreement does not relieve them of the consequences of refusing to cooperate in our investigation. Therefore, we have used the best information available, in accordance with section 776 of the Act (19 U.S.C. 1677e(b)) and § 353.51 of our regulations (19 CFR 353.51(b)).

Comment 5: Respondent maintains that GSA purchases of certified strategic and critical materials for National Defense Stockpile, such as titanium sponge, are not subject to antidumping duties under TSUSA item 833 because the "exemption" for importation under 833 is absolute and because the Department's interpretation of item 832 as free of antidumping duties is equally applicable to imports under item 833.

DOC Position: We have determined that it was reasonable for Billiton Metals, Inc., to expect, at the time it enetered into a contract with GSA, that imports of titanium sponge certified for the National Defense Stockpile would enter free of duties, including antidumping duties. It had this expectation based on the longstanding administrative practice of exempting articles imported for defense procurement under TSUS 832. Because of Billiton's reliance on this past practice, we have excluded entries within the current titanium sponge procurement contract from the scope of our determination. We credit reliance here only because of twenty-five years of unbroken practice by two federal agencies, and apparent congressional acquiescence in the practice.

Nevertheless, we do not view this decision as immutable. Further reliance on this agency's past practice would not be well advised. We intend to undertake a careful and thorough review of issues relevant to the waiver of antidumping and countervailing duties under sections 832 and 833, and will publish the results of this review within six months. During the course of this review, we will invite comments from all interested parties. We have decidied to undertake this review in recognition of serious implications for the domestic industry of a waiver of such duties, and our obligation to enforce vigorously the unfair trade laws.

Comment 6: Respondent contends that procurements under the Trade Agreements Act of 1979 and Department of Defense memoranda of understanding require that all bidders be treated on an equal basis.

DOC Position: Respondent's interpretation of the Trade Agreements Act of 1979 as requiring equal treatment for foreign bidders is incorrect. Section 301 of the Act, 19 U.S.C. 2511, provides that the President *may* waive discriminatory purchasing requirements, such as the Buy American provisions. Also, the GATT Procurement Code, which is in force under the Act, states that its equal treatment provision does not prevent imposition of duties. The Department of Defense memoranda of understanding with other countries do not require equal treatment; duties may not be considered, even at the bid evaluation stage. These memoranda, however, concern only defense procurement.

Comment 7: Respondent argues that any change in the Department's long-established position may occur only in accordance with the notice and public comment requirements of the Administrative Procedure Act.

DOC Position: Our investigations are not subject to the rulemaking provisions of the Administrative Procedure Act and our procedures have received judicial approval. *NLRB* v. *Bell Aerospace Company*, 416 U.S. 267, 290–95 (1973); *Michelin Tire Corp.* v. *United States*, slip op. 83–136 at 5 (Ct. Int'l Trade Dec. 22, 1983). We followed our normal procedures in this investigation, providing full notice and opportunity to comment to all interested parties.

Verification

Because the respondent did not provide the information requested in our questionnaire, we were unable to conduct a verification.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will make its determination whether these imports are

materially injuring, or threatening material injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or the threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue an antidumping order, directing Customs officers to assess an antidumping duty on titanium sponge from the United Kingdom entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the U.S. prices.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we have directed the United States Customs Service to suspend liquidation of all entries of the subject titanium sponge from the United Kingdom which are entered, or withdrawn from warehouse, for consumption on or after May 11, 1984. The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. This suspension of liquidation will remain in effect until further notice. The Customs Service, however, will exclude those entries being imported in fulfillment of the contract dated October 28, 1983, between the General Services Administration and Billiton Metals, Inc. for the National Defense Stockpile from the suspension of liquidation and any bonding or deposit requirements. The average margin for the respondent is as follows:

	Margin (percent)
Deeside Titanium Co., Ltd	109.06
All other manufacturers, producers, and exporters	109.06

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Dated: September 24, 1984.

William T. Archey,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 84-25952 Filed 9-28-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-020]

Titanium Sponge From Japan: Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that titanium sponge from Japan is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and the ITC will determine, within 45 days of publication of this notice, whether a U.S. industry is materially injured, or is threatened with material injury, by imports of this merchandise. We have directed the U.S. Customs Service to continue to suspend the liquidation of all entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice and to require a cash deposit or bond for each such entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice. We have decided, however, to exclude those entries being imported in fulfillment of the sale to the General Services Administration for the National Defense Stockpile made during the period of investigation from suspension of liquidation and any bonding or deposit requirements.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: John J. Kenkel, 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) 377-3965.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that titanium sponge from Japan is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act).

We have found that the foreign market value of titanium sponge exceeded the United States price on 100 percent of comparisons made for each company. These margins ranged from 1.30 percent to 67.49 percent. The margins for Osaka Titanium Company ranged from 1.30 percent to 18.80 percent. The weighted-average margin for all comparisons made was 15.09 percent. The margins for Toho Titanium ranged from 31.53 percent to 40.29 percent. The weighted-average margin for all comparisons made was 34.25 percent. The margins for Nippon Soda ranged from 55.60 percent to 67.49 percent. The weighted-average margin for all comparisons made was 56.37 percent.

Case History

On November 28, 1983, we received a petition from RMI Company on behalf of the domestic titanium sponge industry. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioner alleged that imports of titanium sponge from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening material injury to, a United States industry. The petition also alleged sales of the subject merchandise were being made at less than the cost of production. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on December 16, 1983 (48 FR 56815). On January 12, 1984, the ITC determined that there is reasonable indication that imports of titanium sponge from Japan are materially injuring a U.S. industry.

On December 30, 1983, we presented antidumping questionnaires to counsel for Osaka Titanium Co. Ltd. (OTC), Toho Titanium Co. Ltd. (Toho) and Nippon Soda Co. (Nisso). An extension of time to respond was granted, and on February 23, 24 and March 9, 1984, we received their responses to the questionnaires. Based on information contained in those responses, on May 7, 1984, we preliminarily determined that titanium sponge was being sold at less than fair value (49 FR 20042). The estimated weighted-average dumping margins were zero, 15.90 and 62.30 percent, for OTC , Toho and Nisso, respectively. As required by law, we conducted a verification of the correctness of each response through examination of source documents of each company in Japan. We also received a questionnaire response from Philipp Brothers, Inc. (Phibro). Phibro stated that it acts as a purchaser and/or agent of the producer of this product. We also conducted a verification of its responses.

A hearing was held on July 25, 1984, to allow the parties an opportunity to

address the issues arising in this investigation.

Scope of the Investigation

The merchandise covered by this investigation is titanium sponge. The term "titanium sponge" covers titanium sponge, unwrought, as currently provided for in item 629.1420 of the Tariff Schedules of the United States Annotated (TSUSA). Titanium sponge may also enter under item 833 of the TSUSA for certified government importations for the National Defense Stockpile. Titanium sponge is a porous, brittle metal, that has a high strength-to-weight ratio and is highly ductile. It is an intermediate product used to produce titanium ingot, slab, billet, bar, plate and sheet.

This investigation covers the period from June 1 to November 30, 1983. OTC, Nisso and Toho are the only known Japanese producers who export the subject merchandise to the United States. We examined virtually all United States sales made during the period of investigation.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold to unrelated U.S. purchasers prior to its importation into the United States.

We calculated the purchase price for Nisso based on the CIF price to the first unrelated United States purchaser. We deducted port charges, inland freight, ocean freight and insurance costs incurred in delivering the product.

We calculated purchase price for OTC based on the CIF or C&F price from Philipp Brothers, Inc. (an unrelated trading company) to the first unrelated United States purchaser on those sales where Phibro acted as agent. We used the price from Sumitomo Corporation of America to the first unrelated purchaser on all other sales. We deducted inland freight, home market brokerage, ocean freight and inland and marine insurance.

We calculated purchase price for Toho based on the CIF price from Mitsui & Co., Ltd. (a related trading company) to the first unrelated United States purchaser. We deducted inland and ocean freight and insurance costs.

Foreign Market Value

In accordance with section 773(a)(2) of the Act, we used constructed value to determine foreign market value. The petitioner alleged that sales in the home market were at prices below the cost of producing titanium sponge. In order to determine the cost of production, we examined production costs, including materials, labor and general expenses.

We found that all non-U.S. sales of the merchandise under investigation were made over an extended period of time in substantial quantities, and at prices that did not permit recovery of all costs within a reasonable period of time in the normal course of trade. Therefore, we disregarded these sales in our analysis in accordance with section 773(b) of the Act. Instead, we used constructed value to determined foreign market value. In accordance with section 773 of the Act, we calculated constructed value, where appropriate, by adding the costs of materials, fabrication, general expenses, and profit. For materials, fabrication and general expenses we used the appropriate producer's actual cost figures. We did not use the statutory 10 percent for general expenses since actual expenses for each company exceeded the minimum of 10 percent of the sum of material and fabrication costs prescribed in section 773(e)(1)(B) of the Act. We used the statutory eight percent for profit since actual profit did not meet the eight percent of the sum of costs and general expenses prescribed in section 773(e)(1)(B) of the Act.

In calculating foreign market value, we made currency conversions from Japanese yen to United States dollars in accordance with § 353.56(a)(1) of our regulations using the certified daily exchange rates.

We found that all U.S. sales for each company were made at less than the constructed value.

Petitioner's Comments

Comment 1: Petitioner claims that for OTC, United States price should be the price at which OTC sells titanium sponge to Sumitomo Corporation , a Japanese trading company, and not the price charged by Sumitomo to the first unrelated U.S. customer.

DOC Position: We disagree. We found that OTC does not sell the merchandise to Sumitomo. Instead, Sumitomo acts as agent for OTC and receives a commission for its services.

Comment 2: Petitioner argues that if the Department uses Sumitomo's price to the first unrelated customer as the basis for United States price, it should deduct the commission paid to Sumitomo since Sumitomo is conducting an arm's length transaction with OTC.

DOC Position: We disagree. We have determined that if a producer owns five percent or more of an agent, or vice versa, we will treat them as related companies. Therefore, we did not deduct Sumitomo's commission from purchase price.

Comment 3: Petitioner contends that deductions for selling commissions in calculating United States price should not be offset by non-comparable selling expenses for home market sales.

DOC Position: We disagree. Under § 353.15(c) of our regulations, reasonable allowance for actual selling expenses in one market will be made where commissions are paid in the other market. The allowance is limited by the lesser of the two amounts. The expenses in the two markets do not have to be comparable.

Comment 4: Petitioner contends that in its response, Osaka improperly modified its inventory accounting methodology in reporting its raw material costs. Cost of production is, as a rule, based on the normal accounting practices of the company involved. Absent compelling reasons to do otherwise, Osaka's normal accounting method for raw materials must provide the basis for the Departments analysis of Osaka's raw material cost.

DOC Position: We agree. In calculating the cost of production, the Department values the inputs based on the company's accounting methods used in the ordinary course of business, unless the Department concludes that such methods do not appropriately reflect the cost of the product under investigation. Therefore, as OTC's normal accounting practice follows generally accepted accounting principles and appropriately reflected the cost of the product, the Department rejected the methodology used by OTC in its response and instead used OTC's normal accounting method for calculating the material cost in cost of production.

Comment 5: Petitioner claims that titanium tetrachloride produced by OTC is an intermediate product in the production process of titanium sponge, and not a by-product as claimed by respondent. Because it is an intermediate product, OTC should not be allowed to reduce the cost of producing titanium sponge by the revenue earned from sales of excess titanium tetrachloride.

DOC Position: We agree. We analyzed the production of titanium tetrachloride and determined that such product was not a by-product but was

an intermediate product because (1) it was manufactured in separate facilities, (2) the quantity of production could be determined by management and is not determined by the production of titanium sponge, and (3) its production was not an unavoidable consequence of the manufacturing of titanium sponge. Therefore, we have not offset the cost of producing titanium sponge by the revenues from outside sales of titanium tetrachloride.

Comment 6: Petitioner contends that in its questionnaire response, Osaka improperly excluded depreciation on plant and equipment which, because of the depressed market conditions, was not in production. Depreciation expense is a fixed cost of production. Facilities have a depreciable life and must be depreciated over that period whether or not they are in operation.

DOC Position: We agree. Depreciation of equipment which, due to economic conditions, has been temporarily idled is considered to be a cost incurred for the manufacturing of the product under investigation and must be included in the cost of production. Therefore, the cost of production employed in the determination of fair value has been adjusted to reflect the depreciation of idle plant capacity.

Comment 7: Petitioner argues that Osaka understated selling, general and administrative expenses by excluding research and development expense, business taxes, legal expenses and other expenses. Each of the specific items that was excluded is a necessary expense incurred in the titanium sponge production business.

In addition, Osaka improperly allocated its SG&A expenses on the basis of *net* sales, in order to lower the costs allocated to titanium sponge production.

Osaka's SG&A costs should also include the selling costs absorbed by Sumitomo and Sumitomo Corporation of America.

DOC Position: Research and development costs directly attributable to titanium sponge have been included in the cost of production employed in the determination of fair value. All other costs have been included in selling, general and administrative expenses, a portion of which have been allocated to sales of titanium sponge. The methods used to allocate the selling, general and administration expenses were (1) to identify those expenses which could be tied specifically to the product or (2) to allocate unidentified expenses on the basis of cost of production.

The administrative costs of Sumitomo Corporation and Sumitomo Corporation of America have not been included in the cost of production included in the comparison of home market sales because these companies are employed in export sales only.

Comment 8: The petitioner contends that by allocating financial income and expense on the basis of net sales rather than the cost of goods sold, OTC understates the real cost of financing titanium sponge. In addition, Osaka failed to report financing costs borne by Sumitomo and Sumitomo Corporation of America.

DOC Position: We disagree with the petitioner for the following reasons. Financial income unrelated to the production of titanium sponge was not included in the cost of production to allocate financial expenses on the net sales or cost-of-goods-sold basis and would not appropriately be identifying such costs with titanium sponge. The company produces and sells titanium sponge and silicon products. Some of the silicon products are purchased from a subsidiary and resold by the company. The balance of the silicon products is manufactured by the company. The financial expenses pertains only to the production of titanium sponge and silicon products manufactured by the company, not to the silicon produced by the subsidiary. Therefore, to allocate this cost by sales value or cost-of-goods sold would be apportioning some of the expense to the silicon produced by the subsidiary. For calculating the cost of production, financial expense has been allocated on the basis of the relative cost of direct, long-term plant assets of the company. The financial expense of Sumitomo and Sumitomo Corporation of America have not been included in the cost of production because they engage only in export sales.

Comment 9: Petitioner argues that Osaka takes a significant cost of production credit for dividend income and income from the sale of negotiable securities. Established Department practice has been to disallow claims for cost of production credits from non-operational revenue that cannot be directly related to sales of the product under investigation. Under this precedent, the non-related income reported by Osaka cannot be factored into its production costs.

DOC Position: We agree. Dividend and securities sales income have been excluded from the interest calculation, because the securities were held by the company for investment purposes and were not related to the cost of production of titanium sponge.

Comment 10: Petitioner claims that for Toho, the United States price should be the price at which Toho sells its titanium sponge to Mitsui & Co., if the Department uses Toho's home market sales to Mitsui as the basis for determining whether home market sales are above cost of production.

DOC Position: We disagree. We found that Toho does not sell the merchandise to Mitsui in the United States market. Mitsui is Toho's agent and receives a commission for it services. Therefore, we have used the price charged by Mitsui to the first unrelated U.S. purchaser.

Comment 11: Petitioner argues that if the Department uses the Mitsui price to the first unrelated customer on U.S. sales as the basis for United States prices, it must reduce the price by the amount of the commission paid to Mitsui because that price reflects selling expenses in addition to Toho's indirect selling expenses.

DOC Position: We disagree. See DOC position to petitioner's comment two.

Comment 12: Petitioner contends that in its questionnaire response, Toho modified its normal accounting methodology in order to lower the cost of raw materials reported to the Department. DOC must use Toho's normal accounting practices provided they follow accepted principles.

DOC Position: We agree. See our response to petitioner's comment four.

Comment 13: Petitioner asserts that in responding to the Department's questionnaire, Toho excluded a good portion of its labor costs from the cost of production response submitted to the Department. Toho adjusted its labor costs by eliminating "excess labor" due to production problems at a plant that had been in operation for over two years. Respondent must report all labor costs so that the Department can accurately determine cost of production.

DOC Position: We agree. Actual labor costs incurred by the respondent were included in the cost of production for the determination of fair value. The Department does not permit the adjustment of actual costs incurred to a hypothetical efficient production cost model.

Comment 14: Petitioner claims that Toho understated its depreciation costs in its questionnaire response by treating depreciation on its idle facilities as a financial expense and by modifying its normal method of depreciation from a double declining balance to a straight line method.

DOC Position: We agree. See our response to Petitioner's comments four and six.

Comment 15: Petitioner argues that Toho improperly excluded its research and development directly related to titanium sponge costs from its stated

cost of production. The data must be corrected.

DOC Position: We agree. In conformity with department policy, the cost of production has been adjusted to reflect the cost of research and development in the measurement of fair value.

Comment 16: Petitioner contends that costs incurred by a plant that is dedicated to the production of titanium sponge are properly allocated to titanium sponge production. Toho erroneously included a number of plant costs in SG&A. Accuracy in cost calculation requires that these costs be allocated only to titanium sponge production.

DOC Position: We agree. The cost of production has been adjusted to reflect the full cost of factory administration allocated to the production of titanium sponge.

Comment 17: Petitioner argues that to the extent that Toho allocated SG&A expenses on the basis of gross margin, they should be recalculated.

In addition, Toho's SG&A expenses should be recalculated to (1) exclude dividend income, income from the sale of securities, and income from the sale of land, and (2) include retirement benefits for officers of the corporation.

DOC Position: The Department agrees that allocation of SG&A expenses on the basis of gross margin (the difference between sales revenue and cost of goods sold) is not a reasonable allocation method. For example on such basis, a product which is being sold at a price below the cost of sales would not absorb any selling, general and administrative expenses. Therefore, the allocation method has been changed to a method based on cost of production.

The income from dividends on stock held in other companies, security sales and land sales are not considered to be related to the production of titanium sponge. Therefore, we did not include the benefits of this income in the measurement of fair value.

The retirement benefits for officers of the corporation are considered a necessary expense of the corporation and the portion allocated to titanium sponge production has been included in the cost of production.

Comment 18: Petitioner argues that Nisso's United States price should be that to its unrelated trading company. Alternatively, if the Department uses the price from the unrelated trading company to the first unrelated U.S. purchaser, it should not allow any offset for indirect selling expenses in the home market because the U.S. commission is not comparable to any selling expense incurred in the home market.

DOC Position: We disaree. Nisso does not sell the merchandise to an unrelated trading company. Therefore, we used the price from the trading company to the first unrelated U.S. purchaser as the purchase price. We allowed an adjustment for indirect selling expenses as explained in our response to petitioner's comment three.

Comment 19: Petitioner objects to a number of major adjustments that Nisso claimed to its production costs resulting from the start-up of its titanium tetrachloride plant in April 1983, *e.g.*, labor, rent, raw materials, depreciation. A number of the adjustments requested cannot reasonably be viewed as legitimate "start-up" costs and were start-up costs might fairly be claimed, the absence of detailed supporting data is conspicuous. Petitioner claims that Nisso also cannot reasonably claim that lower-than-expected output levels where a "start-up" phenomenon when, instead, they were caused by the collapse of the market.

DOC Position: We agree. Under section 773(b) of the Act, one of the tests of selling below the cost of producing the product under investigation is that such sales "are not at prices which permit recovery of all costs within a resonable period of time in the normal course of trade." We believe that this provision contemplates start-up as a period when sales prices may not exceed production costs because cost may be extraordinary. Therefore, the Department usually would consider the cost related to start-up to determine if the sales price could meet the requirements of the above section. However, adjustments for start-up must be supported by sufficient documentation that would allow us to verify their accuracy. Because the Department considers the supporting documentation submitted by Nisso insufficient to support the accuracy of the start-up adjustment, the adjustment has been denied. Therefore, the cost of production employed in the calculation of fair value is based on the actual cost of producing titanium sponge for the period of the investigation.

Comment 20: Petitioner objects to Nisso's claim for electricity cost savings specifically related to titanium sponge production when most other costs to Nisso are budgeted on a plant-wide basis. To grant such a claim would allow Nisso to elect the specificity and method for stating individual costs.

DOC Position: We disgree. During the verification, Nisso submitted extensive information to support the allocation of electricity cost. We verified the information. Therefore, the submitted cost of electricity has been employed in the calculation of cost of production.

Comment 21: Petitioner contends that Nisso excluded a number of items from its reported selling, general, and administrative expenses. These are noted in the verification report and except for profits and loss from the sale or disposal of securities and fixed assets, they are properly attributable to titanium sponge production. There also appears to be a problem of understating financing costs.

DOC Position: The Department agrees with the petitioner. Therefore, the selling, general and administrative expenses have been adjusted to reflect all costs attibutable to the production of titanium sponge. Also, the allocation of financing expenses has also been corrected.

Respondents' Comments

Phibro

Comment 1: Even if Commerce issues an antidumping order as a result of this investigation, importations of titanium sponge certified for the National Defense Stockpile are exempt from all duties, including antidumping duties, according to long-standing administrative practice regarding a related tariff provision for defense procurement.

DOC Position: We have determined that it was reasonable for Phibro to expect, at the time it entered into a contract with GSA, that imports of titanium sponge certified for the National Defense Stockpile would enter free of duties, including antidumping duties. It had this expectation based on the longstanding administrative practice of exempting articles imported for defense procurement under TSUS 832. Because of Phibro's reliance on this past practice, we have excluded entries within the current titanium sponge procurement contract from the scope of our determination. We credit reliance here only because of twenty-five years of unbroken practice by two federal agencies, and congressional acquiescence in the practice.

Nevertheless, we do not view this decision as immutable. Further reliance on this past practice would not be well advised. We intend to undertake a careful and thorough review of issues relevant to the waiver of antidumping and countervailing duties under Sections 832 and 833, and will publish the results of this review within six months. During the course of this review, we will invite comments from all interested parties. We have decided to undertake this review in recognition of serious

implications for the domestic industry of a waiver of such duties, and our obligation to enforce vigorously the unfair trade laws.

Osaka Titanium Company

Comment 1: Osaka claims that it properly calculated the amounts for depreciation, titanium tetrachloride as a by-product, cost of manufacturing at current costs, R&D not related to production and sale of the product in 1983, reduction of finance costs by amount of income and Japanese enterprise tax exclusion in its response for the cost of production for titanium sponge.

DOC Position: See the DOC position to petitioner's comments four through eight.

Comment 2: OTC contends that Phibro and Sumitomo are OTC's agents and are related to OTC within the meaning of the antidumping law.

DOC Position: We have determined whether a producer and its agent are considered to be related, for the purposes of an antidumping investigation, by examining the percentage ownership one company has in the other. If a producer owns five percent or more of the agent, or vice versa, we will treat them as related. The degree of ownership between OTC and Sumitomo meets this test. The degree of ownership, however, between OTC and Phibro is so small as to be negligible. Therefore, for purposes of this investigation, we do not consider them to be related. It is clear that Sumitomo acts as an agent for OTC on U.S. sales. We also found evidence supporting OTC's and Pilbro's claims that Phibro acted as OTC's agent on non-GSA sales. Therefore, we have treated Phibro accordingly.

Toho Titanium Company

Comment 1: Toho asserts that the Department must determine that its home market sales at less than the cost of production (1) have been made over an extended period of time and (2) are not at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade, pursuant to section 773(b) of the Act. Toho argues that the six-month period which the Department examined is not an "extended period of time" nor a "reasonable period" within the meaning of the Act.

DOC Position: Toho submitted the company's plant utilization data for 10 years to support its allegation that the titanium sponge industry was in a trough in its business cycle during the period of investigation and that Toho's prices would allow recovery of all costs over a "reasonable period of time," were that period to include an entire business cycle. The adjustment was not considered by the Department because the information (1) did not justify Toho's position that its prices would recover all costs over a "reasonable period of time," and (2) was not submitted in a timely manner.

Comment 2: Toho claims that the Department should make an adjustment for extraordinary expenses such as excessive labor costs it incurred in the start-up of its new reduction facility.

DOC Position: We disagree. Section 773 of the Act and § 353.7 of the Commerce regulations (19 CFR 353.7) require the inclusion of labor costs in cost of production. While the Department recognizes that in certain circumstances such as during a start-up phase, there could be appropriate adjustments to the cost of production, in this case the plant had been in operation beyond a reasonable start-up period.

Comment 3: Toho claims that because Toho and Phibro are related, the Department should use prices charged by Phibro to its United States customers to calculate U.S. price, alternatively if Phibro is not related to Toho, then the Department should allow an adjustment for indirect selling expenses in the home market equivalent to Phibro's commission.

DOC Position: We disagree. We found that Phibro is not an agent for Toho but is the first unrelated U.S. purchaser. Therefore, we did not allow an offset for Phibro's commission.

Comment 4: The petitioner's assertion that Toho changed its cost accounting methodology to straight line depreciation solely for this investigation is wrong because Toho currently, for its financial and tax reporting, uses straight line depreciation.

DOC Position: We disagree. See DOC position to petitioner's comment four. The depreciation method used by the company on its books during the period of investigation was the double-declining balance methods not straight line. The Department accepted the method that the company used on its books during the period of investigation.

Comment 5: The Department should exclude all non-operating income and expenses from GS&A.

DOC Position: We disagree. See DOC position to petitioner's comment eight and nine.

Comment 6: Toho contends that the Department should exclude contributions to the retirement fund because Japanese law distinguishes these funds from salaries; the contributions are clearly non-operating in nature.

DOC Position: We disagree. See DOC position to petitioner's comment 17.

Nippon Soda Company

Comment 1: Nisso claims that the Department must adjust its computation of cost of production and constructed value to make due allowance for Nisso's start-up costs, including production inefficiencies and quality control problems. The production inefficiencies included area of problems in input usage rate, factory overhead costs, and labor costs.

DOC Position: We disagree. See DOC position to petitioner's comment 19.

Comment 2: Moreover. Nisso argues that the Department must amortize start-up costs over a reasonable cost recovery period in determining cost of production and constructed value. Nisso proposes using a five-year period for cost recovery.

DOC Position: We disagree. See DOC position to petitioner's comment 19.

Comment 3: The Department should exclude Nisso's interest expenses for long-term debt in calculating cost of production because Nisso rents facilities for production of sponge from its wholly-owned subsidiary. Its subsidiary's long-term debt costs are reflected in the rent paid by Nisso to the subsidiary. Inclusion of this expense in both rent and financing will result in double counting.

DOC Position: We disagree. The interest expense included in the cost of production was Nisso's expense, not the interest expense of its subsidiary. Therefore, Nisso's interest expense and the rent paid to its subsidiary were included in the calculation of cost of production. This did not result in double counting.

Comment 4: Nisso claims that the Department must grant it an adjustment for all indirect selling expenses in the home market because Commerce regulations provide that sales commissions paid in one market but not the other may be offset by indirect selling expenses in the market where no commissions and paid. Nisso, further contends that the decision in *Silver Reed America, Inc.* v. *United States,* slip op. 84–8 (Ct. of Int'l Trade. Feb. 1, 1984) invalidates the cap that the Department's regulation places on the offset provision.

DOC Position: We do not agree, that our regulation is invalid insofar as it limits the permissible offset to the amount of indirect selling expenses or the amount of commission paid in the other market, whichever is less. *Silver Reed,* which Nisso cites, addresses only the offset cap provision for exporter's

sales price, rather than the commission offset. Furthermore, that case is on appeal.

Verification

In accordance with section 776(a) of the Act, we verified the information provided by each company by using standard verification procedures, including examination of relevant sales and financial records of the company. Only data considered verified were used in arriving at our final determination. We also verified the responses submitted by Phibro, a purchaser and/or agent of the producer of this product.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will make its determination whether these imports are materially injuring or threatening materially injury, to a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or the threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue an antidumping order, directing Customs officers to assess an antidumping duty on titanium sponge from Japan entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the U.S. price.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we have directed the United States Customs Service to suspend liquidation of all entries of the subject titainium sponge from Japan, which are entered, or withdrawn from warehouse, for consumption on or after May 11, 1984. The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated weghted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. This suspension of liquidation will remain in effect until further notice. The Customs Service, however, will exclude those entries being imported in fulfillment of the contract dated October 28, 1983, between the General Services Administration and Philipp Brothers, Inc., for the National Defense Stockpile, from the suspension of liquidation and any bonding or deposit requirements. The weighted-average margin for each company is as follows:

	Margin (percent)
Osaka Titanium Co	15.09
Toho Titanium Co	34.25
Nippon Soda Co	56.37
All other manufacturers, producers and exporters	28.47

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 16783d(d)).

William T. Archey,

Acting Assistant Secretary for Trade Administration.

September 24, 1984.

[FR Doc. 84-25951 Filed 9-28-84; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic and the South Atlantic Fishery Management Council will meet October 24–26, 1984, at the Cavalier, 42nd and Atlantic Avenue, Virginia Beach, VA, to discuss the Surf Clam and Ocean Quahog Fishery Management Plan (FMP), Striped Bass FMP, Swordfish Plan, joint venture policy and other fishery management and administrative matters.

The meeting may be lengthened or shortened depending on progress of the agenda. The Council may go into closed session to discuss personnel and/or national security matters. A detailed agenda will be made available to the public about October 12. For further information contract John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901, telephone: (302) 674–2331.

Dated: September 25, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84-25879 Filed 9-28-84; 8:45 am]

BILLING CODE 3510-20-M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council, established by Section 302 of the Magnuson fishery Conservation and Management Act of 1976 (Public Law 94–265), will hold a public meeting to discuss measures to be included in the fishery management plan for the multi-species fishery in the New England and Mid-Atlantic areas of the fishery conservation zone. Other Council busienss may also be discussed as time permits.

The Council will convene a meeting October 10, 1984 at 9:30 a.m., Holiday Inn, Peabody, MA, and will adjourn at approximately 6:00 p.m. or upon conclusion of the agenda. For further information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Rte. 1), Saugus, Massachusets 01906, telephone: 617–231–0422.

Dated: September 25, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84-25880 Filed 9-28-84; 8:45 am]

BILLING CODE 3510-22-M

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Scientific and Statistical Committee of the Mid-Atlantic Fishery Management Council will convene a meeting on October 10, 1984 at the Best Western, Airport Inn, Philadelphia International Airport, Philadelphia, PA, to discuss the Surf Clam and Ocean Quahog Quota for 1985, vessel ID project, Striped bass FMP and other fishery related matters. The meeting may be lengthened or shortened depending upon progress of the agendas. For further information contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE, 11901, telephone: 302-674–2231.

Dated: September 25, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84-25881 Filed 9-28-84; 8:45 am]

BILLING CODE 3510-22-M

Receipt of Permit Applications

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*)

Send comments on applications to: Fees, Permits and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, or, send comments to the Fishery Managment Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231-0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19901, 302/674-2331

David H.G. Gould, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571-1366

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00818, 809/753-6910

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813/228-2815

Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 S.W. Mill Street, Portland, OR 97201, 503/221-6352

Jim H. Bryson, Executive Director, North Pacific Fishery Management Council, 605 W. Fourth Avenue, Anchorage, AK 99510, 907/271-4060

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 164 Bishop Street, Room 1608, Honolulu, HI 98613, 808/523-1368

For further information contact Shirley E. Whitted or John D. Kelly (Fees, Permits, and Regulations Division, 202-634-7432).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register**. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1984 have been received from the Government(s), shown below.

Dated: September 26, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

Code	Fishery	Regional fishery management councils
ABS	Atlantic Billfishes and Sharks.	New England, Mid Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA	Bering Sea and Aleutian Islands.	North Pacific.
GOA	Gulf of Alaska	North Pacific.
NWA	Northwest Atlantic Ocean.	New England, Mid-Atlantic.
SMT	Seamount Groundfish	Western Pacific.
SNA	Snails (Bering Sea)	North Pacific.
WOC	Pacific Groundfish (Washington, Oregon and California).	Pacific.
PBS	Pacific Billfishes and Sharks.	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Fishing operations	Activity code
Catching, processing and other support	1
Processing and other support only	2
Other support only	3
"Joint venture" in support of U.S. vessels	4

Nation vessel name, and vessel type	Application No.	Fishery	Activity
USSR:			
Svetlaja, Large Stern Trawler.	UR-84-0080	BSA, GOA, WOC	1
Ternei, Large Stern Trawler.	UR-84-0202	BSA, GOA, WOC	1
Sovgavanj, Large Stern Trawler.	UR-84-0234	BSA, GOA, WOC	1
Zelenograd, Large Stern Trawler.	UR-84-0634	BSA, GOA, WOC	1
Slavianskii, Large Stern Trawler.	UR-84-9765	BSA, GOA, WOC	1
Ukrainskiy Komsomolets, Large Stern Trawler.	UR-84-0771	BSA, GOA, WOC	3

Poland

Joint Venture—The government of Poland has applied for fishing vessel permits for the *Gemini* and the *Aquila* to engage in joint venture activities with Quest Export Trading Company, 790 North 4th Court, Coos Bay, Oregon 97420, tele: 503/267-5457, the American Partner. The application requests that Polish vessels receive transshipments of U.S. harvested Alaskan pollock in the amount of 5,000 mt from domestic vessels. The joint venture will take place in the BSA and GOA fisheries. A notice of receipt for the two vessels used in this operation was published June 19, 1984 at FR 25021 for the BSA, GOA and WOC fisheries.

For the Information of the Reader

Japan—Applications were received to authorize the vessels, *Shiga Maru, Kunisaki, Orion, Kisaragi Maru, Takeshima Maru, Hirotusuki Maru,* to conduct support authorities in the WOC fishery. A notice of receipt of vessel applications was published for these vessels 12/22/83 at FR 56669 for the BSA, GOA, SMT, and NWA fisheries for support activities.

Poland—The Polish Government has submitted an application to expand the Polish Alaskan joint venture to the GOA fishery requesting 15,000 mt Alaskan pollock. This is an extension of the operation that was published June 19, 1984, at FR 25022. An application was received to authorize the vessel, *Prof. Bugucki,* in the GOA fishery. A notice of receipt of that vessel application was published July 25, 1984, at FR 30005 for the BSA and WOC fisheries for directed fishing as well as joint venture. The North Pacific Fishery Management Council recommended approval of the GOA joint venture together with the one for the BSA on July 2, 1984. Therefore, the submission of this application complete administrative requirements and informs the reader of the approved JV operation.

USSR—The Union of the Soviet Socialist Republics has submitted an application for the vessel, ZELENOGRAD, to participate in the joint venture operation published December 2, 1983, at FR 54410. The notice also listed applications to authorize the Samara and the Korenga in the BSA and GOA.

[FR Doc. 84-25960 Filed 9-28-84; 8:45 am]

BILLING CODE 3510-22-M

Marine Fisheries Advisory Committee; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of subcommittee

meetings of the Marine Fisheries Advisory Committee (MAFAC). MAFAC was established by the Secretary of Commerce on February 17, 1971, to advise the Secretary on matters pertinent to the Department's responsibilities for marine fisheries resources and on means to facilitate cooperation between public and private interests in these matters.

DATES: The meetings will be held on October 15, 1984, 8:00 a.m. to 5:15 p.m. and on October 16, 1984, 8:00 a.m. to 11:45 a.m..

ADDRESS: The meetings will be held at the Howard Johnson's Motor Lodge, 320 Washington Street, Newton, Massachusetts.

Meeting Agenda: On October 15, 1984, the Budget and Strategic Planning Subcommittee will meet 8:00—9:30 a.m. to discuss the FY 1985 budget status; FY 1986 program; FY 1987 planning; NMFS objectives; and NMFS strategic plan. The Public Relations Working Group will meet 9:45–10:45 a.m. to discuss the need for establishment of a subcommittee. The State/Federal/Regional Councils Subcommittee will meet 11:00–12:30 p.m. to discuss the proposed NMFS policy for management of interjurisdictional coastal fisheries; and Federal fisheries responsibilities. The Habitat Conservation Subcommittee will meet 1:30–3:15 p.m. to discuss fishery resource considerations in Federal Energy Regulatory Commission procedures; NMFS habitat conservation policy; NOAA habitat alterations policy development; FY 1985 habitat budget; and Fish and Wildlife Coordination Act amendments. The Marine Recreational Fishing Subcommittee will meet 3:30–5:15 p.m. to discsuss status of the NMFS Marine Recreational Fishing Policy; the 1985 Boating Safety and Sport Fish Restoration Act; the NMFS draft program plan for development of marine recreational fisheries; and FWS/NMFS consulation on Dingell-Johnson marine recreational projects.

On October 16, 1984, the Consumer Affairs Subcommittee will meet 8:00–9:30 a.m. to discuss mandatory quality control inspection; benefits of seafood consumption; and seafood consumption survey. The Commercial Fishing Subcommittee will meet 9:45–11:45 a.m. to discuss joint ventures; phaseout of foreign fishing; development of U.S. export capacity; allocating surplus fishery resources; loan guarantees under capital Construction Fund (CCF); and economic impact of taxes deferred under CCF.

FOR FURTHER INFORMATION CONTACT: Ann Smith, Executive Secretary, Marine Fisheries Advisory Committee, National Marine Fisheries Service, Washington, D.C. 20235, telephone (202) 634–7220.

Dated: September 26, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management.

[FR Doc. 84–25979 Filed 9–28–84; 8:45 am]

BILLING CODE 3510–08–M

Office of the Secretary

[Docket No. 40921–4121]

Cost Comparison Review Scheduled for Commercial or Industrial Activity Performed by Government Personnel in the Office of the Secretary

September 25, 1984.

AGENCY: Office of the Secretary, Commerce.

ACTION: Notice.

SUMMARY: Notice is hereby given that pursuant to Office of Management and Budget (OMB) Circular A–76 and Department of Commerce Administrative Order 201–41, the Office of the Secretary intends to conduct a cost comparison of the following commercial activity performed by Government personnel in the Office of the Secretary, Office of Administrative Services Operations, and to issue an invitation for bids or request for proposals after the start date shown:

Description of activity and location	Review start date	Review completion
Operation of Commerce Library at the Herbert C. Hoover Building, Washington, D.C.	Oct. 1, 1984	Sept. 30, 1985.

An invitataion for bids or request for proposals will be announced in the *Commerce Business Daily* and in the **Federal Register.**

A contract or contracts may or may not result from the cost comparison of this activity. Results of the cost comparison will be made available to responding bidders or offerors, and other interested parties.

FOR FURTHER INFORMATION CONTACT: Jim Sullivan, Office of Management Analysis and Control, Office of the Assistant Secretary for Administration, Deparatment of Commerce, Washington, D.C. 20230, (202) 377–3743.

Hugh L. Brennan,

Director for Procurement and Administrative Services, Office of the Assistant Secretary for Administration, Department of Commerce.

[FR Doc. 84–25963 Filed 9–28–84; 8:45 am]

BILLING CODE 3510–03–M

[Docket No. 40920–4120]

Cost Comparison Review Scheduled for Commercial or Industrial Activity Performed by Government Personnel in the Office of the Secretary

September 25, 1984.

AGENCY: Office of the Secretary, Commerce.

ACTION: Notice.

SUMMARY: Notice is hereby given that pursuant to Office of Management and Budget (OMB) Circular A–76 and Department of Commerce Administrative Order 201–41, the Office of the Secretary intends to conduct a cost comparison of the following commercial activity performed by Government personnel in the Office of the Secretary, Office of Administrative Services Operations, and to issue and invitation for bids or request for proposals after the start date shown:

Description of activity and location	Review start date	Review completion
Operation of the Design and Graphics Services for the Department of Commerce, Washington, D.C.	Oct. 1, 1984	Sept. 30, 1985.

An invitation for bids or request for proposals will be announced in the *Commerce Business Daily* and in the **Federal Register.**

A contract or contracts may or may not result from the cost comparison of this activity. Results of the cost comparison will be made available to responding bidders or offerors, and other interested parties.

FOR FURTHER INFORMATION CONTACT: Marc J. Bloom, Office of Administrative Services Operations, Office of the Assistant Secretary for Administration, Department of Commerce, Washington, D.C. 20230 (202) 377–4983.

Hugh L. Brennan,

Director for Procurement and Administrative Services, Office of the Assistant Secretary for Administration, Department of Commerce.

[FR Doc. 84–25962 Filed 9–28–84; 8:45 am]

BILLING CODE 3510–03–M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

September 24, 1984.

The USAF Scientific Advisory Board Weapons Panel will meet on October 18 (8:00 a.m.–5:00 p.m.) and October 19

(8:00 a.m.–2:00 p.m.) 1984 at Eglin AFB, Florida to receive briefings on and to discuss current and planned weapon development programs. The panel will meet in building 1, room 204, on October 18 and in room 118 on October 19.

This meeting will concern matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) and therefore will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 84–25977 Filed 9–28–84; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF EDUCATION

Office of Management

Membership of the Performance Review Board

AGENCY: Department of Education.

ACTION: Notice of Membership of the Performance Review Board.

SUMMARY: Notice is hereby given of the names of members of the Department of Education Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Martha C. Brooks, Director, Executive Resources Division, Office of Personnel Resource Management Service, Office of Management, Department of Education, (Room 1085, FOB–6), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 472–3567.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Membership

The following executives of the Department of Education have been selected to serve on the Performance Review Board of the Department of Education: Linda Combs, Chairperson; Lawrence Davenport; Ralph Olmo; Joan Standlee; William Smith; Emerson Elliott; Earl Ingram; Richard Hastings; Sally Christensen; Theodore Sky; Harold Wright; Frances Norris; Hunter Harrison; Thomas Skelly; Norman Beller; Mark Blazey; Burton Taylor; John Yazurlo; Dick Hays; Paul Delker.

Dated: September 26, 1984.

Ralph J. Olmo,

Acting Deputy Under Secretary for Management.

[FR Doc. 84–25964 Filed 9–28–84; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2514–002, et al.]

Hydroelectric Applications (Appalachian Power Co., et al); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Change of Land Rights.

b. Project No.: 2514–002.

c. Date Filed: June 1, 1984.

d. Applicant: Appalachian Power Co.

e. Name of Project: Byllesby and Buck Project.

f. Location: On the New River in Carroll County, Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John W. Vaughan, President, Appalachian Power Company, 40 Franklin Road, Roanoke, VA 24009.

i. Comment Date: November 13, 1984.

j. Description of Lands to be Transferred: The applicant requests that 99.7 acres of project lands be transferred to the U.S. Forest Service. The lands would be developed by the U.S. Forest Service as a recreational area in accordance with the terms and conditions of the license. These project lands are designated as Parcel 2, Tract No. 5 and Parcel 2, Tract No. 3.

k. Purpose of Project: The project lands transferred would be developed as part of the Mount Rogers National Recreational area.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

2 a. Type of Application: License (More than 5 MW).

b. Project No.: 5931–002.

c. Date Filed: December 29, 1983.

d. Applicant: Roseburg Lumber Company.

e. Name of Project: Hatchet Creek.

f. Location: On Hatchet Creek in Shasta County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Charles Grenier, P.O. Box 697, Anderson, California 96007.

i. Comment Date: November 29, 1984.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high, 50-foot-long diversion weir at elevation 3,487 feet msl; (2) a 39-inch-diameter, 18,600-foot-long pipe; (3) a powerhouse containing a single generating unit with a rated capacity of 6,890 kW, operating under a head of 1,025 feet; (4) a switch gear; (5) a power transformer stepping voltage from 4,160 volts to 13.8 kV; (6) a 4,800-foot-long, 13.8-kV transmission line; (7) a substation increasing voltage to 230-kV; and (8) interconnection with Pacific Gas and Electric Company's (PG&E) transmission line existing at the proposed substation site. This project will not occupy any Federal lands. This application was filed pursuant to an 18-month preliminary permit issued to the Applicant on June 18, 1982. No new recreational facilities are proposed by the Applicant.

k. Purpose of Project: The estimated 19.57 GWh generated annually by the proposed project would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

3 a. Type of Application: Minor License.

b. Project No.: 7678–001.

c. Date Filed: May 9, 1984.

d. Applicant: Michiana Hydro-Electric Power Corporation.

e. Name of Project: Goshen Water Power.

f. Location: On the Elkhart River, in Elkhart County, Indiana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Charles. S. Hayes, 1634 East Jefferson Blvd., South Bend, Indiana 46617.

i. Comment Date: December 3, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing concrete dam approximately 200-feet in length and 15-feet high; (2) an existing pond with storage capacity of 3,100 acre-feet and normal pool elevation of 790.3-feet, m.s.l., (3) an existing headgate structure; (4) an existing hydraulic canal, approximately 1.5 miles long and 50-feet wide; (5) an existing concrete and brick powerhouse, approximately 50-feet by 25-feet, which will house two proposed turbine-generating units with a total installed capacity of 430 kW; (6) an existing tailrace; (7) about 250-feet of proposed transmission line at 12.5 kV;

(8) and appurtenant facilities. Applicant estimates that the average annual energy generation would be 2,275,000 kWh. Owner of the dam is the Elkhart County Park and Recreation Board. The powerhouse is owned by the City of Goshen.

k. Purpose of Project: The applicant anticipates the project power will be sold to the Northern Indiana Public Service Company.

l. This notice also consists of the following standard pargraphs: A3, A9, B, C and D1.

4 a. Type of Application: Preliminary Permit.

b. Project No.: 8138–000.

c. Date Filed: March 1, 1984.

d. Applicant: The Nuclear Energy Group, Inc.

e. Name of Project: Curwensville.

f. Location: On the West Branch of the Susquehanna River in Clearfield County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Brian B. Hegarty, The Nuclear Energy Group, Inc., Hydro Systems Division, 1000 RIDC Plaza, Suite 312, Pittsburgh, Pennsylvania 15238.

i. Comment Date: November 29, 1984.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Curwensville Dam and would consist of: (1) A proposed 150-foot-long, 9.5-foot-diameter penstock; (2) a proposed powerhouse which will contain an installed generating capacity of 1,750 kW; (3) a proposed 75-foot-long, 11.1-foot-diameter tailrace; (4) a proposed 240-foot-long, 12-kV transmission line; and (5) appurtenant facilities.

The Applicant estimates the average annual energy generation to be 6,130 MWh.

k. Purpose of Project: The applicant intends to sell the power produced at the site to the Pennsylvania Electric Company.

l. This notice also consists of the following standard pargraphs: A5, A7, A9, B, C & D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license. Applicant seeks issuance of a preliminary permit for a period of 18 months, during which time it would perform surveys and geologic investigations, determine the economic feasibility of the project, investigate the sale of project power, secure financing commitments, consult with Federal, State and local government agencies concerning the potential environmental effects of the project, and prepare an application for an FERC license, including an environmental report. Applicant estimates the cost of the work under the permit would be $40,000.

5 a. Type of Application: Preliminary Permit.

b. Project No.: 8235–001.

c. Date Filed: April 6, 1984.

d. Applicant: Hydroelectric Development, Inc.

e. Name of Project: Robertson Dam.

f. Location: On the Ashuelot River in Cheshire County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: John R. Spencer, Dufresne-Henry, Inc., Precision Park, North Springfield, Vermont 05150.

i. Comment Date: November 30, 1984.

j. Description of Project: The proposed run-of-river project would consist of:

Alternative A

(1) A new 12-foot-high, 150-foot-long concrete gravity dam, completely breached about 10 years ago; (2) a small reservoir with a normal surface elevation of 410 feet NGVD; (3) a new intake structure at the southern abutment of the dam; (4) a new 7-foot-diameter, 3,200-foot-long steel penstock; (5) a new powerhouse at the southern abutment of the Robertson Dam, with 3 turbine-generator units with a total installed capacity of 2,500 kW; (6) a new 40-foot-long tailrace; (7) a new 69-kV, 200-foot-long transmission line; and (8) other appurtenances. The Robertson Dam is a 10-foot-high, 150-foot-long rock-filled timber crib structure and impounds a small reservoir with a normal surface elevation of 382 feet NGVD. Applicant estimates an average annual generation of 7,000,000 kWh for this alternative.

Alternative B

(1) A new 12-foot-high, 150-foot-long concrete gravity dam (completely breached about 10 years ago); (2) a small reservoir with a normal surface elevation of 410 feet NGVD; (3) a new intake structure and powerhouse at the southern abutment of the dam with 2 turbine-generator units with a total installed capacity of 1,170 kW; (4) a new 40-foot-long tailrace; (5) the existing Robertson Dam and small reservoir, about 3,500 feet downstream; (6) a new intake structure and powerhouse at the southern abutment of the dam, with 2 turbine-generator units with a total installed capacity of 830 kW; (7) a new 40-foot-long tailrace; (8) a new 69-kV, 200-foot-long transmission line; and (9) other appurtenances. Applicant estimates an average annual generation of 6,000,000 kWh. The existing facilities are owned by Paper Services Mills, Inc.

k. Purpose of Project: Project energy would be sold to the New Hampshire Public Service Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 18 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of studies under the permit would be $48,000.

6 a. Type of Application: Application for license (under 5MW).

b. Project No.: 8366–000.

c. Date Filed: June 14, 1984.

d. Applicant: PRODEK, Inc.

e. Name of Project: Sumner Water Power Project.

f. Location: On Pecos River in DeBaca County, New Mexico.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. David N. Raffel, President, PRODEK, Inc., P.O. Box 12608, El Paso, Texas 79913.

i. Comment Date: December 3, 1984.

j. Description of Project: The proposed project would utilize the existing Bureau of Reclamation's Sumner Dam and Reservoir and would consist of: (1) A new steel penstock utilizing the existing outlet works near the right dam abutment; (2) a new powerhouse containing 6 turbine-generator units rated at 200 kW each for a total rated capacity of 1,200 kW; (3) draft tube outlets returning flow to the existing outlet works stilling basin; (4) an underground transmision line connecting to nearby existing lines; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 3,500,000 kWh. Project energy will likely be sold to the Farmer's Electric Cooperative, Inc., of New Mexico.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

7 a. Type of Application: Preliminary Permit.

b. Project No.: 8377–000.

c. Date Filed: June 21, 1984.

d. Applicant: Central Hydroelectric Corporation.

e. Name of Project: Isabella Hydroelectric Project.

f. Location: On Kern River in Kern County, California.

g. Filed Pursuant to: Federal Power Act section 791(a)–825(r).

h. Contact Person: Bart M. O'Keeffe, 3451 Longview Drive, Suite 130, North Highlands, California 95660.

i. Comment Date: November 29, 1984.

j. Description of Project: The proposed project would utilize the existing 193-foot-high dam and 13,900-acre reservoir of the U.S. Army Corps of Engineers' Isabella Project and would consist of: (1) A 13.67-foot-diameter steel liner, acting as a penstock, to be inserted into the existing outlet tunnel of the Isabella Dam; (2) an outlet structure, containing three-gated structures, (3) a 10,575-kW powerhouse containing three Francis type turbines each rated at 3,150 kW and a fourth unit rated at 1,125 kW; and (4) a 66-kV, 1,200-foot-long transmission line connecting with an existing 66-kV trransmission line of the Southern California Edison Company (SCE).

Purpose of Project: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would conduct engineering, hydrological, economic and environmental studies; conduct negotiations with the utility; and prepare FERC license application. No new roads are required to conduct the studies. The cost of studies to be completed for preliminary permit is estimated to be $75,000.

The estimated 26.5 million kWh generated annually by the project would be sold to SCE.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

8 a. Type of Application: Preliminary Permit.

b. Project No.: 8381–000.

c. Date Filed: June 22, 1984.

d. Applicant: Noah Corp.

e. Name of Project: Gallipolis Locks and Dam

f. Location: On the Ohio River in Gallia County, Ohio.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: James B. Price, President-Noah Corp,. P.O. Drawer 640, Aiken, South Carolina 29802.

i. Comment Date: December 3, 1984.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Gallipolis Locks and Dam and would consist of: (1) A proposed powerhouse which will contain an installed generating capacity of 70 MW; (2) a proposed 1.7-mile-long, 138–kV transmission line; and (3) appurtenant facilities. The Applicant estimates that the average annual energy generation will be 300 GWh.

k. Purpose of Project: It is the intent of the Applicant to sell the electric power produced to Virginia Electric Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, C, B, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 24 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $100,000.

9 a. Type of Application: Preliminary Permit.

b. Project No.: 8414–000.

c. Date Filed: July 9, 1984.

d. Applicant: Atlas Placer Power.

e. Name of Project: Rock Creek.

f. Location: On Rock Creek, partly within the Tahoe National Forest in Sierra County, California.

g. Filed Pursuant to: Federal Power Act., 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Fracis E. Borcalli, Ensign and Buckley, Consulting Engineers, 3327 longview Drive, North Highland, CA 95660.

i. Comment Date: December 3, 1984.

j. Description of Project: The proposed project would consist of: (1) An intake structure within the north bank of the Rock Creek at elevation 3,970 feet; (2) a 20-inch-diameter, 6,200-foot-long low pressure steel pipe; (3) a 20-inch-diameter; 900-foot-long penstock; (4) a powerhouse containing a single generating unit with a rated capacity of 1,600 KW operating under a head of 1,090 feet; and (5) a short tap into an existing Pacific Gas and Electric Company's 12–KV transmission line at the project site.

k. Purpose of Project: The project's estimated annual generation of 3 million KWH would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

10 a. Type of Application: Preliminary Permit.

b. Project No.: 8415–000.

c. Date Filed: July 9, 1984.

d. Applicant: Winona Hydro Partners.

e. Name of Project: Mississippi Lock & Dam No. 5.

f. Location: On the Mississippi River in Buffalo County, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ingolf Hermann, Winona Hydro Partners, 380 Ridgehill Professional Building, 2000 Plymouth Road, Minnetonka, Minnesota 55343.

i. Comment Date: December 3, 1984.

j. Description of Project: The Applicant would utilize an existing dam and lands under the jurisdiction of the U.S. Army Corps of Engineers. The proposed project would consist of: (1) A proposed intake structure; (2) proposed penstocks; (3) a proposed forebay; (4) a proposed powerhouse containing 5 generating units rated at 2 MW each, for a total installed capacity of 10 MW; (5) a proposed tailrace; (6) a proposed substation; (7) a proposed transmission line; and (8) appurtenant facilities. The estimated average annual energy output for the project is 55,000,000 kWh.

k. Proposed Scope of Studies Under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, Applicant would decide whether to proceed with an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $50,000.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 8420–000.

c. Date Filed: July 9, 1984.

d. Applicant: Essex County.

e. Name of Project: J & J Rogers/ AuSable Forks Project.

f. Location: On the West Branch of the AuSable River in Essex County, New York.

g. Filed Pursant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: William Johnston, County Planner, Essex County Planning Office, Church Street, Elizabethtown, New York 12932.

i. Comment Date: November 13, 1984.

j. Competing Application: Project No. 8137–000; Date Filed: March 1, 1984.

k. Description of Project: The proposed project would consist of: (1) The existing 34-foot-high, 103-foot-long concrete gravity J & J Rogers Dam; (2) a reservoir with a surface area of 8 acres,a storage capacity of 56 acre-feet, and a

normal water surface elevation of 665.5-feet m.s.l.; (3) an existing forebay structure; (4) a new 7-foot-diameter, 1100-foot-long steel penstock; (5) a new powerhouse containing two generating units having a total installed capacity of 900 kW; (6) a new tailrace; (7) a new 1100-foot-long, 13.5-kV transmission line; and (8) appurtenant facilities. The Applicant estimates the average annual generation would be 8100 MWH. The existing dam and project facilities are owned by the Applicant.

l. Purpose of Project: All project energy produced would be sold to the New York State Electric and Gas Corporation.

m. This notice also consists of the following standard paragraphs: A8, A9, B, C, and D2.

n. Proposed Scope and Cost of Studies Under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 18 months, during which time the Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under permit would be $108,000.

12 a. Type of Application: Preliminary Permit.

b. Project No: 8422–000.

c. Date Filed: July 9, 1984.

d. Applicant: Pine Island Pond Hydro.

e. Name of Project: Pine Island Pond Project.

f. Location: On the Cohas Brook in Hillsborough County, New Hampshire.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. § 791(a)–825(r).

h. Contact Person: Anne L. Warner, Pine Island Pond Hydro, 6–10 Pendleton Land, Londonderry, New Hampshire 03053.

i. Comment Date: November 29, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing 70-foot-long stone masonry dam varying in height from 12 to 15 feet; (2) a reservoir with a surface area of 70 acres, a storage capacity of 500 acre-feet, and a normal water surface elevation of 150 feet msl; (3) a new intake structure; (4) a new powerhouse containing one generating unit with a capacity of 90 kw; (5) a new tailrace; (6) a new transmission line 300 feet long; and (7) appurtenant facilities. The Applicant estimates the average annual generation would be 450,000 kwh. the existing dam is owned by Laurence E. Desrosiers.

k. Purpose of Project: All project energy produced would be sold to the Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope and Cost of studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time the Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under permit would be $20,000.

13 a. Type of Application: Preliminary Permit.

b. Project No: 8445–000.

c. Date Filed: July 19, 1984.

d. Applicant: Jerry Buckley.

e. Name of Project: Blue Hill Hydroelectric.

f. Location: West Fork Clear Creek and Blue Creek, in Clear Creek County, Colorado.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: William J. Kenney, 2600 Virginia Avenue, NW., Suite 209, Washington, D.C. 20037.

i. Comment Date: November 30, 1984.

j. Description of Project: The project would consist of all new facilities as follows: (1) A concrete overflow diversion structure approximately 5-feet high and 40-feet long, located on the West Fork of Clear Creek; (2) a second concrete overflow diversion structure approximately 4-feet high and 10-feet long, located on Blue Creek; (3) an impoundment on the West Fork of Clear Creek with a water surface area of about 0.1 acres and storage capacity of less than 0.2 acre-feet. The Blue Creek diversion structure will create essentially no impoundment. The normal water surface elevation at these two structures would be approximately 9340 feet, m.s.l.; (4) the main penstock extended from the Clear Creek diversion will be 36-inches in diameter and approximately 5300 feet long, and will be buried on the north side of the West Fork of Clear Creek. The penstock connecting the Blue Creek diversion dam and the main penstock will be 12-inches in diameter and approximately 300 feet long; (5) a powerhouse at the end of the main penstock approximately 40-feet by 20-feet, housing three turbine-generator units with a total installed capacity of 2,000 kw; (6) a tailrace channel about 100-feet long; (7) about 200-feet of 25-kV transmission line; and (8) appurtenant facilities. Applicant estimates that the average annual energy generation would be 7,400,000 kWh. The profect will affect lands of the Arapaho National Forest.

k. Purpose of Project: The Applicant anticipates that project energy will be sold to the Public Service Company of Colorado.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

m. Proposed scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be between $15,000 and $25,000.

14 a. Type of Application: Preliminary Permit.

b. Project No: 8454–000.

c. Date Filed: July 20, 1984.

d. Applicant: Fountain City Associates.

e. Name of Project: Mississippi Lock & Dam No. 5A.

f. Location: On the Mississippi River in Winona County, Minnesota and Buffalo County, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Joel Kirk Rector, CFS Financial Corporation, 324 South State Street, #500, Salt Lake City, Utah 84111.

i. Comment Date: December 3, 1984.

j. Description of Project: The Applicant would utilize an existing dam and lands under the jurisdiction of the U.S. Army Corps of Engineers. The proposed project would consist of: (1) A proposed intake structure; (2) a proposed penstock; (3) a proposed powerhouse containing 1 generating unit rated at 6,000 kW; (4) a proposed 69-kV, 800-foot-long transmission line; and (5) appurtenant facilities. The estimated average annual energy output for the project is 30,000,000 kWh.

k. Proposed Scope of Studier under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 24 months to conduct feasibility studies, prepare final design plans and a license application. Applicant estimates the cost for this work would be $100,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

15 a. Type of Application: Preliminary Permit.

b. Project No: 8459–000.

c. Date Filed: July 23, 1984.

d. Applicant: Geoffrey Shadroui.

e. Name of Project: Swanton.

f. Location: On the Missisquoi River in the Village of Swanton, Franklin County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Geoffrey Shadroui, 121 Maple Avenue, Barre, Vermont 05641.

i. Comment Date: December 3, 1984.

j. Description of Project: The proposed run-of-river project would consist of: (1) An existing 6-foot-high and 360-foot-long concrete dam; (2) a small reservoir with a surface area of 60 acres; (3) an existing 280-foot-long canal at the west side of the dam; (4) an existing concrete powerhouse with 3 new turbine-generator units with a total installed capacity of 1,000 kW; (5) a new 600-volt and 280-foot-long transmission line; and (6) other appurtenances. Applicant estimates an average annual generation of 3,600,000 kWh. Existing facilities are owned by the Village of Swanton.

k. Purpose of Project: Project energy would be sold to the Swanton Water and Light Department.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $50,000.

16 a. Type of Application: Preliminary Permit.

b. Project No: 8487–000.

c. Date Filed: August 2, 1984.

d. Applicant: Amador County.

e. Name of Project: Irish Hill Water and Power.

f. Location: On Dry Creek in Amador County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) (825(r).

h. Contact Person: Mr. Kenneth Deaver, Chairman of the Board, Amador County, 108 Court St., Jackson, California 95642.

i. Comment Date: November 13, 1984.

j. Competing Application: Project No. 8084.000; Date Filed: February 13, 1984.

k. Description of Project: The proposed project would consist of: (1) A 185-foot-high, 1,880-foot-long earthfill dam forming; (2) a reservoir with gross storage capacity of 100,000 acre-feet and water surface elevation of 575 feet; (3) a powerhouse, at the foot of the dam, with total installed capacity of 4,500 kW operating under a head 155 feet; and (4) a 4-mile-long, 60-kV transmission line connecting the powerhouse with the Applicant's proposed 60-kV transmission line under its application for preliminary permit for Project No. 8144. The public notice for Project No. 8144 was issued on June 27, 1984.

l. Purpose of Project: Project energy would be sold to a public or private utility.

m. This notice also consists of the following standard paragraphs: A8, A9, B, C & D2.

17 a. Type of Application: Preliminary Permit.

b. Project No: 8500–000.

c. Date Filed: August 9, 1984.

d. Applicant: New Valley Hydro Ltd.

e. Name of Project: New Valley Hydroelectric Project.

f. Location: On Big Creek, near town of Burnt Ranch, within the Shasta-Trinity National Forest, in Trinity County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Roy McDonald, 1121 L Street, Suite 1000, Sacramento, California 95814.

i. Comment Date: November 30, 1984.

j. Description of Project: The proposed project would consist of: (1) A 5-foot-high, 86-foot-long diversion dam on Big Creek at elevation 1,500 feet; (2) a 4-foot-diameter, 9,000-foot-long diversion conduit; (3) a 35-inch-diameter, 1,150-foot-long steel penstock; (4) a powerhouse with a total installed capacity of 2,540 kW operating under a head of 410 feet; and (5) a 5.5-mile-long, 12.5-kV transmission line to connect to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 10 million kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Application seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $70,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

18 a. Type of Application: Exemption (5 MW or less).

b. Project No: 6378–003.

c. Date Filed: August 1, 1984.

d. Applicant: Monterey County Flood Control and Water Conservation District.

e. Name of Project: Nacimiento Hydroelectric Project.

f. Location: On Nacimiento River in San Luis Obispo County, California.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 *as amended*).

h. Contact Person: Mr. Wayne MacRostie, Interim District Engineer, Monterey County Flood Control and Water Conservation District, P.O. Box 930, Salinas, California 93902.

i. Comment Date: November 8, 1984.

j. Competing Application: Project No. 8333, Date Filed: June 1, 1984 (Notice expires September 28, 1984).

k. Description of Project: The proposed project would consist of: (1) The Applicant's existing 190-foot-high earthfill Dam with a 1,650-foot-long crest at elevation 825 feet; (2) the existing 470,000-acre-foot Nacimiento Reservoir; (3) a proposed powerhouse, at the existing low-level outlet, containing two generating units with combined rated capacity of 3,175 kW operating under a head of 115 feet; and (4) a proposed 1,000-foot-long, 21-kV transmission line connecting the project with an existing Pacific Gas and Electric Company line northeast of the powerhouse.

l. Purpose of Project: The project's estimated annual generation of 9.5 million kWh would be sold to a local utility.

m. This notice also consists of the following standard paragraphs: A2, A9, B, C and D3a.

19 a. Type of Application: Exemption (5 MW or less).

b. Project No: 7893–001.

c. Date Filed: July 3, 1984.

d. Applicant: Bertha Wright Bertillion.

e. Name of Project: Wright Ranch Hydroelectric.

f. Location: On Rock Creek near the town of Goodyear Bar in Sierra County, California.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705, 2708 *as amended*).

h. Contact Person: Mr. Francis E. Borcalli, Borcalli, Ensign and Buckley, 3327 Longview Drive, North Highlands, California 95660.

i. Comment Date: November 1, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing

3½-foot-high diversion dam at elevation 2800 feet; (2) an existing 15-inch-diameter, 465-foot-long pipeline; (3) an existing 268-foot-long wooden flume; (4) an existing 2,400-foot-long ditch; (5) a 12-inch-diameter, 830-foot-long penstock; (6) a powerhouse containing a single generating unit with a rated capacity of 20 kW operating under 138 feet of head; and (7) a 400-foot-long transmission line connecting the powerhouse with an existing Pacific Gas and Electric Company (PG&E) line.

k. Purpose of Project: The estimated 130,000 kWh of project's annual generation will be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C & D3a.

20 a. Type of Application: Preliminary Permit.

b. Project No.: 8531–000.

c. Date Filed: August 17, 1984.

d. Applicant: SHA Development Company.

e. Name of Project: Albion Project.

f. Location: On the Blackstone River in Hartford County, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. David M. Coombe, Synergics, Inc., 410 Severn Avenue, Suite 409, Annapolis, Maryland 21403.

i. Comment Date: November 29, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing 300-foot-long, 25-foot-high concrete rollaway dam; (2) a reservoir with a surface area of 18 acres, a storage capacity of 235 acre-feet, and a normal water surface elevation of 87.7 feet m.s.l.; (3) an existing 1250-foot-long, 140-foot-wide headrace; (4) a proposed powerhouse containing two generating units with a total installed capacity of 900 kW; (5) an existing tailrace; (6) a new 13.2-kV transmission line; and (8) appurtenant facilities. The Applicant estimates the annual generation would be 3,660,000 kWh. The dam and existing project facilities are owned by American Tourister Inc.

k. Purpose of Project: All project power generated would be sold to the Blackstone Valley Electric Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 18 months, during which time the Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under permit would be $30,000.

Competing Applications

A1. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and shall hydroelectric exemption will not be accepted in response to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submissions of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days

after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A7.Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined

to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: September 26, 1984.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25998 Filed 9-28-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5550-001]

Modesto Irrigation District; Surrender of Preliminary Permit

September 25, 1984.

Take notice that Modesto Irrigation District, Permittee for the proposed Boyd's Hat Creek Project, has requested that its preliminary permit be terminated. The preliminary permit was issued on July 29, 1983, and would have expired December 31, 1984. The project would have been located on Hat Creek in Shasta County, California.

The Permittee filed its request on September 12, 1984, and the surrender of the preliminary permit for Project No. 5550 is deemed accepted as of September 12, 1984, and effective 30 days after the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25988 Filed 9-28-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6735-001]

Modesto Irrigation District; Surrender of Preliminary Permit

September 25, 1984.

Take notice that Modesto Irrigation District, Permittee for the proposed Duncan Canyon Creek Project, has requested that its preliminary permit be terminated. The preliminary permit was issued on November 22, 1983, and would have expired on April 30, 1985. The project would have been located on Duncan Canyon Creek, in Placer County, California.

The Permittee filed its request on September 4, 1984, and the surrender of the preliminary permit for Project No. 6735 is deemed accepted as of September 4, 1984, and effective 30 days after the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25989 Filed 9-28-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-2683-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget for review. The ICR describes the nature of the solicitation and the expected impact, and, where appropriate, includes the actual data collection instrument. The following ICRs are available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman (PM-223); Office of Standards and Regulations; Regulation and Information Management Division; U.S. Environmental Protection Agency; 401 M Street, SW., Washington, D.C. 20460; telephone (202) 382-2742 or FTS 382-2742.

Water Programs

National Pollutant Discharge Elimination System (NPDES)

The following new or modified information collection requests are included in the final rule on the NPDES Litigation Settlement Agreement, published on 26 September 1984. The permit authority is EPA or the appropriate state water pollution control agency.

- *Title:* Request for Modification, Revocation and Reissuance, or Termination of Permit [EPA #0029, 40 CFR 124.5(a)].

Abstract: Interested persons, including permittees, may request the permit authority to modify, revoke and reissue, or terminate a permit. The request may result in changes to the permit which increase or decrease the authorized pollutant discharge.

Respondents: Businesses and other organizations, state and local governments, and individuals.

- *Title:* Report of Planned Changes to Permitted Facility [EPA #0092, 40 CFR 122.41(L)(1)].

Abstract: A permittee must notify the permit authority of any planned physical alteration or addition to its facility that could significantly affect its discharge. The permit authority uses this information to dicide whether to modify any of the permit conditions.

Respondents: Businesses, state and local governments, and other organizations discharging wastewater.

- *Title:* Wastewater Permittee Report of Excessive Toxic Pollutant Discharge (EPA #0125, 40 CFR 122.42(a)].

Abstract: A permittee must report to the permit authority the discharge of those toxic pollutants (not limited in the permit) that exceed threshold levels specified in EPA regulations. The permit authority uses the information to assess the need for permit modification.

Respondents: Businesses.

- *Title:* Application for Permit to Discharge Wastewater—Form 2c [EPA #0238, 40 CFR 122.21(g), 122.45].

Abstract: Facilities intending to discharge any pollutant into national waters must obain an NPDES permit. Applicants submit the form to the permit authority, describing the facility location, receiving waters, and discharge. The permit authority approves/disapproves the application and sets permit conditions.

Respondents: Businesses and other organizations with existing manufacturing, commercial, mining or silvicultural operations.

- *Title:* NPDES Notice of Actual Production Level—Automotive

Manufacturing Industries [EPA #1025, 40 CFR 122.45(b)(2)(ii)].

Abstract: Permittees with approved alternate discharge limits must notify the permit authority when changes in production are anticipated. The permit authority then evaluates permit compliance based on the alternate limits

Respondents: Automotive manufacturing industries.

Title: Notification of Construction Prior to Wastewater Permit Issuance [EPA #1163, 40 CFR 122.29(c)(5)].

Abstract: If a new source begins construction prior to final permit issuance, it must notify the EPA Regional Administator of this fact. Such construction prior to final permit issuance constitutes grounds for permit denial.

Respondents: Businesses and other organizations discharging wastewater.

Agency PRA Clearance Requests Completed by OMB

EPA #0276, Application for Experimental Use Permit To Ship and Use a Pesticide for Experimental Purposes Only/Final Reports on EUP's, was approved 9/12/84 (OMB #2060–0013: expires 9/30/87).

EPA #0277, Registration of Pesticides Under section 3 of the Federal Insecticide, Fungicide and Rodenticide Act, was approved 9/07/84 (OMB #2000–0483; expires 9/30/87).

EPA #0871, Contractors and Assistant recipients Invention Report, was approved 9/07/84 (OMB #2000–0021: expires 6/30/87).

EPA #0997, NSPS for Petroleum Dry Cleaners—Reporting and Recordkeeping, was approved 9/13/84 (OMB #2060–0079: expires 9/30/87).

EPA #1001, Polychlorinated Biphenyls (PCB's): Exclusions, Exemptions and Use Authorizations, was approved 9/12/84 (OMB #2070–0008: expires 9/30/87).

EPA #1132, NSPS for Volatile Organic Liquid Storage—Reporting and Recordkeeping, was approved 9/06/84 (OMB #2060–0074: expires 9/30/87).

Comments on all parts of this notice should be sent to:

Nanette Liepman (PM–223) U.S. Environmental Protection Agency, Office of Standards and Regulations, Regulation & Information Management Division, 401 M Street, S.W., Washington, D.C. 20460; and

Rick Otis, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228) 726 Jackson Place, N.W., Washington, D.C. 20503

Dated: September 24, 1984.

Daniel J. Fiorino,

Acting Director, Regulation and Information Management Division.

[FR Doc. 84–25800 Filed 9–28–84; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51526A; FRL–2683–7]

Certain Chemicals; Premanufacture Notices, Extension of Review Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is extending the review period for an additional 90 days for premanufacture notices (PMNs) 84–884 and 84–885, under the authority of section 5(c) of the Toxic Substances Control Act (TSCA). The review period will now expire on December 22, 1984.

FOR FURTHER INFORMATION CONTACT: Jane Talarico, Chemical Control Division (TS–794), Environmental Protection Agency, Rm. E–611, 401 M St., SW., Washington, D.C. 20460 (202–382–3725).

SUPPLEMENTARY INFORMATION: On June 26, 1984, EPA received PMNs 84–884 and 84–885 for new chemical substances 1-methyl-1-phenylethyl peroxyester and carboxylic acid chloride respectively. The submitter claimed its identities, specific chemical identities, volumes, uses, and process information to be confidential business information. Notice of receipt was published in the **Federal Register** of July 13, 1984 (49 FR 28614). The original 90-day review period was scheduled to expire on September 23, 1984.

Based on its analysis, EPA finds that there is a possibility that the substance submitted for review in these PMNs may be regulated under TSCA. The Agency requires an extension of the review period, as authorized by section 5(c) of TSCA, to investigate further potential risk, to examine its regulatory options, and to prepare the necessary documents, should regulatory action be required. Therefore, EPA has determined that good cause exists to extend the review period for an additional 90 days, to December 22, 1984.

PMNs are available for public inspection in Rm. E–107, at the EPA headquarters, address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Dated: September 21, 1984.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 84–25936 Filed 9–28–84; 8:45 am]

BILLING CODE 6560–50–M

[SAB–FRL–2683–8]

Science Advisory Board; Environmental Health Committee; Open Meeting

Under Pub. L. 92–463, notice is hereby given that a one-day meeting of the Metals Subcommittee of the Environmental Health Committee (EHC) of the Science Advisory Board will be held on October 22, 1984, in the Anderson Conference Room, University of Rochester School of Medicine and Dentistry, 575 Elmwood Avenue, Rochester, New York. The meeting will start at 9:00 a.m. and adjourn not later than 4:00 p.m.

The principal purpose of the meeting will be to review and comment on the scientific adequacy of a preliminary draft document entitled Updated Mutagenicity and Carcinogenicity Assessment of Cadmium prepared by the Office of Health and Environmental Assessment (OHEA) in the Office of Research and Development (ORD). The document is dated April 1984 (EPA–600/8–83–025B) and is an Addendum to the Health Assessment Document (HAD) for Cadmium dated May 1981 (EPA–600/8–81–023) previously reviewed by the EHC at a public meeting on September 22–23, 1983.

For information on how to obtain copies of the draft HAD please write the ORD Publications Office, Center for Environmental Research Information, U.S. EPA, Cincinnati, Ohio 45268 or call (513) 684–7562.

The meeting will be open to the public. Any member of the public wishing to attend, participate, submit a paper, or wishing further information should contact Dr. Daniel Byrd, Executive Secretary to the EHC, or Mrs. Patti Howard, by telephone at (202) 382–2552 or by mail to: Science Advisory Board (A–101F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 before c.o.b. October 16, 1984.

Terry F. Yosie,

Staff Director, Science Advisory Board.

September 20, 1984.

[FR Doc. 84–25934 Filed 9–28–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–725–DR]

Major Disaster and Related Determinations; State of New York

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA–725–DR), dated September 25, 1984, and related determinations.

DATED: September 25, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287–0501.

NOTICE: Notice is hereby given that, in a letter of September 25, 1984, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288), as follows:

I have determined that the damage in certain areas of the State of New York, resulting from severe storms and flooding during the period of August 11 through 14, 1984, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93–288. I therefore declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Michael J. Chivinski of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared major disaster:

Allegany and Steuben Counties for Individual Assistance and Public Assistance.

Yates County as an adjacent county for Individual Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84–25918 Filed 9–28–84; 8:45 am]

BILLING CODE 6718–01–M

[Docket: FEMA–REP–4–NC–4]

South Carolina and North Carolina Radiological Emergency Plans

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of receipt of plans.

SUMMARY: For continued operation of nuclear power plants, the Nuclear Regulatory Commission requires approved licensee and State and local governments' radiological emergency response plans. Since FEMA has a responsibility for reviewing the State and local governments' plans, the State of South Carolina and the State of North Carolina have submitted their radiological emergency plans to the FEMA Regional Office. These plans support nuclear power plants which impact on South Carolina and North Carolina, and include those of local governments near Duke Power Companys' Catawba Nuclear Station located in York County, South Carolina.

Date Plans Received: North Carolina—September 5, 1984; South Carolina—September 11, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Major P. May, Regional Director, FEMA Region IV, 1371 Peachtree St., NE, Atlanta, GA 30309, 404/881–2400.

Notice: In support of the Federal requirement for emergency response plans, FEMA has a final Rule describing its procedures for review and approval of State and local governments' radiological emergency response plans. Pursuant to this FEMA Rule (44 CFR Part 350.8), "Review and Approval of State Radiological Emergency Plans and Preparedness", 45 FR 42341, the "North Carolina Emergency Response Plan in Support of the Catawba Nuclear Station" and the "Catawba Nuclear Station Site-Specific Plan" and the "York County Emergency Operation Plan" of South Carolina were received by the Federal Emergency Management Agency Region IV Office.

Included are plans for local governments which are wholly or partially within the plume exposure pathway emergency planning zones of the nuclear plants. For the Catawba Nuclear Station, plans are included for York County, South Carolina, and for Mecklenburg and Gaston Counties, North Carolina.

Copies of the plans are available for review at the FEMA Region IV Office, or they will be made available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests, as set out in subpart C of 44 CFR Part 5. There are 841 pages in the documents; reproduction fees are $0.10 a page payable with the request for copy.

Comments on the plan may be submitted in writing to Mr. Major P. May, Regional Director, at the above address within thirty days of this **Federal Register** Notice.

FEMA Rule CFR 350.10 also calls for a public meeting prior to approval of the plans. This meeting was held in accordance with FEMA Rule CFR 350.10 at the Clover Junior High School, Clover, South Carolina on February 17, 1984.

Thomas P. Credle,

Deputy Regional Director.

[FR Doc. 84–25917 Filed 9–28–84; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; North Europe-U.S. Pacific Freight Conference, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 202–000093–033.

Title: North Europe-U.S. Pacific Freight Conference.

Parties:

Blue Star Line, Ltd.,
Compagnie Generale Maritime,
Hapag-Lloyd AG,
Intercontinental Transport (ICT) B.V.,
A/S Det Ostasiatiske Kompagnie,
Johnson Line AB,
Sea-Land Service, Inc.,
Trans Freight Lines Inc.

Synopsis: The proposed amendment would adopt the Commission's mandated transitional provisions, restate the agreement and reformat the agreement in accordance with the provisions of the Shipping Act of 1984 and the Commission's implementing regulations.

Agreement No. 202–010485–001.

Title: United States Atlantic Ports/ Italy, France and Spain Freight Conference.

Parties:

Costa Armatori S.p.A.,
"Italia" di Navigazione S.p.A.,
Farrell Lines, Inc.,
Sea-Land Services, Inc.

Synopsis: The proposed amendment would authorize agreements with other conferences on inland European rates, add new independent action rules to replace interim mandatory provisions, add a new article governing service contracts and clarify that cargo exempt from tariff filing requirements is included within the scope of the agreement and that rates, charges and rules covering such cargo will be published in a conference tariff.

Agreement No. 224–010609–001.

Title: Jersey City Terminal Agreement.

Parties: Global Terminal and Container Services, Inc. (Global), American Coastal Line Joint Venture Inc. (ACLJVI).

Synopsis: This agreement amends the basic agreement by allowing Global to utilize the container demurrage provisions of ACLJVI's Freight Tariff FMC–3 and FMC–4 in lieu of Global's Terminal Tariff No. 1, which is specified in the basic agreement.

Agreement No. 221–010646.

Title: Oakland Marine Terminal Agreement.

Parties: The Port of Oakland (Port), Korea Marine Transport Co., Ltd. (KMTC).

Synopsis: Agreement No. 221–010646 provides that KMTC shall have the nonexclusive use of assigned premises at the Port's Outer Terminal, Berth No. 6, for the berthing, loading and discharging of its vessels and related operations in its transpacific container liner service. KMTC agrees that the assigned premises shall be the published, regularly scheduled Northern California port of call for its vessel operations. The dockage and wharfage charges paid by KMTC to the Port for the use of these facilities is established at 90% of the Port's applicable tariff rates. If KMTC generates in excess of 31,000 revenue tons per acre in a contract year, wharfage payments for such tonnage in excess of that amount will be refunded to KMTC. The agreement terminates August 31, 1989.

Dated: September 26, 1984.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84–25954 Filed 9–28–84; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Privacy Act of 1974; Systems of Rocords

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Amendment to System of Records FMSHRC–01.

SUMMARY: Added to the System of Record FMSHRC–01 (49 FR 30668, July 31, 1984) an additional routine use to allow the transfer of information to a debt collection agency. The addition was a recommendation from the Office of Personnel Management received during the 30 day comment period.

DATE: Comments are due on or before October 31, 1984. This system of record routine use will become effective October 31, 1984, unless the Commission publishes notice to the contrary.

ADDRESS: Send comments to the Executive Director, Federal Mine Safety and Health Review Commission, Room 612, 1730 K Street, N.W., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Catherine Sands Hiler, (202) 653–5625.

Signed this 24th day of September, 1984.

Catherine Sands Hiler,

Executive Director.

FMSHRC–01 is amended by adding a routine use as follows:

FMSHRC–01

SYSTEM NAME:

Payroll Records Federal Mine Safety and Health Review Commission.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

* * * * *

[FR Doc. 84–25922 Filed 9–28–84; 8:45 am]

BILLING CODE 6735–01–M

FEDERAL RESERVE SYSTEM

Bancorp Hawaii, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 19, 1984.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Bancorp Hawaii Inc.*, Honolulu, Hawaii, proposes to engage, through its

subsidiary, BHI Trust Limited (following the merger of BHI Trust Limited with and into Hawaiian Trust Company, Limited) in fiduciary and trust activities, including administration of testamentary and irrevocable trusts; administration of living trusts; estate settlement (probate); investment management and advice; guardianship services; employee benefit services (pension-profit sharing trusts and agencies); corporate trusteeships; stock transfer agencies; investment management and advice for corporations; bookkeeping, custody and bill paying for corporations; and ancillary services directly related to its trust activities. These activities would be conducted in the State of Hawaii and other United States jurisdictions in the Pacific Basin.

Board of Governors of the Federal Reserve System, September 25, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-25913 Filed 9-28-84; 8:45 am]

BILLING CODE 6210-01-M

FNB Financial Services Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and section 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 22, 1984.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *FNB Financial Services Corporation*, Reidsville, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Reidsville, Reidsville, North Carolina.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Lincoln Bancshares, Inc.*, Lincolnton, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers State Bank, Lincolnton, Georgia.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Dysart Bancshares, Inc.*, Dysart, Iowa; to become a bank holding company by acquiring 81 percent or more of the voting shares of Dysart State Bank, Dysart, Iowa.

2. *Evans Bancshares, Inc.*, Evansdale, Iowa; to become a bank holding company by acquiring 97.82 percent of the voting shares of First Security State Bank, Evansdale, Iowa.

3. *First Winnebago Corporation*, Winnebago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Winnebago, Winnebago, Illinois.

D. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Third Illinois Bancorp, Inc.*, Manchester, Missouri; to become a bank holding company by acquiring at least 89.2 percent of the voting shares of Lawrenceville National Bank & Trust Company, Lawrenceville, Illinois.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Chariton County Bancshares, Inc.*, Chariton, Missouri; to become a bank holding company by acquiring at least 80 percent of the voting shares of Chariton County Bank (formerly Commerce Bank of Brunswick), Brunswick, Missouri.

2. *Waterville Bancshares, Inc.*, Waterville, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens State Bank of Waterville, Waterville, Kansas.

F. **Federal Reserve Bank of Dallas.** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Capitalbank Corporation*, San Antonio, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First City Bank-Capital Park, San Antonio, Texas.

2. *Houston Bancorporation, Inc.*, Lake Jackson, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of Citizens National Bank, Houston, Texas.

3. *O'Donnell Bancshares, Inc.*, O'Donnell, Texas; to become a bank holding company by acquiring 92 percent of the voting shares of The First National Bank of O'Donnell, O'Donnell, Texas.

Board of Governors of the Federal Reserve System, September 25, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-25914 Filed 9-28-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84D-0284]

Drug Stability, Availability of Draft Revised Liquid Feed Supplement Guidelines

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft revised liquid feed supplements section of the Center for Veterinary Medicine's guidelines entitled "Drug Stability Guidelines." The guidelines describe practices and procedures that FDA views as acceptable in complying with the requirements for the manufacture of finished dosage forms in new animal drug applications and of the corresponding current good manufacturing practice regulations.

DATE: Comments by November 30, 1984.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests for copies of the draft revised guidelines section to the Division of Drug Manufacturing and Controls (HFV-140), Center for Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John R. Markus, Center for Veterinary Medicine (HFV-140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3442.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of the draft

revised liquid feed supplements section of the Drug Stability Guidelines prepared by the Center for Veterinary Medicine (the Center). A notice of availability of the Drug Stability Guidelines was first published in the Federal Register of November 2, 1976 (42 FR 48150). Since then, the guidelines have been revised from time to time. In the Federal Register of July 22, 1980 (45 FR 48945), FDA announced the availability of the latest revised guidelines. The guidelines are intended to be used as an aid in designing and conducting stability studies to meet the requirements of § 514.1(b)(5)(x) (21 CFR 514.1(b)(5)(x)). Section 514.1 specifies the proper form and the information required for new animal drug approval under section 512(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C 360b(b)). The guidelines apply to dosage form drugs and to drugs used in medicated feeds.

The Center, through review of applications and meetings with industry, has determined that the liquid feed supplements section of the guidelines is outdated. Use of different types of carrier media (e.g., thixotropic agents) for the transport of drugs to animals has required the Center to develop guidelines that provide for chemical and positional stability of drugs in liquid feeds. For those liquid feed matrices in which the drug is completely soluble, chemical stability testing should be done. Under this condition, the drug is assumed to be homogeneously distributed throughout the matrix. For those liquid feed matrices in which the drug is not completely soluble, positional stability testing should be done. Under this condition, the drug is dispersed throughout the matrix by a suspending or thickening agent. Because of incomplete solubility, the drug is dispersed in a layering effect. The draft revised guidelines provide for use of mixing equipment or static (nonmixing) situations.

This notice and the draft revised guidelines are issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to establish procedures or standards of general applicability that are not legal requirements but are acceptable to the agency. If a person chooses to depart from the practices and procedures set forth in the guidelines, that person may wish to discuss the matter further with the agency to prevent an expenditure of money and effort on work that may later be found to be unacceptable.

This draft revised section of the guidelines supersedes the corresponding section of the existing guidelines, and may be used immediately. The agency advises uses of the stability guidelines that it expects to issue a draft revision of other parts of the guidelines in the near future. The revised guidelines will include the section which is the subject of this notice.

Interested persons may, on or before November 30, 1984, submit written comments on the draft revised guidelines to the Dockets Management Branch (address above). Two copies of comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. Received comments and related materials may be seen in the Dockets Management Branch, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 25, 1984

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-25882 Filed 9-26-84; 11:11 am]

BILLING CODE 4160-01-M

National Institutes of Health

Dental Research Programs Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Dental Research Programs Advisory Committee from 9:00 a.m. to recess on November 1 and from 9:00 a.m. to adjournment on November 2, 1984, in Conference Room B1N30B, Building 38A, National Institutes of Health, Bethesda, Maryland.

The entire meeting will be open to the public to discuss research progress and ongoing plans and programs. Attendance by the public will be limited to space available.

Dr. Anthony Rizzo, Deputy Associate Director for Extramural Programs, NIDR, NIH, Westwood Building, Room 504, Bethesda, Maryland 20205 (telephone 301 496-7748) will furnish rosters of committee members, a summary of the meeting, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Programs Nos. 13.121—Diseases of the Teeth and Supporting Tissues; Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122—Disorders of Structure, Function, and Behavior, Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13.845—Dental Research Institutes, National Institutes of Health)

Dated: September 24, 1984.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 84-25904 Filed 9-28-84; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Resources; Meeting of the National Advisory Research Resources Council

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Research Resources Council, Division of Research Resources (DRR), October 10 and 11, 1984, Conference Room 6, Building 31-C, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20205.

This meeting will be open to the public October 10 from 9:00 a.m. to 5:30 p.m. to discuss administrative details such as the Report of the Director, DRR, budget and legislative updates, and other issues. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on October 11 from 8:30 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. The applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, DRR, Building 31, Room 5B10, National Institutes of Health, Bethesda, Maryland 20205, (301) 496-5545, will provide summaries of the meeting and rosters of the Council members. Dr. James F. O'Donnell, Deputy Director, DRR, Building 31, Room 5B03, National Institutes of Health, Bethesda, Maryland 20205, (301) 496-6023, will provide substantive program information and will receive any comments pertaining to this announcement.

Dated: September 24, 1984.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 84-25905 Filed 9-28-84; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Child Health and Human Development; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of meetings of the review committees of the National Institute of

Child Health and Human Development for November 1984.

These meetings will be open to the public to discuss items relative to committee activities, including announcements by the Director, Scientific Review Program, and executive secretaries, for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6) Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, these meetings will be closed to the public for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Marjorie Neff, Committee Management Officer, NICHD, Landow Building, Room 6C08, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of committee members.

Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each committee.

Name of Committee: Population Research Committee.

Executive Secretary: Dr. Dinesh Sharma, Room 6C03, Landow Building, Telephone: 301, 496–1696.

Date of Meeting: November 8–9, 1984.

Place of Meeting: Landow Building, Conference Room A.

Open: November 8, 1984, 9:00 a.m.—10:00 a.m.

Closed: November 8, 1984, 10:00 a.m.—5:00 p.m. November 9, 1984, 9:00 a.m.—adjournment.

Name of Committee: Matenal and Child Health Research Committee.

Executive Secretary: Dr. Jane Showacre, Room 6C03, Landow Building, Telephone: 301, 496–1696.

Date of Meeting: November 13–14, 1984.

Place of Meeting: Landow Building, Conference Room A.

Open: November 13, 1984, 9:00 a.m.—10:00 a.m.

Closed: November 13, 1984, 10:00 a.m—5:00 p.m. November 14, 1984, 9:00 a.m.—adjournment.

Name of Committee: Mental Retardation Research Committee.

Executive Secretary: Dr. Stanley Slater, Room 6C03, Landow Building, Telephone: 301, 496–1696.

Date of Meeting: November 15–16, 1984.

Place of Meeting: Landow Building, Conference Room A.

Open: November 15, 1984, 1:00 p.m.—2:00 p.m.

Closed: November 15, 1984, 2:00 p.m.—5:00 p.m. November 16, 1984, 9:00 a.m.—adjournment.

(Catalog of Federal Domestic Assistance Program No. 13.864, Population Research and No. 13.865, Research for Mothers and Children, National Institutes of Health.)

Dated: September 24, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84–25906 Filed 9–28–84; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; The Ad Hoc Working Group of the NCI Thyroid/Iodine-131 Assessments Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the NCI Thyroid/Iodine-131 Assessments Committee ad hoc Working Group, National Cancer Institute, October 10–11, 1984, Building 31A, Conference Room 2, National Institutes of Health, Bethesda, Maryland 20205. The entire meeting will be open on October 10 from 2:00 p.m. to approximately 5:00 p.m. and on October 11 from 9:00 a.m. to adjournment. Attendance by the public will be limited to space available.

The meeting is being held by the ad hoc Working Group to discuss the activities of the NCI Thyroid/Iodine-131 Assessments Committee.

Requests for information on the meeting should be directed to Dr. Victor H. Zeve, National Cancer Institute, Landow Building, Room 3A10, Bethesda, Maryland 20205 (301/496–6111).

Dated: September 24, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84–25902 Filed 9–28–84; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Sickle Cell Disease Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, National Heart, Lung, and Blood Institute, October 26, 1984. The meeting will be held at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205, Building 31, Conference Room 7, C-Wing. The entire meeting will be open to the public from 9:00 a.m. to 5:00 p.m., to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A21, (301) 496–4236, will provide summaries of the meeting and roster of the Committee members.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: September 24, 1984.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 84–25903 Filed 9–28–84; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute on Aging, October 16–18, 1984, to be held at the Gerontology Research Center, Baltimore, Maryland. The meeting will be open to the public from 8:30 a.m. on Tuesday, October 16 until approximately 4:00 p.m. and will again be open to the public from 8:30 a.m. on Wednesday, October 17 until 4:00 p.m. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on October 16 from 4:00 p.m., until recess, and again on October 17 from 4:00 p.m., until adjournment on October 18 for the review, discussion and evaluation of individual programs and projects conducted by the National Institutes of Health, NIA, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, NIA Building 31, Room 2C–05, National Institutes of Health, Bethesda, Maryland 20205, (telephone: 301/496–5898) will provide a summary of the meeting and a roster of committee members. Dr. Richard C. Greulich, Scientific Director, NIA, Gerontology Research Center, Baltimore City Hospitals, Baltimore, Maryland 21224, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No 13.866, Aging Research, National Institutes of Health.)

Dated: September 24, 1984.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 84-25907 Filed 9-28-84; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Board of Scientific of Cancer Etiology; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Etiology on October 18-19, 1984, Building 31, C Wing, Conference Room 6, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205. The meeting will be open to the public from approximately 1:00 p.m. to recess on October 18, and from 9:00 a.m. to adjournment on October 19, for discussion and review of the Division budget and review of concepts for grants and contracts. Attendance by the public will be limited to space available.

The Board of Scientific Counselors meeting will be closed to the public from 9:00 a.m. to approximately 1:00 p.m. on October 18, 1984, in accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual programs and projects conducted by the Division of Cancer Etiology. These programs, projects, and discussions could reveal personal information concerning individuals associated with the program and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. David McB. Howell, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Etiology, National Cancer Institute, Building 31, Room 11A04, National Institutes of Health, Bethesda, Maryland 20205 (301/496-6927) will furnish substantive program information.

Dated: September 24, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84-25908 Filed 9-28-84; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Allergy and Infectious Diseases, on October 29, 30, and 31. On October 29 and 30 the meeting will be held in Conference Room 428, Building 5, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD. On October 31, the meeting will be held in Conference Room 7A-24, Building 31, National Institutes of Health, Bethesda, Maryland.

The meeting will be open to the public on October 29 from 8:30 a.m. until recess and on October 30 from 8:30 a.m. until noon. During this open session, the permanent staff of the Laboratory of Parasitic Diseases will present and discuss their immediate past and present research activities.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting of the Board will be closed to the public on October 30 from 1:00 p.m. until recess and again on October 31 from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personal qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Thomas Flavin, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A-32, National Institutes of Health, Bethesda, Maryland 20205, telephone (301) 496-5717, will provide summaries of the meeting and rosters of the Board members.

Dr. Kenneth W. Sell, Executive Secretary, Board of Scientific Counselors, NIAID, National Institutes of Health, Building 10, Room 11C103, telephone (301) 496-3006, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13-301, National Institutes of Health)

Dated: September 24, 1984.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 84-25909 Filed 9-28-84; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Institute Board of Scientific Counselors, November 29 and 30, 1984, National Institutes of Health, 9000 Rockville Pike, Building 10, Room 7N214, Bethesda, Maryland 20205. This meeting will be open to the public from 9:30 a.m. to 4:00 p.m. November 29 and from 9:30 a.m. to 12 noon on November 30 for discussion of the general trends in research relating to cardiovascular, pulmonary and certain hematologic diseases. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 12 noon to adjournment November 30 for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Public Inquiry Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496-4236, will provide summaries of the meeting and rosters of the Board members. Substantive program information may be obtained from Dr. Jack Orloff, Director, Division of Intramural Research, NHLBI, NIH, Building 10, Room 7N214, phone (301) 496-2116.

Dated: September 24, 1984.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 84-25910 Filed 9-28-84; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Environmental Health Sciences; Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, NIEHS, October 10-11, 1984, in Building 101 Conference Room, South Campus, NIEHS, Research Triangle Park, North Carolina.

This meeting will be open to the public 9 a.m. to 12 noon on October 10, for the purpose of presenting an overview of the organization and conduct of research in the Laboratory of Pulmonary Functions and Toxicology. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6) of Title 5 U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be clsoed to the public on October 10 from approximately 1 p.m. to adjournment on October 11, for the evaluation of the programs of the Laboraltory of Pulmonary Functions and Toxicology, including the consideration of personnel qualifications and performance, the competence of individual investigators, and similar itmes, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Charles E. Carter, Scientific Director, NIEHS Research Triangle Park, N.C. 27709, telephone (919) 541–3205, FTS 629–3205, will furnish summaries of the meeting, rosters of committee members and substantive program information.

Dated: September 24, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84–25911 Filed 9–28–84; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Privacy Act of 1974; Altered System of Records

AGENCY: Department of Health and Human Services; Public Health Service.

ACTION: Notification of altered Privacy Act system of records 09–15–0036, "Indian Health Service Scholarship Programs, HHS/HRSA/IHS."

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing notice of a proposal to alter system of records 09–15–0036, "Health Professions Preparatory Scholarship Program for Indians and Health Professions Scholarship Program Record System, HHS/HRSA/IHS."

The purpose of the alteration is to expand the existing system of records with a view toward administrating all future Indian Health Service (IHS) scholarship programs in the Health Resources and Services Administration (HRSA), not just the two scholarship programs currently covered. We are also proposing to alter one routine use.

PHS invites interested persons to submit comments on the proposed alteration on or before October 31, 1984.

DATE: PHS has sent a report of altered system to the Congress and to the Office of Management and Budget (OMB) on September 19, 1984. The alteration of this system of records will be effective 60 days from the date submitted to OMB unless PHS receives comments on the alteration which would result in a contrary determination.

ADDRESS: Address comments to the HRSA Privacy Act Coordinator, Department of Health and Human Services, Room 14A–20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. We will make comments received available for public inspection at the above address during normal business hours, 8:30 a.m.–5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra L. Perry, Privacy Act Coordinator, Health Resources and Services Administration, Room 14A–20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–3780. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: IHS currently maintains the Health Professions Preparatory Scholarship Program for Indians and the Health Professions Scholarship Record System. The purpose of the system of records is to select candidates for the two IHS scholarship programs, to monitor the scholarship-related activities of the selected candidates, and to evaluate the effectiveness of the scholarship programs.

The Indian Health Care Amendments of 1980, Section 3(b)(1) of Pub. L. 96–537, provided for the addition of a third scholarship program, entitled "Health Professions Pregraduate Scholarship Program for Indians." IHS intends to expand the "Categories of Individuals" section and the "Categories of Records in the System" section to accommodate the third scholarship program by broadening the language to include all individuals who have applied for and have received any scholarship grant administered by IHS.

To reflect the expansion of this umbrella system of records, IHS has changed the name of the record system from "Health Professions Preparatory Scholarship Program for Indians and Health Professions Scholarship Program Record System, HHS/HRSA/IHS" to "Indian Health Service Scholarship Programs, HHS/HRSA/IHS."

To reflect the requirements of the Debt Collection Act of 1982, the "Purpose" section has been modified to include the statement, "Records may be transferred to System No. 09–15–0045, Health Resources and Services Administration Loan Repayment/Debt Management Record System, HHS/HRSA/OA, for debt collection purposes."

The fourth routine use has been modified to remove the requirement that an annual list of scholarship recipients be published in the **Federal Register**, and now reads "The Indian Health Service will provide to any person requesting it a list of recipients of scholarship grants, including the school attended and tribal affiliation of each recipient." Disclosure to persons requesting this nonsensitive information in the record system is provided for by the terms of the final rules and regulations implementing the Indian Health Care Improvement Act Programs (49 FR 7380–7381, dated February 29, 1984, § 36.374).

In addition to the above-mentioned alterations and modifications, the "Authority for Maintenance of the System," "Disclosure to Consumer Reporting Agencies," "Safeguards," "Retention and Disposal," "Record Access Procedures," and the "Contesting Record Procedure" sections have been revised, either to enhance clarity and specificity, or to incorporate normal updating changes.

This system notice was last published in the **Federal Register** on November 29, 1983 (48 FR 53902–53903). We are republishing the system notice in its entirety below to incorporate the proposed alterations and modifications.

Dated: September 19, 1984.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

09–15–0036

SYSTEM NAME:

Indian Health Service Scholarship Programs, HHS/HRSA/IHS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Human Resources Management Branch, Indian Health Service, 5600 Fishers Lane, Room 6A–23, Rockville, Maryland 20857 and
Washington National Records Center, 4205 Suitland Road, Suitland, Maryland 20832

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied for, persons who have been approved to receive,

persons who are receiving, and persons who have received scholarship grant funds administered by the Indian Health Service (IHS) since January 1976, such as, but not necessarily limited to, the Health Professions Pregraduate Scholarship Program for Indians, the Health Professions Preparatory Scholarship Program for Indians, and the Health Professions Scholarship Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include all grant applications; associated forms from selected applicants only; selection and performance records; progress reports; vouchers of expenditures; and social security numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 103 of the Indian Health Care Improvements Act, 25 U.S.C. 1613, Health Professions Preparatory Scholarship Program for Indians, and the Health Professions Pregraduate Scholarship Program for Indians.

Section 104 of the Indian Health Care Improvement Act, 42, U.S.C. 294y–1, Health Professions Scholarship; Program.

Section 4 of the Debt Collection Act of 1982, Pub. L. 97–365, 5 U.S.C. 5514 note, Requirement That Applicant Furnish Taxpayer Identifying Number.

PURPOSE OF THE SYSTEM:

The purpose of this system of records is to select candidates for the Indian Health Service scholarship programs, to monitor the scholarship-related activities of candidates selected, and to evaluate the effectiveness of the programs. Scholarship-related activities are defined as enrollment and attendance in IHS-funded courses, the receipt by the student of a monthly stipend and the expenditure of funds by the student for the purchase of supplies (including books), equipment, tuition, fees and other reimbursable and justified expresses authorize by IHS.

Records may be transferred to system No. 09–15–0045, Health Resources and Services Administration Loan Repayment/Debt Management Records System, HHS/HRSA/OA," for debt collection purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Records may be disclosed to a congressional office in response to an inquiry from that office made at the request of the subject individual.

2. Records may be disclosed to authorized persons employed by the grantee institution (the institution which the recipient of a scholarship grant is attending) as needed for the administration of a scholarship grant award.

2. Records may be disclosed to other Federal agencies that also provide scholarship funding at the request of these Federal agencies in conjunction with a matching program conducted by these Federal agencies to detect or curtail fraud and abuse in Federal scholarship programs, and to collect delinquent loans or benefit payments owed to the Federal Government.

4. IHS will provide to any person requesting it a list of recipients of scholarship grants, including the school attended and tribal affiliation of each recipient.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 522a(b)(12): Disclosure may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owned to the Federal Government; typically, to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records. Disclosure of records is limited to the individual's name, address, Social Security number, and other information necessary to establish the individuals' identity; the amount, status, and history of the claim; and the agency or program under which the claim arose. This disclosure will be made only after the procedural requirements of 31 U.S.C. 3711(f) have been followed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in folders, ledgers, and on electronic word processing diskettes.

RETRIEVABILITY:

Records which identify individual persons are indexed by name or identification number of scholarship grant applicant or recipient.

SAFEGUARDS:

1. Authorized Users: Access is limited only to authorized personnel in the performance of their duties. Authorized personnel include: the system manager, his/her staff, IHS Area/Program Scholarship Coordinators, IHS Headquarters Branch Chiefs acting as advisors to scholarship recipients, staff of the IHS grants Management Office, and IHS Headquarters and Area/Program Offices.

2. Physical Safeguards: Paper records are stored in locked file cabinets. The records storage area is secured during off-duty hours.

Word processing diskettes are stored in areas where fire and life safety codes are strictly enforced. Word processing diskettes are off-loaded and stored in locked cabinets when not in use.

3. Procedural Safeguards: All IHS personnel who make use of records contained in this system are made aware of their responsibilities under the provisions of the Privacy Act and are required to maintain Privacy Act safeguards with respect to such records.

The records storage area is not left unattended during office hours, including lunch hours. Records are not removed from this area in which they are maintained in the absence of proper charge-out procedures. Twenty-four-hour, seven-day security guards perform random checks on the physical security of the records storage area and word processing diskettes. A data set name controls the release of data to only authorized users.

When copying records for authorized purposes, care is taken to ensure that any imperfect pages are not left in the reproduction room where they can be read, but are destroyed or obliterated.

4. Implementing Guidelines: DHHS Chapter 45–13 and supplementary Chapter PHS.hf: 45–13 of the General Administration Manual; and, Chapter PHS.i.1–602, of the PHS Grants Administration Manual, "Information on Individuals Obtained in Grant Application."

RETENTION AND DISPOSAL:

Scholarship application materials are returned to unsuccessful applicants. Records in the system are retained by IHS for one year after the final award payment has been made by IHS and are then retired to a Federal Records Center. Records are shredded or burned by the Federal Records Center four years after they are received.

SYSTEM MANAGER AND ADDRESS:

Chief, Human Resources Development Branch, Indian Health Service, 5600 Fishers Lane, Room 6A–23, Rockville, Maryland 20857.

NOTIFICATION PROCEDURE:

Requests by mail or in person: To substantiate the identity of subject individual seeking access to his/her scholarship grant application and/or

performance record the requester must provide his/her name, signature, and Grant Identification Number; and to identify the record sought the requester must provide dates of attendance, school(s) of attendance, and field or speciality or courses taken.

In addition, the requester is informed that provision of the SSN may assist in the verification of the identity of the person as well as the identification of his/her record. The requester is informed that provisions of his/her SSN is voluntary and that the individual will not be refused access to his/her record for failure to disclose his/her SSN.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also provide a reasonable description of the record being sought.

Requesters may also request an accounting of disclosures that have been made of their record, if any.

CONTESTING RECORD PROCEDURES:

Contact the system manager, provide a reasonable description of the record, specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individuals whose records are contained in the sytem, third parties who provide reference concerning the subject individuals, and schools that individuals in the system attend or have attended.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 25923 Filed 9-28-84; 8:45 am]
BILLING CODE 4160-16-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974—Revision and Update of Notices of Systems of Records

This notice updates and revises the information which the Department of the Interior has published describing systems of records maintained which are subject to the requirements of section 3 of the Privacy Act of 1974, as amended, 5 U.S.C. 552a. Except as noted below, all changes being published are editorial in nature, and reflect organization changes and other minor administrative revisions which have occurred since the previous publication of the material in the **Federal Register.**

A composite system of records notice is being established to describe the payroll, attendance, and leave records contained in the Department's integrated payroll/personnel (PAY/PERS) information system. The composite notice, published in its entirety below, will replace the ten separate bureau and office notices previously published in the **Federal Register** that describe payroll records. The title, number, and citation to the previous publication of each notice in the **Federal Register** are provided below.

1. Payroll, Attendance, and Leave-Interior, Office of the Secretary-85 (48 FR 49103, October 24, 1983, as amended at 49 FR 3274, January 26, 1984).
2. Payroll-Interior, BLM-17 (42 FR 19115, April 11, 1977, as amended at 49 FR 3274, January 26, 1984).
3. Payroll, Attendance, and Leave Records-Interior, Reclamation-24 (48 FR 44663, September 29, 1983, as amended at 49 FR 3274, January 26, 1984).
4. Payroll-Interior, FWS-24 (48 FR 54720, December 6, 1983, as amended at 49 FR 3274, January 26, 1984).
5. Payroll-Interior, NPS-20 (48 FR 51704, November 10, 1983, as amended at 49 FR 3274, January 26, 1984).
6. Payroll, Attendance and Leave Records-Interior, GS-1 (48 FR 46449, October 12, 1983, as amended at 49 FR 3274, January 26, 1984).
7. Payroll-Interior, Mines-1 (48 FR 45311, October 4, 1983, as amended at 49 FR 3274, January 26, 1984).
8. Payroll—Interior, OSM-1 (48 FR 50170, October 31, 1983, as amended at 49 FR 3274, January 26, 1984).
9. Payroll-Interior, BIA-17 (48 FR 41108, September 13, 1983, as amended at 49 FR 3275, January 26, 1984).
10. Payroll Personnel Data-Interior,, EMM-7 (48 FR 57626, December 30, 1983, as amended at 49 FR 3275, January 26, 1984).

The notices described in items 2 through 10 above are removed from the inventory of systems of records notices describing records maintained by the Department. The notice published below replaces the notice described in item 1 above.

5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment. Therefore, written comments on these proposed changes can be addressed to the Department Privacy Act Officer, Office of the Secretary (PIR), U.S. Department of the Interior, Washington, D.C. 20240. Comments received on or before October 31, 1984, will be considered. The notices shall be effective as proposed without further notice at the end of the comment period, unless comments are received which would require a contrary determination.

Dated: September 25, 1984.

Oscar W. Mueller, Jr.,

Director, Office of Information Resources Management.

INTERIOR/OS-85

SYSTEM NAME:

Payroll, Attendance, and Leave Records—Interior, Office of the Secretary-85.

SYSTEM LOCATION:

(1) Office of the Secretary, Office of Administrative Services, Division of Fiscal Services, U.S. Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240,

(2) Bureau of Land Management, Division of Financial Operations, Denver Federal Center, Bldg. 50, Denver, Colorado 80225,

(3) Bureau of Reclamation, Division of Management Support, Engineering and Research Center, Denver Federal Center, Building 67, P.O. Box 25007, Denver, Colorado 80225,

(4) U.S. Fish and Wildlife Service, Division of Finance, 18th and C Streets, NW., Washington, D.C. 20240,

(5) National Park Service, Office of the Chief, Branch of Payroll Operations, Post Office Box 25287, Lakewood, Colorado 80225.

(6) Geological Survey, Branch of Financial Management, National Center, Reston, Virginia 22092,

(7) Bureau of Mines, Division of Finance, Building 20, Denver Federal Center, Denver, Colorado 80225,

(8) Office of Surface Mining Reclamation and Enforcement, Division of Financial Management, Building 20, Denver Federal Center, Denver, Colorado 80225,

(9) Bureau of Indian Affairs, Branch of Employee Data and Compensation, P.O. Box 2026, Albuquerque, New Mexico 87103,

(10) Minerals Management Service, Financial Management Division, Mail Stop 632, 12203 Sunrise Valley Drive, Reston, Virginia 22091,

(11) Office of Inspector General, Office of Assistant Inspector General for Administration, 18th and C Streets, NW., Washington, D.C. 20240,

(12) Office of Aircraft Services, Division of Management Services, P.O. Box 15428, Boise, Idaho 83715-9998,

(13) All Departmental offices and locations which prepare and provide input documents for data processing and administrative actions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees of the Department of the Interior, and employees of Independent Agencies, Councils, and Commissions who are provided payroll administrative support by the Department.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee identification, pay rate and grade, retirement, and location data; length of service; pay, leave, time and attendance, allowances, and cost distribution records; deductions for FICA, savings bonds, insurance, union dues, taxes, allotments, quarters, charities; overtime authorizations, awards, shift schedules, pay differentials, IRS tax lien data; and related personnel data. Also included is information on debts owed to the government as a result of overpayment, refunds owed, or a debt referred for collection on a transferred employee. The payroll, attendance, and leave records described in this notice form a part of the information contained in the Department's integrated payroll and personnel (PAY/PERS) automated information system. Personnel records contained in the PAY/PERS system are covered under the governmentwide system of records notice published by the Office of Personnel Management (OPM/GOVT–1).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5101, et seq., 31 U.S.C. 3512.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are for fiscal operations for payroll, attendance, leave, insurance, tax, retirement and cost accounting programs; and to prepare related reports to other Federal agencies including the Treasury Department and the Office of Personnel Management. Disclosures outside the Department of the Interior may be made: (1) To the Department of the Treasury for preparation of payroll checks and other checks to Federal, State, and local government agencies, non-governmental organizations, and individuals; (2) to the Internal Revenue Service and to State, local, tribal and territorial governments for tax purposes; (3) to the Office of Personnel Management in connection with programs administered by that office; (4) to another Federal agency to which an employee has transferred (5) to the U.S. Department of Justice when related to litigation or anticipated litigation; (6) to disclose pertinent information to an appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indicatio of a violation or potential violation of civil or criminal law or regulation; (7) to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual; (8) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit; (9) to Federal, State or local agencies where necessary to enable the Department of the Interior to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, contract, license, grant or other benefit; (10) to appropriate Federal and State agencies to provide required reports including data on unemployment insurance; (11) to the Social Security administration to report FICA deductions; (12) to labor unions to report union dues deductions; (13) to insurance carriers to report withholdings for health insurance; (14) to charitable institutions to report contributions; (15) to a Federal agency for the purpose of collecting a debt owed the Federal government through administrative or salary offset; (16) to other Federal agencies conducting computer matching programs to help eliminate fraud and abuse and to detect unauthorized overpayments made to individuals; (17) to provide addresses obtained from the Internal Revenue Service to debt collection agencies for purposes of locating a debtor to collect or compromise a Federal claim against the debtor; (18) with respect to Bureau of Indian Affairs employee records, to a Federal, State, local agency, or Indian tribal group or any establishment or individual that assumes jurisdiction, either by contract or legal transfer, of any program under the control of the Bureau of Indian Affairs; (19) with respect to Bureau of Reclamation employee records, to non-Federal auditors under contract with the Department of the Interior or Energy or water user and other organizations with which the Bureau of Reclamation has written agreements permitting access to financial records to perform financial audits.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual, microfilm, and printout form in the Payroll Office. Currently applicable records are stored on magnetic media at the computer processing center; historic records are stored on magnetic media at the computer center. Original input documents are kept in standard office filing equipment.

RETRIEVABILITY:

Indexed by name, social security number, and organizational code.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

The records contained in this system of records have varying retention periods as described in General Records Schedule 2 issued by the Administrator, General Services Administration, and are disposed of in accordance with the Federal Property Management Regulations, 41 CFR 101–11.406–9.

SYSTEM MANAGER(S) AND ADDRESS:

The following system managers are responsible for the payroll records contained in the integrated Payroll/Personnel (PAY/PERS) system which are pertinent to their bureaus. Personnel records contained in the PAY/PERS system fall under the juridiction of the Office of Personnel Management as prescribed in 5 CFR Part 293 and 5 CFR Part 297.

(1) Chief, Division of Fiscal Services, Office of Administrative Services, U.S. Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240;

(2) Chief, Division of Financial Operations, Bureau of Land Management, Denver Federal Center, Bldg. 50, Denver, Colorado 80225;

(3) Finance Officer, Division of Management Support, Bureau of Reclamation, Denver Federal Center, Building 67, P.O. Box 25007, Denver, Colorado 80225;

(4) Chief, Division of Finance, U.S. Fish and Wildlife Servcice, 18th and C Streets, NW., Washington, D.C. 20240;

(5) Chief, Branch of Payroll Operations, National Park Service, Post Office Box 25287, Denver, Colorado 80225;

(6) Chief, Branch of Financial Management, Geological Survey, National Center, Reston, Virginia 22092;

(7) Chief, Division of Finance, Bureau of Mines, Building 20, Denver Federal Center, Denver, Colorado 80225;

(8) Chief, Division of Financial Management, Office of Surface Mining, Building 20, Denver Federal Center, Denver, Colorado 80225;

(9) Director, Office of Administration, Bureau of Indian Affairs, 1951 Constitution Avenue, NW., Washington, D.C. 20245;

(10) Chief, Financial Management Division, Minerals Management Service, 12203 Sunrise Valley Drive, Mail Stop 632, Reston, Virginia 22091.

(11) Assistant Inspector General for Administration, Office of Inspector General, 18th and C Streets, NW, Washington., D.C. 20240.

(12) Chief, Division of Management Services, Office of Aircraft Services, P.O. Box 15428, Boise, Idaho 83715–9998.

NOTIFICATION PROCEDURES:

Inquiries regarding the existence of records should be addressed to the pertinent System Manager. A written, signed request stating that the individual seeks information concerning his/her records is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access may be addressed to the pertinent System Manager. The request must be in writing, signed by the requester, and meet the content requirement of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the pertinent System Manager and meet the content requirements of 43 CFR 2.71.

RECORDS SOURCE CATEGORIES:

Individuals on whom the records are maintained, supervisors, timekeepers, official personnel records, previous employers, and the Internal Revenue Service.

[FR Doc. 84–25974 Filed 9–28–84; 8:45 am]

BILLING CODE 4310–01–M

Bureau of Indian Affairs

Information Collection Submitted for Review

August 29, 1984.

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau'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 Interior Department Desk Officer, Washington, D.C. 20240, telephone (202) 395–7313.

Title: 25 CFR Part 244, Wind River Reservation Game Code.

Bureau Form Numbers: None.

Frequency: Annually.

Description of Respondents: Indians seeking a hunting permit.

Annual Responses: 1,930.

Annual Burden Hours: 903.

Bureau Clearance Officer: Orville Hood, (202) 343–3574.

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 84–25975 Filed 9–28–84; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[Coal Lease Application C–26914]

Colorado; Public Hearing Availability of Environmental Assessment, and Request for Public Comment

The Department of the Interior, Bureau of Land Management, Colorado State Office, Denver, Colorado, hereby gives notice that a public hearing will be held on October 23, 1984, at 7:00 p.m. in the Yampa Valley Electric Building, 32—10th Street, Steamboat Springs, Colorado. This emergency by-pass application has been made by Colorado Yampa Coal Company to the United States to offer for lease approximately 202,000 tons of recoverable Wadge seam coal in the lands hereinafter described. The purpose of the hearing is to obtain public comments on the Environmental Assessment and on the following items: (1) The method of mining to be employed to obtain maximum economic recovery of the coak, (2) the impact that mining the coal in the proposed leasehold may have on the area, and (3) methods of determining the fair market value of the coal to be offered. Written requests to testify orally at the October 23, 1984, public hearing should be received at the Craig District Office, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625, prior to the close of business October 23, 1984. People who indicate they wish to testify when they check in at the hearing may have an opportunity if time is available.

Both oral and written comments will be received at the public hearing, but speakers will be limited to a maximum of three or five minutes each depending on the number of persons desiring to comment. The time limitation will be strictly enforced, but the complete text of prepared speeches may be filed with the presiding officer at the hearing, whether or not the speaker has been able to finish oral delivery in the allotted minutes. Written comments regarding the Environmental Assessment may also be submitted to the Craig District Office at the above address, prior to close of business on October 29, 1984.

In addition, the public is invited to submit written comments concerning the fair market value and maximum economic recovery of the coal resource. Public comments will be utilized in establishing fair market value for the coal resources in the described lands. Comments should address specific factors related to fair market value including, but not limited to: the extent and quality of the coal resources, the price that the mined coal would bring in the market place, the cost of producing the coal, the interest rate at which anticipated income streams would be discounted, depreciation and other accounting factors, and the mining method or methods which would achieve maximum economic recovery of the coal. Documentation of similar market transactions, including location, terms and conditions, may also be submitted. The comments will be considered in the final determination of fair market value. Should any information submitted as comments be considered to be proprietary by the commenter, the information should be labeled as such and stated in the first page of the submission. Comments on fair market value should be sent to the State Director (CO–920), Bureau of Land Management, Colorado State Office, 2020 Arapahoe Street, Denver, Colorado 80205, to arrive no later than October 29, 1984.

Substantive comments, whether written or oral, will receive equal consideration prior to any lease offering.

The coal resource to be offered is limited to coal recoverable by surface mining methods from the Wadge Seam in the following lands located approximately 13 miles southwest of Steamboat Springs, Colorado:

T. 4 N., R. 86 W., 6th P.M.

Sec. 9: W½SW¼SW¼ and NE¼SW¼ SW¼.

The land described contains 30 acres.

The average coal quality is approximately as follows: Sub Bituminous 10,500/11,500; Sulfur 0.5%; Ash 12%.

The draft Environmental Assessment is available for review in the Craig District Office. Single copies are available for distribution upon request from that office.

A copy of the Environmental Assessment, the case file and the comments submitted by the public on fair market value, except those portions identified as proprietary by the commenter and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Colorado State Office, Bureau of Land Management.

Evelyn W. Axelson,

Chief, Mineral Leasing Section.

[FR Doc. 84-25886 Filed 9-28-84; 8:45 am]

BILLING CODE 4310-JB-M

[C-35774]

Colorado; Classification of Public Lands for State Indemnity Selection

1. Pursuant to sections 2275 and 2276 of the Revised Statutes, as amended (43 U.S.C. 851, 852), and the provisions granted to the State of Colorado by the Act of March 3, 1875 (18 Stat. 475), the public lands described below are hereby classified for State Indemnity Selection. The State of Colorado has filed an application to acquire the described lands in lieu of certain school lands that were encumbered by other rights or reservations before the State's title could attach. This application was assigned serial number Colorado 35774.

2. The Notice of Proposed Classification of these lands was published in the **Federal Register** of July 7, 1982, Vol. 47, No. 130, pages 29607-29609. The land is being classified as proposed.

3. The lands included in this classification are in Hinsdale County and are described as:

New Mexico Principal Meridian

T. 43 N., R. 4 W.,
Sec. 9, lots 22 and 25;
Sec. 10, lots 34 and 39.

The area described contains 57.43 acres.

4. This classification decision is based on the following disposal criteria set forth in Title 43 Code of Federal Regulations, Part 2400.

Transfer of the lands to the State will help fulfill the Federal Government's common school land grant to the State, and constitutes a public purpose use of the land. Lands found to be valuable for a public purpose use will be considered chiefly valuable for public purposes (43 CFR 2430.2b).

5. Rights-of-way granted by the Bureau of Land Management on the above lands will transfer with the land: Gunnison County Electric Association, Inc., P.O. Box 180, Gunnison, Colorado 81230, C-021766; Harley and Caryl Rudofsky, c/o Kasic and Landwehr, P.C. 121 South Taylor, P.O. Box 628, Gunnison, Colorado 81230, C-31163. It is anticipated that minerals in lots 22 and 25 of section 9 will be transferred in a clearlist if one issues, provided the State of Colorado has mineral-in-character base of equivalent value to the minerals in lots 22 and 25. It is anticipated that minerals, if any, in lots 34 and 39 of section 10 will be transferred in a clearlist if one is issued as these lots are considered to be nonmineral in character.

Any cultural resources will be managed by the State. The lands described above are segregated from operation of the public land laws, including the general mining law, but not the mineral leasing laws, for 120 days from the date of publication of this notice in the **Federal Register.**

6. The public lands classified by this notice are shown on a map on file and available for inspection in the Bureau of Land Management District Office, 2465 South Townsend, Montrose, Colorado 81401, Phone (303) 249-7791.

7. For a period of 30 days from the date of publication in the **Federal Register**, this classification shall be subject to exercise of administrative review and modification by the Secretary of the Interior as provided for in 43 CFR 2461.3 and 2462.3. Interested parties may submit comments to the Secretary of the Interior, LLM 320, Washington, D.C. 20240.

Dated: September 20, 1984.

Kannon Richards,

State Director.

[FR Doc. 84-25887 Filed 9-28-84; 8:45 am]

BILLING CODE 4310-JB-M

[OR36767, OR37058]

Realty Action; Sale of Public Lands in Baker and Malheur Counties, OR

Summary

The following described public land has been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713), at no less than the appraised fair market value:

BAKER COUNTY, WILLAMETTE MERIDIAN, OR

Parcel No.	Legal Description	Acreage	Value
OR36767			
	T. 10S., R. 39E., Sec. 25, SE¼SW¼.	40.00	$5,400
2	T. 7S., R. 40E., Sec. 6, Lots 7 and 10.	14.19	2,050
3	T. 7S., R. 40E., Sec. 26, NE¼NE¼.	40.00	5,375
4	T. 10S., R. 40E., Sec. 9, NE¼SE¼.	40.00	5,275
5	T. 8S., R. 41E., Sec. 7, Lot 4.	39.34	5,400
6	T. 8S., R. 41E., Sec. 29, SW¼SE¼.	40.00	5,450
7	T. 9S., R. 43E., Sec. 15, SW¼SE¼; Sec. 22, NW¼NE¼.	80.00	10,850
8	T. 10S., R. 43E., Sec. 3, SE¼SE¼.	40.00	5,175
9	T. 10S., R. 43E., Sec. 5, SW¼SW¼.	40.00	4,825
10	T. 8S., R. 47E., Sec. 10, SE¼NW¼.	40.00	5,400

MALHEUR COUNTY, WILLAMETTE MERIDIAN, OR

Parcel No.	Legal description	Acreage	Value
OR 37058			
1	T.14S., R.41E., Sec. 15, SE¼NE¼.	40.00	$5,000
2	T.14S., R.41E., Sec. 17, SW¼SW¼.	40.00	4,000
3	T.21S., R.38E., Sec. 21, Lot 1.	12.09	800

The parcels are difficult and uneconomical to manage as part of the public lands and are not suitable for management by another Federal agency. There are no significant resource values which will be affected by this disposal. Only parcel No. 3 of OR37058 has legal access; none of the parcels in OR36767 has legal access. The sale is consistent with BLM planning for the subject land and the public interest will be served by offering this land for sale.

Except for provisions of section 203 of the Federal Land Policy and Management Act of 1976, (90 Stat. 2750; 43 U.S.C. 1713), the above described lands are hereby segregated from appropriation under the public land laws, including the mining laws.

All parcels are being offered for sale through modified competitive or non-competitive (direct) bidding procedures as follows:

Serial No. OR36767

Parcel No. 1—Modified competitive to designated bidders
(1) Richard E. Truscott Estate c/o Roger Agar (Trustee)
(2) Gary Marlette

Parcel No. 2—Modified competitive to designated bidders
(1) Nina Prowell
(2) Joseph T. Steiner

Parcel No. 3—Modified competitive to designated bidders
(1) Warner Bros. c/o Fred Warner
(2) Charles M. Colton

Parcel No. 4—Noncompetitive

Warnock Ranches c/o Dan Warnock
Parcel No. 5—Noncompetitive
Charles M. Colton
Parcel No. 6—Modified competitive to designated bidders
(1) Earl McKnight
(2) Virgil Prowell Estate c/o Claudine J. Prowell
Parcel No. 7—Noncompetitive
Phillips Angus Ranch, Inc.
Parcel No. 8—Modified competitive to designated bidders
(1) Frank E. Widman c/o Mike Widman
(2) Agnes Widman Heater
Parcel No. 9—Uncompetitive
Orman Bieber
Parcel No. 10—Modified competitive to designated bidders
(1) L. J. Smelcer
(2) Leroy J. Smelcer

Serial No. OR37058

Parcel No. 1—Noncompetitive
Orchards Water Co.
Parcel No. 2—Noncompetitive
D. L. Berger
Parcel No. 3—Noncompetitive
John W. Wharton

Modified competitive and noncompetitive bidding procedures are being used to recognize the needs and historical uses of adjoining landowners and users. Preference to users is authorized under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713; 43 CFR 2711.3–2).

The terms and conditions applicable to the above sales are:

1. A right-of-way for ditches and canals will be reserved to the United States (43 U.S.C. 945).

2. A right-of-way will be reserved for that portion of Malheur Reservoir and Dam (VO1499) found in parcel No. 1 of OR37058.

3. For parcels No. 1, 2, and 3 of OR37058, the sale is for the surface estate only. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

4. For parcels No. 1, 2, 3, 5, 6, 8, and 9 of OR36767, the sale is for the surface estate only. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

5. All minerals beneath parcels No. 4, 7 and 10 of OR36767 will be offered for conveyance. These mineral interests being offered have no known mineral value. A bid on the parcel will also constitute application for conveyance of those mineral interests offered under the authority of section 209(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719(b)). On the sale date, the successful bidder(s) will be required to deposit an additional $50.00 nonrefundable filing fee for the conveyance offered minerals pursuant to 43 CFR 2720.1–2(c).

6. For parcel No. 1 of OR36767, the successful bidder agrees that he takes the real estate subject to the existing grazing use of the Richard E. Truscott Estate, holder of Grazing Authorization No. 6244. The rights of the Truscott Estate to graze domestic livestock on the real estate according to the conditions and terms of Grazing Authorization No. 6244 shall cease on 2/28/85. The successful bidder is entitled to receive annual grazing fees from the Truscott Estate in an amount not to exceed that which would be authorized under the Federal Grazing Fee published annually in the **Federal Register.**

7. For parcel No. 3 of OR36767, the successful bidder agrees that he takes the real estate subject to the existing grazing use of Warner Brothers, holder of Grazing Authorization No. 6245. The rights of Warner Brothers to graze domestic livestock on the real estate according to the conditions and terms of Grazing Authorization No. 6245 shall cease on 2/28/92. The successful bidder is entitled to receive annual grazing fees from Warner Brothers in an amount not to exceed that which would be authorized under the Federal Grazing Fee published annually in the **Federal Register.**

8. For Parcel No. 6 of OR36767, the successful bidder agrees that he takes the real estate subject to the existing use of Earl McKnight, holder of Grazing Authorization No. 6227. The rights of Earl McKnight to graze domestic livestock on the real estate according to the conditions and terms of Grazing Authorization No. 6227 shall cease on 2/28/89. The successful bidder is entitled to receive annual grazing fees from Earl McKnight in an amount not to exceed that which would be authorized under the Federal Grazing Fee published annually in the **Federal Register.**

9. For Parcel No. 8 of OR36767, the successful bidder agrees that he takes the real estate subject to the existing grazing use of Mike Widman, holder of Grazing Authorization No. 6253. The rights of Mike Widman to graze domestic livestock on the real estate according to the conditions and terms of Grazing Authorization No. 6253 shall cease on 2/28/87. The successful bidder is entitled to receive annual grazing fees from Mike Widman in an amount not to exceed that which would be authorized under the Federal Grazing Fee published annually in the **Federal Register.**

10. For Parcel No. 10 of OR36767, the successful bidder agrees that he takes the real estate subject to the existing grazing use of Leroy Smelcer, holder of Grazing Authorization No. 6330. The rights of Leroy Smelcer to graze domestic livestock on the real estate according to the conditions and terms of Grazing Authorization No. 6330 shall cease on 2/28/85. The successful bidder is entitled to receive annual grazing fees from Leroy Smelcer in an amount not to exceed that which would be authorized under the Federal Grazing Fee published annually in the **Federal Register.**

11. The sale will be subject to all valid existing rights, reservations, and restrictions of record.

12. The BLM may accept or reject any and all offers, or withdraw any land or interest in land from sale, if in the opinion of the authorized officer, consumption of the sale would not be fully consistent with the Federal Land Policy and Management Act or other applicable laws.

All parcels will be offered for sale by sealed bids only. The sealed bids for the modified and noncompetitive sales for parcels 1–10 of OR36767 will be opened at 10:00 a.m. at the Baker Resource Area Headquarters, New Federal Building, P.O. Box 987, Baker, Oregon 97814. Sealed bids shall be considered only if received at the above address prior to 10:00 a.m. on December 5, 1984.

The sealed bids for the noncompetitive sales for parcels 1–3 of OR37058 wil be opened at 10:00 a.m. (Mountain Standard Time) at the Vale District Office, 100 Oregon St., P.O. Box 700, Vale, Oregon 97918.

For parcels No. 1, 2, 3, 6, 8, and 10 of OR36767 not sold pursuant to this Notice of Realty Action will continue to be available for sale on a sealed bid basis. All sealed bids for available parcels will be opened at 10:00 a.m. on the first Wednesday of each month and must be received in the Baker Resource Area Headquarters by 4:00 p.m. the last working day prior to the opening of the sealed bids.

This provision does not apply to Parcels No. 4, 5, 7, and 9 of OR36767. If these parcels are not purchased by the designated bidders, they will be removed from availability for purchase.

For parcels No. 2 and 3 of OR37058 not sold pursuant to this Notice of Realty Action, will continue to be available for sale on a sealed bid basis. All sealed bids for available parcels will be opened at 10:00 a.m. (Mountain Standard Time) on the first Wednesday of each month and must be received in the Vale District Office by 4:00 p.m. (Mountain Standard Time) the last working day prior to the opening of the sealed bids.

This provision does not apply to parcel No. 1 of OR37058. If this parcel is not purchased by the designated bidder, it will be removed from availability for purchase.

Federal law requires that individuals by 18 years of age or over and a U.S. citizen, and corporations be subject to the laws of any State of the United States.

Bids must be made by the principal or his duly qualified agent. Bids delivered or sent by mail must be received at the BLM at the above respective addresses, before 10:00 a.m., December 5, 1984 to be considered. Each sealed bid must be accompanied by postal money order, bank draft or cashier's check, made payble to the Bureau of Land Management for not less than 30 percent of the bid, 20 percent for parcel No. 7 of OR36767. The sealed envelope must be marked in the lower left hand corner as follows. "Public Sale Bid Parcel

No. ——, Serial No. OR ———. Sale held December 5, 1984."

If two or more envelopes are received containing valid bids of the same amount for the same parcel, tied high bidders will be immediately notified and given 20 days to submit a new bid. The highest qualifying sealed bid on each parcel will be the sale price. The successful bidder will be required to pay the remainder of the sale price within 180 days. Failure to submit the full sale price within 180 days shall cancel sale of the specific parcel and the bidder's deposit will be forfeited. All unsuccessful bids will be returned.

For parcel Nos. 1–10 of OR36767—detailed information concerning the sale, including the planning documents, environmental assessment and the record of public involvement, is available for review at the Baker Resource Area Headquarters, New Federal Building, Baker, Oregon.

For parcels Nos. 1–3 of OR37058—detailed information concerning the sale, including the planning documents, environmental assessment and the record of public involvement, is available for review at the Vale District Office, 100 Oregon St., Vale, Oregon

FOR FURTHER INFORMATION CONTACT: For parcel Nos. 1–10 of OR36767—detailed information concerning the sale, including the planning documents, environmental assessment and the record of public involvement, is available for review at the Baker Resource Area Headquarters, New Federal Building, Baker, Oregon.

For parcels Nos. 1–3 of OR37058—detailed information concerning the sale, including the planning documents, environmental assessment and the record of public involvement, is available for review at the Vale District Office, 100 Oregon St., Vale, Oregon.

For a period of 45 days after the date of issuance of this notice, the public and interested parties may submit comments to the Vale District Manager, at the above address. Any adverse comments received as a result of the Notice of Realty Action or notification to the Congressional committee and delegations pursuant to Pub. L. 97–394 will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become a final determination of the Department of the Interior. Interested parties should continue to check with the District Office or the Baker Resource Area Headquarters to keep themselves advised of changes.

Dated: September 24, 1984.

Fearl M. Parker,

District Manager.

[FR Doc. 84–25966 Filed 9–28–84; 8:45 am]

BILLING CODE 4310–33–M

Minerals Management Service

Development Operations Coordination Document; The Superior Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that the Superior Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0797, Block 105, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on September 24, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: September 24, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84–25968 Filed 9–28–84; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Lower Sheenjek Wild and Scenic River Study, Alaska

ACTION: Notice of Availability of Draft Environmental Impact Statement.

SUMMARY: This notice announces the availability of a draft environmental impact statement (EIS) for the Lower Sheenjek Wild and Scenic River Study in Alaska. This notice also announces the comment period for receiving public comments on the draft EIS.

DATE: Comments on the draft EIS should be received no later than 90 days from the date of this notice.

ADDRESSES: Comments on the draft EIS should be submitted to Regional Director, Alaska Region, National Park Service, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503. Public reading copies of the draft EIS will be available for review at the following locations.

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets, N.W., Washington, D.C. 20240 (Telephone 202–343–6843)

Visitor Center, Alaska Regional Office, National Park Service, 2525 Gambell Street, Room 101, Anchorage, Alaska 99503 (Telephone 907–271–4366)

A limited number of copies of the statement are available on request from the Regional Director, Alaska Region, National Park Service, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503, 907–271–4366.

FOR FURTHER INFORMATION CONTACT: Mr. Vaughn Baker, Division of Planning, Alaska Regional Office, National Park Service, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503, 907–271–4366.

SUPPLEMENTARY INFORMATION: The lower Sheenjek River, in Northeast Alaska (those portions of the river not already in the National Wild and Scenic Rivers System) has been studied with respect to possible inclusion in the national system. The EIS describes and evaluates three alternatives, including a proposed action that calls for designation of both study segments, a total of about 124 river miles.

Dated: September 20, 1984.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 84-25941 Filed 9-28-84; 8:45 am]

BILLING CODE 4310-70-M

Squirrel Wild and Scenic River Study, Alaska

ACTION: Notice of Availability of Draft Environmental Impact Statement.

SUMMARY: This notice announces the availability of a draft environmental impact statement (EIS) for the Squirrel Wild and Scenic River Study in Alaska. This notice also announces the comment period for receiving public comments on the draft EIS.

DATES: Comments on the draft EIS should be received no later than 90 days from the date of this notice.

ADDRESSES: Comments on the draft EIS should be submitted to Regional Director, Alaska Region, National Park Service, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503. Public reading copies of the draft EIS will be available for review at the following locations.

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets, N.W., Washington, D.C. 20240 (Telephone 202-343-6843)

Visitor Center, Alaska Regional Office, National Park Service, 2525 Gambell Street, Room 101, Anchorage, Alaska 99503 (Telephone 907-271-4366)

A limited number of copies of the statement are available on request from the Regional Director, Alaska Region, National Park Service, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503, 907-271-4366.

FOR FURTHER INFORMATION CONTACT: Mr. Vaughn Baker, Division of Planning, Alaska Regional Office, National Park Service, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503 907-271-4366.

SUPPLEMENTARY INFORMATION: The Squirrel River, a tributary of the Kobuk River in northwest Alaska, has been studied with respect to possible inclusion in the National Wild and Scenic Rivers System. This EIS describes and evaluates five alternatives, including the proposed action. The proposed action calls for a designation of the federally administered portion of the Squirrel River, plus the lower 6 miles of the North Fork and 15 miles of the Omar River.

Dated: September 20, 1984.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 84-25942 Filed 9-28-84; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development; Meeting

Pursuant to the a provisions of the Federal Advisory Committee Act, notice is hereby given of the sixty-sixth meeting of the Board for International Food and Agricultural Development (BIFAD) on October 11, 1984.

For this meeting, the principal item of business is a presentation and discussion of fisheries in international development by John V. Byrne, Administrator of the National Oceanic and Atmospheric Administration (NOAA), and members of his senior staff with input from A.I.D., U.S. Department of Agriculture, and the Title XII university community. In addition, the Board will consider old business left over from the previous meeting such as the moratorium on applications for new Strengthening Grants, and the Collaborative Research Support Program (CRSP) revised guidelines.

The meeting will begin at 9:00 a.m. and adjourn at 12:30 p.m., and will be held in Room 1107, New State Department Building, 22nd and C Streets, NW., Washington, D.C. The meeting is open to the public. Any interested person may attend, may file written statements with the Board before or after the meeting, or may present oral statements in accordance with procedures established by the Board, and to the extent the time available for the meting permits. An escort from the "C" Street Information Desk (Diplomatic Entrance) will conduct you to the meeting.

Dr. Erven J. Long, Coordinator, Research and University Relations, Bureau for Science and Technology, Agency for International Development, is designated as A.I.D. Advisory Committee Represenatative at this meeting. It is suggested that those desiring further information write to him in care of the Agency for International Development, International Development Cooperation Agency, Washington, D.C. 20503, or telephone him at (703) 235-8929.

Dated: September 25, 1984.

Bernard Masters,

Acting Coordinator, Research and University Relations, Bureau for Science and Technology.

[FR Doc. 84-26004 Filed 9-28-84; 8:45 am]

BILLING CODE 6116-01-M

[Amdt. No. 1 to Delegation of Authority No. 40]

Regional Assistant Administrators, et al.; Delegation of Authority Regarding Source, Origin and Nationality for Procurement

Pursuant to the authority delegated to me by IDCA Delegation of Authority No. 1 (44 FR 57521, October 1, 1979), I hereby amend Delegation of Authority No. 40 (47 FR 1049, January 8, 1982) as follows:

1. Section I is amended by adding "Program and Policy Coordination" after "Science & Technology".

2. Paragraphs IA. and IB. are amended by deleting "$3,000,000" and inserting "$5,000,000".

This amendment is effective immediately.

Dated: September 15, 1984.

Jay F. Morris,

Deputy Administrator.

[FR Doc. 84-25976 Filed 9-28-84; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Water Act; United States v. District of Columbia

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 12, 1984 a proposed Consent Decree in *United States* v. *District of Columbia*, Civil Action No. 84-2842, was lodged with the United Stated District Court for the District of Columbia. The proposed Consent Decree concerns the discharge of pollutants from the District of Columbia's Blue Plains Wastewater Treatment Plant.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *District of Columbia*, D.J. Ref. No. 90-5-1-1-1969.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of Columbia,

Third Street & Constitution Avenue, NW., Washington, D.C. 20001 and at Region III Office of Environmental Protection Agency, Sixth & Walnut Streets, Philadelphia, Pennsylvania 19106. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $4.10.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 84-25978 Filed 9-28-84; 8:45 am]

BILLING CODE 4410-01-M

Office of Justice Assistance, Research, and Statistics

State Reimbursement Program for Incarcerated Mariel-Cubans

AGENCY: Office of Justice Assistance, Research, and Statistics, Justice

ACTION: Notice of issuance of solicitation for applications to reimburse states for the expense incurred by the incarceration of Mariel-Cubans.

SUMMARY: The Office of Justice Assistance, Research, and Statistics (OJARS) is administering a program to reimburse states for the expenses incurred by the incarceration of certain Mariel-Cubans in state facilities. The Program is limited to those states which have incarcerated Mariel-Cubans that were paroled by the U.S. Department of Justice during the 1980 influx of Cubans leaving the port of Mariel.

ADDRESSES: Henry T. Tubbs, Office of Planning and Management, Office of Justice Assistance, Research, and Statistics, 633 Indiana Avenue, NW., Washington, D.C. 20531.

FOR FURTHER INFORMATION CONTACT: Henry T. Tubbs, (202) 724-5974. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The Office of Justice Assistance, Research, and Statistics (OJARS) is publishing a notice of issuance of solicitation to implement a State Reimbursement Program for Incarcerated Mariel-Cubans. The Department of Justice Appropriations Act (Pub. L. 98-411) allocates up to $5 million for the purpose of making grants to states for their expenses for the incarceration of Mariel-Cubans in state facilities.

I. General Provisions

Statutory authority: The statutory authority is the Department of Justice Appropriations Act (Pub. L. 98-411).

Submission date: The submission date for state applications is not later than February 1, 1985.

Eligible applicants: All states are eligible to apply for and receive grants. *State,* means any state of the United States and includes the District of Columbia and the Commonwealth of Puerto Rico.

Participating states: It is estimated that approximately fourteen states will participate in this program. Although we can not be positive at this time, it is assumed that the states of Florida, Arkansas, Wisconsin, and Pennsylvania will participate, as holding camps existed in each state. Although not necessarily limited to the following: the states of California, New Jersey, New York, Texas, Nevada, Arizona, Illinois, Louisiana, Massachusetts, and the Commonwealth of Puerto Rico may be included as participating states.

II. Allocations and Uses of Funds

Fund availability: The Act provides a total of $5 million for the purpose of making grants to states. The total amount of funds awarded will be on the basis that the certified number of incarcerated persons in a state bears to the total certified number of such incarcerated persons. The amount of reimbursements per prisoner per annum will not exceed $12,000.

Fund use: The intent of the public law is to reimburse the states for their expenses by reason of Mariel-Cubans having to be incarcerated in state facilities. A budget or expenditure plan is not required as the award will be solely for reimbursement. No match funds are required.

III. Application Content

(a) All state applicants must submit Standard Form 424 (Application for Federal Assistance), and a *certified listing* of incarcerated Mariel-Cuban prisoners. This listing will include the following information in the suggested sequence:

(1) Name (last name first)
(2) AKA (also know as)
(3) Alien Identification Number (e.g., A24456789)
(4) Date of birth
(5) Last known address
(6) Conviction date
(7) Conviction offense
(8) Probable earliest release date
(9) State facility housing the prisoner
(10) State facility address
(11) Dates of incarceration of the prisoner
(12) I-247 Form—Immigration Detainer Notice (If INS has filed a Detainer on this prisoner, submit a copy)
(13) Fingerprint card

(b) The certified listing must be signed by the Governor or his authorized representative.

(c) The period of incarceration for reimbursement purposes is October 1, 1984 to September 30, 1985. The computation of funds will be based on an aggreate total of certified prisoners incarcerated for a twelve month period, (e.g., if two prisoners are incarcerated for six months during the period the state will be reimbursed the full amount for one year).

(d) The Act is specific in that the prisoner must have been paroled into the United States by the Attorney General during the 1980 influx of Mariel-Cubans. This means those Cubans who *Entered Without Inspection* (EWI), earlier arrivals (pre-boatlift), and/or later arrivals (post-boatlift) can not be included and, thus, no expenses will be reimbursed.

(e) State law will prevail when a determination is required as to what constitutes a state facility and/or a state prisoner.

IV. Review of State Applications

State applications must be submitted in the form and at the time prescribed.

(a) The application and certified listing will be reviewed by OJARS and a cross-check verification of prisoners will be made. This review will be accomplished not later than April 1, 1985 and grants will be immediately made to states.

(b) Compliance with Executive Order 12372, "Intergovernmental Review of Federal Programs." This program is covered by Executive Order 12372 and Department of Justice implementing regulations 28 CFR Part 30. States must submit grant applications to the states *Single Point of Contact,* if there is a *Single Point of Contact,* and if this program has been selected for coverage by the state process, at the same time applications are submitted to the Federal agency. State processes have 60 days starting from the application deadline to comment on applications. Applicants should contact their state "Single Point of Contact" as soon as possible to alert them of the prospective application and receive instructions regarding the process.

(c) The Office of Justice Assistance, Research, and Statistics will notify the applicant in writing of the specific

reasons for the disapproval of the application or amendment, in whole or in part.

V. Civil Rights Assurances

The applicant State must specifically assure its compliance with the following civil rights laws and regulations:

(a) Title VI of the Civil Rights Act of 1964 and its implementing regulations 28 CFR 42.101, *et seq.*

(b) Section 815(c) of the Justice System Improvement Act of 1979, and its implementing regulations 28 CFR 42.201, *et seq.*

(c) Section 504 of the Rehabilitation Act of 1973, as amended, and its implementing regulations at 28 CFR 42.501, *et seq.*

(d) Title IX of the Education Amendments of 1972, and

(e) The Age Discrimination Act of 1975.

Any application for $500,000 or more shall be accompanied by a copy of the current Equal Employment Opportunity Program of the corrections department in accordance with the provisions of 28 CFR 42.301 *et seq.*

VI. Non-discrimination

The state assures that it will comply, and that subgrantees and contractors will comply, with all applicable Federal non-discrimination requirements, including:

(a) Title VI of the Civil Rights Act of 1964;

(b) Section 504 of the Rehabilitation Act of 1973, as amended;

(c) Title IX of the Education Amendments of 1972;

(d) The Age Discrimination Act of 1975; and,

(e) The Department of Justice Non-Discrimination Regulations, 28 CFR Part 42, Subparts C, D, E and G.

Lois Haight Herrington,

Assistant Attorney General.

[FR Doc. 84-25940 Filed 9-28-84; 8:45 am]

BILLING CODE 4410-18-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[84-76]

NASA Advisory Council (NAC), Space and Earth Science Advisory Committee (SESAC); 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 and Earth Science Advisory Committee.

DATE: October 24, 1984 8:30 a.m. to 5 p.m.; October 25, 1984, 8:45 a.m. to 4:30 p.m.; and October 26, 1984, 8:30 a.m. to 12 noon.

ADDRESS: National Aeronautics and Space Administration, Room 226A, 600 Independence Avenue, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey D. Rosendhal, Code E, National Aeronautics and Space Administration, Washington, DC. 20546 (202/453-1410).

SUPPLEMENTARY INFORMATION: The NAC Space and Earth Science Advisory Committee Consults with and advises the council as a whole and NASA on plans for, work in progress on, and accomplishments of NASA's Space and Earth Science programs. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including Committee members and other participants). Topics under discussion at this meeting will include status reports on the Space Station Task Force and the Earth System Sciences Committee (ESSC); the Space Science Board Long Range Planning; and the activities of the Office of Science and Technology Policy in regard to the Space and Earth Science Program.

Type of meeting: Open.

Agenda

October 24, 1984

8:30 a.m.—Introduction, Logistics, Announcements
9 a.m.—FY 1984 Budget and Program Status
9:30 a.m.—Space Science Board Long Range Planning Study
10:30 a.m.—Review of Earth System Science Committee Activities
1:30 p.m.—Space Station Organization and Planning
2:30 p.m.—Review of SESAC Space Station Task Force Activities
5 p.m.—Adjourn

October 25, 1984

8:45 a.m.—Office of Science and Technology Policy (OSTP) Activities/Perspective on Prospects for the Space and Earth Science Program
10:30 a.m.—Discussion on Committee Activities for the Coming Year
1:15 p.m.—Discussion on Committee Activities/Organizational Splinter Meetings
4:30 p.m.—Adjourn

October 26, 1984

8:30 a.m.—Committee Planning and Organizational Activities
12 noon—Adjourn

Dated: September 24, 1984.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 84-25866 Filed 9-28-84; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

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 of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506:

1. Date: October 15-16, 1984. Time: 9:00 a.m. to 5:00 p.m. Room: 415. Program: This meeting will review applications submitted for Special Projects/Program Development Programs, Division of General Programs, for projects beginning after April 1, 1985.

2. Date: October 22-23, 1984. Time: 8:30 a.m. to 5:00 p.m. Room: 316. Program: This meeting will review applications submitted to the Research Resources Program: American Studies I Panel, Division of Research Programs, for projects beginning after April 1, 1985.

3. Date: October 29, 1984. Time: 8:30 a.m. to 5:00 p.m. Room: 316. Program: This meeting will review applications submitted to the Research Resources Program: Literature, Libraries, and Bibliography Panel, Division of Research Programs, for projects beginning after April 1, 1985.

4. Date: October 30, 1984. Time: 8:30 a.m. to 5:00 p.m. Room: 316. Program: This meeting will review applications submitted to the Research Resources Program: Preservation Panel, Division of Research Programs, for projects beginning after April 1, 1985.

5. Date: October 16, 1984. Time: 8:30 a.m. to 5:00 p.m. Room: 316. Program: This meeting will review applications submitted to the Research Resources Program: Art Historical Resources Panel, Division of Research Programs, for projects beginning after April 1, 1985.

6. Date: October 22, 1984. Time: 9:00 a.m. to 5:00 p.m. Room: 430. Program: This meeting will review applications submitted for Special Projects/Bicentennial Programs, Division of General Programs, for projects beginning after April 1, 1985.

7. Date: October 22-23, 1984. Time: 8:30 a.m. to 5:00 p.m. Room: 415. Program: This meeting will review applications submitted for the Humanities Projects in Media, Division of General Programs for projects beginning after April 1, 1985.

8. Date: October 25-26, 1984. Time: 8:30 a.m. to 5:00 p.m. Room: 415. Program: This meeting will review applications submitted

for the Humanities Projects in Media, Division of General Programs, for projects beginning after April 1, 1985.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation of 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. 84–26000 Filed 9–28–84; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Regulatory Biology; 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 Regulatory Biology.

Date and time: October 17, 18, and 19, 1984 8:30 a.m. to 5:00 p.m. each day.

Place: Room 338, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of meeting: Closed.

Contact person: Bruce L. Umminger, Program Director, Regulatory Biology Program Room 332, National Science Foundation, Washington, DC 20550 Telephone 202/357–7975.

Purpose of advisory panel: To provide advice and recommendations concerning support for research in regulatory biology.

Agenda: To review and evaluate research proposals as part of the selection process for 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: September 26, 1984.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 84–25961 Filed 9–28–84; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co.; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an exemption from the requirements of 10 CFR 50.46 and Appendix K to 10 CFR Part 50 to Connecticut Yankee Atomic Power Company (the licensee) for the Haddam Neck Plant, located at the licensee's site in Middlesex County, Connecticut.

Environmental Assessment

Identification of the Proposed Action: The exemption would exempt the licensee from the requirements of 10 CFR 50.46 to provide an analysis conforming to Appendix K for the installation of up to four Zircaloy clad lead test assemblies in the Haddam Neck core. The proposed exemption is in accordance with the licensee's request dated August 31, 1984, as supported by information provided in an amendment request dated May 25, 1984.

The Need for the Proposed Action: 10 CFR 50.46 (a)(1) requires that for each light-water nuclear power reactor fueled with uranium oxide pellets within cylindrical Zircaloy cladding, emergency core cooling system (ECCS) performance shall be calculated in accordance with an acceptable evaluation model as provided in 10 CFR Part 50 Appendix K, ECCS Evaluation Models. Because the Haddam Neck Plant has historically been fueled with stainless steel clad fuel, the licensee was previously required to evaluate ECCS performance in accordance with 10 CFR 50.46. Rather, it was required to demonstrate the ECCS performance capability in accordance with the AEC Interim Policy Statement for Emergency Core Cooling Systems (36 FR 12247). The licensee now plans to install four Zircaloy-4 clad lead test assemblies to evaluate the potential to convert to a zirconium clad core in order to reduce the enrichment of uranium required for a fuel cycle. The licensee wishes to take advantage of the refueling cycle beginning in Fall 1984 to obtain performance data for the new fuel. However, since Appendix K analyses are lengthy and costly, the licensee requests permission to operate on the basis of the previous evaluation using stainless steel modeling since the core remains essentially a complete stainless steel core (153 assemblies out of 157).

Environmental Impacts of Proposed Action: The proposed action pertains to the use of Zircaloy clad fuel in the Haddam Neck core. The NRC staff has reviewed the licensee's request for exemption and proposed amendment to the Technical Specifications and agrees with the licensee that the loss-of-coolant accident evaluation for Haddam Neck would not be sensitive to increased metal-water reaction because the Zircaloy lead test assemblies are at locations not exceeding 11.0 kW/ft steady-state peak linear heat generation rate. The NRC staff review also indicates that there are no other transients or accidents for which the increase of 50 kg of Zircaloy-4 in the core would make any significant difference in the safety evaluation. Thus, the exemption does not affect the risk of facility accidents. Post-accident radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents, or any significant occupational exposures. The exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption. Since the staff has concluded that there is no measurable environmental impact associated with the proposed exemption, any alternative will either have no environmental impact or greater environmental impact.

The principal alternative to the exemption would be to not allow the use of the lead test assemblies until literal compliance with 10 CFR 50.46 and Appendix K was demonstrated. This would likely require Connecticut Yankee Atomic Power Company to develop new ECCS evaluation models for NRC approval prior to determining the economic feasibility for conversion to the new fuel. Such an evaluation for four lead test assemblies out of a core of 157 assemblies would not significantly enhance the protection of the environment.

Alternative Use of Resource: The proposed exemption involves the use of resources (Zircaloy-4) not previously considered in the Haddam Neck Draft and Final Environmental Statements, March 1973 and October 1973, respectively. However, Zircaloy is by far the dominant cladding material in use in lightwater power reactors licensed by the NRC and the use of up to 400 kg of Zircaloy in a core with a total of 18,000 kg of clad material is insignificant from the standpoint of resource use.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's requests dated May 25, 1984 and August 31, 1984, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., 20555, and at the Russell Library, 119 Broad Street, Middletown, Connecticut 16457.

Dated at Bethesda, Maryland, this 25th day of September 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 84-25994 Filed 9-28-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-289]

General Public Utilities Nuclear Corp.; (Three Mile Island Nuclear Station, Unit 1), Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a decision concerning a petition dated January 20, 1984, as supplemented on May 9, 1984, submitted by the Union of Concerned Scientists. The petitions request that the Commission initiate show cause or further enforcement proceedings to pervent restart of the Three Mile Island Nuclear Station, Unit 1, unless and until certain modifications are made to the facility's emergency feedwater system.

The Director, Office of Nuclear Reactor Regulation, has determined to deny the petitioner's request to initiate such proceedings. The reasons for this decision are explained in a "Director's Decision under 10 CFR 2.206" (DD-84-22) which is available for public inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and in the local Public Document Room for the TMI facility located in the Government Publications Section of the State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126. A copy of this decision will be filed with the Secretary for the Commissions' review.

Dated at Bethesda, Maryland this 25th day of September 1984.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 84-25995 Filed 9-28-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. STN 50-498 OL, STN 50-499 OL; ASLBP No. 79-421-07 OL]

Houston Lighting and Power Co., et al. (South Texas Project Units 1 and 2); Change in Date of Prehearing Conference

September 25, 1984.

The prehearing conference previously scheduled for October 15-16, 1984 (49 FR 36037, September 13, 1984, as modified by Notice dated September 19, 1984) has been rescheduled for October 16, 1984, beginning at 9:00 a.m. Parties should plan their presentations to permit the conference to be completed in one day (rather than the two previously scheduled).

The prehearing conference will be held at the same location as previously announced: Forum Rooms 1-2, Astro Village Hotel, 2350 South Loop W (I-610 at Kirby), Houston, Texas.

For the Atomic Safety and Licensing Board.

Dated at Bethesda, Maryland.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 84-25992 Filed 9-28-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-352-OL; and 50-353-OL ASLBP No. 81-465-07 OL]

Philadelphia Electric Co.; Limerick Generating Station, Units 1 and 2; Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721, the Atomic Safety and Licensing Board for *Philadelphia Electric Company* (Limerick Generating Station, Units 1 and 2), Docket Nos. 50-352-OL and 50-353-OL, is hereby reconstituted by appointing Administrative Judges Helen F. Hoyt and Jerry Harbour in place of Administrative Judges Lawrence Brenner and Peter A. Morris, who, because of schedule conflicts, are unable to serve. Administrative Judge Helen F. Hoyt is appointed as Chairman of the Board.

As reconstituted, the Board is comprised of the following Administrative Judges:

Helen F. Hoyt, Chairman
Dr. Richard F. Cole
Dr. Jerry Harbour

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The addresses of the new Board members are:

Helen F. Hoyt, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Dr. Jerry Harbour, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Issued at Bethesda, Maryland, this 25th day of September 1984.

B. Paul Cotter, Jr.

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 84-25993 Filed 9-28-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-406]

Tuskegee Institute; Finding of No Significant Environmental Impact Regarding Proposed Order Relating to Termination of Facility Operationg License No. R-122

The Nuclear Regulatory Commission (the Commission) is considering issuance of an Order authorizing disposition of all reactor components and terminating Facility Operating License No. R-122 for the Tuskegee Institute in Tuskegee, Alabama.

The Order will authorize disposal of the reactor components and terminate the Operating License in accordance with the licensee's application dated

August 9, 1983, as supplemented. Opportunity for hearing was afforded by the Notice of Proposed Issuance of Order Authorizing Disposition of Component Parts and Termination of Facility License published in the Federal Register June 12, 1984 at 49 FR 24189.

Environmental Assessment

Identification of Proposed Action

The Order would authorize disposition of all reactor components and terminate Operating License No. R–122, issued to the Tuskegee Institute Research Reactor in Tuskegee, Alabama.

Need the Proposed Action

The Tuskegee Institute Research Reator was never assembled and did not operate at the Tuskegee Institute. The final inspection and termination approval have been completed and show that all relevant regulatory requirements have been satisfied. Therefore, there is no longer any need for the Operating License to be in effect.

Environmental Impacts of Proposed Action

Since the fuel has been shipped offsite and residual contamination is within acceptable levels, termination of the license is the next appropriate administrative action. This action will have no environmental impact.

Alternative Use of Resources

This action does not involve the use of resources beyond those needed for its administrative processing.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's decommissioning plan and conducted the final inspection of the site. No other agencies or persons were consulted.

Finding of no Significant Impact

On the basis of the Environmental Assessment, the Commission has concluded that termination of the license will have no significant environmental impact. The Commission has determined not to prepare an Environmental Impact Statement for the proposed action.

For futher details with respect to this action see the licensee's request for decommissioning and termination dated August 9, 1983, and the Commission's Notice of Proposed Issuance of Order Authorizing Disposition of Component Parts and Termination of Facility License dated July 12, 1984, (49 FR 24189), which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C.

Dated at Bethesda, Maryland, this 26th day of September 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 84–25996 Filed 9–28–84; 8:45 pm]

BILLING CODE 7590–01–M

Documents Containing Reporting or Record Keeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: New.

2. The title of the information collection: 10 CFR Part 53, "Criteria and Procedures for Determining the Adequacy of Available Spent Nuclear Fuel Storage Capacity."

3. The form number if applicable: Not Applicable.

4. How often the collection is required: Once.

5. Who will be required or asked to report: NRC Power Reactor Licensees.

6. An estimate of the number of responses: Not More Than Two Annually.

7. An estimate of total number of hours needed annually to complete the requirement or request: 2640 Hours Per Year.

8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not Applicable.

9. Abstract: Any person owning and operating a civilian nuclear power reactor, when requesting a determination under section 135(b) of the Nuclear Waste Policy Act of 1982, must submit general and specific information to assist the Commission in determining whether that person cannot reasonably provide adequate spent nuclear fuel storage capacity.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, D.C. 20555.

Comments and questions should be directed to the OMB reviewer Jefferson B. Hill, (202) 395–7340.

NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland this 24th day of September 1984.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 84–25986 Filed 9–28–84; 4:45 pm]

BILLING CODE 7590–01–M

Draft Regulatory Guide; Issuance, Availability; Test and Calibration of Radiation Protection Instrumentation

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, OP 032–5 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Test and Calibration of Radiation Protection Instrumentation" and is intended for Division 8, "Occupational Health." It is being developed to provide information to licensees on criteria acceptable to the NRC staff for the test and calibration of hand-held portable instruments used to make surveys for radiation. With certain exceptions and supplements, the proposed guide will endorse ANSI N323–1978, "Radiation Protection Instrumentation Test and Calibration."

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Comments on both drafts should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, by November 30, 1984.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland this 24th day of September 1984.

For the Nuclear Regulatory Commission.

Karl R. Goller,

Director, Division of Radiation Programs and Earth Sciences, Office of Nuclear Regulatory Research.

[FR Doc. 84-25991 Filed 9-28-84; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives a consolidated notice of all positions excepted under Schedules A, B, C as of June 30, 1984, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

SUPPLEMENTARY INFORMATION: Civil Service Rule VI (5 CRF 6.1) requires the Office of Personnel Management (OPM) to publish notice of all exceptions granted under Schedules A, B, and C. 5 CFR 213.103(c) further requires that a consolidated listing, current as of June 30 of each year, be published annually as a notice in the **Federal Register.** That notice follows. OPM maintains continuing information on the status of all Schedules A, B, and C excepted appointing authorities. Interested parties needing information about specific authorities during the year may obtain information by contacting the Staffing Policy Analysis Division, Room 6526, Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20415, or by calling (202) 632-6817. The following exceptions were current on June 30, 1984:

Schedule A

Section 213.3102 Entire executive civil service.

(a) Positions of Chaplain and Chaplain's Assistant.

(b) Cooks, except at fixed locations such as hospitals, quarantine stations, and penal institutions.

(c) Positions to which appointments are made by the President without confirmation by the Senate.

(d) Attorneys.

(e) Law clerk trainee positions. Appointments under this paragraph shall be confined to graduates of recognized law schools or persons having equivalent experience and shall be for periods not to exceed 14 months pending admission to the bar. No person shall be given more than one appointment under this paragraph. However, an appointment which was initially made for less than 14 months may be extended for not to exceed 14 months in total duration.

(f) Chinese, Japanese, and Hindu interpreters.

(g) Any nontemporary position the duties of which are part-time or intermittent in which the appointee will receive compensation during his or her service year that aggregates not more than 40 percent of the annual salary rate for the first step of grade GS-3. This limited compensation includes any premium pay such as for overtime, night, Sunday, or holiday work. It does not, however, include any mandatory within-grade salary increases to which the employee becomes entitled subsequent to appointment under this authority. Appointments under this authority may not be for temporary project employment.

(h) Positions in Federal mental institutions when filled by persons who have been patients of such institutions and have been discharged and are certified by an appropriate medical authority thereof as recovered sufficiently to be regularly employed but it is believed desirable and in the interest of the persons and the institution that they be employed at the institution.

(i) Subject to prior approval of OPM, positions requiring temporary, part-time or intermittent employment in wage board type occupations (i.e., position excluded from Classification Act coverage by section 202(7) of the Act) on construction or repair work, where the activity is carried on in localities where examination coverage for the positions has not been provided and where because of employment conditions there is a shortage of available candidates for the positions. Appointments under this paragraph shall not extend beyond 1 year and the employment thereunder shall not exceed 180 working days a year. Seasonal employments of a recurring nature are not authorized under this paragraph.

(j) Positions filled by (1) appointment of persons previously employed as National Guard Technicians under 32 U.S.C. 709(a) in positions at the same or equivalent grade level, or below, who are applying for or receiving an annuity under the provisions of 5 U.S.C. 8337(h) by reason of a disability that disqualifies them from membership in the National Guard or from holding the military grade required as a condition of their National Guard employment; or (2) reassignment, promotion, or demotion within the same agency of former National Guard Technicians originally appointed under this authority.

(k) Positions without compensation provided appointments thereto meet the requirements of applicable laws relating to compensation.

(l) Positions requiring the temporary or intermittent employment of professional, scientific, or technical experts for consultation purposes.

(m) Nonsupervisory positions of custodial laborer (levels 1, 2, and 3) and general laborer (levels 2 and 3) in field establishments outside central office and regional office cities of OPM where examination coverage has not been provided for the positions, as follows:

(1) For temporary, intermittent, or seasonal employment (exclusive of positions covered by paragraph (1) of this section) not to exceed 180 working days a year in the Departments of Agriculture, Commerce, Interior, and Energy, in the Federal Aviation Agency, and in the International Boundary and Water Commission; or

(2) When it is specifically held by OPM that this authority is applicable for employment in localities that are isolated with respect to labor supply and where there is a shortage of available candidates for the positions.

(n) Any local physician, surgeon, or dentist employed under contract or on a part-time or fee basis.

(o) Positions of a scientific, professional, or analytical nature when filled by bona fide members of the faculty of an accredited college or university who have special

qualifications for the positions to which appointed. Employment under this provision shall not exceed 130 working days a year.

(p) Positions of a scientific, professional, or analytical nature when filled by bona fide graduate students at accredited colleges or universities provided that the work performed for the agency is to be used by the student as a basis for completing certain academic requirements toward a graduate degree. Appointments under this authority may not exceed 1 year, but may be extended for additional period(s) not to exceed 1 year as long as the conditions for appointment continue to be met. The appointment of any individual under this authority shall terminate upon the individual's completion of requirements for the graduate degree.

(q) Positions at grade GS–7 and below when appointees are to assist scientific, professional, or technical employees. Persons employed under this provision shall be (1) bona fide high school science or mathematics teachers; or (2) bona fide students at high schools or accredited colleges or universities who are pursuing courses related to the field in which employed. The appointment of any individual under this authority shall terminate upon the individual's ceasing to be enrolled in a qualifying educational program or to be employed as a teacher. No person shall be employed under this provision in (i) positions of a routine clerical type; or (ii) positions in excess of 1040 working hours a year, except that the 1040 working-hours-a-year limitation shall not apply to positions at grade GS–4 and below which are established in connection with associate degree cooperative education programs. Students enrolled in bachelor's degree cooperative education programs as defined in § 213.3202(a) shall not be employed under this provision. Appointments under this authority may be made only to positions for which qualification standards established under 5 CFR Part 302 are consistent with the education and experience standards established for comparable positions in the competitive service. Appointments under this authority may not be used to extend the service limits contained in any other appointing authority.

(r)–(s) [Reserved]

(t) Positions when filled by mentally retarded persons in accordance with written agreements executed between an agency and the OPM. Provisions to be included in such agreements are specified in the Federal Personnel Manual. Upon completion of 2 years of satisfactory service under this authority, the employee many qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by the Office.

(u) Positions when filled by severely physically handicapped persons who (1) under a temporary appointment have demonstrated their ability to perform the duties satisfactorily; or (2) have been certified by counselors of State vocational rehabilitation agencies or the Veterans Administration as likely to succeed in the performance of the duties. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by the Office.

(v) Between May 13 and September 30 only, temporary Summer Aid positions the duties of which involve work of a routine nature not regularly covered under the General Schedule requiring no specific knowledge or skills, when filled by youths, either (1) appointed under economic needs standards prescribed by the Office of Personnel Management; or (2) who are mentally retarded or severely physically handicapped. Youths may not be appointed unless they have reached their 16th birthday. This paragraph shall apply only to positions for which pay is fixed at the highest Federal minimum wage rate established by the Fair Labor Standards Act of 1938, as amended.

(w) Part-time or intermittent positions, the duties of which involve routine work up to and including the GS–4 level of difficulty or equivalent under the Federal Wage System, when filled by bona fide students appointed under the Stay-in-School Program. Students may be appointed if they need the earnings from this employment to continue in school or if they are mentally retarded or severely physically handicapped, provided that the following conditions are met: (1) Appointees are enrolled in or accepted for enrollment as a resident student in a secondary school (or other appropriate school for mentally retarded students) or an institution of higher learning not above the baccalaureate level, accredited by a recognized accrediting body;

(2) Employment does not exceed 20 hours in any calendar week except that students may work full time during any period in which their school is officially closed and during any school vacation period;

(3) While employed, appointees continue to maintain an acceptable school standing, although they need not attend school during the summer;

(4) Appointees meet the economic criteria prescribed by the Office of Personnel Management, except that this requirement does not apply to mentally retarded or severely physically handicapped students appointed under the authority; and

(5) Salaries are fixed by the agency head at a level commensurate with the duties assigned and the expected level of performance.

Appointments under this authority may not extend beyond 1 year. *However*, such appointments may be made for additional periods of not to exceed 1 year, each, if the conditions for initial appointment are still met. Students may not be appointed under this authority unless they have reached their 16th birthday. No new appointments may be made between May 13 and August 31, inclusive.

(x) Positions for which a local recruiting shortage exists when filled by inmates of Federal, District of Columbia, and State (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands) penal and correctional institutions under work-release programs authorized by the Prisoner Rehabilitation Act of 1965, the District of Columbia Work Release Act, or under work-release programs authorized by the States. Initial appointments under this authority may not exceed 1 year. An initial appointment may be extended for one or more periods not to exceed one additional year each upon a finding that the inmate is still in a work-release status and that a local recruiting shortage still exists. No person may serve under this authority longer than 1 year beyond the date of that person's release from custody.

(y) Positions at grade GS–2 and below for summer employment as defined in 213.3101(d), of assistants to scientific, professional, and technical employees, when filled by finalists in national science contests.

(z) Not to exceed 30 positions of assistants to top-level Federal officials when filled by persons designated by the President as White House Fellows.

(aa) Scientific and professional research associate positions at GS–11 and above when filled on a temporary basis by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and their agencies. Appointments are limited to persons referred by the National Research Council under its post-doctoral research associate program, may not exceed 2 years, and are subject to satisfactory

outcome of evaluation of the associate's research during the first year.

(bb) Positions when filled by aliens in the absence of qualified citizens. Appointments under this authority are subject to prior approval of the Office except when the authority is specifically included in a delegated examining agreement with the Office.

(cc) Positions at GS–15 and below when filled by persons identified as Interchange Executives by the President's Commission on Personnel Interchange. Appointments made under this authority may not extend beyond 2 years.

(dd)–(ee) [Reserved]

(ff) Not to exceed 25 positions when filled in accordance with an agreement between OPM and the Department of Justice by persons in programs administered by the Attorney General of the United States under Pub. L. 91–452 and related statutes. A person appointed under this authority may continue to be employed under it after he ceases to be in a qualifying program only as long as he remains in the same agency without a break in service.

(gg)–(hh) [Reserved]

(ii) Positions of Presidential Intern, GS–9 and –11, in the Presidential Management Intern Program. Initial appointments must be made at the GS–9 level. No one may serve under this authority for more than 2 years, unless extended with OPM approval for up to one additional year. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive appointment under the provisions of Executive Order 12364, in accordance with requirements published in the Federal Personnel Manual.

(jj) Legal intern positions. Appointments under this paragraph shall be confined to bona fide students at recognized law schools who are candidates for J.D. or LL.B. degrees. Appointments under this authority may not exceed 1 year, but may be extended for additional period(s) not to exceed 1 year as long as the conditions for appointment continue to be met. The appointment of any individual under this authority shall terminate upon the individual's graduation from law school.

(kk) [Reserved]

(ll) Positions as needed of readers for blind employees, interpreters for deaf employees and personal assistants for handicapped employees, filled on a full time, part-time, or intermittent basis.

Section 213.3103 Executive Office of the President

(a) *Office of Administration.* (1) Not to exceed 75 positions to provide administrative services and support to the White House office.

(b) *Office of Management and Budget.* (1) Not to exceed 10 positions at grades GS–9/15.

(c) *Council on Environmental Quality.* (1) Professional and technical positions in grades GS–13 through –15 on the staff of the Council.

(d)–(f) [Reserved]

(g) *National Security Council.* (1) All positions on the staff of the Council.

(h) *Office of Science and Technology Policy.* (1) Thirty positions of Senior Policy Analyst, GS–15; Policy Analyst, GS–11/14; and Policy Research Assistant, GS–9, for employment of anyone not to exceed 5 years on projects of a high priority nature.

Section 213.3104 Department of State.

(a) *Office of the Secretary.* (1) All positions, GS–15 and below, on the staff of the Family Liaison Office, Office of the Under Secretary for Management.

(2)–(5) [Reserved]

(b) *American Embassy, Paris, France.* (1) Chief, Travel and Visitor Unit. No new appointments may be made under this authority after August 10, 1981.

(c) *International Boundary and Water Commission, United States and Mexico.* (1) Gauge readers employed part time or intermittently at isolated localities when in the opinion of OPM, appointment through competitive examination is impracticable.

(d) *International Boundary Commission, United States and Canada.* (1) Temporary and intermittent field employees such as instrument men, foremen, recorders, packers, cooks, and axemen, for not to exceed 180 working days within any one calendar year.

(e) *Bureau of Oceans and International Environmental and Scientific Affairs.* (1) Two Physical Science Administration Officer positions at GS–16.

(f) [Reserved]

(g) *Office of Refugee and Migration Affairs.* (1) Not to exceed 10 positions at grades GS–5 through –11 on the staff of the office.

(h) *Bureau of Administration.* (1) One Presidential Trip Specialist. No new appointments may be made under this authority after June 11, 1981. No one may serve under this authority longer than 5 years.

Section 213.3105 Department of the Treasury

(a) *Office of the Secretary.* (1) Not to exceed 20 positions at the equivalent of GS–13 through GS–17 to supplement permanent staff in the study of complex problems relating to international financial, economic, trade, and energy policies and programs of the Government, when filled by individuals with special qualifications for the particular study being undertaken. Employment under this authority may not exceed 4 years.

(2) Not to exceed 20 positions, which will supplement permanent staff involved in the study and analysis of complex problems in the area of domestic economic and financial policy. Employment under this authority may not exceed 4 years.

(b) *U.S. Customs Service.* (1) Positions in foreign countries designated as "interpreter-translator" and "special employees," when filled by appointment of persons who are not citizens of the United States; and positions in foreign countries of messenger and janitor.

(2) [Reserved]

(3) Positions of part-time, intermittent, or temporary Customs Inspectors, and Port Directors in Alaska paid at a rate not above GS–9 and for not more than 130 working days in a service year.

(4) Positions of day "pickup" laborers whose assignments are to intermittent duties of short duration that must be performed without delay in field establishments where hiring of "pickup" laborers is authorized by the Bureau of Customs' headquarters. Persons appointed under this authority may not be employed in this kind of work in the Bureau of Customs for more than 180 working days a year under this authority or under a combination of this authority and any other authority for excepted appointment that may be appropriate. This authority is not appropriate for job employment.

(5) Positions at GS–9 and below of Customs Enforcement Officer, Customs Inspector, Customs Marine Clerk/Officer, Customs Aid (sampling), Customs Warehouse Officer, Port Director, Interpreter, and Laborer, with duties of a continuing nature that require the part-time or intermittent service of an employee for not more than 700 hours in his service year. An individual appointed under this exception may not be employed in the Bureau of Customs under a combination of this and any other exception for more than 700 hours in his service year.

(6) Twenty-five positions of Criminal Investigator for special assignments.

(7)–(8) [Reserved]

(9) Not to exceed 25 positions of Customs Patrol Officers in the Papago Indian Agency in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(c) *Office of the Comptroller of the Currency.* (1) Not to exceed six positions

filled under the Professional Accounting Fellow Program. Appointments under this authority may not exceed 2 years.

(d) [Reserved]

(e) *Internal Revenue Service.* (1) Twenty positions of investigator for special assignments.

(f) [Reserved]

(g) *Bureau of Alcohol, Tobacco, and Firearms.* (1) One hundred positions of criminal investigator for special assignments.

(h) *Office of New York Finance.* (1) Not to exceed 10 positions. Employment under this authority may not exceed September 30, 1983.

(i) *Bureau of Government Financial Operations.* (1) Clerical positions at grades GS–5 and below established in Emergency Disbursing Offices to process emergency payments to victims of catastrophes or natural disasters requiring emergency disbursing services. Employment under this authority may not exceed 1 year.

Section 213.3106 Department of Defense.

(a) *Office of the Secretary.* (1) Not to exceed 30 positions at grades GS–7/15 in the Defense Mobilization Systems Planning Activity, Office of the Deputy Assistant Secretary of Defense (Mobilization Planning and Requirements.) No new appointments may be made under this authority after March 31, 1985.

(2)–(5) [Reserved]

(6) One Executive Secretary, US–USSR Standing Consultative Commission and Staff Analyst (SALT), Office of the Assistant Secretary of Defense (International Security Affairs).

(b) *Entire Department (including the Office of the Secretary of Defense and the Departments of the Army, Navy, and Air Force.)* (1) Professional positions in Military Dependent School Systems overseas.

(2) Positions in attache 1 systems overseas, including all professional and scientific positions in the Naval Research Branch Office in London.

(3) Positions of clerk-translator, translator, and interpreter overseas.

(4) Positions of Educational Specialist the incumbents of which will serve as Director of Religious Education on the Staffs of the Chaplains in the military services.

(5) Positions under the program for utilization of alien scientists approved under pertinent directives administered by the Director of Defense Research and Engineering of the Department of Defense when occupied by alien scientists initially employed under the program including those who have acquired United States citizenship during such employment.

(6) Positions in overseas installations of the Department of Defense when filled by dependents of military or civilian employees of the U.S. Government residing in the area. Employment under this authority may not extend longer than 2 months following the transfer from the area or the separation of a dependent's sponsor: *Provided,* that (i) a school employee may be permitted to complete the school year; and (ii) an employee other than a school employee may be permitted to serve up to one additional year when the military department concerned finds that the additional employment is in the interest of management.

(7) Fifteen secretarial and staff support positions at GS–12 or below on the White House Support Group.

(c) Defense Contract Audit Agency. (1) Not to exceed two positions of Accounting Fellow, Auditor, GM–511–14, filled under the Accounting Fellowship Program. Appointments under this authority may not exceed 2 years.

(d) *General.* (1) Positions concerned with advising, administering, supervising or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information, including scientific and technical positions in the intelligence function; and positions involved in the planning, programming, and management of intelligence resources when, in the opinion of OPM, it is impracticable to examine. This authority does not apply to positions assigned to cryptologic and communications intelligence activities/functions.

(2) Positions involved in intelligence-related work of the cryptologic intelligence activities of the military departments. This includes all positions of intelligence research specialist, and similar positions in the intelligence classification series; all scientific and technical positions involving the applications of engineering, physical or technical sciences to intelligence work; and professional as well as intelligence technician positions in which a majority of the incumbent's time is spent in advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, or estimation of intelligence information or in the planning, programming, and management of intelligence resources.

(e) *Uniformed Services University of the Health Sciences.* (1) Positions of Dean, Associate Dean, Assistant Dean, faculty members, postdoctoral fellows, and teaching/research assistants.

(2) Positions established to perform work on projects funded from grants.

(f) *National Defense University.* (1) Not to exceed 16 positions of senior policy analyst, GS–15, at the strategic Concepts Development Center. Initial appointments to these positions may not exceed 3 years, but may be extended thereafter for additional period(s) not to exceed 1 year each.

Section 213.3107 Department of the Army.

(a) *General.* (1) Not to exceed 30 positions on the faculty and staff which are classified in the GS–1700 occupational group and the GS–1410 Librarian series, located at the U.S. Army Russian Institute, Garmisch, Germany, and the U.S. Army Foreign Language Training Center Europe, Munich, Germany.

(2) Unskilled laborers and munitions handlers engaged in handling ordnance material, including ammunition, where temporary or intermittent employment is necessary.

(b) *Aviation Systems Command.* (1) One scientific and professional research position in the U.S. Army Research and Technology Laboratories, the duties of which require specific knowledge of aviation technology in non-allied nations.

(c) *Corps of Engineers.* (1) [Reserved]

(2) Nonsupervisory trades, crafts, and manual labor positions at grades WG–6 and below on survey, construction, short-term maintenance, or floating-plant operations, where because of turnover, lack of housing facilities, mobility of work site, or remoteness of personnel servicing facilities, an adequate labor force can be recruited only by immediate gate hiring on a local basis. This authority can be used only when OPM has determined that it is psecifically applicable to a given situation; ordinarily, it will not be used for employment in OPM central office, regional, and branch office cities or in cities where there is a local OPM area office to service the employing establishment.

(d) *U.S. Military Academy, West Point, New York.* (1) Civilian professors, instructors, teachers (except teachers at the Children's School), Cadet Social Activities Coordinator, chapel organist and Choir-master, Dirtector of Intercollegiate Athletics, Associate Director of Intercollagiate Athletics, Facility Manager, Deputy Director of Alumni Affairs; and librarian when filled by an officer of the Regular Army retired from active service, and the

military secretary to the Superintendent when filled by a U.S. Military Academy graduate retired as a regular commissioned officer for disability.

(e)–(f) [Reserved]

(g) *Defense Language Institute.* (1) All positions of the faculty and staff which are classified in the GS–1700 occupational group, the GS–1040 Language specialist series, and the GS–303 Bilingual Clerk series, that require either a proficiency in a foreign language or a knowledge of foreign language teaching methods.

(2)–(4) [Reserved]

(h) *Army War College, Carlisle Barracks, Pa.* (1) Five positions of Educaitonal Specialist for employment of not to exceed 1 year: Provided, that such employment may, with the prior approval of OPM, be extended for not to exceed one additional year.

(2) Nine senior policy analyst positions, GS–14/15, at the Strategic Studies Institute, Army War College, with appointments to be made initially for up to 3 years and thereafter extended annually if needed.

(3) Five research oriented faculty positions, GS–14/15, with the U.S. Army War College, at Carlisle Barracks, Pennsylvania, with appointments to be made initially for up to 3 years and thereafter extended annually if needed.

(i) *Defense Systems Management School, Fort Belvoir, Va.* (1) The Deputy Commandant and professors in grades GS–13 through GS–15.

(j) *U.S. Military Academy Preparatory School, Fort Monmouth, New Jersey.* (1) Positions of Academic Director, Department Head and Instructor.

Section 213.3108 Department of the Navy

(a) *General.* (1) [Reserved]

(2) Positions of Student Pharmacist for temporary, part-time, or intermittent employent in U.S. naval regional medical centers, hospitals, clinics and departments when filled by students who are enrolled in an approved pharmacy program in a participating non-Federal institution, and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(3) [Reserved]

(4) Not to exceed 50 positions of resident-in-training at U.S. naval regional medical centers, hospitals, and dispensaries which have residency training programs, when filled by residents assigned as affiliates for part of their training from non-Federal hospitals. Assignments shall be on a temporary (full-time or part-time) or intermittent basis, shall not amount to more than 6 months for any person, and shall be applied only to persons whose compensation is fixed under 5 U.S.C. 5351–54.

(5) [Reserved]

(6) Positions of Student Operating Room Technician for temporary, part-time or intermittent employment in U.S. naval regional medical centers and hospitals, when filled by students who are enrolled in an approved operating room technician program in a participating non-Federal institution, whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(7) Positions of student social worker for temporary, part-time, or intermittent employment in U.S. naval regional medical centers, hospitals and dispensaries, when filled by bona fide students enrolled in academic institutions: *Provided,* that the work performed in the agency is to be used by the student as a basis for completing certain academic requirements by such educational institution to qualify for a graduate degree in social work. This authority shall be applied only to students whose compensation is fixed under 5 U.S.C. 5351–54.

(8) Positions of student practical nurse for temporary, part-time, or intermittent employment in U.S. naval regional medical centers, hospital, and dispensaries, when filled by trainees enrolled in a non-Federal institution in an approved program of educational and clinical training which meets the requirements for licensing as a practical nurse. This authority shall be applied only to trainees whose compensation is fixed under 5 U.S.C. 5351–54.

(9) One Personnel Security Specialist, Naval Personnel Program Support Activity, Bureau of Naval Personnel.

(10) Positions of medical technology intern in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by students enrolled in approved programs of training in non-Federal institutions. Employment under this authority may be filled on a full-time, part-time, or intermittent basis but may not exceed 1 year. This authority shall be applied only to students whose compensation is fixed under 5 U.S.C. 5351–54.

(11) Positions of medical intern at U.S. naval regional medical centers, hospitals, and dispensaries, when filled by persons who are serving medical internships at participating non-Federal hospitals and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(12) Positions of student speech pathologist at U.S. naval regional medical centers, hospitals, and dispensaries, when filled by persons who are enrolled in participating non-Federal institutions and whose compensation if fixed under 5 U.S.C. 5351–54. Employemnt under this authority may not exceed 1 year.

(13) Positions of student dental assistant in U.S. naval dental centers, clinics, and departments, when filled by students who are enrolled in an approved dental assistant program in a participating non-Federal institution, and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(14) [Reserved]

(15) Marine positions assigned to a coastal or seagoing vessel operated by a naval activity for research or training purposes.

(b) *Naval Acadmey, Naval Postgraduate School, and Naval War College.* (1) Professors, instructors, and teachers; the Director of Academic Planning, Naval Postgraduate School; and the librarian, organist-choirmaster, registrar, the dean of admissions, and social counselors at the Naval Academy.

(c) [Reserved]

(d) *Military Sealift Command.* (1) All positions on vessels operated by the Military Sealift Command.

(e)–(f) [Reserved]

(g) *Office of Naval Research.* (1) Not to exceed five positions of Liason Scientists, GS–13/15, in the office of Naval Research Branch Office in Japan, when filled by research scientists who have specialized experience in scientific disciplines of current interest to the Department and who have a demonstrated ability to deal with the Japanese scientific community in their disciplines. An appointment under this authority may be made initially for a period not to exceed 2 years. With the prior approval of OPM, total employment under this authority may be for as long as 3 years.

Section 213.3109 Department of the Air Force.

(a) *Office of the Secretary.* (1) One Special Assistant in the Office of the Secretary of the Air Force. This position has advisory rather than operating duties except as operating or administrative responsibilities may be exercised in connection with the pilot studies.

(b) *General.* (1) Professional, technical, managerial and administrative position supporting speace activities, when approved by the Secretary of the Air Force.

(2) Fifty-five positions engaged in interdepartmental defense projects

involving scientific and technical evaluations.

(c) Not to exceed 14 professional positions, GS–11 through GS–15, in Detachment 6, 2762 Logistics Squadron (Special), Norton Air Force Base, California, which will provide logistic support management to specialized research and development projects. Employment under this authority may not exceed January 31, 1985.

(d) *U.S. Air Force Academy, Colorado.* (1) Positions of Cadet Hostesses, Instructors in Physical Education, and Instructors in Music (choirmaster).

(e) Not to exceed five positions, GS–12 through GS–15, in the Specialized Management Office (WR–ALC/QL) at Robins Air Force Base, Georgia, which will provide logistic support management staff guidance for highly sensitive and high priority programs and projects. Employment under this authroity is not to exceed May 30, 1988.

(f) *Air Force Office of Special Investigations.* (1) Twenty-five positions of Criminal Investigator and Intelligence Research Specialist, GS–9 through GS–14, for indefinite employment on projects concerned with the security of national defense activities and materials.

(2) Not to exceed 25 positions of Criminal Investigators/Polygraph Examiners, GS–11 thrugh GS–14, in the Air Force Office of Special Investigations, Polygraph Office, duty location nationwide, which will provide high level polygraph security screening for a highly classified, sensitive and compartmented special access program concerned with national defense activities and materials, for employment not to exceed April 30, 1987.

(g) Not to exceed 7 positions, GS–12 through 15, in Headquarters Air Force Logistics Command, DCS Logistics Operation, Wright Patterson Air Force Base, Ohio, which will provide logistic support management staff guidance to classified research and development projects. Employment under this authority is not to exceed January 31, 1985.

Section 213.3110 Department of Justice

(a) *General.* (1) Deputy U.S. Marshals employed on an hourly basis for intermittent service.

(2) [Reserved]

(3) U.S. Marshal in the Virgin Islands.

(4) Staff positions, GS–15 and below, to assist in the resettlement of Cuban and Haitian entrants. Employment under this authority may not exceed September 30, 1984.

(5) Thirty positions of Field Representative and Field Representative Trainee, GS–5 through GS–14, in the Community Relatins Service for temporary employment not to exceed 1 year. Employment under this authority may be extended for not to exceed 1 additional year.

(6) [Reserved]

(b) *Imigration and Naturalization Service.* (1) Not to exceed 700 positions at grades GS–15 and below engaged in planning for and implementing the processing of claims for resident status which may be submitted by aliens already in the United States as authorized by immigration control and reform legislation. Employment under this authority is not to exceed 4 years from the effective date of such legislation. New appointments under this authority may not be made after December 31, 1984 unless applicable authorizing legislation has been enacted.

(c) *Drug Enforcement Administration.* (1) [Reserved]

(2) 150 positions of Intelligence Research Agent and/or Intelligence Operation Specialist in the GS–132 series, grades GS–9 through GS–15.

(d) U.S. Marshals Service. (1) Three hundred intermittent positions for guard for employment not to exceed 1,040 hours a year.

Section 213.3112 Department of the Interior.

(a) *General.* (1) Technical, maintenance, and clerical positions at or below grades GS–7, WG–10, or equivalent in the field service of the Department of the Interior, when filled by the appointment of persons who are certified as maintaining a permanent and exclusive residence within, or contiguous to, a field activity or district, and as being dependent for livelihood primarily upon employment available within the field activity of the Department.

(2) All positins on Government-owned ships or vessels operated by the Department of the Interior.

(3) Temporary or seasonal caretakers at temporarily closed camps or improved areas to maintain grounds, buildings, or other structures and prevent damages or theft of Government property. Such appointments shall not extend beyond 130 working days a year without the prior approval of OPM.

(4) Temporary, intermittent, or seasonal field assistants at GS–7, or its equivalent, and below in such areas as forestry, range management, soils, engineering, fishery and wildlife management, and with surveying parties. Employment under this authority may not exceed 180 working days a year.

(5) Temporary positions established in the field service of the Department for emergency forest and range fire prevention or suppression and blister rust control for not to exceed 180 working days a year: *Provided,* that an employee may work as many as 220 working days a year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property.

(6) Persons employed in field positions, the work of which is financed jointly by the Department of the Interior and cooperating persons or organizations outside the Federal service.

(7) All positions in the Bureau of Indian Affairs and other positions in the Department of the Interior directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of the Interior is responsible for defining the term "Indian."

(8) Temporary, intermittent, or seasonal positions at GS–7 or below in Alaska, as follows: Positions in non-professional mining activities, such as those of drillers, miners, caterpiller operators, and samplers. Employment under this authority shall not exceed 180 working days a year and shall be appropriate only when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(9) Temporary, part-time, or intermittent employment of mechanics, skilled laborers, equipment operators and tradesmen on construction, repair, or maintenance work not to exceed 180 working days a year in Alaska, when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(10) Seasonal airplane pilots and airplane mechanics in Alaska, not to exceed 180 working days a year.

(11) Temporary staff positions in the Youth Conservation Corps Centers operated by the Department of the Interior. Employment under this authority shall not exceed 11 weeks a year except with prior approval of OPM.

(12) Positions in the Youth Conservation Corps for which pay is fixed at the Federal minimum rate. Employment under this authority may not exceed 10 weeks.

(b) [Reserved]

(c) *Indian Arts and Crafts Board.* (1) The Executive Director.

(d) [Reserved]

(e) *Office of the Assistant Secretary, Territorial and International Affairs.* (1) [Reserved]

(2) Not to exceed four positions of Territorial Management Interns, grades GS–5, GS–7, or GS–9, when filled by territorial residents who are U.S. citizens from the Virgin Islands or Guam; U.S. nationals from American Samoa; or in the case of the Northern Marianas, will become U.S. citizens upon termination of the U.S. trusteeship. Employment under this authority may not exceed 6 months.

(3) [Reserved]

(4) Special Assistants to the Governor of American Samoa who perform specialized administrative, professional, technical, and scientific duties as members of his or her immediate staff.

(f) *National Park Service.* (1) Park Ranger positions (appropriate specializations) at salaries equivalent to GS–5, or GS–4 and those equivalent to grade GS–7 or GS–6 in which the duties are supervisory or are limited to a highly specialized part of the duties performed by career protective or interpretive personnel of the National Park Service. (The total number of Park Ranger and Park Technician positions at salaries equivalent to GS–7 and GS–6 excepted under this paragraph and paragraph (f)(2) of this section shall not exceed 200.) Employment under this paragraph is limited to persons who meet the qualification standards for each salary level which have been agreed upon by OPM and the Department. These standards include as a minimum the following number of previous seasons' experience in the National Park Service as a Park Ranger at a salary equivalent to the next lower grade:

(i) For IGS–7: Two seasons at IGS–6 level.

(ii) For IGS–6: Two seasons at IGS–5 level.

(iii) For IGS–5: One season at IGS–4 level.

Employment under this paragraph shall be only for duty that is temporary, intermittent, or seasonal, and no person shall be employed by the same appointing office in the National Park Service under this paragraph or a combination of this and any other excepting authorities in excess of 180 working days a year.

(2) Park Aid and Park Technician positions at salaries equivalent to GS–2 through GS–5 to perform technical and practical work supporting the management, conservation, interpretation, development, and use of park ares and resources; and positions at salaries equivalent to GS–7 and GS–6 in which the duties are supervisory or are limited to a highly specialized part of the duties performed by career resources management, interpretive or visitor service personnel of the National Park Service. (The total number of Park Technician and Park Ranger positions at salaries equivalent to GS–7 and GS–6 excepted under this paragraph and paragraph (f)(1) of this section shall not exceed 200.) Employment under this paragraph is limited to persons who meet the qualification standards for each salary level which have been agreed upon by OPM and the Department. These standards include as a minimum the following number of previous seasons' experience in the National Park Service as a Park Aid or Park Technician equivalent to the next lower grades:

(i) For IGS–7: Two seasons at IGS–6 level.

(ii) For IGS–6: Two seasons at IGS–5 level.

(iii) For IGS–5: One season at IGS–4 level.

(iv) For IGS–4: One season at IGS–3 level or its equivalent in experience.

(v) For IGS–3: One season at IGS–2 level or its equivalent in experience.

Employment under this paragraph shall be only for duty that is temporary, intermittent, or seasonal, and no person shall be employed by the same appointing office in the National Park Service under this paragraph or a combination of this and any other excepting authorities in excess of 180 working days a year.

(3) Seven full-time permanent and 31 temporary, part-time, or intermittent positions in the Redwood National Park, California, which are needed for rehabilitation of the park, as provided by Pub. L. 95–250.

(4) One Special Representative of the Director.

(g) *Bureau of Reclamation.* (1) Appraisers and examiners employed on a temporary, intermittent, or part-time basis on special valuaton or prospective-entrymen-review projects where knowledge of local values or conditions or other specialized qualifications not possessed by regular Bureau employees are required for successful results. Employment under this provision shall not exceed 130 working days a year in any individual case: *Provided,* that such employment may, with prior approval of OPM, be extended for not to exceed an additional 50 working days in any single year.

(h) *Office of the Deputy Assistant Secretary for Territorial Affairs.* (1) Positions of Territorial Management Interns, GS–5, when filled by persons selected by the Government of the Trust Territory of the Pacific Islands. No appointment may extend beyond 1 year.

(i) *Office of Hearings and Appeals.* (1) [Reserved]

Section 213.3113 Department of Agriculture.

(a) *General.* (1) Agents employed in field positions the work of which is financed jointly by the Department and cooperating persons, organizations, or governmental agencies outside the Federal service. Except for positions for which selection is jointly made by the Department and the cooperating organization, this authority is not applicable to positions in the Agricultural Research Service, the Animal and Plant Health Inspection Service, or positions in the Statistical Reporting Service. This authority is not applicable to the following positions in the Agricultural Marketing Service: Agricultural Commodity grader (grain) and (meat), (poultry), and (dairy) agricultural commodity aid (grain), and tobacco inspection positions.

(2)–(4) [Reserved]

(5) Temporary, intermittent, or seasonal employment in the field service of the Department in positions at and below GS–7 and WG–10 in the following types of positions: Field assistants for subprofessional services; caretakers at temporarily closed camps or improved areas; forest workers engaged primarily for fire prevention or suppression activities and other forest workers employed at headquarters other than forest supervisor and regional offices; State performance assistants in the Agricultural Stabilization and Conservation Service; agricultural commodity aids (cotton) in the Agricultural Marketing Service; agricultural helpers, helper-leaders, and workers in the Agricultural Research and the Animal and Plant Health Inspection Service; and subject to prior OPM approval granted in the calendar year in which the appointment is to be made, other clerical, trades, crafts, and manual labor positions. Total employment under this subparagraph may not exceed 180 working days in a service year: *Provided,* that an employee may work as many as 220 working days in a service year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property. This paragraph does not cover trades, crafts, and manual labor positions covered by paragraphs (i) and (m) of § 213.3102.

(6) [Reserved]

(7) Not to exceed 20 Program Assistants, whose experience acquired in positions excepted from the competitive civil service in the administration of agricultural programs

at the State level is needed by the Department for the more efficient administration of its programs. No new appointment may be made under this authority after December 31, 1977.

(b) [Reserved]

(c) *Forest Service.* (1) [Reserved]

(2) Positions in Alaska of Laborers, Boat Operators, Mechanics, Equipment Operators, and Carpenters whose duties require the operation of boats in coastal waters and/or the establishment and maintenance of work camps in remote areas.

(d) *Agricultural Stablization and Conservation Service.* (1) [Reserved]

(2) Members of State Committees: *Provided,* that employment under this authority shall be limited to temporary intermittent (WAE) positions whose principal duties involve administering farm programs within the State consistent with legislative and Departmental requirements and reviewing national procedures and policies for adaptation at State and local levels within established parameters. Individual appointments under this authority are for 1 year and may be extended only by the Secretary of Agriculture or his designee. Members of State Committees serve at the pleasure of the Secretary.

(3) [Reserved]

(e) *Farmers Home Administration.* (1) [Reserved]

(2) County committeemen to consider, recommend, and advise with respect to the Farmers Home Administration program.

(3) Temporary positions whose principal duties involve the making and servicing of natural disaster emergency loans pursuant to current statutes authorizing natural disaster emergency loans. Appointments under this provision shall not exceed 1 year unless extended for one additional period not to exceed 1 year, but may, with prior approval of OPM, be further extended for additional periods not to exceed 1 year each.

(4) [Reserved]

(5) Temporary positions in State and county offices of the Farmers Home Administration whose principal duties involve the making and servicing of loans pursuant to the Economic Opportunity Act of 1964. Appointments under this provision shall not exceed 1 year unless extended with prior OPM approval for not to exceed one additional year.

(6) Professional and clerical positions in the Trust Territory of the Pacific Islands when occupied by indigenous residents of the Territory to provide financial assistance pursuant to current authorizing statutes.

(7) Positions concerned with an economic emergency loan program authorized by the Agricultural Credit Act of 1978, for seasonal employment not to exceed August 31, 1982.

(f) *Agricultural Marketing Service.* (1) Positions of Cotton, Tobacco, Dairy, and Poultry Agricultural Commodity Graders and Meat Acceptance Specialists, GS–11 and below, for employment not to exceed 1280 hours in a service year. Agricultural Commodity Graders (Cotton), GS–5, may be employed as trainees for the first appointment for an initial period of 6 months for training without regard to the hour limitation. Positions of Agricultural Commodity Technicians, GS–5 through GS–7; Agricultural Commodity Aids, GS–2 through GS–5; Clerks, GS–4 and below; and laborers employed on a seasonal basis not to exceed 180 days or 1280 hours a year.

(2) Positions of Raisin Inspectors and Aids and Processed Fruit and Vegetable Graders and Aids, GS–9 and below, for employment not to exceed 180 days in a service year. In unforeseen situations such as bad weather or crop conditions, unanticipated plant demands, or increased imports, employees may work up to 240 days in a service year.

(3) Milk Market Administrators.

(4) All positions on the staffs of Milk Market Administrators.

(5) [Reserved]

(g)–(i) [Reserved]

(j) *Food and Nutrition Service.* (1) [Reserved]

(2) Three hundred fifty positions of food assistance program specialist, GS–5/7, under the Child Nutrition Summer Feeding Program, for temporary employment not to being before March 1 and not to exceed September 30 of each year, on a full-time, part-time, or intermittent basis.

(k) Animal and Plant Health Inspection Service. (1) [Reserved]

(2) Temporary field positions concerned with the control, suppression, and eradication of emergency livestock and plant diseases and emergency outbreaks of animal and plant pests. Persons appointed under the authority may not be employed in these positions in the Animal and Plant Health Inspection Service for longer than 1 year under this authority, or under a combination of this and any other authorities for excepted appointment that may be appropriate without prior approval of OPM. This authority shall be appropriate only in situations declared by the Secretary of Agriculture to be emergencies threatening the livestock and plant industries of the country.

(l) *Food Safety and Inspection Service.* (1)–(2) [Reserved]

(3) Positions of meat and poultry inspectors (veterinarians at GS–11 and below and nonveterinarians at appropriate grades below GS–11) for employment on a temporary, intermittent, or seasonal basis, not to exceed 1,280 hours a year.

(m) *Federal Grain Inspection Service.* (1) One hundred and fifty positions of Agricultural Commodity Aid (Grain), GS–2/4; 100 positions of Agricultural Commodity Technician (Grain), GS–4/7; and 60 positions of Agricultural Commodity Grader (Grain), GS–5/9, for temporary employment on a part-time, intermittent, or seasonal basis not to exceed 1,280 hours in a service year.

Section 213.3114 Department of Commerce.

(a) *General.* (1)–(2) [Reserved]

(3) Not to exceed 50 scientific and technical positions whose duties are performed primarily in the Antarctic. Incumbents of these positions may be stationed in the continental United States for periods of orientation, training, analysis of data, and report writing.

(b) *Office of the Secretary.* (1) One position of Administrative Assistant, GS–301–8, in the Office of Economic Affairs. New appointments may not be made after March 30, 1979.

(c) [Reserved]

(d) *Bureau of the Census.* (1) Managers, supervisors, technicians, clerks, interviewers, and enumerators in the field service, for temporary, part-time or intermitten employment in connection with major economic and demographic censuses or with surveys of a nonrecurring or noncyclical nature: *Provided,* that temporary, part-time employment will be for periods not to exceed 1 year; and that such appointments may be extended for additional periods of not to exceed 1 year each; but that prior Office approval is required for extension of total service beyond 2 years.

(2) Current Program Interviewers employed on an intermittent or part-time basis in the field service.

(3) Not to exceed 20 professional and scientific positions at grades GS–9 through GS–12 filled by participants in the ASA research trainee program. Employment of any individual under this authority may not exceed 2 years.

(e)–(h) [Reserved]

(i) *Office of the Under Secretary for International Trade.* (1) Thirty positions at GS–12 and above in specialized fields relating to international trade or commerce in units under the jurisdiction

of the Under Secretary for International Trade. Incumbents will be assigned to advisory rather than to operating duties, except as operating and administrative responsibility may be required for the conduct of pilot studies or special projects. Employment under this authority will not exceed 2 years for an individual appointee.

(2) Not to exceed 40 positions of Managers and Deputy Managers of International Trade Fairs and Exhibit Programs in foreign countries when the duties require a considerable portion of the employee's time to be spent in foreign countries.

(3) Not to exceed 30 positions in grades GS–12 through GS–15, to be filled by persons qualified as industrial or marketing specialists; who possess specialized knowledge and experience in industrial production, industrial operations and related problems, market structure and trends, retail and wholesale trade practices, distribution channels and costs, or business financing and credit practices applicable to one or more of the current segments of U.S. industry served by the Under Secretary for International Trade, and the subordinate components of his organization which are involved in Domestic Business matters. Appointments under this authority may be made for a period of not to exceed two years and may, with prior approval of OPM, be extended for an additional period of 2 years.

(j) National Oceanic and Atmospheric Administration. (1) subject to prior approval of OPM, which shall be contingent upon a showing of inadequate housing facilities, meterological aid positions at the following stations in Alaska: Barrow, Bethal, Kotzebue, McGrath, Northway, and St. Paul Island.

(2) Positions requiring temporary employment of persons to perform duties which involve work associated with the inspection of fishery products. Appointment under this authority may be made for a period of 1 year (2,080 hours), with one extension not to exceed 2,080 hours. No persons shall be employed under this authority in a supervisory position or in a position above grade GS–9, or equivalent. Positions filled under this authority may not exceed 20 percent of authorized fishery products inspection staff.

(3) All civilian positions on vessels operated by the National Ocean Survey.

(4) Temporary positions required in connection with the surveying operations of the field service of the National Ocean Survey. Appointment to such positions shall not exceed 8 months in any one calendar year.

(k) [Reserved]

(l) *National Telecommunication and Information Administration.* (1) Seventeen professional positions in grades GS–13 through GS–15.

(m) [Reserved]

Section 213.3115 Department of Labor.

(a) *Office of the Secretary.* (1) Chairman and five members, Employees' Compensation Appeals Board.

(2) Chairman and two members, Benefits Review Board.

(b) *Bureau of Labor Statistics.* (1) Not to exceed 500 positions involving part-time and intermittent employment for field survey and enumeration work in the Bureau of Labor Statistics. This authority is applicable to positions where the salary is equivalent to GS–6 and below. Employment under this authority may not exceed 1,600 work hours in a service year. No new appointment may be made under this authority after December 31, 1984.

(c) [Reserved]

(d) *Employment and Training Administration.* (1) Not to exceed 10 positions of supervisory manpower development specialist and manpower development specialist GS–7/15, in the Division of Indian and Native American Programs, when filled by the appointment of persons of one-fourth or more Indian blood. These positions require direct contact with Indian tribes and communities for the development and administration of comprehensive employment and training programs.

Section 213.3116 Department of Health and Human Services.

(a) *Saint Elizabeth's Hospital.* (1)–(4) [Reserved]

(5) Fifteen positions of pyschodrama trainees, including interns and first- and second-year residents. This authority shall be applied only to positions with compensation fixed under 5 U.S.C. 5351 and 5352.

(6)–(8) [Reserved]

(9) Positions of Chaplain Residents: *Provided,* that employment under this authority shall not exceed 39 months for any individual. This authority shall be applied only to positions whose compensation is fixed in accordance with the provisions of 5 U.S.C. 5351 and 5352.

(10) [Reserved]

(11) Ten positions of group dynamics and group psychotherapy trainees, including interns and residents in the Overholser Training and Research Division. Employment under this authority shall not exceed 2 years, and shall be applied only to positions with compensation fixed under 5 U.S.C. 5351 and 5352.

(12) Ten positions of Interns, Residents and Fellows for work in mental health and deafness. Employment under this authority may not exceed 1 year for any individual.

(13) Fifteen positions of Interns and Residents in Applied and Evaluative Research (Mental Health) Program. Employment under this authority may not exceed 2 years for any individual.

(b) *Public Health Service.* (1) Not to exceed five positions a year of Medical Technologist Resident, GS–644–7, in the Blood Bank Department, Clinical Center, of the National Institutes of Health. Appointments under this authority will not exceed 1 year.

(2) Positions at Government sanatoria when filled by patients during treatment or convalescence.

(3) All positions in the Public Health Service Hospital, Carville, La.

(4) Positions concerned with problems in preventive medicine financed or participated in by the Department of Health and Human Services and a cooperating State, county, municipality, incorporated organization, or an individual in which at least one-half of the expense is contributed by the cooperating agency either in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

(5) Medical and dental interns, externs, and residents; and student nurses.

(6) Positions of scientific, professional, or technical nature when filled by bona fide students enrolled in academic institutions: *Provided,* that the work performed in the agency is to be used by the student as a basis for completing certain academic requirements required by an educational institution to qualify for a scientific, professional, or technical field: *And provided further,* that appropriate exclusions of the positions under the authority of Pub. L. 80–330 have been approved by the Office of Personnel Management.

(7) [Reserved]

(8) All positions in the Public Health Service and other positions in the Department of Health and Human Services directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of Health and Human Services is responsible for defining the term "Indian."

(9) Twelve positions of Therapeutic Radiologic Technician Trainee in the Radiation Oncology Branch, National Cancer Institute. Employment under this authority shall not exceed 1 year for any

individual. This authority shall be applied only to positions with compensation fixed under 5 U.S.C. 5351–5356.

(10) Health care positions of the National Health Service Corps for employment of any one individual not to exceed 4 years of service in health manpower shortage areas.

(11) Pharmacy Resident positions at GS–7 in the National Institutes of Health's Clinical Center, Pharmacy Department. Employment in these positions is confined to graduates of approved schools of pharmacy and is limited to a period not to exceed 12 months pending licensure.

(12) Hospital Administration Resident positions at GS–9 in the National Institutes of Health's Clinical Center, Bethesda, Maryland. Employment in these positions is confined to graduates of approved hospital or health care administration programs and is limited to a period not to exceed 1 year.

(c) [Reserved]

(d) *Social Security Administration.* (1) Six positions of social insurance representative in the district offices of the Social Security Administration in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(2) Seven positions of social insurance representative in the district offices of the Social Security Administration in the State of New Mexico when filled by the appointment of persons of one-fourth or more Indian blood.

(3) Two positions of social insurance representative in the district offices of the Social Security Administration in the State of Alaska when filled by the appointment of persons of one-fourth or more Alaskan Native blood (Eskimos, Indians, or Aleuts).

(4) Not to exceed 64 positions on the Refugee Program Staff.

(5) Eleven clerical and technical positions at grade GS–5 in the Social Security Administration which involve contact with recent Indochinese immigrants and which require a knowledge of Indochinese languages and an understanding of any sympathy for the problems faced by recent Indochinese immigrants.

(6) [Reserved]

(e) [Reserved]

(f) *The President's Council on Physical Fitness.* (1) Four staff assistants, The President's Council on Physical Fitness.

(g)–(i) [Reserved]

(j) *Health Care Financing Administration.* (1) [Reserved]

(2) Not to exceed 10 professional positions, GS–9 through GS–15, to be filled under the Health Care Financing Administration Professional Exchange Program. Appointment under the authority will not exceed 1 year.

(k) *Office of the Secretary.* (1) Not to exceed 75 positions providing direct services to Cuban and Haitian entrants.

(2) Not to exceed 10 positions at grades GS–9/14 in the Office of the Assistant Secretary for Planning and Evaluation filled under the Policy Research Associate Program. New appointments to these positions may be made only at grades GS–9/12. Employment of any individual under this authority may not exceed 2 years.

Section 213.3117 Department of Education.

(a) Positions concerned with problems in education financed and participated in by the Department of Education and a cooperating State educational agency, or university or college, in which there is joint responsibility for selection and supervision of employees, and at least one-half of the expense is contributed by the cooperating agency in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

Section 213.3124 Board of Governors, Federal Reserve System.

(a) All positions.

Section 213.3127 Veterans Administration.

(a) *Construction Division.* (1) Temporary construction workers paid from "purchase and hire" funds and appointed for not to exceed the duration of a construction project.

(b) Not to exceed 400 positions of rehabilitation counselors, GS–3 through GS–11, in Alcoholism Treatment Units and Drug Dependence Treatment Centers, when filled by former patients.

(c) [Reserved]

(d) Not to exceed 600 positions at grades GS–3 through GS–11, involved in the Veterans Administration Vietnam Era Veterans Readjustment Counseling Program. No one may serve under this authority after August 31, 1988.

Section 213.3128 U.S. Information Agency.

(a) *Office of Congressional and Public Liaison.* (1) Two positions of Liaison Officer (Congressional), GS–14.

(b) Five positions of Supervisory International Exchange Officer (Reception Center Director), GS–13 and GS–14, located in USIA's field offices of New Orleans, New York, Miami, San Francisco and Honolulu. Initial appointments will not exceed December 31 of the calendar year in which appointment is made with extensions permitted up to a maximum period of 4 years.

Section 213.3130 Securities and Exchange Commission.

(a)–(b) [Reserved]

(c) Positions of accountant and auditor, GS–13 through 15, when filled by persons selected under the SEC Accounting Fellow Program, as follows:

(1) Four positions, for employment of any one individual not to exceed 2 years; and

(2) Two additional identical positions, for employment of any one individual not to exceed 90 days which may be used to provide a period of transition and orientation between Fellowship appointments. These additional identical positions must be filled by persons who either have completed a 2-year Fellowship or have been selected as replacement Fellows for a 2-year term. Appointments of outgoing Fellows under this authority must be made without a break in service of 1 workday following completion of their 2-year terms; incoming Fellows appointed under this provision must be appointed to 2-year Fellowships without a break in service of 1 workday following their 90-day appointments.

(d) Positions of Economist, GS–13 through 15, when filled by persons selected under the SEC Economic Fellow Program. No more than four positions may be filled under authority at any one time. An employee may not serve under this authority longer than 2 years unless selected under provisions set forth in the Intergovernmental Personnel Act (IPA), 5 U.S.C. 3372(b)(2).

Section 213.3131 Department of Energy.

(a) [Reserved]

(b) *Bonneville Power Administration.* (1) Five Area Managers.

Section 213.3132 Small Business Administration.

(a) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by temporary appointment of employees to make and administer disaster loans in the area under the Small Business Act, as amended. Service under this authority may not exceed 4 years, and no more than 2 years may be spent on a single disaster. Exception to this time limit may only be made with prior Office approval. Appointments under this authority may not be used to extend the 2-year service limit contained in

paragraph (b) below. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(b) When the President under 42 U.S.C. 1855–1855g, or the Secretary of Agriculture under 7 U.S.C. 1961 or the Small Business Administration under 15 U.S.C. 636(b)(1), declares an area to be a disaster area, positions filled by temporary appointment of employees to make and administer disaster loans in that area under the Small Business Act, as amended. No one may serve under this authority for more than an aggregate of 2 years without a break in service of at least 6 months. Persons who have had more than 2 years of service under paragraph (a) of this section must have a break in service of at least 8 months following such service before appointment under this authority. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(c) Positions of Community Economic-Industrial Planner, GS–7 through 12, when filled by local residents who represent the interest of the groups to be served by the Minority Entrepreneurship Terms of which they are members. No new appointments may be made under this authority after May 1, 1977.

Section 213.3133 Federal Deposit Insurance Corporation.

(a) All Liquidation Graded, temporary field positions concerned with the work of liquidating the assets of closed banks, of liquidating loans to banks, or of paying the depositors of closed insured banks.

Section 213.3136 U.S. Soldiers' and Airmen's Home.

(a) All positions.

Section 213.3137 General Services Administration.

(a) *General.* (1) Custodians, guards, watchmen, laborers, and other employees engaged in the custody, care, and preservation of plants, warehouses, shipyards, airfields, and surplus facilities of a similar nature pending disposition of such facilities.

(b) Not to exceed 25 positions at grades GS–14/15, in order to bring into the agency current industry expertise in various program areas. Appointments under this authority may not exceed 2 years.

Section 213.3140 Civil Aeronautics Board.

(a) Not to exceed 40 percent of the Civil Aeronautics Board's authorized GS–15 and below positions. This authority may not be used for new appointments to positions which are identified for transfer to other Federal agencies as authorized under the mandates of the Airline Deregulation Act of 1978. Employment under this authority may not exceed December 31, 1984.

Section 213.3141 National Labor Relations Board.

(a) Election Examiners for temporary, part-time or intermittent employment in connection with elections under the Labor-Management Relations Act.

Section 213.3142 Export-Import Bank of the United States.

(a) One Special Assistant to the Board of Directors, grade GS–14 and above.

Section 213.3146 Selective Service System.

(a) State Directors.

(b)–(c) [Reserved]

(d) Executive Secretary, National Selective Service Appeal Board.

Section 213.3148 National Aeronautics and Space Administration.

(a) One hundred and fifty alien scientists having special qualifications in the fields of aeronautical and space research where such employment is deemed by the Administrator of the National Aeronautics and Space Administration to be necessary in the public interest.

(b) Not to exceed 40 positions of fully qualified pilot and mission specialists astronauts.

(c)–(e) [Reserved]

(f) Positions of Program Coordinator/Counselor at grades GS–7/9/11 for part-time and summer employment in connection with the High School Students Summer Research Apprenticeship Program.

Section 213.3152 U.S. Government Printing Office.

(a) Not to exceed three positions of Research Associate at grades GS–15 and below, involved in the study and analysis of complex problems relating to the reduction of the Government's printing costs and to provision of more efficient service to customer agencies and the public. Appointments under this authority may not exceed 1 year, but may be extended for not to exceed one additional year.

(b) Positions in the printing trades when filled by students majoring in printing technology employed under a cooperative education agreement with the University of the District of Columbia.

Section 213.3154 Federal Home Loan Bank Board.

(a) One Secretary, Federal Home Loan Bank Board.

(b) [Reserved]

(c) Positions in the Federal Savings and Loan Insurance Corporation concerned with the work of liquidating the assets of closed insured institutions or the liquidation of loans or the handling of contributions to insured institutions and the purchase of assets therefrom; and positions of the Federal Savings and Loan Insurance Corporation the work of which is concerned with paying the depositors of closed insured institutions. Appointments under this authority may not exceed 3 years.

Section 213.3156 Commission on Civil Rights.

(a) Twenty-five positions at grade GS-11 and above of employees who collect, study, and appraise civil rights information to carry out the national clearinghouse responsibilities of the Commission under Pub. L. 88–352, as amended. No new appointments may be made under this authority after March 31, 1976.

Section 213.3174 Smithsonian Institution.

(a) Not to exceed 25 positions at grades GS–11 and below which support planning and production of the Annual American Folklife Festival. Employment under this authority may not exceed 6 months in connection with any one Festival.

(b) All positions located in Panama which are part of or which support the Smithsonian Tropical Research Institute.

(c) One Russian Studies Program Administrator, one East Asian Studies Program Administrator, one International Security Studies Program Administrator, and one Latin American Program Administrator in the Woodrow Wilson International Center for Scholars.

Section 213.3182 National Foundation on the Arts and the Humanities.

(a) *National Endowment for the Arts.* (1) Until September 30, 1985, one position of Assistant Director, Artists-in-Education Programs, Office for Partnership, GS–301–14.

(2) Until September 30, 1985, one position of Director of Federal-State Partnership.

(3) Until September 30, 1985, one position of Director of Literature Programs.

(4) Until September 30, 1985, one position of Assistant Director of Theatre Programs.

(5) Until September 30, 1985, one position of Director of Folk Arts Programs.

(6) Until September 30, 1985, one position of Director, Opera/Musical Theatre Programs.

(7) Until September 30, 1985, one position of Assistant Director of Opera/Musical Theatre Programs.

(8) Until September 30, 1985, one position of Assistant Director of Literature Programs.

(9) Until September 30, 1985, one position of Director of Locals Test Programs, Office of the Deputy to the Chairman for Public Partnership.

(10) Until September 30, 1985, one position of Deputy to the Chairman for Public Partnership.

(11) Until September 30, 1985, four Project Evaluators.

(12) Until September 30, 1985, one position of Director of Museum Programs.

(13) Until September 30, 1985, one position of Assistant Director of Folk Arts, Office of the Deputy Chairman for Programs.

(14) Until September 30, 1985, two positions of Assistant Director of Music Programs.

(15) Until September 30, 1985, one position of Director of Expansion Arts Programs.

(16) Until September 30, 1985, one position of Director of Media Arts Programs.

(17) Until September 30, 1985, one position of Director, Challenge Grant Program.

(18)–(19) [Reserved]

(20) Until September 30, 1985, one position of Director of Inter Arts Program.

(21) Until September 30, 1985, one position of Assistant Director of Expansion of Arts Programs.

(22) Until September 30, 1985, one position of Assistant Director of Media Arts Programs.

(23) Until September 30, 1985, one position of Assistant Director of Design Arts Program.

(24) Until September 30, 1985, one position of Assistant Director of Dance Programs.

(25) Until September 30, 1985, one position of Assistant Director of Visual Arts Programs.

(26) Until September 30, 1985, one position of Assistant Director of Museum Programs.

(27) Until September 30, 1985, one position of Assistant Director of Special Projects.

(28)–(29) [Reserved]

(30) Until September 30, 1985, one position of Director of Education Programs.

(31) Until September 30, 1985, one position of Director of Music Programs.

(32) Until September 30, 1985, one position of Director of Theater Programs.

(33) Until September 30, 1985, one position of Director of Dance Programs.

(34) Until September 30, 1985, one position of Director of Visual Arts Programs.

(35) Until September 30, 1985, one position of Director of Design Arts Program.

(36) [Reserved]

(37) Until September 30, 1985, one Director for State Programs.

(38) Until September 30, 1985, one Director for Artists-in-Education Programs.

(b) *National Endowment for the Humanities.* (1)–(21) [Reserved]

(22) Until September 30, 1985, one position of Bicentennial Coordinator, Office of the Chairman.

Section 213.3184 Department of Housing and Urban Development.

(a) One position of Special Advisor to the Regional Administrator, GS–301–14, in San Francisco. Employment under this authority may not exceed 2 years.

Section 213.3191 Office of Personnel Management.

(a) Not to exceed 500 positions in Federal Job Information Centers, to be filled under the Community Outreach Information Network program. Appointments under this authority may not exceed 90 days, and no one may receive more than one appointment under the authority.

(b)–(c) [Reserved]

(d) Part-time and intermittent positions of test examiners at grades GS–8 and below.

Section 213.3194 Department of Transportation.

(a) *U.S. Coast Guard.* (1) Not to exceed 25 positions of Marine Traffic Controller (Pilot), at grade GS–11 and below for temporary, intermittent or seasonal employment in the State of Louisiana. Temporary appointments may not exceed 1 year, and temporary appointees may be reappointed under this authority only after a break in service of at least 6 months. Intermittent or seasonal employment may not exceed 180 working days in a service year, except that this limitation for an individual employee may be extended to 220 days when necessitated by emergencies caused by unusual flooding conditions or high river stages.

(2) Lamplighters.

(3) Professors, Associate Professors, Assistant Professors, Instructors, one Principal Librarian, one Cadet Hostess, and one Psychologist (Counseling) at the Coast Guard Academy, New London, Conn.

(b) [Reserved]

(c) *Federal Highway Administration.* (1) Temporary, intermittent, or seasonal employment in the field service of the Federal Highway Administration at grades not higher than GS–5 for subprofessional engineering aide work on the highway surveys and constructions projects, for not to exceed 180 working days a year, when in the opinion of OPM, appointment through competitive examination is impracticable.

(d) [Reserved]

(e) *Maritime Administration.* (1)–(2) [Reserved]

(3) All positions on Government-owned vessels or those bareboats chartered to the Government and operated by or for the Maritime Administration.

(4)–(5) [Reserved]

(6) U.S. Merchant Marine Academy, positions of: Professors, Instructors, and Teachers: including heads of Departments of Physical Education and Athletics, Humanities, Mathematics and Science, Maritime Law and Economics, Nautical Science, and Engineering; Coordinator of Shipboard Training; the Commandant of Midshipmen, the Assistant Commandant of Midshipmen; Director of Music; three Battalion Officers; three Regimental Affairs Officers; and one Training Administrator.

(7) U.S. Merchant Marine Academy position of: Associate Dean; Registrar; Director of Admissions; Assistant Director of Admissions; Director, Office of External Affairs; Placement Officer; Administrative Librarian; Shipboard Training Assistant; three Academy Training Representatives; and one Education Program assistant.

Section 213.3195 Federal Emergency Management Agency.

(a) Field positions at grades GS–15 and below, or equivalent, which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Pub. L. 93–288, as amended.

Employment under this authority may not exceed 36 months on any single emergency. Persons may not be employed under this authority for long-term duties or for work not directly

necessitated by the emergency response effort.

(b) Not to exceed 30 positions at grades GS–15 and below in the Offices of Executive Administration, General Counsel, Inspector General, Comptroller, Public Affairs, Personnel, Acquisition Management, and the State and Local Program and Support Directorate which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Pub. L. 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency, or for long-term duties or work not directly necessitated by the emergency response effort. No one may be reappointed under this authority for service in connection with a different emergency unless at least 6 months have elapsed since the individual's latest appointment under this authority.

(c) Not to exceed 350 professional and technical positions at grades GS–5 through GS–15, or equivalent, in Mobile Emergency Response Support Detachments (MERS).

Section 213.3199 Temporary organizations.

(a) Positions at GS–15 and below on the staffs of temporary boards and commissions which are established by law or Executive order for specified periods not to exceed 4 years to perform specific projects. A temporary board or commission originally established for less than 4 years and subsequently extended may continue to fill its staff positions under this authority as long as its total life, including extension(s) does not exceed 4 years. No board or commission may use this authority for more than 4 years to make appointments and position changes unless prior approval of the Office is obtained.

(b) Positions at GS–15 and below on the staffs of temporary organizations established within continuing agencies when all of the following conditions are met: (1) The temporary organization is established by an authority outside the agency, usually by law or Executive order; (2) the temporary organization is established for an initial period of 4 years or less and, if subsequently extended, its total life including extension(s) will not exceed 4 years; (3) the work to be performed by the temporary organization is outside the agency's continuing responsibilities; and (4) the positions filled under this authority are those for which other staffing resources or authorities are not available within the agency. An agency may use this authority to fill positions in organizations which do not meet all of the above conditions or to make appointments and position changes in a single organization during a period longer than 4 years only with prior approval of the Office.

Schedule B

Section 213.3202 Entire executive civil service.

The provisions established under paragraphs (a) through (i) are authorized under provisions of E.O. 12015 and support career-related work-study programs. OPM's requirements relating to appointment under paragraphs (a) through (i) will be published in the Federal Personnel Manual. Further, appointments under paragraphs (a) through (i) are subject to all the requirements and conditions governing career or career-conditional appointments, including investigation by OPM to establish an appointee's qualifications and suitability. Appointments of participants may be converted to career or career-conditional at any time within a 120-day period after satisfactory completion of a career-related work-study program.

(a) Student positions established in connection with a bachelor's degree cooperative education program which provide for a formally arranged schedule of attendance at an institution of higher learning combined with at least 26 weeks, or 1040 hours, of study-related work in a Federal agency. The periods of work and study together must satisfy requirements for a bachelors degree and must provide the experience necessary for a career or career-conditional appointment to administrative, professional or technical positions in the Federal career service upon the student's graduation.

(b) Student positions established in support of cooperative education programs for graduate students which provide for scheduled periods of attendance at a graduate school combined with at least 16 weeks or 640 hours of study-related work in a Federal agency. The periods of work and study must satisfy requirements for a graduate degree and provide experience necessary for career or career-conditional appointment in the Federal career service upon the student's graduation.

(c) Student positions established in connection with associate degree cooperative education programs which provide for formally arranged schedules of attendance at a recognized 2-year educational institution combined with at least 26 weeks or 1040 hours of study-related work in a Federal agency. The periods of work and study together must satisfy the requirements for graduation and must provide the experience necessary for career or career-conditional appointment in selected occupations in the Federal career service upon the student's graduation.

(d) Student positions established in connection with the Harry S. Truman Foundation Scholarship Program under the provisions of Pub. L. 93–642 to permit scheduled periods of attendance at institutions of high education combined with at least 26 weeks or 1040 hours of study-related work in a Federal agency. The periods of work and study satisfy requirements of programs established by agreement between the Harry S. Truman Scholarship Foundation and the employing agency and provide the experience necessary for career or career-conditional appointment in the Federal career service upon the student's graduation.

(e) Positions at shipyards, air rework facilities and other major industrial activities in the Department of the Navy which prepare students at the high school level, upon satisfactory completion of a cooperative education program of at least 1,040 hours for employment in preapprentice positions or in helper positions at the WG–5 level as pipefitters, marine machinist, inside machinist, welder, sheet metal mechanic, and such other occupations where the journeyman level is WG–9 or above as the Associate Director, Staffing Group, shall have approved, provided that (1) Not more than 25 percent of the positions in covered occupations will be filled annually at any single installation through this conversion authority; and (2) the maximum time during which any student will be employed in the program is 18 months; and (3) except for conditions specified in this authority, students will be subject to instructions governing all other high school vocational education students in cooperative education programs; and (4) any student who completes a program without a diploma must have an authenticated certificate from the school indicating satisfactory completion in his or her personnel folder.

(f) Positions under the Federal Junior Fellowship Program, a career-related work-study program covered under the provisions of Executive Order 12015.

(g)–(i) [Reserved]

(j) Special executive development positions established in connection with Senior Executive Service candidate development programs which have been approved by OPM. A Federal agency may make new appointments under this authority for any period of employment

not exceeding three years for one individual.

(k) Positions at grades GS–15 and below when filled by individuals who (1) are placed at a severe disadvantage in obtaining employment because of a psychiatric disability evidenced by hospitalization or outpatient treatment and have had a significant period of substantially disrupted employment because of the disability; and (2) are certified to a specific position by a State vocational rehabilitation counselor or a Veterans Administration counseling psychologist (or psychiatrist) who indicates that they meet the severe disadvantage criteria stated above, that they are capable of functioning in the positions to which they will be appointed, and that any residual disability is not job related. Employment of any individual under this authority may not exceed 2 years following each significant period of mental illness.

(l) Professional and administrative career (PAC) positions at the GS–5 or GS–7 grade level which are subject to the decree entered on November 19, 1981, by the United States District Court for the District of Columbia in the civil action known as *Luevano* v. *Devine* and numbered as No. 79–271, which were not removed from coverage of the Professional and Administrative Career Examination (PACE) prior to the effective date of the consent decree, and which are to be filled, under the conditions described below, by appointment of individuals other than those who at the time of such appointment already have competitive status in the Federal civil service. When a Federal agency needs to fill a PAC position that was not removed from PACE coverage before the consent decree became effective, and the agency has made maximum use of priority placement sources and has given appropriate consideration to available and qualified status applicants, then OPM may authorize the agency to make a new appointment under this paragraph. Such appointments shall be authorized and made pursuant to such Schedule B requirements for PAC positions as shall be prescribed in the Federal Personnel Manual. Terms of use of this appointment authority shall be established from the competitive service pursuant to this authority. An incumbent of a Schedule B PAC position may be appointed to a competitive position upon a demonstration that the employee has met qualifications on the basis of an examination of the employee's experience and such other measures as may be prescribed for such position in civil service laws, rules, and regulations, including the Federal Personnel Manual.

Section 213.3203 Executive Office of the President.

(a) [Reserved]

(b) *Office of the Special Representative for Trade Negotiations.* (1) Seventeen positions of economist at grades GS–12 through GS–15.

Section 213.3204 Department of State.

(a)-(c) [Reserved]

(d) Eight positions on the household staff of the President's Guest House (Blair and Blair-Lee Houses).

(e) Four Physical Science Administration Officer positions at GS–11 and GS–12 under the Bureau of Oceans and International Environmental and Scientific Affairs' Science, Engineering and Diplomacy Fellowship Program. Employment under this authority is not to exceed 1 year.

(f) Scientific, professional, and technical positions at grades GS–12 to GS–15 when filled by persons having special qualifications in foreign policy matters. Total employment under this authority may not exceed 4 years.

Section 213.3205 Department of the Treasury.

(a) Positions of Deputy Comptroller of the Currency, Chief National Bank Examiner, Assistant Chief National Bank Examiner, Regional Administor of National Banks, Deputy Regional Administrator of National Banks, Assistant to the Comptroller of the Currency, National Bank Examiner, Associate National Bank Examiner, and Assistant National Bank Examiner, whose salaires are paid from assessments against national banks and other financial institutions.

(b) [Reserved]

(c) Not to exceed two positions of Accountant (Tax Specialist) at grades GS–13 and above to serve as specialists on the accounting analysis and treatment of corporation taxes. Employments under this paragraph shall not exceed a period of 18 months in any individual case.

(d) Positions concerned with the protection of the life and safety of the President and members of his immediate family, or other persons for whom similar protective services are prescribed by law, when filled in accordance with special appointment procedures approved by OPM. Service under this authority may not exceed (1) a total of 4 years; or (2) 120 days following completion of the service required for conversion under Executive Order 11203, whichever occurs first.

Section 213.3206 Department of Defense.

(a) *Office of the Secretary.* (1) [Reserved]

(2) Professional positions at GS–11 through GS–15 involving systems, costs, and economic analysis functions in the Office of the Assistant Secretary (Program Analysis and Evaluation); and in the Office of the Deputy Assistant Secretary (Systems Policy and Information) in the Office of the Assistant Secretary (Comptroller).

(3)–(4) [Reserved]

(5) Four Net Assessment Analysts.

(b) *Interdepartmental activities.* (1) Five positions to provide general administration, general art and information, photography, and/or visual information support to the White House Photographic Service.

(c) *National Defense University.* (1) Twenty-one positions for professor, GS–13/15, for employment of any one individual on an initial appointment not to exceed 3 years with an annual renewal provision indefinitely thereafter.

(d) *General.* (1) One position of Law Enforcement Liaison Officer (Drugs), GS–301–15, U.S. European Command.

Section 213.3207 Department of the Army.

(a) *U.S. Army Command and General Staff College.* (1) Seven positions of professors, instructors, and education specialists. Total employment of any individual under this authority may not exceed 4 years.

(b) *Brooke Army Medical Center, Fort Sam Houston, Texas.* (1) Two Medical Officer (Surgery) positions, GS–12, in the Clinical Division, U.S. Army Institute of Surgical Research, whose incumbents are enrolled in medical school surgical residency programs. Employment under this authority shall not exceed 12 months.

Section 213.3208 Department of the Navy.

(a) *Naval Underwater Systems Center, New London, Connecticut.* (1) One position of oceanographer, grade GS–14, to function as project director and manager for research in the weapons systems applications of ocean eddies.

(b) All civilian faculty positions of professors, instructors, and teachers on the staff of the Armed Forces Staff College, Norfolk, Virginia.

Section 213.3209 Department of the Air Force.

(a) Not to exceed four interdisciplinary positions for the Air

Research Institute at the Air University, Maxwell Air Force Base, Alabama, for employment to complete studies proposed by candidates and acceptable to the Air Force. Employment of any one individual is not to exceed 1 year. Such employment may be extended for not to exceed one additional year. Total employment of any one individual under this authority may not exceed 2 years.

(b) Civilian Deans and Professors at the Air Force Institute of Technology, Wright-Patterson Air Force Base, Dayton, Ohio.

(c) One Director of Instruction and 14 civilian Instructors at the Defense Institute of Security Assistance Management, Wright-Patterson Air Force Base, Dayton, Ohio. Individual appointments under this authority will be for an initial 3-year period, which may be followed by an appointment of indefinite duration.

(d) Seven positions of professor or associate professor at the Air University, Maxwell Air Force Base, Ala., for employment of any one individual not to exceed 2 years. Such employment may be extended once for an additional period of 2 years. Total employment of any one individual under this authority may not exceed 4 years.

Section 213.3210 Department of Justice.

(a) Criminal Investigator (Special Agent) positions in the Drug Enforcement Administration. New appointments may be made under this authority only at grades GS–5 through 11. Service under the authority may not exceed 4 years. Appointments made under this authority may be converted to career or career-conditional appointments under the provisions of Executive Order 12230, subject to conditions agreed upon between the Department and OPM.

(b) Positions of Port Receptionist and Supervisory Port Receptionist, Immigration and Naturalization Service.

(c) Not to exceed 50 positions at grades GS–7 through 15 assigned to regional task forces established to conduct special investigations to combat drug trafficking and organized crime.

(d) Until September 30, 1984, positions, other than those providing routine clerical and administrative support, on the staff of the offices of United States Trustees. Terms of service under this authority shall be established in accordance with provisions of the Bankruptcy Reform Act of 1978 and subsequent applicable legislation.

Section 213.3212 Department of the Interior.

(a) Any competitive position at an Indian school when filled by the spouse of a competitive employee of the school, when because of isolation or lack of quarters, the OPM deems appointment through competitive examination impracticable.

Section 213.3213 Department of Agriculture.

(a) *Office of International Cooperation and Development.* (1) Positions of a project nature involved in international technical assistance activities. Service under this authority may not exceed 2 years on a single project for any individual. No more than 20 new appointments may be made under this authority in any 12-month period.

(b) *Agricultural Research Service.* (1) Temporary positions of professional Research Scientists, GS–15 or below, when such positions are established to support the ARS Research Associateship Program and are filled by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and ARS. Appointments are limited to proposals approved by the Administrator and may be made initially for 1 year with an extension for up to one additional year. No more than 25 new appointments may be made under this authority during a calendar year.

Section 213.3214 Department of Commerce.

(a) *Bureau of the Census.* (1) [Reserved]

(2) Not to exceed 50 Community Services Specialist positions at the equivalent of GS–5 through GS–12.

(b) *Economic Development Administration.* (1)–(2) [Reserved]

(c) *Minority Business Development Agency.* (1) One position of minority business opportunity specialist at grades GS–9 through GS–15. This authority may not be used for new appointments after December 31, 1977.

(d) *Office of Telecommunications.* (1) Not to exceed 10 positions of Telecommunications Policy Analyst, grades GS–11 through 15. Employment under this authority may not exceed 2 years.

Section 213.3215 Department of Labor.

(a) Positions of Chairman and Member, Wage Appeals Board.

Section 213.3216 Department of Health and Human Services.

(a) *Public Health Service.* (1) Not to exceed 68 positions at GS–11 and below on the Health and Nutrition Examination Survey teams of the National Center for Health Statistics.

(b)–(c) [Reserved]

(d) *National Library of Medicine.* (1) Ten positions of Librarian, GS–7, the incumbents of which will be trainees in the Library Associate Training Program in Medical Librarianship and Biomedical Communications. Employment under this authority is not to exceed 1 year.

Section 213.3217 Department of Education.

(a) Seventy-five positions, not in excess of GS–13, of a professional or analytical nature when filled by persons, other than college faculty members or candidates working toward college degrees, who are participating in midcareer development programs authorized by Federal statute or regulation, or sponsored by private nonprofit organizations, when a period of work experience is a requirement for completion of an organized study program. Employment under this authority shall not exceed 1 year.

(b) Fifty positions, GS–7 through GS–11, concerned with advising on education policies, practices, and procedures under unusual and abnormal conditions. Persons employed under this provision must be bona fide elementary school and high school teachers. Appointments under this authority may be made for a period of not to exceed 1 year, and may, with the prior approval of the Office of Personnel Management, be extended for an additional period of 1 year.

Section 213.3227 Veterans Administration.

(a) Not to exceed 800 principal investigatory, scientific, professional and technical positions at grades GS–11 and above in the medical research program. Employment under this authority may not exceed 7 years for any individual.

Section 213.3228 U.S. Information Agency.

(a) *Voice of America.* (1) Not to exceed 150 positions at grades GS–15 and below in the Cuba Service. Appointments may not be made under this authority to administrative, clerical, and technical support positions.

(b) Positions of English Language Radio Broadcast Intern, GS–1001–5/7/9. Employment is not to exceed 2 years for any intern.

Section 213.3231 Department of Energy.

(a) Twenty Exceptions and Appeals Analyst positions at grades GS–7 through 11, when filled by persons selected under DOE's fellowship

program in its Office of Hearings and Appeals, Washington, D.C. Appointments under this authority shall not exceed 3 years.

Section 213.3237 General Services Administration.

(a) One position of Deputy Director of Network Services.

Section 213.3242 Export-Import Bank of the U.S.

(a) One position of Food Service Worker WG–7804–3/4/5, in the Office of the President and Chairman.

Section 213.3248 National Aeronautics and Space Administration.

(a) Not to exceed 40 positions of Command Pilot, Pilot and Mission Specialist candidates at grades GS–7 through 15 in the Space Shuttle Astronaut program. Employment under this authority may not exceed 3 years.

Section 213.3254 Federal Home Loan Bank Board.

(a) Positions of Accounting Policy Analyst, GS–13/14/15, in the Office of Examinations and Supervision filled in connection with a fellowship program. Appointments under this authority may not exceed 2 years. No more than two new appointments may be made under this authority during any consecutive 12-month period.

(b) Up to 73 positions at GS–15 and below in the Federal Home Loan Bank Board engaged in exploring methods to promote stability in the thrift industry, restore the industry to profitability, and protect individual savers.

Section 213.3257 National Credit Union Administration.

(a) *Central Liquidity Facility.* (1) All managerial and supervisory positions at pay levels greater than the equivalent of GS–13.

Section 213.3259 ACTION.

(a) *Office of Domestic and Anti-Poverty Operations.* (1) Not to exceed 25 positions of Program Specialist at grades GS–9 through GS–15.

(2) [Reserved]

(b) *Office of Voluntary Liaison.* (1) Three positions of Program Specialist at grades GS–7 through GS–15.

Section 213.3264 U.S. Arms Control and Disarmament Agency.

(a) Twenty-five scientific, professional, and technical positions at grades GS–12 through GS–15 when filled by persons having special qualifications in the fields of foreign policy, foreign affairs, arms control, and related fields. Total employment under this authority may not exceed 4 years.

Section 213.3272 Administrative Office of the U.S. Courts.

(a) Not to exceed 18 positions of Federal Probation System Administrator in the Division of Probation, when filled by Federal Probation Officers and/or Pretrial Services Officers on active service in the U.S. Courts.

(b) [Reserved]

(c) Three positions of Clerks Liaison Officer in the Division of Clerks of Court.

Section 213.3274 Smithsonian Institution.

(a) *National Zoological Park.* (1) Four positions of Veterinary Intern, GS–8/9/11. Employment under this authority is not to exceed 36 months.

(b) *Freer Gallery of Art.* (1) Not to exceed four positions of Oriental Art Restoration Specialist at grades GS–9 through GS–15.

Section 213.3276 Appalachian Regional Commission.

(a) Two Program Coordinators.

Section 213.3282 National Foundation on the Arts and the Humanities.

(a) *National Endowment for the Arts.* (1) Until September 30, 1985, Assistant Director, Office of Program Development and Coordination.

(b) *National Endowment for the Humanties.* (1) Until September 30, 1985, Humanist Administrator, Reference Works Programs, Division of Research Programs.

(2) Until September 30, 1985, Humanist Administrator (Assistant Director), Central Disciplines in Undergraduate Education Program, Division of Education Programs.

(3) Until September 30, 1985, Deputy Director, Division of Education Programs.

(4) Until September 30, 1985, Director, Division of Research Grants.

(5) Until September 30, 1985, one position of Director, GS–1701–15, one position of Deputy Director, GS–1701–14, and six positions of Humanist Administrator, GS–1701–13, Division of State Programs.

(6) Until September 30, 1985, one Director and one Deputy Director, Division of Fellows and Seminars.

(7) Until September 30, 1985, one Humanist Administrator, Fellowships for College Teachers, Division of Fellowships.

(8) Until September 30, 1985, four positions of Humanist Administrator, Media Program, Division of General Programs.

(9) Until September 30, 1985, one position of Humanist Administrator (Assistant Director), Exemplary Projects, Nontraditional Learners, and Teaching Materials Program, Division of Education Programs.

(10) Until September 30, 1985, one position of Assistant Director for the Elementary and Secondary Education Program, Division of Education Programs.

(11) Until September 30, 1985, one position of Assistant Director for the Museums and Historical Organizations Program, Division of General Programs.

(12) Until September 30, 1985, one position of Humanist Administrator, Museums and Historical Organizations Program, Division of General Programs.

(13) Until September 30, 1985, one position of Humanist Administrator, Elementary and Secondary Education Program, Division of Education Programs.

(14) Until September 30, 1985, Director of General Programs.

(15) Until September 30, 1985, one Deputy Director of General Programs.

(16) Until September 30, 1985, one Humanist Administrator, Youth Programs, Division of General Programs.

(17) Until September 30, 1985, one Humanist Administrator, Program Development, Division of General Programs.

(18) Until September 30, 1985, one position of Director, Division of Education Programs.

(19) Until September 30, 1985, one Special Assistant for Comparative Cultures, Office of the Chairman. Appointments under this authority may not exceed 4 years.

(20) Until September 30, 1985, one Humanist Administrator, Fellowships at Centers for Advanced Study, Division of Fellowships and Seminars.

(21) Until September 30, 1985, one Challenge Grants Officer.

(22) Until September 30, 1985, one Assistant Director, Media Program, Division of General Programs.

(23) Until September 30, 1985, one position of Humanist Administrator, Publications Program, Division of Research Grants.

(24) Until September 30, 1985, one Deputy Director, Division of Research Grants.

(25) Until September 30, 1985, one Humanist Administrator, Summer Seminars for College Teachers, Division of Fellowships and Seminars.

(26) Until September 30, 1985, one position of Humanist Administrator, Humanities Libraries Projects, Division of General Programs.

(27) Until September 30, 1985, one position of Humanist Administrator, GS–14, Humanities Planning and Assessment Studies Program, Office of Planning and Policy Assessment.

(28) Until September 30, 1985, one position of Humanist Administrator, Program Development, Division of General Programs, GS–14.

(29) Until September 30, 1985, two positions of Humanist Administrator, GS–1701–14, in the Research Resources Programs and in the Basic Research Programs, Division of Research Programs.

(30) Until September 30, 1985, one Humanist Administrator, Office of Challenge Grants.

(31) (Reserved).

(32) Until September 30, 1985, one Humanist Administrator, Independent Study and Research Program, Division of Fellowships and Seminars.

(33) Until September 30, 1985, on Assistant Director, Special Projects Program, GM–1701–14, Division of General Programs.

(34) Until September 30, 1985, one Humanist Administrator, GS–1701–12, Central Disciplines in Undergraduate Education Program, Division of Education Programs.

(35) Until September 30, 1985, one Humanist Administrator, Central Disciplines in Undergraduate Education Programs, Division of Education Programs.

(36) Until September 30, 1985, two Humanist Administrators, Exemplary Projects, Nontraditional Learners, and Teaching Materials Program, Division of Education Programs.

(37) Until September 30, 1985, one Humanist Administrator, Summer Seminars for Secondary School Teachers, Division of Fellowships and Seminars.

(38) Until September 30, 1985, one Humanist Administrator, Summer Stipends, Division of Fellowships and Seminars.

(39) Until September 30, 1985, one Humanist Administrator, Basic Research Programs, Division of Research Programs.

(40) Until September 30, 1985, one Humanist Administrator, Translation Program, Reference Works Program, Division of Research Programs.

(41) Until September 30, 1985, one Humanist Administrator, Editions Program, Reference Works Program, Division of Research Programs.

(42) Until September 30, 1985, one Humanist Administrator, Humanities Projects in Museums and Historical Organizations, Division of General Programs. Employment under this authority may not exceed 1 year.

Section 213.3285 Pennsylvania Avenue Development Corporation.

(a) One position of Civil Engineer (Construction Manager).

Section 213.3291 Office of Personnel Management.

(a) Not to exceed eight positions of Associate Director at the Executive Seminar Centers at grades GS–13 and GS–14. Appointments may be made for any period up to 3 years and may be extended without prior approval for any indiviual. Not more than half of the authorized faculty positions at any one Executive Seminar Center may be filled under this authority.

(b) Twelve positions of faculty members at grades GS–13 through 15, at the Federal Executive Institute. Individual appointments under this authority may be made for initial period(s) up to 3 years, which may be followed by an appointment of indefinite duration.

Schedule C

Section 213.3303 Executive Office of the President.

Office of Management and Budget

OMB 1 Secretary to the Associate Director for Economics and Government.
OMB 5 Secretary to the Director.
OMB 8 Secretary to the Deputy Director.
OMB 10 Secretary to the Associate Director for Public Affairs.
OMB 11 Secretary to the Associate Director, National Security and International Affairs.
OMB 16 Secretary to the Associate Director for Management.
OMB 20 Secretary to the Administrator of the Office of Federal Procurement Policy.
OMB 23 Administrative Assistant to the Administrator, Information and Regulatory Affairs.
OMB 27 Staff Assistant to the Associate Director.
OMB 33 Executive Assistant to the Deputy Director.
OMB 36 Public Affairs Assistant to the Assistant Director for Public Affairs.
OMB 37 Legislative Assistant to the Assistant Director for Legislative Affairs.
OMB 38 Confidential Secretary to the Counsel to the Director for Policy Analysis and Law.
OMB 41 Secretary (Steno) to the Assistant Director for Legislative Affairs.
OMB 43 Secretary (Steno) to the Associate Director for Economics and Planning.
OMB 46 Clerk Legislative Affairs to the Assistant Director for Legislative Affairs.
OMB 47 Public Affairs Specialist to the Assistant Director for Public Affairs.
OMB 49 Administrative Assistant to the Assistant Director for Legislative Affairs.
OMB 50 Legislative Assistant to the Assistant Director for Legislative Affairs.
OMB 51 Administrative Assistant to the Chief, Legislative and Budget Support Group.
OMB 53 Legislative Clerk to the Chief, Legislative and Budget Support Group.

President's Commission on Executive Exchange

PCEE 1 Confidential Assistant to the Executive Director.
PCEE 2 Confidential Assistant to the Executive Director.
PCEE 4 Secretary (Typing) to the Executive Director.
PCEE 5 Public Information Officer to the Executive Director.
PCEE 6 Public Affairs Assistant to the Executive Director.

Office of the United States Trade Representative

USTR 10 Confidential Assistant to the Ambassador.
USTR 12 Special Assistant to the Executive Assistant to the Trade Representative.
USTR 13 Confidential Assistant to the General Counsel.
USTR 14 Secretary (Steno) to the Trade Representative.
USTR 15 Confidential Secretary to the Deputy Trade Representative.
USTR 17 Public Affairs Specialist to the Director for Public and Intergovernmental Affairs.
USTR 18 Secretary (Steno) to the Ambassador.
USTR 19 Director for Congressional Affairs.
USTR 20 Deputy Director for Congressional Affairs.
USTR 21 Confidential Assistant to the Deputy Trade Representative.

Section 213.3304 Department of State.

ST 8 Secretary (Steno) to the Secretary.
ST 9 Secretarial Assistant (Steno) to the Secretary.
ST 51 Secretary (Steno) to the Legal Advisor.
ST 79 Special Assistant to the Ambassador-at-Large.
ST 90 Foreign Affairs Officer to the Chief of Protocol.

ST 95 Secretary (Steno) to the Ambassador-at-Large.
ST 97 Member, Policy Planning Staff to the Director.
ST 99 Secretary (Steno) to the Ambassador.
ST 102 Special Assistant to the Under Secretary.
ST 105 Special Assistant to the Assistant Secretary.
ST 106 Assistant to the Manager, President's Guest House.
ST 107 Secretary (Steno) to the Assistant Secretary for the Bureau of Economic Business Affairs.
ST 109 Secretary (Steno) to the Director, Management Operations.
ST 114 Coordinator for Caribbean Affairs.
ST 115 Public Information Specialist to the Ambassador-at-Large.
ST 116 Special Assistant to the Counselor.
ST 117 Confidential Clerk to the Secretary.
ST 119 Secretary (Steno) to the Assistant Secretary for Inter-American Affairs.
ST 120 Special Assistant to the Spokesman, Office of the Spokesman.
ST 122 Staff Assistant to the Under Secretary for Management.
ST 125 Secretary (Steno) to the Secretary.
ST 127 Secretary (Steno) to the Assistant Secretary for Human Rights and Humanitarian Affairs.
ST 130 Member, Policy Planning Staff to the Director.
ST 134 Secretary (Steno) to the Deputy Secretary.
ST 139 Protocol Officer (Visits) to the Chief of Protocol.
ST 140 Secretary (Steno) to the Chief of Protocol.
ST 142 Housekeeper, Presidential Guest House.
ST 145 Member, Policy Planning Staff to the Director.
ST 148 Member, Policy Planning Staff to the Director.
ST 149 Special Assistant to the Assistant Secretary for Inter-American Affairs.
ST 150 Staff Assistant to the Ambassador-at-Large/Special Advisor to the Secretary.
ST 153 Special Assistant to the Assistant Secretary, Bureau of International Affairs.
ST 154 Congressional Liaison Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs.
ST 155 Protocol Officer (Visits) to the Chief of Protocol.
ST 159 Protocol Officer to the Chief of Protocol.
ST 161 Secretary (Steno) to the Under Secretary for Management.
ST 163 Special Assistant to the Deputy Secretary of State.
ST 167 Protocol Officer to the Chief of Protocol.
ST 173 Special Assistant to the Under Secretary for Management.
ST 174 Public Affairs Specialist to the Deputy Assistant Secretary for Public Affairs.
ST 175 Staff Assistant to the Principal Deputy Assistant Secretary for Congressional Relations.
ST 176 Staff Assistant to the Under Secretary for Management.
ST 177 Special Assistant to the Chairman, International Joint Commission.
ST 178 Secretary (Steno) to the Assistant Secretary, Bureau of International Narcotics Matters.
ST 179 Congressional Relations Officer to the Assistant Secretary, Office of Congressional Relations.
ST 180 Policy and Program Officer to the Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs.
ST 181 Director, Office of Intergovernmental and Public Liaison.
ST 182 Special Assistant to the Assistant Secretary, Bureau of Consular Affairs.
ST 183 Public Affairs Advisor to the Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs.
ST 184 Special Assistant to the Assistant Secretary, Office of African Affairs.
ST 186 Alternate Representative to the Ambassador, U.S. Permanent Representative to the Organization of American States.
ST 187 Secretary (Steno) to the Chairman, International Joint Commission.
ST 191 Secretary (Steno) to the Executive Assistant/Special Assistant to the Secretary.
ST 192 Staff Assistant to the Deputy Secretary of State.
ST 193 Assistant to the Under Secretary for Security Assistance, Science and Technology.
ST 195 Staff Assistant to the Assistant Secretary for Congressional Relations.
ST 197 Special Assistant to the Assistant Secretary for Oceans and International Environmental and Scientific Affairs.
ST 198 Special Assistant to the Deputy Secretary of State.
ST 199 Executive Assistant to the Ambassador-at-Large.
ST 200 Staff Assistant to the Deputy Secretary of State.
ST 202 Special Assistant to the Ambassador-at-Large.
ST 203 Special Assistant to the Counselor.
ST 204 Deputy Assistant Secretary for Private Sector Initiatives.
ST 205 Secretary (Steno) to the Assistant Secretary for European Affairs.
ST 206 Special Assistant to the Under Secretary for Security Assistance, Science and Technology.
ST 207 Deputy Assistant Secretary for Oceans and Fisheries Affairs.
ST 209 Protocol Officer (Visits) to the Chief of Protocol.
ST 210 Special Assistant to the Assistant Secretary for Oceans and International Environmental and Scientific Affairs.
ST 212 Special Assistant to the Assistant Secretary for Economic and Business Affairs.
ST 213 Special Assistant to the Assistant Secretary for Human Rights and Humanitarian Affairs.
ST 214 Staff Assistant to the Under Secretary for Political Affairs.
ST 215 Special Assistant to the Assistant Secretary for the Bureau of International Organization Affairs.
ST 216 Special Assistant to the Ambassador, U.S. Representative, Organization of American States.
ST 217 Deputy Coordinator for Public Diplomacy for Latin America and the Caribbean.
ST 218 Deputy to the Ambassador-at-Large/Special Advisor to the Secretary.
ST 220 Congressional Relations Specialist to the Assistant Secretary for the Bureau of International Organization Affairs.
ST 221 Special Assistant to the Assistant Secretary for East Asian and Pacific Affairs.

Section 213.3305 Department of the Treasury.

TREA 27 Staff Assistant (Coordination) to the Secretary.
TREA 28 Special Assistant to the Director of the Mint.
TREA 33 Special Assistant to the Assistant Secretary for Public Liaison and Consumer Affairs.
TREA 39 Staff Assistant to the Assistant Secretary for Legislative Affairs.
TREA 41 Staff Assistant to the Assistant Secretary for Public Affairs.

TREA 47 Special Assistant to the Assistant Secretary for Legislative Affairs.
TREA 48 Public Information Specialist to the Assistant Secretary for Public Affairs.
TREA 52 Special Assistant to the Assistant Secretary for Legislative Affairs.
TREA 59 Special Assistant to the Assistant Secretary for Tax Policy.
TREA 60 Confidential Secretary to the Assistant Secretary for Tax Policy.
TREA 61 Special Assistant to the Assistant Secretary for Public Affairs.
TREA 69 Staff Assistant to the Executive Secretary.
TREA 81 Deputy Executive Secretary.
TREA 82 Staff Assistant to the Principal Deputy Assistant Secretary for International Affairs.
TREA 89 Special Assistant to the Assistant Secretary for Legislative Affairs.
TREA 90 Special Assistant to the Assistant Secretary for Public Affairs.
TREA 92 Director, Consumer Affairs.
TREA 97 Senior Assistant to the Assistant Secretary for Enforcement and Operations.
TREA 99 Staff Assistant to the Director, Office of Revenue Sharing.
TREA 100 Staff Assistant to the Deputy Assistant Secretary for Administration.
TREA 101 Director, Office of Business Affairs.
TREA 103 Staff Assistant to the Senior Deputy Comptroller for Operations.
TREA 104 Executive Assistant to the Special Assistant to the Commissioner for Legislative and Public Affairs.
TREA 105 Policy Adviser to the Commissioner of Customs.
TREA 108 Staff Assistant to the Treasurer of the United States.
TREA 109 Special Assistant to the Assistant Secretary for Publc Affairs.
TREA 110 Staff Assistant to the Assistant Secretary for Electronic Systems and Information Techology.
TREA 111 Senior Adviser to the Assistant Secretary for Electronic Systems and Information Technology.
TREA 112 Staff Assistant to the Director, Office of Revenue Sharing.
TREA 113 Executive Assistant to the Special Assistant to the Commissioner.
TREA 114 Staff Assistant to the Commissioner of Customs.
TREA 115 Staff Assistant to the Deputy Assistant Secretary for Fiancial Systems.
TREA 116 Staff Assistant to the Commissioner of Customs.
TREA 117 Special Assistant to the Assistant Secretary for Business and Consumer Affairs.
TREA 118 Staff Assistant to the Executive Secretary.

Section 213.3306 Department of Defense.

DOD 3 Private Secretary to the Secretary of Defense.
DOD 5 Private Secretary to the Deputy Secretary.
DOD 6 Private Secretary to the Under Secretary for Research and Engineering.
DOD 8 Private Secretary to the Deputy Under Secretary for Research and Engineering (Tactical Warfare Programs).
DOD 9 Private Secretary to the Deputy Under Secretary of Defense for Research and Engineering (Strategic and Theater Nuclear Forces).
DOD 10 Private Secretary to the Deputy Under Secretary of Defense for Research and Engineering (Research and Advanced Technology).
DOD 13 Private Secretary to the Assistant Secretary for Manpower, Reserve Affairs and Logistics.
DOD 14 Private Secretary to the Assistant Secretary of Defense for International Secruity Affairs.
DOD 15 Private Secretary to the Assistant Secretary for Public Affairs.
DOD 18 Private Secretary to the Assistant Secretary (Comptroller).
DOD 19 Private Secretary to the Director, Program Analysis and Evaluation.
DOD 22 Private Secretary to the Assistant Secretary of Defense for Atomic Energy.
DOD 23 Private Secretary to the Military Assistant to the Secretary.
DOD 30 Secretary (Steno) to the Defense Advisor to US NATO.
DOD 31 Private Secretary to the Assistant Secretary of Defense for Legislative Affairs.
DOD 32 Special Assistant to the Assistant Secretary of Defense for Legislative Affairs.
DOD 33 Personal Secretary to the Deputy Secretary.
DOD 34 Private Secretary to Principal Deputy Assistant Secretary of Defense for International Security Affairs.
DOD 35 Confidential Assistant to the Executive Secretary.
DOD 37 Assistant to the Secretary for Personnel Security.
DOD 54 Private Secretary to the Judge, U.S. Court of Military Appeals.
DOD 55 Private Secretary to the Chief Judge, U.S. Court of Military Appeals.
DOD 56 Private Secretary to the Judge, U.S. Court of Military Appeals.
DOD 62 Private Secretary to the Personal Assistant to the President, White House Support Group.
DOD 66 Private Secretary to the Physician to the President, White House Support Group.
DOD 73 Private Secretary to the Assistant Secretary of Defense for Health Affairs.
DOD 75 Chauffeur to the Deputy Secretary.
DOD 84 Private Secretary to the Principal Deputy Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).
DOD 98 Private Secretary to the Secretary of Defense Representative on Mutual and Balanced Force Reduction and Conference on Security and Cooperation in Europe.
DOD 101 Personal and Confidential Assistant to the Director of Net Assessment.
DOD 104 Special Projects Assistant to the Deputy Assistant Secretary of Defense for Equal Opportunity and Safety Policy.
DOD 112 Special Assistant to the Assistant Secretary for Legislative Affairs.
DOD 119 Private Secretary to the Principal Deputy Director, Program Analysis and Evaluation.
DOD 148 Private Secretary to the Deputy Under Secretary of Defense (Policy).
DOD 156 Private Secretary to the Assistant Deputy Under Secretary of Defense (Policy).
DOD 171 Special Assistant to the Deputy Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).
DOD 174 Private Secretary to the Under Secretary for Policy.
DOD 175 Personal and Confidential Assistant to the Judge, U.S. Court of Military Appeals.
DOD 178 Special Assistant to the Assistant Secretary for Legislative Affairs.
DOD 187 Special Assistant for African Affairs to the Deputy Assistant Secretary of Defense for International Security Affairs.
DOD 189 Staff Assistant to the Deputy Secretary of Defense.

DOD 194 Private Secretary to the Assistant Secretary of Defense for International Security Policy.
DOD 196 Private Secretary to the Deputy Under Secretary of Defense, Research and Engineering (Acquisition Management).
DOD 205 Personal and Confidential Assistant to the Judge, U.S. Court of Military Appeals.
DOD 209 White House Director of Television Services.
DOD 210 Chauffeur to the Secretary of the Interior.
DOD 211 Special Assistant to the Principal Deputy Assistant Secretary for Public Affairs.
DOD 212 Private Secretary to the Deputy Under Secretary, Research and Engineering (International Programs and Technology).
DOD 216 Private Secretary to the Principle Deputy Assistant Secretary for International Security Policy.
DOD 217 Private Secretary to the Deputy Under Secretary for Research and engineering.
DOD 218 Private Secretary to the Assistant Secretary of Defense for Development and Support.
DOD 220 Assistant to the Director for Emergency Planning.
DOD 222 Executive Assistant to the Assistant Secretary for Research and Technology.
DOD 225 Special Assistant to the Director, Defense Security Assistance Agency.
DOD 227 Private Secretary to the Assistant Secretary for Research and Technology.
DOD 228 Private Secretary to the Director, Defense Testing and Evaluation.
DOD 232 Special Assistant to the Assistant Secretary for International Security Policy.
DOD 234 Deputy Assistant to the Secretary and Deputy Secretary of Defense.
DOD 235 Special Assistant to the Deputy Assistant Secretary, Near Eastern, African and South Asian Affairs.
DOD 236 Special Assistant to the Assistant Secretary for Public Affairs.
DOD 238 Special Assistant to Assistant Secretary for Legislative Affairs.
DOD 241 Personal and Confidential Assistant to the Assistant Secretary for International Security Policy.
DOD 245 Private Security to the Photographer to the President, White House Support Group.
DOD 248 Special Projects Assistant to the Deputy Assistant Secretary for Equal Opportunity and Safety Policy.
DOD 249 Special Assistant to the Director, Defense Audiovisual Agency.
DOD 250 Speechwriter to the Assistant Secretary of Defense for Public Affairs.
DOD 251 Assistant to the Deputy Assistant Secretary of Defense for East Asian and Pacific Affairs.
DOD 252 Confidential Assistant to the Secretary.
DOD 254 Special Assistant for Emergency Planning and Requirements.
DOD 255 Personal and Confidential Assistant to the Deputy Secretary.
DOD 256 Special Assistant to the Assistant Secretary for Manpower, Reserve Affairs and Logistics.
DOD 257 Special Assistant for Technology Transfer Policy to the Deputy Assistant Secretary of Defense, International Economic, Trade and Security Policy.
DOD 258 Confidential Assistant to the Director for Emergency Planning.
DOD 259 Staff Assistant to the Special Assistant to the President.
DOD 260 Special Assistant to the Ambassador to NAOT.
DOD 261 Special Assistant for European Security and Political Affairs.
DOD 262 Special Assistant to the Deputy Assistant Secretary of Defense for East Asian and Pacific Affairs.
DOD 263 Special Assistant to the Assistant Secretary of Defense for International Security Policy.
DOD 264 Assistant Director to the Chairman of the President's Foreign Intelligence Advisory Board.
DOD 265 Special Assistant to the Deputy Assistant Secretary of Defense for East Asian and Pacific Affairs.
DOD 266 Assistant for Policy Analysis to the Deputy Assistant Secretary of Defense for International Economic, Trade and Security Policy.

Section 213.3307 Department of the Army.

ARMY 1 Staff Assistant to the Secretary.
ARMY 2 Secretary (Steno) to Under Secretary.
ARMY 3 Secretary (Steno) to the Assistant Secretary of the Army, Manpower and Reserve Affairs.
ARMY 6 Secretary (Steno) to the Assistant Secretary, Research, Development and Acquisition.
ARMY 17 Secretary (Steno) to the Assistant Secretary, Civil Works.
ARMY 21 Secretary (Steno) to the General Counsel.
ARMY 25 Public Affairs Officer to the Chief, Office of the Chief of Public Affairs.
ARMY 30 Secretary (Typing) to the Principal Deputy Assistant Secretary.
ARMY 38 Plans Coordinator to the Chief of Public Affairs.
ARMY 40 Staff Advisor to the Deputy Assistant to the President.
ARMY 41 Assistant Director to the Chairman and Executive Director of the President's Foreign Intelligence Advisory Board.
ARMY 44 Executive Director to the Deputy Assistant Secretary, Reserve Affairs.
ARMY 51 Confidential Staff Assistant to the Deputy Director, Office of Private Sector Initiatives.
ARMY 52 Special Assistant to the Assistant Secretary of the Army, Research, Development and Acquisition.
ARMY 54 Staff Assistant to the Deputy Assistant to the President for Presidential Personnel.

Section 213.3308 Department of the Navy.

NAVY 2 Staff Assistant to the Secretary.
NAVY 7 Private Secretary to the Assistant Secretary of Research and Engineering Systems.
NAVY 20 Special Assistant to the Military Assistant to the President.
NAVY 23 Special Assistant to the Military Assistant to the President.
NAVY 25 Special Assistant to the Military Assistant to the President.
NAVY 27 Special Assistant for Emergency Planning to the Military Assistant to the President.
NAVY 31 Staff Assistant to the Under Secretary.
NAVY 35 Staff Assistant to the Deputy Assistant Secretary.
NAVY 36 Staff Assistant to the Principal Deputy Assistant Secretary.
NAVY 37 Attorney-Adviser to the General Counsel.
NAVY 38 Private Secretary to the Under Secretary.

Section 213.3309 Department of the Air Force.

AF 2 Secretary (Steno) to the Under Secretary.
AF 3 Secretary (Steno) to the Assistant Secretary for Manpower, Reserve Affairs and Installations.
AF 5 Secretary (Steno) to the Assistant Secretary for Research, Development Logistics.

AF 8 Secretary (Steno) to the General Counsel.
AF 17 Administrative Officer to the Assistant to the Vice President for National Security Affairs.
AF 18 Special Assistant to the Assistant to the Vice President for National Security Affairs.
AF 20 Secretary (Steno) to the Military Assistant to the President.
AF 21 Special Assistant to the Military Assistant to the President.
AF 22 Secretary (Steno) to the Assistant to the Vice President for National Security Affairs.
AF 26 Special Assistant to the Assistant Secretary for Manpower, Reserve Affairs and Installations.
AF 28 Special Assistant to the General Counsel.
AF 29 Staff Assistant to the Secretary.
AF 30 Special Assistant to the Assistant to the President/Director of the White House Military Office.
AF 31 Secretary (Steno) to the Assistant to the Vice President for National Security Affairs.

Sections 213.3310 Department of Justice.

JUS 13 Secretary (Typing) to the Deputy Attorney General.
JUS 21 Confidential Assistant (Private Secretary) to the Assistant Attorney General, Antitrust Division.
JUS 23 Private Secretary to the Assistant Attorney General, Civil Division.
JUS 25 Confidential Assistant (Private Secretary) to the Assistant Attorney General, Criminal Division.
JUS 26 Confidential Secretary (Private Secretary) to the Assistant Attorney General, Tax Division.
JUS 27 Private Secretary to the Assistant Attorney General, Land and Natural Resources Division.
JUS 35 Confidential Assistant (Private Secretary) to the U.S. Attorney, Office of Legal Counsel.
JUS 53 Secretary (Steno) to the Assistant Attorney General, Civil Rights Division.
JUS 70 Special Assistant to the Assistant Attorney General, Civil Rights Division.
JUS 83 Confidential Assistant to the Attorney General.
JUS 93 Secretary (Steno) to the Associate Attorney General.
JUS 97 Secretary (Steno) to the Attorney General.
JUS 115 Confidential Assistant (Private Secretary) to the Assistant Attorney General, Office of Legislative Affairs.
JUS 122 Staff Assistant to the Director of Public Affairs.
JUS 128 Secretary and Confidential Assistant to the U.S. Attorney.
JUS 129 Special Assistant to the Assistant Attorney General, Antitrust Division.
JUS 147 Attorney-Advisor to the Assistant Attorney General, Civil Division.
JUS 152 Secretary and Confidential Assistant to the U.S. Attorney.
JUS 158 Secretary and Confidential Assistant to the U.S. Attorney.
JUS 165 Special Assistant to the Associate Attorney General.
JUS 166 Special Assistant to the Attorney General.
JUS 170 Special Assistant to the Attorney General.
JUS 175 Special Assistant to the Attorney General, Offices, Board and Divisions.
JUS 188 Special Assistant to the Assistant Attorney General, Antitrust Division.
JUS 190 Staff Assistant to the Assistant Attorney General.
JUS 195 Secretary (Typing) to the Commissioner, Immigration and Naturalization Service.
JUS 200 Secretary and Confidential Assistant to the U.S. Attorney.
JUS 204 Secretary (Steno) to the Assistant Attorney General, Legislative Affairs.
JUS 205 Special Assistant (Security) to the Associate Commissioner for Enforcement, Immigration and Naturalization Service.
JUS 207 Staff Assistant to the Deputy Director, Office of Public Affairs.
JUS 210 Secretary (Steno) to the Attorney General.
JUS 213 Staff Assistant to the Counselor to the Attorney General.
JUS 214 Confidential Assistant to the Assistant Attorney General, Office of Legal Policy.
JUS 215 Deputy Assistant Attorney General, Antitrust Division.
JUS 216 Special Assistant to the Administrator, Office of Juvenile Justice and Delinquency Prevention.
JUS 218 Confidential Assistant to the Administrator, Office of Juvenile Justice and Delinquency Prevention.
JUS 219 Special Assistant to the Assistant Attorney General, Tax Division.
JUS 220 Special Assistant to the Attorney General, Tax Division.
JUS 221 Special Assistant to the Director, Bureau of Justice Statistics.
JUS 225 Legal Aide to the Director, Regulatory and Legislative Affairs Staff.
JUS 226 Staff Assistant to the General Counsel, Immigration and Naturalization Service.
JUS 227 Staff Assistant to the Director, Community Relations Service.
JUS 229 Special Assistant to the Director, National Institute of Justice.
JUS 231 Attorney-Advisor to the Director, Regulatory and Legislative Affairs Staff.
JUS 233 Attorney-Advisor to the Assistant Attorney General, Civil Rights Division.
JUS 234 Confidential Assistant to the Assistant Attorney General for Justice Assistance.
JUS 236 Confidential Assistant to the Commissioner, Immigration and Naturalization Service.
JUS 239 Secretary to the Deputy Administrator of the Office of Juvenile Justice and Delinquency Prevention.

Section 213.3311 Federal Judicial Center.

FJC 2 Secretary (Steno) to the Director.

Section 213.3312 Department of the Interior.

INT 18 Confidential Assistant to the Assistant Secretary, Water and Science.
INT 25 Steward to the Secretary.
INT 37 Confidential Assistant to the Deputy Solicitor.
INT 73 Special Assistant to the Secretary.
INT 116 Special Assistant to the Deputy Assistant Secretary, Office of Territorial Affairs.
INT 149 Special Assistant to the Assistant Secretary, Land and Minerals Management.
INT 152 Special Assistant to the Deputy Director of the National Park Service.
INT 153 Assistant to the Director for Congressional and Legislative Activities.
INT 165 Special Assistant to the Director, Bureau of Land Management.
INT 170 Special Assistant to the Deputy Director of the National Park Service.
INT 171 Public Information Officer for the Bureau of Reclamation.
INT 191 Special Assistant to the Director, Bureau of Land Management.
INT 193 Special Assistant to the Director, Office of Surface Mining and Reclamation.
INT 195 Special Assistant to the Assistant Secretary, Territorial and International Affairs.
INT 196 Special Assistant to the Assistant Secretary, Territorial and International Affairs.

INT 198 Special Assistant to the Counselor to the Secretary.
INT 201 Special Assistant to the Assistant Secretary, Territorial and International Affairs.
INT 202 Special Assistant to the Director, National Park Service.
INT 204 Special Assistant to the Secretary.
INT 205 Special Assistant to the Assistant Secretary, Indian Affairs.
INT 207 Special Assistant to the Assistant Secretary, Territorial and International Affairs.
INT 208 Congressional Liaison Officer to the Director, Minerals Management Service.
INT 212 Special Assistant to the Counselor to the Secretary.
INT 217 Special Assistant to the Assistant Secretary, Territorial and International Affairs.
INT 219 Staff Assistant to the Public Information Officer, Bureau of Reclamation.
INT 220 Special Assistant to the Assistant Secretary, Territorial and International Affairs.
INT 222 Special Assistant to the Assistant Secretary, Fish and Wildlife Service.
INT 225 Special Assistant to the Director, Office of Surface Mining.
INT 226 Special Programs Liaison to the Associate Director, Bureau of Land Management.
INT 227 Special Assistant to the Assistant Secretary, Land and Minerals Management.
INT 228 Special Assistant to the Assistant Secretary for Policy, Budget and Administration.
INT 231 Special Assistant to the Director, Office of Public Affairs.
INT 232 Special Assistant to the Executive Assistant to the Secretary.
INT 235 Confidential Assistant to the Director, Fish and Wildlife Service.
INT 237 Special Assistant to the Director, Fish and Wildlife Service.
INT 238 Director, Office of Congressional and Legislative Affairs.
INT 239 Assistant for Public Affairs to the Associate Director.
INT 241 Congressional Affairs Officer, Fish and Wildlife Service.
INT 242 Special Assistant to the Assistant Director, Legislative and Congressional Affairs.
INT 243 Confidential Assistant to the Under Secretary.
INT 244 Special Assistant to the Assistant Secretary and Director, Office of Public Affairs.
INT 245 Special Assistant to the Special Assistant (Field Representative) to the Secretary.
INT 247 Special Assistant to the Counselor to the Secretary.
INT 249 Special Assistant to the Assistant Secretary, Water and Science.
INT 250 Special Assistant to the Director, Bureau of Mines.
INT 251 Public Affairs Specialist to the Deputy Director, Minerals Management Service.
INT 252 Staff Assistant to the Associate Director for Offshore Minerals Management.
INT 253 Special Assistant to the Assistant Secretary, Territorial and International Affairs.
INT 254 Assistant to the Director, Minerals Management Service.
INT 255 Special Assistant to the Deputy Director, National Park Service.
INT 256 Staff Assistant to the Associate Director, Bureau of Land Management.
INT 257 Staff Assistant to the Associate Director, Bureau of Land Management.
INT 258 Confidential Assistant to the Special Assistant (Field Representative) to the Secretary.
INT 259 Special Assistant to the Congressional Liaison Officer, Bureau of Mines.
INT 260 Executive Assistant to the Under Secretary.

Section 213.3313 Department of Agriculture.

AGR 1 Administrative Assistant to the Secretary.
AGR 2 Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 3 Confidential Assistant to the Secretary.
AGR 5 Confidential Assistant to the Secretary.
AGR 6 Confidential Assistant to the Executive Assistant to the Secretary.
AGR 8 Chauffeur to the Secretary.
AGR 12 Private Secretary to the Under Secretary, International Affairs and Commodity Programs.
AGR 13 Private Secretary to the Assistant Secretary for Food and Consumer Services.
AGR 21 Private Secretary to the Deputy Secretary.
AGR 23 Private Secretary to the General Counsel.
AGR 24 Confidential Assistant to the Administrator, Farmers Home Administration.
AGR 25 Staff Assistant to the Administrator, Farmers Home Administration.
AGR 26 Confidential Assistant to the Administrator, Farmers Home Administration.
AGR 27 Private Secretary to the Administrator, Farmers Home Administration.
AGR 28 Member, Board of Directors, Federal Crop Insurance Corporation.
AGR 29 Member, Board of Directors, Federal Crop Insurance Corporation.
AGR 30 Private Secretary to the Manager, Federal Crop Insurance Corporation.
AGR 31 Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service.
AGR 32 Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service.
AGR 33 Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service.
AGR 35 Private Secretary to the Administrator, Agricultural Stabilization and Conservation Service.
AGR 44 Private Secretary to the Assistant Secretary for Economics.
AGR 48 Confidential Assistant to the Administrator, Food and Nutrition Service.
AGR 56 Private Secretary to the Assistant Secretary for Governmental and Public Affairs.
AGR 61 Private Secretary to the Assistant Secretary for Natural Resources and Environment.
AGR 62 Private Secretary to the Under Secretary for Small Community and Rural Development.
AGR 64 Confidential Assistant to the Under Secretary for Small Community and Rural Development.
AGR 65 Confidential Assistant to the Director for Congressional and Public Affairs.
AGR 74 Private Secretary to the Deputy Assistant Secretary for Food and Consumer Services.
AGR 75 Private Secretary to the Deputy Under Secretary for Small Community and Rural Development.
AGR 77 Confidential Assistant to the Director, Congressional Affairs.
AGR 80 Confidential Assistant to the Director, Rural Development Policy.
AGR 81 Confidential Assistant to the Administrator, Farmers Home Administration.
AGR 95 Private Secretary to the Director, Rural Development Policy.

AGR 96 Confidential Assistant to the Assistant Secretary for Natural Resources and Environment.
AGR 97 Confidential Assistant to the Secretary.
AGR 102 Special Assistant to the Assistant Secretary for Food and Consumer Services.
AGR 103 Confidential Assistant to the Administrator, Foreign Agricultural Service.
AGR 105 Confidential Assistant to the Director, Congressional and Public Affairs.
AGR 106 Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 108 Private Secretary to the Deputy Under Secretary for International Affairs and Commodity Programs.
AGR 109 Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 111 Confidential Assistant to the Deputy Secretary.
AGR 114 Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 115 Confidential Assistant to the Director, Congressional and Public Affairs.
AGR 117 Confidential Assistant to the Director, Governmental and Public Affairs.
AGR 118 Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 121 Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 128 Private Secretary to the Administrator, Federal Grain Inspection Service.
AGR 129 Private Secretary to the Assistant Secretary for Marketing and Inspection Services.
AGR 130 Private Secretary to the Deputy Assistant Secretary for Marketing and Inspection Services.
AGR 131 Private Secretary to the Deputy Assistant Secretary for Natural Resources and Environment.
AGR 133 Confidential Assistant to the Assistant Secretary for Economics.
AGR 136 Confidential Assistant to the Administrator for Food Safety and Inspection Service.
AGR 139 Confidential Assistant to the Executive Assistant to the Secretary.
AGR 140 Confidential Assistant to the Assistant Secretary for Economics.
AGR 141 Confidential Assistant to the Administrator for Food Safety and Inspection Service.
AGR 143 Confidential Assistant to the Administrator, Agricultural Marketing Service.
AGR 144 Staff Assistant (Typing) to the Administrator, Agricultural Marketing Service.
AGR 152 Deputy General Counsel.
AGR 156 Confidential Assistant to the Administrator, Federal Grain Inspection Service.
AGR 157 Confidential Assistant to the Administrator, Foreign Agricultural Service.
AGR 158 Private Secretary to the Assistant Secretary for Science and Education.
AGR 159 Special Representative for the Administrator, Foreign Agricultural Service.
AGR 160 Confidential Assistant to the Administrator, Foreign Agricultural Service.
AGR 161 Confidential Assistant to the Assistant to the Secretary for Intergovernmental Affairs.
AGR 163 Confidential Assistant to the Secretary.
AGR 164 Confidential Assistant to the Assistant Secretary for Science and Education.
AGR 168 Staff Assistant to the Administrator, Food Safety and Inspection Service.
AGR 169 Private Secretary to the Deputy Assistant Secretary for Economics.
AGR 174 Special Assistant to the Director, Rural Development Policy.
AGR 175 Confidential Assistant to the Assistant to the Secretary for Intergovernmental Affairs.
AGR 177 Special Assistant to the Director of the Office of Transportation.
AGR 180 Staff Assistant to the Administrator, Federal Grain and Inspection Service.
AGR 182 Assistant to the Administrator, Rural Electrification Administration.
AGR 183 Confidential Assistant to the Administrator, Food and Nutrition Service.
AGR 185 Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service.
AGR 187 Confidential Assistant to the Assistant Secretary for Food and Consumer Services.
AGR 188 Northeast Area Director, Office of State and County Operations.
AGR 189 Southeast Area Director, Office of State and County Operations.
AGR 191 Northwest Area Director, Office of State and County Operations.
AGR 192 Southwest Area Director, Office of State and County Operations.
AGR 194 Confidential Assistant to the Under Secretary for Small Community and Rural Development.
AGR 195 Administrative Resources Coordinator.
AGR 198 Special Assistant to the Manager, Federal Crop Insurance Corporation.
AGR 199 Secretary (Typing) to the Secretary.
AGR 201 Office Assistant to the Executive Assistant to the Secretary.
AGR 202 Confidential Assistant to the Administrator, Food Safety and Inspection Service.
AGR 204 Confidential Assistant to the Assistant Secretary for Science and Education.
AGR 205 Confidential Assistant to the Administrator, Food and Nutrition Service.
AGR 206 Director, Office of the Consumer Advisor.
AGR 207 Member, Board of Directors, Federal Crop Insurance Corporation.
AGR 208 Members, Board of Directors, Federal Crop Insurance Corporation.
AGR 209 Confidential Assistant to the Chief, Soil Conservation Service.
AGR 210 Staff Assistant to the Administrator, International Cooperation and Development.
AGR 211 Deputy Director for the Office of Transportation.
AGR 212 Special Assistant to the Assistant Secretary for Administration.
AGR 213 Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 215 Special Assistant to the Deputy Assistant Secretary for Administration.
AGR 217 Confidential Assistant to the Manager, Federal Crop Insurance Corporation.
AGR 218 Special Assistant to the Deputy Assistant for Administration.
AGR 220 Private Secretary to the Deputy Assistant Secretary for Administration.
AGR 221 Confidential Assistant to the Director, Office of Equal Opportunity.
AGR 222 Confidential Assistant to the Manager, Federal Crop Insurance Corporation.
AGR 223 Confidential Assistant to the Director, Office of Equal Opportunity.

AGR 224 Director, Congressional and Public Affairs Division.
AGR 226 Confidential Assistant to the Administrator, Food and Nutrition Service.
AGR 227 Private Secretary to the Chief Soil Conservation Service.
AGR 228 Confidential Assistant to the Inspector General.
AGR 229 Secretary (Typing) to the Executive Assistant to the Secretary.
AGR 231 Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 332 Director, Legislative Affairs and Public Information Staff.
AGR 333 Private Secretary to the Special Assistant to the Secretary.
AGR 234 Confidential Assistant to the Administrator, Office of International Cooperation and Development.
AGR 235 Confidential Assistant to the Administrator, Agricultural Marketing Service.
AGR 236 Confidential Assistant to the Administrator (Congressional Affairs), Animal and Plant Health Inspection Service.
AGR 238 Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 239 Deputy Director, Rural Development Policy.
AGR 240 Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service.
AGR 241 Staff Assistant to the Assistant Secretary for Administration.
AGR 243 Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 244 Confidential Assistant to the Chief, Soil Conservation Service.
AGR 245 Confidential Assistant to the Administrator, Agricultural Marketing Service.
AGR 246 Confidential Assistant to the Chief, Soil Conservation Service.
AGR 247 Private Secretary to the Inspector General.

Section 213.3314 Department of Commerce.

COM 1 Confidential Assistant to the Secretary.
COM 2 Special Assistant to the Secretary.
COM 3 Confidential Assistant to the Secretary.
COM 4 Confidential Assistant to the Secretary.
COM 5 Confidential Assistant to the Special Assistant to the Secretary.
COM 12 Private Secretary to the Deputy Secretary.
COM 19 Chauffeur for the Secretary.
COM 22 Congressional Liaison Officer to the Assistant Secretary for Congressional Affairs.
COM 42 Secretary (Steno) to the Commissioner, Patent and Trademark Office.
COM 70 Director, Office of Congressional Relations.
COM 73 Congressional Liaison Officer, Economic Development Administration.
COM 87 Private Secretary and Confidential Assistant to the Administrator, National Atomospheric and Oceanic Administration.
COM 89 Private Secretary to the Deputy Administrator, National Oceanic and Atmospheric Administration.
COM 100 Confidential Assistant to the Director, Minority Business Development Agency.
COM 125 Private Secretary to the Assistant Secretary for Congressional Affairs.
COM 151 Private Secretary to the Deputy Secretary.
COM 152 Congressional Liaison Officer.
COM 153 Private Secretary to the Under Secretary for International Economic Affairs.
COM 158 International Tourism Officer, U.S. Travel and Tourism Administration.
COM 160 Confidential Assistant to the Director General, U.S. and Foreign Commercial Services.
COM 161 Confidential Assistant to the Under Secretary for International Trade.
COM 162 Confidential Assistant to the Deputy Assistant Secretary for International Economic Policy.
COM 174 Private Secretary to the Deputy Assistant Secretary for Congressional Affairs.
COM 181 Special Assistant to the Assistant Secretary for Communications and Information.
COM 184 Confidential Assistant to the Director, National Bureau of Standards.
COM 189 Private Secretary to the Associate Administrator, National Oceanic and Atmospheric Administration.
COM 191 Confidential Assistant to the General Counsel.
COM 192 Legislative Director, National Oceanic and Atmospheric Administration.
COM 193 Confidential Assistant to the Deputy Assistant Secretary for Trade Development, International Trade Administration.
COM 194 Special Assistant to the Assistant Administrator, National Oceanic and Atmospheric Administration.
COM 198 Congressional Liaison Officer
COM 200 Congressional Liaison Officer
COM 201 Confidential Liaison Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs.
COM 202 Congressional Liaison Assistant to the Assistant Secretary for Congressional Affairs.
COM 203 Confidential Liaison Assistant to the Deputy Assistant Secretary for Congressional Operations.
COM 204 Special Assistant to the Associate Administrator, National Oceanic and Atmospheric Administration.
COM 207 Deputy Director, National Oceanic and Atmospheric Administration.
COM 220 Confidential Assistant to the Deputy Assistant Secretary for East Asia and the Pacific, International Trade Administration.
COM 222 Private Secretary to the Inspector General.
COM 236 Special Assistant to the Secretary.
COM 237 Special Assistant to the Under Secretary, International Trade Administration.
COM 244 Private Secretary to the Assistant Secretary, International Trade Administration.
COM 247 Private Secretary to the Under Secretary for International Trade.
COM 248 Special Assistant to the Deputy Secretary.
COM 254 Supervisory Public Affairs Specialist to the Director for Minority Business Development Agency.
COM 259 Confidential Assistant to the Deputy Under Secretary, International Trade Administration.
COM 261 Confidential Assistant to the Assistant Secretary for Trade Development.
COM 262 Confidential Assistant to the Assistant Secretary for Trade Development, International Trade Administration.
COM 263 Confidential Assistant to the Assistant Secretary, International Trade Administration.
COM 265 Confidential Assistant to the Deputy Assistant Secretary for Export Administration.
COM 270 Secretary (Typing) to the Special Assistant to the Secretary.

COM 273 Confidential Assistant to the Deputy Assistant Secretary for Trade Information and Analysis.
COM 274 Confidential Assistant to the Director, Office of Business Liaison.
COM 284 Special Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs.
COM 287 Congressional Affairs Assistant to the Deputy Assistant Secretary for Congressional Affairs.
COM 288 Confidential Assistant to the Director, Office of Business Liaison.
COM 291 Special Assistant to the Director, Office of Public Affairs.
COM 292 Special Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs.
COM 293 Special Assistant to the Director, Office of Intergovernmental Affairs.
COM 294 Confidential Assistant to the Special Assistant to the Secretary.
COM 296 Confidential Assistant to the Special Assistant to the Secretary.
COM 297 Confidential Assistant to the Assistant Secretary for Administration.
COM 299 Confidential Assistant to the Director, Office of Productivity, Technology and Innovation.
COM 302 Special Assistant to the Director, Office of Public Affairs.
COM 304 Confidential Assistant to the Under Secretary for Travel and Tourism.
COM 305 Private Secretary to the Under Secretary for Travel and Tourism.
COM 306 Congressional Staff Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs.
COM 307 Special Assistant to the Deputy Assistant Secretary for Export Administration.
COM 308 Confidential Assistant to the Assistant Secretary for Trade Administration.
COM 309 Confidential Assistant to the Director, Minoirty Business Development Agency.
COM 310 Private Secretary to the Deputy Under Secretary, Tourism Administration.
COM 311 Confidential Assistant to the Special Assistant to the Secretary.
COM 312 Confidential Assistant to the Director General of the Foreign Commercial Service.
COM 313 Confidential Assistant to the Special Assistant to the Secretary.
COM 315 Special Assistant to the Deputy Assistant Secretary for Economic Development Administration.
COM 316 Confidential Assistant to the Deputy Assistant Secretary for Trade Information and Analysis.
COM 318 Special Assistant to the Assistant Director for Communications, Bureau of the Census.
COM 319 Special Assistant to the Dputy Assistant Secretary for Import Administration.
COM 320 Confidential Assistant to the Special Assistant to the Secretary.
COM 322 Confidential Assistant to the Director for Productivity, Technology and Innovation.
COM 323 Special Assistant to the Assistant Secretary for Economic Development Administration.
COM 234 Confidential Assistant to the Assistant Secretary for International Economic Policy.
COM 326 Confidential Assistant to the Director General of the Foreign Commercial Service.
COM 327 Special Assistant to the Deputy Secretary.
COM 329 Congressional Liaison Specialist to the Under Secretary, International Trade Administration.
COM 330 Confidential Assistant to the Assistant Secretary for Trade Development.
COM 331 Confidential Assistant to the Assistant Secretary for Tourism Marketing.
COM 332 Confidential Assistant to the Deputy Assistant Secretary for Industry Projects.
COM 335 Confidential Assistant to the Assistant Secretary for Congressional Affairs.
COM 336 Confidential Assistant to the Deputy Assistant Secretary for Export Enforcement.
COM 338 Press Secretary to the Secretary.
COM 339 Confidential Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs.
COM 340 Special Assistant to the Assistant Administrator, National Oceanic and Atmospheric Administration.
COM 342 Confidential Assistant to the Deputy Secretary for Strategic Policy and Planning.
COM 343 Confidential Assistant to the Deputy Assistant Secretary for the U.S. and Foreign Commercial Services.
COM 345 Confidential Assistant to the Under Secretary, International Trade Administration.
COM 346 Confidential Aide to the Special Assistant to the Secretary.
COM 347 Confidential Assistant to the Director, Office of Public Affairs.
COM 348 Special Assistant to the Director, Office of Public Affairs.
COM 349 Confidential Assistant to the Associate Administrator, National Oceanic and Atmospheric Administration.
COM 350 Deputy Director, Office of Business Liaison.
COM 351 Confidential Assistant to the Associate General Counsel for Legislation and Regulation.
COM 354 Special Assistant to the Assistant Secretary for Communications and Information.
COM 356 Confidential Assistant to the Deputy Director, Office of Minoirty Business Development Agency.
COM 357 Confidential Assistant to the Director, Office of Export Trading Company Affairs.
COM 358 Special Assistant to the Deputy Assistant Secretary for Import Administration.
COM 359 Confidential Assistant to the Deputy Assistant Secretary for International Economic Policy.
COM 360 Congressional Liaison Officer to the Under Secretary for Economic Affairs.
COM 361 Special Assistant to the Director, Bureau of Census.
COM 362 Congressional Affairs Specialist to the Director, Office of Congressional Affairs, National Oceanic and Atmospheric Administration.
COM 363 Congressional Affairs Specialist to the Director, Office of Congressional Affairs, National Oceanic and Atmospheric Administration.
COM 367 Confidential Assistant to the Director of Policy and Planning, National Oceanic and Atmospheric Administration.
COM 369 Private Secretary to the Deputy Assistant Secretary for Trade Development, International Trade Administration.
COM 371 Confidential Assistant to the Program Director, National Oceanic and Atmospheric Administration.
COM 372 Deputy Director, Office of Ocean and Coastal Resource Management.
COM 373 Confidential Assistant to the Assistant Secretary for Economic Development.
COM 374 Congressional Liaison Specialist to the Assistant Director for communications Bureau of the Census.
COM 375 Congressional Liaison Officer, Bureau of the Census.

Section 213.3315 Department of Labor

LAB 17 Assistant to the Assistant Secretary for Legislative Affairs.
LAB 24 Staff Assistant to the Deputy Under Secretary for International Affairs.

LAB 25 Assistant to the Deputy Under Secretary for Legislative Affairs.
LAB 35 Special Assistant to the Director, Women's Bureau.
LAB 43 Assistant to the Assistant Secretary, Occupational Safety and Health Administration.
LAB 45 Executive Assistant to the Assistant Secretary, Occupational Safety and Health Administration.
LAB 49 Special Assistant to the Assistant Secretary, Occupational Safety and Health Administration.
LAB 62 Special Assistant to the Assistant Secretary, Occupational Safety and Health Administration.
LAB 64 Special Assistant to the Assistant Secretary, Occupational Safety and Health Administration.
LAB 83 Confidential Assistant to the Administrator for Pension and Welfare Programs.
LAB 91 Private Secretary to the Deputy Under Secretary for Legislation and Intergovernmental Relations.
LAB 92 Special Assistant to the Secretary.
LAB 93 Staff Assistant to the Secretary.
LAB 99 Special Assistant to the Assistant Secretary, Employment and Training Administration.
LAB 100 Executive Assistant to the Deputy Under Secretary for International Affairs.
LAB 104 Regional Representative to the Deputy Under Secretary for Intergovernmental Affairs.
LAB 106 Regional Representative to the Deputy Under Secretary for Intergovernmental Affairs.
LAB 107 Regional Representative to the Deputy Under Secretary for Intergovernmental Affairs.
LAB 108 Regional Representative to the Deputy Under Secretary for Intergovernmental Affairs.
LAB 109 Regional Representative to the Deputy Under Secretary for Intergovernmental Affairs.
LAB 111 Regional Representative to the Deputy Under Secretary for Intergovernmental Relations.
LAB 112 Regional Representative to the Deputy Under Secretary for Intergovernmental Affairs.
LAB 113 Secretary (Typing) to the Regional Representative.
LAB 114 Secretary to the Regional Representative.
LAB 115 Secretary (Typing) to the Regional Representative.
LAB 117 Secretary (Typing) to the Regional Representative.
LAB 118 Secretary to the Regional Representative.
LAB 119 Secretary (Typing) to the Regional Representative.
LAB 120 Secretary (Steno) to the Regional Representative.
LAB 121 Secretary (Typing) to the Regional Representative.
LAB 122 Secretary (Typing) to the Regional Representative.
LAB 123 Special Assistant to the Administrator for Pension and Welfare Benefit Programs.
LAB 126 Special Assistant to the Deputy Under Secretary, Employment Standards Administration.
LAB 127 Staff Assistant to the Director, Office of Workers' Compensation Programs.
LAB 128 Special Assistant to the Assistant Secretary, Employment and Training Administration.
LAB 131 Special Assistant to the Assistant Secretary, Employment and Training Administration.
LAB 132 Assistant to the Deputy Under Secretary for Legislation and Intergovernmental Relations.
LAB 135 Private Secretary to the Commissioner, Bureau of Labor Statistics.
LAB 138 Special Assistant to the Assistant Secretary for Mine Safety and Health Administration.
LAB 139 Special Assistant to the Administrator, Wage and Hour Division.
LAB 141 Staff Assistant to the Director, Office of Worker's Compensation Programs.
LAB 143 Special Assistant to the Assistant Secretary, Employment and Training Administration.
LAB 146 Staff Assistant to the Solicitor.
LAB 154 Assistant to the Deputy Under Secretary for Legislative Affairs.
LAB 159 Special Assistant to the Deputy Under Secretary for International Affairs.
LAB 163 Special Assistant to the Assistant Secretary, Occupational Safety and Health Administration.
LAB 169 Staff Assistant to the Assistant Secretary for Policy, Evaluation and Research.
LAB 179 Executive Assistant to the Deputy Under Secretary, Employment Standards Administration.
LAB 180 Assistant to the Deputy Under Secretary for Legislative Affairs.
LAB 181 Staff Assistant to the Deputy Under Secretary for International Affairs.
LAB 182 Staff Assistant to the Assistant Secretary for Labor Management Relations.
LAB 183 Special Assistant to the Assistant Secretary, Occupational Safety and Health Administration.
LAB 186 Special Assistant to the Director, Womens' Bureau.
LAB 187 Special Assistant to the Assistant Secretary, Employment and Training Administration.
LAB 189 Special Assistant to the Assistant Secretary, Occupational Safety and Health Administration.
LAB 192 Staff Assistant to the Assistant Secretary for Labor Management Relations.
LAB 193 Confidential Staff Assistant to the Assistant Secretary, Employment and Training Administration.
LAB 195 Special Assistant to the Assistant Secretary, Employment and Training Administration.
LAB 197 Staff Assistant to the Deputy Under Secretary for Intergovernmental Affairs.
LAB 199 Research Assistant to the Deputy Under Secretary for Legislation and Intergovernmental Relations.
LAB 203 Special Assistant to the Assistant Secretary for Veterans' Employment.
LAB 204 Staff Assistant to the Deputy Assistant Secretary for Veterans' Employment.
LAB 213 Special Assistant to the Assistant Secretary for Employment and Training.
LAB 216 Secretary (Typing) to the Assistant Secretary for Employment and Training.
LAB 217 Special Assistant to the Deputy Under Secretary for Intergovernmental Affairs.
LAB 218 Secretary to the Secretary of Labor.
LAB 219 Staff Assistant to the Deputy Under Secretary for Intergovernmental Affairs.
LAB 220 Special Assistant to the Director, Office of Information and Public Affairs.
LAB 221 Special Assistant to the Deputy Under Secretary for Intergovernmental Affairs.
LAB 224 Confidential Staff Assistant to the Assistant Secretary for Mine Safety and Health Administration.

Section 213.3316 Department of Health and Human Services.

HHS 11 Confidential Assistant to the Under Secretary.
HHS 14 Special Assistant to the Executive Secretary.
HHS 17 Staff Assistant to the Secretary.
HHS 22 Assistant to the Secretary for Special Programs.
HHS 23 Assistant to the Secretary for Special Programs.
HHS 30 Special Assistant to the Executive Administrative Assistant to the Secretary.

HHS 31 Special Assistant to the Secretary.
HHS 34 Assistant to the Secretary.
HHS 53 Special Assistant to the Assistant Secretary for Legislation.
HHS 62 Special Assistant to the Assistant Secretary for Legislation.
HHS 120 Assistant to the General Counsel.
HHS 128 Special Assistant for Special Groups.
HHS 129 Special Assistant for Special Groups.
HHS 172 Director of Consumer Information.
HHS 173 Director of Organizational Liaison.
HHS 187 Special Assistant to the Deputy Assistant Secretary for Legislation (Health).
HHS 196 Confidential Executive Assistant to the Assistant Secretary for Public Affairs.
HHS 211 Assistant to the Secretary.
HHS 213 Steward to the Secretary.
HHS 220 Confidential Assistant to the Deputy Assistant Secretary for Planning and Evaluation (Health).
HHS 237 Director, Intergovernmental and Congressional Affairs.
HHS 238 Director, Intergovernmental and Congressional Affairs.
HHS 239 Director, Intergovernmental and Congressional Affairs.
HHS 240 Director, Intergovernmental and Congressional Affairs.
HHS 241 Director, Intergovernmental and Congressional Affairs.
HHS 242 Director, Intergovernmental and Congressional Affairs.
HHS 243 Director, Intergovernmental and Congressional Affairs.
HHS 244 Director, Intergovernmental and Congressional Affairs.
HHS 246 Director, Public Affairs.
HHS 248 Director, Public Affairs.
HHS 249 Director, Public Affairs.
HHS 250 Director, Public Affairs.
HHS 251 Director, Public Affairs.
HHS 252 Director, Public Affairs.
HHS 253 Director, Public Affairs.
HHS 254 Director, Public Affairs.
HHS 255 Director, Intergovernmental and Congressional Affairs.
HHS 264 Special Assistant to the Secretary.
HHS 265 Special Assistant to the Secretary.
HHS 268 Special Assistant to the Executive Secretary.
HHS 277 Special Assistant (Special Projects) to the Deputy Under Secretary for Intergovernmental Affairs.
HHS 285 Confidential Assistant to the Secretary.
HHS 289 Confidential Assistant to the Associate Administrator for External Affairs.
HHS 290 Director of Public Affairs, Office of Human Development Services.
HHS 293 Special Assistant to the Commissioner, Administration for Children, Youth and Families.
HHS 295 Confidential Assistant to the Executive Secretary.
HHS 305 Special Assistant to the Deputy Under Secretary for Intergovernmental Affairs.
HHS 306 Special Assistant to the Director, Office of Program Coordination and Review.
HHS 307 Deputy Director to the Director, Office of Congressional Liaison.
HHS 316 Associate Commissioner, Office of Developmental Services.
HHS 318 Confidential Assistant to the Executive Assistant to the Secretary.
HHS 332 Special Assistant to the Assistant Secretary for Human Development Services.
HHS 336 Special Assistant to the Deputy Assistant Secretary, Office of Legislation (Welfare).
HHS 339 Confidential Assistant to the Deputy Assistant Secretary, Office of Legislation.
HHS 345 Congressional Liaison Specialist to the Assistant Secretary, Office of Legislation.
HHS 354 Associate Commissioner, Office of Services for Children and Youth.
HHS 359 Congressional Liaison Specialist to the Deputy Assistant Secretary, Office of Legislation.
HHS 361 Congressional Liaison Specialist to the Deputy Assistant Secretary, Office of Legislation.
HHS 362 Secretary (Steno) to the Assistant Secretary for Human Development Services.
HHS 365 Special Assistant to the Administrator, Office of External Affairs.
HHS 366 Special Assistant to the Inspector General.
HHS 367 Confidential Assistant to the Associate Commissioner, Officer of Governmental Affairs.
HHS 368 Director, Office of Intergovernmental Affairs, Health Care Financing Administration.
HHS 370 Confidential Assistant to the Associate Administrator for External Affairs, Health Care Administration.
HHS 371 Confidential Assistant to the Executive Assistant to the Secretary.
HHS 372 Special Assistant to the Director, Office of Program Coordination and Review.
HHS 373 Confidential Assistant to the Executive Secretary.
HHS 376 Confidential Secretary to the Regional Director.
HHS 377 Special Assistant to the Deputy Under Secretary for Intergovernmental Affairs.
HHS 380 Confidential Assistant to the Executive Assistant.
HHS 382 Associate Commissioner, Office for Families, Administration for Children, Youth and Families.
HHS 383 Special Assistant to the Assistant Secretary for Public Affairs.
HHS 386 Confidential Secretary to the Chief of Staff.
HHS 387 Confidential Assistant to the General Counsel.
HHS 389 Special Assistant to the Director, Office of Program Coordination and Review.
HHS 391 Confidential Staff Assistant to the Assistant Secretary for Public Affairs.
HHS 392 Confidential Staff Assistant to the Assistant Secretary for Planning and Evaluation.
HHS 393 Special Assistant to the Director, Office of Community Services.
HHS 394 Confidential Assistant to the Executive Secretary.
HHS 395 Special Assistant to the Director, Office of Community Services.
HHS 397 Special Assistant for Block Grants to the Director, Office of State and Project Assistance.
HHS 398 Confidential Staff Assistant to the Chief of Staff.
HHS 399 Special Assistant to the Assistant Secretary for Human Development Services.
HHS 400 External Affairs Specialist to the Director, Office of Community Services.
HHS 405 Executive Assistant to the Administrator, Alcohol, Drug Abuse and Mental Health Administration.
HHS 406 Special Assistant to the Assistant Secretary.
HHS 407 Special Assistant to the Commissioner, Office of Human Development.
HHS 408 Confidential Assistant to the Director, Office of Community Services.
HHS 411 Confidential Assistant to the Associate Commissioner for Governmental Affairs.
HHS 412 Special Assistant to the Regional Director.
HHS 415 Confidential Assistant to the Secretary.
HHS 416 Confidential Assistant to the Administrator, Alcohol, Drug Abuse and Mental Health Administration.
HHS 417 Special Assistant to the Regional Director.

HHS 418 Confidential Staff Assistant to the Chief of Staff.
HHS 419 Confidential Assistant to the Secretary.
HHS 20 Confidental Assistant to the Associate Administrator for Operations.
HHS 421 Confidential Staff Assistant to the Executive Secretary.
HHS 423 Special Assistant to the Associate Commissioner, Administration for Children, Youth and Families.
HHS 424 Staff Assistant to the Secretary.
HHS 425 Special Assistant to the Senior Advisor to the Secretary.
HHS 426 Director, Office of Legislation and Policy.
HHS 427 Executive Director, President's Committee on Mental Retardation.
HHS 428 Confidential Staff Assistant to the Senior Advisor to the Secretary.
HHS 429 Confidential Staff Assistant to the Secretary.
HHS 430 Director, Office of Intergovernmental Communications.
HHS 431 Confidential Staff Assistant to the Deputy Assistant Secretary for Public Affairs.

Section 213.3317 Department of Education.

EDU 3 Personal Assistant to the Secretary.
EDU 5 Confidential Assistant to the Under Secretary.
EDU 6 Confidential Assistant to the Executive Secretary.
EDU 9 Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education.
EDU 11 Personal Assistant to the Assistant Secretary, Office of Educational Research and Improvement.
EDU 14 Special Assistant to the Deputy Under Secretary for Management.
EDU 15 Special Assistant to the Deputy Under Secretary for Management.
EDU 18 Attorney-Advisor to the General Counsel.
EDU 20 Steward.
EDU 21 Confidential Assistant to the Assistant Secretary for Legislation and Public Affairs.
EDU 23 Personal Assistant to the Executive Assistant for Private Education.
EDU 29 Special Assistant to the Executive Assistant.
EDU 31 Special Assistant to the Deputy Assistant Secretary for policy.
EDU 33 Executive Assistant to the Assistant Secretary for Elementary and Secondary Education.
EDU 37 Special Assistant to the Secretary.
EDU 40 Confidential Assistant to the Executive Assistant.
EDU 46 Special Assistant to the Assistant Secretary for Vocational and Adult Education.
EDU 49 Confidential Assistant to the Deputy Assistant Secretary, Office of Legislation and Public Affairs.
EDU 51 Special Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 52 Special Assistant to the Under Secretary.
EDU 54 Confidential Assistant to the Executive Assistant.
EDU 55 Special Assistant to the Director, Intergovernmental Affairs Staff.
EDU 57 Speechwriter to the Secretary.
EDU 65 Special Assistant to the Under Secretary.
EDU 66 Special Assistant to the Secretary.
EDU 68 Confidential Assistant to the Deputy Under Secretary for Management.
EDU 70 Confidential Assistant to the Director, Intergovernmental Affairs Staff.
EDU 72 Special Assistant to the Assistant Secretary, Office of Legislation and Public Affairs.
EDU 82 Special Assistant to the Deputy Under Secretary, Office of Planning, Budget and Evaluation.
EDU 83 Special Assistant to the Deputy Under Secretary, Office of Planning Budget and Evaluation.
EDU 85 Executive Assistant to the Assistant Secretary for Special Education and Rehabilitative Services.
EDU 86 Confidential Assistant to the Assistant Secretary for Special Education and Rehabilitative Services.
EDU 88 Special Assistant to the Assistant Secretary for Elementary and Secondary Education.
EDU 89 Special Assistant to the Assistant Secretary for Elementary and Secondary Education.
EDU 90 Special Assistant to the Assistant Secretary for Vocational and Adult Education.
EDU 91 Special Assistant to the Assistant Secretary for Vocational and Adult Education.
EDU 94 Confidential Assistant to the Assistant Secretary for Postsecondary Education.
EDU 97 Executive Assistant to the Assistant Secretary, Office of Educational Research Improvement.
EDU 98 Special Assistant to the Director, National Institute of Education.
EDU 100 Confidential Assistant to the Deputy Under Secretary for Management.
EDU 103 Special Assistant to the Commissioner, Rehabilitation Services Administration.
EDU 104 Special Assistant to the Assistant Secretary, Office of Special Education and Rehabilitative Services.
EDU 105 Secretary to the Regional Representative.
EDU 106 Secretary's Regional Representative.
EDU 107 Secretary's Regional Representative.
EDU 108 Secretary's Regional Representative.
EDU 111 Secretary's Regional Representative.
EDU 112 Special Assistant to the Assistant Secretary, Office of Educational Research and Improvement.
EDU 116 Special Assistant to the Assistant Secretary, Office of Postsecondary Education.
EDU 120 Director, Office of Editorial Services.
EDU 121 Special Assistant to the Commissioner, Rehabilitation Services Administration.
EDU 123 Special Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 124 Secretary's Regional Representative.
EDU 125 Special Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 127 Special Assistant to the Secretary.
EDU 128 Confidential Assistant to the Deputy Under Secretary for Management.
EDU 131 Secretary's Regional Representative.
EDU 132 Confidential Assistant to the Deputy Under Secretary for Management.
EDU 133 Special Assistant to the Deputy Under Secretary for Planning, Budget and Evaluation.
EDU 134 Confidential Assistant to the Deputy Under Secretary for Management.
EDU 135 Confidential Assistant to the Director, National Institute of Education.

EDU 136 Confidential Assistant to the Director, Bilingual Education and Minority Languages Affairs.
EDU 137 Special Assistant to the Comptroller, Office of the Deputy Under Secretary for Management.
EDU 140 Special Assistant to the Deputy Assistant Secretary for Operations, Office of Civil Rights.
EDU 142 Special Assistant to the Deputy Assistant Secretary for Operations, Office of Civil Rights.
EDU 143 Confidential Assistant to the Counselor/Executive Assistant to the Secretary.
EDU 144 Special Assistant to the Comptroller, Office of the Deputy Under Secretary for Management.
EDU 145 Special Assistant to the Deputy Under Secretary for Management.
EDU 146 Special Assistant to the Deputy Assistant Secretary for Special Education and Rehabilitative Services.
EDU 147 Secretary's Regional Representative.
EDU 148 Executive Assistant to the Deputy Under Secretary for Management.
EDU 149 Special Assistant to the Under Secretary.
EDU 150 Special Assistant to the Deputy Assistant Secretary for Special Education and Rehabilitative Services.
EDU 153 Special Assistant to the Director, Intergovernmental Affairs Staff.
EDU 154 Executive Director, Intergovernmental Advisory Council on Education.
EDU 155 Special Assistant to the Under Secretary.
EDU 156 Special Assistant to the Director, Bilingual Education and Minority Languages Affairs.
EDU 157 Personal Assistant to the Deputy Under Secretary for Management.
EDU 158 Confidential Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 159 Confidential Assistant to the Assistant Secretary, Postsecondary Education.
EDU 160 Special Assistant to the Director, Postsecondary Relations Staff.
EDU 161 Special Assistant to the Deputy Assistant Secretary for Higher Education Programs.
EDU 164 Special Counsel to the Under Secretary.
EDU 165 Legislative Liaison to the Assistant Secretary, Office of Legislation and Public Affairs.
EDU 166 Special Assistant to the Assistant Secretary, Office of Vocational and Adult Education.
EDU 167 Director, Operations Support Services.
EDU 168 Confidential Assistant to the Associate Deputy Under Secretary for Planning, Budget and Evaluation.
EDU 169 Special Assistant to the Under Secretary.
EDU 170 Deputy Commissioner, Rehabilitative Services Administration.
EDU 172 Legislative Liaison to the Director, Legislative Liaison Staff.
EDU 174 Confidential Assistant to the Assistant Secretary, Office of Legislative and Public Affairs.
EDU 176 Confidential Assistant to the Assistant Secretary for Special Education and Rehabilitative Services.
EDU 178 Personal Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 179 Special Assistant to the Executive Assistant to the Secretary for Private Education.
EDU 180 Confidential Assistant to the Counselor/Executive Assistant to the Secretary.
EDU 181 Deputy Director, Postsecondary Relations Staff.
EDU 182 Special Assistant to the Director of Regional Liaison.
EDU 183 Deputy Director, Regional Liaison Staff.
EDU 184 Confidential Assistant to the Director, National Institute of Education.
EDU 185 Staff Assistant to the Secretary's Regional Representative.

Section 213.3318 Environmental Protection Agency.

EPA 50 Program Advisor to the Administrator.
EPA 54 Congressional Liaison Specialist to the Director, Office of Congressional Liaison.
EPA 55 Special Assistant to the Administrator.
EPA 61 Special Assistant to the Assistant Administrator for Special Administration and Resource Management.
EPA 63 Special Assistant to the General Counsel.
EPA 65 Special Assistant to the Inspector General.
EPA 69 Deputy Director, Office of Congressional Liaison.
EPA 71 Assistant Director for Local Affairs to the Director, Office of Intergovernmental Liaison.
EPA 72 Congressional Relations Specialist to the Deputy Director, Office of Congressional Liaison.
EPA 75 Congressional Relations Officer to the Deputy Director, Office of Congressional Liaison.
EPA 81 Special Assistant to the Assistant Administrator for Solid Waste and Emergency Response.
EPA 82 Special Assistant for Regulatory Affairs to the Director, Office of Federal Activities.
EPA 88 Special Assistant to the Associate Administrator for Policy and Resources Management.
EPA 89 Special Assistant to the Assistant Administrator for Solid Waste and Emergency Response.
EPA 91 Local Affairs Specialist to the Director, Office of Intrgovernmental Liaison.
EPA 93 Staff Assistant to the Executive Assistant to the Administrator.
EPA 95 Special Assistant to the Administrator.
EPA 97 Special Assistant to the Director, Office of Public Affairs.
EPA 100 Confidential Assistant to the Associate Administrator.
EPA 101 External Affairs Specialist to the Administrator.
EPA 102 Staff Assistant to the Executive Assistant to the Administrator.
EPA 103 Staff Assistant to the Assistant Administrator for External Affairs.
EPA 104 Confidential Assistant to the General Counsel.
EPA 105 Special Assistant to the Assistant Administrator for Policy, Planning and Evaluation.

Section 213.3319 Administrative Conference of the United States

ACUS 2 Confidental Assistant to the Chairman.

Section 213.3320 Inter-American Foundation.

IAF 9 Confidential Assistant (Vice President for Program) to the President.
IAF 13 Confidential Assistant (Vice President for Research and Planning) to the President.
IAF 14 Special to the President.

Section 213.3322 Interstate Commerce Commission.

ICC 1 Confidential Assistant to a Commissioner.
ICC 2 Confidential Assistant to a Commissioner.
ICC 4 Secretary (Typing) to the Chairman.

ICC 8 Confidential Assistant to the Chairman.
ICC 8 Confidential Assistant to a Commissioner.
ICC 18 Information Officer to the Chairman.
ICC 19 Staff Advisor (Transportation) to a Commissioner.
ICC 22 Staff Advisor (Economics) to a Commissioner.
ICC 24 Staff Advisor (Economics) to a Commissioner.
ICC 40 Staff Advisor (Economics) to the Managing Director.
ICC 41 Staff Advisor (Transportation) to the Director.
ICC 42 Staff Advisor (Editorial) to the Chairman.

Section 213.3323 Overseas Private Investment Corporation.

OPIC 1 Chauffeur to the President.
OPIC 19 Secretary (Steno) to the Executive Vice President.
OPIC 21 Assistant to the Executive Vice President.

Section 213.3325 The Tax Court of the United States.

TCOUS 16 Attorney-Advisor to the Judge.
TCOUS 19 Attorney-Advisor to the Judge.
TCOUS 20 Attorney-Advisor to the Judge.
TCOUS 21 Attorney-Advisor to the Judge.
TCOUS 22 Attorney-Advisor to the Judge.
TCOUS 23 Attorney-Advisor to the Judge.
TCOUS 24 Attorney-Advisor to the Judge.
TCOUS 25 Attorney-Advisor to the Judge.
TCOUS 29 Attorney-Advisor to the Judge.
TCOUS 32 Attorney-Advisor to the Judge.
TCOUS 33 Attorney-Advisor to the Judge.
TCOUS 40 Secretary and Confidential Assistant to the Judge.
TCOUS 41 Secretary and Confidential Assistant to the Judge.
TCOUS 42 Secretary and Confidential Assistant to the Judge.
TCOUS 43 Secretary and Confidential Assistant to the Judge.
TCOUS 44 Secretary to the Judge.
TCOUS 45 Secretary and Confidential Assistant to the Judge.
TCOUS 46 Secretary and Confidential Assistant to the Judge.
TCOUS 47 Secretary and Confidential Assistant to the Judge.
TCOUS 48 Secretary and Confidential Assistant to the Judge.
TCOUS 49 Secretary and Confidential Assistant to the Judge.
TCOUS 50 Secretary and Confidential Assistant to the Judge.
TCOUS 51 Secretary and Confidential Assistant to the Judge.
TCOUS 52 Secretary and Confidential Assistant to the Judge.
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TCOUS 61 Secretary and Confidential Assistant to the Judge.
TCOUS 62 Secretary and Confidential Assistant to the Judge.
TCOUS 63 Secretary and Confidential Assistant to the Judge.
TCOUS 64 Secretary and Confidential Assistant to the Judge.

Section 213.3327 Veterans Administration

VA 5 Confidential Assistant to the Associate Deputy Administrator for Logistics.
VA 11 Confidential Assistant to the Administrator of Veterans Affairs.
VA 15 Confidential Assistant to the Administrator.
VA 30 Confidential Assistant to the Director, Intergovernmental Affairs.
VA 31 Confidential Assistant to the Associate Deputy Administrator for Congressional and Public Affairs.
VA 32 Confidential Assistant to the Associate Deputy Administrator for Logistics.
VA 34 Confidential Assistant to the Associate Deputy Administrator for Congressional and Public Affairs.
VA 36 Confidential Assistant to the Director, Congressional Affairs Staff.
VA 39 Special Assistant to the Administrator.
VA 40 Confidential Assistant to the Associate Deputy Administrator for Congressional and Intergovernmental Affairs.

Section 213.3328 U.S. Information Agency.

USIA 2 Special Assistant to Director.
USIA 12 Special Assistant (Congressional Relations) to the General Counsel.
USIA 14 Special Assistant to the Associate Director for Programs.
USIA 21 Special Assistant to the Director.
USIA 22 Director, New York Foreign Press Center.
USIA 25 Counselor for Press and Public Affairs to the Associate Director for Programs.
USIA 29 Assistant Counselor for Press and Public Affairs.
USIA 30 Staff Assistant to the Director.
USIA 33 Staff Assistant to the Director, Office of Public Liaison.
USIA 34 Special Assistant to the Director, Private Sector Program.
USIA 37 Staff Assistant to the Special Assistant, Private Sector Liaison.
USIA 40 Staff Specialist to the Special Assistant, Private Sector Liaison.
USIA 41 Staff Specialist to the Special Assistant, Private Sector Liaison.
USIA 42 Secretary (Typing) to the Associate Director for Management.
USIA 45 Special Assistant to the Associate Director for Programs.
USIA 47 Special Assistant (Congressional Relations) to the General Counsel.
USIA 56 Staff Specialist to the Director, Office of Private Sector Liaison.
USIA 57 Special Assistant to the Associate Director for Educational and Cultural Affairs.
USIA 59 Staff Assistant to the Deputy Director.
USIA 61 Special Assistant to the General Counsel.
USIA 62 Special Assistant to the Associate Director for Broadcasting.
USIA 63 Special Assistant to the Director of Public Liaison.
USIA 64 Staff Assistant to the Director of Public Liaison.
USIA 65 Special Assistant (Cultural Centers and Resources) to the Associate Director for Educational and Cultural Affairs.
USIA 67 Special Assistant to the Associate Director for Educational and Cultural Affairs.
USIA 70 Special Assistant to the General Counsel.
USIA 73 Special Assistant to the Associate Director for Educational and Cultural Affairs.
USIA 77 Special Assistant to the Associate Director for Management.
USIA 79 Special Projects Officer to the Associate Director for Broadcasting.
USIA 80 Special Assistant (Media Relations) to the Director, Office of Public Liaison.
USIA 81 Special Assistant to the Associate Director for programs.
USIA 82 Special Assistant to the Associate Director for Management.
USIA 85 Special Assistant to the Director of Research.

Section 213.3330 Securities and Exchange Commission.

SEC 2 Executive Aide (Typing) to the Executive Assistant to the Chairman.
SEC 3 Confidential Assistant to the Commissioner.
SEC 5 Confidential Assistant to the Commissioner.
SEC 6 Confidential Assistant to the Commissioner.
SEC 8 Secretary (Steno) to the Chief Accountant.
SEC 9 Secretary to the General Counsel.
SEC 11 Confidential Assistant to the Chairman.
SEC 12 Public Information Officer to the Chairman.
SEC 15 Secretary (Steno) to the Director, Market Regulation Division.
SEC 16 Secretary (Steno) to the Director.
SEC 18 Secretary (Typing) to the Director of Investment Management.
SEC 21 Confidential Adviser on Corporate Practices to the Director, Division of Enforcement.

Section 213.3331 Department of Energy.

DOE 2 Confidential Assistant (Secretary) to the Secretary.
DOE 5 Confidential Assistant (Secretary) to the Deputy Secretary.
DOE 7 Secretary (Confidential Assistant) to the Under Secretary.
DOE 8 Staff Assistant to the Executive Assistant to the Secretary.
DOE 11 Private Secretary to a Member, Federal Energy Regulatory Commission.
DOE 12 Private Secretary to a Member, Federal Energy Regulatory Commission.
DOE 15 Confidential Assistant (Secretary) to the Administrator, Energy Information Administration.
DOE 17 Confidential Assistant (Secretary) to the Inspector General.
DOE 19 Confidential Assistant (Secretary) to the Director, Energy Research.
DOE 38 Staff Assistant to the Assistant Secretary for Conservation and Renewable Energy.
DOE 40 Legal Advisor to a Member of the Commission, Federal Energy Regulatory Commission.
DOE 41 Legal Advisor to a Member of the Commission, Federal Energy Regulatory Commission.
DOE 43 Legal Advisor to a Member of the Commission, Federal Energy Regulatory Commission.
DOE 48 Attorney-Advisor to the Chairman, Federal Energy Regulatory Commission.
DOE 49 Legal Advisor to a Member of the Commission, Federal Energy Regulatory Commission.
DOE 51 Attorney-Advisory (Public Utilities) to the Chairman, Federal Energy Regulatory Commission.
DOE 52 Staff Assistant to the Assistant Secretary for International Affairs.
DOE 55 Staff Assistant to the Special Assistant to the Secretary.
DOE 59 Staff Assistant to the Director, Office of Energy Research.
DOE 60 Confidential Assistant to a Member of the Commission, Federal Energy Regulatory Commission.
DOE 68 Confidential Assistant to a Member of the Commission, Federal Energy Regulatory Commission.
DOE 69 Staff Assistant (Legislative Affairs) to the Assistant to the Secretary for Legislative Affairs.
DOE 73 Legal Advisor to a Member of the Commission, Federal Energy Regulatory Commission.
DOE 74 Staff Assistant to the General Counsel.
DOE 75 Legal Advisor to a Member of the Commission, Federal Energy Regulatory Commission.
DOE 77 Staff Assistant to the Administrative Assistant to the Secretary and Chief of Staff.
DOE 87 Staff Assistant to the Assistant Secretary for Fossil Energy.
DOE 103 Attorney-Advisor to the Chairman, Federal Energy Regulatory Commission.
DOE 105 Confidential Assistant to a Member, Federal Energy Regulatory Commission.
DOE 106 Confidential Assistant to a member of the Commission, Federal Energy Regulatory Commission.
DOE 109 Private Secretary to a Member of the Commission, Federal Energy Regulatory Commission.
DOE 110 Private Secretary to a Member of the Commission, Federal Energy Regulatory Commission.
DOE 111 Private Secretary to the Chairman, Federal Energy Regulatory Commission.
DOE 112 Private Secretary to the Chairman, Federal Energy Regulatory Commission.
DOE 114 Special Assistant to the Administrator, Bonneville Power Administration.
DOE 171 Special Assistant to the Assistant Secretary for Conservation and Renewable Energy.
DOE 172 Staff Assistant to the Assistant Secretary for Conservation and Renewable Energy.
DOE 174 Special Assistant to the Assistant Secretary for Environmental Protection, Safety, and Emergency Preparedness.
DOE 178 Legislative Affairs Specialist to the Deputy Assistant Secretary for Congressional Affairs.
DOE 182 Staff Assistant to the Assistant Secretary for Congressional, Intergovernmental and Public Affairs.
DOE 185 Confidential Assistant (Secretary) to the Manager, Congressional Liaison Staff.
DOE 189 Staff Assistant to the General Counsel.
DOE 190 Staff Assistant to the Secretary.
DOE 192 Staff Assistant to the Special Assistant, Office of Programs and Policy.
DOE 195 Special Assistant to the Director, Minority Economic Impact.
DOE 197 Director, Division of Congressional Liaison, Federal Energy Regulatory Commission.
DOE 206 Executive Assistant to the Director, Office of Energy Research.
DOE 213 Senate Liaison Specialist to the Deputy Assistant Secretary for Senate Liaison.
DOE 225 Advisor to a Member of the Commission, Federal Energy Regulatory Commission.
DOE 228 Advisor to a Member of the Commission, Federal Energy Regulatory Commission.
DOE 229 Deputy Assistant Secretary for Senate Liaison.
DOE 230 Staff Assistant to the Special Assistant to the Secretary for Programs and Polices.
DOE 231 Staff Assistant to the Assistant Secretary for Congressional, Intergovernmental and Public Affairs.
DOE 234 Director, Office of Public Affairs.
DOE 235 Staff Assistant to the Director, Office of Policy Planning and Analysis.
DOE 237 Staff Assistant to the Special Assistant to the Secretary for Programs and Policies.
DOE 238 Staff Assistant to the Assistant Secretary for Conservation and Renewable Energy.
DOE 239 Staff Assistant to the Special Assistant to the Secretary for Programs and Policies.
DOE 242 Staff Assistant to the Special Assistant to the Secretary.
DOE 243 Staff Assistant to the Assistant Secretary for International Affairs.

DOE 244 Director, Office of Consumer Affairs.
DOE 245 Staff Assistant to the Assistant Secretary for Congressional, Intergovernmental and Public Affairs.
DOE 246 Staff Assistant to the Assistant Secretary for Conservation and Renewable Energy.
DOE 248 Confidential Assistant to the Chairman, Federal Energy Regulatory Commission.
DOE 249 Special Assistant to the Administrator, Economic Regulatory Administration.
DOE 251 Intergovernmental Affairs Specialist to the Director of Intergovernment Affairs.
DOE 254 Staff Assistant to the Special Assistant to the Secretary.
DOE 255 Attorney-Advisor (Assistant) to the Chairman, Federal Energy Regulatory Commission.
DOE 256 Confidential Assistant to the General Counsel, Federal Energy Regulatory Commission.
DOE 258 Research Assistant to the Special Assistant to the Secretary for Programs and Policies.
DOE 259 Private Secretary to the Chairman, Federal Energy Regulatory Commission.
DOE 263 Staff Assistant to the Assistant Secretary for Management and Administration.
DOE 264 Staff Assistant to the Administrator, Energy Information Administration.
DOE 265 Special Assistant to the Secretary.
DOE 267 Staff Assistant to the Director, Office of Minority Economic Impact.
DOE 268 Secretary (Confidential Assistant) to the Assistant Secretary for Management and Administration.
DOE 269 Intergovernmental Affairs Specialist to the Principle Deputy Assistant Secretary.
DOE 270 Public Affairs Specialist to the Director, Office of Public Affairs.
DOE 271 Staff Assistant to the General Counsel.
DOE 272 Secretarial Assistant (Typing) to the Special Assistant to the Secretary for Programs and Policies.
DOE 274 Secretary (Confidential Assistant) to the Special Assistant to the Secretary.
DOE 275 Secretary (Confidential Assistant) to the Under Secretary.
DOE 276 Secretary (Confidential Assistant) to the Executive Assistant to the Secretary.
DOE 278 Deputy Director, Office of Policy and Management.

Section 213.3332 Small Business Administration.

SBA 11 Deputy Assistant Administrator for Congressional and Legislative Affairs.
SBA 18 Special Assistant to the Administrator.
SBA 30 Special Assistant to the Associate Administrator for Minority Small Business and Capital Ownership Development.
SBA 35 Special Assistant to the Associate Administrator for Minority Small Business and Capital Ownership Development.
SBA 48 Special Assistant to the Assistant Administrator for Congressional and Legislative Affairs.
SBA 52 Special Assistant to the Administrator.
SBA 54 Special Assistant to the Assistant Administrator for Public Communications.
SBA 58 Confidential Assistant to the Chief of Staff.
SBA 59 Director of Information Services.
SBA 64 Special Assistant to the Regional Administrator.
SBA 65 Special Assistant to the Regional Administrator.
SBA 66 Special Assistant to the Regional Administrator.
SBA 68 Confidential Assistant to the Regional Administrator.
SBA 69 Special Assistant to the Regional Administrator.
SBA 70 Special Assistant to the Regional Administrator.
SBA 71 Assistant to the Regional Administrator.
SBA 72 Special Assistant to the Regional Administrator.
SBA 73 Special Assistant to the Regional Administrator.
SBA 76 Special Assistant to the Director of Women's Business Ownership.
SBA 90 Confidential Program Assistant to the Administrator.
SBA 91 Speical Assistant to the Assistant Administrator for Public Communication.
SBA 92 Staff Assistant to the Administrator.
SBA 95 Special Assistant to the Administrator.
SBA 97 Confidential Assistant to the General Counsel.
SBA 98 Staff Assistant to the Administrator
SBA 99 Special Assistant to the Regional Administrator.
SBA 100 Special Assistant to the Regional Administrator.
SBA 101 Special Assistant to the Associate Deputy Administrator for Management and Administration.
SBA 103 Confidential Assistant to the Administrator.
SBA 104 Special Assistant to the Associate Deputy Administrator for Special Programs.
SBA 105 Special Assistant to the Administrator.
SBA 107 Confidential Assistant to the Associate Deputy Administrator for Special Programs.
SBA 108 Director, Office of Public Affairs.
SBA 111 Special Assistant to the Director of Women's Business Ownership.
SBA 112 Special Assistant to the Deputy Administrator.
SBA 113 Director, Executive Secretariat.
SBA 115 Special Assistant to the Regional Administrator.
SBA 117 Staff Assistant to the Director of Women's Business Ownership.
SBA 118 Staff Assistant to the Director of Women's Business Ownership.
SBA 119 Confidential Assistant to the Regional Administrator.
SBA 120 Staff Assistant to the Assistant Administrator for Public Communications.
SBA 121 Special Assistant to the Regional Administrator.
SBA 122 Special Assistant to the Regional Administrator.
SBA 123 Special Assistant to the Regional Administrator.

Section 213.3333 Federal Deposit Insurance Corporation.

FDIC 2 Secretary to the Members.
FDIC 7 Special Assistant to the Director, Congressional Liaison Staff.

Section 213.3334 Federal Trade Commission.

FTC 5 Staff Assistant to a Commissioner.
FTC 6 Director, Office of Congressional Relations.
FTC 8 Special Assistant (Economic Adviser) to a Commissioner.

Section 213.3337 General Services Administration.

GSA 24 Special Assistant to the Commissioner.
GSA 79 Confidential Assistant to the Regional Administrator.
GSA 81 Special Assistant to the Director of Organization and Personnel.
GSA 82 Confidential Assistant to the Director of Public Affairs.
GSA 87 Confidential Assistant to the Regional Administrator.

GSA 88 Confidential Assistant to the Regional Administrator.
GSA 89 Confidential Assistant to the Director of Congressional Affairs.
GSA 90 Special Assistant to the Director of Congressional Affairs.
GSA 91 Confidential Assistant to the Commissioner, Public Building Service.
GSA 99 Confidential Assistant to the Regional Administrator.
GSA 100 Director of Executive Secretariat.
GSA 106 Special Assistant to the Director, Office of Communications.
GSA 108 Chief of Staff.
GSA 110 Special Assistant to the Director of Communications.
GSA 112 Director, Office of Program Initiatives.

Section 213.3338 Federal Communications Commission.

FCC 9 Communications Analyst to the Administrative Assistant to the Chairman.
FCC 10 Legislative Affairs Officer to the General Counsel.
FCC 11 Special Assistant to the Director of Public Affairs.
FCC 12 Confidential Staff Assistant to the Managing Director.

Section 213.3339 U.S. International Trade Commission.

ITC 1 Confidential Assistant to a Commissioner.
ITC 3 Staff Assistant (Economics) to a Commissioner.
ITC 5 Confidential Assistant to the Chairman.
ITC 6 Staff Assistant (Economics) to a Commissioner.
ITC 7 Staff Assistant (Economics) to a Commissioner.
ITC 12 Staff Assistant (Economics) to a Commissioner.
ITC 13 Staff Assistant (Legal) to the Chairman.
ITC 14 Confidential Assistant to a Commissioner.
ITC 17 Staff Assistant (Legal) to a Commissioner.
ITC 18 Confidential Assistant to a Commissioner.
ITC 19 Staff Assistant (Economics) to a Commissioner.
ITC 20 Staff Assistant (Legal) to a Commissioner.
ITC 22 Staff Assistant (Legal) to a Commissioner.
ITC 27 Congressional Liaison for the Chairman.
ITC 30 Confidential Assistant to a Commissioner.
ITC 31 Staff Assistant (Economics) to a Commissioner.
ITC 32 Staff Assistant (Economics) to a Commissioner.
ITC 33 Staff Assistant to the Chairman.

Section 213.3340 Civil Aeronautics Board.

CAB 10 Congressional Relations Representative to the Director.
CAB 13 Community Relations Representative to the Director.
CAB 18 Community Relations Representative to the Director.

Section 213.3341 National Labor Relation Board.

NLRB 2 Confidential Assistant to the Chairman.
NLRB 3 Confidential Assistant to a Member.
NLRB 5 Confidential Assistant to a Board Member.
NLRB 6 Confidential Assistant to a Board Member.

Section 213.3342 Export-Import Bank of the United States.

EXIM 1 Confidential Assistant to the President and Chairman.
EXIM 3 Private Secretary to the Director.
EXIM 4 Private Secretary to the Director.
EXIM 5 Private Secretary to the Director.
EXIM 12 Secretary (Steno) to the Senior Vice President.
EXIM 15 Secretary (Typing) to the President and Chairman.
EXIM 16 Administrative Assistant to the General Counsel.
EXIM 24 Secretary (Steno) to the Senior Vice President-Director for Credits and Financial Guarantees.
EXIM 26 Assistant to the President and Chairman.
EXIM 29 Special Assistant to the President and Chairman.
EXIM 31 Deputy Vice President for Public Affairs.
EXIM 34 Special Assistant to the Vice President and Vice Chairman for Small Business.

Section 213.3344 Occupational Safety and Health Review Commission.

OSHRC 2 Special Assistant to the Chairman
OSHRC 6 Confidential Assistant to a Commissioner.

Section 213.3348 National Aeronautics and Space Administration.

NASA 1 Secretary (Steno) to the Administrator.

Section 213.3351 Federal Mine Safety and Health Review Commission.

FM 1 Secretary (Steno) to a Commissioner.
FM 2 Secretary (Typing) to a Commissioner.
FM 4 Confidential Secretary to a Commissioner.
FM 5 Confidential Secretary to the Chairman.
FM 6 Attorney-Adviser (General) to the Chairman.
FM 7 Attorney-Adviser (General) to a Commissioner.
FM 8 Attorney-Adviser (General) to a Commissioner.
FM 9 Attorney-Adviser (General) to a Commissioner.
FM 10 Attorney-Adviser (General) to a Commissioner.
FM 12 Confidential Secretary to the General Counsel.

Section 213.3352 Government Printing Office.

GPO 3 Congressional Relations Officer.
GPO 6 Confidential Assistant to the Public Printer.
GPO 7 Confidential Assistant to the Deputy Public Printer.
GPO 9 Staff Assistant to the Congressional Relations Officer.
GPO 14 Deputy Congressional Relations Officer.

Section 213.3354 Federal Home Loan Bank Board.

FHLB 3 Secretary to a Board Member.
FHLB 7 Assistant to a Board Member.
FHLB 8 Secretary (Typing) to the Executive Staff Director.
FHLB 11 Director, Ofice of Communications.
FHLB 19 Congressional Liaison to the Executive Staff Director.
FHLB 21 Secretary (Steno) to the Congessional Liaison.
FHLB 25 Staff Assistant to the Congressional Liaison.
FHLB 26 Secretary (Typing) to the Director.

Section 213.3356 Commission on Civil Rights.

CCR 9 Special Assistant to the Staff Director.
CCR 13 Special Assistant to the Chairman.

Section 213.3357 National Credit Union Administration.

NCUA 2 Public Information Officer to the Chairman.
NCUA 3 Legislative Liaison Officer to the General Counsel.
NCUA 13 Staff Assistant to the Chairman.
NCUA 14 Special Assistant to the Board. Member.
NCUA 15 Secretary (Typing) to the General Counsel.
NCUA 16 Confidential Assistant to the Board Member.

Section 213.3359 ACTION.

ACT 2 Special Assistant to the Associate Director for Domestic and Anti-Poverty Operations.
ACT 22 Special Assistant to the Director.
ACT 29 Staff Assistant to the Director.
ACT 30 Special Assistant to the Assistant Director for Policy and Planning.
ACT 31 Special Assistant to the Director.
ACT 34 Special Assistant to the Director.
ACT 40 Special Assistant to the Assistant Director, Office of Legislative and Governmental Affairs.
ACT 44 Special Assistant to the Associate Director for Domestic And Anti-Poverty Operations.
ACT 45 Assistant Director For Communications.
ACT 46 Deputy Assistant Director for Policy and Planning.
ACT 48 Special Assistant to the Deputy Director.
ACT 51 Special Assistant to the Assistant Director, Office of Volunteer Liaison.
ACT 56 Special Assistant to the Associate Director for Domestic and Anti-Poverty Operations.
ACT 59 Secretary (Typing) to the Director.
ACT 62 Special Assistant to the Assistant Director for Volunteer Liaison.
ACT 63 Young Volunteers Program Officer to the Deputy Associate Director.
ACT 68 Special Assistant to the Director.
ACT 69 Assistant Director, Office of Legislative and Governmental Affairs.
ACT 73 Special Assistant to the Assistant Director, Office of Compliance.
ACT 74 Special Assistant to the Public Information Officer.
ACT 75 Special Assistant to the Assistant Director of Policy and Planning.
ACT 76 Special Assistant to the Director, Vietnam Veteran Leadership Program.
ACT 78 Assistant Director for Policy and Planning.
ACT 80 Staff Assistant to the Young Volunteer Program Officer.

Section 213.3360 Consumer Product Safety Commission.

CPSC 7 Special Assistant to a Commissioner.
CPSC 12 Special Assistant to a Commissioner.
CPSC 14 Special Assistant to a Commissioner.
CPSC 16 Director, Office of Congressional Relations.
CPSC 20 Special Assistant to the Chairman.
CPSC 26 Secretary (Steno) to a Commissioner.
CPSC 28 Staff Assistant to a Commissioner.
CPSC 34 Special Assistant (Legal) to a Commissioner.
CPSC 35 Confidential Assistant to the Chairman.
CPSC 38 Secretary (Typing) to the Chairman.
CPSC 39 Supervisory Public Affairs Specialist to the Director.
CPSC 40 Congressional Relations Specialist to the Director.
CPSC 41 Special Assistant to the Chairman.
CPSC 42 Public Affiars Specialist to the Chairman.
CPSC 43 Secretary (Typing) to the Director, Office of Public Affairs.
CPSC 44 Secretary (Steno) to the General Counsel.

Section 213.3364 U.S. Arms Control and Disarmament Agency

ACDA 2 Private Secretary to the Deputy Director.
ACDA 5 Private Secretary to the Assistant Director.
ACDA 7 Private Secretary to the General Counsel.
ACDA 10 Deputy Director for Congressional Affairs.
ACDA 11 Congressional Affairs Specialist to the Deputy Director.
ACDA 13 Special Assistant to the Deputy Director..
ACDA 15 Secretary to the Executive Director, General Advisory Committee.
ACDA 18 Secretary to the Special Representative for Negotiations.
ACDA 19 Private Secretary to the Special Representative for Long Range Theatre Nuclear Forces.
ACDA 20 Special Assistant to the Deputy Director for Public Affairs.
ACDA 22 Private Secretary to the Assistant Director for Multilateral Affairs Bureau.
ACDA 23 Staff Assistant to the Assistant Director for Multilateral Affairs.
ACDA 24 Special Assistant to the Assistant Director for Multilateral Affairs.

Section 213.3367 Federal Maritime Commission.

FMC 2 Confidential Assistant to a Commissioner.
FMC 4 Confidential Assistant to a Commissioner.
FMC 5 Confidential Assistant to a Commissioner.
FMC 7 Secretary (Steno) to a Commissioner.
FMC 9 Secretary (Steno) to a Commissioner.
FMC 10 Secretary (Steno) to a Commissioner.
FMC 23 Secretary (Steno) to the Counsel to the Chairman.
FMC 24 Chauffeur-Messenger to the Chairman.

Section 213.3368 Agency for International Development.

AID 20 Special Assistant to the Assistant Administrator (Asia).
AID 31 Special Assistant to the Director, Office of Public Affairs.
AID 32 Special Assistant to the Assistant Administrator.
AID 36 Deputy Director, Women in Development.
AID 37 Deputy Director to the Director, Office of Legislative Affairs.
AID 38 Deputy Assistant to the Administrator for Interbureau Affairs and Special Projects.
AID 41 Congressional Liaison Officer to the Director, Office of Legislative Affairs.
AID 43 Confidential Assistant to the Administrator.
AID 45 Deputy Assistant to the Administrator for Public Affairs.
AID 47 Special Assistant to the Assistant Administrator, Bureau for Food for Peace and Voluntary Service.
AID 48 Special Assistant to the Director, Office of Policy Development and Program Review.

Section 213.3372 Administrative Office of United States Courts.

AOUSC 2 Attorney-Advisor (Legal) to the Legislative Affairs Officer.
AOUSC 4 Supervisory Attorney-Advisor (Legal) to the Legislative Affairs Officer.
AOUSC 5 Secretary (Steno) to the Legislative Affairs Officer.
AOUSC 7 Attorney-Advisor (Legal) to the Legislative Affairs Officer.

Section 213.3376 Appalachian Regional Commission.

ARC 8 Public Affairs Liaison.
ARC 9 Special Assistant to the Alternate Federal Co-Chairman.

Section 213.3377 Equal Employment Opportunity Commission.

EEOC 5 Secretary (Steno) to a Member.
EEOC 10 Special Assistant to a Commissioner.

EEOC 13 Secretary (Typing) to the Chariman.
EEOC 15 Public Affairs Specialist to the Director.
EEOC 22 Director, Office of Congressional Affairs.
EEOC 23 Special Assistant to the Executive Director.
EEOC 25 Special Assistant to the Chairman.
EEOC 26 Staff Assistant to the Chairman.
EEOC 29 Director, Office of Public Affairs.
EEOC 37 Social Science Research Specialist to the Director, Office of Policy Implementation.
EEOC 38 Congressional Liaison Assistant to the Director, Office of Congressional Affairs.
EEOC 39 Confidential Assistant to the Chairman.

Section 213.3379 Commodity Futures Trading Commission.

CFTC 1 Administrative Assistant to the Chairman.
CFTC 3 Administrative Assistant to a Commissioner.
CFTC 5 Administrative Assistant to a Commissioner.
CFTC 6 Administrative Assistant to a Commissioner.
CFTC 12 Special Assistant to a Commissioner.
CFTC 14 Special Assistant to a Commissioner.

Section 213.3382 National Foundation on the Arts and the Humanities.

NEA 2 Director, Media, News and Special Events.
NEA 9 Congressional Liaison Officer to the Chairman.
NEA 23 Director of Policy, Planning and Research to the Chairman.
NEA 36 Special Assistant to the Director of Policy, Planning and Research.
NEA 45 Special Assistant to the Chairman.
NEA 49 Associate Deputy Chairman for Programs.
NEA 50 Special Assistant (Development) to the Deputy Chairman.
NEA 51 Executive Director, President's Committee on the Arts and Humanities.
NEA 52 Deputy to the Chairman for Private Partnership.
NEA 53 Special Assistant to the Public Affairs Officer.

Section 213.3384 Department of Housing and Urban Development.

HUD 1 Confidential Assistant to the Secretary.
HUD 6 Confidential to the General Counsel.
HUD 33 Senor Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 35 Senior Assistant for Legislation to the Deputy Assistant Secretary for Legislation.
HUD 36 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 37 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 39 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 41 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 42 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 45 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 60 Supervisory Public Affairs Specialists to the Assistant to the Secretary for Public Affairs.
HUD 64 Staff Assistant (Typing) to the Assistant Secretary for Community Planning and Development.
HUD 65 Special Assistant to the Assistant Secretary for Community Planning and Development.
HUD 68 Executive Assistant to the Assistant Secretary for Community Planning and Development.
HUD 76 Confidential Assistant to the Assitant Secretary for Fair Housing and Equal Opportunity.
HUD 78 Special Assistant to the Assistant Secretary for Fair Housing and Equal Opportunity.
HUD 120 Special Assistant (Speech Issues) to the Assistant Secretary for Public Affairs.
HUD 135 Special Assistant to the Deputy Assistant Secretary for Fair Housing and Equal Emploment Opportunity.
HUD 137 Sepcial Assistant to Assistant Secretary for Fair Housing and Equal Opportunity.
HUD 143 Special Assistant to the Director, Executive Secretariat.
HUD 153 Executive Assistant to the President, Government National Mortgage Association.
HUD 160 Special Assistant to the Assistant Secretary for Policy Development and Research.
HUD 164 Intergovernmental Relations Officer to the Deputy Under Secretary for Intergovernmental Relations.
HUD 173 Secretary to the Secretary.
HUD 175 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 182 Special Assistant to the General Deputy Assistant Secretary for Housing.
HUD 184 Senior Assistant for Congressional Relations to the Deputy Assistant Secretary for Legislation and Congressional Relations.
HUD 187 Executive Assistant to the Deputy Assistant Secretary for Single Family Housing.
HUD 190 Executive Assistant to the Assistant Secretary for Housing-Federal Housing Commissioner.
HUD 191 Special Assistant to the Assistant Secretary for Policy Development and Research.
HUD 193 Special Assistant to the General Counsel.
HUD 195 Special Assistant to the Assistant Secretary for Community Planning and Development.
HUD 197 Special Advisor to the Deputy Under Secretary for Intergovernmental Relations.
HUD 198 Special Assistant to the Executive Assistant to the Secretary.
HUD 199 Special Assistant to the Assistant Secretary for Housing-Federal Housing Commissioner.
HUD 202 Execuitive Assistant to the Assistant Secretary for Legislation.
HUD 204 Special Assistant to the Assistant Secretary for Legislation and Intergovernmental Relations.
HUD 205 Senior Advisor to the Deputy Under Secretary for Field Coordination.
HUD 206 Intergovernmental Relations Officer to the Deputy Under Secretary for Intergovernmental Relations.
HUD 208 Intergovernmental Relations Officer to the Deputy Under Secretary for Intergovernmental Relations.
HUD 209 Intergovernmental Relations Officer to the Deputy Under Secretary for Intergovernmental Relations.
HUD 211 Assistant for Congressional Relations to the Deputy Under Secretary for Legislation and Congressional Relations.
HUD 216 Special Assistant to the Assistant Secretary for Administration.
HUD 218 Executive Assistant to the Regional Administrator.

HUD 222 Special Assistant for Congressional Relations and Public Affairs to the Regional Administrator.
HUD 223 Executive Assistant to the Regional Administrator.
HUD 224 Special Assistant to the Regional Administrator.
HUD 225 Executive Assistant to the Regional Administrator.
HUD 226 Special Assistant to the Regional Administrator.
HUD 227 Executive Assistant to the Regional Administrator.
HUD 228 Executive Assistant to the Regional Administrator.
HUD 232 Staff Assistant to the Regional Administrator.
HUD 238 Special Assistant to the Secretary.
HUD 258 Special Assistant to the Under Secretary.
HUD 260 Executive Assistant to the Assistant Secretary for Housing.
HUD 261 Special Assistant to the Secretary for Indian and Alaska Native Programs.
HUD 266 Special Assistant to the President, Government National Mortgage Association.
HUD 272 Special Assistant to the Assistant Secretary for Community Planning and Development.
HUD 285 Senior Legislative Specialist to the Deputy Assistant Secretary for Legislation.
HUD 287 Special Assistant to the Regional Administrator.
HUD 288 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 289 Special Assistant to the Assistant Secretary for Community Planning and Development.
HUD 293 Staff Assistant to the President, Government National Mortgage Association.
HUD 311 Associate Deputy Assistant Secretary for Multifamily Housing Programs.
HUD 312 Special Assistant to the Regional Administrator.
HUD 315 Special Assistant to the Deputy Assistant Secretary for Community Planning and Development.
HUD 316 Special Assistant to the Regional Administrator.
HUD 317 Special Assistant to the Regional Administrator.
HUD 318 Executive to the General Deputy Assistant Secretary for Public and Indian Housing.
HUD 319 Executive Assistant to the Regional Administrator.
HUD 320 Special Assistant to the Assistant Secretary for Administration.
HUD 322 Special Assistant to the Regional Administrator.
HUD 323 Executive Assistant to the General Deputy Assistant Secretary for Housing.
HUD 324 Special Assistant to the Regional Administrator.
HUD 325 Special Assistant to the Director, Office of Small and Disadvantaged Buisness Utilization.
HUD 329 Special Assistant to the Assistant Secretary for Labor Relations.
HUD 332 Special Assistant to the Regional Administrator.
HUD 334 Special Assistant to the Regional Administrator.
HUD 335 Special Assistant to the Assistant Secretary for Community Planning and Develpment.
HUD 336 Special Assistant to the General Deputy Assistant Secretary for Public Affairs.
HUD 337 Special Assistant (Speech Writer) to the Assistant Secretary for Pubic Affairs.
HUD 342 Special Assistant to the Regional Administrator.
HUD 343 Special Asistant to the Regional Administrator.
HUD 345 Staff Assistant to the Deputy Assistant Secretary for Multifamily Housing Programs.
HUD 347 Special Advisor for Elderly Programs to the Deputy Under Secretary for Intergovernmental Relations.
HUD 349 Executive Assistant to the Assistant Secretary for Housing.
HUD 351 Special Assistant to the Regional Administrator.
HUD 352 Executive Assistant to the Regional Administrator.
HUD 353 Confidential Assistant to the President for Solar Energy and the Energy Conservation Bank.
HUD 354 Special Assistant to the Deputy Assistant Secretary for Public and Indian Housing.
HUD 355 Special Assistant to the Regional Administrator.
HUD 356 Executive Assistant to the Regional Administrator.
HUD 357 Staff Assistant to the Assistant to the Secretary for Labor Relations.
HUD 361 Special Assistant to the Regional Administrator.
HUD 362 Staff Assistant to the Deputy Assistant Secretary for Housing.
HUD 364 Special Advisor for Minority Programs to the Deputy Under Secretary for Intergovernmental Relations.
HUD 365 Special Assistant to the Regional Administrator.
HUD 366 Special Assistant to the Assistant Secretary-Federal Housing Commissioner.
HUD 367 Special Assistant to the Regional Administrator.
HUD 368 Special Assistant to the Regional Administrator.
HUD 369 Special Assistant to the Deputy Assistant Secretary for Policy and Budget.
HUD 370 Special Assistant to the Assistant Secretary for Public and Indian Housing.
HUD 373 Special Assistant (Speech Issues) to the Assistant Secretary for Public Affairs.
HUD 374 Executive Assistant to the Deputy Under Secretary for Field Coordination.
HUD 376 Special Assistant to the Regional Administrator.
HUD 377 Special Assistant to the Regional Administrator.
HUD 378 Staff Assistant to the Manager, Solar Bank.
HUD 379 Assistant Director for Executive Secretariat Operations.
HUD 380 Special Assistant to the Manager, Solar Bank.
HUD 381 Special Assistant to the Secretary.
HUD 382 Staff Assistant (Typing) to the Deputy Under Secretary for Intergovernmental Relations.
HUD 383 Special Assistant to the Regional Administrator.
HUD 384 Special Assistant to the Assistant Secretary for Public and Indian Housing.
HUD 385 Special Assistant (Speech Writer) to the Assistant Secretary for Public Affairs.

Section 213.3389 National Mediation Board.

NMB 49 Special Assistant to the Chairman.
NMB 52 Confidential Assistant to the Chairman.
NMB 53 Confidential Assistant to a Member.
NMB 54 Confidential Assistant to a Member.

Section 213.3391 Office of Personnel Management.

OPM 2 Staff Assistant (Typing) to the Director.
OPM 4 Special Assistant to the Deputy Director.
OPM 5 Supervisory Special Assistant to the Director.
OPM 6 Special Assistant to the Director.
OPM 8 Confidential Assistant to the Director.
OPM 9 Confidential Assistant to the General Counsel.
OPM 10 Staff Assistant (Typing) to the Supervisory Special Assistant to the Director.

OPM 12 Regional Representative to the Director.
OPM 13 Regional Representative to the Director.
OPM 14 Regional Representative to the Director.
OPM 15 Regional Representative to the Director.
OPM 16 Regional Representative to the Director.
OPM 17 Staff Assistant (Typing) to the Director.
OPM 18 Staff Assistant to the Deputy Director.
OPM 20 Special Assistant to the Assistant Director for Public Affairs.
OPM 21 Special Assistant to the Executive Assistant Director of Policy and Communications.
OPM 22 Special Assistant to the General Counsel.
OPM 23 Special Assistant to the General Counsel.
OPM 24 Special Assistant to the Director, Office of Government Ethics.
OPM 25 Special Assistant to the Assistant Director for Public Affairs.
OPM 26 Confidential Assistant (Typing) to the Director, Office of Government Ethics.
OPM 27 Staffing Clerk (Typing) to the Confidential Assistant to the Director.
OPM 28 Special Assistant to the Associate Director for Workforce Effectiveness and Development.

Section 213.3392 Federal Labor Relations Authority.

FLRA 1 Confidential Secretary to the Chairman.
FLRA 4 Executive Assistant to the Chairman.
FLRA 6 Executive Assistant to a Member.
FLRA 7 Congressional Affairs and Public Information Officer.

Section 213.3393 Pension Benefit Guaranty Corporation.

PBGC 1 Secretary (Steno) to the Executive Director.
PBGC 3 Secretary (Typing) to the Deputy Executive Director.
PBGC 4 Special Assistant to the Executive Director.
PBGC 6 Staff Assistant to the Executive Director.

Section 213.3394 Department of Transportation.

DOT 1 Coinfidential Secretary to the Secretary.
DOT 3 Staff Assistant to the Secretary.
DOT 8 Confidential Secretary to the Deputy Secretary.
DOT 14 Chauffeur to the Secretary.
DOT 20 Congressional Liaison Officer to the Director, Office of Congressional Affairs.
DOT 38 Special Counsel to the Administrator, National Highway Traffic Safety Administration.
DOT 40 Special Assistant to the Administrator, Urban Mass Transportation Administration.
DOT 41 Special Assistant to the Administrator, Urban Mass Transportation Administration.
DOT 43 Confidential Assistant to the Administrator, Saint Lawrence Seaway Development Corporation.
DOT 54 Congressional Liaison Officer to the Director, Congressional Affairs.
DOT 55 Congressional Liaison Officer to the Director, Congressional Affairs.
DOT 56 Special Assistant to the Administrator, Saint Lawrence Seaway Development Corporation.
DOT 57 Confidential Assistant to the Assistant Secretary for Government Affairs.
DOT 60 Congressional Liaison Officer to the Director, Congressional Affairs.
DOT 67 Secretary (Typing) to the Administrator, Federal Railroad Administration.
DOT 69 Supervisory Public Affairs Specialist to the Federal Railroad Administrator.
DOT 77 Special Assistant to the Assistant Secretary for Public Affairs.
DOT 78 Special Assistant to the Assistant Secretary for Governmental Affairs.
DOT 94 Staff Assistant to the Administrator, Federal Aviation Administration.
DOT 100 Chief, Consumer Affairs Division to the Director, Office of Public and Consumer Affairs.
DOT 105 Secretary (Steno) to the Federal Highway Administrator.
DOT 115 Special Assistant to the Assistant Administrator for Public Affairs, Federal Aviation Administration.
DOT 121 Deputy Director, Office of Congressional Affairs.
DOT 123 Intergovernmental Liaison Officer to the Director, Office of Intergovernmental Affairs.
DOT 126 Director, Office of Public Affairs, Federal Highway Administration.
DOT 127 Special Assistant to the Assistant Secretary for Budget and Programs.
DOT 142 Intergovernmental Liaison Specialist to the Director, Office of Intergovernmental Affairs.
DOT 143 Staff Assistant to the Deputy Administrator, Federal Railroad Administration.
DOT 145 Staff Assistant to the Deputy Assistant Secretary for Governmental Affairs.
DOT 147 Staff Assistant to the Assistant Secretary for Public Affairs.
DOT 148 Director, Office of Scheduling and Programs.
DOT 149 Staff Assistant to the Director, Office of Commercial Space Transportation.
DOT 151 Special Assistant to the Deputy Secretary.
DOT 153 Congressional Liaison Officer to the Assistant Secretary for Governmental Affairs.
DOT 154 Confidential Assistant to the Director, Executive Secretariat.
DOT 157 Secretary (Steno) to the Associate Administrator for Policy and International Aviation.
DOT 158 Confidential Secretary to the General Counsel.
DOT 159 Special Assistant to the Administrator, Federal Highway Administration.
DOT 172 Receptionist to the Secretary.
DOT 175 Special Assistant to the Assistant Secretary for Policy and International Affairs.
DOT 185 Special Assistant to the Assistant Secretary for Policy and International Affairs.
DOT 186 Director, Office of Public Affairs, Urban Mass Transportation Administration.
DOT 191 Special Assistant to the Administrator for Public Affairs, Federal Aviation Administration.
DOT 192 Special Assistant to the Director, Office of Small and Disadvantaged Utilization.
DOT 193 Special Assistant to the Director, Office of Civil Rights.
DOT 200 Special Assistant to the Director, Office of Civil Rights.
DOT 203 Staff Assistant to the Assistant Secretary for Governmental Affairs.
DOT 207 Staff Assistant to the Inspector General.
DOT 208 Director, Executive Secretariat, Urban Mass Transportation Administration.
DOT 209 Special Assistant to the Administrator, Urban Mass Transportation Administration.
DOT 215 Special Assistant to the Director, Office of Public Affairs and Consumer Participation.
DOT 216 Confidential Assistant to the Administrator, Federal Aviation Administration.
DOT 220 Chief, Minority Business Resource Center to the Director,

Small and Disadvantaged Business Utilization.
DOT 221 Secretary to the Administrator, Maritime Administration.
DOT 223 Advisor to the Associate Administrator for Traffic Safety Programs.
DOT 229 Staff Assistant to the Administrator, Maritime Administration.
DOT 230 Deputy Director, Office of Public and Congressional Affairs.
DOT 231 Policy Advisor to the Associate Administrator for Traffic Safety Programs.
DOT 232 Special Assistant to the Regional Administrator.
DOT 233 Staff Assistant to the General Counsel.
DOT 234 Secretary (Steno) to the Special Assistant to the Secretary.
DOT 235 Special Assistant to the Secretary.
DOT 237 Special Assistant to the Assistant Secretary for Public Affairs.
DOT 241 Secretary (Typing) to the Coordinator for Minority Affairs.
DOT 242 Deputy Director, Executive Secretariat.
DOT 243 Special Assistant to the Director, Office of Public Affairs.
DOT 244 Assistant Director for Management.
DOT 245 Office Assistant to the Director, Office of Public Affairs.
DOT 246 Special Assistant to the Director, Office of Intergovernmental Affairs.
DOT 247 Private Sector Initiatives Coordinator, National Highway Traffic Safety Administration.
DOT 248 Program Coordinator to the Special Assistant to the Administrator, Federal Railroad Administration.
DOT 249 Assistant Director of Policy to the Director, Executive Secretariat.
DOT 251 Staff Assistant to the Administrator, Maritime Administration.
DOT 252 Director, Executive Secretariat, National Highway Traffic Safety Administration.
DOT 253 Intergovernmental Affairs Coordinator to the Administrator, Federal Railroad Administration.
DOT 254 Special Assistant to the Deputy Secretary.
DOT 255 Secretary (Typing) to the Chief of Staff.
DOT 256 Staff Assistant to the coordinator for Minority Affairs.
DOT 257 Staff Assistant to the Assistant Secretary for Public Affairs.
DOT 258 Deputy Director, Office of Intergovernmental Affairs.
DOT 259 Special Assistant to the Director, Executive Staff to the President's Commission on Drunk Driving.
DOT 260 Special Assistant to the Administrator, Urban Mass Transportation Administration.
DOT 261 Staff Assistant to the Deputy Secretary.
DOT 262 Secretary (Typing) to the Deputy Secretary.
DOT 263 Special Assistant to the Administrator, Saint Lawrence Seaway Development Corporation.
DOT 264 Special Assistant to the Administrator, Saint Lawrence Seaway Development Corporation.
DOT 265 Staff Assistant to the Director for Public Affairs, Federal Highway Administration.
DOT 267 Receptionist to the Associate Deputy Secretary.
DOT 268 Office Assistant to the Assistant Secretary for Public Affairs.
269 Research Assistant to the Director, Executive Secretariat.
DOT 270 Special Assistant to the Administrator, Federal Aviation Administration.

Section 213.3395 Federal Emergency Management Agency.

FEMA 1 Executive Assistant (Steno) to the Director.
FEMA 14 Special Assistant to the Administrator, Federal Insurance Administration.
FEMA 23 Special Assistant to the Director.
FEMA 24 Assistant to the Director.
FEMA 25 Assistant to the Director for Program Planning.
FEMA 28 Special Assistant to the Director.
FEMA 29 Special Assistant to the Associate Director.
FEMA 31 Special Assistant to the Associate Director, National Preparedness Programs Directorate.
FEMA 32 Deputy Director, Office of Congressional Relations.
FEMA 33 Director, Office of Regional Operations.
FEMA 34 Executive Assistant (Steno) to the Associate Director.

Section 213.3396 National Transportation Safety Board.

NTSB 1 Special Assistant to a Member.
NTSB 2 Secretary (Typing) to the Chairman.
NTSB 25 Special Assistant to a Board Member.
NTSB 30 Confidential Assistant to the Chairman.
NTSB 31 Confidential Assistant to a Board Member.
NTSB 32 Confidential Assistant to the Chairman.
NTSB 33 Confidential Assistant to a Board Member.
NTSB 34 Confidential Assistant to a Board Member.
NTSB 92 Government and Public Affairs Officer.
NTSB 98 Special Assistant to a Board Member.
NTSB 102 Special Assistant and Counsel to the Chairman.

U.S. Office of Personnel Management.
Donald J. Devine,
Director.

[FR Doc. 84-25863 Filed 9-28-84; 8:45 am]
BILLING CODE 6325-01-M

POSTAL RATE COMMISSION

[Docket No. A84-16; Order No. 581]

Hanover, WI 53542 (Emma Borkenhagen, et al., Petitioners); Order Accepting Appeal and Establishing Procedural Schedule

Issued: September 25, 1984.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; Simeon M. Bright; John W. Crutcher; James H. Duffy.

Docket Number: A84-16.

Name of affected post office: Hanover, Wisconsin.

Name(s) of petitioner(s): Emma Borkenhagen.

Type of determination: Consolidation.

Date of filing of appeal papers: September 21, 1984.

Categories of issues apparently raised:

1. Whether the petition was timely filed, so as to give the Commission jurisdiction to hear the appeal.

2. Effect on the community [39 U.S.C. 404(b) (2) (A)].

3. Effect on postal services [39 U.S.C. 404(b) (2) (C)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition within the 120-day decision schedule [39 U.S.C. 404(b) (5)] the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioner. In a brief or motion to dismiss or affirm, the Postal Service may

incorporate by reference any such memorandum previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before October 9, 1984.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

September 21, 1984—Filing of Petition.
September 25, 1984—Notice and Order of Filing of Appeal.
October 16, 1984—Last day for filing of petitions to intervene [*see* 39 CFR 3001.111(b)].
October 26, 1984—Petitioners' Participant Statement or Initial Brief [*see* 39 CFR 3001.115 (a) and (b)].
November 15, 1984—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].
November 30, 1984—(1) Petitioners' Reply Brief should petitioners choose to file one [*see* 39 CFR 3001.115(d)].
December 7, 1984—(2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument [*see* 39 CFR 3001.116].
January 19, 1985—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 84-25973 Filed 9-28-84; 8:45 am]
BILLING CODE 7715-01-M

POSTAL SERVICE

International Postal Rates and Fees; Proposed Changes

AGENCY: Postal Service.

ACTION: Proposed International Postal Rates and Fees.

SUMMARY: Pursuant to its authority under 39 U.S.C. 407, the Postal Service announces proposed increases in international postal rates and fees for special mail services as indicated below. The levels of some of these rates and fees, marked with an asterisk, are the current rates and will be adjusted based upon the levels of certain related domestic rates and fees for which increases have been proposed and are expected to become effective in early 1985. New levels for the international rates and fees marked with an asterisk will be announced in a **Federal Register** Notice along with the new domestic rates and fees when these are determined. The proposed increases are to become effective concurrently with the effective date of new domestic rates and fees.

DATE: Comments must be received on or before November 1, 1984.

ADDRESS: Written comments should be directed to the Director, Office of Rates, Rates and Classification Department, U.S. Postal Service, Washington, D.C. 20260–5350. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday in Room 8620.

FOR FURTHER INFORMATION CONTACT: Don S. Allen, (202) 245–4418.

SUPPLEMENTARY INFORMATION: These proposed increases are necessary to cover increases in the costs incurred by the Postal Service in providing international services.

Although 39 U.S.C. 407 does not require advance notice and opportunity for submission of comments and the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirement of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites interested persons to submit written data, views, or arguments concerning the following proposed changes in rates of postage and fees for international mail.

(39 U.S.C. 401, 403, 404(2), 407, 410(a))

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

BILLING CODE 7710-12-M

I. International Postal Rates and Fees

A. New Rates

1. Letters and letter packages (Surface)

Weight Steps Not Over Lbs.	Weight Steps Not Over Ozs.	Canada	Mexico
0	1	$0.20*	$0.20*
0	2	0.37*	0.37*
0	3	0.54*	0.54*
0	4	0.71*	0.71*
0	5	0.88*	0.88*
0	6	1.05*	1.05*
0	7	1.22*	1.22*
0	8	1.39*	1.39*
0	9	1.56*	1.56*
0	10	1.73*	1.73*
0	11	1.90*	1.90*
0	12	2.07*	2.07*
1	0	2.58*	2.58*
1	8	3.07*	3.07*
2	0	3.57*	3.57*
2	8	4.06*	4.06*
3	0	4.56*	4.56*
3	8	5.05*	5.05*
4	0	5.55*	5.55*

* To be affected by domestic rate levels.

I. International Postal Rates and Fees

A. New Rates

2. Letters and letter packages (Surface)

Weight Steps Not Over Lbs.	Weight Steps Not Over Ozs.	All countries (Other than Canada/Mexico)
0	1	$0.37
0	2	0.57
0	3	0.77
0	4	0.97
0	5	1.17
0	6	1.37
0	7	1.57
0	8	1.77
1	0	3.40
1	8	4.66
2	0	5.92
2	8	6.84
3	0	7.76
3	8	8.68
4	0	9.60

3. Letters and Letter Packages (Air)

a. Canada and Mexico; Refer to rates listed under A.1. (Surface Rates). Mail paid at this rate receives First-Class service in the United States and air service in Canada and Mexico.

b. Colombia, Venezuela, Central America, The Caribbean Islands, Bahamas, Bermuda, St. Pierre & Miquelon: 35* cents per half ounce up to and including 2 ounces; 30* cents each additional half ounce up to and including 32 ounces; 30* cents per additional ounce over 32 ounces.

c. All other Countries: 40* cents per half ounce up to and including 2 ounces; 35* cents each additional half ounce up to and including 32 ounces; 35* cents per additional ounce over 32 ounces.

4. Post and Postal Cards

a. Surface

(1) Canada: 13* cents each.

(2) Mexico: 13* cents each.

(3) All other countries: 25 cents each.

b. Air

(1) All countries (except Canada and Mexico): 28* cents each.

(2) Canada: 13* cents each.

(3) Mexico: 13* cents each.

* Affected by domestic rates.

5. Aerogrammes: 30* cents each.

6. Other Articles (AO)

a. Surface

(1). Regular Printed Matter

Weight Steps Not Over	Canada and Mexico	All Other Countries
1 oz.	$0.20*	$0.29
2	0.37*	0.47
3	0.54*	0.65
4	0.71*	0.83
6	0.85*	1.02
8	0.95*	1.21
10	1.14*	1.40
12	1.36*	1.59
14	1.58*	1.78
16	1.81*	1.97
18	1.81*	2.16
20	1.94*	2.35
22	2.07*	2.54
24	2.21*	2.73
26	2.35*	2.92
28	2.49*	3.11
30	2.62*	3.30
32	2.76*	3.49
3 lbs.	3.31*	4.19
4 lbs.	3.86*	4.89
Each additional 1 lb.	0.96*	1.22
Direct sacks to one addressee (M-Bag): Minimum 15 lbs. Maximum 66 lbs. Per Pound or Fraction	0.86*	1.10

* Affected by domestic rates.

(2). Publishers Periodicals

Weight Steps Not Over	All Countries
1 oz.	$0.15
2	0.22
3	0.29
4	0.36
6	0.46
8	0.56
10	0.66
12	0.76
14	0.86
16	0.96
18	1.06
20	1.16
22	1.26
24	1.36
26	1.46
28	1.56
30	1.66
32	1.76
3 lbs.	2.10
4 lbs.	2.44
Each additional 1 lb.	0.61
Direct sacks to one addressee (M-Bag): Minimum 15 lbs.	
Maximum 66 lbs.	
Per Pound or Fraction	0.55

(3). Books and Sheet Music

Weight Steps Not Over	All Countries
1 lb.	$0.96
2	1.76
3	2.10
4	2.44
5	3.05
6	3.66
7	4.27
8	4.88
9	5.49
10	6.10
11	6.71
Each additional 1 lb.	0.61
Direct sacks to one addressee (M-Bag): Minimum 15 lbs.	
Maximum 66 lbs.	
Per Pound or Fraction	0.55

(4). Small Packets

Weight Steps Not Over	Canada	Mexico	All Other Countries
1 oz.	$0.20*	$0.20*	$0.29
2	0.37*	0.37*	.47
3	0.54*	0.54*	.65
4	0.71*	0.71*	.83
6	0.85*	0.85*	1.02
8	0.95*	0.95*	1.21
10	1.14*	1.14*	1.40
12	1.36*	1.36*	1.59
14	1.58*	1.58*	1.78
16	1.81*	1.81*	1.97
18	--	1.81*	2.16
20	--	1.94*	2.35
22	--	2.07*	2.54
24	--	2.21*	2.73
26	--	2.35*	2.92
28	--	2.49*	3.11
30	--	2.62*	3.30
32	--	2.76*	3.49

* Affected by domestic rates.

b. Air (Encompasses all Printed Matter, Matter for the Blind and Small Packets)

WEIGHT STEPS Not Over Ounces	Canada and Mexico	Colombia, Venezuela, Central America, Caribbean Islands, Bahamas, Bermuda, & St. Pierre & Miquelon (Also, from American Samoa to Western Samoa, & from Guam to the Philippines	South America (except Colombia & Venezuela), Europe (except Estonia, Latvia, Lithuania, & U.S.S.R.), & North Africa	Estonia, Latvia, Lithuania, U.S.S.R., Asia, Australia & New Zealand, Pacific Ocean Islands, Africa (other than North Africa) the Indian Ocean Islands & the Middle East
1	See Section c.	$0.58	$0.70	$0.82
2		0.89	1.12	1.35
3		1.20	1.54	1.88
4		1.51	1.96	2.41
6		1.82	2.50	3.18
8		2.13	3.04	3.95
10		2.44	3.58	4.72
12		2.75	4.12	5.49
14		3.06	4.66	6.26
16		3.37	5.20	7.03
18		3.68	5.74	7.80
20		3.99	6.28	8.57
22		4.30	6.82	9.34
24		4.61	7.36	10.11
26		4.92	7.90	10.88
28		5.23	8.44	11.65
30		5.54	8.98	12.42
32		5.85	9.52	13.19
2.5 pounds		7.07	11.68	16.29
3.0 pounds		8.29	13.84	19.39
3.5 pounds		9.51	16.00	22.49
4.0 pounds		10.73	18.16	25.59
Each additional 1/2 pound over 4 pounds		1.22	2.16	3.10
Direct Sacks to one addressee (M-Bag): Minimum 15 pounds Maximum 66 pounds				
Per Pound or fraction		2.20	3.89	5.58

c. Air AO - Canada/Mexico (Encompasses all Printed Matter, Matter for the Blind and Small Packets)

Weight Up to Ounces	Rates
1	$0.20*
2	.37*
3	.54*
4	.71*
5	.88*
6	1.05*
7	1.22*
8	1.39*
9	1.56*
10	1.73*
11	1.90*
12	2.07*
16	2.58*
24	3.07*
32	3.57*
Pounds	
2.5	4.06*
3.0	4.56*
3.5	5.05*
4.0	5.55*
4.5	6.05*
5.0	6.54*
6.0	7.53*
7.0	8.52*
8.0	9.51*
9.0	10.51*
10.0	11.50*
11.0	12.49*
12.0	13.48*
13.0	14.47*
14.0	15.46*
15.0	16.45*
17.0	17.44*
17.0	18.43*
18.0	19.42*
19.0	20.42*
20.0	21.41*
21.0	22.40*
22.0	23.39*
23.0	24.38*
24.0	25.37*
25.0	26.36*
26.0	27.35*
27.0	28.34*
28.0	29.33*
39.0	30.33*
30.0	31.32*
Minimum 15 lbs Maximum 66 lbs per pound or fraction	
Direct sack to one addressee (M-Bag)	.89*

* Affected by domestic rates.

7. Parcel Post

a. Surface

1. Canada: $3.10* for over 1 pound and up to 2 pounds; $1.00* for each additional pound up to and including 35 pounds; $0.10* for each additional pound up to and including 37 pounds; and $0.90* for each additional pound or fraction.

2. Mexico, Central America, The Caribbean Islands, Bahamas, Bermuda, St. Pierre and Miquelon: $3.70 for the first 2 pounds and $1.20 for each additional pound or fraction.

3. All other countries: $3.90 for the first 2 pounds and $1.30 for each additional pound or fraction.

b. Air

Air Parcel Post Rates

1. Canada

Weight Steps Not Over		
Pounds	Ounces	Rates
1	8	$3.07*
2	0	3.57*
2	8	3.86*
3	0	4.33*
3	8	4.80*
4	0	5.27*
4	8	5.75*
5	0	6.21*
6	0	7.15*
7	0	8.09*
8	0	9.03*
9	0	9.98*
10	0	10.93*
11	0	11.87*
12	0	12.81*
13	0	13.75*
14	0	14.69*
15	0	15.63*
16	0	16.57*
17	0	17.51*
18	0	18.45*
19	0	19.40*
20	0	20.34*
21	0	21.28*
22	0	22.22*
23	0	23.16*
24	0	24.10*

(continued)

* Affected by domestic rates.

Air Parcel Post Rates

1. Canada (continued)

Weight Steps Not Over Pounds	Ounces	Rates
25	0	$25.04*
26	0	25.98*
27	0	26.92*
28	0	27.86*
39	0	28.81*
30	0	29.75*
31	0	30.69*
32	0	31.64*
33	0	32.58*
34	0	33.52*
35	0	34.46*
36	0	35.40*
37	0	36.34*
38	0	37.28*
39	0	38.23*
40	0	39.17*
41	0	40.11*
42	0	41.05*
43	0	41.99*
44	0	42.93*
45	0	43.87*
46	0	44.81*
47	0	45.75*
48	0	46.69*
49	0	47.64*
50	0	48.58*
51	0	49.52*
52	0	50.46*
53	0	51.40*
54	0	52.35*
55	0	53.29*
56	0	54.23*
57	0	55.17*
58	0	56.11*
59	0	57.06*
60	0	58.00*
61	0	58.94*
62	0	59.88*
63	0	60.82*
64	0	61.76*
65	0	62.70*
66	0	63.64*

* Affected by domestic rates.

b. Air

2. All other countries

WEIGHT STEPS	Country Groups				
	A	B	C	D	E
First 4 ounces	$3.90	$4.95	$6.00	$7.05	$8.10
Each additional 4 ounces or fraction up to 5 pounds	.65	.90	1.10	1.35	1.60
Each additional 8 ounces or fraction over 5 pounds	1.00	1.50	2.00	2.50	3.00

AIR PARCEL POST RATE GROUPS: See List.

AIR PARCEL POST RATE GROUPS:

Country	Rate group	Maximum weight limits for air parcel post
Afghanistan	D	22
Albania	C	22
Algeria	D	44
Andorra	B	44
Angola	E	22
Antigua and Barbuda (Including Redonda)	A	22
Argentina	D	44
Ascension	No Air Service	
Australia	D	44
Austria	B	44
Azores	C	22
Bahamas	A	22
Bahrain	D	22
Bangladesh	E	22
Barbados	B	22
Belgium	D	44
Belize	A	22
Benin	D	44
Bermuda	A	33
Bhutan	No Parcel Post Service	
Bolivia	B	44
Botswana	E	22
Brazil	D	44
Brunei	D	22
Bulgaria	D	22
Burma	D	22
Burundi	E	22
Cameroon	D	22
Canada	Separate Rate Group	66
Cape Verde	D	22
Cayman Islands	A	22
Central African Rep	E	44
Chad	D	44
Chile	D	22
China (People's Republic of)	D	44
Colombia	B	44
Comoros	E	44
Congo	D	44
Corsica	E	44
Costa Rica	A	44
Cuba	No Parcel Post Service	
Cyprus	D	44
Czechoslovakia	C	44
Denmark	C	44
Djibouti	E	44
Dominica	A	22
Dominican Republic	A	44
East Timor	No Parcel Post Service	
Ecuador	B	44
Egypt	C	44
El Salvador	A	44
Equatorial Guinea	D	44
Estonia	E	22
Ethiopia	D	44
Faeroe Islands	C	44
Falkland Islands	D	22
Fiji	B	22
Finland	D	44
France (including Monaco)	D	44
French Guiana	C	44
French Polynesia	D	44
Gabon	D	44
Gambia	B	44
German Democratic Republic (East Germany)	C	44
Germany, Federal Rep. of (West Germany)	C	44
Ghana	D	22
Gibraltar	D	22
Great Britain and Northern Ireland	C	50
Greece	C	44
Greenland	D	44
Grenada	B	22
Guadeloupe	A	44
Guatemala	A	44
Guinea	B	44
Guinea-Bissau	B	22
Guyana	B	22
Haiti	A	44
Honduras	B	44
Hong Kong	C	22
Hungary	C	44
Iceland	D	44
India	D	22
Indonesia	E	22
Iran	D	44
Iraq	D	44
Ireland (Eire)	C	22
Israel	C	33
Italy (including San Marino)	C	44
Ivory Coast	D	44
Jamaica	A	22
Japan	E	22
Jordan	C	22
Kampuchea	No Parcel Post Service	

Country	Rate group	Maximum weight limits for air parcel post
Kenya	D	22
Kirabati(formerly Gilbert Islands)	B	44
Korea, (Democratic People's Republic of (North)	No Parcel Post Service	
Korea Republic of (South)	C	44
Kuwait	C	44
Lao	E	22
Latvia	E	22
Lebanon	C	11
Leeward Islands	A	22
Lesotho	E	22
Liberia	C	22
Libya	C	44
Lithuania	E	22
Luxembourg	B	44
Macao	C	22
Madagascar	E	44
Madeira Islands	B	22
Malawi	D	22
Malaysia	D	22
Maldives	E	22
Mali	C	44
Malta	C	22
Martinique	A	44
Mauritania	D	44
Mauritius	E	22
Mexico	A	44
Mongolia	No Parcel Post Service	
Morocco	C	44
Mozambique	E	22
Nauru	C	22
Nepal	D	22
Netherlands	C	44
Netherlands Antilles	A	44
New Caledonia	D	44
New Zealand	D	22
Nicaragua	B	44
Niger	D	44
Nigeria	C	22
Norway	D	44
Oman	D	22
Pakistan	D	22
Panama	A	44
Papua New Guinea	D	22
Paraguay	C	44
Peru	B	44
Phillipines	D	44
Pitcairn Islands	B	22
Poland	C	44
Portugal	C	22
Qatar	C	22
Reunion	E	44
Romania	C	22
Rwanda	D	22
St. Christopher and Nevis	A	22
St. Helena	C	22
St. Lucia	A	22
St. Pierre & Miquelon	A	44
Sao Tome & Principe	D	22
St.Vincent & The Grenadines	A	22
Santa Cruz Islands	C	22
Sao Tome & Principe	D	22
Saudi Arabia	D	22
Senegal	D	44
Seychelles	E	22
Sierre Leone	D	22
Singapore	D	22
Solomon Islands	C	22
Somalia	D	22
South Africa (including South-West Africa & Namibia)	D	22
Spain	C	22
SriLanka	D	22
Sudan	D	22
Suriname	B	44
Swaziland	D	22
Sweden	D	44
Switzerland (including Leichtenstein)	B	44
Syria	C	44
Taiwan	C	44
Tanzania	E	22
Thailand	D	22
Togo	D	44
Tonga	B	22
Trinidad & Tobago	B	22
Tristan da Cunha	E	22
Tunisia	C	44
Turkey	C	44
Turks & Caicos Islands	A	22
Tuvalu (Ellice Islands)	B	22
Uganda	D	22
Union of Soviet Socialist Republic	E	22
United Arab Emirates	D	22

Country	Rate group	Maximum weight limits for air parcel post
Upper Volta (See Burkina)		
Uruguay	B	44
Vanuatu (formerly New Hebrides)	B	44
Vatican City State	C	44
Venezuela	B	44
Vietnam	No Parcel Post Service	
Western Samoa	B	22
Yemen Arab Republic (Sanaa)	D	44
Yemen, Peoples Democratic Rep.of (Aden)	D	44
Yugoslavia	C	44
Zaire	D	44
Zambia	E	22
Zimbabwe (formerly Rhodesia)	E	22

EXPRESS MAIL INTERNATIONAL SERVICE

FOR COUNTRIES BY RATE GROUP, SEE LIST

a. CUSTOM DESIGNED SERVICE 1/ 2/

(1) Group 1:

Pounds (Up to and including)	Rates
1	$31.00
2	32.60
3	34.20
4	35.80
5	37.40
6	39.00
7	40.60
8	42.20
9	43.80
10	45.40
11	47.00
12	48.60
13	50.20
14	51.80
15	53.40
16	55.00
17	56.60
18	58.20
19	59.80
20	61.40
21	63.00
22	64.60
23	66.20
24	67.80
25	69.40
26	71.00
27	72.60
28	74.20
29	75.80
30	77.40
31	79.00
32	80.60
33	82.20
34	83.80
35	85.40
36	87.00
37	88.60
38	90.20
39	91.80
40	93.40
41	95.00
42	96.60
43	98.20
44	99.80

(2) Group 2:

Pounds (Up to and including)	Rates
1	$31.00
2	34.80
3	38.60
4	42.40
5	46.20
6	50.00
7	53.80
8	57.60
9	61.40
10	65.20
11	69.00
12	72.80
13	76.60
14	80.40
15	84.20
16	88.00
17	91.80
18	95.60
19	99.40
20	103.20
21	107.00
22	110.80
23	114.60
24	118.40
25	122.20
26	126.00
27	129.80
28	133.60
29	137.40
30	141.20
31	145.00
32	148.80
33	152.60
34	156.40
35	160.20
36	164.00
37	167.80
38	171.60
39	175.40
40	179.20
41	183.00
42	186.80
43	190.60
44	194.40

(3) Group 3:

Pounds (Up to and including)	Rates
1	$31.00
2	35.90
3	40.80
4	45.70
5	50.60
6	55.50
7	60.40
8	65.30
9	70.20
10	75.10
11	80.00
12	84.90
13	89.80
14	94.70
15	99.60
16	104.50
17	109.40
18	114.30
19	119.20
20	124.10
21	129.00
22	133.90
23	138.80
24	143.70
25	148.60
26	153.50
27	158.40
28	163.30
29	168.20
30	173.10
31	178.00
32	182.90
33	187.80
34	192.70
35	197.60
36	202.50
37	207.40
38	212.30
39	217.20
40	222.10
41	227.00
42	231.90
43	236.80
44	241.70

(4) Group 4:

Pounds (Up to and including)	Rates
1	$31.00
2	36.90
3	42.80
4	48.70
5	54.60
6	60.50
7	66.40
8	72.30
9	78.20
10	84.10
11	90.00
12	95.90
13	101.80
14	107.70
15	113.60
16	119.50
17	125.40
18	131.30
19	137.20
20	143.10
21	149.00
22	154.90
23	160.80
24	166.70
25	172.60
26	178.50
27	184.40
28	190.30
29	196.20
30	202.10
31	208.00
32	213.90
33	219.80
34	225.70
35	231.60
36	237.50
37	243.40
38	249.30
39	255.20
40	261.10
41	267.00
42	272.90
43	278.80
44	284.70
45	290.60
46	296.50
47	302.40
48	308.30
49	314.20
50	320.10

b. ON DEMAND SERVICE 2/

(1) Group 1:

Pounds (Up to and including)	Rates
1	$23.00
2	24.60
3	26.20
4	27.80
5	29.40
6	31.00
7	32.60
8	34.20
9	35.80
10	37.40
11	39.00
12	40.60
13	42.20
14	43.80
15	45.40
16	47.00
17	48.60
18	50.20
19	51.80
20	53.40
21	55.00
22	56.60
23	58.20
24	59.80
25	61.40
26	63.00
27	64.60
28	66.20
29	67.80
30	69.40
31	71.00
32	72.60
33	74.20
34	75.80
35	77.40
36	79.00
37	80.60
38	82.20
39	83.80
40	85.40
41	87.00
42	88.60
43	90.20
44	91.80

(2) Group 2:

Pounds (Up to and including)	Rates
1	$23.00
2	26.80
3	30.60
4	34.40
5	38.20
6	42.00
7	45.80
8	49.60
9	53.40
10	57.20
11	61.00
12	64.80
13	68.60
14	72.40
15	76.20
16	80.00
17	83.80
18	87.60
19	91.40
20	95.20
21	99.00
22	102.80
23	106.60
24	110.40
25	114.20
26	118.00
27	121.80
28	125.60
29	129.40
30	133.20
31	137.00
32	140.80
33	144.60
34	148.40
35	152.20
36	156.00
37	159.80
38	163.60
39	167.40
40	171.20
41	175.00
42	178.80
43	182.60
44	186.40

(3) Group 3:

Pounds (Up to and including)	Rates
1	$23.00
2	27.90
3	32.80
4	37.70
5	42.60
6	47.50
7	52.40
8	57.30
9	62.20
10	67.10
11	72.00
12	76.90
13	81.80
14	86.70
15	91.60
16	96.50
17	101.40
18	106.30
19	111.20
20	116.10
21	121.00
22	125.90
23	130.80
24	135.70
25	140.60
26	145.50
27	150.40
28	155.30
29	160.20
30	165.10
31	170.00
32	174.90
33	179.80
34	184.70
35	189.60
36	194.50
37	199.40
38	204.30
39	209.20
40	214.10
41	219.00
42	223.90
43	228.80
44	233.70

(4)Group 4:

Pounds (Up to and including)	Rates
1	$23.00
2	28.90
3	34.80
4	40.70
5	46.60
6	52.50
7	58.40
8	64.30
9	70.20
10	76.10
11	82.00
12	87.90
13	93.80
14	99.70
15	105.60
16	111.50
17	117.40
18	123.30
19	129.20
20	135.10
21	141.00
22	146.90
23	152.80
24	158.70
25	164.60
26	170.50
27	176.40
28	182.30
29	188.20
30	194.10
31	200.00
32	205.90
33	211.80
34	217.70
35	223.60
36	229.50
37	235.40
38	241.30
39	247.20
40	253.10
41	259.00
42	264.90
43	270.80
44	276.70
45	282.60
46	288.50
47	294.40
48	300.30
49	306.20
50	312.10

INTERNATIONAL EXPRESS MAIL

Rate Groups and Maximum Weight Limits

Country	Rate Group	Maximum Weight (lbs.)
Argentina	3	33
Australia	4	44
Bahrain	3	22
Barbados	2	44
Belgium	3	44
Bermuda	1	33
Brazil	4	50
Canada	1	44
China, Peoples Republic	4	33
Colombia	2	44
Egypt	3	22
France	3	44
Federal Republic of Germany	2	44
Great Britain/Northern Ireland	2	44
Hong Kong	3	33
Ireland	2	44
Israel	3	33
Italy	3	44
Japan 3/	4	22
Korea, Republic of	3	44
Kuwait	3	33
Luxembourg	2	44
Macao	3	44
Malaysia	4	22
Netherlands	3	44
New Zealand	4	22
Norway	3	44
Qatar	3	44
Singapore	4	33
South Africa	4	44
Spain	2	44
Sweden	3	44
Switzerland	3	33
Taiwan	3	33
Thailand	4	22
Tunisia	3	44
Uruguay	3	44

1/ Rates in these tables are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a designated Post Office.
2/ Pickup is available under a Service Agreement for an added charge of $5.60 for each pickup stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pickup charge.
3/ Custom Designed service only.

9. INTERNATIONAL SURFACE AIRLIFT SERVICE RATES

a. Regular Service Pound Rates 1/ 2/

Origin Groups	Destination Groups Rate Group A	Rate Group B	Rate Group C	Rate Group D	Rate Group E
East	$1.95	$2.22	$2.55	$2.66	$3.40
Central	1.70	2.47	NA	2.57	3.22
West	1.99	2.53	2.99	2.33	3.13

b. Regular Service M-Bag Pound Rates 2/

East	$1.76	$2.00	$2.30	$2.39	$3.06
Central	1.53	2.22	NA	2.31	2.90
West	1.79	2.28	2.69	2.10	2.82

c. Transit Service Regular Pound Rates 1/ 2/

East	NA	$2.41	NA	NA	$3.60
Central	NA	2.64	NA	NA	3.42
West	NA	2.82	NA	NA	3.30

d. Transit Service M-Bag Pound Rates 2/

East	NA	$2.17	NA	NA	$3.24
Central	NA	2.38	NA	NA	3.08
West	NA	2.54	NA	NA	2.97

1/ Minimum Rate Postage. The total postage paid on any bulk mailing may not be lower than the amount determined by multiplying the minimum rate per piece of 17¢ by the total number of pieces in the mailing. If the total postage computed at pound rates is less than the minimum postage charge, postage must be computed at the minimum rate per piece.

2/ Sack charge: $1.00.

INTERNATIONAL SURFACE AIRLIFT SERVICE RATE GROUPS: SEE LIST

International Surface Air Lift Service Rate Groups

Origin AMF's

East	Central	West
Boston	Chicago	Los Angeles
New York City	Dallas	San Francisco
Philadelphia	Houston	
Washington, D.C.		

Destination Countries for Regular and/or Transit Service

Rate Groups

A	B	C	D	E
Mexico	Albania	Argentina	India	Australia
Venezuela	Austria	Brazil	Japan	Fuji Islands
	Belgium			New Guinea
	Bulgaria			New Zealand
	Czechoslovakia			Phillipines
	Denmark			Singapore
	East Germany			South Africa
	Finland			
	France			
	Great Britain			
	Greece			
	Hungary			
	Iceland			
	Ireland			
	Italy			
	Luxembourg			
	Netherlands			
	Norway			
	Poland			
	Portugal			
	Rumania			
	Spain			
	Sweden			
	Switzerland			
	Yugoslavia			
	West Germany			

NOTE: All AMF's do not service all destinating countries.

B. New Special Mail Services Fees

1. Nonstandard Surcharge

   a. Letters (weighing one ounce or less): 9*cents

   b. Regular Printed Matter (weighing one ounce or less): 9*cents

2. Customs Clearance and Delivery Fee: $2.70

3. Inquiry Fee: $3.75*

4. Return receipt requested at time of mailing: 60*cents

5. Registered Mail

Limit of indemnity	Fee
1. Canada	
$00.00 to $100	$3.25*
$100.01 to $200	$3.55*
2. All other countries	
$25.20	$3.25*

6. Insured Mail

Limit of Indemnity **	Fees	
Not Over	Canada	All Other Countries
$ 25	$0.45*	$1.10
50	0.85*	1.50
100	1.25*	2.10
150	1.70*	3.00
200	2.05*	3.00
300	3.45*	3.70
400	4.70*	4.40
500	-- *	5.20
600	--	5.50
700	--	5.80
800	--	6.10
900	--	6.40
1,000	--	6.70
1,100	--	7.00
1,200	--	7.30

*Affected by domestic fees.

**Limits vary by country.

7. Money Orders

   a. Orders Issued on Domestic Form

Amount of Money Order	Fee
$0.01 to $25	$0.75*
$25.01 to $50	$1.10*
$50.01 to $500*	$1.55*

   b.

Orders Issued on International Form	
Amount of Money Order	Fee
$0.01 to $500.00*	$2.00

8. Special Handling

Weight	Fee
Not more than 10 pounds	$0.75*
More than 10 pounds	$1.30*

9. Special Delivery

Class of Mail	Not more than 2 pounds	Over 2 pounds
Letters, letter packages, post and postal cards.	$2.10*	$2.35*
Other articles.	$2.35*	$3.00*

10. Restricted Delivery: $1.00*

* Affected by domestic fees.

- 31 -

11. Certificates of Mailing

	Fee
Individual listed pieces: Original or Copy of original Certificate of mailing or receipt for registered or insured mail (Form 3817).	$0.40*
Firm mailing books (Form 3877).	0.40*
Bulk pieces: Up to 1,000 pieces	1.35*
For each additional 1,000 pieces, or fraction	0.15*
Duplicate copy	0.40*

[FR Doc. 84-25915 Filed 9-28-84; 8:45 am]
BILLING CODE 7710-12-C

SECURITIES AND EXCHANGE COMMISSION

[Release No. 21344; File No. SR-BSE-48-3]

Self-Regulatory Organizations; Boston Stock Exchange; Order Approving Proposed Rule Change

September 21, 1984.

The Boston Stock Exchange ("BSE") 1 Boston Place, Boston, Massachusetts 02108, submitted on July 6, 1984, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to amend Chapter XX, section 6 of the Exchange's rules to add a new rule which would require a member or member organization or employee thereof that gives any compensation to an employee of another member or member organization or other financial concern [1] in excess of $100 to first obtain the prior written consent of the recipient's employer.[2] However, gratuities valued at $100 or less in total given to any one person specified in Section 6, during the calendar year, are exempt from the rule's consent and notice requirement.

In addition, the proposed rule would require that a record of each gratuity given to a person covered by section 6 be retained and available for inspection by the Exchange for at least three years. The Exchange has stated in its filing that the proposed amendment is consistent with section 6(b)(5) of the Act in that it is designed to prevent fraudulent acts and practices which might arise in connection with the giving of gifts without such employer's knowledge.

Notice of the proposed rule change, together with the terms of substance of the proposed rule change, was given by the issuance of a Commission Release (Securities Exchange Act Release No. 21247, August 16, 1984) and by publication in the **Federal Register** (49 FR 33387, August 22, 1984). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-25929 Filed 9-28-84; 8:45 am]

BILLING CODE 8010-01-M

[1] Such financial concerns include any officer or employee of a news or financial information medium, bank, trust company, insurance company or any corporation, firm or individual engaged in the business of dealing, either as broker or principal, in stocks, bonds or other securities, bills of exchange, acceptances or other forms of commerical paper.

[2] In the case of gifts by a member or member organization or employee thereof to floor employees of the BSE, the prior written consent of both the employer and the BSE is required.

[Release No.23434; (70-7025)]

Middle South Utilities, Inc., and Middle South Services, Inc.; Proposed Guaranty by Holding Company of Subsidiary Service Company's Performance Under Computer Leasing Agreement.

September 25, 1984.

Middle South Utilities, Inc. ("Middle South"), a registered holding company, and Middle South Services, Inc. ("Services"), 225 Baronne Street, New Orleans, Louisiana 70112, a subsidiary service company of Middle South, have filed a proposal with this Commission pursuant to Section 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder.

By prior orders dated December 21, 1982, and January 19, 1983 (HCAR Nos. 22793 and 22822), Middle South was authorized to guarantee the performance by Services of obligations under computer equipment leasing arrangements between Services and Comdisco, Inc. ("Comdisco"), a nonaffiliated corporation. Services now intends to enter into additional computer equipment leasing arrangements with Comdisco with respect to certain model upgrading ("Model Upgrading") for the IBM 3084 computer system and related equipment ("Computer System") currently being used by Services at its data processing center in Gretna, Louisiana. In order to effectuate these transactions, Middle South proposes to guarantee the performance by Services of its lease obligations without recourse to Services first being required.

Comdisco will purchase the Model Upgrading for the Computer System from International Business Machines Corporation ("IBM") at the IBM purchase price, estimated at approximately $612,360. Concurrently, Comdisco will lease the Model Upgrading to Services under leasing arrangements coterminous with the lease of the existing Computer System, which expires on December 31, 1986, except the commencement date of the leasing arrangements for the Model Upgrading will be approximately October or November 1984, which is when the Model Upgrading is expected to be installed. The lease will be a net lease conferring responsibility for operation, maintenance, and various expenses upon Services. The lease will be non-cancellable through the initial term ending December 31, 1986 ("Initial Term") except in the event of: (a) Irreparable damage, loss, or destruction of the Model Upgrading; or (b) default by Services. Monthly rental payments by Services for the Model Upgrading during the Initial Term will be approximately $22,449, with payments beginning by December 1984. Rental payments may be adjusted in the event that, under certain circumstances; the lessor loses certain tax benefits incident to its ownership and leasing of the Model Upgrading. Services intends to change the payments under the lease to operating expense. The rental payments are such that Services will not acquire any equity in the Model Upgrading, and, consequently, the lease will be accounted for by Services as a lease.

The proposal and any amendments thereto are available for public inspections through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by October 19, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-25931 Filed 9-28-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23430; (70-7014)]

New England Power Co.; Proposal To Extend Increase in Permitted Short-Term Indebtedness; Order Authorizing Solicitation of Proxies in Connection Therewith

September 21, 1984.

New England Power Company ("NEP"), 25 Research Drive, Westborough, Massachusetts 01581, a subsidiary of New England Electric System, a registered holding company, has proposed a transaction subject to sections 6(a)(2), 7(e), and 12(e) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 62 and 65 thereunder.

The preference provisions of the Cumulative Preferred Stock, as set forth in NEP's Articles of Organization and By-Laws, provide that, except as voted by the holders of a majority of the Cumulative Preferred Stock, the short-term unsecured indebtedness of NEP shall not exceed 10% of the sum of the principal amount of all bonds and other secured indebtedness and the capital, premium, and retained earnings of NEP and that all unsecured indebtedness of NEP shall not exceed 20% of such sum. As used in NEP's Articles of Organization and By-Laws, short-term unsecured indebtedness means unsecured indebtedness having an original maturity of less than ten years. Currently, as in the past, NEP's unsecured indebtedness is all short-term. By a majority vote of the holders of the Cumulative Preferred Stock during a special meeting of stockholders held on June 25, 1980, NEP was authorized to issue short-term unsecured indebtedness in excess of the 10% limitation thereon, provided that all unsecured indebtedness not exceed 20% of the indebtedness and the capital, premium, and retained earnings of NEP and that any such unsecured indebtedness in excess of the 10% limitation be issued not later than July 1, 1985, and mature not later than July 1, 1986. (HCAR No. 21634, June 20, 1980.)

In order to maintain financial flexibility in its construction and bond retirement plans, NEP now proposes to seek an affirmative vote by the holders of a majority of the Cumulative Preferred Stock, authorizing the continued issue by NEP of short-term unsecured indebtedness in excess of the 10% limitation provided that any such excess indebtedness be issued not later than November 1, 1991, such excess indebtedness shall have a maturity not later than November 1, 1992, and the 20% limitation on all unsecured indebtedness of NEP shall remain in effect.

The continuation of the 20% permitted amount of short-term unsecured indebtedness requires the favorable vote, at a meeting called for that purpose, of a majority of the Cumulative Preferred Stock of all series now outstanding voting as a single class. The Board of Directors intends to submit the proposal to the Cumulative Preferred Stockholders for approval, and to solicit proxies to obtain the required vote.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by October 15, 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 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 and/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 proposal, as filed or as it may be amended, may be authorized.

It appearing that the declaration, as amended, regarding the proposed solicitation of proxies should be permitted to become effective forthwith pursuant to Rule 62:

It is ordered, pursuant to Rule 62, that the declaration regarding the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-25930 Filed 9-28-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23432; (70-7016)]

New England Power Co.; Proposal To Execute Loan Agreements in Connection With the Issuance of Short-Term Pollution Control Bonds; Exception From Competitive Bidding

September 24, 1984.

New England Power Company ("NEP") 25 Research Drive, Westborough, Massachusetts 01581, a subsidiary of New England Electric System, a registered holding company, has proposed a transaction subject to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) thereunder.

NEP proposes to execute loan agreements in connection with the issuance of pollution control revenue bonds with a maturity of less than one year to finance certain facilities associated with its approximately 10% share of the Seabrook nuclear project and its approximately 12% share of the Millstone 3 nuclear project. NEP is seeking authority to finance its share of the Internal Revenue Service ("IRS") qualifying costs of constructing radioactive waste facilities with pollution control revenue bonds to be issued by the Industrial Development Authority of the State of New Hampshire (NHIDA) in the case of the Seabrook I nuclear project and the Connecticut Development Authority (CDA) in the case of the Millstone 3 nuclear project (NHIDA and CDA are hereinafter referred to individually and collectively as the "Issuing Authority"). NEP's share of these expenses and carrying charges is currently estimated to be approximately $20 million for the Millstone nuclear project and $15 million for the Seabrook Nuclear project. In addition, NEP has been advised that the IRS may consider certain other costs associated with Nuclear plants as being qualified for financing with pollution control revenue bonds. Actual issuance of pollution control revenue bonds in connection with these expenditures is contingent upon obtaining an opinion of nationally recognized tax counsel or an IRS ruling that the interest paid thereon will not be taxable to the buyer.

Any pollution control revenue bonds issued on NEP's behalf will be sold by the Issuing Authority through arrangements negotiated with underwriters. Based on current market conditions, it is anticipated that the interest rate on the proposed bonds will not exceed 7.5%. NEP would not be a party to the negotiated underwriting agreements but those agreements will provide that the terms of the pollution control revenue bonds and their sale shall be acceptable to NEP. Additionally, NEP may give certain written assurances to the Issuing Authority and the underwriters. Loan agreements to be entered into between NEP and the Issuing Authority will provide that the proceeds from the sale of any pollution control revenue bonds issued will be loaned to NEP. The authority would be supplemental to that applied for in pending Commission File 70-7015, providing for long-term

pollution control financing by NEP. The supplemental authority proposed here will provide NEP with the necessary flexibility to meet an IRS December 31, 1984 deadline for financing the project with tax-exempt bonds in the event that market conditions or time constraints preclude the issuance of long-term bonds by the Issuing Authority before that time. Any such short-term pollution control revenue bonds would be backed by NEP's promise to make payments to the Issuing Authority corresponding in both timing and amount to the payment obligations of the Issuing Authority with respect to the short-term pollution control revenue bonds. Any such pollution control revenue bonds would not be otherwise secured. As discussed above, these short-term pollution control revenue bonds would be sold through negotiation with underwriters.

The terms of any such short-term bonds would provide that they could be refinanced prior to their maturity, without a redemption, through a defeasance mechanism, whereby, at such time as funds are irrevocably placed in trust for the benefit of the Issuing Authority, NEP would be released from any further obligation with respect to the defeased bonds. It is presently contemplated that the Issuing Authority will issued long-term bonds to refinance any short-term bonds. In order to avoid the inflexibility and potential adverse economic impact associated with establishing, in advance, a date upon which the short-term financing will be replaced with long-term financing, it is proposed that NEP has the option to rollover the short-term financing for a period not exceeding three years, subject to Commission approval. Any short-term borrowing made by NEP pursuant to this proposal will be considered in determining the total borrowing authority granted by prior Commission Order (HCAR No. 23265, March 31, 1984).

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by October 19, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-25932 Filed 9-28-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Direct Business Loans; Interest Rates

The interest rate on Section 7(a) Small Business Administration direct business loans (as amended by Pub. L. 97-35) and the SBA share of immediate participation loans is thirteen and seven-eights (13⅞) percent for the fiscal quarter beginning October 1, 1984.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 120.3(b)(2)(iii)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the October-December quarter of 1984, this rate will be thirteen and one-quarter (13¼) percent.

Edward J. Myerson,

Acting Associate Administrator for Finance and Investment.

[FR Doc. 84-25926 Filed 9-28-84; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #12169]

North Carolina; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on September 21, 1984, I find that the Counties of Brunswick, New Hanover, and Pender constitute a disaster loan area because of damage from Hurricane Diana beginning on September 13, 1984. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on November 23, 1984, and for economic injury until June 21, 1985, at: Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Bldg., 75 Spring St., SW., Suite 822, Atlanta, Georgia 30303, or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 216908 for physical damage and for economic injury the number is 620600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 25, 1984.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84-25925 Filed 9-28-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 918]

Certain Foreign Passports; Validity

Under the provisions of section 212(a)(26) of the Immigration and Nationality Act, a nonimmigrant alien who makes application for a visa or for admission into the United States is required to be in possession of a passport which is valid for a minimum period of six months from the date of expiration of the initial period of his admission into the United States or his contemplated initial period of say authorizing him to return to the country from which he came or proceed to and enter some other country during such period. By reason of the foregoing requirement, certain foreign governments have entered into agreements with the Government of the United States whereby their passports are recognized as valid for the return of the bearer to the country of the foreign-issuing authority for a period of six months beyond the expiration date specified in the passport. These arrangements have the effect of extending the validity period of the foreign passport an additional six months notwithstanding the expiration date indicated in the passport.

This order incorporates those countries which have concluded such agreements subsequent to Public Notice 766 of August 4, 1981 and adds United Arab Emirates to the list. The following foreign governments have concluded agreements with the Government of the United States:

Algeria
Antigua and Barbuda
Australia

Austria (Reisepass only)
Bahamas, The
Bangladesh (travel permits and passports)
Belgium
Bolivia
Brazil
Cambodia
Canada
Chile
Colombia
Costa Rica
Cuba
Cyprus
Denmark
Dominican Republic
Ecuador
Egypt
El Salvador
Ethiopia
Finland
France
Germany (FRG) (Reisepass and kinderausweis)
Greece
Guatemala
Guinea
Guyana
Honduras
Iceland
India
Iran
Ireland
Israel
Italy
Ivory Coast
Jamaica
Japan
Korea
Kuwait
Laos
Lebanon
Libya
Liechtenstein
Luxembourg
Madagascar
Mauritius
Mexico
Monaco
Morocco
Netherlands
New Zealand
Nicaragua (diplomatic and official passports only)
Nigeria
Norway
Pakistan
Panama
Paraguay
Peru
Philippines
Portugal
Qatar
St. Vincent and the Grenadines
Senegal
Soviet Union (U.S.S.R.) (Seamen only)
Spain Sri Lanka
Sudan
Sweden
Switzerland
Syria
Thailand
Togo
Trinidad and Tobago
Tunisia
Turkey
United Arab Emirates
United Kingdom
Uruguay
Venezuela
Yugoslavia

In addition, travel documents issued by the Government of the Trust Territory of the Pacific Islands are considered to be valid for the return of the bearer to the Trust Territory for a period of six months beyond the expiration date specified therein.

Public Notice 766 of August 4, 1981 issued at 46 FR 39718 and amendments thereto are hereby superseded.

Dated: September 24, 1984.

Edward M. Rowell,

Acting Assistant Secretary for Consular Affairs.

[FR Doc. 84-25972 Filed 9-28-84; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 84-072]

Lower Mississippi River Waterway Safety Advisory Committee; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) Notice is hereby given of the fifth meeting of the Lower Mississippi River Waterway Safety Advisory Committee. The meeting will be held on Wednesday, October 17, 1984 in the 29th Floor Boardroom of the International Trade Mart Building, 2 Canal Street, New Orleans, LA. The meeting is scheduled to begin at 9 a.m. and end at 4 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Minutes of the July 17, 1984 Meeting.
3. Chairman's Message.
4. Formal solicitation of views of members concerning the effectiveness, activities, and management of the committee, including recommendations for improvement.
5. Discussion of the committee sponsor's responses to recommendations approved by the LMRWSAC at their July 17, 1984 meeting.
6. Introduction of any new items for discussion.
7. Adjournment.

The purpose of this committee is to provide a public forum which will furnish to the U.S. Coast Guard consultation, local expertise, and advice on a wide range of matters regarding all facets of navigation safety.

Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Prior to presentation of their oral statements, but no later than the day before the meeting, members of the public shall submit, in writing, to the Executive Secretary of the Lower Mississippi River Waterway Safety Advisory Committee, the subject of their comments, a general outline signed by the presenter, and the estimated time required for presentation. The individual making the presentation shall also provide their name, address, and, if applicable, the organization they are representing. Any member of the public may present a written statement to the Advisory Committee at any time.

Additional information may be obtained from Commander R. A. Brunell, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (mps), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130, Telephone number (504) 589-6901.

Dated: September 26, 1984.

William H. Stewart,

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

[FR Doc. 84-25950 Filed 9-28-84; 8:45 am]

BILLING CODE 4910-14-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 191
Monday, October 1, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Federal Mine Safety and Health Review Commission	1
Federal Reserve System	2, 3
Tennessee Valley Authority	4

1

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

September 26, 1984.

TIME AND DATE: 10:00 a.m., Wednesday, September 26, 1984.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will also consider and act upon the following:

2. Kennecott Minerals Company, Docket Nos. WEST 82-155-M, WEST 83-60-M. (Petition for Discretionary Review.)

It was determined by a unanimous vote of Commissioners that a meeting be held on this item and that no earlier announcement of the meeting was possible. 5 U.S.C. 552b(e)(1).

Any person intending to attend this (hearing/meeting) who requires special accessibility features and/or any auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR 150(a)(3) and 160(e), ensure access for any handicapped person who gives reasonable advance notice.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653-5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 84-26039 Filed 9-27-84; 12:50 pm]

BILLING CODE 6735-01-M

2

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Thursday, October 4, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposal to extend, with revision, the money market mutual fund asset reports (FR 2051 a, b, c, and d).

2. Proposed extension of the reporting forms required by Regulation F (Securities of Member State Banks) (F-1, 2, 3, 4, 5, 6, 7, 8, 9 A, B, C, D, and E, 10, 11, 11A, 12, 13, and 20).

Discussion Agenda

1. Proposed amendments to Regulation E (Electronic Fund Transfers) regarding periodic disclosures and fund transfers resulting from point-of-sale transactions. (Proposed earlier for public comment; Docket No. R-0502.)

2. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204.

Dated: September 26, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-26002 Filed 9-26-84; 4:54 pm]

BILLING CODE 6210-01-M

3

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 10:45., Thursday, October 4, 1984, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Report to Congress on the Bank Export Services Act.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 26, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-26003 Filed 9-26-84; 4:54 pm]

BILLING CODE 6210-01-M

4

TENNESSEE VALLEY AUTHORITY

CHANGE IN PREVIOUSLY ANNOUNCED TIME OF MEETING AND CHANGE IN PREVIOUSLY ANNOUNCED AGENDA: The previously announced time of the September 27, 1984 open meeting of the TVA Board was changed, following public announcement of the change at the earliest practicable time, to 9:15 a.m., September 27, 1984. The previously announced location of the meeting, TVA West Tower, Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee, remains unchanged.

In addition, the following item is now added to the previously announced agenda:

Unclassified

7. Revised Organization Bulletin—Tennessee Valley Authority

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615-632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202-245-0101.

SUPPLEMENTARY INFORMATION:

TVA Board Action

The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires the subject matter of this meeting be changed to include the additional item shown above and that no earlier

announcement of this change was possible.

The members of the TVA Board voted to approve the above findings and their approvals are recorded below:

Approved:

C.H. Dean, Jr.,

Director and Chairman.

Richard M. Freeman,

Director.

John B. Waters,

Director.

[FR Doc. 84-26095 Filed 9-27-84; 3:48 pm]

BILLING CODE 8120-01-M

Federal Register

Monday
October 1, 1984

Part II

Environmental Protection Agency

40 CFR Parts 260, 261, 264, 265, 270, and 271 Hazardous Waste Management System; Ground Water Testing and Monitoring Activities; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 264, 265, 270, and 271

[SWH-FRL 2633-5]

Hazardous Waste Management System; Ground Water Testing and Monitoring Activities

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing to amend its hazardous waste regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA) to make EPA Publication "Test Methods for Evaluating Solid Waste" (SW-846) methods mandatory for all testing and monitoring activities required under Subtitle C, as specified in 40 CFR Parts 260-271. The Agency is also proposing to eliminate certain requirements for ground-water testing in those limited circumstances where the constituent being tested for immediately converts to another substance on contact with water, or where no testing method has been developed to detect the constituent in question. The Agency is also proposing to allow the use of screening tests for ground-water monitoring to test for classes of constituents. Finally, EPA is proposing a conceptual hierarchical approach (screening) that has the potential for reducing the amount of testing necessary to determine whether certain classes of chemical constituents are present in the ground water. All of these changes will provide for enhanced performance by both the regulated community and the Agency.

DATES: Comments on this proposed rule must be submitted on or before December 31, 1984.

ADDRESSES: Comments on this proposed rule should be sent to Docket Clerk, Docket No. 846-84-1 (RCRA Monitoring), Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M. St., S.W., Washington, D.C. 20460. The public docket for this proposed rule is located in Room S-212A, U.S. Environmental Protection Agency, 401 M. St., S.W., Washington, D.C. 20460. The public docket is available for viewing from 9:00 a.m. to 4:00 p.m. Monday through Friday, except legal holidays.

Complete copies of the text of the sampling and analytical methodologies addressed in this rulemaking are available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, (703) 487-4600.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA hazardous waste hotline, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M. St., S.W., Washington, D.C. 20460, telephone (800) 424-9346 or in Washington, D.C. 382-3000.

For information on the technical aspects of this proposed rule contact: David Friedman, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M. St., S.W., Washington, D.C. 20460, (202) 382-4770.

SUPPLEMENTARY INFORMATION:

Index

Part I. Background
- A. Overview of Subtitle C Regulations and Testing Provisions
- B. Sampling and Test Methods Under Subtitle C
- C. General Concerns with Subtitle C Testing
- D. Specific Comments Received on Sampling and Analysis Requirements of Part 264

Part II. Proposed Modifications To Subtitle C Regulations
- A. Mandatory Use of SW-846
- B. Addition of Methods to SW-846
  - 1. Appendix VIII Methods
  - 2. Ignitability and Representative Sampling Methods
- C. Elimination of Requirement to Test for Certain Compounds
- D. Use of Screening Tests
- E. Hierarchical Analysis Protocol (HAP)
  - 1. Explanation of the HAP
  - 2. Alternative methods and approaches
- F. References

Part III. Regulatory Impact
- A. Regulatory Impact
- B. Regulatory Flexibility Act
- C. Paperwork Reduction Act
- D. State Authority

I. Background

A. Overview of Subtitle C Regulations and Testing Provisions

Subtitle C of RCRA establishes a national program to provide comprehensive regulation of hazardous waste. Central to this regulatory scheme is the critical need to reliably identity both hazardous wastes and those situations in which improper management of such wastes may adversely affect human health and the environment. The testing provisions of the Subtitle C regulations have been developed to meet this need.

Among other things section 3001 of RCRA directs EPA to list hazardous wastes which are then subject to regulation under Subtitle C.[1] Part 261 of 40 CFR contains a list of wastes determined by the Administrator to be hazardous; it also sets forth the criteria the Administrator must consider in listing a hazardous waste. One of the criteria the Administrator considers in listing a waste is whether it contains any of the approximately 375 toxic constituents set forth in Appendix VIII of Part 261. (There are a number of other factors that the Agency uses in listing a waste, in addition to mere presence of an Appendix VIII constituent. See § 261.11(a)(3). Constituents are included in Appendix VIII if they have been shown to have toxic, carcinogenic, mutagenic, or teratogenic effects on humans or other life forms. As will be seen from the discussion of testing under Section 3004 of RCRA which follows, while Appendix VIII plays an important part in the Administrator's listing considerations, it also plays a significant role in defining the extent of certain incineration and ground-water testing required of hazardous waste facilities.

Once a waste has been listed by the Administrator as hazardous in accordance with Part 261 criteria it must be managed in accordance with the remaining Subtitle C requirements regarding generators, transporters, and hazardous waste treatment, storage and disposal facilities. In order to "delist" a waste at a particular facility, an individual must petition the Agency under 40 CFR 260 and demonstrate to the Administrator through the use of appropriate sampling and analytic testing methodologies that the specific waste in question does not meet any of the criteria under which it was classified as hazardous.

Sections 3002 and 3003 require EPA to establish standards for generators and transporters of hazardous wastes which will ensure proper recordkeeping and reporting as well as the use of a manifest system to track shipments of hazaradous waste. Transporters of hazardous waste must comply with manifest and recordkeeping requirements of Part 263, but they are not required to test or evaluate the waste. Generators, however, are required to evaluate their waste and, where necessary, test it to determine whether or not it is hazardous.

To ensure that the treatment, storage, and disposal facilities which receive this waste are designed, constructed, and operated in a manner which protects human health and the environment, Section 3004 of RCRA directs EPA to promulgate technical, administrative, monitoring, and financial responsibility standards for the facilities. Parts 264 and

[1] The RCRA regulations also define characteristics of hazardous waste. The discussion here is simplified by restricting it to listed wastes.

265 implement these statutory requirements and generally require owners and operators of hazardous waste facilities both to test wastes they receive and to perform various types of ground-water monitoring.[2] Additional testing requirements for hazardous waste land treatment and incineration are also provided. The analytical testing necessary to comply with Parts 264 and 265 generally falls into one of two categories: waste analysis to identify hazards and management options, and monitoring of management effectiveness. This includes measurement of incinerator destruction and removal efficiency as part of a trial burn, and monitoring of ground water and the unsaturated zone (in the case of land treatment units) at land disposal facilities.

Owners and operators of hazardous waste facilities are required, under Parts 264 and 265, to obtain a detailed chemical and physical analysis of representative samples of wastes before such wastes are treated, stored, or disposed of at the facility. The minimum requirement for this analysis is that it contain all the information necessary to allow proper storage, treatment, or disposal of the waste in question. Facilities that manage hazardous waste from offsite are required, at a minimum, to inspect each shipment received and, where necessary, analyze each shipment to determine whether it matches the waste description contained in the accompanying manifest or shipping paper.

For hazardous waste incinerators, Part 264 also requires that stack gases and other incinerator operating streams be analyzed for designated principal organic hazardous constituents (POHCs) in order to develop operating conditions necessary to insure a required 99.99% destruction and removal efficiency (DRE). The POHCs are selected from Appendix VIII compounds known to be present in the waste that is incinerated.

Land disposal facilities are required to establish ground-water monitoring programs. Under Part 265 interim status regulations and the Part 264 permit regulations, hazardous waste facilities are required to establish background levels for certain indicator parameters and then test periodically to determine whether the background levels have been exceeded. If the periodic testing indicates a significant increase over background levels, then facilities are required to conduct further testing. In the Part 265 program, this takes the form of "assessment monitoring" for specific hazardous waste constituents. Under Part 264, facilities with final permits are required to sample and analyze for each of the compounds specified in Appendix VIII of Part 261 when there is an indication that a unit may be leaking. In addition, the facility owner/operator must monitor for some (or, in rarer cases, all Appendix VIII constituents on a regular basis during the compliance and post-closure care periods.)

In addition to the testing provisions discussed above, Parts 264 and 265 require further testing for facilities that land treat hazardous wastes. Under Part 264, EPA requires that for each waste that will be applied to the treatment zone, the owner or operator of the facility demonstrate through field tests, laboratory analyses, and available data that the hazardous constituents contained in the waste can be completely degraded, transformed, or immobilized on the treatment zone. The testing needed to accomplish this will require analyzing for certain Appendix VIII constituents. Finally, in order to make certain that the land treatment process is working effectively to contain the wastes being treated, owners and operators are required to conduct testing in the soils beneath the treatment zone. This is commonly referred to as unsaturated zone monitoring and includes both soil monitoring through the use of soil cores, and soil-pore liquid monitoring through the use of devices such as lysimeters. Where a treatment zone itself will be subsequently used for food chain crops, owners and operators of land treatment facilities must also conduct testing to demonstrate that Appendix VIII constituents will not be transferred to the crop in greater concentrations than crops grown on untreated soils.

B. Sampling and Test Methods Under Subtitle C

The foregoing discussion outlined the major Subtitle C testing requirements. The principal issue addressed by today's proposed rulemaking is *how* this testing should be carried out. Specifically, this proposed rule addresses sampling and analytical procedures and methods to be used to ensure accurate, consistent, and comparable testing results—year to year, facility to facility, and region to region.

EPA Publication SW–846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," contains all of the sampling and analysis methods necessary for identifying hazardous wastes under the definition and listing provisions of 40 CFR Part 261. It has been incorporated by reference for regulatory use under Part 260 and 261 and for informational purposes in Parts 260 through 265. An index of sampling and analytical procedures contained in SW–846 is provided in Appendix III of Part 261.

Use of the testing methods contained in SW–846 is presently required in only certain regulatory provisions under Subtitle C: § 261.22 specifies an SW–846 test method for measuring the hazardous waste characteristic of corrosivity; § 261.24 requires SW methods for the analsis of the extract; § 260.22(d) calls for use of SW–846 methods in developing data for delisting petitions; and § 270.62 requires the use of SW–846 analytical techniques to identify hazardous organic constituents as part of the process for obtaining a hazardous waste incinerator permit.

Appendix I of Part 261, "Representative Sampling Methods," supplements SW–846 by referencing four sampling methods for extremely viscous liquids, fly ash-like materials, containerized liquid wastes, and liquid wastes in pits, ponds and lagoons. The regulations provide explicitly that while Appendix I is not formally adopted or required by EPA, the Agency will consider its use acceptable for determining a "representative sample" (see § 261.20).

Finally, § 260.11 incorporates by reference two test methods for measuring the hazardous waste characteristic of ignitability under Part 261: ASTM Standard Test Methods for Flash Point of Liquids by Seta Flash Closed Tester and ASTM Standard Test Methods for Flash Point by Pensky-Martens Closed Tester.

As a matter of policy, EPA relies upon the sampling and analytical procedures contained in SW–846 as well as the additional methods incorporated by reference in Part 260 and Appendix I of Part 261 for implementing many of the testing provisions under Subtitle C. However, with the limited exception of the provisions noted above, none of these testing procedures and methodologies is presently required or specified for compliance with Subtitle C regulations.

C. General Concerns With Subtitle C Testing Requirements

As discussed, generators of hazardous waste and owners or operators of hazardous waste treatment, storage, and disposal facilities (TSDFs) are required to conduct sampling and analytical testing for waste analysis and monitoring purposes, as well as to provide data for any hazardous waste "delisting" petitions they may wish to submit. The constitutents they may need

[2] Sections 264.90, 265.93.

to test for could ultimately include any of those identified in Appendix VIII.

Standardized sampling and analytical methods for measuring all these constituents have not been compiled in one place nor been formally recognized as acceptable by the Agency for many purposes in the hazardous waste program. The Agency has received numerous inquiries on acceptability of various methods from both the regulated community and regional permitting officials. Usually there is more than one analytical method that can be used to measure a given parameter. This has led to confusion. Questions about which methods are appropriate, and whether other methods are equivalent, are also frequently encountered.

Because EPA has not provided specific guidance on testing methodology, it is possible that differing methods with different detection limits could be used in each Region. Testing and monitoring standards therefore may not be applied uniformly throughout the country. This creates the potential for inconsistent enforcement at both the Federal and State levels and, perhaps most important, raises the possibility of uneven and thus unfair imposition of testing requirements on individual generators of facilities which otherwise may be operating under similar circumstances.

In addition, since EPA has not identified acceptable sampling and analysis methodology for all required testing, owners or operators of hazardous waste facilities must expend resources to indentify methods for their testing amd monitoring programs. Permitting officials, in turn, may need to expend additional resources to evaluate these methods. Moreover, without specific guidance, permitting officials often will not be familiar with particular methods referenced in a permit application and this may lead to confusion and duplication of effort for both the facilities and the permitting officials.

In conjunction with the general concerns noted above, the following section outlines a number of more specific concerns raised in connection with Part 264 sampling and analysis requirements that deal particularly with the requirement to monitor for Appendix VIII constituents discussed earlier under section A. These concerns are expressed in the form of comments on an earlier rulemaking, and illustrate in more detail some of the issues that today's proposal addresses. Because of their relevance, this proposed rule is being used to summarize those comments and provide the Agency's formal response.

D. Specific Comments Received on Sampling and Analysis Requirements of Part 264

Many of the testing requirements discussed earlier were part of the Part 264 ground-water monitoring requirements published on July 26, 1982. The Agency received a number of comments on that interim final rule which are summarized as follows:

1. Sampling and analysis for all Appendix VIII constituents under the compliance monitoring requirements of Part 264 will be very expensive.

2. Many analysis methods provided in SW–846 are written for solid waste and therefore inappropriate and have not been validated for ground-water samples.

3. Neither the ground-water regulations nor SW–846 provide performance criteria (such as required levels of accuracy, precision , recovery, etc.) for analytical methods for ground-water sampling and analysis. In the absence of these criteria, a laboratory cannot reasonably evaluate and select analytical methods to be used for Appendix VIII constituents in ground water.

4. A number of Appendix VIII constituents are either unstable or dissociate into ionic species in water and therefore cannot exist in ground water.

5. Many compounds are listed as classes such as "lead and compounds N.O.S." (not otherwise specified). Hundreds of additional compounds could be assigned to the N.O.S. classes and identification of each of these would be infeasible.

6. Analytical methods for many Appendix VIII constituents are not available.

7. There are a number of technical errors in SW–846.

A discussion of the testing costs for Appendix VIII constitutents in ground water is provided in Part III of this Preamble. EPA believes that monitoring is essential to determine the extent of ground-water contaminaton and the effectiveness of a facility's corrective action program. Howeve, the Agency also believes that this monitoring should be done as cost effectively as possible and, therefore, is proposing the use of screening tests in Part II D as well as soliciting comment on a hierarchical testing formula under which it may be possible to accurately test for all classes of Appendix VIII constituents through the use of a relatively small number of analytical procedures. This is explained further in Part II D and E, respectively.

We disagree with the comment that many analysis methods in SW–846 are not appropriate for ground water. Since most of the methods contained in SW–846 evolved from EPA drinking water and effluent monitoring methods and reduce to the standard EPA 600 series methods for aqueous samples, the methods in SW–846 are appropriate for ground-water monitoring. The basis of the Agency's selection of the existing methods in SW–846, as well as the basis for incorporating additional methods into SW–846, is discussed in detail in Part II A and B respectively. As to the concern that no performance criteria exist, many SW–846 methods provide performance criteria (such as precision, accuracy, etc.) for Appendix VIII constituents. This is evidenced in the tables provided with each method. The tables provide precision and recovery data for many of the compounds EPA has identified as priority pollutants under the Clean Water Act. For a number of Appendix VIII constituents additional performance data is needed, and this is presently being worked on by the Agency's Office of Research and Development at its laboratories in Cincinnati and Las Vegas. It should be emphasized, however, that with today's action consolidating into SW–846 all the methods necessary to comply with Subtitle C testing requirements, the lack of such data for certain methods does not hinder compliance with Subtitle C regulations nor prevent the preparation and submissions of equivalency petitions under § 260.21. Equivalency can be determined on the basis of data derived from controlled experiments where a proposed method is run alongside an existing approved on.

EPA recognizes that some Appendix VIII constituents are immediately unstable in water and, therefore, impossible to test for. Therefore, EPA is proposing today in Part II C to eliminate the requirement for testing those Appendix VIII constituents that immediately convert to another compound upon contact with water. For those Appendix VIII constituents that dissociate into ionic species upon contact with water, and therefore cannot be tested for in the form listed, the Agency is providing a list of methods that can be used to determine the particular ionic species of interest in the ground water (see Table 3.1.4–2, of today's SW–846 proposed amendments). The following Appendix VIII constituents, for example, can be determined by simply testing for total cyanide, which is the species of concern:

Calcium cyanide
Copper cyanide
Cyanide (soluble salts and complexes) N.O.S.

Cyanogen
Hydrocyanic acid
Nickel cyanide
Potassium cyanide
Sodium cyanide
Zinc cyanide

It should also be noted that some compounds can be tested for (and therefore eliminated) in more than one way. Nickel cyanide, for example, can be eliminated by verifying that either nickel or cyanide is not present. Either approach is valid. Again, referring to the cyanide example, the listing "cyanide (soluble salts and complexes) N.O.S." in theory contains hundreds of compounds; however, since cyanide is sufficient to cover this N.O.S. category. This type of screening approach is explained in greater detail in Section II D of this preamble.

The methods that are proposed today and discussed in Part II B, together with the methods already contained in SW-846, will provide sampling and analysis methods for all Appendix VIII compounds with the exception of those that are immediately unstable in water or do not have analytical methods. Appendix VIII components that are immediately unstable in water or do not have associated analytical methods need not be monitored for. This point is explained more fully in Part II C.

Finally, EPA is aware of a number of technical errors in SW-846 and has taken steps to correct them. Corrections of these errors will be sent to all subscribers of SW-846 by the Government Printing Office (GPO) within the next few weeks and a notice of these corrections will be published in the **Federal Register.**

The rulemaking proposed today addresses the general concerns discussed under Section C of this part as well as the major points raised by commenters on the issues of monitoring and testing under 40 CFR Part 264.

II. Proposed Modifications to Subtitle C Regulations

As indicated in the summary to this preamble, today's rulemaking proposes to: (1) Make SW-846 mandatory for Subtitle C testing purposes; (2) consolidate in SW-846 all methods necessary for Subtitle C testing; (3) modify certain requirements for the testing for Appendix VIII compounds; (4) allow the limited use of SW-846 methods for compliance monitoring screening purposes; and (5) introduce the concept of hierarchical testing that in certain cases may reduce the number of tests required to determine whether classes of Appendix VIII compounds are present. Each of these changes addresses an issue raised in Sections C and D of Part I of this preamble and, taken together, EPA believes they will contribute significantly to reducing confusion and uncertainty, promoting uniform and consistent implementation, and eliminating unnecessary testing.

A. Mandatory Use of SW-846

Today's rulemaking proposes to make the use of SW-846 methods mandatory for Subtitle C testing in Part 260 through 271. EPA believes that the methods contained in SW-846, including the ones being added today, are suitable for the sampling and analytical testing required to comply with the requirements of Subtitle C.

The basis of the Agency's judgment that the methods being proposed today for incorporation into SW-846 are suitable for the testing required under Subtitle C is explained in Section B of this part of the preamble. With respect to the methods presently contained in SW-846, EPA's judgment that they are suitable for the sampling and analytical testing required under Parts 260 through 271 is based on a number of considerations. These include the Agency's experience with many of the methods in other programs, the fact that other methods in SW-846 are routinely utilized by the scientific community, and, finally, the fact that in some cases certain of these methods are simply the only ones that EPA has been able to develop or identify that provide acceptable levels of precision, accuracy, sensitivity, and reliability.

Most analysis methods are divided into two distinct steps: sample preparation and parameter measurement. Sample preparation depends on the sample matrix while the actual measurement of the parameter of interest depends on a specific instrument or detection device. Prior to RCRA, the Agency had developed methods for specific types of matrices such as air and water. When analyzing a water sample for organic compounds, for example, the first step is usually an extraction of the sample with an organic solvent. After the extraction, the organic solvent is concentrated and then analyzed using an instrumental technique, such as gas chromatography or combined gas chromatography-mass spectrometry.

When an analytical method will always be applied to the same matrix, the method can be written to include both the sample preparation and the parameter determination steps. This type of organization is employed in most published methods (1,2,3). Unfortunately, waste analysis involves an infinite variety of matrices and, therefore, it is impossible to write a specific method for each matrix that may be encountered. It is possible, however, to specify a number of general sample preparation techniques (i.e., the first step in the method) and a number of routine measurement methods (i.e., the second step in the method) which can be used for analyzing waste samples. Due to the wide variability of sample matrices that RCRA encompasses, EPA realized that the methods in the manual need to be more flexible than methods previously developed by the Agency or other testing organizations. This type of modular approach is believed to be the only testing organizations. This type of modular approach is believed to be the only feasible way to provide a framework for the analysis of wastes while insuring the flexibility to handle many types of matrix.

The methods manual, SW-846, is organized in this manner. Sampling methods, sample preparation methods, and parameter measurement methods are treated separately and may be combined to handle specific waste sampling and analysis situations. Sampling methods in SW-846 were chosen from sampling procedures previously developed by the Agency for the various types of materials in the air and water programs and general sampling considerations. Sampling procedures for waste materials have been derived from commonly accepted, statistically valid sampling approaches.

Where available, sample preparation methods contained in SW-846 are taken from standard methods published by EPA, ASTM, and other standards-setting organizations. For example, EPA's water, wastewater, and effluent guidelines methods developed under the Clean Water Act are employed for aqueous sample preparation. EPA has also developed sample preparation procedures for aqueous sludges which are also incorporated into SW-846. Finally, there are a number of sample preparation procedures incorporated in SW-846 that have been in general use by chemists for many years and are accepted as standard sample preparation procedures. Techniques such as soxhlet extraction and continuous liquid-liquid extraction are procedures which fall into this category.

Analytical measurement methods in SW-846 are likewise adopted from EPA, ASTM, and Standard Methods instrumental techniques. Parameter measurement methods, unlike sampling and sample preparation methods, are always the same for similar analyses. The measurement method itself is independent of the type of sample or matrix.

The precision and accuracy of the SW–846 sample preparation and analytical measurement for aqueous samples has also been established. The Agency's Office of Research and Development (ORD) is currently evaluating the sample preparation methods using a number of RCRA wastes.

With the exception of detection monitoring under Part 265, the methods presently contained in SW–846 and those being added today will be made mandatory for all testing conducted pursuant to 40 CFR Parts 260 through 271.

EPA is not proposing to apply the SW–846 methods to § 265.92 detection monitoring since the sampling and analytical testing required by § 265.92 is, in general, limited to a few, well defined parameters and is already underway at interim status facilities. EPA feels that if a facility is currently performing required detection monitoring tests using methods other than those prescribed in SW–846, the facility should be allowed to continue using those procedures until they are granted a final permit. Facilities may, at their option, begin using methods in SW–846 if they are not already doing so; however, it will be necessary for the facility to re-establish background levels using the SW–846 methods. Facilities wishing to employ this option sould use both their old method and the SW–846 method for one year [as prescribed in 40 CFR 265.92(c)] to insure that no discharge takes place while new background levels are being established. If a signficant increase in one or more parameters is detected using the old method during this period, the provisions described in § 265.93 will still apply. It should be emphasized that this proposed exemption from the mandatory use of SW–846 applies only to § 265.92 detection monitoring. EPA is soliciting comments on this proposed exemption.

EPA also proposes to require the use of SW–846 methods for any testing or monitoring required under a State program that has been authorized under Section 3006 of RCRA (42 U.S.C. 6926). EPA believes this step is needed to achieve a consistent application of sampling and analytical methods among different facilities across the country.

To indicate that SW–846 methods will be required for listing and identification of hazardous wastes, EPA is proposing to amend the State program requirements for identifying hazardous waste (§ 271.9) and the requirements for generators (§ 271.10) to specifically reference the methods in SW–846. EPA believes that State program requirements for hazardous waste management facilities (§ 271.12) should also include mandatory application of SW–846 methods for testing and monitoring purposes. EPA believes that such a result would follow from the current wording of § 271.12 which requires the programs to have standards equivalent to those EPA has established for treatment, storage and disposal facilities. Since today's proposal would make use of SW–846 a component of the substantive standards for such facilities, EPA believes § 271.12 would make SW–846 methods mandatory for State program requirements affecting such facilities. Comments are requested as to whether further clarification is needed on the mandatory use of SW–846 methods under authorized State hazardous waste programs.

As an alternative to using methods contained in SW–846, owners and operators of hazardous waste facilities may petition the Agency for approval of equivalent methods at any time (see 40 CFR 260.21). After evaluation of each new method, a determination of equivalency will be made. If the new method is judged equivalent it will be approved and incorporated into SW–846.

B. Addition of Methods to SW–846

1. Appendix VIII Methods

EPA Publicaiton SW–846 was initially incorporated by reference into the RCRA regulations for informational purposes to provide a compilation of testing methods generally acceptable to the Agency for delisting purposes. However, there are certain chemical compounds which are subject to Subtitle C testing and monitoring provisions that have not been listed as constituents of listed hazardous wastes. A number of constituents included in Appendix VIII of Part 261, for example, fall into this group.

EPA is, proposing therefore, to include the following additional methods contained in Tables 1–4 in SW–8464 to allow for the testing for all Appendix VIII compounds. With the addition of these methods, SW–846 will provide sampling and analytical procedures for compliance with all the subtitle C testing and monitoring provisions. Table 1 lists the analytical methods, and Tables 2 through 4 summarize the sampling methods to be added.

TABLE 1.—GENERAL ANALYTICAL METHODS PROPOSED TO BE ADDED TO SW–846

Method	Title	Description
1120	Electrochemical Corrosion Method.	Alternate method for determining corrosivity toward steel in characteristic testing.
1320	Multiple Extraction Procedure.	Extraction procedure for use in delisting wastes that are stablized, encapsulated or chemically fixed.
1330	Extraction Procedure for Oily Wastes.	Extraction procedure that removes oil or grease that may interfere with the normal EP test.
3560	Reverse Phas Cartridge Extraction.	Cartridge method to extract organics from ground-water samples.
3570	Column Clean-Up for Oil Samples and Extracts.	Alumina column clean-up with three fractions.
3720	Volatile Organics Sampling Train Thermal Desorption Sample Preparation.	Sample preparation after collection of stack samples by VOST method.
6010	Inductively Coupled Argon Plasma (ICAP) Spectroscopy.	General method for multiple element determination.
7090	Beryllium	Direct Aspiration Atomic Absorption Method.
7091	Beryllium	Furnace Atomic Absorption Method.
7198	Chromium, Hexavalent.	Differential Pulse Polarographic method.
7210	Copper	Direct Aspiration Atomic Absorption Method.
7211	Copper	Furnace Atomic Absorption Method.
7380	Iron	Direct Aspiration Atomic Absorption Method.
7381	Iron	Furnace Atomic Absorption Method.
7460	Manganese	Direct Aspiration Atomic Absorption Method.
7461	Manganese	Furnace Atomic Absorption Method.
7550	Osmium	Direct Aspiration Atomic Absorption Method.
7551	Osmium	Furnace Atomic Absorption Method.
7770	Sodium	Direct Aspiration Atomic Absorption Method.
7640	Thallium	Direct Aspiration Atomic Absorption Method.
7841	Thallium	Furnace Atomic Absorption Method.
7910	Vanadium	Direct Aspiration Atomic Absorption Method.
7911	Vanadium	Furnace Atomic Absorption Method.
7950	Zinc	Direct Aspiration Atomic Absorption Method.
7951	Zinc	Furnace Atomic Absorption Method.
8320	Phenols and Other Compounds.	General Reverse Phase Liquid Chromatographic Method.
8330	Thioureas and Other Compounds.	General Reverse Phase Liquid Chromatographic Method.
8410	Formaldehyde	Differential Pulse Polargraphic Method—basic.
8411	Formaldehyde	Differential Pulse Polarographic Method—acidic.
8600	Hierarchical Analysis Protocol.	Screening method for Appendix VIII constituents in ground water.
8610	Total Aromatics by Ultraviolet and Visible Spectroscopy.	Total aromatics in ground water by UV/VIS.
8620	Total Chromatographable Nitrogen/Phosphorus Compounds.	Chromatographable nitrogen/phosphorus compounds by thermionic detection.
8630	Dinitrobenzoyl Chloride Derivitization.	Reduction of Appendix VIII compounds followed by derivitization and UV/VIS determination.

TABLE 1.—GENERAL ANALYTICAL METHODS PROPOSED TO BE ADDED TO SW-846—Continued

Method	Title	Description
9011	Photodegradeable Cyanide.	Cyanide releasable by UV radiation.
9022	Total Organic Halogen.	Neutron Activation Method.
9035	Sulfate	Automated Chloranilate Colorimetric Method.
9036	Sulfate	Automated Methyl Thymol Blue, Autoanalyzer II Colorimetric Method.
9037	Sulfate	Gravimetric Method.
9038	Sulfate	Turbidimetric Method.
9060	Total Organic Carbon.	Infrared Determination of Carbon Dioxide.
9065	Phenolics	Manual 4-AAP with Distillation, Spectrophotometric Method.
9066	Phenolics	Automated 4-AAP with Distillation Spectrophotometric Method.
9067	Phenolics	MBTH with Distillation, Spectrophotometric.
9070	Total Oil and Grease.	Total Oil and Grease for Liquids.
9071	Total Oil and Grease.	Total Oil and Grease for Solids.
9080	Cation Exchange Capacity.	Method used for Soil Liner Evaluation.
9081	Cation Exchange Capacity.	Method used for Soil Liner Evaluation.
9090	Polymeric Liner Compatability.	Liner Compatability Test for Flexible Membrane Liners.
9100	Hydraulic Conductivity.	General Methods for Hydraulic Conductivity and Liner Permeability.
9131	Coliform	Multiple Tube Fermentation Technique.
9132	Coliform	Membrane Filter Technique.
9200	Nitrate	Brucine Colorimetric Method.
9250	Chloride	Automated Ferricyanide Autoanalyzer I Colorimetric Method.
9251	Chloride	Automated Ferricyanide Autoanalyzer II Colorimetric Method.
9252	Chloride	Mercuric Nitrate Titrimetric Method.
9310	Gross Alpha and Beta.	General Radioactivity Method.
9315	Radium	Total Radium Method.
9230	Radium 228	Radium 228 Method.

TABLE 2.—GROUND WATER SAMPLING METHODS PROPOSED TO BE ADDED TO SW-846

Section No.	Title	Description
1.2.1.20	Bailer	
1.2.1.21	Suction Pumps	
1.2.1.22	Positive Displacement Pumps.	
1.4.6	Ground-water Sampling.	Ground-water Sampling Methods.
3.1	Ground-water Monitoring.	General Ground-water Information and Analysis Procedures.

TABLE 3.—LAND TREATMENT SAMPLING METHODS PROPOSED TO BE ADDED TO SW-846

Section No.	Title	Description
1.2.1.30	Pressure Vacuum Lysimeter.	Soil Pore Liquid Sampling Equipment.
1.2.1.31	Vacuum Extractor	Do.
1.2.1.32	Trench Lysimeter	Do.
1.4.7	Land Treatment Sampling.	Land Treatment Sampling; Unsaturated Zone Monitoring.

TABLE 3.—LAND TREATMENT SAMPLING METHODS PROPOSED TO BE ADDED TO SW-846—Continued

Section No.	Title	Description
3.2	Land Treatment Monitoring.	General Land Treatment Information and Analysis Procedures.

TABLE 4.—INCINERATOR SAMPLING METHODS PROPOSED TO BE ADDED TO SW-846

Section No.	Title	Description
1.2.1.8	Modified Method 5 (MM5) Sampling Train.	Stack sampling method for semi-volatile compounds.
1.2.1.9	Source Assessment Sampling System (SASS).	Stack sampling method for semi-volatile compounds.
1.2.1.13	Volatile Organics Sampling Train (VOST).	Stack sampling method for volatile organic compounds.
1.4.5	Stack Sampling	General information on stack sampling.
3.3	Incineration	General and detailed information on hazardous waste incineration sampling and analysis strategy.

The methods listed in Table 1, together with what is presently contained in SW-846, provide analytical methodology for all Appendix VIII compounds with exception of those that are either immediately unstable in water or for which no reliable tests are presently available. When these methods are added to SW-846, at least one approved method of analysis will exist for each Appendix VIII constituent with the exceptions noted. (Section C discusses these exceptions in more detail.) Inclusion of these analytical and sampling methods in Tables 1 through 4 will, for the first time, provide the regulated community with a comprehensive and consistent set of acceptable methods that can be used for RCRA Subtitle C testing.

EPA has taken the initiative of identifying most of the procedures listed on Table 1. Three of the methods listed, however, are the result of equivalency petitions received from individuals outside the Agency pursuant to 40 CFR 260.21. For the reasons discussed below, EPA is proposing to treat these procedures as equivalent to existing SW-846 methods and, therefore, to be generally applicable to Subtitle C testing.

The first petition, from Amoco Oil Co., seeks inclusion of an Inductively Coupled Argon Plasma (ICAP) method as an alternative method for the determination of metals. EPA has evaluated this petition and proposes to include Amoco's ICAP method in SW-846 as part of a more general method developed by EPA's Office of Research and Development (Method 6010). Numerous studies have been performed comparing ICAP with the more traditional Atomic Absorption (AA) methods. (4,5) These studies, including the one submitted by Amoco with their petition, have shown that ICAP test results are comparable to AA methods in terms of precision, accuracy, and detection limit. The Agency, therefore, has determined that ICAP is equivalent to AA for the metals listed in Method 6010 and has further determined that use of this method will allow the regulated community to determine a number of metals sumultaneously and thereby lower overall monitoring and testing costs.

EPA has received a second equivalency petition from the Environmental Research Group (ERG), Inc., of Ann Arbor, Michigan, for inclusion of a Neutron Activation Method into SW-846 as an alternative method for the determination of Total Organic Halogen (TOX). ERG submitted data comparing its Neutron Activation Method with the current microcoulometric TOX method (Method 9020) for a number of blank and spiked water samples as well as a number of blank and spiked ground-water samples. Comparison of the results of the two methods shows that the maximum variance between the two methods was only 15% and that the methods were identical with respect to precision. Detection limits of the two methods was also shown to be identical. EPA has evaluated this petition and has determined that the Neutron Activation Method is equivalent to the current TOX method (Method 9020) on the basis of precision, accuracy, and detection limit. The Neutron Activation method, which has been assigned method number 9022, also provides the ability to speciate between halides which is an advantage over Method 9020. The laboratory comparison of these two methods is detailed in a report submitted by ERG titled "A Laboratory Comparison Between EPA Method 450.1 (Method 9020) and Haloscan™ for the Determination of Total Organic Halogen in Groundwater, Surface Water, and Waste Treatment Plant Effluents." This report is included in the public docket for this proposed rule and is available for viewing as previously explained. EPA is therefore proposing to include Method 9022 in SW-846.

Finally, EPA has received a third equivalency petition from EG&G, Princeton Applied Research, for inclusion of a electrochemical corrosion method as an alternative to Method 1110

(corrosivity toward steel). This method has been evaluated by EPA's National Enforcement Investigation Center (NEIC) and has been shown to offer the advantages of speed, convenience, and lower cost over the current method. NEIC has routinely used this method for screening wastes for the characteristic of corrosivity and has determined that this method gives comparable precision and accuracy figures that fall within the range produced by Method 1110. We therefore believe that the electrochemical corrosion method is equivalent to the current method. (6) Accordingly, EPA is proposing to include this method in SW–846 as an alternative for measurement of corrosion rate. The Agency will modify § 261.22(a)(2) to include this method after comments have been evaluated from this proposal.

Selection of the remaining methods and procedures listed in Tables 1 through 4 was undertaken by EPA in generally the same way described in the preceding section with regard to existing SW–846 methods. As discussed in section A, EPA uses standardized methodology for waste analysis if such methodology is available. All of the analytical methods listed in Table 1 fall into this category except for the following:

1320 Multiple Extraction Procedure
1330 Oily Waste Extraction Procedure
3560 Reverse Phase Cartridge Extraction Method
3570 Column Clean-up for Oil Samples and Extracts
3720 VOST sample preparation
7198 Polarographic method for Hexavalent Chromium
8320 Reverse Phase Liquid Chromatographic Method
8330 Reverse Phase Liquid Chromatographic Method
8410 Polarographic method for formaldehyde
8411 Polarographic method for formaldehyde
8600 Hierarchical Analysis Protocol
8610 Total Aromatics by UV/VIS
8620 Total Chromatographable Nitrogen/Phosphorus Compounds
8630 Dinitrobenzoylchloride Derivitization Method
9011 Photodegradeable Cyanide
9080 Cation Exchange Capacity of Soils
9081 Cation Exchange Capacity of Soils
9090 Liner Compatibility Test
9100 Hydraulic Conductivity, Intrinsic Permeability

With the exception of these nineteen, the methods listed on Table 1 have been used by EPA in its water programs and have been evaluated by the Office of Research and Development. These evaluations indicate that the methods are suitable for water analysis and, are therefore, acceptable to the Agency for the analysis of specific parameters in ground water. The specific Office of Research and Development evaluations are noted in the technical discussion of the methods which accompanies this rulemaking and are available either at the public docket or through the National Technical Information Service as explained in the introduction to the preamble.

Method 1320 (Multiple Extraction Procedure) was developed in response to public comment to assess the long term stability of stabilized, encapsulated, or chemically fixed hazardous wastes when evaluating delisting petitions. Its use for this purpose has been previously noticed in the **Federal Register** (see 47 FR 52682–52683, November 22, 1982). Method 1320 has been used by many hazardous waste treatment companies and the Agency to evaluate long term leaching of hazardous wastes which have been stabilized, encapsulated, or chemically fixed. This test was informally evaluated by the Agency and has been shown to have a precision comparable to that of the Extraction Procedure (EP) Toxicity test.

Method 1330 (Oily Waste Extraction Procedure), which is a combination of Methods 3540 and 1310, was also developed in response to public concern over the use of the EP Toxicity test for wastes that contain appreciable levels (i.e., greater than 1%) of oil or grease. The Agency has received numerous comments that using the EP is not appropriate for wastes which contain oil or grease since the oil or grease will shield the waste from the leaching medium. Such a situation gives artificially low values for the concentration of that toxic metals that could leach out of the waste and therefore grossly underestimates the potential hazard posed by such a waste. The Agency has discussed these concerns with interested parties and has concluded that Method 1330 addresses the limitations of the EP with respect to wastes that contain oil or grease. Method 1330 has been used extensively by member companies of the American Petroleum Institute [3] and the EPA for evaluating hazardous wastes that contain oil or grease.

Method 3570 (Column Cleanup Procedure for Oily Materials) was developed by the Agency in response to a need for detailed organic analysis of petroleum refinery wastes. Method 3570 has been shown to permit detection limits of between 1 to 50 ppm for most compounds of interest with relatively good precision and accuracy.

Method 3720 (Thermal Cartridge Desorbtion Procedure) and the VOST sampling method are closely associated. The VOST is a relatively new method that has been evaluated by EPA's ORD. The VOST used in conjunction with Method 3720 has been shown to be a reliable, sensitive, and efficient method for determining volatile organics in stack effluents and is capable of determining the required 99.99% DRE required for incinerator permitting.

Method 7198 involves the polarographic determination of hexavalent chromium. ORD has evaluated 5 different methods for the determination of hexavalent chromium in wastes and found that Method 7196 (colorimetric) to be the best overall for waste analysis and Method 7198 (polarographic) to be the next best. These studies further indicate that hexavalent chromium Methods 7195, 7196, and 7198 are acceptable for waste analysis from a standpoint of precision, recovery, and detection limits (Technical Reports, Contract 68–03–3099, WA4, detail these evaluations and are available for inspection in the public docket for this rulemaking). All the methods have been retained in order that analysts may have an option when a given method cannot be employed because of interferences that may be present in the sample.

The liquid chromatographic Methods 8320 and 8330 were developed as general High Pressure Liquid Chromatographic (HPLC) methods for polar Appendix VIII compounds by EPA's Industrial Environmental Research Laboratory at RTP. (7,8) (These reports are also available from NTIS.) Both of these methods have been evaluated with respect to on-column detection limit for the compounds listed. The results of these evaluations show that most of the compounds can be determined at levels of between 1 and 80 ng. Therefore, the actual method detection limit for the compound given can be between 1 and 80 parts per trillion assuming 100% extraction efficiency. As a result of these evaluations EPA believes that these analysis methods are appropriate for ground-water monitoring.

Methods 8410 and 8411 describe the polarographic determination of formaldehyde in an aqueous matrix. Formaldehyde is extremely water soluble and therefore difficult to determine due to low extraction and concentration efficiency. Since the polarographic methods do not require extraction or concentration, they offer

[3] In fact, it was API that suggested the basic framework for Method 1330.

the advantage of better overall accuracy and precision than previously used chromatographic procedures.[4] Therefore, we are proposing their incorporation into the methods manual.

Method 8600 (of which Methods 8610, 8620, 8630, and 3560 are part), is a hierarchical testing approach that is discussed in detail in Section E of this preamble.

Method 9011 is an extension of Method 9010 to evaluate wastes which may discompose to release cyanides on exposure to UV light. The determinitive steps in Method 9011 are identical to those in Method 9010 with similar precision and accuracy.

The two Soil Cation-Exchange Capacity methods (Methods 9080 and 9081) were adopted from standard methods for soil analysis used by the American Society of Agronomy. (9) These methods are commonly used by soil scientists and EPA has determined that they are acceptable for determining the cation exchange capacity of soils and soil liner materials.

The liner compatibility test (Method 9090) employs a short exposure of the liner to the chemical environment at two temperatures (room temperature and 50 °C) to simulate effects of a waste on the liner, including long-term effects. Since actual field testing would require 25 years or more, EPA decided that the test could be shortened to a 120-day maximum by increasing the temperature of some of the testing to 50 °C. The temperature of 50 °C and maximum test length was chosen using the Arrhenius equation assuming the activation energy for the reaction for the waste with the liner to be greater than 20 Kcal/mole. The Agency's information indicates that the reaction of the liner and the wastes in contact with it have an activation energy of 20 Kcal/mole or more.(10) Therefore, our calculations indicate that the reaction rate at 50 °C will be at least 75 times faster than at 10 °C. Since 120 days is a 75th of 25 years, this time-frame and temperature should be adequate for testing liner compatibilities with wastes.

The methods contained in Method 9100 were compiled from numerous literature sources. EPA performed an extensive literature survey to indentify methods for determining hydraulic conductivity and intrinsic permeability. The methods found and evaluated are fully referenced in Section 15 of Method 9100.

The sampling methods contained in Tables 2 and 3 were taken directly from Permitting Guidance Documents prepared by the Agency and represent the best available sampling methods for ground-water and land treatment monitoring.(11,12)

The sampling methods in Table 4 were, similarly, taken from methods developed by the Agency for its Air Programs.(13) The Modified Method 5 and SASS Trains have been in use for monitoring semivolatile organic compounds in incinerator stack gases for many years and have proven to be effective and reliable.

The full text of the methods and sections listed in Tables 1 through 4 is available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161 or they may be viewed at the public docket.

After comments on the sections and methods to be added to Appendix III and SW–846 are received and evaluated, final sections and methods will be added to SW–846 and the appropriate changes to § 260.11 and Appendix III of Part 261 will be adopted. When the Agency makes these changes it will also provide an explanation of the technical corrections to SW–846. Persons who have subscribed to the Second Edition of SW–846 will automatically receive the *final* sections and methods (and the technical corrections when they are adopted; they will not, however, automatically receive *proposed* sections and methods.

2. Ignitability and Representative Sampling Methods

A further purpose of today's rule is to consolidate, wherever possible, existing methods necessary for Subtitle C testing into SW–846. This will eliminate the need to consult numerous different reference manuals and chemical testing guides. Where an approved method, however, is one that has been developed and copywrited by a standards-setting organization such as ASTM, the actual method cannot be printed in SW–846. For the convenience of those using SW–846, citations to such methods will be included in the appropriate sections of the manual. This rulemaking, therefore, proposes to included in SW–846 references to the following sampling methods which are presently in use and relied upon by the Agency.

1. "ASTM Standard Test Methods for Flash Point of Liquids by Setaflash Closed Tester," ASTM Standard D–3278–78.

2. "ASTM Standard Test Methods for Flash Point by Pensky-Martens Closed Tester, ASTM Standard D–93–79 or D–93–80.

3. "Flammable and Combustible Liquids Code" (1977 or 1981). National Fire Protection Assn., Boston, MA.

4. "Extremely Viscous Liquid," ASTM Standard D–140–70 Crushed or powdered material, ASTM Standard D–346–75 Soil or rock-like material, ASTM Standard D–420–69 Soil-like material, ASTM Standard D–1452–65.

5. "Fly Ash-like material," ASTM Standard D–2234–75.

C. Elimination of Requirement to Test for Certain Compounds

The Agency is proposing to eliminate the requirement to analyze ground water for the presence of compounds contained in Appendix VIII which are unstable in water or for which methods have not been published in SW–846. With the addition to SW–846 of the methods proposed in Section B, sampling and analytical procedures are now provided for 353 of the 375 compounds presently contained in Appendix VIII. The remaining 22 compounds include those that are immediately unstable in water and those for which no method is presently available.

Appendix VIII compounds which are immediately unstable in water are listed in Table V. These compounds cannot exist in water because upon contact they are immediately and irreversibly converted to other compounds. Some of these hydrolysis products are themselves Appendix VIII constituents. For example, toluene diisocyanate will decompose to toluene diamine which is also an Appendix VIII constituent.

Other Appendix VIII compounds are known to react with water at slower rates. These compounds are not included in Table V since there is some likelihood they can be found in water. For example, it is known that maleic anhydride and dimethyl sulfate are both hydrolyed to their parent acids (i.e., maleic and sulfuric acid respectively). However, it is also known that maleic anhydride is relatively persistent because it hydrolizes and biodegrades slowly and hydrolysis of dimethyl sulfate is rapid only above 18 °C.

EPA is also proposing to eliminate the requirement to test for Appendix VIII compounds for which approved analytical methods are not available and therefore have not been included in SW–846. With the proposed addition to SW–846 of the sampling and analytical procedures discussed in section B, the Agency has compiled a list of methods for all Appendix VIII constituents except for those listed in Table VI. Although analytical methods have been identified in the literature for a few of

[4] Precision and accuracy of polarographic determinations are on the order of ±2% for most analyses.

the compounds on Table VI (or compounds which are chemically similar) the Agency feels that no method can be recommended with any confidence at this time. For example, some references have been found for the spectrophotometric determination of pyrrolizidine alkaloids, but EPA feels it cannot recommend these methods for the determination of lasiocarpine (a pyrrolizidine alkaloid) since the referenced method is not applicable to environmental testing. For several compounds on Table VI no reference to an analysis method could be found.

Table V.—Appendix VIII Compounds Which are Unstable in Water

Acetyl Chloride
Aluminum Phosphide
Bis (Chloromethyl) ether
Carbon Oxyfluoride
Dimethyl Carbamoylchloride
Fluorine
Hydrogen Fluoride
Methyl Chlorocarbonate
Methyl Isocyanate
Nitrogen Dioxide
Phosgene
Toluene Diisocyanate
Zinc Phosphide

Table VI.—Appendix VIII Compounds Without Analytical Methods

Cacasin
Ethylenebisdithiocarbamic acid
2-Fluoroacetamide
Iron Dextran
Lasocarpine
Mustard Gas
Nitrogen Mustard, N-Oxide and HCl salts
Nitrogen Mustard, and HCl salts
Nitric Oxide
Phosphine

Since the compounds listed in Tables V and VI are either unstable or do not have analytical methods, the Agency feels it is unreasonable to require owners or operators of hazardous waste facilities to test for them. As methods become available for the compounds on Table VI, EPA will pursue the normal regulatory procedures to include them in SW–846; owners and operators would then need to monitor for them after their formal adoption.

D. Use of Screening Tests

In the preceding sections, EPA has proposed to make SW–846 mandatory for Subtitle C testing, to include additional methods in SW–846, and to eliminate the requirement to test for certain Appendix VIII compounds. While these proposals will do much to reduce uncertainty for hazardous wastes facilities and alleviate the need to design, develop, and validate acceptable testing methods, a substantial number of tests and still required under Subtitle C.

EPA believes that while it is necessary under compliance monitoring for the owner or operator to determine whether any Appendix VIII compounds are present in the ground water, it may not be necessary for owners or operators to test specifically for each compound in Appendix VIII. The Agency believes that it is acceptable for an owner or operator to limit the amount of testing by conducting tests which will show that certain classes of Appendix VIII constituents are not present. For example, if an owner or operator tested the ground water for the presence of halogen by using a TOX analytical method and found no halogens present, he should be able to eliminate 112 Appendix VIII compounds from further consideration, since these all contain halogens. If, however, contamination was detected, then he should be required to conduct further tests to determine the presence of the 112 Appendix VIII compounds containing halogen. A literal reading of EPA's current regulations does not allow for this approach. Specifically, the regulations call for monitoring of each hazardous constituent.

EPA, therefore, is proposing today to permit the use of individual SW–846 methods as screening procedures to make determinations for purposes of compliance monitoring of whether a particular group or class of Appendix VIII constituents is present in the ground water. If no constituent of the class being tested for is detected, then individual tests to determine the concentration of each constituent in the class do not need to be conducted. This objective is achieved in today's proposed rule by amendments to §§ 264.98(h)(2), 264.99(f) and 270.14(c)(4)(ii). Specifically these amendments remove regulatory language indicating that owners or operators must monitor for "all" or "each" constituent on Appendix VIII. In its stead EPA is proposing a requirement that the owner or operator determine whether constituents identified in Appendix VIII are present and, if so, at what concentrations. The intent of this language is to provide sufficient flexibility in the regulations to allow for screening of classes of Appendix VIII constituents.

It should be emphasized that screening protocols will only be allowed (or accepted in the case of permit applications) in those situations where an applicant can demonstrate to the Agency's satisfaction that the specific procedure being suggested is technically able to determine the presence in ground water of any one of the constituents of the class being tested for. The advantage of screening tests is that they respond to a class or classes of compounds, permitting testing for large numbers of compounds at once. This type of approach would only be useful, however, when there is a significant likelihood that certain compound classes *are not present.*

E. Hierarchical Analysis Protocol

1. Explanation of Hierarchical Analysis Protocol

As the final part of today's rulemaking, EPA is seeking public comment on a Hierarchical Analysis Protocol, which would provide a more sophisticated method for screening for Appendix VIII constituents than the simple screening methods mentioned in the preceding section D. Demonstration that a compound or class of compounds is not present in ground water can be a relatively simple matter depending on the particular compounds and classes. However, a more difficult problem is to configure SW–846 test procedures so as to: (1) Be selective for all Appendix VIII constituents, (2) quickly focus attention on Appendix VIII constituents actually present, (3) not require highly sophisticated instrumentation, (4) be relatively inexpensive, and (5) offer good sensitivity. With these objectives in mind, EPA has formulated the Hierarchical Analysis Protocol (HAP) that is presented in Figure 1.

The HAP has been informally reviewed by EPA's Office of Research and Development, the Chemical Manufacturers Association, the American Petroleum Institute, and other interested members of the scientific community. Comments received generally indicate that hierarchical type analysis procedures can be used to eliminate groups of Appendix VIII constituents in ground-water samples. Commenters have raised concerns, however, with respect to the specific tests in the HAP or on their configuration within the the hierarchy.

EPA is proposing the HAP today; it is described in more detail below. It is the Agency's intention that the following presentation serve as basis for discussion on analysis procedures and methods that can be used to meet the objectives stated. For this reason EPA is today requesting comments on the concept of the HAP approach and the alternatives to it detailed below. The following paragraphs briefly describe how the HAP is configured and how the individual tests can be used to eliminate Appendix VIII constituents in ground water samples.

The first part of the HAP concept is straightforward and utilizes existing methodology. The method numbers refer to methods currently contained in the

manual "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW–846) or which are part of this proposal. Tests for metals, cyanides, sulfides, and organic halides may be done in any order since the path of the HAP does not depend on the order the tests are performed.

Method 3570 begins a simple organic screening which utilizes three basic properties. These are the ability of aromatic compounds to absorb ultraviolet (UV) or visible (VIS) radiation; the ability of thermionic detectors (N/P) to selectively detect nitrogen or phosphorus-containing compounds; and the fact that lithium aluminum hydride will convert most organic functional groups to alcohols or amines which can be easily derivitized to form compounds which are UV/VIS active.

A brief description of each method used in the HAP is included in Figure 1. Tables VII through XV show which compounds from Appendix VIII are eliminated in each step of the procedure. Each table (VII–XV) defines a class of compounds that may be eliminated from further review by a single test.

Each method contains an explanation of the pass/fail or high/low criteria used in the HAP. Since these criteria are critical to the operation of the HAP they are discussed in the following paragraphs of this section.

Table VII.—Metals

Aluminum phosphide
Antimony and compounds, N.O.S.
Arsenic and compounds, N.O.S.
Arsenic acid
Arsenic pentoxide
Arsenic trioxide
Barium and compounds, N.O.S.
Barium cyanide
Benezenearsenoic acid
Beryllium and compounds, N.O.S.
Cadmium and compounds, N.O.S.
Calcium chromate
Chromium and compounds, N.O.S.
Copper cyanide
Cyanides (soluble salts and complexes), N.O.S.
Dichlorophenylarsine
Diethylarsine
Hydroxydimethylarsine oxide
Iron dextran
Lead and compounds, N.O.S.
Lead acetate
Lead phosphate
Lead subacetate
Mercury fulminate
Mercury and compounds, N.O.S.
Nickel and compounds, N.O.S.
Nickel carbonyl
Nickel cyanide

Table VII.—Metals—Continued

Osmium tetroxide
Phenylmercury acetate
Potassium silver cyanide
Selenious acid
Selenium and compounds, N.O.S.
Selenium sulfide
Selenourea
Silver and compounds, N.O.S.
Silver cyanide
Strontium sulfide
Tetraethyl lead
Thallium and compounds, N.O.S.
Thallic oxide
Thallium (I) acetate
Thallium (I) carbonate
Thallium (I) chloride
Thallium (I) nitrate
Thallium selenite
Thallium (I) sulfate
Vanadic acid, ammonium salt
Vanadium pentoxide
Zinc cyanide
Zinc phosphide

Table VIII.—Cyanides

Barium cyanide
Calcium cyanide
Copper cyanide
Cyanides (soluble salts and complexes), N.O.S.
Cyanogen
Cyanogen bromide
Cyanogen chloride
Hydrocyanic acid
Nickel cyanide
Potassium cyanide
Potasium silver cyanide
Silver cyanide
Sodium cyanide
Zinc cyanide

Table IX.—Volatile Halogenated Organics

Bis(2-chloroethoxy)methane
Bis(2-chloroethyl)ether
Bis(2-chloroisopropyl)ether
Bis(chloromethly)ether
Bromoacetone
Bromomethane
Chloral
Chlorinated benzenes, N.O.S.
Chlorinated ethanes, N.O.S.
Chlorinated fluorocarbons, N.O.S.
Chloroalkyl ethers, N.O.S.
Chlorobenzene
1-Chloro-2,3-epoxypropane
2-Chloroethyl vinyl ether
Chloroform
Chloromethane
Chloromethyl methyl ether
1,2-Dibromo-3-chloropropane
1,2-Dibromoethane
Dibromomethane
1,4-Dichloro-2-butene
Dichlorofluoromethane
1,1-Dichloroethane
1,2-Dichloroethane
trans-1,2-Dichloroethene
cis-1,2-Dichloroethene
1,1-Dichloroethylene
Dichloromethane
Dichloropropane, N.O.S.
1,2-Dichloropropane
Dichloropropene, N.O.S.
1,3-Dichloropropene
Halomethane, N.O.S.
Hexachloroethane

Table IX.—Volatile Halogenated Organics—Continued

Hexachloropropene
Iodomethane
Tetrachloroethane, N.O.S.
1,1,1,2-Tetrachloroethane
1,1,2,2-Tetrachloroethane
Tetrachloroethane, N.O.S.
Tetrachloromethane
Tribromomethane
1,1,1-Trichloroethane
1,1,2-Trichloroethane
Trichloroethene
Trichloromonofluoromethane
Trichloropropane, N.O.S.
1,2,3-Trichloropropane
Vinyl chloride

Table X.—Semi-volatile Halogenated Organics

Aldrin
Aramite
Benxotrichloride
Benzyl chloride
N,N-Bis(2-chloroethyl)-2-napthylamine
4-Bromophenyl phenyl ether
Chlordane
Chlorinated benzenes, N.O.S.
Chlorinated naphthalene, N.O.S.
Chlorinated phenol, N.O.S.
Chloroacetaldehyde
Chloroalkyl ethers, N.O.S.
Chlorobenzilate
p-Chloro-m-cresol
2-Chlorophenol
3-Chloropropionitrile
Cyclophosphamide
1,1-Dichloro-2,2-bis(4-chlorophenyl)ethane
1,1-Dichloro-2,2-bis(4-chlorophenyl)ethylene
Dichloromethylbenzene
1,1,1-Trichloro-2,2-bis(p-chlorophenyl)ethane
Diallate
o-Dichlorobenzene
M-Dichlorobenzene
p-Dichlorobenzene
Dichlorobenzene, N.O.S.
3,3'-Dichlorobenzidine
2,4-Dichlorophenol
2,6-Dichlorophenol
2,4-Dichlorophenoxyacetic acid, salts and esters
Dichloropropanol, N.O.S.
Dieldrin
Endosulfan
Endrin and metabolites
Heptachlor
Heptachlor epoxide
Hexachlorobenzene
Hexachlorobutadiene
Hexachlorocyclohexane (all isomers)
Hexachlorocyclopentadiene
1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo,endo-dimethanonaphthalene
Hexachlorophene
Kepone
Methoxychlor
Methylchlorocarbonate
4,4'-Methylenebis(2-chloroaniline)
Pentachlorobenzene
Pentachlorophenol
Polychlorinated biphenyls, N.O.S.
Pronamide
1,3-Propane sulfone
1,2,4,5-Tetrachlorobenzene
2,3,7,8-Tetrachlorodibenzo-p-dioxin
2,3,4,6-Tetrachlorophenol
Toxaphene
1,2,4-Trichlorobenzene
Trichloromethanethiol

Table X.—Semi-volatile Halogenated Organics—Continued

2,4,5-Trichlorophenol
2,4,6-Trichlorophenol
2,4,5-Trichlorophenoxyacetic acid
2,4,5-Trichlorophenoxypropionic acid
Tris(2-3-dibromopropyl)phosphate

Table XI.—UV Active, Non-polar, Semi-volatile Organics

Benz[c]acridine
Benz[a]anthracene
Benzene
Benzene, dichloromethyl-
Benzo(b)fluoranthene
Benzo(j)fluoranthene
Benzo(a)pyrene
Benzotrichloride
Benzyl chloride
4-Bromophenyl phenyl ether
Chlorinated benzenes, N.O.S.
2-Chloronaphthalene
Chrysene
1,1-Dichloro-2,2-bis(4-chlorophenyl)ethane
1,1-Dichloro-2,2-bis(4-chlorophenyl)ethylene
1,1,1-Trichloro-2,2-bis(p-chlorophenyl)ethane
Dibenz(a,h)acridine
Dibenz(a,j)acridine
Dibenz(a,h)anthracene
7H-Dibenzo(c,g)carbazole
Dibenzo(a,e)pyrene
Dibenzo(a,h)pyrene
Dibenzo(a,i)pyrene
o-Dichlorobenzene
m-Dichlorobenzene
p-Dichlorobenzene
Dichlorobenzene, N.O.S.
7,12-Dimethylbenz(a)anthracene
Fluoranthene
Heptachlor
Hexachlorobutadiene
Hexachlorocyclopentadiene
Hexachlorophene
Ideno(1,2,3-cd)pyrene
Methoxychlor
3-Methylocholanthrene
Naphthalene
Polychlorinated biphenyls, N.O.S.
2,3,7,8-Tetrachlorodibenzo-p-dioxin

Table XII.—UV Active, Polar, Semi-volatile Organics

Acetophenone
3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin, and salts.
2-Acetylaminofluorene
4-Aminobiphenyl
5-(Aminomethyl)-3-isoxazolol
Amitrole
Aniline
Aramite
Auramine
Benzenethiol
Benzidine
p-Benzoquinone
N,N-Bis(2-chloroethyl)-2-napthylamine
Bis(2-ethylhexyl) phthalate
Brucine
Butyl benzyl phthalate
2-sec-Butyl-2,4-dinitrophenol
Chlorambucil
p-Chloroaniline
Chlorobenzilate

Table XII.—UV Active, Polar, Semi-volatile Organics—Continued

p-Chloro-m-cresol
2-Chlorophenol
Citrus red No. 2
Coal tars
Creosote
Cresols
2-Cyclohexyl-4,6-dinitrophenol
Daunomycin
Diallate
Di-n-butyl phthalate
3,3'-Dichlorobenzidine
2,4-Dichlorophenol
2,6-Dichlorophenol
2,4-Dichlorophenoxyacetic acid, salts and esters
O,O-Diethylphosphoric acid, O-p-nitrophenyl ester
Diethyl phthalate
Diethylstilbesterol
Dihydrosafrole
3,4-Dihydroxy-alpha-(methylamino)methyl benzyl alcohol.
3,3'Dimethoxybenzidine
p-Dimethylaminoazobenzene
3,3'-Dimethylbenzidine
alpha,alpha-Dimethylphenethylamine
2,4-Dimethylphenol
Dimethyl phthalate
Dinitrobenzene, N.O.S.
4,6-Dinitro-o-cresol and salts
2,4-Dinitrophenol
2,4-Dinitrotoluene
2,6-Dinitrotoluene
Di-n-octyl phthalate
Diphenylamine
1,2-Diphenylhydrazine
Isosafrole
Maleic hydrazide
Methapyrilene
4,4'-Methylenebis(2-chloroaniline)
Methyl parathion
Mitomycin C
1,4-Naphthoquinone
1-Naphthylamine
2-Naphthylamine
Nicotine and salts.
p-Nitroaniline
Nitrobenzene
4-Nitrophenol
Parathion
Pentachloronitrobenzene
Pentachlorophenol
Phenacetin
Phenylenediamine
N-Phenylthiourea
Phosphorothioic acid, O,O-dimethyl O-(p((dimethylamino)-sulfonyl) phenyl) ester
Phthalic acid esters, N.O.S.
Phthalic anhydride
2-Picoline
Propylthiouracil
Pyridine
Reserpine
Resorcinol
Safrole
Strychnine and salts
Thioacetamide
2,4,5-Trichlorophenol
2,4,6-Trichlorophenol
2,4,5-Trichlorophenoxyacetic acid
2,4,5-Trichlorophenoxypropionic acid
sym-Trinitrobenzene
Trypan blue
Uracil mustard

Table XIII.—Nitrogen or Phosphorus Containing Non-polar, Semi-volatile Organics

Dibenz (a,h) acridine
Dibenz (a,j) acridine

Table XIII.—Nitrogen or Phosphorus Containing Non-polar, Semi-volatile Organics—Continued

7H-Dibenzo(c,g)carbazole

Table XIV.—Nitrogen or Phosphorus Containing Polar, Semi-volatile Organics

1-Acetyl-2-thiourea
4-Aminobiphenyl
5-(Aminomethyl)-3-isoxaxolol
Amitrole
Aniline
Auramine
Benzidine
N,N-Bis(2-chloroethyl)-2-naphthylamine
Brucine
2-sec-Butyl-2,4-dinitrophenol
3-Chloropropionitrile
2-Cyclohexyl-4,6-dinitrophenol
Cyclophosphamide
Diallate
3,3'-Dichlorobenzidine
N,N-Diethylhydrazine
O,O-Diethyl O-2-pyrazinyl phosphorothioate
Dimethoate
3,3'-Dimethoxybenzidine
p-Dimethylaminoazobenzene
3,3'-Dimethylbenzidine
1,1-Dimethylhydrazine
1,2-Dimethylhydrazine
3,3-Dimethyl-1-(methylthio)-2-butanone
alpha,alpha-Dimethylphenethylamine
Dinitrobenzene, N.O.S.
4,6-Dinitro-o-cresol and salts
2,4-Dinitrophenol
2,4-Dinitrotoluene
2,6-Dinitrotoluene
Diphenylamine
1,2-Diphenylhydrazine
Di-n-propylnitrosamine
2,4-Dithiobiuret
Ethyl carbamate
Ethyl cyanide
Ethylenimine
Ethylenethiourea
Hydrazine
Maleic hydrazide
Malononitrile
Methapyrilene
Methomyl
2-Methylaziridine
4,4'-Methylenebis(2-chloroaniline)
2-Methyllactonitrile
4,4'-Methylenebis(2-chloroaniline)
2-Methyllactonitrile
2-Methyl-2-(methylthio)propionaldehyde-o-(metrhyl carbonyl) oxime
N-Methyl-N'-nitro-N-Nitrosoguanidine
Methyl parathion
Methylthiouracil
1-Naphthylamine
2-Naphylamine
2-Naphthyl-2-thiourea
Nicotine and salts
p-Nitroaniline
Nitrobenzene
Nitroglycerin
4-Nitrophenol
4-Nitroquinoline-1-oxide
Nitrosamine, N.O.S.
N-Nitrosodi-n-butylamine
N-Nitrosodiethanolamine
N-Nitrosodiethylamine

Table XIV.—Nitrogen or Phosphorus Containing Polar, Semi-volatile Organics—Continued

N-Nitrosodimethylamine
N-Nitroso-N-ethylurea
N-Nitrosomethylethylamine
N-Nitroso-N-methylurea
N-Nitroso-N-methylurethane
N-Nitrosomethylvinylamine
N-Nitrosomorpholine
N-Nitrosonornicotine
N-Nitrosopiperidine
Nitrosopyrrolidine
N-Nitrososarcosine
5-Nitro-o-toluidine
Octamethylpyrophosphoramide
Parathion
Pentachloronitrobenzene
Phenacetin
Phenylenediamine
2-Picoline
Pronamide
1,3-Propane sultone
n-Propylamine
Propylthiouracil
Saccharin and salts
Toluenediamine
o-Toluidine hydrochloride
Toluene diisocyanate
Tris(1-azridinyl) phosphine sulfide
O,O-Diethyl S-methyl ester of phosphorodithioic acid
O,O-Diethylphosphoric acid, O-p-nitrophenyl ester
Diisopropylfluorophosphate
Disulfoton
Hexaethyltetraphosphate
Octamethylpyrophosphoramide
Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl]ester
Phosphorothioic acid, O,O-dimethyl O-(p-[(dimethylamino)-sulfonyl]phenyl]ester
Tetraethyldithiopyrophosphate
Tetraethypyrophosphate
O,O,O-Triethylphosphorothioate
Tris(2,3-dibromopropyl) phosphate

Table XV.—Non-halogenated, Volatile Organics

Acetonitrile
Acrolein
Acrylamide
1,2,3,4-Diepoxybutane
*1,4-Dioxane
Ethylene oxide
Formaldehyde
Glycidaldehyde
Isobutyl alcohol
Methanethiol
Methyl ethyl ketone
Paraldehyde

*1,4-Dioxane cannot be eliminated by Method 8630.

Table XVI.—Non-halogenated, Semi-volatile Organics

Aflatoxins
Allyl alcohol
Azaserine
2-Butanone peroxide
Crotonaldehyde
Ethyl methacrylate
Ethyl methanesulfonate
Fluoroacetic acid
Formic acid
Maleic anhydride
Methyl acetonitrile
Methyl methacrylate
Methyl methanesulfonate
7-Oxabicyclo[2.2.1] heptane-2,3-dicarboxylic acid
Phenol

Table XVI.—Non-halogenated, Semi-volatile Organics—Continued

2-Propyl-1-ol
Streptozotocin
Tetranitromethane
Thiosemicarbazide
Thiourea

In the case of Method 9020 (TOX) the low value would be the method detection limit, which is about 5 ppb for routine ground-water samples. A value greater than the detection limit would require that Method 8010 be performed. Results of Method 8010 would then be compared to that found with the TOX test. If Method 8010 accounts for 85% or greater of the TOX reading and the difference between the two methods is not greater than 20 ppb then no further testing for halogenated compounds is necessary.

The Pass/Fail criteria used in the UV/VIS Method 8610 is straightforward. Ground-water samples are analyzed by Method 8610 by using an upgradient sample in the reference cell of the spectrophotometer. This insures that the contribution of any indigenous UV/VIS active compounds present in the ground water will be subtracted out. If the analyst obtains an absorbance of greater than .005 (99% transmittance) between 220 nm and 310 nm the sample will fail the UV/VIS test.

The Pass/Fail criteria employed in Method 8620 are somewhat more complicated and involves 3 cases. The first case, which should be encountered most frequently, results when no peaks (compounds) are detected in the upgradient sample. In this instance any peaks found in the downgradient sample will constitute a failed test. The second case is encountered when the same peaks are present in both the upgradient and downgradient samples. In this case, the analyst will compare the areas (or peak heights) from both chromatograms. If any downgradient peak is greater than 2 times the upgradient, the sample fails. The final case will be when peaks are detected both in the upgradient and downgradient but the downgradient sample contains more peaks. This situation also indicates at failure. Instrument sensitivity for Mehod 8620 is set by injecting 0.8 ng of parathion and adjusting the attenuation for half-scale deflection (peaks less than 5% full scale may be ignored).

EPA has formulated the HAP by applying inexpensive readily available methods, and by codifying other simple methology as necessary to determine whether Appendix VIII constitutents are present in ground water at relatively low levels (the detection limits using the methods in the HAP are on the order of 10 ppb). This scheme is arranged to eliminate large classes of compounds at a time using simple tests and using the results in a logical decision matrix to determine whether additional testing is necessary.

EPA believes that hazardous waste facilities which accept a small number of similar type wastes will realize the major economic benefits from the HAP. The HAP will only be cost effective if most of the tests in the scheme result in elimination of classes of compounds. The HAP will probably not be useful to facilities that are accepting many types of wastes because the owner or operator may find that a detailed analysis for Appendix VIII compounds is still necessary after using the HAP.

2. Alternative Methods and Approaches

A number of other approaches for analyzing ground water samples for Appendix VIII constituents have been identified. These approaches generally involve the use of sophisticated instrumentation which will increase testing costs. However, these approaches have the advantage of providing information that can be used to screen for, identify, and in some cases quantitate specific Appendix VIII components. Although there are many techniques that can be used in this way, the following discussion will focus on only three. These techniques were selected for discussion because of the unique type of information they provide, their anticipated utility, and the possibility of using them to replace screening methods described in the HAP.

a. *Mass Spectrometric Techniques.* It is generally recognized that combined Gas Chromatography/Mass Spectrometry (GC/MS) is probably the single most useful tool for organic compound analysis. The advent of high resolution gas chromatographic columns and sophisticated data systems used in conjunction with mass spectrometers has permitted the analytical chemist to explore very complex mixtures of compounds. Today GC/MS is routinely used to identify and determine the concentration of hundreds of organic compounds in a single analysis.

Of the 375 compounds or materials listed on Appendix VIII, 58 can be analyzed by testing for specific metals, cyanides, and sulfides. EPA has determined that of the 317 Appendix VIII components left, 272 will be

amenable to some form of GC/MS. The 45 remaining compounds are either unstable (12), have no analytical method (10), or are so polar that they cannot be gas chromatographed (23). [Prior to mass spectrometric analysis a compound must be in the gas phase. Very polar compounds cannot be put into the gas phase by normal methods and therefore cannot be analyzed by gas chromatography or GC/MS.]

Recently, a new mass spectrometric technique has been developed by Dr. Marvin Vestal of the University of Houston which shows great promise for the MS analysis of very polar compounds. (14) This technique, called "Thermospray," employs a liquid chromatograph coupled through a specially designed direct liquid interface to the mass spectrometer. This new interface overcomes the problem of gas phase introduction of polar compounds. Thermospray has recently been marketed by both Vestec (Houston, TX) and Finnigan/MAT (San Jose, CA), and can be easily added to existing GC/MS systems for about $15,000. The great advantage of Thermospray is its ability to analyze very polar compounds and materials that previously have been unanalyzable by GC/MS. In addition, Thermospray can also be used to analyze for many compounds that are analyzable by gas chromatography. The result is that the two techniques, GC/MS and LC/Thermospray/MS, are complementary and may give the analytical chemist the ability to screen for almost the entire gambit of compounds and materials listed on Appendix VIII. EPA has contracted with Research Triangle Institute to evaluate LC/Thermospray/MS for a variety of Appendix VIII constituents. Initial results are extremely encouraging and many useful spectra have been obtained. Eventually a GC/MS and LC/Thermospray/MS screen may be the only tests necessary for a complete qualitative and quantitative analysis for organic Appendix VIII constituents in ground-water samples.

b. *Fourier Transform Infrared Spectroscopy.* A potentially viable screening method utilizes information obtained from a Fourier Transform Infrared Spectrometer (FTIR). FTIR is sensitive, easy to use, and will provide a detection limit of about 10 ppb for most compounds (FTIR requires about 1 ug of sample and assuming extraction of a 100 ml sample of ground water, one calculates a detection limit of about 10 ppb for most compounds). The analysis of a sample would involve the usual extraction and concentration steps followed by FTIR analysis. The information obtained from the infrared spectrum will indicate the presence or absence of certain organic functional groups. For example, if the resulting IR spectrum shows no absorption in the region from 1750 to 1650 cm^{-1} then the analyst would conclude that no carbonyl groups are present in the sample. This would eliminate about 56 compounds from Appendix VIII. Likewise if the spectrum showed no absorption in the region from 800 to 600 cm^{-1} then no chlorinated compounds can be present, etc.

The FTIR spectrum can be used as a screening procedure in conjunction with selective sample extractions or fractionation. It is possible to subdivide a sample extract into a number of fractions that can be analyzed individually by FTIR. This approach insures that only compounds or materials with particular functional groups are in a specific fraction and will help eliminate interferences. The overall screening procedure using FTIR then would be to analyze each fraction for the particular functional group specific to that fraction and thereby eliminate classes of Appendix VIII compounds in a sequential manner. This approach will provide an indication of functional groups in the sample and provide a clearer picture of particular Appendix VIII components present.

This type of an approach has been proposed for certain types of analyses by EPA's Office of Research and Development and is discussed at some length in an EPA publication.(15)

c. *Microwave Plasma Detector.* A helium microwave plasma can be used for the excitation and subsequent detection of nonmetallic elements in much the same way as an argon radio frequency plasma can be used for the detection and quantitation of metals.(16,17) Both types of plasma excite atoms from their ground state to higher energy levels. Excited atoms eventually decay back their ground state with the concomitant emission of a photon of light at a specific wave length. The wave length and emission intensity are used to detect and quantitate each element.

Helium microwave plasma instruments can be used for the detection and quantitation of the following elements:

Carbon
Hydrogen
Oxygen
Nitrogen
Fluorine
Chlorine
Bromine
Iodine
Sulfur
Phosphorus

Ground-water detection limits for these elements when present in organic compounds can be estimated by considering a 100 ml sample which is extracted and the extract introduced into the plasma over a 5 second period. Using detection limit values reported by Bienner (18), all of the elements listed can be determined at a level of 0.2 ppb.

As with FTIR and the HAP, selective extractions and fractionations can be used in conjunction with the microwave plasma to provide more specific compound information.

d. *Comments.* From a theoretical standpoint, the HAP should be able to quickly determine the absence of Appendix VIII compounds in ground water. However, actual laboratory investigations need to be completed prior to making any final judgments. EPA's Office of Research and Development (ORD) is currently undertaking method evaluations using the methods provided in the HAP.

The primary purpose for discussing the broader application HAP in this notice is to solicit public comment on a number of aspects of the procedure and, more importantly, to obtain comments on the more comprehensive and sophisticated approach together with the alternative methodologies. Specifically the Agency is soliciting comments that will address the following questions:

A. Is the concept of a hierarchical analysis protocol applicable to the analysis of ground water samples?

B. Will the hierarchical approach provide adequate ground-water protection while lowering overall testing costs?

C. Are detection limits for the methods adequate?

D. Can one or more of the new techniques discussed in this notice be used to provide cost effective ground-water protection?

E. What alternative tests should be considered for inclusion in the HAP?

F. References

1. American Society for Testing and Materials, 1981 Annual Book of ASTM Standards, Part 32, Philadelphia, PA (1981).

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3. Standard Methods for the Examination of Water and Wastewater, 15th Edition. American Public Health Association, American Waterworks Association, and the Water Pollution Control Federation, Washington D.C. (1981)

4. Telliard, W., and Maxfield, R., Metals Methods Evaluation; Inductively Coupled Plasma and Atomic Absorption Analyses of Mining Effluents, Prepared under EPA contracts 68–01–5767 and 68–01–5948, (March 1981)

5. Application for ICAP Approval, EPA Region VII, (September 1979). This document is available from the RCRA Docket.

6. Lowrey, J., Proceedings of the American Chemical Society, 185th National Meeting, Las Vegas, NV, 22, 602 (1982).

7. Harris, J.C., Larsen, D.J., Rechsteiner, E.C., and Thurn, K.E., Little, A.D., Inc., EPA 68–02–3111 (February 1982).

8. Guidance Manual for Hazardous Waste Incinerator Permits, U.S. Environmental Protection Agency, Office of Solid Waste and MITRE Corporation (March 1983).

9. Chapman, H.D., Cation-Exchange Capacity in C.A. Black(ed) Methods of Soil Analysis, American Society of Agronomy Madison, WI, Part 2 (1965).

10. Benson, S.W., The Foundations of Chemical Kinetics, McGraw-Hill Book Company, New York, NY (1960).

11. RCRA Permit Writers Manual, Groundwater Protection, 40 CFR Part 264 Subpart F., Prepared under EPA contract 68–01–6464 (October 1983).

12. Hazardous Waste Land Treatment, Municipal Environmental Research Laboratory, Cincinnati, Ohio, SW–874, Prepared under EPA contracts 68–03–2940 and 68–03–2943 (April 1983).

13. 40 CFR Part 60, Appendix A.

14. Blakey, C.R. and Vestal, M.L., Analytical Chemistry, *55* 750 (1983).

15. IERL-RTP Procedures Manual: Level 1 Environmental Assessment, EPA–600/7–78–201.

16. Bache, C.A. and Lisk, D.J., Analytical Chemistry, *39* 786 (1967).

17. McLean, W.R., Stanton, P.D., and Penketh, G.E., Analyst *98* 432 (1973).

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Part III

A. Regulatory Impact

Executive Order 12291 requires that the regulatory impact of potential Agency actions be evaluated as part of the process of developing regulations. Such an assessment consists of:

• A description of the potential benefits of the rule, including any beneficial effects that cannot be quantified in monetary terms (Section 3(d)(2)); and

• A description of the potential costs of the rule, including any adverse effects that cannot be qualified in monetary terms (Section 3(d)(3)).

In addition, Executive Order 12291 requires that regulatory agencies prepare a Regulatory Impact Analysis in connection with major rules (Section 3). Major rules are defined in Section 1(b) as those which are likely to result in:

1. An annual effect on the economy of $100 million or more;

2. A major increase in costs or prices for consumers or individual industries; or

3. Significant adverse effects on competition, employment, investment, productivity, innovation, or international trade.

A review of the comments filed in response to the interim final rules of July 26, 1982 indicated that the consensus among commentors was that there is significant confusion as to what constitutes full compliance with current requirements, since EPA has specified neither standard methods nor performance criteria to use in analysis of Appendix VIII constitutents. Consequently, a large segment of the regulated community will need to expend resources to determine appropriate testing methods. By specifying standard test methods EPA would reduce the uncertainties and resource costs to the regulated community.

A telephone survey of EPA and State permitting officials was conducted. These inquiries substantiated the view that the regulated community is confused as to what testing procedures should be used, and, if all Appendix VIII constituents have to be tested for. Most officials felt that a regulatory proposal specifying acceptable analytical methods, including screening procedures, would likely reduce uncertainty and cost to the regulated community.

Inquiries to the RCRA Hotline also indicated that there is significant confusion on the part of the regulated community, and standard test methods would reduce the bulk of this confusion. In particular, EPA received about 700 calls asking how to test for hazardous constituents given the lack of criteria in the regulations. Many callers also asked if it was really necessary to test for all the Appendix VIII constituents in all cases.

Available information suggests that the proposed rule does not constitute a major rule. The proposed rule eliminates 22 Appendix VIII substances from requirements for compliance and assessment monitoring. In addition, for those 353 substances which remain in Appendix VIII the regulatory proposal specifies acceptable testing methods. In contrast, the existing regulations (40 CFR 264) require testing for all 375 substances, but do not specify acceptable methods. Thus, the regulatory proposal both reduces the number of substances for which testing must be conducted and reduces the uncertainty as to which tests are appropriate for the remainder.

The available information data indicate that there will be no incremental compliance costs associated with the regulatory proposal. In assessing incremental compliance costs, we attempted to:

(1) Estimate the minimum costs of being in full compliance with the regulatory proposal;

(2) Estimate the costs associated with full compliance with the current standard (i.e., calculate the baseline); and

(3) Take the difference (either positive or negative) and attribute that difference to the regulatory proposal as either costs or savings.

To obtain an estimate of the cost of the proposed regualtory change, we contacted four major laboratories experienced in groundwater testings. These laboratories estimated per sample compliance costs from $2300 to $3100, with an average of $2700.

Estimating per sample costs associated with full compliance with the current standard (i.e., the baseline) was complicated by the facts that:

• Most candidate facilities have not yet submitted permit applications and therefore have no direct experience with compliance monitoring plans and their costs.

• As a result, testing laboratories have not had to design compliance monitoring testing programs, as there has not yet been any real demand.

• Acceptable testing methods currently do not exist for all of the Appendix VIII constituents.

Information collected from some of the more experienced testing laboratories indicates that the testing methods being proposed in this action are generally the same ones that they currently use for ground water monitoring. The reason for this is that the proposed methods are, in the main, based on the methodologies developed for use in testing industrial waste treatment facility effluents. Ground waters at hazardous wates facilities have many of the same attributes as treatment plant effluents and it is reasonable to expect that similar methods are indicated.

This suggests that the proposed analytical methods do not deviate from current practice at many of the major contract laboratories known to specialize in this area. Thus, there will be no incremental compliance costs associated with the methods proposed.

There could even be potential cost savings, due to the fact that development and validation testing would no longer be required for those constituents for which methods do not

currently exist. Estimates from testing laboratories and commentors to the interim final rules suggest that appropriate methods development, to conform with the current regulations, might cost at least $50,000 per laboratory, and could exceed $100,000.

Thus, under existing rules, laboratories would incur substantial research and development expenditures to develop acceptable methods for those constituents on Appendix VIII for which no methods exist. Depending on the number of laboratories willing to undertake such a research and development effort, the cost for the development and diffusion of acceptable methods could easily exceed $1 million.

This proposal carries with it the following benefits:

(1) Reduced uncertainty to the regulated community as to which testing methods will be acceptable;

(2) Improved guidance to EPA and State permitting officials in administering the RCRA permitting process and in establishing testing requirements under Subtitle C; and

(3) Improved uniformity in ground-water monitoring nationwide, thus ensuring ground-water monitoring data of acceptable quality.

These benefits have been documented based on the following sources:

- a review of the comments filed in response to the interim final rules of July 26, 1982;
- a telephone survey of EPA and State permitting officials; and
- an analysis of inquiries to the RCRA hotline.

At the present time, it is not possible to develop a confident estimate of the value of these benefits in dollars. However, such benefits would be achieved at a level of compliance costs which would not exceed the level of compliance costs under current rules. In fact, if under the current rules methods had to be developed for those constituents for which methods do not now exist, the regulatory proposal would result in cost savings.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5, U.S.C. 601 *et seq.*, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a Regulatory Flexibility Analysis which describes the impact of the rule on small entities (i.e., small business, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

As discussed above under Regulatory Impact, there are no incremental compliance costs associated with the regulatory proposal. This proposal will therefore generally have no adverse economic impact on small entities. Accordingly, I hereby certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities. This proposed regulation therefore does not require a Regulatory Flexibility Analysis.

C. Paperwork Reduction Act

This proposed rule does not contain any information collection requirements as described by provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

D. State Authority

Under Section 3006 of RCRA, EPA may authorize qualified States to administer and enforce their State hazardous waste management programs in lieu of EPA operating the Federal program in those States. Authorization, either interim or final, may be granted to State programs that regulate the identification, generation, transportation, or operation of facilities that treat, store, or dispose of hazardous waste.

Today's announcement proposes certain changes to the Federal hazardous waste management program. Upon authorization of the State program, EPA suspends operation within the State of those parts of the Federal program for which the State is authorized. States which have been granted final authorization will have to revise their programs to cover the requirements in today's announcement. Generally, these authorized State programs must be revised within one year of the date of promulgation of these standards, or within two years if the State must amend or enact a statute in order to make the required revision. (The process and schedule for State adoption of these regulations is described in the recent amendment to 40 CFR 271.21, published on May 22, 1984 at FR 21678.)

List of Subjects

40 CFR Part 260

Administrative practice and procedure, Hazardous materials, Waste treatment and disposal.

40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

40 CFR Part 264

Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal.

40 CFR Part 265

Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal, Water supply.

40 CFR Part 270

Administrative practice and procedure, Reporting and recordkeeping requirements, Hazardous materials, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

40 CFR Part 271

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

Dated: September 19, 1984.

William D. Ruckelshaus,

Administrator.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 260—[AMENDED]

1. The authority citation for Part 260 reads as follows:

Authority: Secs. 1006, 2002(a), 3001 through 3007, 3010, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, and 6974.

2. Section 260.1 is amended by inserting a new paragraph (b)(3) as follows, and by redesignating the existing paragraphs (b)(3), (b)(4), (b)(5), and (b)(6) as paragraphs (b)(4), (b)(5), (b)(6), and (b)(7) respectively:

§ 260.1 Purpose, scope, and applicability.

* * * * *

(b) * * *

(3) Section 260.4 requires the use of SW–846 test methods for sampling, testing and analytical procedures conducted pursuant to Parts 260 through 265 of this chapter.

* * * * *

3. Subpart A of Part 260 is amended by adding a new § 260.4 to read as follows:

Subpart A—General

§ 260.4 Mandatory use of SW–846 test methods.

(a) The sampling and analysis methods provided in EPA Publication "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," SW–846 and described in Appendix III of Part 261 of this chapter shall be used for all sampling, monitoring, analysis and testing required pursuant to Parts 260 through 265 of this chapter except where an equivalent method has been approved pursuant to § 260.21. Where methods contained in ground water sampling and analysis plans established in compliance with § 265.92 prior to the effective date of this rule do not comply with the requirements of SW–846, such methods may continue to be used provided that they are adequate to achieve the objectives of Subpart F of Part 265.

4. Section 260.11(a) is amended by changing the reference with respect to SW–846 to read as follows:

§ 260.11 References.

* * * * *

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Second Edition, 1982," EPA Publication SW–846. It is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, [GPO Catalog Number 055–002–81001–2] on a subscription basis, and future updates will automatically be mailed to subscribers.

* * * * *

5. Section 260.20 is amended by revising paragraph (a) to read as follows:

§ 260.20 General.

(a) Any person may petition the Administrator to modify or revoke any provision in Parts 260 through 265 of this chapter. This section sets forth general requirements which apply to all such petitions. Section 260.21 sets forth additional requirements for petitions to add a testing, sampling, or analytical method to EPA Publication "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," SW–846 as described in Appendix III of Part 261 of this chapter." Section 260.22 sets forth additional requirements for petitions to exclude a waste at a particular facility from § 261.3 of this chapter or the lists of hazardous wastes in Subpart D of Part 261.

* * * * *

6. Section 260.21 is amended by revising paragraphs (a) and (b)(3) to read as follows:

§ 260.21 Petitions for equivalent testing or analytical methods.

(a) Any person seeking to add a sampling, testing, or analytical method to EPA Publication "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," SW–846 as described in Appendix III of Part 261 of this Chapter may petition for a regulatory amendment under this section and § 260.20. To be successful, the person must demonstrate to the satisfaction of the Administrator that the proposed method is equal to or superior to the corresponding method prescribed in EPA Publication SW–846 in terms of its sensitivity, accuracy, and precision (i.e., reproducibility).

(b) * * *

(3) Comparative results obtained from using the proposed method with those obtained from using the relevant or corresponding methods prescribed in EPA Publication SW–846;

* * * * *

PART 261—[AMENDED]

7. The authority citation for Part 261 reads as follows:

Authority: Secs. 1006, 2002(a), 3001 and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

8. Section 261.20 is amended by revising paragraph (c) to read as follows and removing the "comment" paragraph:

§ 261.20 General.

* * * * *

(c) For purposes of this Subpart, the Administrator will consider a sample obtained using any of the applicable sampling methods specified in EPA Publication "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," (SW–846) as described in Appendix III of this Part to be a representative sample as defined in § 260.10 of this chapter.

9. Part 261, Appendix I is amended by removing the entire text following Roman numeral I and inserting in lieu thereof the bracketed word, "[reserved]".

10. The following compounds and methods are added to Table 1 of Appendix III of Part 261 in alphabetical order:

Appendix III—Chemical Analysis Test Methods

* * * * *

TABLE 1.—ANALYSIS METHODS FOR ORGANIC CHEMICALS CONTAINED IN SW–846

Compound	First edition method(s)	Second edition method(s)
3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin and salts.		8250 and 8320.
Acetophenone		8250.
2-Acetylaminofluorene		8250.
1-Acetyl-2-thiourea		8250 and 8330.
Aflatoxins		8250.
Aldrin		8250.
Allyl alcohol		8250.
4-Aminobiphenyl		8250.
6-Amino-1,1a,2,8,8a,8b-hexahydro-8-(hydroxymethly)8a-methoxy-5-methlycarbamate azirino(2',3':3,4)-pyrrolo-(1,2-a)indole-4,7-dione (ester) (Mitomycin C).		8320.
5-(Aminomethyl)-3-isoxazole		8250.
2-Amino-1-methylbenzene		8250
4-Amino-1-methylbenzene		8250.
Amitrole		8250.
Aniline		8250.
Aramite		8250.
Auramine		8250.
Azaserine		8330.
Benz[c]acridine		8250.
Benzenearsonic acid (Phenyl arsonic acid).		7060.
Benzene,dichloromethly-		8250.
Benzenethiol		8250.
Benzidine		8250.
Benzo[j]fluoranthene		8100 and 8250.
Benzoquinone		8250.
N,N-Bis(2-chloroethyl)-2-naphthylamine.		8250.
Bis(chloromethyl) ether		8010 and 8240.
Bis(2-ethylhexyl) phthalate		8060 and 8250.
Bromoacetone		8010 and 8240.
Bromomethane		8010 and 8240.
4-Bromophenyl phenyl ether		8250.
Brucine		8250.
2-Butanone peroxide		8250.
Butyl benzyl phthalate		8060 and 8250.
2-sec-Butyl-4,6-dinitrophenol		8040.
Chloral		8010 and 8240.
Chlorambucil		8320.
Chlorinated benzene		8010, 8020, 8240, and 8250.
Chlorinated ethane		8010 and 8240.
Chlorinated fluorocarbon		8010 and 8240.
Chlorinated naphthalene		8250.
Chlorinated phenol		8040 and 8250.
Chloroalkyl ether		8240 and 8250.
p-Chloroaniline		8250.
Chlorobenzilate		8250.
p-Chloro-m-cresol		8040 and 8250.
1-Chloro-2,3-epoxybutane		8010 and 8240.
2-Chloroethyl vinyl ether		8010 and 8240.
Chloromethyl methyl ether		8010 and 8240.
2-Chloronaphthalene		8250.
1-(o-Chlorophenyl)thiourea		8330.
3-Chloropropionitrile		8250.
Citrus red No. 2		8330.
Coal tars [2]		8240 and 8250.

TABLE 1.—ANALYSIS METHODS FOR ORGANIC CHEMICALS CONTAINED IN SW-846—Continued

Compound	First edition method(s)	Second edition method(s)
Crotonaldehyde		8330.
Cyanogen (Dicyanogen)		9010.
Cyanogen bromide		9010.
Cyanogen chloride		9010.
2-Cyclohexyl-4,6-dinitrophenol		8250.
Daunomycin		8320.
DDD [2,2-bis(p-chlorophenyl-1,1-dichloroethane].		8250.
DDE [2,2-bis(p-chlorophenyl-1,1-dichloroethylene].		8250.
DDT [1,1,1-trichloro-2,2-bis(p-chlorophenyl)ethane].		8250.
Diallate		8250.
Dibenz[a,h]acridine		8100 and 8250.
Dibenz[a,j]acridine		8100 and 8250.
Dibenz[a,h]anthracene (Dibenzo[a,h]anthracene).		8100 and 8250.
7H-Dibenzo[c,g]carbazole		8100 and 8250.
Dibenzo [a,e] pyrene		8100 and 8250.
Dibenzo [a,h] pyrene		8100 and 8250.
Dibenzo [a,i] pyrene		8100 and 8250.
1,2-Dibromo-3-chloropropane (DBCP).		8010 and 8240.
1,2-Dibromoethane		8010 and 8240.
Dibromomethane		8010 and 8240.
Di-n-butly phathalate		8060 and 8250.
3,3'-Dichlorobenzidene		8250.
1,4-Dichloro-2-butene		8010 and 8240.
Dichlorodifluoromethane		8010 and 8240.
1,2-trans-Dichloroethene		8240.
Dichloroethylene(s)		8240.
1,1-Dichloroethylene		8240.
Dichlorophenols		8040 and 8250.
2,6-Dichlorophenol		8040 and 8250.
Dichlorophenylarsine		7060.
Dichloropropane(s)		8010 and 8240.
1,2-Dichloropropane		8010 and 8240.
Dichloropropene(s)		8010 and 8240.
1,3-Dichloropropene		8010 and 8240.
Dieldrin		8250.
1,2:3,4-Diepoxybutane		8240.
Diethylarsine		7060.
O,O-Diethyl-S-methylester phosphorodithioic acid.		8250.
O,O-Diethylphosphoric acid, O-p-nitrophenyl ester.		8250.
Diethyl phthalate		8260 and 8250.
O,O-Diethyl-O-(2-pyrazinyl) phosphorothioate.		8250.
Dihydrosafrole		8250.
Diethylstilbestrol		8330.
3,4-Dihydroxy-alpha-((methylamino)methyl) benzyl alcohol.		8330.
Diisopropyl fluorophosphate (DFP).		8250.
Dimethoate		8140 and 8250.
3,3'-Dimethoxybenzided		8250.
p-Dimethylaminoazobenzene		8010 and 8250.
7,12-Dimethylbenz [a] anthracene.		8100 and 8250.
3,3'-Dimethylbenzidine		8250.
1,1-Dimethylhydrazine		8250.
1,2-Dimethylhydrazine		8250.
alpha, alpha-Dimethylphenethylamine.		8250.
Dimethyl phthalate		8250.

TABLE 1.—ANALYSIS METHODS FOR ORGANIC CHEMICALS CONTAINED IN SW-846—Continued

Compound	First edition method(s)	Second edition method(s)
Dimethyl sulfate		8250.
2,4-Dinitrophenol		8040 and 8250.
2,4-Dinitrotoluene		8090 and 8250.
2,6-Dinitrotoluene		8060 and 8250.
Di-n-octyl phthalate		8090 and 8250.
1,4-Dioxane		8240.
Diphenylamine		8250.
1,2-Diphenylhydrazine		8250.
Di-n-propylnitrosamine		8250.
Disulfoton		8140 and 8250.
Ethyl carbamate		8250.
Ethyl cyanide		8240.
2,4-Dithiobiuret		8250.
Endosulfan and metabolites		8250.
Ethyleneimine		8250.
Ethylene oxide		8240.
Ethylenethiourea		8250 and 8330.
Ethyl methacrylate		8250.
Ethyl methanesulfonate		8250.
Fluoranthene		8100 and 8250.
Fluoroacetic acid, sodium salt		8250.
Halomethane		8240.
Heptachlor epoxide (alpha, beta, or gamma isomers).		8250.
1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo,endo-dimethanonaphthalene.		8250.
Hexachlorophene		8250.
Hexachloropropene		8240.
Hexaethyltetraphosphate		8250.
Hydrazine		8250.
Indeno(1,2,3-cd)pyrene		8100 and 8250.
Iodomethane		8010 and 8240.
Isobutyl alcohol		8240.
Isosafrole		8250.
Kepone		8250.
Maleic hydrazide		8250.
Malononitrile		8240 and 8250.
Melphalan		8320.
Methacrylonitrile		8240.
Methanethiol		8240.
Methapyrilene		8250.
Methoxychlor		8080 and 8250.
2-Methylaziridine		8250.
3-Methylcholanthrene		8100 and 8250.
4,4'-Methylene-bis-(2-chloroaniline).		8250.
Methyl hydrazine		8240.
2-Methyllactonitrile		8250.
Methyl methacrylate		8250.
Methyl methanesulfonate		8250.
2-Methyl-2-(methylthio)-o-(methylcarbonyl)-propionaldhyde oxime.		8250.
N-Methyl-N'-nitro-N-nitrosoguenidine.		8250.
Methyl parathion		8140 and 8250.
Methylthiouracil		8250.
1-Naphthylamine		8250.
2-Naphthylamine		8250.
1-Naphthyl-2-thiourea		8330
Nicotine and salts		8250.
p-Nitroaniline		8250.
Nitroglycerine		8250.
4-Nitroquinoline-1-oxide		8250.
Nitrosamine		8250.
N-Nitrosodi-n-butylamine		8250.
N-Nitrosodiethanolamine		8250.
N-Nitrosodiethylamine		8250.
N-Nitrosodimethylamine		8250.
N-Nitroso-n-ethylurea		8250.
N-Nitrosomethylethylamine		8250.

TABLE 1.—ANALYSIS METHODS FOR ORGANIC CHEMICALS CONTAINED IN SW-846—Continued

Compound	First edition method(s)	Second edition method(s)
N-Nitroso-n-methylurea		8350 and 8330.
N-Nitroso-n-methylurethane		8250.
N-Nitrosomethylvinylamine		8250.
N-Nitrosomorpholine		8250.
N-Nitrosonornicotine		8250.
N-Nitrosopiperidine		8250.
N-Nitrosopyrrolidine		8250.
N-Nitrosoarcosine		8250.
5-Nitro-o-toluidine		8320.
Octamethylpyrophosphoramide.		8250.
Parathion		8140 and 8250.
Pentachlorobenzene		8250.
Pentachloroethane		8250.
Pentachloronitrobenzene		8250.
Phenacetin		8250.
Phenylenediamine		8250.
Phenylmercury acetate		7440 and 7441.
N-Phenylthiourea		8330.
Phosphorothioic acid, O,O-dimethyl ester, O-[p-((dimethylamino)sulfonyl)phenyl]ester.		8140 and 8250.
Phthalic acid esters		8060 and 8250.
Pronamide		8250.
1,3-Propane sultone		8250.
n-Propylamine		8250.
Propylthiouracil		8250.
2-Propyn-1-ol		8250.
Reserpine		8320.
Resorcinol		8250.
Saccharin		8250.
Safrole		8250.
Streptozotocin		8320.
Tetraethyldithiopyrophosphate		8250.
Tetraethyl lead		7420 and 7421.
Tetraethylpyrophosphate		8250.
Tetranitromethane		8240.
Thioacetamide		8330.
Thiosemicarbazide		8330.
Thiourea		8330.
Thiuram		8320.
2,4-Toluenediamine		8250.
2,6-Toluenediamine		8250.
3,4-Toluenediamine		8250.
o-Toluidine hydrochloride (as o-Toluidine).		8250.
Tribromomethane		8010 and 8240.
1,2,4-Trichlorobenzene		8020 and 8250.
Trichloromethanethiol		8250.
2,4,5-Trichlorophenoxyacetic acid.		8150.
1,2,3-Trichloropropane		8240.
O,O,O-Triethly phosphorothioate.		8250.
sym-Trinitrobenzene		8250.
Tris(1-azridinyl)phosphine sulfide.		8250.
Tris(2,3-dibromopropyl) phosphate.		8250.
Trypan blue		8330.
Uracil mustard		8250.

[2] Analyze for benzene, toluene, naphthalene, phenol, and cresol; if all these compounds are present then coal tar should be considered present.

* * * * *

11. Table 1. of Appendix III of Part 261 is amended by revising the entries for Formaldehyde and Methomyl as follows:

TABLE 1.—ANALYSIS METHODS FOR ORGANIC CHEMICALS CONTAINED IN SW-846

Compound	First ediction method(s)	Second edition method(s)
* * * * *		
Formaldehyde	8.01 and 8.24	8015, 8240, 8410, and 8411.
* * * * *		
Methomyl	8.32	8250 and 8320.
* * * * *		

12. Table 2 of Appendix III of Part 261 is revised to read as follows:

TABLE 2.—ANALYSIS METHODS FOR INORGANIC CHEMICALS CONTAINED IN SW-846

Compound	First edition method(s)	Second edition method(s)
Antimony	8.50	6010, 7040, and 7041.
Arsenic	8.51	6010, 7060, and 7061.
Barium	8.52	6010, 7080, and 7081.
Beryllium		6010, 7090, and 7091.
Cadmium	8.53	6010, 7090, and 7091.
Chromium	8.54	6010, 7190, and 7191.
Chromium: Hexavalent	8.545, 8.546 and 8.547.	7195, 7196, 7197, and 7198.
Copper		6010, 7210, and 7211.
Iron		6010, 7380, and 7381.
Lead	8.56	6010, 7420, and 7421.
Manganese		6010, 7460, and 7461.
Mercury	8.57	7470 and 7471.
Nickel	8.58	6010, 7520, and 7521.
Osmium		7550 and 7551.
Selenium	8.59	6010, 7740, and 7741.
Silver	8.60	6010, 7760, and 7761.
Sodium		6010 and 7770.
Thallium		6010, 7840, and 7841.
Vanadium		6010, 7910, and 7911.
Zinc		6010, 7950, and 7951.
Cynanides	8.55	9010.
Total Organic Halogen	8.66	9020 and 9022.
Sulfides	8.67	9030.
Sulfate		9035, 9036, 9037, and 9038.
Nitrate		9200.
Chloride		9250, 9251, and 9252.
Gross Alpha and Beta		9310.
Radium		9315.
Radium 228		9320.

13. Table 3 of Appendix III of Part 261 is revised to read as follows:

TABLE 3.—SAMPLING AND ANALYSIS METHODS CONTAINED IN SW-846

Title	First edition		Second edition	
	Section No.	Method No.	Section No.	Method No.
Sampling of Solid Wastes				
Development of Appropriate Sampling Plans	1.0		1.0	
Regulatory and Scientific Objectives	1.0		1.1	
Fundamental Statistical Concepts	1.0–2		1.1.1	
Basic Statistical Strategies	1.0–3		1.1.2	
Simple Random Sampling	1.0–7		1.1.3	
Stratified Random Sampling			1.1.3.1	
Systematic Random Sampling			1.1.3.2	
Special Considerations			1.1.3.3	
Composite Sampling	1.0–7			
Subsampling			1.1.4.1	
Cost and Loss Functions			1.1.4.2	
Statistical Tests			1.1.4.3	
Implementation of Sampling Plan			1.1.5	
Selection of Sampling Equipment	1.0–7		1.2	
Composite Liquid Waste Sampler			1.2.1	
Weighted Bottle	3.2.1		1.2.1.1	
Dipper	3.2.2		1.2.1.2	
Thief	3.2.3		1.2.1.3	
Trier	3.2.4		1.2.1.4	
Auger	3.2.5		1.2.1.5	
Scoop and Shovel	3.2.6		1.2.1.6	
Modified Method 5 Sampling Train	3.2.7		1.2.1.7	
Source Assessment Sampling System (SASS)			1.2.1.8	
Volatile Organics Sampling Train (VOST)			1.2.1.9	
Bailer			1.2.1.13	
Suction Pumps			1.2.1.20	
Positive Displacement Pumps			1.2.1.21	
Pressure Vacuum Lysimeter			1.2.1.22	
Vacuum Extractor			1.2.1.30	
Trench Lysimeter			1.2.1.31	
Selection of Sample Containers			1.2.1.32	
Processing and Storage of Samples	3.3		1.2.2	
Sample Labels	3.3		1.2.3	
Sample Seals	2.0–1		1.3.1	
Field Log Book	2.0–3		1.3.2	
Chain-of-Custody Record	2.0–5		1.3.3	
Sample Analysis Request Sheet	2.0–6		1.3.4	
Sample Delivery to Laboratory	2.0–9		1.3.5	
Shipping of Samples	2.0–10		1.3.6	
Receipt and Logging of Sample	2.0–10		1.3.7	
Assignment of Sample for Analysis	2.0–12		1.3.8	
Sampling Methodology	2.0–13		1.3.9	
Containers	3.0		1.4	
Tanks	3.2-2		1.4.1	
Waste Piles	3.2-2		1.4.2	
Landfills and Lagoons	3.2-2		1.4.3	
Stack Sampling	3.2-2		1.4.4	
Ground-water Sampling			1.4.5	
Land Treatment Sampling			1.4.6	
Waste Evaluation Procedures			1.4.7	
			2.0	

TABLE 3.—SAMPLING AND ANALYSIS METHODS CONTAINED IN SW-846—Continued

Title	First edition		Second edition	
	Section No.	Method No.	Section No.	Method No.
Characteristics of Hazardous Waste			2.1	
Ignitability	4.0		2.1.1	
Pensky-Martens Closed-Cup Method	4.1		2.1.1	1010
Setaflash Closed-Cup Method	4.1		2.1.1	1020
Corrosivity	5.0		2.1.2	
Corrosivity Toward Steel	5.3		2.1.2	1110
Electrochemical Corrosion Method			2.1.2	1120
Reactivity	6.0		2.1.3	
Extraction Procedure Toxicity	7.0		2.1.4	
Extraction Procedure Toxicity Test	7.1, 7.2, 7.5			
Method and Structural Integrity Test	7.4		2.1.4	1310
Multiple Extraction Procedure			2.1.4	1320
Extraction Procedure for Oily Wastes			2.1.4	1330
Monitoring			3.0	
Ground Water			3.1	
Land Treatment			3.2	
Incineration			3.3	
Sample Workup Techniques			4.0	
Inorganic Techniques	8.49		4.1	
Acid Digestion for Flame AAS	(1)		4.1	3010
Acid Digestion for Furnace AAS	(1)		4.1	3020
Acid Digestion of Oil, Grease, or Wax	8.49-9		4.1	3030
Dissolution Procedure for Oil, Grease, or Wax	8.49-8		4.1	3040
Organic Techniques	8.0		4.2	
Separatory Funnel Liquid-Liquid Extraction	9.0	9.01	4.2	3510
Continuous Liquid-Liquid Extraction	9.0	9.01	4.2	3520
Acid-Base Cleanup Extraction	8.0	8.84	4.2	3530
Soxhlet Extraction	8.0	8.86	4.2	3540
Reverse Phase Cartridge Extraction			4.2	3560
Column Clean-Up for Oily Wastes			4.2	3570
Sonication Extraction	8.0	8.85	4.2	3550
Gas Bulb and Gas Bag Sample Preparation			4.2	3710
Volatile Organics Sampling Train Purge and Trap Sample Preparation			4.2	3720
Sample Introduction Techniques			5.0	
Headspace	8.0	8.82	5.0	5020
Purge-and-Trap	8.0	8.83	5.0	5030
Multielement Inorganic Methods			6.0	
Inductively Coupled Plasma Method			6.0	6010
Inorganic Analytical Methods	8.0		7.0	
Antimony, Flame AAS	8.0	8.50	7.0	7470
Antimony, Furnace AAS	8.0	8.50	7.0	7471
Arsenic, Flame AAS	8.0	8.51	7.0	7060
Arsenic, Furnace AAS	8.0	8.51	7.0	7061
Barium, Flame AAS	8.0	8.52	7.0	7080
Barium, Furnace AAS	8.0	8.52	7.0	7081
Beryllium, Flame AAS			7.0	7090
Beryllium, Furnace AAS			7.0	7091
Cadmium, Flame AAS	8.0	8.53	7.0	7130
Cadmium, Furnace AAS	8.0	8.53	7.0	7131
Chromium, Flame AAS	8.0	8.54	7.0	7190
Chromium, Furnace AAS	8.0	8.54	7.0	7191
Chromium, Hexavalent, Chelation	8.0	8.547	7.0	7197
Chromium, Hexavalent, Colorimetric	8.0	8.546	7.0	7196
Chromium, Hexavalent, Coprecipitation	8.0	8.545	7.0	7195
Chromium, Hexavalent, Polarographic			7.0	7198
Copper, Flame AAS			7.0	7210
Copper, Furnace AAS			7.0	7211
Iron, Flame AAS			7.0	7380
Iron, Furnace AAS			7.0	7381
Lead, Flame AAS	8.0	8.56	7.0	7420
Lead, Furnace AAS	8.0	8.56	7.0	7421
Manganese, Flame AAS			7.0	7460
Manganese, Furnace AAS			7.0	7461
Mercury, Cold Vapor, Liquid	8.0	8.57	7.0	7470
Mercury, Cold Vapor, Solid	8.0	8.57	7.0	7471
Nickel, Flame AAS	8.0	8.58	7.0	7520
Nickel, Furnace AAS	8.0	8.58	7.0	7521
Osmium, Flame AAS			7.0	7550
Osmium, Furnace AAS			7.0	7551
Selenium, Furnace AAS	8.0	8.59	7.0	7740
Selenium, Gaseous Hydride AAS	8.0	8.59	7.0	7741
Silver, Flame AAS	8.0	8.60	7.0	7760
Silver, Furnace AAS	8.0	8.60	7.0	7761
Sodium, Flame AAS			7.0	7770
Thallium, Flame AAS			7.0	7840
Thallium, Furnace AAS			7.0	7841
Vanadium, Flame AAS			7.0	7910
Vanadium, Furnace AAS			7.0	7911
Zinc, Flame AAS			7.0	7950
Zinc, Furnace AAS			7.0	7951
Organic Analytical Methods Flame	8.0		8.0	
Gas Chromatographic Methods Furnace	8.0		8.1	
Acrolein, Acrylonitrile, Acetonitrile	8.0	8.03	8.1	8030
Aromatic Volatile Organics	8.0	8.02	8.1	8020
Chlorinated Herbicides	8.0	8.40	8.1	8150
Chlorinated Hydrocarbons	8.0	8.12	8.1	8120
Halogenated Volatile Organics	8.0	8.01	8.1	8010
Nitroaromatics and Cyclic Ketones	8.0	8.09	8.1	8090

TABLE 3.—SAMPLING AND ANALYSIS METHODS CONTAINED IN SW-846—Continued

Title	First edition		Second edition	
	Section No.	Method No.	Section No.	Method No.
Nonhalogenated Volatile Organics	8.0	8.01	8.1	8015
Organochlorine Pesticides and PCBs	8.0	8.08	8.1	8080
Organophosphorus Pesticides	8.0	8.22	8.1	8140
Phenols	8.0	8.04	8.1	8040
Phthalate Esters	8.0	8.06	8.1	8060
Polynuclear Aromatic Hydrocarbons	8.0	8.10	8.1	8100
Gas Chromatographic/Mass Spectroscopy Methods (GC/MS)	8.0		8.2	
GC/MS Volatiles	8.0	8.24	8.2	8240
GC/MS Semi-Volatiles, Packed Column	8.0	8.25	8.2	8250
GC/MS Semi-Volatiles, Capillary	8.0	8.27	8.2	8270
High Performance Liquid Chromatographic Methods (HPLC)	8.0		8.3	
Polynuclear Aromatic Hydrocarbons	8.0	8.10	8.3	8310
Phenols and Miscellaneous Compounds			8.3	8320
Thioureas and Miscellaneous Compounds			8.3	8330
Polarographic Methods			8.4	
Formaldehyde			8.4	8410
Do			8.4	8411
Screening Methods			8.6	
Hierarchical Analysis Protocol for Ground Water			8.6	8600
Dinitrobenzoylchloride Derivitization for Appendix VIII Compounds				8630
Total Aromatics by UV Absorption			8.6	8610
Total Nitrogen/Phosphorous Gas Chromatographable Compounds			8.6	8620
Miscellaneous Analytical Methods			9.0	
Cation Exchange Capacity	8.0		9.0	9080
Do			9.0	9081
Chloride			9.0	9250
Do			9.0	9251
Do			9.0	9252
Coliform			9.0	9131
Do			9.0	9132
Cyanide; Photodegradable			9.0	9011
Cyanide; Total and Amendable to Chlorination			9.0	9010
Free Liquids Test, Paint Filter	8.0	8.55	9.0	9095
Gross Alpha and Beta			9.0	9310
Hydraulic Conductivity			9.0	9100
Nitrate			9.0	9200
pH Measurement			9.0	9040
pH Paper Method	5.0	5.2	9.0	9041
Phenolics			9.0	9065
Do			9.0	9066
Do			9.0	9067
Polymeric Liner Compatability			9.0	9090
Radium			9.0	9315
Radium 228			9.0	9320
Soil pH			9.0	9045
Specific Conductance			9.0	9050
Sulfate			9.0	9035
Do			9.0	9036
Do			9.0	9037
Do			9.0	9038
Sulfides			9.0	9030
Total Oil and Grease	8.0	8.67	9.0	9070
Do			9.0	9071
Total Organic Carbon			9.0	9060
Total Organic Halogen (TOX)			9.0	9020
Total Organic Halogen (TOX) by NA	8.0	8.66	9.0	9022
Quality Control/Quality Assurance			10.0	
Introduction	10.0		10.1	
Program Design	10.0		10.2	
Sampling	10.0		10.3	
Analysis	10.0		10.4	
Data Handling	10.0		10.5	
	10.0			

[1] See specific metal.

14. Appendix VIII of Part 261 is amended by adding a double asterisk before each of the following constituents and adding the following double asterisk footnote at the bottom of the first page of Appendix VIII:

Appendix VIII—Hazardous Constituents

**Acetyl Chloride
**Aluminum Phosphide
**Bis (Chloromethyl) Ether
**Cacasin
**Carbon Oxyfluoride
**Dimethyl Carbamoylchloride
**Ethylenebisdithiocarbamic acid
**Fluorine
**2-Fluoroacetamide
**Hydrogen Fluoride
**Iron Dextran
**Lasocarpine
**Methyl Chlorocarbonate
**Methyl Isocyanate
**Mustard Gas
**Nitrogen Dioxide
**Nitrogen Mustard, N-Oxide and HCl salts
**Nitrogen Mustard, and HCl salts
**Nitric Oxide
**Phosgene
**Phosphine
**Toluene Diisocyanate
**Zinc Phosphide

**To the extent that this Appendix is used to define hazardous constituents for purposes of the monitoring and response program requirements of this chapter, these constituents shall be exempt from any ground water sampling, analysis, and evaluation requirements because the Agency has determined that the constituent immediately converts to another substance upon contact with water or that no satisfactory analytical method is available at this time to detect the constituent in question.

PART 262—[AMENDED]

15. The authority citation for Part 262 reads as follows:

Authority: Secs. 1006, 2002, 3002, 3003, 3004 and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912, 6922, 6923, 6924 and 6925).

16. Subpart A of Part 262 is amended by adding new paragraph (g) to § 262.10 to read as follows:

Subpart A—General

§ 262.10 Purpose, scope, and applicability.

* * * * *

(g) When used in Part 262 of this Chapter, the following publications are incorporated by reference:

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Second Edition, 1982," EPA Publication SW–846. It is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, on a subscription basis, and future updates will automatically be mailed to subscribers. The references listed is also available for inspection at the Office of the Federal Register, 1100 L Street, N.W., Washington, D.C. 20408. These incorporations by reference were approved by the Director of the Federal Register. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register.**

17. Section 262.11 is amended by revising paragraph (c)(1) to read as follows:

§ 262.11 Hazardous waste determination.

* * * * *

(c) * * *

(1) Testing the waste according to the sampling and analysis methods specified in EPA Publication "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," SW–846 as provided in §260.4 of this Chapter and as described in Appendix III of Part 261 of this Chapter, or according to an equivalent method approved by the Administrator under 40 CFR 260.21; or

PART 264—[AMENDED]

18. The authority citation for Part 264 reads as follows:

Authority: Secs. 1006, 2002(a), and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6924).

19. Subpart A of Part 264 is amended by adding new §§ 264.5 and 264.6 to read as follows:

Subpart A—General

§ 264.5 Mandatory use of SW–846 test method.

As provided in § 260.4 of this chapter, the sampling and analysis methods specified in EPA Publication "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," SW–846 and described in Appendix III of Part 261 of this chapter shall be used for all sampling, monitoring, analysis and testing required pursuant to this Part, except where an equivalent method has been approved pursuant to § 260.21 of this chapter.

§ 264.6 References.

(a) When used in Part 264 of this chapter, the following publications are incorporated by reference:

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Second Edition, 1982," EPA Publication SW–846. It is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, on a subscription basis, and future updates will automaticaly be mailed to subscribers.

(b) The references listed in paragraph (a) of this section are also available for inspection at the Office of the Federal Register, 1100 L Street, N.W., Washington, D.C. 20408. These incorporations by reference were approved by the Director of the Federal Register. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register.**

20. Section 264.98 is amended by revising paragraph (h)(2) to read as follows:

§ 264.98 Detection monitoring program.

* * * * *

(h) * * *

(2) Immediately sample the ground water in all monitoring wells and determine whether constituents identified in Appendix VIII of Part 261 of this chapter are present and, if so, at what concentration.

* * * * *

21. Section 264.99 is amended by revising paragraph (f) to read as follows:

§ 264.99 Compliance monitoring program.

* * * * *

(f) The owner or operator must analyze samples from all monitoring wells at the compliance point to determine whether constituents identified in Appendix VIII of Part 261 of this chapter are present and, if so, at what concentration. The analysis must be conducted at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer. If the owner or operator finds Appendix VIII constituents in the gound water that are not identified in the permit as hazardous constituents, the owner or operator must report the concentrations of these additional constituents to the Regional Administrator within seven days after completion of the analysis.

* * * * *

PART 265—[AMENDED]

22. The authority citation for Part 265 reads as follows:

Authority: Secs. 1006, 2002(a), 3004 and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924 and 6925).

23. Subpart A of Part 265 is amended by adding new §§ 265.5 and 265.6 to read as follows:

Subpart A—General

§ 265.5 Mandatory use of SW–846 test method.

(a) As provided in § 260.4 of this chapter, the sampling and analysis methods specified in EPA Publication "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," SW–846 and described in Appendix III of Part 261 of this chapter shall be used for all sampling, monitoring, analysis and testing required pursuant to this Part, except where an equivalent method has been approved pursuant to § 260.21 of this chapter. Where methods contained in ground water sampling and analysis plans established in compliance with § 265.92 do not comply with the requirements of SW–846, such methods may continue to be used provided that they are adequate to achieve the objectives of Subpart F of Part 265 of this chapter.

§ 265.6 References.

(a) When used in Part 265 of this chapter, the following publications are incorporated by reference:

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Second Edition, 1982," EPA Publication SW–846. It is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, on a subscription basis, and future updates will automatically be mailed to subscribers.

(b) The references listed in paragraph (a) of this section are also available for inspection at the Office of the Federal

Register, 1100 L Street, N.W., Washington, D.C. 20408. These incorporations by reference were approved by the Director of the Federal Register. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register.

§ 265.92 [Amended]

24. Section 265.92 is amended by deleting the bracketed Comment following paragraph (a)(4).

PART 270—[AMENDED]

25. The authority citation for Part 270 reads as follows:

Authority: Secs. 1006, 2002(a), 3004, 3005, 3007 and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, 6925 and 6974).

26. Subpart A of Part 270 is amended by revising § 270.6 to read as follows and adding a new § 270.7 to read as follows:

Subpart A—General Information

§ 270.6 Mandatory use of SW-846 test method.

(a) As provided in § 260.4 of this chapter, the sampling and analysis methods specified in EPA Publication "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," SW-846 and described in Appendix III of Part 261 of this chapter shall be used for all sampling, monitoring, analysis and testing required pursuant to this Part, except where an equivalent method has been approved pursuant to § 260.21 of this chapter.

§ 270.7 References.

(a) When used in Part 270 of this chapter, the following publications are incorporated by reference:

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Second Edition, 1982," EPA Publication SW-846. It is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, on a subscription basis, and future updates will automatically be mailed to subscribers.

(b) The references listed in paragraph (a) of this section are also available for inspection at the Office of the Federal Register, 1100 L Street, NW., Washington, D.C. 20408. These incorporations by reference were approved by the Director of the Federal Register. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register.

27. Section 270.14 is amended by revising paragraph (c)(4)(ii) to read as follows:

§ 270.14 Contents of Part B: General requirements.

* * * * *

(c) * * *

(4) * * *

(ii) Includes a determination of whether constituents identified in Appendix VIII of Part 261 of this chapter are present and, if so, at what concentration.

* * * * *

PART 271—[AMENDED]

28. The authority citation for Part 271 reads as follows:

Authority: Secs. 1006, 2002(a) and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA) (42 U.S.C. 6905, 6912(a), and 6936).

29. Subpart A of Part 271 is amended by adding a new paragraph (j) to § 271.1, by revising § 271.9 to read as follows, and by adding a new paragraph (i) to § 271.10.

Subpart A—Requirements for Final Authorization

§ 271.1 [Amended]

(j)(1) When used in Subpart A of this Part, the following publication is incorporated by reference:

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Second Edition, 1982," EPA Publication SW-846. It is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, on a subscription basis, and future updates will automatically be mailed to subscribers.

(2) The reference listed in paragraph (1) of this section is also available for inspection at the Office of the Federal Register, 1100 L Street, NW., Washington, D.C. 20408. This incorporation by reference was approved by the Director of the Federal Register. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register.

* * * * *

§ 271.9 Requirements for identification and listing of hazardous waste.

(a) The State program must control all the hazardous wastes controlled under 40 CFR Part 261 and must adopt a list of hazardous wastes and set of characteristics for identifying hazardous wastes equivalent to those under 40 CFR Part 261.

(b) In identifying hazardous wastes, the State program must require that the sampling and analysis methods provided in EPA Publication "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," SW-846 and described in Appendix III of Part 261 of this chapter be used for all sampling, monitoring, analysis and testing required pursuant to this Subpart, except where an equivalent method has been approved pursuant to § 260.21 of this chapter.

§ 271.10 Requirements for generators of hazardous waste.

* * * * *

(i) The State program must require that the sampling and analysis methods specified in EPA Publication "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," SW-846 and described in Appendix III of Part 261 of this chapter be used for all sampling, monitoring, analysis and testing required pursuant to this Subpart, except where an equivalent method has been approved pursuant to § 260.21 of this chapter.

* * * * *

BILLING CODE 6560-50-M

Figure 1. Method 8600 Decision Matrix

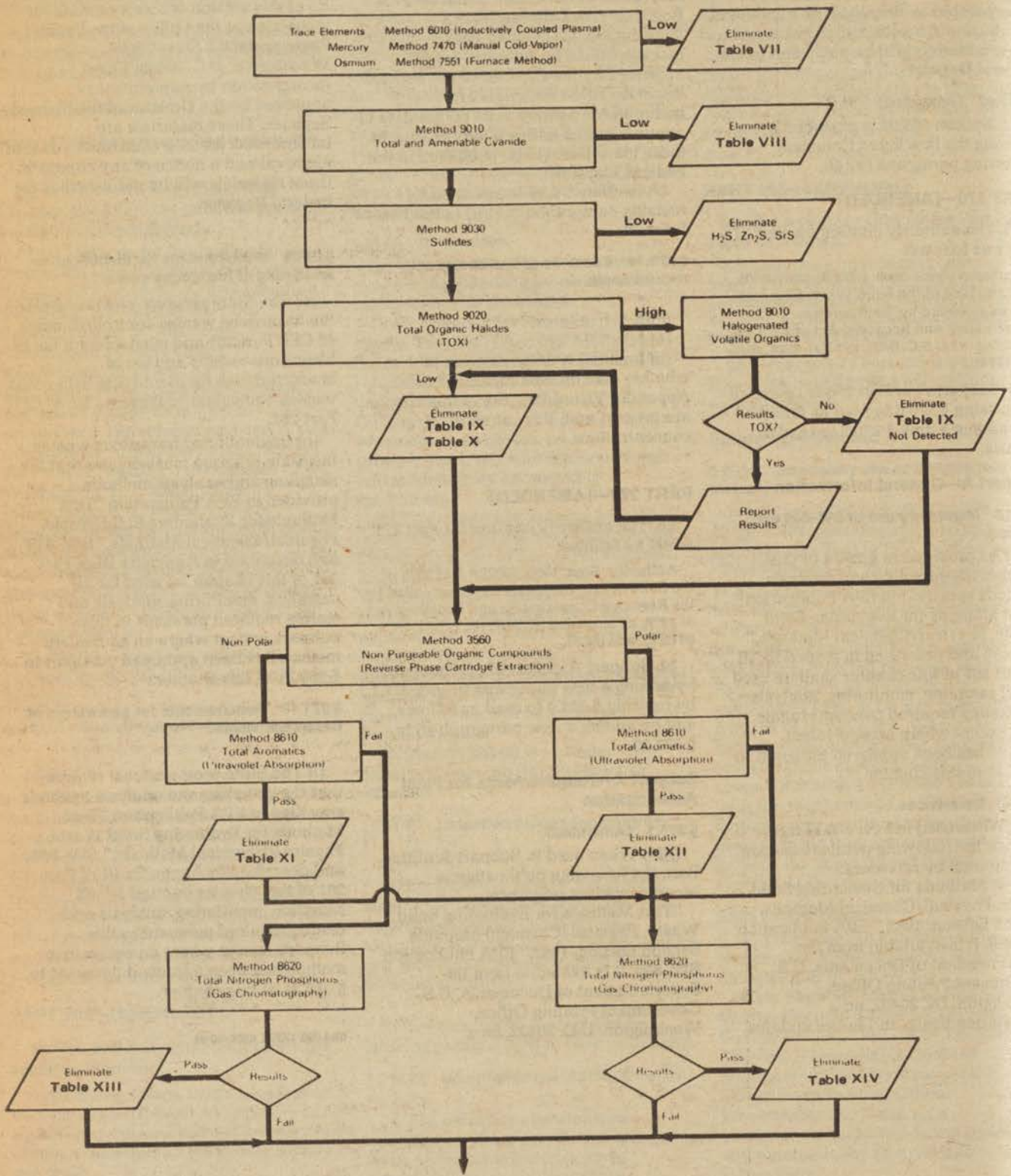
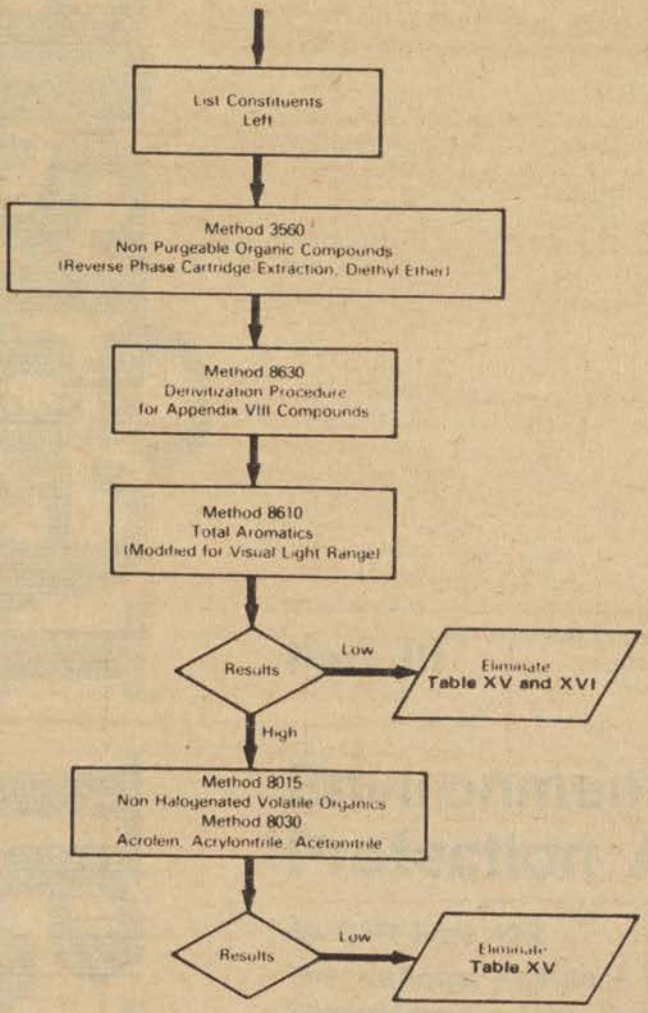


Figure 1. Method 8600 Decision Matrix (Continued)



[FR Doc. 84-25803 Filed 9-28-84; 8:45 am]

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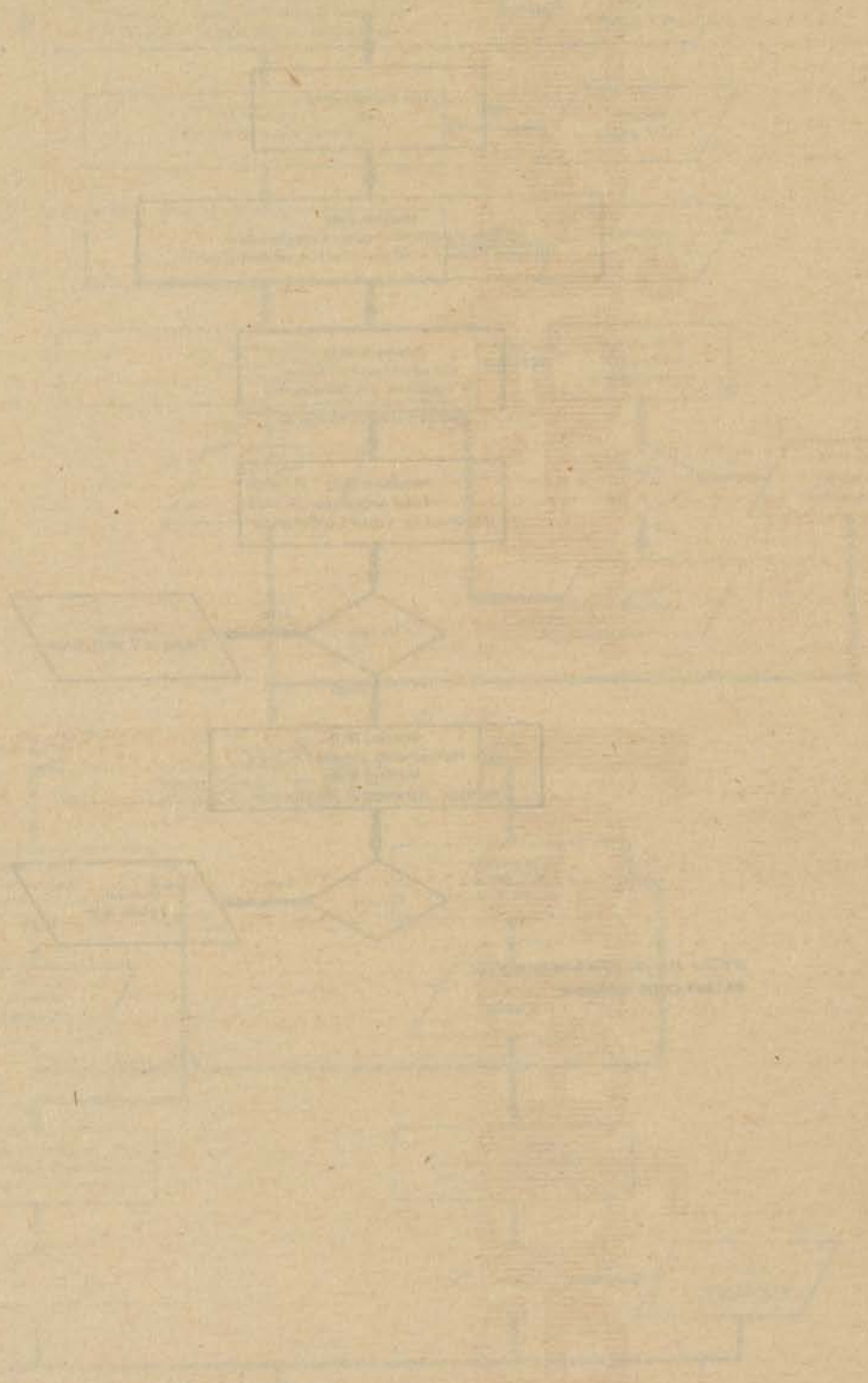

Federal Register

Monday
October 1, 1984

Part III

Environmental Protection Agency

40 CFR Part 122

The National Pollutant Discharge Elimination System; Draft Application Forms for New NPDES Permits and Facilities Which Do Not Discharge Process Wastewater; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 122

[EN FRL-2611-6]

The National Pollutant Discharge Elimination System; Draft Application Forms for New NPDES Permits and Facilities Which Do Not Discharge Process Wastewater

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is revising regulations and developing new forms to be used when applying for permits issued under the National Pollutant Discharge Elimination System (NPDES). The forms proposed today include: (1) A short version of application Form 2c (Wastewater Discharge Information) for use by Non-process wastewater dischargers; and (2) a form for new sources and new dischargers.

This notice solicits public comments on these two forms and their accompanying instructions. When completed, Short Form 2c (Form 2c–s) will replace Form 2c for facilities which do not discharge process wastewater and Form 2d will replace old Form C (7550–23 used by industrial facilities) and old short Forms C&D for new sources and new dischargers. The shorter version of Form 2c is intended to reduce reporting burdens and to simplify the application requirements for non-process wastewater dischargers. Form 2d is required to update the previous application form used by new sources in order to emphasize the control of toxic pollutants as mandated by the amended Clean Water Act (CWA).

DATES: Comments must be received on or before November 30, 1984 to be considered.

ADDRESS: Comments should be addressed to: Ms. Marilyn Goode, Permits Division (EN–336), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 426–7010.

FOR FURTHER INFORMATION CONTACT: Ms. Marilyn Goode or Ms. Gail S. Goldberg, Permits Division (EN–336), U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, (202) 426–7035.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Agency is developing a coordinated set of forms to be used when applying for NPDES permits. General information on a facility is submitted in Form 1 (§ 122.21(f)) and need not be repeated on other forms. The forms will be used wherever EPA issues NPDES permits and in those States with approved NPDES programs which choose to adopt the forms. EPA will provide NPDES forms to States wishing to use them. States may use different forms if they wish, but the information requested of permit applicants must be the same as that required by the NPDES regulations.

The application forms will, when complete, consist of the following:

Form 1—General Information (used by several permit programs)
Discharges to Surface Water (NPDES permits)
Form 2a. Publicly Owned Treatment Work (POTW's)
Form 2b. Concentrated Animal Feeding Operations and Aquatic Animal Production Facilities
Form 2c. Existing Manufacturing, Commercial, Mining, and Silvicultural Operations
Form 2c–s. Facilities Which Do Not Discharge Process Wastewater
Form 2d. New Manufacturing, Commercial, Mining, and Silvicultural Operations

II. General Considerations

A. *Short Form 2c* (see proposed § 122.21(h)) represents a new initiative by EPA's experience a substantial number of industrial dischargers may discharge only sanitary wastewater and/or non-contact cooling water. For these facilities, toxic pollutants (with the exception of cooling water additives) are expected to be minimal or absent. At present these dischargers are required to use Form 2c. Many of the items in this form are not applicable to non-process dischargers. EPA has therefore decided to design a simplified, two page form for these non-process dischargers. Not only will the short from simplify the application procedure for certain dischargers, it will also reduce the reporting burden associated with the longer form.

In selecting the community of users of this form, a balance must be struck between the types of potential users and the complexity of the form. As the types of facilities eligible to use the short form increase, so does the complexity and length of the form. Therefore, EPA proposes to limit the use of this form to those facilities which discharge only sanitary wastes (such as privately owned treatment works with no industrial input), and non-contact cooling water. To accommodate facilities which serve food, restaurant or cafeteria wastes are included. Educational and medical laboratories are also included. Dischargers of cooling water must identify additives, and dischargers of laboratory wastes must identify the type of waste and estimate the amount. This will provide a basis for permitting authorities to require submission of additional information about toxic pollutants if necessary. (Dischargers of stormwater runoff are not eligible to use the short form because of differing application requirements promulgated pursuant to the NPDES litigation settlement.)

While certain process wastewaters may also have few or no toxic pollutants in their discharges, additional data or testing necessary to ascertain this fact would require EPA to expand the form. Secondary Industries (as defined by EPA) and other dischargers of such process wastewaters will find the existing Form 2c simpler than first appearances may suggest since many questions do not apply. However, some facilities which meet the criteria for use of the proposed short form may have discharges with a major water quality impact, due to local factors. In such cases, the local permitting authority may require additional information or the use of standard Form 2c to gather information necessary for permitting.

B. *Form 2d* (see proposed § 122.21(j)) is designed for use by industrial new source facilities and new dischargers. Briefly, a new source is any facility the construction of which began: (1) After applicable new source performance standards (NSPS) were promulgated, or (2) after NSPS were proposed, if the NSPS are promulgated within 120 days of proposal. A new discharger, on the other hand, is any facility, not a new source: (1) from which there is or may be a new or additional "discharge of pollutants" at a site from which on August 13, 1979, they had never been discharged and (2) which has never received a finally effective NPDES permit for discharge at that site. See 40 CFR 122.2 and 122.29.

Section 122.21(k)(2)(i) of the Environmental Permit Regulations explains that the EPA Regional Office or the State permitting agency will determine if a facility is a new source. A new source determination is necessary for the following reasons. If a facility is a new source, as opposed to an existing source or new discharger, NSPS would apply rather than effluent limitations applicable to existing sources. While the Clean Water Act generally exempts EPA NPDES permits from the requirement to prepare environmental impact statements under the National Evnvironmental Policy Act, this exemption does not extend to new

source permit issuance. Under § 122.29(d)(4), a new source as well as a new discharger must meet all permit conditions not later than 90 days after permit issuance. Moreover, under § 124.60, no discharge is allowed during an evidentiary hearing on the permit for the new source or new discharger, except under special circumstances.

Form 2d (see proposed § 122.21(j)) is modeled after standard Form 2c, the form used by existing dischargers. Changes to Form 2c were promulgated as a result of the settlement agreement on the NPDES regulations (see September 26, 1984, **Federal Register**). These changes have been incorporated in the forms proposed today for the sake of consistency in the NPDES application forms. In addition, a new discharger of stormwater runoff is not eligible to use Form 2d because of differing application requirements promulgated pursuant to the NPDES settlement agreement. These dischargers should use Form 2c (as revised).

The major difference between Form 2c and Form 2d is that Form 2d requires estimates of pollutants being discharged without requiring testing (see proposed 122.21(j)(5)). The forms presently used for new sources and new dischargers (Short Forms C and D, Standard Form C) also require no testing. These forms require estimates of certain pollutants, but estimates are not required for all pollutants on the priority pollutant list referred to in section 307(a)(1) of the CWA (as amended in 1977). In addition to estimates for the priority pollutants, Form 2d requires "followup data" testing and reporting to be done at a later date (see proposed § 122.21(j)(5)(F)). Followup data are necessary to correct possible discrepancies which may often exist between the estimated effluent data reported in Form 2d (before the facility begins operation) and the actual character of the discharge (after the facility begins operation). Permit limits established before a facility begins operation may not, therefore, lead to adequate control of pollutants present in the actual discharge. EPA considered application options ranging from requiring no additional information to requiring the submission of standard Form 2c after operation commences. EPA considered both the needs of industry for regulatory certainty and the possible necessity for adjusting permit limits after operation commences in order to protect the environment. In balancing these considerations, EPA proposes to require only the completion of Item V—Effluent Characteristics from Form 2c (with the exception of information already reported in the applicant's Discharge Monitoring Report) and information on current use or manufacture of certain pollutants which must be submitted at the request of the permitting authority no later than two years after operation commences. Item V sets forth analytical testing requirements for all industries, with special emphasis on those which may discharge toxic pollutants. The two year period is intended to allow adequate startup time. The permitting authority may then modify the permit if the analytical data received under Item V of Form 2c are significantly different from the estimates given in Form 2d. (See § 122.62 of the NPDES regulations for further information related to permit modification.) It should be noted that although section 306(d) of the Clean Water Act provides a ten-year protection period from requirements based upon more stringent new source peformance standards which may be subsequently promulgated, the protection period does not apply to recalculations under the same new source performance standard due to the receipt of new information, such as a decrease in production from that previously estimated. Nor does it apply to non-technology-based requirements as set forth in 40 CFR 122.29(d)(2).

EPA is also requesting that operators list pollutants which they currently use or manufacture as a final or intermediate product or by-product. This information will allow permit writers to have a clearer idea of the facilities' operations. It will also aid in the conducting of inspections, since inspectors will be more aware of the possibility that "used or manufactured" pollutants might be inadvertently discharged. EPA requests comments on the concept of followup data reporting.

III. Description of the Proposed Reporting Requirements

A. Short Form 2c-s (see proposed § 122.21(h)). This form, like all other NPDES forms, should be used together with Form 1. Form 1 requests the name, address, and general information about the facility.

Item I of the short form (Form 2c-s) contains a requirement to list the latitude and longitude of the facility's outfall(s) and name the receiving water(s). We expect that most facilities will have only one outfall. Those with multiple outfalls will submit a separate Short Form 2c for each outfall. Item II requires information on the types of wastewaters discharged. Further information is required about cooling water additives or laboratory wastes, since these may cause a significant discharge of pollutants. Analytical information for several conventional and nonconventional pollutants is required in Item III (Effluent Characteristics). These pollutants correspond roughly to the Item V–A pollutants of Form 2c, with some modifications to allow for the usual nature of non-process wastewater effluent. Most of these pollutants are routinely monitored by such facilities as part of existing permit requirements and this information is necessary for developing permit limits and conditions To minimize reporting burdens and only require data necessary to determine permit limits and conditions, testing for any pollutant may be waived by the permitting authority, if appropriate. However, the permitting authority may request additional pollutant data, on a case-by-case basis, under section 308 of the CWA if needed to develop specific permit conditions. Item IV requires a description of frequency of flow and duration for intermittent or seasonal discharges. Item V requires information concerning any treatment system(s) used. Item VI provides space for any other optional information that the permittee wishes to be considered. This is intended to establish better cooperation between the permittee and EPA and is not intended in any way to be an additional burden. The last item on short Form 2c-s is the certification requirement.

B. New Source Form 2d (see proposed § 122.21(j)) closely follows existing Form 2c. (A **Federal Register** notice of May 19, 1980, describes in detail the rational and substance of Form 2c. See 45 FR 33516.) The present discussion will explain the differences between Form 2c and 2d. The major concern with Form 2d is the development of appropriate permit conditions before a facility begins operation, or perhaps before it is constructed.

Item I requires the latitude and longitude of each outfall. This information is required for new sources and new dischargers. EPA will use the data in the Agency water quality data base called STORET. Maps of the location of water discharges will be developed to examine the relationship between NPDES outfalls and other items of interest such as drinking water intake points.

Data required in Item IV on production volume are necessary to determine permit limits when effluent guidelines are keyed to production volume. EPA considered requiring production estimates for differing numbers of years. The proposed approach requires estimates for each of

the first three operating years, since these data may be especially variable for new facilities. EPA also considered whether to require this information for all new facilities or only for those for which there are production-based effluent guidelines. Because of the special problems associated with determining permit limits for new facilities, this production information has practical utility for all new facilities. However, EPA chose to require this information only from facilities for which there are production-based effluent guidelines, principally to minimize business confidentiality concerns. Under § 122.7(b)(3) of the NPDES regulations, NPDES permit application data cannot be held confidential. EPA requests comments on this option.

Item V requires estimates of the amounts of pollutants expected to be discharged. These pollutants are the same as those required to be analyzed or reported under Item V of Form 2c for existing industrial dischargers except for three pollutants which have been suspended from the list of organic toxic pollutants in the NPDES regulations (See 46 FR 2266, January 8, 1981, and 46 FR 10723, February 4, 1981). Dischargers generally should be aware of anticipated pollutant levels in their discharge. EPA recognizes that a proposed new facility could not meet the Form 2c requirement for analytical testing prior to permit issuance. Therefore, Item V asks for an estimated range of values, using the nomenclature "daily maximum" and "daily minimum". Item V also asks for the source of the projected estimates, in order to determine whether further information might be required by the permit writer. EPA considered requiring submission of detailed raw material and process information. The proposed option (which requires estimates) was selected to minimize reporting burdens and confidentiality concerns. EPA further believes that the discharger is best able to translate process information into potential discharger values. Item VI–A requires information to determine if the discharger has conducted studies to address this problem of wastewater characterization so that the permit writer may, if necessary, examine the basis for such estimates. Item VI–B requires the discharger to identify any similar facilities of which he is aware, since this provides the permit writer with information useful in developing permit limits and conditions. Moreover, EPA credits the discharger with being most knowledgeable about its operation and industry. Item VII provides the applicant with the option of presenting additional information to help the permit writer establish permit limitations for the proposed discharges.

Several questions included in Form 2c have not been used for Form 2d because they are not relevant for new sources. In addition, we have simplified the format use in standard Form 2c in response to concerns about the length of that form.

IV. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because of the relatively small number of new sources and new dischargers (estimated at 500 per year) and the cost of submitting the date (estimated at a total of $493,020, including the followup data). Also, the short form provides for a reduction in burden for certain existing industrial facilities.

V. Regulatory Flexibility Act

EPA has determined, pursuant to the Regulatory Flexibility Act, that this regulation will not have a significant economic impact on a substantial number of small entities. Using the Small business administration's definition of small business, EPA estimates that the majority of direct industrial dischargers are not small businesses. Small businesses are usually zero dischargers or indirect dischargers to municipal treatment works. Moreover, the short form for facilities which do not discharge process wastewater will reduce the economic burden of filing an NPDES application form for these facilities.

VI. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted to the Office of Management and Budget (OMB) for clearance under Section 3504(h) of the Paperwork Reduction Act of 1980 44 U.S.C. 3501 *et seq.* Submit comments on these requirements to EPA and: OMB, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, D.C. 20503, Attention: Richard Otis.

It is proposed that 40 CFR Part 122 be amended as follows: 1. Section 122.21 is proposed to be amended by revising the introductory paragraph (g), redesignating paragraph (h) through (o) as (i) through (p), and adding new paragraphs (h) and (j) (previously reserved) to read as follows:

§ 122.21 Application for a permit.

* * * * *

(g) Application requirement for existing manufacturing, commercial, mining, and silvicultural dischargers. Existing manufacturing, commercial, mining, and silvicultural dischargers applying for NPDES permits, except for those existing facilities which do not discharge process wastewater, shall provide the following information to the Director, using application forms provided by the Director:

* * * * *

(h) Application requirements for existing manufacturing, commercial, mining and silvicultural facilities which do not discharge process wastewater. Existing manufacturing, commercial, mining and silvicultural dischargers applying for NPDES permits who do not discharge process wastewater (except for stormwater dischargers) shall provide the following information to the Director, using application forms provided by the Director:

(1) *Outfall location.* Outfall number, latitude and longitude to the nearest 15 seconds, and the name of the receiving water.

(2) *Type of waste.* An identification of the general type of waste discharged, including sanitary wastes, restaurant or cafeteria wastes, noncontact cooling water, and/or educational or medical laboratory wastes. An identification of cooling water additives that are used, if any. An identification of laboratory wastes that are discharged, if any.

(3) *Effluent characteristics.*

(i) Quantitative data for the effluent parameters listed below, unless testing is waived by the Director. The quantitative data may be data collected over the past year if they remain representative of current operations and must include maximum daily value, average daily value (over the last year) and number of measurements taken (over the last year).

(A) Discharge Flow

(B) Biochemical Oxygen Demand (BOD_5)

(C) Total Suspended Solids (TSS)

(D) Fecal Coliform

(E) pH (range)

(F) Total Residual Chlorine (if chlorine is used)

(G) Temperature (winter and summer)

(H) Oil and Grease

(ii) The Director may waive the testing and reporting requirements for any of the pollutants or flow listed in paragraph (h)(3)(i) of this section if the applicant submits a request for such a waiver forty-five days in advance of the application which demonstrates that information adequate to support issuance of a permit can be obtained through other requirements.

(4) *Flow.* A description of the frequency of flow and duration of any seasonal or intermittent discharge (except for storm runoff, leaks, or spills).

(5) *Treatment system.* A brief description of any system used.

(6) *Optional information.* Any additional information the applicant wishes to be considered.

(7) *Certification.* Signature of certifying official under § 122.22.

(j) New manufacturing, commercial, mining, and silvicultural dischargers applying for NPDES permits (except for new dischargers of stormwater runoff) shall provide the following information to the Director, using application forms provided by the Director:

(1) *Expected outfall location.* The latitude and longitude to the nearest 15 seconds and the name of the receiving water.

(2) *Discharge dates.* Information about the expected date of commencement of discharge.

(3) *Flows, sources of pollution, and treatment technologies.*

(i) *Expected treatment of wastewater.* Description of the treatment that the wastewater will receive, along with all operations contributing wastewater to the effluent, average flow contributed by each operation, and the ultimate disposal of any solid or liquid wates not discharged.

(ii) *Line drawing.* A line drawing of the water flow through the facility with a water balance as described in 40 CFR 122.21(g)(2).

(iii) *Intermittent flows.* If any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration and maximum daily flow rate of each discharge occurrence (except for storm water runoff, spillage, or leaks).

(4) *Production.* If a new source performance standard promulgated under section 306 of CWA or an effluent limitation guideline applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's expected actual production reported in the units used in the applicable effluent guideline as required by § 122.45(b)(2) for the first three years.

(5) *Intake and effluent characteristics.* The requirements in parts A, B, and C of this section that an applicant must provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water; however, an applicant must report such pollutants as present. Net credits may be provided for the presence of pollutants in intake water if the requirements of § 122.45(h) are met.

(i) Each applicant must report estimated daily maximum and minimum values and source of information for each outfall for the following pollutants (unless waived by the permitting authority):

(A) Biochemical Oxygen Demand (BOD)

(B) Chemical Oxygen Demand (COD)

(C) Total Organic Carbon (TOC)

(D) Total Suspended Solids (TSS)

(F) Flow

(G) Ammonia (as N)

(H) Temperature (winter and summer)

(I) pH

(ii) Each applicant must report estimated daily maximum, daily minimum, and source of information for each outfall for the following pollutants, if the applicant knows or has reason to believe they will be present or if they are limited by an effluent limitation guideline either directly or indirectly through limitations on an indicator pollutant:

All pollutants in Table IV of Appendix D of Part 122 (certain conventional and nonconventional pollutants).

(iii) Each applicant must report estimated daily maximum, daily minimum and source for the following pollutants if he knows or has reason to believe that they will be present in any outfall:

(A) The pollutants listed in Table III of Appendix D (the toxic metals, cyanide, and total phenols);

(B) The organic toxic pollutants in Table II of Appendix D (except bis (chlormethyl) ether, dicloroflúoromethane and trichlorofluoremethane). This requirement is waived for applicants with expected gross sales of less than $100,000 per year for the next three years, and for coal mines with expected average production of less than 100,000 tons of coal per year.

(iv) The applicant is required to report that 2,3,7,8 Tetrachlorodibenzo-PDioxin (TCDD) may be discharged if he uses or manufactures one of the following compounds:

(A) 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) (CAS # 93–76–5);

(B) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP) (CAS #93–72–1);

(C) 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #136–25–4);

(D) 0,0,-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel) (CAS # 299–84–3);

(E) 2,4,5-trichlorophenol (TCP) (CAS # 95–95–4); or

(F) Hexachlorophene (HCP) (CAS #70–30–4).

(v) Each applicant must report any pollutants listed in Table 2d–3 of the instructions (certain hazardous substances) if he believes they will be present in any outfall (no quantitative estimates are required unless they are already available).

(vi) No later than two years after the commencement of discharge from the proposed facility, the applicant is required to complete and submit Item V of NPDES application Form 2c (see § 122.21(g)). However, the applicant need not complete those portions of Item V requiring tests which he has already performed and reported under the discharge monitoring requirements of his NPDES permit. The applicant must also list any pollutants which he then uses or manufactures as an intermediate or final product or byproduct.

(6) *Engineering report.* Each applicant must report the existence of any technical evaluation concerning his wastewater treatment, along with the name and location of similar plants of which he has knowledge.

(7) *Other information.* Any optional information the permittee wishes to have considered.

(8) *Certification.* Signature of certifying official under § 122.22.

* * * * *

2. Section 122.62 is proposed to be amended by adding the following sentence at the end of paragraph (a)(2) to read as follows:

§ 122.62 Modification or revocation and reissuance of permits.

(a)* * *

(2)* * *For new source or new discharge NPDES permits (§§ 122.21, 122.29), this cause shall include any significant information derived from effluent testing required under § 122.21(j)(5)(vi) after issuance of the permit.

* * * * *

BILLING CODE 6560-50-M

SHORT APPLICATION FORM 2C-S — INSTRUCTIONS

Who Must File Short Form 2C-s

Short Form 2c-s must be completed in conjunction with Form 1 and instead of long Form 2c. The short form may be used *only* by operators of facilities which do not discharge process wastewater (water that comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product) excluding POTW's. The form is intended primarily for use by dischargers of sanitary wastes, and noncontact cooling water. It should not be used by dischargers of stormwater runoff.

Where To File Applications

The application forms should be sent to the EPA Regional Office which covers the State in which the facility is located. Form 2c-s (the short form) must be used only when applying for permits in States where the NPDES permits program is administered by EPA. For facilities located in States which are approved to administer the NPDES permits program, the State environmental agency should be contacted for proper permit application forms and instructions. Information on whether a particular program is administered by EPA or by a State agency can be obtained from your EPA Regional Office. In Form 1, Table 1 of the "General Instructions" lists the addresses of EPA Regional Offices and the States within the jurisdiction of each Office.

Public Availability of Submitted Information

You may not claim as confidential any information *required* by this form and Form 1, whether the information is reported on the forms or in an attachment. This information will be made available to the public upon request.

You may claim as confidential any information you submit to EPA *which goes beyond* that required by this form and Form 1, although confidentiality claims for effluent data must be denied. If you do not assert a claim of confidentiality at the time of submitting the information, EPA may make the information public without further notice. Claims of confidentiality will be handled in accordance with EPA's business confidentiality regulations in 40 CFR Part 2.

Completeness

Your application will not be considered complete unless you answer every question on this form and Form 1 (except as instructed below). If an item does not apply to you, enter "NA" (for "not applicable") to show that you considered the question.

Definitions

Significant terms used in these instructions and in the form are defined in the Glossary found in the General Instructions accompanying Application Form 1 published May 19, 1980 (45 *FR* 33516).

Item I

Under Part A, list each outfall in numerical sequence. Under Part B, list the latitude and longitude to the nearest 15 seconds for each outfall. Under Part C, list the name of each outfall receiving water(s). When there is more than one outfall listed, an additional Form 2c-s must be completed for each outfall. On each additional short form again list all outfalls in Item I and circle the particular outfall to which the form pertains.

Item II

In Part A, indicate the general type(s) of wastes to be discharged by placing an "x" in the appropriate box(es). If cooling water additives are used, they must be listed by name under Part B. Also under Part B, briefly describe any laboratory wastes that are discharged, naming the type of waste and estimating the amount of these wastes discharged daily. If toxic pollutants are present in the discharges from hospital or medical laboratories, you should use standard Form 2c.

Item III

You are required to provide at least one analysis for each pollutant parameter listed by filling in the requested information under each column. Data reported must be representative of the facility's current operation. Most facilities routinely monitor these pollutants or parameters as part of existing permit requirements. However, reporting requirements for such pollutants or parameters for application purposes may be waived at the discretion of the permitting authority as provided in §122.21(h)(3)(ii). The pollutants or parameters listed in paragraph (h)(3)(i) include: discharge flow, biochemical oxygen demand (BOD), total suspended solids (TSS), fecal coliform, pH, total residual chlorine (data required only if chlorine is used), temperature (winter and summer), and oil and grease. The analysis of these pollutants must be done in accordance with procedures promulgated in 40 CFR Part 136.

The permitting authority may request that the applicant do additional testing, if appropriate, on a case-by-case basis under Section 308 of the Clean Water Act (CWA).

To request a waiver from reporting any of these pollutants or parameters, the applicant must submit to the permitting authority a written request specifying which pollutants should be waived and the reasons for requesting a waiver. This request should be submitted to the permitting authority at least 45 days before the permit application. No extensive documentation of the request will normally be needed, but the applicant should contact the permitting authority if he/she wishes to receive instructions on what her/his particular request should contain. At least 30 days are required to process the request and notify the applicant, who would use the remaining time to adjust his/her application. If a waiver from testing is granted, place an "x" in the column marked "testing waived" for the relevant pollutant(s). An applicant shall not assume that a waiver is granted unless written notice is received.

Item IV

Describe the average frequency of flow and duration of any intermittent or seasonal discharge (except for storm runoff, leaks or spills). The frequency of flow means the number of days or months per year there is intermittent discharge. Duration means the number of days or hours per discharge.

Item V

Describe briefly any treatment system(s) used, indicating whether the treatment system is physical, chemical, biological, sludge and disposal, or other. Also give the particular type(s) of process(es) used. For example, if a physical treatment system is used, specify the processes applied such as grit removal, ammonia stripping, dialysis, etc.

Item VI

This space is reserved for you to provide any additional information that you feel should be considered by the reviewer in establishing permit limitations. Any response here is optional.

Item VII

The Clean Water Act provides severe penalties for submitting false information on this application form. Section 309(c)(2) of the Clean Water Act provides that "Any person who knowingly makes any false statement, representation, or certification in any application, ... shall upon conviction, be punished by a fine of no more than $10,000 or by imprisonment for not more than six months or both."40 CFR Part 122.22 requires the certification to be signed as follows:

a. For a corporation: by a responsible corporate officer. A responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

Please type or print in the unshaded areas only

EPA ID Number *(copy from Item 1 of Form 1)*

Form Approved
OMB No. xxxx-xxxx
Approval expires xx-xx-xx

Form 2C-S NPDES

EPA

Existing Facilities Which Do Not Discharge Process Wastewater

I. Receiving Waters

For each outfall, list the latitude and longitude, and name of the receiving water(s). *(If more than one outfall, please attach an additional short Form 2c-s for each, circling the particular outfall to which the form pertains.)*

A. OUTFALL NUMBER *(list)*	B. LATITUDE			LONGITUDE			C. RECEIVING WATER *(name)*
	Deg	Min	Sec	Deg	Min	Sec	

II. Type of Waste

A. Check the box(es) indicating the general type(s) of wastes discharged.

☐ Sanitary Wastes ☐ Restaurant or Cafeteria Wastes ☐ Noncontact Cooling Water

☐ Educational or Medical Laboratory Wastes

B. If any cooling water additives are used, list them here. If laboratory wastes are discharged, describe briefly.

III. Effluent Characteristics

Provide measurements for the following pollutants or parameters, unless waived by the permitting authority *(see instructions)*.

Pollutant or Parameter	Maximum Daily Value *(include units)*	Average Daily Value (last year) *(include units)*	Number of Measurements Taken *(last year)*	Testing Waived
Discharge Flow				
Biochemical Oxygen Demand (BOD)				
Total Suspended Solids (TSS)				
Fecal Coliform				
pH (give range)				
Total Residual Chlorine *(if chlorine used)*				
Temperature *(Winter)*				
Temperature *(Summer)*				
Oil and Grease				

EPA Form 3510-2c-s (7-84)

IV. Except for storm water runoff, leaks or spills, will the discharge described in this form be intermittent or seasonal? ☐ Yes ☐ No

If yes, briefly describe the frequency of flow and duration.

V. Treatment System *(Describe briefly any treatment system(s) used)*

VI. Other Information *(Optional)*

Use the space below to expand upon any of the above questions or to bring to the attention of the reviewer any other information you feel should be considered in establishing permit limitations. Attach additional sheets, if necessary.

VII. Certification

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

A. Name & Official Title	B. Phone No. *(area code & no.)*
C. Signature	D. Date Signed

FORM 2D INSTRUCTIONS

This form must be completed by all applicants who checked "yes" to Item II-D in Application Form 1 (General Information). To further determine if you are a new source or a new discharger, see §122.2 and proposed §122.29.

Public Availability of Submitted Information

You may not claim as confidential any information *required* by this form or Form 1, whether the information is reported on the forms or in an attachment. This information will be made available to the public upon request.You may claim as confidential any information you submit to EPA *which goes beyond* that required by this form and Form 1. Confidentiality claims for effluent data must be denied. If you do not assert a claim of confidentiality at the time of submitting the information, EPA may make the information public without further notice. Claims of confidentiality will be handled in accordance with EPA's business confidentiality regulations in 40 CFR Part 2.

Completeness

Your application will not be considered complete unless you answer every question on this form and on Form 1 (except as instructed below). If an item does not apply to you, enter "NA" (for "not applicable") to show that you considered the question.

Followup Requirements

Please note that not less than 2 years after you begin discharging from the proposed facility, you must complete and submit Item V of NPDES application Form 2c. However, you need not complete those portions of Item V requiring tests which you have already performed under the discharge monitoring requirements of your NPDES permit. You must also list any pollutants which you then use or manufacture as a final or intermediate product or byproduct.

Definitions

All significant terms used in these instructions and in the form are defined in the glossary found in the General Instructions which accompany application Form 1.

Item I

You may use the map you provided for Item XI of Form 1 to determine the latitude and longitude (to the nearest 15 seconds) of each of your outfalls and the name of the receiving water. You should name all waters to which discharge is made and which flow into significant receiving waters. For example, if the discharge is made to a ditch which flows into an unnamed tributary which in turn flows into a named river, you should provide the name or description (if no name is available) of the ditch, the tributary, and the river.

Item II

This item requires your best estimate of the date on which your facility or new outfall will begin to discharge.

Item III-A

List all outfalls, their source (operations contributing the flow), and estimate an average flow from each source. Briefly describe the planned treatment for these wastewaters prior to discharge. Also describe the ultimate disposal of any solid or liquid wastes not discharged You should describe the treatment in either a narrative form or list the proper code for the treatment unit from a list provided in Table 2d-1.

Item III-B

An example of an acceptable line drawing appears in Figure 2d-1 to these instructions. The line drawing should show the route taken by water in your proposed facility from intake to discharge. Show all sources of wastewater, including process and production areas, sanitary flows, cooling water, and stormwater runoff. You may group similar operations into a single unit, labeled to correspond to the more detailed listing in Item III-A. The water balance should show estimates of anticipated average flows. Show all significant losses of water to production, atmosphere, and discharge. You should use your best estimates.

ItemIII-C

Fill in every applicable column in this item for each source of intermittent or seasonal discharge. Base your answers on your best estimate. A discharge is intermittent if it occurs with interruptions during the operating hours of the facility. Discharge caused by routine maintenance shutdowns, process changes, or other similar activities are not considered to be intermittent. A discharge is seasonal if it occurs only during certain parts of the year. The reported flow rate is the maximum flow at any time and should be measured in gallons per day. Maximum total volume means the total volume of any one discharge within 24 hours and is measured in units such as gallons.

ItemIV

"Production" in this question refers to those goods which the proposed facility will produce, not to "wastewater" production. This information is only necessary where applicable new source performance standards from effluent guidelines apply to your facility. Your estimated production figures should be based on a realistic projection of actual daily production level (not design capacity) for the first 3 operating years of the facility. This estimate must be a long term average estimate (e.g., average production on an annual basis). If production will vary depending on long term shifts in operating schedule or capacity, the applicant may report alternate production estimates and the basis for the alternate estimates.

If known, report quantities in the units of measurement used in the applicable effluent guideline. For example, if the applicable new source performance standard con-

tains "g/kg" as the unit, then report maximum "QUANTITY PER DAY" in "Kg." If you do not know whether any new source performance standard applies to your facility, report quantities in any unit of measurement known to you. If a guideline specifies a method to estimate production, that method must be followed.There is no need to conduct new studies to obtain these figures, only data already on hand are required. Moreover, you are not required to indicate how the reported information was calculated.

Items V — A, B, and C

These items require you to estimate (for Part C, only a list is required) and report data on the pollutants expected to be discharged from each of your outfalls. Sampling and analysis are not required at this time. If however, data from such analysis are available, then those data should be reported. Each part of this item addresses a different set of pollutants and must be completed in accordance with the specific instructions for that part. The following are the general and specific instructions for Items V-A through V-C.

Item V — General Instructions

Each part of this item requires you to provide an estimated daily maximum and daily minimum value for each pollutant listed (see Table 2d-2), according to the specific instructions below. The source of the data is also required. For Parts A through C, base your determination of whether a pollutant will be present in your discharge on your knowledge of the proposed facility's raw materials, maintenance chemicals, intermediate and final products, byproducts, and any analyses of your effluent or of any similar effluent. You may also provide the determination and the estimates based on available in-house or contractor's engineering reports or any other studies performed on the proposed facility (See Item VI of the form). If you expect a pollutant to be present soley as a result of its presence in your intake water, please state this information on the form.

REPORTING INTAKE DATA

You are not required to report pollutant data for intake water unless you wish to demonstrate your eligibilty for a "net" effluent limitation for these pollutants, that is, an effluent limitation adjusted to provide allowance for the pollutant(s) present in your intake water. If you wish to obtain credits for pollutants present in your intake water, please attach a separate sheet, with a short statement of why you believe you are eligible (See (122.45(g)). You will then be contacted by the permitting authority for further instructions.

Reporting

All pollutant levels must be reported as concentration and as total mass. Total mass is the total weight of pollutants discharged over a day.

Use the following abbreviations for units:

CONCENTRATION	MASS
ppm ..... parts per million	lbs ..... pounds
mg/l .... milligrams per liter	ton ... tons (English tons)
ppb ..... parts per billion	mg ..... milligrams
Ug/l ... micrograms per liter	g ..... grams
	kg ..... kilograms
	T .... tonnes (metric tons)

Source

In providing the estimates, use the codes in the following table to indicate the source of such information in column 4 of Parts V — A and B.

	Code
Engineering study	
Actual data from pilot plants	1
Estimates from other engineering studies	2
Data from other similar plants	3
Best professional estimates	4
Others	specify on the form

Item V — A

Data on pollutants in Group A must be reported by all applicants for all outfalls, including outfalls containing only noncontact cooling water, stormwater runoff, or nonprocess wastewater. However, at your request, the permitting authority may waive the requirements to report information for any of these pollutants, upon a determination that reporting for such pollutant(s) is not appropriate for your effluent.

Item V — B

Data on pollutants in Group B must be reported by all applicants for all outfalls, including outfalls containing only noncontact cooling water, stormwater runoff, or nonprocess wastewater. You are merely required to report estimates for those pollutants which you know or have reason to believe will be discharged or which are limited directly by an effluent limitations guideline or indirectly through an indicator. The priority pollutants in group B are divided into the following three sections:

1) Metal toxic pollutants, total cyanide, and total phenols
2) 2,3,7,8-Tetrachlorodibenzo-P-Dioxin (TCDD) (CAS #1764-01-6)
3) Organic Toxic Pollutants (Gas Chromatography/Mass Spectrometry Fractions)
   a) Volatile compounds
   b) Acid compounds
   c) Base/neutral compounds
   d) Pesticides

For pollutants listed in Sections 1 and 3, you must report estimates as instructed above.

For Section 2, you are required to report that TCDD may be discharged if you use or manufacture one of the following compounds:

A. 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) (CAS # 93-76-5);
B. 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP) (CAS # 93-72-1);
C. 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS # 136-25-4);
D. 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel) (CAS # 299-84-3);
E. 2,4,5-trichlorophenol (TCP)(CAS # 95-95-4); or
F. Hexachlorophene (HCP) (CAS # 70-30-4).

SMALL BUSINESS EXEMPTION

If you are a "small business," you are exempt from the reporting requirement for Item V-B (section 3). You may qualify as a "small business" if you fit one of the following definitions:

1) Your expected gross sales will total less than $100,000 per year for the next three years, or

2) in the case of coal mines, your average production will be less than 100,000 tons of coal per year.

If you are a "small business," you may submit projected sales or production figures to qualify for this exemption. The sales or production figures you submit must be for the facility which is the source of the discharge. The data should not be limited only to production or sales for the process or processes which contribute to the discharge, unless those are the only processes at your facility. For sales data, where intracorporate transfers of goods and services are involved, the transfer price per unit should approximate market prices for those goods and services as closely as possible. If necessary, you may index your sales figures to the second quarter of 1980 to demonstrate your eligibility for a small business exemption. This may be done by using the gross national product price deflator (second quarter of 1980 = 100), an index available in "National Income and Product Accounts of the United States" (Department of Commerce, Bureau of Economic Analysis).

The small business exemption applies to the GC/MS fractions (Section 3) of Item V-B only. Even if you are eligible for a small business exemption, you are still required to provide information on metals, cyanide, total phenols, and dioxin in Item V-B, as well as all of Items V — A and C.

Item V — C

List any pollutants in Table 2d-3 that you believe will be present in all outfalls and briefly explain why you believe they will be present. No estimate of the pollutant's quantity is required, unless you already have quantitative data.

NOTE: If you wish an exemption under 40 CFR 117.12(a)(2) for certain discharges of hazardous substances (listed in Table 2d-4 of these instructions), attached additional sheets of paper to this form, providing the following information:

A. The substance and the amount of each substance which may be discharged;

B. The origin and source of the discharge of the substance;

C. The treatment which is to be provided for the discharge by:

1. An on-site treatment system separate from any treatment system which will treat your normal discharge,

2. A treatment system designed to treat your normal discharge and which is additionally capable of treating the amount of the substance identified under paragraph 1 above, or

3. Any combination of the above.

Please note that Table 2d-3 contains those hazardous pollutants for which reporting is always required in NPDES applications. Table 2d-4 is a longer list of pollutants which need only be reported according to the note above if the applicant wishes to be exempt from the additional requirements of 40 CFR 117 (reporting, liability for cleanups of spills, etc.).

For further information on exclusions from Section 311, see 40 CFR Section 117.12(a)(2) and (c), published on August 29, 1979, in 44 *FR* 50766, or contact your EPA Regional office (Table 1 in the Form 1 instructions).

Item VI — A

If an engineering study was conducted, check the box labeled "report available." If no study was done, check the box labeled "no report."

Item VI — B

Report the name and location of any existing plant(s) which (to the best of your knowledge) resembles your planned operation with respect to items produced, production process, wastewater constituents, or wastewater treatment. No studies need be conducted to respond to this item. Only data which are already available need be submitted.

This information will be used to inform the permit writer of appropriate treatment methods and their associated permit conditions and limits.

Item VII

A space is provided for optional information.

Item VIII

The Clean Water Act provides for severe penalties for submitting false information on this application form.

Section 309(c)(2) of the Clean Water Act provides that "Any person who knowingly makes any false statement, representation, or certification in any application, . . . shall upon conviction, be punished by a fine of no more than $10,000 or by imprisonment for not more than six months, or both."

40 CFR Part 122.22 REQUIRES THE CERTIFICATION TO BE SIGNED AS FOLLOWS:

A. For a corporation: by a responsible corporate officer.

A responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business funcition, or any other person who who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

B. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

C. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

Please type or print in the unshaded areas only	EPA ID Number *(copy from Item 1 of Form 1)*	*Form Approved OMB No. xxxx-xxxx Approval expires xx-xx-xx*

Form **2D** NPDES

Application for Permit to Discharge Wastewater New Sources and New Discharges

I. OUTFALL LOCATION

For each outfall, list the latitude and longitude, and the name of the receiving water.

Outfall Number *(list)*	LATITUDE			LONGITUDE			C. RECEIVING WATER *(name)*
	Deg	Min	Sec	Deg	Min	Sec	

II. DISCHARGE DATE

When do you expect to begin discharging? DATE

III. FLOWS, SOURCES OF POLLUTION, AND TREATMENT TECHNOLOGIES

A. For each outfall, provide a description of (1) All operations contributing wastewater to the effluent, including process wastewater, sanitary wastewater, cooling water, and stormwater runoff; (2) The average flow contributed by each operation; and (3) The treatment received by the wastewater. Continue on additional sheets if necessary.

Outfall Number	1. Operations Contributing Flow *(list)*	Average Flow *(include units)*	3. Treatment *(Description or List Codes from Table 2d-1)*

B. Attach a line drawing showing the water flow through the facility. Indicate sources of intake water, operations contributing wastewater to the effluent, and treatment units labeled to correspond to the more detailed descriptions in Item III-A. Construct a water balance on the line drawing by showing average flows between intakes, operations, treatment units, and outfalls. If a water balance cannot be determined (e.g., for certain mining activities), provide a pictorial description of the nature and amount of any sources of water and any collection or treatment measures.

C. Except for storm runoff, leaks, or spills, will any of the discharges described in item III-A be intermittent or seasonal?

☐ Yes *(complete the following table)* ☐ No *(go to item IV)*

Outfall Number	1. FREQUENCY		2. FLOW		
	a. Days Per Week *(specify average)*	b. Months Per Year *(specify average)*	a. Maximum Daily Flow Rate *(in mgd)*	b. Maximum Total Volume *(specify with units)*	c. Duration *(in days)*

IV. PRODUCTION

If there is an applicable production-based effluent guideline, for each outfall list the estimated level of production (actual, as opposed to design), expressed in the terms and units used in the applicable effluent guideline, for the first 3 years of operation.

YEAR	a. Quantity Per Day	b. Units of Measure	c. Operation, Product, Material, etc *(specify)*

CONTINUED FROM THE FRONT	EPA ID Number *(copy from Item 1 of Form 1)*	OUTFALL NUMBER

V. EFFLUENT CHARACTERISTICS

A, and B: These items require you to report estimated amounts of the pollutants to be discharged from each of your outfalls. Each part of this item addresses a different set of pollutants and should be completed in accordance with the specific instructions for that part. Data for each outfall should be on a separate page. Attach additional sheets of paper if necessary.

General Instructions *(See table 2d-2 for Pollutants)*

Each part of this item requests you to provide an estimated daily maximum and minimum (i.e., a range) for certain pollutants and the source of information. Data for all pollutants in Group A, for all outfalls, must be submitted unless waived by the permitting authority. For all outfalls, data for pollutants in Group B should be reported only for pollutants which you believe will be present or are limited directly by an effluent limitations guideline or indirectly through an indicator.

1. Pollutant	2. Maximum Daily Value *(include units)*	3. Minimum Daily Value *(include units)*	4. Source *(see instructions)*

CONTINUED FROM THE FRONT	EPA ID Number *(copy from Item 1 of Form 1)*	*Form Approved OMB No. xxxx-xxxx Approval expires xx-xx-xx*

C. Use the space below to list any of the pollutants listed in Table 2d-3 of the instructions which you know or have reason to believe will be discharged from any outfall. For every pollutant you list, briefly describe the reasons you believe it will be present.

1. Pollutant	2. Reason for Discharge

VI. ENGINEERING REPORT ON WASTEWATER TREATMENT *(fill out once per facility)*

A. If there is any technical evaluation concerning your wastewater treatment, including engineering reports or pilot plant studies, check the appropriate box below.

☐ Report Available ☐ No Report

B. Provide the name and location of any existing plant(s) which, to the best of your knowledge, resembles the design of this production facility.

Name	Location

VII. OTHER INFORMATION *(Optional)*

Use the space below to expand upon any of the above questions or to bring to the attention of the reviewer any other information you feel should be considered in establishing permit limitations for the proposed facility. Attach additional sheets if necessary.

VIII. CERTIFICATION

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

A. Name and Official Title *(type or print)*	B. Phone No.
C. Signature	D. Date Signed

GROUP A

Biochemical Oxygen Demand (BOD)
Chemical Oxygen Demand (COD)
Total Organic Carbon (TOC)
Total Suspended Solids (TSS)
Flow
Ammonia (as N)
Temperature (winter)
Temperature (summer)
pH

GROUP B

Bromide
Total Residual Chlorine
Color
Fecal Coliform
Flouride
Nitrate-Nitrite (as N)
Oil and Grease
Phosphorus (as P) Total
Radioactivity
(1) Alpha, Total
(2) Beta, Total
(3) Radium, Total
(4) Radium 226, Total
Sulfate (as SO_4)
Sulfide (as S)
Sulfite (as SO_3)
Surfactants
Aluminum, Total
Barium, Total
Boron, Total
Cobalt, Total
Iron, Total
Magnesium, Total
Molybdenum, Total
Manganese, Total
Tin, Total
Titanium, Total

Section 1

Antimony, Total
Beryllium, Total
Chromium, Total
Lead, Total
Nickel, Total
Silver, Total
Zinc, Total
Phenols, Total
Arsenic, Total
Cadmium, Total
Copper, Total
Mercury, Total
Selenium, Total
Thallium, Total
Cyanide, Total

Section 2

2,3,7,8,Tetrachlorodibenzo-P-Dioxin

Section 3

GC/MS FRACTION* — VOLATILE COMPOUNDS

Acrolein
Benzene
Carbon Tetrachloride
Chlorodibramomethane
2-Chloroethylvinyl Ether
Dichlorobomomethane
1,2-Dichloroethane
1,2-Dichloropropane
Ethylbenzene
Methyl Chloride
1,1,2,2-Tetrachloroethane
Toluene
1,1,1-Trichloroethane
Trichloroethylene
Vinyl Chloride
Acrylonitirle
Bromoform
Chlorobenzene
Chloroethane
Chloroform
1,1-Dichloroethane
1,1-Dichloroethane
1,3-Dichloropropylene
Methyl Bromide
Methylene chloroethane
Tetrachloroethylene
1,2-Trans-Dichloroethylene
1,1,2-Trichloroethane

Table 2D-2

LINE DRAWING

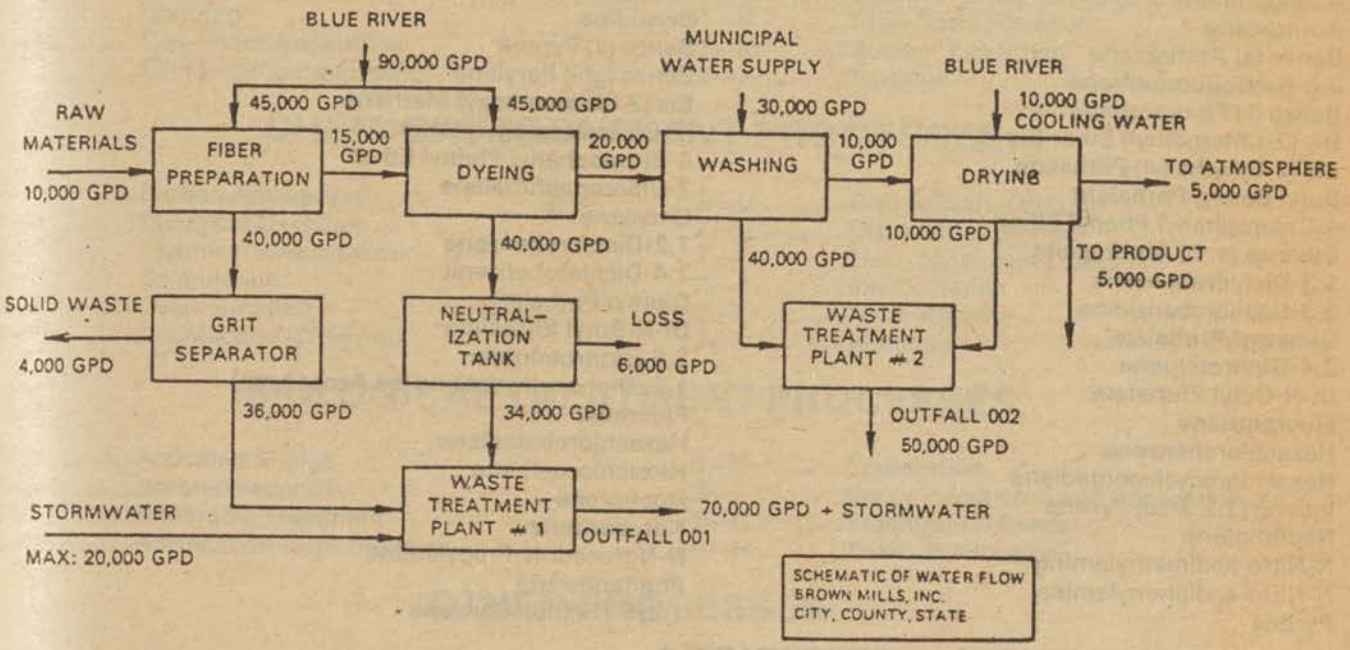

FIGURE 2d-1

GS/MS FRACTION — ACID COMPOUNDS

2-Chlorophenol
2,4-Dimethylphenol
2,4-Dinitro-phenol
4-Nitrophenol
Pentachlorophenol
2,4,6-Trichlorophenol
2,4-Dichlorophenol
4,6-Dinitro-O-Cresol
2-Nitrophenol
P-Chloro-M-Cresol
Phenol

GC/MS FRACTION — BASE/NEUTRAL COMPOUNDS

Acenaphthene
Anthracene
Benzo (a) Anthracene
3,5-Benzofluoranthene
Benzo (k) Fluoranthene
Bis (2-Chloroethyl) Ether Bis
Bis (2-Ethylhexyl) Phthalate
Butyl Benzyl Phthalate
4-Chlorophenyl Phenyl Ether
Dibenzo (a, h) Anthracene
1,3-Dichlorobenzene
3,3-Dichlorobenzidine
Dimethyl Phthalate
2,4-Dinitrotoluene
Di-N-Octyl Phthalate
Fluoranthene
Hexachlorobenzene
Hexachlorocyclopentadiene
Indeno (1,2,3-cd) Pyrene
Naphthalene
N-Nitro-sodimethylamine
N-Nitro-sodiphenylamine
Pyrene
Acenaphtylene
Benzidine
Benzo (a) Pyrene
Benzo (ghi) Perylene
Bis (2 Chloroethoxy) Methane
(2-Chloroisopropyl) Ether
4-Bromophenyl Phenyl Ether
2-Chloronaphthalene
Chrysene
1,2-Dichlorobenzene
1,4-Dichlorobenzene
Diethyl Phthalate
Di-N-Butyl Phthalate
2,6-Dinitrotoluene
1,2, Diphenylhydrazine (as Azobenzen)
Fluorene
Hexachlorobutadiene
Hexachloroethane
Isophorone
Nitrobenzene
N-Nitrosodi-N-Propylamine
Phenanthrene
1,2,4-Trichlorobenzene

GC/MS FRACTION — PESTICIDES

Aldrin
-BHC
-BHC
4,4' DDT
4,4'-DDD
-Endosulfan
Endosulfan Sulfate
Endrin Aldehyde
Heptachlor Epoxide
PCB-1254
PCB-1232
PCB-1260
Toxaphene
-BHC
-BHC
Chlordane
4,4' DDE
Dieldrin
-Endosulfan
Endrin
Heptachlor
PCB-1242
PCB-1221
PCB-1248
PCB-1016

*fractions defined in 40 CFR Part 136

Table 2d-2

PHYSICAL TREATMENT PROCESSES

1—A .....Ammonia Stripping
1—B .....Dialysis
1—C .....Diatomaceous Earth Filtration
1—D .....Distillation
1—E .....Electrodialysis
1—F .....Evaporation
1—G .....Flocculation
1—H .....Flotation
1—I .....Foam Fractionation
1—J .....Freezing
1—K .....Gas-Phase Separation
1—L .....Grinding *(Comminutors)*
1—M .....Grit Removal
1—N .....Microstraining
1—O .....Mixing
1—P .....Moving Bed Filters
1—Q .....Multimedia Filtration
1—R .....Rapid Sand Filtration
1—S .....Reverse Osmosis *(Hyperfiltration)*
1—T .....Screening
1—U .....Sedimentation *(Settling)*
1—V .....Slow Sand Filtration
1—W .....Solvent Extraction
1—X .....Sorption

CHEMICAL TREATMENT PROCESSES

2—A .....Carbon Adsorption
2—B .....Chemical Oxidation
2—C .....Chemical Precipitation
2—D .....Coagulation
2—E .....Dechlorination
2—F .....Disinfection *(Chlorine)*
2—G .....Disinfection *(Ozone)*
2—H .....Disinfection *(Other)*
2—I .....Electrochemical Treatment
2—J .....Ion Exchange
2—K .....Neutralization
2—L .....Reduction

BIOLOGICAL TREATMENT PROCESSES

3—A .....Activated Sludge
3—B .....Aerated Lagoons
3—C .....Anaerobic Treatment
3—D .....Nitrification-Denitrification
3—E .....Preaeration
3—F .....Spray Irrigation/Land Application
3—G .....Stabilization Ponds
3—H .....Trickling Filtration

OTHER PROCESSES

4—A .....Discharge to Surface Water
4—B .....Ocean Discharge Through Outfall
4—C .....Reuse/Recycle of Treated Effluent
4—D .....Underground Injection

SLUDGE TREATMENT AND DISPOSAL PROCESSES

5—A .....Aerobic Digestion
5—B .....Anaerobic Digestion
5—C .....Belt Filtration
5—D .....Centrifugation
5—E .....Chemical Conditioning
5—F .....Chlorine Treatment
5—G .....Composting
5—H .....Drying Beds
5—I .....Elutriation
5—J .....Flotation Thickening
5—K .....Freezing
5—L .....Gravity Thickening
5—M .....Heat Drying
5—N .....Heat Treatment
5—O .....Incineration
5—P .....Land Application
5—Q .....Landfill
5—R .....Pressure Filtration
5—S .....Pyrolysis
5—T .....Sludge Lagoons
5—U .....Vacuum Filtration
5—V .....Vibration
5—W .....Wet Oxidation

Table 2D-1

TOXIC POLLUTANTS AND HAZARDOUS SUBSTANCES REQUIRED TO BE IDENTIFIED BY APPLICANTS IF EXPECTED TO BE PRESENT

TOXIC POLLUTANT

Asbestos

HAZARDOUS SUBSTANCES

Acetaldehyde
Allyl alcohol
Allyl chloride
Amyl acetate
Aniline
Benzonitrile
Benzyl chloride
Butyl acetate
Butylamine
Captan
Carbaryl
Carbofuran
Carbon disulfide
Chlorpyrifos
Coumpahos
Cresol
Crotonaldehyde
Cyclohexane
2,4-D (2,4-Dichlorophenoxyacetic acid)
Diazinon
Dicamba
Dichlobenil
Dichlone
2,2-Dichloropropionic acid

HAZARDOUS SUBSTANCES

Dichlorvos
Diethyl amine
Dimethyl amine
Dintrobenzene
Diquat
Disulfoton
Diuron
Epichlorohydrin
Ethion
Ethylene diamine
Ethylene dibromide
Formaldehyde
Furfural
Guthion
Isoprene
Isopropanolamine
Kelthane
Kepone
Malathion
Mercaptodimethur
Methoxychlor
Methyl mercaptan
Methyl methacrylate
Methyl parathion
Mevinphos
Mexacarbate
Monoethyl amine
Monomethyl amine

HAZARDOUS SUBSTANCES

Naled
Napthenic acid
Nitrotoluene
Parathion
Phenolsulfonate
Phosgene
Propargite
Propylene oxide
Pyrethrins
Quinoline
Resorcinol
Strontium
Strychnine
Styrene
2,4,5-T (2,4,5-Trichlorophenoxyacetic acid)
TDE (Tetrachlorodiphenyl ethane)
2,4,5-TP [2-(2,4,5-Trichlorophenoxy) propanoic acid]
Trichlorofon
Triethanolamine
Triethylamine
Trimethylamine
Uranium
Vanadium
Vinyl acetate
Xylene
Xylenol
Zirconium

TABLE 2d-3

HAZARDOUS SUBSTANCES

1. Acetaldehyde
2. Acetic acid
3. Acetic anhydride
4. Acetone cyanohydrin
5. Acetyl bromide
6. Acetyl chloride
7. Acrolein
8. Acrylonitrile
9. Adipic acid
10. Aldrin
11. Allyl alcohol
12. Allyl chloride
13. Aluminum sulfate
14. Ammonia
15. Ammonium acetate
16. Ammonium benzoate
17. Ammonium bicarbonate
18. Ammonium bichromate
19. Ammonium bifluoride
20. Ammonium bisulfite
21. Ammonium carbamate
22. Ammonium carbonate
23. Ammonium chloride
24. Ammonium chromate
25. Ammonium citrate
26. Ammonium fluoroborate
27. Ammonium fluoride
28. Ammonium hydroxide
29. Ammonium oxalate
30. Ammonium silicofluoride
31. Ammonium sulfamate
32. Ammonium sulfide
33. Ammonium sulfite
34. Ammonium tartrate
35. Ammonium thiocyanate
36. Ammonium thiosulfate
37. Amyl acetate
38. Aniline
39. Antimony pentachloride
40. Antimony potassium tartrate
41. Antimony tribromide
42. Antimony trichloride
43. Antimony trifluoride
44. Antimony trioxide
45. Arsenic disulfide
46. Arsenic pentoxide
47. Arsenic trichloride
48. Arsenic trioxide
49. Arsenic trisulfide
50. Barium cyanide
51. Benzene
52. Benzoic acid
53. Benzonitrite
54. Benzoyl chloride
55. Benzyl chloride
56. Beryllium chloride
57. Beryllium fluoride
58. Beryllium nitrate
59. Butylacetate
60. n-Butylphthalate
61. Butylamine
62. Butyric acid
63. Cadmium acetate
64. Cadmium bromide
65. Cadmium chloride
66. Calcium arsenate
67. Calcium arsenite
68. Calcium carbide
69. Calcium chromate
70. Calcium cyanide
71. Calcium dodecylbenzenesulfonate
72. Calcium hypochlorite
73. Captan
74. Carbaryl
75. Carbofuran
76. Carbon disulfide
77. Carbon tetrachloride
78. Chlordane
79. Chlorine
80. Chlorobenzene
81. Chloroform
82. Chloropyrifos
83. Chlorosulfonic acid
84. Chromic acetate
85. Chromic acid
86. Chromic sulfate
87. Chromous chloride
88. Cobaltous bromide
89. Cobaltous formate
90. Cobaltous sulfamate
91. Coumaphos
92. Cresol
93. Crotonaldehyde
94. Cupric acetate
95. Cupric acetoarsenite
96. Cupric chloride
97. Cupric nitrate
98. Cupric oxalate
99. Cupric sulfate
100. Cupric sulfate ammoniated
101. Cupric tartrate
102. Cyanogen chloride
103. Cyclohexane
104. 2,4-D acid (2,4-Dichlorophenoxyacetic acid)
105. 2,4-D esters (2,4-Dichlorophenoxyacetic acid esters)
106. DDT
107. Diazinon
108. Dicamba
109. Dichlobenil
110. Dichlone
111. Dichlorobenzene
112. Dichloropropane
113. Dichloropropene
114. Dichloropropene-dichloproropane mix
115. 2,2-Dichloropropionic acid
116. Dichlorvos
117. Dieldrin
118. Diethylamine
119. Dimethylamine
120. Dinitrobenzene
121. Dinitrophenol
122. Dinitrotoluene
123. Diquat
124. Disulfoton
125. Diuron
126. Dodecylbenzesulfonic acid
127. Endosulfan
128. Endrin
129. Epichlorohydrin
130. Ethion
131. Ethylbenzene
132. Ethylenediamine
133. Ethylene dibromide
134. Ethylene dichloride
135. Ethylene diaminetetracetic acid (EDTA)
136. Ferric ammonium citrate
137. Ferric ammonium oxalate
138. Ferric chloride
139. Ferric fluoride
140. Ferric nitrate
141. Ferric sulfate
142. Ferrous ammonium sulfate
143. Ferrous chloride
144. Ferrous sulfate
145. Formaldehyde
146. Formic acid
147. Fumaric acid
148. Furfural
149. Guthion
150. Heptachlor
151. Hexachlorocyclopentadiene
152. Hydrochloric acid
153. Hydrofluoric acid
154. Hydrogen cyanide
155. Hydrogen sulfite
156. Isoprene
157. Isopropanolamine dodecylbenzenesulfonate
158. Kelthane
159. Kepone
160. Lead acetate
161. Lead arsenate
162. Lead chloride
163. Lead fluoborate
164. Lead flourite
165. Lead iodide
166. Lead nitrate
167. Lead stearate
168. Lead sulfate
169. Lead sulfide
170. Lead thiocyanate
171. Lindane
172. Lithium chromate
173. Matathion
174. Maleic acid
175. Maleic anhydride
176. Mercaptodimethur
177. Mercuric cyanide
178. Mercuric nitrate
179. Mercuric sulfate
180. Mercuric thiocyanate
181. Mercurous nitrate
182. Methoxychlor
183. Methyl mercaptan
184 Methyl methacrylate
185. Methyl parathion
186. Mevinphos
187. Mexacarbate
188. Monoethylamine
189. Monomethylamine
190. Naled
191. Napthalene
192. Napthenic acid
193. Nickel ammonium sulfate
194. Nickel chloride
195. Nickel hydroxide
196. Nickel nitrate
197. Nickel sulfate
198. Nitric acid
199. Nitrobenezene
200. Nitrogen dioxide
201. Nitrophenol
202. Nitrotoluene
203. Paraformaldehyde

TABLE 2d–4

HAZARDOUS SUBSTANCES (continued)

204. Parathion
205. Pentachlorophenol
206. Phenol
207. Phosoene
208. Phosphoric acid
209. Phosphorus
210. Phosphorus oxychloride
211. Phosphorus pentasulfide
212. Phosphorus trichloride
213. Polychlorinated biphenyls (PCB)
214. Potassium arsenate
215. Potassium arsenite
216. Potassium bichromate
217. Potassium chromate
218. Potassium cyanide
219. Potassium hydroxide
220. Potassium permanganate
221. Propargite
222. Propionic acid
223. Propionic anhydride
224. Propylene oxide
225. Pyrethrins
226. Quinoline
227. Resorcinol
228. Selenium oxide
229. Silver nitrate
230. Sodium
231. Sodium arsenate
232. Sodium arsenite
233. Sodium bichromate
234. Sodium bifluoride
235. Sodium bisulfite
236. Sodium chromate
237. Sodium cyanide
238. Sodium dodecylbenzenesulfonate
239. Sodium fluoride
240. Sodium hydrosulfide
241. Sodium hydroxide
242. Sodium hypochlorite
243. Sodium methylate
244. Sodium nitrate
245. Sodium phosphate (dibasic)
246. Sodium phosphate (tribasic)
247. Sodium selenite
248. Strontium chromate
249. Strychnine
250. Styrene
251. Sulfuric acid
252. Sulfur monochloride
253. 2,4,5-T acid (2,4,5-Trichlorophenoxyacetic acid)
254. 2,4,5-T amines (2,4,5-Trichlorophenoxy acetic acid amines)
255. 2,4,5-T esters (2,4,5-Trichlorophenoxy acetic acid esters)
256. 2,4,5-T salts (2,4,5-Trichlorophenoxy acetic acid salts)
257. 2,4,5-TP acid (2,4,5-Trichlorophenoxy propanoic acid)
258. 2,4,5-TP acid esters (2,4,5-Trichlorophenoxy propanoic acid esters)
259. TDE (Tetrachlorodiphenyl ethane)
260. Tetraethyl lead
261. Tetraethyl pyrophosphate
262. Thallium sulfate
263. Toluene
264. Toxaphene
265. Trichlorofon
266. Trichloroethylene
267. Trichlorophenol
268. Triethanolamine dodecylbenzenesulfonate
269. Triethylamine
270. Trimethylamine
271. Uranyl acetate
272. Uranyl nitrate
273. Vanadium pentoxide
274. Vanadyl sulfate
275. Vinyl acetate
276. Vinylidene chloride
277. Xylene
278. Xylenol
279. Zinc acetate
280. Zinc ammonium chloride
281. Zinc borate
282. Zinc bromide
283. Zinc carbonate
284. Zinc chloride
285. Zinc cyanide
286. Zinc fluoride
287. Zinc formate
288. Zinc hydrosulfonate
289. Zinc nitrate
290. Zinc phenolsulfonate
291. Zinc phosphide
292. Zinc silicofluoride
293. Zinc sulfate
294. Zirconium nitrate
295. Zirconium potassium flouride
296. Zirconium sulfate
297. Zirconium tetrachloride

TABLE 2d–4 (continued)

[FR Doc. 84–25797 Filed 9–28–84; 8:45 am]
BILLING CODE 6560–50–C

federal register

Monday
October 1, 1984

Part IV

Federal Maritime Commission

46 CFR Parts 550, 552, 553, 555, 558, 559, 560, 561, 562, 564, 566, 568, and 569

Subchapter C Regulations Affecting Maritime Carriers and Related Activities in Domestic Offshore Commerce; Technical Changes; Final Rules

FEDERAL MARITIME COMMISSION

46 CFR Parts 550, 552, 553, 555, 558, 559, 560, 561, 562, 564, 566, 568, and 569

Further Final Rules To Make Technical Changes in Subchapter C Regulations Affecting Maritime Carriers and Related Activites in Domestic Offshore Commerce

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is again making technical, non-substantive changes to Subchapter C involving the domestic offshore trades. The parts affected by this rulemaking are Parts 550, 552, 553 and 555 dealing with tariffs, rates and financial matters; and Parts 558, 559, 560, 561, 562, 564, 566, 568 and 569 involving agreement matters under the Shipping Act, 1916. The full-text rules, revised and set forth herein comprise Subchapter C in its entirety.

DATE: Effective October 31, 1984.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523–5725.

SUPPLEMENTARY INFORMATION:

Subchapter C of Chapter IV of Title 46, Code of Federal Regulations, was established by final rule at 49 FR 22289 (May 29, 1984) and contains regulations affecting maritime carriers and related activities in the domestic offshore commerce.

In further reviewing all of its regulations since the passage of the Shipping Act of 1984 on March 20, 1984, the Commission has found further technical changes necessary.

Accordingly, extensive changes in form are being made here to improve style, readability and understandability. No changes in substance, however, are included and, for this reason, the rules are promulgated as final, without the need for comments, although their effective date will be 30 days after publication in the **Federal Register**.

The Parts revised herein are [the "old" part number refers to the number in the October 1, 1983 edition of the CFR, Parts 400 to end]:

New Part

550 Publishing Filing and Posting of Tariffs in Domestic Offshore Commerce. [Old Part 531]

552 Financial Reports of Common Carriers by Water in the Domestic Offshore Trades. [Old Part 512]

553 Financial Exhibits and Schedules of Non-Vessel-Operating Common Carriers in the Domestic Offshore Trades. [Old Part 514]

555 Audits and Auditing Procedures in the Domestic Offshore Trades. [Old Part 513]

558 Exemption of Husbanding and Agency Agreements under the Shipping Act, 1916. [Old Part 520]

559 Exemption of Certain Agreement from the Requirements of Section 15, Shipping Act, 1916. [Old Part 524]

560 Filing of Agreements by Common Carriers and Other Persons Subject to the Shipping Act, 1916. [Old Part 522]

561 Time for Filing Certain Agreements under the Shipping Act, 1916. [Old Part 521]

562 Conference Agreement Provisions Relating to Concerted Activities under the Shipping Act, 1916. [Old Part 537]

564 Admission, Withdrawal and Expulsion Provisions of Steamship Conference Agreements under the Shipping Act, 1916. [Old Part 523]

566 Shippers' Requests and Complaints under the Shipping Act, 1916. [Old Part 527]

568 Self-Policing Requirements for Agreements under the Shipping Act, 1916. [Old Part 528]

569 Rules Governing the Right of Independent Action under the Shipping Act, 1916. [Old Part 529]

The technical and style changes to all the rules reflect changes in nomenclature and Commission organization, correction of typographical errors and removal of superfluous verbiage. To assist the user, various subdivisions of sections have been restructured and renumbered to facilitate citation. Also changed, where feasible, are references to the obsolete General Order system, "Provided, howevers", and gender specific terms. Further changes are made to the method of setting forth compliance with or exemption from the requirements of the Paperwork Reduction Act.

In Part 550, new exhibits have been prepared to facilitate understanding. The recodifications of Titles 46 and 49, United States Code, require citation changes in §§ 550.0(a)(5), 550.1(a), 550.1(e) and 550.2(w). Part 550 also now contains recent changes effectuated by separate publication in §§ 550.1(f) and 550.3(e).

Outdated and obsolete provisions have also been deleted. See *Old* §§ 512.5(f)(2); 512.6(b)(10); 513.5(d)(2); 537.2; 537.3; 523.2; 527.3; 527.7; 529.1 and 529.2.

The Federal Maritime Commission has determined that this rule is not a "major rule" as defined in Executive Order 12291 dated February 17, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Federal Maritime Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions.

List of Subjects

46 CFR Parts 550, 552, 553, and 555

Maritime carriers, Reporting and recordkeeping requirements, Rates.

46 CFR Parts 558, 559, 560, 561, 562, 564, 566, 568, and 569

Antitrust, Contracts, Maritime carriers, Reporting and recordkeeping requirements, Rates.

Corrections

These final rules are subject to review and editing of form before publication in the Code of Federal Regulations. Users are requested to notify the Commission of any omissions and typographical-type errors in order that corrections can be made before the Commission's CFR book goes to press in January, 1985.

For the reasons described in the preamble, and pursuant to the authority set forth in the Authority Citation for each Part, Parts 550, 552, 553, 555, 558, 559, 560, 561, 562, 564, 566, 568, and 569 of Subchapter C, Chapter IV of Title 46, Code of Federal Regulations, are revised to read as follows:

PART 550—PUBLISHING, FILING AND POSTING OF TARIFFS IN DOMESTIC OFFSHORE COMMERCE

Sec.

550.0 Scope.
550.1 Exemptions.
550.2 Definitions.
550.3 Filing of tariffs; general.
550.4 Form and preparation of tariffs.
550.5 Contents of tariffs.
550.6 Statement of rates and charges.
550.7 [Reserved].
550.8 Tariffs containing provisions for through intermodal transportation.

Sec.
550.9 Terminal rules, charges and allowances.
550.10 Amendments to tariffs.
550.11 Supplements to tariffs.
550.12 Cancellation of tariffs.
550.13 Suspension of tariff matter.
550.14 Governing tariffs.
550.15 Tariffs applicable to seasonal transportation service.
550.16 Index of tariffs.
550.17 Transfer of operations, transfer of control, and changes in carrier name.
550.18 Applications for special permission.
550.19 Special rules for bound tariffs filed pursuant to special permission authority.
550.91 OMB Control numbers assigned pursuant to the Paperwork Reduction Act.

Authority: 5 U.S.C. 553; sec. 14, 15, 16, 18(a), 21, 35, and 43 of the Shipping Act, 1916 (46 U.S.C. app. 812, 814, 815, 817(a), 820, 833a and 841a); and secs. 1, 2, 3(a), 3(b), 4 and 7 of the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 843, 844, 845, 845a and 847).

§ 550.0 Scope.

(a) These regulations govern the publication, filing, and posting of tariffs for the transportation of property or passengers performed by common carriers by water in interstate commerce which are subject to the Shipping Act, 1916, as amended, including through transportation offered in conjunction with one or more common carriers not subject to said Shipping Act. Common carriers subject to the Shipping Act are those vessel operating and non-vessel-operating carriers providing transportation by water between:

(1) Any of the 48 contiguous states or the District of Columbia and Alaska or Hawaii;

(2) Any state or the District of Columbia and any territory, commonwealth, possession or district (excluding the District of Columbia);

(3) Alaska and Hawaii;

(4) Any territory, commonwealth, possession or district (excluding the District of Columbia) and any other such territory, commonwealth, possession, or district; and

(5) Places in the same district, territory, commonwealth or possession (excluding the District of Columbia), and which are not solely engaged in transportation subject to the jurisdiction of the Interstate Commerce Commission under 49 U.S.C. Chapter 105.

(b) Information obtained under this part is used to determine the propriety of the level of rates, fares, charges, and practices demanded, charged, collected or observed by carriers. Compliance is mandatory and failure of a tariff to conform with this part may result in rejection. Violations of the provisions of this part are also subject to a civil penalty of not more than $1,000 for each day such violation continues. (46 U.S.C. app. 844).

§ 550.1 Exemptions.

The following services are exempt from the tariff filing requirements of the Act and the rules of this part:

(a) Transportation subject to the jurisdiction of the Interstate Commerce Commission under 49 U.S.C. Chapter 105;

(b) Round trip passenger excursion voyages;

(c) Transportation by vessels with a cargo carrying capacity of 100 tons or less, or with an indicated *horsepower* of 100 or less, provided that such vessels:

(1) Are not employed by or under the common control or management of a domestic offshore carrier which operates vessels in excess of these limits;

(2) Are not operated as part of a through route with another domestic offshore carrier; and

(3) Are not performing lighterage services in connection with or on behalf of another domestic offshore carrier;

(d) Transportation of passengers, commercial buses carrying passengers, personal vehicles and personal effects by vessels operated by the State of Alaska between Seattle, Washington, and parts in Southeastern Alaska, provided that said personal vehicles and personal effects are not transported for the purpose of sale, lease, or other commercial activities;

(e) Transportation between the continental United States and Puerto Rico of bulk liquid cargoes in quantities of not less than 200,000 gallons per shipment (i.e., a single shipper to a single consignee), and such shipments are carried in tank vessels designed exclusively for bulk liquid cargoes and certified under regulations approved by the U.S. Coast Guard pursuant to 46 U.S.C. 3306.

(f) Transportation of used military household goods and personal effects by non-vessel-operating common carriers.

(g) Transportation between Bethel, Alaska and points in the Kuskokwim Bay region in the range from Platinum to Mekoryuk.

§ 550.2 Definitions.

The following shall apply to the regulations of this part and to all tariffs filed pursuant to them:

(a) "*Amendment*" means any change, alteration, correction or modification of an existing tariff, including a tariff supplement.

(b) "*Act*" or "*1916 Act*" means the Shipping Act, 1916, as amended (including the Intercoastal Shipping Act, 1933, and the Transportation Act of 1940).

(c) "*Carrier*" means any common carrier in interstate commerce. Commonly owned or controlled carriers operating in different transportation modes shall be considered separate carriers for purposes of this part (see paragraph (w) of this section).

(d) "*Class Rates*" means transportation rates applied to specific groups or classes of commodities which are established in accordance with a governing commodity classification scheme.

(e) "*Classification*" means a publication (not a rate tariff) establishing a scheme for grouping or classifying commodities and for applying an accompanying class rate tariff (or a section of a tariff containing class rates) to the various commodity classes established.

(f) "*Commission*" means the Federal Maritime Commission.

(g) "*Commodity Rates*" means the transportation rates applied to commodities specifically named or described in the tariff in which the rates are published.

(h) "*Domestic Offshore Carrier*" means a common carrier by water in interstate commerce as defined by section 1 of the 1916 Act.

(i) "*File, Filed, Filing (of Tariff Matter)*" means the actual receipt by the Federal Maritime Commission at its offices in Washington, D.C., including those received by electronic transmission. Electronic filings are those transmitted through the use of commercial data processing terminals and conforming to all the regulations applicable to permanent tariff filings.

(j) "*General Decrease*" means any change in rates, fares, or charges which will: (1) Result in a decrease in not less than 50 percent of the total rate, fare, or charge items in the tariffs per trade of any carrier, and (2) directly result in a decrease in gross revenues of said carrier for the particular trade of not less than 3 percent.

(k) "*General Increase*" means any change in rates, fares, or charges which will: (1) Result in an increase in not less than 50 percent of the total rate, fare, or charge items in the tariffs per trade of any carrier, and (2) directly result in an increase in gross revenues of said carrier for the particular trade of not less than 3 percent.

(l) "*Joint Rates*" means rates agreed upon by two or more carriers for transportation jointly offered over all or part of the routes of each participating carrier.

(m) *"Local Rates"* means rates for transportation between two points over the route of a single carrier, the application of which is not contingent upon a prior or subsequent movement of the cargo or passengers carried.

(n) *"Person"* includes individuals, firms, partnerships, associations, companies, corporations, joint stock associations, trustees, receivers, agents, assignees and personal representatives.

(o) *"Port"* means a place at which a domestic offshore carrier originates or terminates (by transshipment or otherwise) its actual ocean carriage of property or passengers as to any particular transportation movement.

(p) *"Post, Posted, Posting (of Tariff Matter)"* means the maintenance of a complete, up-to-date tariff at local and general offices of the carriers party to the tariff under conditions assuring its availability for inspection by members of the public.

(q) *"Project Rates"* means rates applicable to the transportation of materials and equipment to be employed in the construction or one-time development of a named facility used for a major governmental, charitable, manufacturing, resource exploitation, public utility or public service purpose, and also including disaster relief projects. Such construction or development must be undertaken by either the shipper or consignee named on the bill of lading and none of the materials or equipment covered shall be transported for the purpose of resale or other commercial distribution.

(r) *"Proportional Rates"* means transportation rates conditioned upon a prior or subsequent movement of the cargo or passengers carried.

(s) *"Round Trip Excursion Voyage"* means a single voyage which originates and terminates at the same port, does not permanently disembark passengers at any intermediate port, and does not call at any port outside of the United States, its territories, commonwealths, districts or possessions.

(t) *"Substituted Service"* means the occasional use of transportation facilities different from those which the publishing carrier normally and regularly offers to the public; those instances where transportation is performed by someone other than the publishing carrier due to unexpected operating exigencies. The offering or performing of a regular service by means of overland or air transportation over part of the publishing carrier's route, or by using a waterborne service not under the operational control of the publishing carrier, is an arrangement for through transportation and may not be described as substituted service.

(u) *"Tariff"* means a written document containing all existing and proposed rates, fares, charges, classifications, rules, regulations and practices governing the transportation of passengers or property, all or a segment of which is performed by a domestic offshore carrier (includes rate tariffs, governing tariffs, and all current amendments thereto).

(v) *"Tariff Matter, Tariff Material, Tariff Publication"* means a tariff or any portion thereof tendered for filing with the Commission pursuant to this part.

(w) *"Through Intermodal Transportation"* means transportation at joint rates over a through route by two or more carriers, at least one of which is, and one of which is not, a domestic offshore carrier. Through transportation entirely by water may be intermodal transportation for purposes of this part when one or more participating carrier(s) is subject to rate regulation pursuant to subchapter III of Chapter 105 of Title 49 of the United States Code.

(x) *"Through Rate"* means a total charge for transportation from origin to destination. It may be a local rate, a joint rate, or a combination of separately established rates.

(y) *"Through Route"* means continuous transportation between origin and destination for which a through rate is assessed and which is offered or performed by: (1) A single domestic offshore carrier offering service between port terminal areas; (2) two or more domestic offshore carriers; or (3) one or more domestic offshore carriers in connection with one or more other carriers.

(z) *Transshipment"* means the physical transfer of cargo from one carrier to another in the course of a through route where at least one of the exchanging carriers is a vessel-operating, domestic offshore carrier.

§ 550.3 Filing of tariffs; general.

(a) Every domestic offshore carrier shall file with the Commission and keep open to public inspection, tariffs showing its actual rates, fares and charges for or in connection with transportation between all points on its own route, and all points on any through route established in conjunction with other carriers. Such tariffs shall plainly show the places between which freight or passengers will be carried and shall contain any classification of freight and passenger accommodations affecting or determining the rates applicable to such transportation and shall state separately each terminal or other charge, privilege, or facility granted or allowed to shippers or passengers and any rules or regulations which in anywise change, affect, or determine any part of the total rates, fares or charges assessed or the value of service rendered to consignors, consignees or passengers.

(b) Tariff matter tendered for filing which fails to comply with the 1916 Act, this part, or an order of this Commission is subject to rejection. The Commission also may at any time direct the reissuance or cancellation of tariff matter which does not conform to the 1916 Act or this part.

(c) Tariffs may be filed only by a responsible official of, or a tariff agent appointed by, a domestic offshore carrier participating in the transportation offered therein. When a tariff agent is employed, a delegation of authority from each participating, domestic offshore carrier must be either on file with the Commission or submitted with the tariff matter tendered for filing.

(1) Delegations of tariff filing authority shall be written on the letterhead and signed by a responsible official of the carrier on whose behalf the agent is to act. Such a letter of appointment shall state that a tariff agent has been appointed as of a particular date, identify the agent by name and business address, indicate whether and under what circumstances any other person is authorized to serve as an alternate agent, and specifically set forth the agent's powers and duties to act for the carrier in tariff matters. Only one alternate agent may be appointed.

(2) More than one delegation of authority covering any one tariff is prohibited, except that governing tariffs filed pursuant to § 550.14 may be the subject of separate delegations. Submission of a subsequent delegation of authority covering a tariff, governing tariff or group of tariffs, shall automatically revoke any earlier delegation as to that tariff or tariffs on the day the subsequent delegation is filed, as evidenced by the Commission's receipt notation.

(3) A delegation of authority to a tariff agent may be revoked in whole or in part by filing a letter of revocation which clearly identifies the delegation of authority and the particular powers and duties being revoked, said letter of revocation to be in the same format as the letter appointing the agent.

(d)(1) Tariffs filed under this part shall be numbered consecutively, with a carrier's initial filing in any particular series being designated No. 1. Freight, passenger, and government tariffs shall be numbered in separate series. Freight tariffs shall be designated as "Tariff FMC–F No. ———;" passenger tariffs shall be designated as "Tariff FMC–P

No. ———;" tariffs governing government cargo or passengers shall be designated as "Tariff FMC–G No. ——— ;" and tariff indices shall be designated "FMC–I No. ———."

(2) Tariff submissions which are not numbered as required in paragraph (d)(1) of this section, may be accepted for filing on an occasional basis if accompanied by a letter clearly explaining the purpose and need for the deviation.

(e) Tariff matter will be received by the Commission at its Washington, D.C., offices on an around-the-clock basis. Receipt of tariff filings during other than normal business hours will be time stamped at a tariff mail drop in the lobby of the Commission's Washington, D.C. offices. Electronic tariff filings transmitted by electronic modes will be receipted by a date/time device on the receiving machine.

(f) Unless otherwise provided by the Commission, or this part, all tariff matter tendered for filing (including the tariffs of carriers entering a trade for the first time), shall bear an effective date which permits at least 30 days' notice of the filing. The 30-day notice period between filing date and effective date shall commence at 12:01 a.m. of the day of filing, as evidenced by the Commission's receipt notation. The tariff may take effect at 12:01 a.m. of the 31st day.

(g) Except as otherwise provided, tariff matter shall be transmitted to the Commission in duplicate, with both copies contained in a single package or envelope and with all postage or delivery charges prepaid.

(h) Tariff matter tendered for filing shall be transmitted to each subscriber to the publishing carrier's tariff by first-class mail, not later than the time the tendered material is transmitted to the Commission.

(i) Copies of individual tariff publications or regular subscriptions to an entire tariff filed pursuant to this part shall be promptly made available to any person requesting the same in writing. Subscriptions to a given tariff shall include all special permission requests which pertain to that tariff. Except as otherwise provided by the rules of this part, carriers may assess a reasonable charge for tariff copies and tariff subscriptions, i.e., not greater than the full cost of reproduction and delivery of the materials in question.

(2) The governor of any state, commonwealth or territory served by a domestic offshore carrier may request a carrier in writing to furnish a designated governmental official or office no more than two (2) copies of any tariff matter filed by the carrier which pertains to trades affecting the state, commonwealth or territory in question. Upon receipt of such a request, the carrier shall promptly provide the designated official or office with the requested copies of its existing tariff(s) and add the official or office to its list of tariff subscribers. No charge shall be made for this service, but such officials and officers shall be treated in the same fashion as paid subscribers in all other respects and are considered tariff subscribers for purposes of this part.

(j) Tariff matter tendered for filing must be accompanied by a letter of transmittal not to exceed 8½ inches by 11 inches in size, which shall:

(1) Fully identify the filing party (i.e., the publishing carrier or its tariff agent) including its name, business address and business telephone;

(2) Fully identify each tariff publication tendered, including the following information in tabular form: Carrier Name, Tariff No., Revision/ Page/Supplement/ No.;

(3) Describe the specific effect of each tariff change implemented by each tariff publication listed in paragraph (j)(2) of this section;

(4) Include or attach such certifications as are required by Part 552 of this chapter.

(5) Certify compliance with the requirements of paragraph (h) of this section; and

(6) Include or attach a delegation of authority from the publishing carrier(s) appointing the tariff filing agent (applicable only if the filing party is a tariff agent and an appropriate delegation of authority is not already on file).

(j) Letters of transmittal shall be tendered in duplicate. One copy will be receipted and returned to the filing party, but only if a self-addressed, stamped envelope is enclosed for that purpose.

(k) No domestic offshore carrier may publish any tariff matter which duplicates or conflicts with any other tariff or tariff provision to which said carrier is a party.

(1)(l) Tariff matter which fails to meet the requirements of the 1916 Act, this part, or an order of the Commission may be rejected after filing. Tariff matter may be rejected for failure of the filing carrier to comply with the provisions of Rule 67 of the Commission's Rules of Practice and Procedure (46 CFR 502.67) and/or Part 552 of this chapter. The filing party shall be notified in writing of the reason for the rejection and one copy of the rejected material will be returned to it.

(2) Rejected tariff material is void and its use is unlawful. The revision number or, in the case of an entire tariff, the series number, of a rejected tariff publication shall not be used again, nor shall the rejected publication be referenced in any subsequent tariff publication as being, or having been, cancelled, amended, or withdrawn. Tariff matter tendered in place of rejected material must bear the notation:

Issued in lieu of (*identify the rejected material*) rejected by the Federal Maritime Commission.

and must cancel any prior publication which the rejected material was originally intended to cancel.

(m) Acceptance of tariff matter does not establish the legality of the rates and practices described therein. The mere filing of a tariff does not excuse the publishing carrier from the obligations of the 1916 Act or this chapter, regardless of whether these obligations preceded or followed the acceptance of the tariff in question.

(n) Tariff matter filed with the Commission shall not be withdrawn by the publishing carrier.

(o) Domestic offshore carriers shall maintain their tariffs in a complete, accessible and usable form and shall keep them available for inspection by any member of the public during ordinary business hours.

(1) There shall be posted at each facility at which a domestic offshore carrier receives freight or passengers for transportation, or at which it employs a general or sales agent, a copy of all of that carrier's tariffs governing transportation to and from the facility in question.

(2) There shall be posted at the principal place of business of a domestic offshore carrier all of the tariffs under which that carrier offers transportation service subject to this part.

(3) Tariff publications shall be posted a minimum of 30 days prior to their effective date unless otherwise provided for by the 1916 Act, the Commission, or this part. Amendments (including supplements) which have been filed, but are not yet effective, shall be posted in a fashion which clearly identifies their prospective nature and shall not physically replace existing tariff matter until said amendments reach their effective date. The maintenance of a presently effective tariff in one binder and all filed, but not yet effective, tariff matter affecting that tariff in a second "proposed tariff changes" binder is recommended. Persons requesting to inspect a carrier's tariffs shall, upon reasonable notice, be provided sufficient instruction or assistance to allow them to ascertain both the present and

proposed rates and practices of the carrier.

(p)(1) Only tariffs of persons engaged in common carriage by water shall be filed. Tariffs shall not contain terms such as "Taken by Special Agreement or Arrangement Only," "Subject to Carrier's Option of Acceptance," or "Carried at Cargo Owner's Risk," which terms (unless accompained by sufficient qualifying language explaining a more limited interpretation) are clearly inconsistent with the legal responsibilities of a common carrier towards the shipping public.

(2) Tariff publications shall not contain rules purporting to limit their liability in a manner not authorized by law;

(3) The tariffs and delegations of authority of a carrier which ceases operations in a trade for more than 30 days (other than seasonal discontinuances as provided by § 550.15) shall be cancelled within 60 days after the cessation of operations.

§550.4 Form and preparation of tariffs.

(a) Tariffs shall be published in loose-leaf form. Pages shall be 8½ by 11 inches in size, and plainly and legibly printed, mimeographed, planographed or otherwise durably reproduced on paper equivalent to, or better than, offset book paper, sub. 100. Pages shall be printed on one side only, using not less than 8-point bold or full face type, except that 6-point type may be used for reference marks, explanations, column headings, or bills of lading. Original typewritten or proof sheets shall not be used for filing or posting.

(b) Tariff matter tendered for filing or used for posting shall not contain erasures or original alterations of any nature.

(c) A margin, without any printing or tariff matter thereon, of not less than three-quarters of an inch is required on the top, bottom, and binding edges of all tariff pages. A similar blank margin of not less than ¼ of an inch is required on the nonbinding edge of all pages.

(d) Tariff matter containing rates will be arranged in an orderly columnar fashion with vertical ruling separating columns of rates, rate bases, and commodity/item descriptions. Horizontal groupings will be done in a manner which clearly defines the rates, terms, conditions, etc., applicable to a given commodity or item with no more than six horizontal lines of type without a page-wide break or horizonal ruling. Exhibit No. 1 following this section demonstrates the required format.

(e) The first page of every tariff shall be the Title Page (see Exhibit No. 2 following § 550.5), and all pages subsequent to the Title Page shall be consecutively numbered, beginning with Page 1. The first edition of a page shall be designated as:

"Original Page No. ——" with subsequent revisions to be designated as "Revised Page No. ——." *(Show Revision No.).*

Revision of individual pages are to be published in a numerically consecutive order. Departures from such consecutive ordering may be accepted for filing on an occasional basis if accompanied by a letter clearly explaining the purpose and need for the deviation.

(f) Each tariff page shall be identified by printing the publishing carrier's name and the applicable FMC tariff designation at the top of the page.

(g) The page number, revision number and effective date of each page shall be printed in the upper right-hand corner of the page.

BILLING CODE 6730-01-M

EXHIBIT NO. 1 — §550.4

CAN MARINE LINES CO. FMC-F No. 1

ORIG/REV	PAGE
Original	105
CANCELS	PAGE
EFFECTIVE DATE	
CORR NO.	

DOMESTIC OFF-SHORE FREIGHT TARIFF NO. 1

BETWEEN: UNITED STATES ATLANTIC COAST PORTS NAMED IN ITEM AND: PORTS IN THE COMMONWEALTH OF PUERTO RICO NAMED IN ITEM

COMMODITY RATES

EXCEPT AS OTHERWISE PROVIDED HEREIN, RATES AND CHARGES ARE IN U.S. DOLLARS AND CENTS AND APPLY PER CUBIC FOOT (CFT.) OR PER 100 LBS (CWT.), WHICHEVER PRODUCES THE GREATER REVENUE. (FOR APPLICATION OF RATES, SEE RULE 1)

COMMODITY DESCRIPTION AND PACKAGING	RATES PER CFT.	RATES PER CWT.	ITEM
SPORTING GOODS, N.O.S.	1.41	4.27	1250
STATIONERY AND SUPPLIES, N.O.S., VIZ:			1260
Up to and including 10,000 pounds per shipment	1.34	4.53	
Over 10,000 pounds per shipment	1.30	4.53	
STRAW ARTICLES, N.O.S.	1.26	----	1270
STOVES, ELECTRIC OR GAS	1.38	3.94	1280
SYNTHETIC RESINS, N.O.S.			1290
Up to and including 10,000 pounds	1.34	4.19	
Over 10,000 pounds	1.34	3.94	
TANKS, N.O.S. EMPTY	1.28	4.27	1300
TELEPHONE EQUIPMENT AND PARTS, N.O.S.	1.34	4.27	1310
THERMOSTAT METAL, N.O.S.	1.28	3.94	1320
TILES, CERAMIC OR VINYL, ON SKIDS OR IN CARTONS	1.34	4.27	1330
TOOLS, N.O.S.	1.34	4.27	1340
TOYS, N.O.S.	1.27	3.94	1350
TRACTOR PARTS, N.O.S.	1.34	4.45	1360

FOR EXPLANATION OF ABBREVIATIONS, REFERENCE MARKS AND SYMBOLS, SEE PAGE

§ 550.5 Contents of tariffs.

(a) The Title Page of every tariff shall contain the following information (Exhibit No. 2 following this section illustrates the required format):

(1) The operating name of the publishing carrier (or group of carriers) followed by an annotation identifying it as either a non-vessel-operating common carrier (NVOCC) or a vessel operating common carrier (VOCC).

(2) The FMC file number of all 1916 Act, section 15 agreements pertaining to the transportation service offered.

(3) The tariff series and number assigned pursuant to § 550.3(d)(1).

(4) A designation of any tariffs cancelled by the instant tariff (see § 550.12(a)). Cancellation designations shall be printed immediately under the assigned tariff number unless there are so many cancellations as to make this impractical. In such case, the designations of cancelled tariffs shall be shown on an interior page which is referenced on the Title Page in the position where the cancellation designations would otherwise appear.

(5) All ports or points from, to, or between which transportation is offered, or a reference to the interior page where a list of such ports or points can be found. Cities, towns or communities are to be listed, not street addresses.

(6) A description of each type of service offered, e.g., direct (no change of vessel), transshipment, etc.

(7) A description of each type of rate offered, *i.e.*, local, proportional, joint, through, class, commodity, or combinations thereof.

(8) Identification of any governing tariffs or reference to an internal tariff page containing this information (see § 550.14).

(9)(i) An effective date. When a revised Title Page is submitted, the effective date of the original Title Page shall also be shown.

(ii) An expiration notice (when applicable). If the tariff contains provisions which expire at a specific time, the expiration date shall be shown in the tariff items to which it applies and the existence of such an expiration date shall be indicated on the Title Page with a reference to the affected tariff item.

(10) The name, title and mailing address of the filing party.

(11) The operating name of each carrier participating in the tariff and the full address of its principal place of business, or a reference to an internal tariff page containing this information.

(12) A list of all supplements currently applicable to the tariff (see § 550.11).

(b) The body of the tariff shall contain, in the exact order named below, the following information:

(1) A table of contents and a complete index showing the location of all information necessary to accurately determine the complete rates, fares and charges applicable to the services offered by the tariff. Such index will list all such subjects of information alphabetically and show the item or rule numbers as well as the page numbers where they can be found.

(2) An alphabetically arranged list of carriers participating in the tariff by operating name. The full legal name (when different from the operating name) and the full address of its principal place of business shall also be shown for each participating carrier. The FMC numbers of all approved (1916 Act) section 15 agreements applicable to the transportation offered shall appear after the name of each carrier party to the agreement.

(3) A list of the ports or points from, to, or between which service shall be provided.

(4) The full street address of a receiving/disbursing freight station(s) at which cargo is or may be tendered/claimed by shippers using the service.

(5)(i) A single, complete, alphabetically arranged index of all commodities for which rates are published, showing the page or item number where each rate can be found.

(ii) A commodity index may be omitted where commodity rates are published in an alphabetical arrangement and the descriptions employed are sufficiently specific as to require no further breakdown other than that required to delineate different minimums or valuations.

(6)(i) A full explanation of any symbols, reference marks, or abbreviations employed. The following standard symbols and explanations are required for the purposes indicated:

▼ or (R) to denote reductions;

▲ or (A) to denote increases;

▲ or (C) to denote changes resulting in neither increases nor reductions in rates or charges;

● or (X) to denote no change in rate;

□ or (N) to denote reissued matters; and

(D) or (D) to denote deletions.

(ii) The symbols prescribed in paragraph (b)(6)(i) of this section shall not be used for any other purpose nor shall any other symbol be used for the above purposes.

(7) An alphabetical list of other tariff publications which govern the service being offered in any manner (see § 550.14), including their series and number designations.

(8) The rules and regulations affecting the transportation being offered. Specific rules shall be published to govern at least the following matters:

(i) *Application of rates.* A clear and definite statement of all services provided to shippers as being included in the published rates.

(ii) *Effective date.* A clear and definite statement of the time at which tariff changes become applicable to any particular shipment. In the case of joint rates (including those for through intermodal transportation), the rate applicable to any particular cargo movement shall be that rate which is in effect on the day the initiating carrier takes possession of the shipment.

(iii) *Heavy lift practices and charges.*

(iv) *Extra length practices and charges.*

(v) *Minimum bill of lading charges.*

(vi) *Payment of freight charges.* A clear and definite statement of the terms of payment for transportation services rendered, e.g., C.O.D., prepaid only, etc. If credit is extended, the rule must describe the credit terms offered and the conditions under which credit will be extended.

(vii) *Bills of lading.* A specimen copy of any bill of lading, contract of affreightment, or other document evidencing the transportation agreement between carrier and shipper shall be provided, unless a governing bill of lading tariff has been filed pursuant to § 550.14. Such shipping contracts shall indicate that they are subject to the terms and conditions of the carrier's Federal Maritime Commission tariffs and shall not contain provisions which

are more stringent than, or otherwise in conflict with, the terms of such tariffs.

(viii) *Freight forwarder compensation.* A statement of the exact rate or rates, if any, to be paid independent ocean freight forwarders (see also § 510.24(f) of this chapter).

(ix) *Application of surcharges and arbitraries.* A clear and definite statement of the method by which surcharges, arbitraries, or other similar charges are to be applied, e.g., in aggregate, by compounding, etc.

(x) *Minimum quantity rates (alternation of rates).* When two or more rates are applicable to the same commodity, depending upon the quantities shipped, there shall be a tariff rule stating:

> When two or more freight rates are named for the carriage of goods of the same description, and the application is dependent upon the quantity of the goods shipped, the charges assessed against the smaller shipment shall not exceed those for any larger quantity.

(xi) *Ad valorem rates.* When an ad valorem rate is published, the exact method of computing the charge and the additional liability, if any, assumed by the carrier in consideration thereof shall be specified.

(xii) *Transshipment service.* When transshipment service is offered pursuant to agreements subject to section 15 of the 1916 Act, any tariff provisions required by the agreement itself or by Part 559 of this chapter shall be stated.

(xiii) *Hazardous cargo.* When rates for explosive, inflammable, corrosive or other dangerous materials are published (or the published rate tariff does not specifically prohibit carriage of such materials), rules governing their carriage shall be clearly stated unless a governing rules tariff has been filed pursuant to § 550.14.

(xiv) *Automobile measurement.* When rates for automobiles are published (or the published rate tariff does not specifically prohibit carriage of automobiles), the basis for applying these rates must be stated in terms of either weight or measurement, but not both. One of the following rules (i.e., (A) or (B)) must be employed in its entirety:

(A) Automobiles shall be rated by measure. The cubic measurement for the five most recent model years will be that prescribed by the manufacturer of the particular make and model as shown on pages ——— to ——— herein. [Alternatively, the carrier may state "as shown in Federal Maritime Commission publication, *Automobile Manufacturers' Measurements.*")

(*1*) Automobiles whose measurements are not shown above, shall be individually measured by the carrier. This fact shall be noted on the bill of lading.

(*2*) Automobiles which, because of additional accessories or equipment, vary in dimensions from the standard measurements shown above, shall be individually measured by the carrier. This fact shall be noted on the bill of lading along with the actual variation (in cubic feet) from the standard measurements.

(B) Automobiles shall be rated by weight. Each vehicle tendered for shipment shall be individually weighed on the carrier's scale. Where the carrier does not possess weighing facilities, the shipper shall have the vehicle weighed by a certified weighmaster and furnish the weighmaster's signed statement to the carrier.

(xv) *Container description.*

(A) When rates or charges for containerized or trailerized cargo are based upon the use of a standard size, type, or capacity container/trailer, or upon the use of specifically identified container/trailers, then the tariff shall state the exact size, type, capacity and identity of the container/trailer upon which said rates are based, and include a conversion formula or table which readily adjusts the rates or charges applicable to other standard container/trailers to those applicable to other container/trailers which might be provided by shippers or consignees or by the carrier itself, except that no conversion formula or table need be included when a tariff expressly precludes carrier and shipper/consignee alike from using nonstandard container/trailers. If referenced by the applicable tariff rule, this information may be set forth in a rate item or in a governing tariff filed pursuant to § 550.14.

(B) For purposes of this subdivision: (*1*) *"Container"* means a demountable freight carrying unit transported on ocean going vessels without wheels attached. (*2*) *"Trailer"* means a wheeled vehicle on or in which freight can be carried, transported by ocean going vessels without removing its wheels. (*3*) *"Capacity"* means the maximum cargo measure or weight available to a shipper using a given container/trailer. (*4*) *"Identity"* means the specific serial number(s) or code marking(s) affixed to the container/trailers of a given carrier.

(xvi) *Overcharge claims.* No tariff in the domestic offshore commerce shall limit the filing of overcharge claims with a carrier for private settlement to a period of less than two years after accrual of the cause of action, nor shall the acceptance of any overcharge claim be conditioned upon the payment of a fee or charge. No tariff in the domestic offshore commerce shall require that overcharge claims based on alleged error in weight, measurement or description of cargo be filed before the cargo has left the custody of the carrier. Tariffs shall contain a rule which states that shippers or consignees may file claims for the refund of freight overcharges resulting from errors in weight, measurement, cargo description or tariff application. This rule shall clearly indicate where and by what method such claims are to be filed with the carrier and shall further advise that such claims may also be filed with the Federal Maritime Commission. At a minimum, tariffs shall contain the following provisions:

(A) Claims seeking the refund of freight overcharges may be filed in the form of a complaint with the Federal Maritime Commission, Washington, D.C. 20573, pursuant to section 22 of the Shipping Act, 1916 (46 U.S.C. app. 821). Such claims must be filed within two years of the date the cause of action accrues.

(B) Claims for freight rate adjustments filed in writing shall be acknowledged by the carrier within twenty days of receipt by written notice to the claimant of the tariff provisions actually applied and claimant's rights under the Shipping Act, 1916.

(9) Additional rules which affect the application of the tariff shall follow immediately the rules specified above and shall be numbered consecutively, commencing with number 17. Special rules affecting particular items, rates or charges shall be expressly referenced in the item, rate or charge affected.

(10) Exceptions to classifications, rules, rates or charges shall be enumerated in the tariff to which they apply. Exceptions to particular items, rates, rules or charges must be set forth within each item, rate, rule or charge affected. General tariff exceptions may be published in a separate rule entitled "Exceptions to the Application of this Tariff."

BILLING CODE 6730-01-M

EXHIBIT NO. 2 — §550.5

[550.5(a)(3)]

[550.4(e)]

[550.5(a)(9)(i)]

FMC-F No. 1
ORIG/REV
ORIGINAL TITLE PAGE
CANCELS
EFFECTIVE DATE
CORRECTION NO.

CAN MARINE LINES CO.

[550.5(a)(1)] (A VESSEL OPERATING COMMON CARRIER)

DOMESTIC OFF-SHORE FREIGHT TARIFF NO. 1

NAMING

[550.5(a)(7)] LOCAL AND PROPORTIONAL COMMODITY RATES

ALSO

GOVERNING RULES, REGULATIONS AND CHARGES

APPLYING ON

GENERAL CARGO

BETWEEN	AND
[550.5(a)(5)] UNITED STATES ATLANTIC COAST PORTS NAMED IN ITEM OF TARIFF	PORTS IN THE COMMONWEALTH OF PUERTO RICO NAMED IN ITEM OF TARIFF

VIA

[550.5(a)(6)] DIRECT SERVICE

[550.5(a)(8)]	FOR REFERENCE TO GOVERNING PUBLICATIONS, SEE ITEM
[550.5(a)(2)]	APPLICABLE AGREEMENTS:
[550.5(a)(12)]	SUPPLEMENTS WHICH CONTAIN ALL CHANGES:
[550.5(a)(11)]	FOR LIST OF PARTICIPATING CARRIERS, SEE ITEM
[550.5(a)(9)(ii)]	FOR LIST OF ITEMS CONTAINING EXPIRATION DATES, SEE RULE
	SUBSCRIPTION PRICE FOR TARIFF:
	FOR EXPLANATION OF ABBREVIATIONS, REFERENCE MARKS AND SYMBOLS, SEE PAGE
ISSUED	ORIGINAL TARIFF EFFECTIVE:
ISSUED BY: [550.5(a)(10)]	PUBLISHED BY:

BILLING CODE 6730-01-C

§ 550.6 Statement of rates and charges.

(a) All rates and charges shall be stated in a systematic and straightforward manner. Rates, charges, rules, regulations or classifications shall not be duplicative, conflicting or otherwise ambiguous when compared with items in the same tariff or in any other tariff to which the publishing carrier is a party.

(b) The correct application of rates shall be clearly and definitely stated in terms of an established unit of freight (e.g., per 100 pounds, ton of 2,000 pounds, ton of 2,240 pounds, cubic foot, etc.).

(c) Rates stated as "per barrel" or "per package" shall define the exact type, size and capacity of the package unit entitled to the stated rate. Clearly-worded rules for correctly determining the weights or measurements of such package units shall be included in the tariff.

(d) Rates which vary with the manner in which cargo is packed or delivered for shipment (e.g., loose, crated, palletized) shall include a clear statement governing their application.

(e) Rates published on a "weight or measurement" basis shall state whether the basis producing the greater or the lesser revenue to the carrier shall apply.

(f) Commodity rates shall displace any class rates which would otherwise be applicable. Commodity rates must be specific and shall not apply by implication, or otherwise, to analogous articles.

(g) Commodities and generic commodity groups on which rates are stated shall be listed alphabetically. When item numbers are published alongside commodities in the index, the item number shall be shown with the appropriate commodity wherever the commodity appears in the tariff.

(h) A commodity item may establish rates for several articles without naming them, but only if it references an item or rule in the same tariff (or a governing classfication filed pursuant to § 550.14) which does name the affected commodities.

(i) Rates for or to designated ports may be established by applying an arbitrary or differential charge based upon the rate applicable to a specified "base port", provided that any such arbitrary or differential is clearly defined and its referenced in the rate item affected.

(j) Commodity rates subject to minimum quantity requirements shall include a clear statement of such requirements in the commodity item description to which they apply.

(k)(1) Rates for the transportation of different, separately rated articles in mixed lots where no specific mixture of articles is required ("mixed shipment") shall be established by a general tariff rule which clearly defines such rates and the basis for their application.

(2) Rates for the transportation of different, separately rated articles in specified proportions as a single generic commodity (not "mixed shipments"), shall be established by a general tariff rule which clearly describes the mixture of articles required.

(l) The general tariff rule described in paragraphs (k)(1) and (k)(2) of this section shall require that the composition of the qualifying shipment be shown on the face of the bill of lading governing the movement, except that, if the shipment contains a greater number of different commodities than is required to qualify for the generic rate, the bill of lading description need show the shipment's composition only to the extent necessary to so qualify.

(M) Tariffs purporting to establish project rates shall:

(1) Include an exact description of the project which demonstrates that it is qualified for a "project rate" within the meaning of § 550.2(q);

(2) Include a list of the commodities to be transported under the project rate;

(3) Include a statement of the exact date upon which the project rate will expire;

(4) Include a statement that only proprietary materials actually employed in the project are eligible for the project rate and provide for the use of a bill of lading clause on all project rate cargo which shall state that:

All materials included in this bill of lading are of a wholly proprietary nature and shall not be resold or otherwise commercially distributed at destination.

(5) Be accompanied by a separate economic justification demonstrating that the project rate will cover the carrier's variable costs and contribute to its fixed expenses; and

(6) Be accompanied by a separate certificate of service reciting the names of all domestic offshore carriers with FMC tariffs for transportation between the project rate ports (if no such carriers exist, then a statement is required to that effect) and stating that said carriers have been simultaneously mailed a copy of the tariff filing (exclusive of economic justification).

(n) Proportional rates must be accompanied by a clear statement of the circumstances under which, and the points between which, they shall apply. When no such statement is provided, a proportional rate shall be available in connection with any other rate to or from the proportional rate point in question.

(o) Tariffs published subject to a governing classification shall not state rates as a percentage of a base rate, but shall publish a specific rate for each class or percentage thereof for which service is proposed.

§ 550.7 [Reserved]

§ 550.8 Tariffs containing provisions for through intermodal transportation.

(a) In addition to the other requirements of this part, tariffs containing rates, charges, rules or regulations for through intermodal transportations shall:

(1) Contain a Title Page stating that the tariff pertains to through intermodal transportation.

(2) List, either on the Title Page or on an interior page referenced on the Title Page, all ports or points to, from and between which the rates apply and the ports through which cargo originating or terminating in such places shall move. Ports or points served shall be described by the name of the city or town which commonly identifies the actual area where freight or passengers are picked up or delivered.

(3) Describe the mode of transportation provided by each participating carrier, i.e., highway, railroad, air, water (FMC), and water (non-FMC).

(4) Contain a rule setting forth the liability and responsibility of each participating carrier, together with a specimen of the bill of lading or other contract of affreightment governing the intermodal service offered.

(5) State all through intermodal rates together with the port-to-port proportional rate collected by the domestic offshore carrier for ocean transportation. The port-to-port proportional rate may be shown either:

(i) In a column adjacent to the column containing the applicable through rate; or

(ii) Directly under the commodity description or the through rate.

(6) Separately state all charges collected by the domestic offshore carrier.

(b)(1) When through intermodal rates are constructed by combining domestic offshore rates with inland rates published in effective Interstate Commerce Commission (ICC) or Civil Aeronautics Board (CAB) tariffs, copies of the actual ICC or CAB tariff material may be incorporated into the required FMC tariff as a separate informational tariff section.

(2) The tariff format requirements of this part shall not apply to ICC and CAB tariff material tendered as a section of a through intermodal tariff, but only if each page thereof is clearly marked to indicate that it is for informational purposes only and if the pages also bear the tariff series and number designations of the FMC tariff to which they belong.

(3) Whenever the ICC or CAB tariff being incorporated is amended, canceled or otherwise altered, the corresponding informational sections of the FMC tariff shall be simultaneously and identically altered.

(c) A memorandum of every agreement or arrangement between a domestic offshore carrier and any other carrier establishing through intermodal transportation, but not subject to prior approval pursuant to section 15 of the 1916 Act, shall be filed concurrently with the filing of any through intermodal transportation tariff based upon such agreement or arrangement.

§ 550.9 Terminal rules, charges and allowances.

(a) All terminal privileges, facilities or services (hereinafter jointly referred to as "terminal services" for purposes of this section) provided to shippers, consignees or passengers shall be fully and completely described in the carrier's tariff, regardless of whether such services result in charges separately assessed and collected as additions to the carrier's basic transportation rate or are simply included within the basic transportation rate without differentiation.

(b) When additional charges are assessed for terminal services provided by the carrier or its agents, the carrier's tariff shall contain an appropriate provision separately stating the exact amount of such charges.

(c) When terminal services are performed or made available by a third party (not the carrier or its agents), and charges for such services are assessed against the account of the cargo or passenger, the carrier's tariff shall contain an appropriate provision advising cargo interests/passengers of this fact. This provision shall describe the terms and conditions under which such services will be made available and performed and specify how and by whom all applicable charges will be collected. Reference to an appropriate terminal tariff or other governing publication shall be sufficient to satisfy the requirements of this paragraph.

(d) When allowances or discounts are paid or otherwise made available to shippers, consignees or passengers in lieu of furnishing a terminal service, the carrier's tariff shall contain an appropriate provision separately stating and fully describing all such allowances or discounts. The exact amount of the allowances or discounts and the terms and conditions under which they are paid shall be included in the required tariff provision.

§ 550.10 Amendments to tariffs.

(a) All changes, additions, or deletions from a tariff shall be known as amendments and shall be filed in the manner prescribed by this section unless otherwise provided by the Commission or this part.

(b) Amendments establishing new or initial rates, or changing rates, fares, charges, rules, or other tariff provisions, which do not constitute a general increase or decrease in rates shall be posted and filed together with any supporting material required by 46 CFR Part 552 of this chapter at least 30 days prior to their effective dates, except that:

(1) Amendments extending actual service to additional ports at rates or fares already in effect for similar service at the ports being added may take effect on the same day they are filed and posted;

(2) Amendments adopting a tariff pursuant to §550.17 may take effect on the same day they are filed and posted;

(3) Amendments completely cancelling a tariff pursuant to § 550.12(a)(2) due to a cessation of all service by the publishing carrier between the ports or points listed in the cancelled tariff, may take effect on the same day they are filed and posted;

(4) Amendments changing only the name or address of the filing party may be filed and posted on not less than one day's notice;

(5)(i) Amendments in terminal rates, charges and provisions over which the carrier has no control may be filed and posted on not less than ten days' notice, but only if the filing occurs within 30 days after the changed terminal practice is actually implemented by the controlling party.

(ii) Amendments in terminal rates, charges and provisions over which the carrier has no control shall be accompanied by a justification statement fully describing the underlying action of a third party not subject to the carrier's control which makes the short notice tariff change necessary.

(iii) If based upon a change in the rates of a terminal operator, amendments in terminal rates, charges and provisions over which the carrier has no control must cite the name, series, and number designation, page number, item number and effective date of the operator's terminal tariff.

(6) Carriers may file and post on not less than one day's notice, amendments establishing additional terminal facilities for loading or discharging cargo at ports or harbors already served, but only if the rates to be charged at such facilities are the same as those currently applicable to comparable facilities of the carrier at the same port or harbor.

(7) Amendments announcing seasonal discontinuance or restoration of service may be filed and posted on not less than ten days' notice. Such amendments shall contain a brief statement announcing the date of discontinuance/restoration and may include no other tariff matter.

(c) Amendments changing rates, fares, charges, rules, or other tariff provisions, which constitute a general increase or decrease in rates, shall be posted and filed together with any supporting material required by Part 552 and § 502.67 of this chapter at least 60 days prior to their effective date.

(d) Amendments shall be made by reprinting the entire page upon which the changed tariff matter will be found. Amended pages shall be designated, in the upper right-hand corner, as revised pages and shall cancel the preceding edition of the same page; e.g., "1st revised page 10 cancels original page 10."

(e) Amendments to existing tariff provisions shall be indicated by the use of the symbols specified in § 550.5(b)(6)(i):

(1) When the same change is made in all, or substantially all, the rates or fares in an entire tariff (or in those printed on a single tariff page), the nature of the change may be indicated in boldface type at the top of the Title Page (or individual tariff page) in substantially the following form:

All rates or fares in this tariff (or supplement or on this page) are increases (reduction), except as otherwise indicated.

(2) When amendments deleting existing tariff matter alter the amount paid by the shipper/consignee, the effect of this change shall be indicated as required by § 550.5(b)(6)(i). In addition, the amendment shall state the provisions, if any, still applicable to the tariff matter affected by the deletion.

(3) When deleted tariff material is republished on a different page, the page from which it is deleted shall contain a specific reference to the page on which the relocated provisions can be found.

(f) Amendments effective upon lesser notice periods than those provided by paragraph (b) of this section (i.e., after

receipt of special permission authority granted by the Commission), shall contain the notation required by § 550.18(i).

(g) If amendments require the addition of pages at the end of a tariff, such pages shall be numbered consecutively with the last existing tariff page and shall be designated as "Original Page —— (insert next following page number)."

§ 550.11 Supplements to tariffs.

(a) A supplement is a particular type of tariff amendment which may be filed to accomplish the following tariff changes only:

(1) General rate changes applicable to all, or substantially all, commodities listed in the tariff;

(2) Transfers of operations or changes in carrier control or name pursuant to § 550.17;

(3) Implementation of a Commission suspension order pursuant to § 550.13(b);

(4) Changes in effective dates affecting an entire tariff;

(5) Cancellations of either an entire tariff or previous supplements to a tariff; partial cancellations of any type are not to be filed as supplements.

(b) No more than one active supplement affecting any given tariff item shall be permitted at any given time; e.g., only one general rate increase supplement may be on file at any one time.

(c) Tariffs shall contain no more than four active supplements.

(d) Supplements shall contain either a list of participating carriers which conforms with § 550.5(b)(2) or a statement that the participating carriers are "as shown in the tariff" or "as shown in tariff amended as follows."

(e) Tariff matter brought forward without change from one supplement to another shall be designated "reissued" and shall show the original effective date and the number of the supplement from which it was reissued.

(f) Supplements shall be numbered consecutively with the first to be issued designated number one: e.g., "Supplement No. 1 to FMC–F No. 3."

(g) The first page of every supplement shall:

(1) Contain the operating name of the publishing carrier as shown on the Title Page of the tariff being amended;

(2) Set out, in the upper right-hand corner and in the following order:

(i) The number of the supplement;

(ii) The series and number of the tariff being amended;

(iii) A statement (if applicable) that the supplement cancels a previous supplement or an entire tariff;

(iv) A statement indicating the numbers of all supplements currently in effect, e.g.:

Supplement No. 5 to FMC–F No. 3 cancels Supplement No. 2 FMC–F No. 3.

Supplements Nos 3, 4, and 5 contain all changes.

(3) Publish, in the upper right-hand corner, an effective date which conforms with §§ 550.10(b) and 550.10(c).

(h) The issuance of a supplement shall require the revision of the Title Page of the tariff being amended (see § 550.5(a)(12)).

(i) Supplements containing more than one page shall be consecutively numbered (with the first page being page number one), shall be bound firmly at the left-hand edge, and may be printed on both sides of the page.

§ 550.12 Cancellation of tariffs.

(a) An entire tariff may be cancelled by:

(1) The issuance of a similar tariff to take its place which contains a cancellation notice printed on the Title Page in accordance with § 550.5(a)(4);

(2) The issuance of a consecutively numbered supplement which contains a cancellation notice printed on its first page in accordance with § 550.11(g)(2)(iii).

(b) Cancellation of an entire tariff automatically cancels all amendments or supplements thereto. Cancellation by supplement is permitted even if the tariff being cancelled contains the maximum number of active supplements allowed by § 550.11(c).

(c) A cancelling publication shall state the tariff(s) applicable to those services, if any, offered under the cancelled tariff which will continue to be offered by the participating carrier(s) and state where these continued services may be found in such tariff(s). If cancellation changes the rates or charges for any continued services, each change shall be indicated on the cancelling publication by the uniform symbols of § 550.5(b)(6)(i).

§ 550.13 Suspension of tariff matter.

(a) The Commission may suspend from use any rate, fare, charge, classification, regulation, or practice for a period of up to 180 days beyond the time it would otherwise have lawfully taken effect.

(b) Upon receipt of an order suspending a tariff publication in whole or in part, the carrier shall immediately post and file a supplement which:

(1) Bears an effective date coinciding with that of the applicable suspension order;

(2) Contains a notice which specifically indicates the suspended portion(s) of the publication;

(3) Contains a notice which specifically states any tariff provisions which remain effective in lieu of the suspended provisions;

(4) Reproduces those portions of the order directed by the Commission to be so published, or, in the absence of such direction, reproduces the suspension order in its entirety.

(c)(1) Neither suspended matter nor matter continued in effect as a result of a suspension, may be amended, deleted or withdrawn except by order or special permission of the Commission, except that a tariff affected by a suspension order may be amended during the suspension period if the amendment does not affect the suspended materials.

(2) All post suspension amendments shall be accompanied by a notation immediately following the cancellation notation (see §§ 550.11(g)(2)(iii) and 550.11(g)(iv)) and which states: " * * * except portions under suspension in Docket No. ——."

(d) If, prior to receiving a suspension order, a carrier files an amendment reissuing, deleting, cancelling or amending any tariff matter named in a subsequent suspension order, the suspension supplement required by paragraph (b) of this section shall specifically cancel from such intervening amendment the reissued, deleted, cancelled or amended material in question.

(e)(1) Should the Commission vacate a suspension order earlier than the date to which the subject tariff publication was originally suspended, the filing carrier may file a vacating supplement stating the date upon which the previously suspended tariff matter will take effect.

(2) Vacating supplements, unless otherwise provided by the Commission, may take effect on one day's notice. Should a carrier elect not to publish a vacating supplement, the suspended provisions will take effect on the date to which they were originally suspended.

(3) Should an order suspending a tariff in its entirety be vacated, the vacating supplement shall contain no tariff material other than the notice of vacating.

(f) Should the Commission subsequently cancel all or any part of a previously suspended tariff publication, the publishing carrier shall effectuate the cancellation by filing upon not less than one day's notice (or such other period as the Commission may specify), a supplement or revised page stating the date upon which such suspended matter was ordered cancelled.

(g) If suspended tariff matter is not cancelled prior to its effective date, it shall take effect automatically and the tariff matter which was continued in effect during the suspension period shall be cancelled automatically.

(h) Suspension, vacating and cancellation supplements issued pursuant to this section may be issued without regard to the requirements of § 550.11.

§ 550.14 Governing tariffs.

(a)(1) When it is impractical to include governing rules (e.g., bills of lading/contracts of affreightment, classifications of freight, equipment registers, hazardous cargo rules and similar lengthy tariff matters) in a single rate tariff, these may be separately published and filed as one or more "rules tariffs."

(2) Governing tariffs may be used only when expressly referenced by name and series/number designation in the governed tariff of rates or fares as prescribed by §§ 550.5(a)(8) and 550.5(b)(7).

(b) Governing tariffs shall conform with all applicable provisions of § 550.5.

(c) A rule or regulation affecting freight rates or passenger fares may appear in only one governing tariff.

(d) A governing tariff containing a classification of commodities shall list all commodities in an orderly manner and a specific rating must be shown in connection with each commodity description employed. Rules applying to the classification must precede the list of commodities and shall be separately numbered. Such a classification is valid only in connection with and to the extent expressly provided for in the rate tariff(s) it governs.

§ 550.15 Tariffs applicable to seasonal transportation service.

Tariffs naming rates, fares or rules applicable to all water routes which are closed to navigation during part of a year shall:

(a) Publish provisions governing the handling of shipments which may arrive at the publishing carrier's facilities after the date service is discontinued, and

(b) Expressly provide for their own expiration at the close of the navigation season, or provide for a discontinuance/restoration of service by the publication, either on the Title Page or by an internal rule referenced on the Title Page, of provisions governing such seasonal discontinuance/restoration.

§ 550.16 Index of tariffs.

(a) Carriers participating in five or more active tariffs, either published in their own names or otherwise, shall publish, post and file an index of such tariffs designated as "FMC–I No. ——." A notice period is not required for tariff indices; they may take effect upon filing.

(b) The Title Page of an Index of Tariffs shall follow the requirements of § 550.5, except that it shall not contain the material required by § 550.5(a) (5), (6), (7), (9), and (11), i.e., scope, statement of service, statement of rate types, effective and expiration date, and list of participating carriers. In addition, the Title Page shall bear the following notation:

This index contains a list of tariff publications in effect on (show publication date).

(c) The body of an Index of Tariffs shall list the following types of tariffs, as applicable, in the following order: specific commodities tariffs; general commodities tariffs; class tariffs; passenger tariffs; rules tariffs; miscellaneous tariffs.

(d)(1) Each tariff listed in an Index of Tariffs shall be accompanied by the following information, as applicable, arranged in a columnar manner: FMC series and number designation; operating name of publishing carrier; type of service and type of rates offered; and ports or points from, to and between which the tariff applies.

(2) Tariffs of each type named in paragraph (c) of this section shall be arranged in numerical order by FMC series and number designation.

(e)(1) Tariff indices shall be revised to reflect tariff changes within 30 days from the effective date of the addition or cancellation involved, either by filing and posting a supplement or by filing and posting a reissued index.

(2) Supplements to an Index of Tariffs shall be numbered consecutively, shall be arranged in the same order as the index, and shall show additions, modifications and cancellations by reference to the page and item numbers of the changed entries. Each new supplement shall bear the following notation on its Title Page:

Supplement Nos. —— and —— contain changes in effect on date thereof, or which have been filed to become effective at a later date as shown within.

§ 550.17 Transfer of operations, transfer of control and changes in carrier name.

(a) Whenever a carrier performing an ongoing service pursuant to duly posted and filed tariffs either: sells its common carrier operations to another person; transfers working control of its business to another person; or changes its operating or legal name, the person legally entitled to control the ongoing common carrier operation (the "adopting carrier") shall simultaneously file:

(1) A one-page adoption notice numbered in the adopting carrier's FMC series, which states:

FMC–F (or –P or –G) No. ——

(operating name of adopting carrier)

Adoption Notice

The (operating name of adopting carrier) hereby adopts, ratifies, and makes its own, in every respect and as if the same had been originally filed and posted by it, all freight (or passenger, rules or other) tariffs, notices, divisions, authorities, delegations of authority, or other instruments whatsoever, including supplements or amendments thereto, filed with the Federal Maritime Commission by, or heretofore adopted by, the ——— (operating name of the carrier previously performing the adopted service) prior to ——— (effective date of change in operating control).

Issued by (Issuing Official as per § 550.3(d) of this part).

Effective Date (see § 550.10(2)). [and]

(2)(i) A consecutively numbered, revised Title Page to each tariff being adopted, which contains the following statement:

Effective *(insert date)*, this tariff became the tariff of *(insert operating name of adopting carrier)* pursuant to its adoption notice published in its Tariff FMC *(insert series and number designation)*.

(ii) The revised Title Pages referred to in paragraph (a)(2)(i) of this section shall be accompanied by a letter of concurrence from an appropriate officer (not a tariff agent) of the previous carrier, stating the full details of the transaction necessitating the adoption, and the previous carrier's concurrence therein.

(b)(1) Tariffs adopted under this section shall be cancelled in their entirety within 90 days and shall not be supplemented or amended subsequent to adoption other than to accomplish said cancellation.

(2) The adopting carrier shall publish replacement tariffs under its own operating name and bearing its own consecutive FMC series and number designation to be effective the date following the last effective day of the cancelled tariff. The new tariff shall provide 30 days' notice of its effective date (see § 550.3(f)), and shall also cancel the adoption notice filed pursuant to paragraph (a) of this section.

(c) Tariffs naming participating carriers shall be amended within 90 days whenever any participating carrier transfers its operations, transfers control of its business, or changes its name, and the adopting carrier continues to participate in the service. The amendment shall delete all references to

the adopted carrier (or old name) and substitute references to the adopting carrier (or new name) in their place. Similarly, all delegations of authority adopted by a new carrier (or affected by a name change) shall be replaced within 90 days by new delegations of authority issued by and numbered in the series of the new carrier. Such amendments shall provide 30 days' notice of their effective date (see § 550.3(f)).

(d) Should a carrier enter receivership, or otherwise come under the control of a trustee, the notices, cancellations and tariffs required by paragraphs (a) and (b) of this section shall be filed in the FMC series of the previous carrier by the receiver or trustee appointed. When the receivership/trusteeship is terminated, the successor to the ongoing common carrier operations (if any) shall also publish all notices, cancellations and tariffs required by paragraphs (a) and (b) of this section.

(e) Adoption of only part of the service extended under a given rate tariff is forbidden. When less than an entire existing operation is transferred to a successor carrier (or new carrier name), all current tariffs must be cancelled or otherwise amended and the successor carrier must file and post its own tariff(s) upon the 30 days' notice required for any new service (see § 550.3(f)).

§ 550.18 Applications for special permission.

(a) Upon a showing of good cause, the Commission may permit rate changes or the issuance of new or initial rates to take effect on short notice, and otherwise waive the requirements of this part.

(1) Special permission requests for authority to correct typographical errors must specify the error involved, include a full statement of the attending circumstances, and be presented with reasonable promptness after issuance of the defective tariff publication.

(2) Other special permission requests shall state the specific rules from which relief is requested, the special circumstances requiring relief, and the beneficial results to be obtained from the requested waiver.

(3) An application for special permission shall be accompanied by a $90 filing fee.

(b) Except upon petition directly to the Commission, special permission authority shall not be granted to:

(1) Allow a carrier to change rates or other tariff provisions on less than full notice for the purpose of meeting competition, where the competitor in question altered its rates/provisions on full notice; or

(2) Modify a formal order of the Commission.

(c) Authority granted by special permission must be used in its entirety and only in the manner set forth in such special permission.

(d) Special permission authority must be applied for by the same person that filed the tariff publication for which special permission is sought.

(e) In addition to the information required by paragraph (a) of this section, an application for special permission shall contain:

(1) An exact copy of the tariff matter the applicant proposes to file, clearly designated as an exhibit to the application, but otherwise in the form required by this part. If the proposed amendment consists of rate changes, all points of origin and destination must be stated in the application if not otherwise included in the exhibit. Tariff series and number destinations (including supplements, if applicable) and all cancellations which would be made must be shown.

(2) The names of carriers known to maintain provisions competitive to those for which the applicant seeks relief and a certification signed by the filing party that all such carriers have been served with a copy of the special permission application. Service by first class mail, postage prepaid, correctly addressed to the intended recipient's principal place of business, and posted no later than the date of filing, is acceptable where personal service is impractical.

(3) The entire application shall be signed and its accuracy sworn to by the filing party at a place within the United States, its commonwealths, territories, or possessions, pursuant to 28 U.S.C. 1746 (Pub. L. 94–550). Immediately following the text of the application and immediately preceding the signature of the filing party, there shall appear the statement:

I declare under penalty of perjury that the foregoing is true and correct. Executed at (insert place of execution)
on (insert date of execution)

(f) Special permission applications (including attachments thereto) shall be filed in duplicate.

(g) Special permission applications shall be filed in substantially complete form at least five working days prior to the effective date of the proposed tariff filing, except that petitions for waiver of this requirement may be granted if they are sworn to in the manner described in paragraph (e)(3) of this section and demonstrate that a genuine emergency justifying a shorter notice period exists.

(h) The Commission may, upon the application of interested persons, or upon its own motion, establish or rescind special permission authorities as it sees fit.

(i) Tariff publications filed pursuant to a grant of special permission shall publish the following notation at the bottom of each page of such publication (at the bottom of the first page only in the case of supplements):

Published under authority of Federal Maritime Commission Special Permission No. ——.

§ 550.19 Special rules for bound tariffs filed pursuant to special permission authority.

(a) Such bound tariffs as may be permitted to be filed by special permission are subject to this section, in addition to those other sections in this part which govern tariff filing generally.

(b) All pages of bound tariffs shall be firmly and permanently fastened together on the left edge by an appropriate binding method. The simple insertion of one or two staples in the binding edge shall not suffice to meet this requirement, but the binding process known as saddle stitching is acceptable.

(c) Section 550.4(a) is waived to the extent it requires bound tariff pages to be printed on only one side.

(d) Section 550.4(g) is waived to the extent it requires an effective date to be published on other than the Title Page of a bound tariff.

(e) Sections 550.5(a) and 550.11 are waived to the extent they require the Title Page of a bound tariff to reflect all supplements either issued or in effect.

(f) Supplements shall be the only method of amending bound tariffs. In addition to the requirements of § 550.11, the following shall apply to bound tariff supplements:

(1) They shall refer specifically to the page and item designation of the tariff/supplement item to be amended;

(2) Amendments to a numbered or otherwise designated item must publish the amended item in its entirety;

(3) Amendments to items shall bear the same designation as the item being amended with a consecutive letter suffix, and shall show the cancellation of the prior item edition, e.g., "Item 10–A, cancels Item 10"; "Item 10–B cancels Item 10–A," etc.

§ 550.91 OMB control assigned pursuant to the Paperwork Reduction Act.

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. The Commission intends that

this section comply with 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 the Office of Management and Budget (OMB) for each agency information collection:

Section	Current OMB control No.
550.3 through 550.6	3072-0005
550.8 through 550.19	3072-0005

PART 552—FINANCIAL REPORTS OF VESSEL OPERATING COMMON CARRIERS BY WATER IN THE DOMESTIC OFFSHORE TRADES

Sec.
552.1 Purpose.
552.2 General requirements.
552.3 Certification.
552.4 Access to and audit of records.
552.5 Definitions.
552.6 Forms.
552.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

Authority: 5 U.S.C. 553; secs. 18(a), 21, and 43 of the Shipping Act, 1916 (46 U.S.C. app. 817(a), 820, 841a); and secs. 1, 2, 3(a), 3(b), 4 and 7 of the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 843, 844, 845, 845a and 847).

§ 552.1 Purpose.

(a) The purpose of this part is to establish methodologies that the Federal Maritime Commission will utilize in evaluating the reasonableness of rates in the domestic offshore trades filed by vessel operating common carriers (VOCCs) subject to the provisions of the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 843, 844, 845, 845(a) and 847) and to provide for the orderly acquisition of data essential to this evaluation. Compliance is mandatory and failure to file the reports required under this part may result in denial of rate increases or rejection of tariff pages implementing rate changes or penalties of up to $100 for each day of such default (46 U.S.C. app. 820(a)).

(b) The methodology employed in each case will depend on the nature of the relevant carrier's operations and financial structure. In evaluating the reasonableness of a VOCC's overall level of rates, the Commission will use return on rate base as its primary standard. However, the Commission may also employ other financial methodologies in order to achieve a fair and reasonable result.

(c) In evaluating the reasonableness of a carrier's rates, the Commission may consider, in addition to the rate of return of the filing carrier, the effect which approval or disapproval of the rates will have on other carriers in the Trade.

(d) The Commission reserves to itself the right to employ other bases for allocation and calculation and to consider other operational factors in any instance where it is deemed necessary to achieve a fair and reasonable result.

§ 552.2 General requirements.

(a) All persons engaged in common carriage via cargo vessels in the domestic offshore trades (except persons engaged in intrastate operations in Alaska and Hawaii) and required by the Intercoastal Shipping Act, 1933, to file tariffs with the Commission, shall execute and file, in duplicate, Statement of Financial and Operating Data (designated as FMC Form No. 377 for tug and barge operators and FMC Form No. 378 for vessel operators) for each domestic offshore trade served, with:

Federal Maritime Commission, Bureau of Tariffs, 1100 L Street, NW., Washington, D.C. 20573

(b) Annual statements under this part shall be filed within 150 days after the close of the carrier's fiscal year and be accompanied by a company-wide balance sheet and income statement having a time period coinciding with that of the annual statements. A specific format is not prescribed for the company-wide statements.

(c)(1) Upon application, the Commission may grant reasonable extensions of the time limit prescribed by this section for filing the statements required by this part, provided that:

(i) The application for extension is received at least 15 days before the statements are due; and

(ii) The application states a specific date on or before which the required statements will be filed.

(2) The mere filing of an application for an extension will not necessarily act as a bar to the imposition of civil penalties for failure to comply with Commission regulations. Even in cases where extensions are granted, the Commission may suspend and investigate rates filed during the extension period.

(d) Upon application, the Commission may relieve a carrier from full compliance with this part and permit it to submit alternative data as the Commission deems acceptable, provided that:

(1) The application shows good cause and is accompanied by the data which the carrier proposes to submit in lieu of the required statements, or a description of that data; and

(2) The Commission finds compliance with this part unnecessary to fulfill its regulatory functions.

(e) Upon application, the Commission shall grant a waiver of the detailed reporting requirements to carriers which have earned gross revenues of $10,000,000 or less for the reporting period in a particular Trade and whose Trade revenues amount to 25 percent or less of the total revenue for the Trade in question. The application for waiver (Exhibit D) must be accompanied by a company-wide balance sheet and income statement. This waiver provision is applicable to annual reporting requirements and to filings of proposed rate changes in accordance with § 552.2(f).

(f) Whenever a carrier files with the Commission an increase in rates which would affect 50 percent or more of the rate items listed in all of its tariffs in a particular Trade, and which increase in rates would result in either: an increase of not less than 3 percent in the carrier's gross revenues in that Trade, or in an increase of less than 3 percent in the carrier's gross revenues in that Trade, but, when aggregated with other rate changes filed during the preceding twelve months which have also resulted in increases of less than 3 percent in the carrier's gross revenues in that Trade, would result in an increase of 9 percent or more in the carrier's gross revenues in that Trade, then such carrier shall simultaneously file in duplicate:

(1) Financial and operating data in support of proposed rate changes as follows:

(i) An *actual* midyear rate base exhibit (Exhibit A–a) and supporting schedules computed for a 12–month period commencing not more than fifteen (15) months prior to the date of filing the proposed rates;

(ii) A *projected* midyear rate base exhibit (exhibit A–p) and supporting schedules computed for a 12–month period commencing on the first day of the month following the date on which the rate changes are proposed to become effective;

(iii) An *actual* income account exhibit (Exhibit B–a) and supporting schedules covering the 12-month period used to calculate rate base in paragraph (f)(1)(i) of this section;

(iv) A *projected* income account exhibit (Exhibit B–p) and supporting schedules for the 12-month period commencing on the first day of the month following the date on which the changed rates are proposed to become effective (taking into account the effect of the proposed rate changes); and,

(v) *Actual* and *projected* rate-of-return exhibits (Exhibits C–a and C–p) coinciding with the time periods covered by the income statements furnished in response to paragraphs (f)(1)(iii) and (f)(1)(iv) of this section.

(2) The work papers described in § 552.4.

(g) If a carrier files proposed rate changes within six (6) months after the end of its fiscal year, it may furnish its annual report under this part for the fiscal year in lieu of the schedules of actual data required in §§ 552.2(f)(1)(i) and 552.2(f)(1)(iii). The requirement to furnish schedules pertaining to future operations under the proposed rate changes would not be affected by this substitution.

(h) When a proposed rate change is filed which does not meet the criteria set forth in § 552.2(f), the following certification shall be submitted simultaneously with the tariff material:

Certification

I, [type or print name of officer] of [name of reporting company] certify, under the penalties of 18 U.S.C. 1001, that the proposed rate increase submitted herewith is not required by § 552.2(f) of 46 CFR Part 552 to be accompanied by the financial and operating data described therein.

Signature: _____
Title: _____
Date: _____

(i) All financial and operating data filed in connection with proposed rate changes shall be made available to interested persons by the carrier upon request.

(j) Where it is necessary to allocate property, revenue (except *Net Passenger* and *Other Voyage* revenue), costs or expenses, the allocation shall be on a direct basis. If this is not practicable, allocation shall be made in the manner prescribed in § 552.6 However, if the gross revenue from *Other Services* does not exceed 5 percent of the total company gross revenue, no allocation of revenue and expense between *Other Services* and the *Service* (see definitions, §§ 552.5(a) and 552.5(b)) is required by this part. Further, if the gross revenue from *Other Cargo* does not exceed 5 percent of the total gross revenue from the *Service*, no allocation of revenue and expense between *Other Cargo* and *The Trade* (see definitions, §§ 552.5(c) and 552.5(e)) is required.

(k) All carriers subject to these filing requirements must comply fully with the instructions outlined in this part for the submission of specified data and with the methods prescribed for its preparation. A carrier may request relief from full compliance in accordance with the provisions of §§ 552.2(d) and 552.2(e). If a carrier has no information to report on a required schedule, it must submit a blank schedule with the word "NONE" printed across its face.

(l) With respect to the annual statements required by this part, all data shown must conform or be reconciled to the figures listed in the balance sheet and income statement filed therewith.

(m) All percentage calculations required by allocations herein shall be carried to two places beyond the decimal point (e.g., 97.54 percent).

(n) Whenever a carrier files an initial tariff, it shall simultaneously file a company-wide balance sheet and income statement together with the data required in Exhibit E. If a carrier is operating in another domestic offshore trade and has already filed the requisite annual data, only the data set forth in Exhibit E will be required.

(o) For the purpose of all reports required under this part, a carrier may employ terminated voyage or period accounting, at its election, and shall identify the method utilized. A carrier may change accounting methods for the purpose of such reports only with the prior written consent of the Commission.

(p) Related company assets employed in the Service shall be reported in the same manner as owned assets. Other intercompany transactions shall be shown net of intercompany profit and reported on the appropriate schedule. Any calculations involving intercompany accounts shall be included in the working papers.

§ 552.3 Certification.

The data required by this part shall be accompanied by a certification by the corporate officer responsible for the maintenance and accuracy of the books of account and financial records of the carrier, stating that:

(a) The books of account have been maintained in accordance with an appropriate system of accounts;

(b) The exhibits and schedules have been prepared from the regularly maintained books and records of the carrier;

(c) The records so maintained conform to, are reconciled to, or represent the actual financial data subject to the annual independent financial audit;

(d) The allocations have been made in accordance with the rules promulgated in this part; and,

(e) The financial and statistical data used are supported by an appropriate information gathering system having proper internal controls which have been tested for accuracy.

§ 552.4 Access to and audit of records.

(a) The carrier shall file with the Commission all work papers, properly cross-referenced and indexed, which were prepared in support of the exhibits and schedules. In addition, the books and records of the carrier and any related company whose financial data is included in any of the exhibits or schedules shall be made available for examination upon request by appropriate Commission personnel. Commission personnel shall be permitted to make copies of these records to the extent they deem necessary.

(b) For all proposed rate changes as described in § 552.2(f), the carrier shall submit a detailed description of the methods employed in projecting revenues.

(c) All exhibits and schedules submitted as part of the filing requirements are to include the work paper reference numbers so that amounts shown can be readily traced to the appropriate work papers.

§ 552.5 Definitions.

For the purpose of this part, the following terms are expressly limited to the definitions listed below:

(a) *"Voyage"* means a completed round trip from port of origin and return to port of origin. A voyage cannot be split to separately reflect outbound and inbound services. However, when a vessel is reassigned to a new United States basing point, then the voyage runs from the old United States port of origin to the new United States port of origin. Should a vessel sail outbound in the Service and then proceed to another service, the voyage will be considered to be terminated upon completion of the offloading of the last cargo in the Service. Carriers which are party to operating differential subsidy contracts may use Maritime Administration commencement and termination guidelines for the purposes of this part.

(1) Voyages generally are considered to be terminated on the completion of the latest occurring event of one of the following:

(i) Crew paid off;

(ii) Discharge of last inbound cargo;

(iii) Completion of repairs (excluding annual overhaul and emergency repairs); or

(iv) Midpoint in time of operations in which cargo is simultaneously on-loaded and off-loaded.

(2) Usually voyage termination will be considered to have happened at noon or midnight of the day on which the determining operation is completed. If a carrier has difficulty in applying this

definition of the word "voyage" to its operations, it may identify the method it uses to determine a voyage and explain the reasons for this alternative definition for the Commission's consideration and approval.

(b) *"The Service"* means those voyages and/or terminal facilities in which cargo subject to the Commission's regulation under Part 550 of this chapter is either carried or handled.

(c) *"The Trade"* means that part of the Service subject to the Commission's regulation under Part 550 of this chapter, more extensively defined below under "Domestic Offshore Trade."

(d) *"Other Services"* means those voyages or terminal facilities other than those in the relevant Service (e.g., a voyage to a foreign port on which no regulated cargo was carried, or a terminal facility in a foreign country).

(e) *"Other Cargo"* means that part of the Service not included in the Trade.

(f) *"Domestic Offshore Trade"* means the carriage of common carrier cargo under the terms of a tariff(s) on file with and regulated by the Commission between any one of the five areas of the Continental United States listed in paragraph (f)(1) of this section and one non-contiguous area of the United States (see paragraph (f)(2) of this section), or between two non-contiguous areas of the United States. Where service is offered to or from two or more areas at the same rates (e.g., Atlantic Coast to Puerto Rico and the Virgin Islands) and listed as such in a single tariff, the carriage of cargo to or from those two or more areas may be treated as one domestic offshore trade for the purposes of this part.

(1) The five areas of the Continental United States are:

(i) North Atlantic (Maine to, but not including, Hatteras, North Carolina);

(ii) South Atlantic (Hatteras, North Carolina to, but not including, Key West, Florida);

(iii) Gulf (Key West, Florida to and including Brownsville, Texas);

(iv) West Coast; and

(v) Great Lakes.

(2) The non-contiguous areas of the United States (including, but not limited to those) to which service is offered under the terms of tariffs on file with the Commission, are:

(i) American Samoa;

(ii) Northern Marianas;

(iii) Guam;

(iv) Johnston Island;

(v) Midway Island;

(vi) Alaska;

(vii) Hawaii;

(ix) U.S. Virgin Islands; and

(x) Wake Island.

(g) *"Cargo Vessel"* means a self-propelled or non-self-propelled vessel which transports cargo, but not including vessels which are authorized to carry more than 12 passengers.

(h) *"Cargo Cube"* means the product of the outside dimensions of a unit of cargo expressed in cubic feet. In computing cargo cube for containerized cargo, the outside dimensions of the container, trailer or other equipment shall be used. The height of equipment moving on wheels shall be measured from the ground to the highest point on the equipment. Empty equipment, such as containers, shall be included in the computation of cargo cube only if it is a revenue-producing unit of cargo. Where an operator finds it more convenient to accumulate such data in terms of twenty-foot equivalent units (TEU's) or metric quantities, these units may be used instead of cargo cube in all instances where cargo cube is cited in this part. Where any of these options are exercised, the operator shall modify the headings on the prescribed reporting forms to indicate the units in which the data is being reported and shall convert the data to TEU's where so provided in the schedules. For purposes of this part, carriers are not required to tape measure each unit (e.g., container, trailer, box, carton). However, the computation of cargo cube must be based upon careful consideration of all evidence available to the carrier, including documents, the opinions of experienced operating personnel, and sample measurements. In calculating the cube of containers, trailers, or other similar equipment, the carrier may assign a standard length, width and height to a given class of equipment, provided that the actual dimensions of each piece of equipment in the class vary no more than a foot from the standard dimensions adopted.

(i) *"Measurement Ton"*—Equals forty (40) cubic feet.

(j) *"Metric Measurement Ton"*—Equals 35.31 cubic feet or 1 cubic meter.

(k) *"Twenty-foot Equivalent Unit (TEU)"*—Equals 1,280 cubic feet, based on the standard 20' x 8' x 8' container.

(l) *"Cargo Cube Relationship"* means the ratio of total cargo cube for all cargo carried in the Trade to total cargo cube for all cargo carried in the Service.

(m) *"Cargo Cube Miles"* means the product of the cargo cube carried between each port of origin and destination, multiplied by the number of nautical miles representing the shortest navigable distance between the two ports as set forth in *Distance Between Ports* (Department of the Navy, Oceanographic Office), *Distance Between United States Ports* (U.S. Department of Commerce, Coast and Geodetic Survey) or, if not listed in either of these publications, as approved by the Commission. Where revenue derived from the carriage of passengers and Other Services is treated as a reduction of costs under § 552.6(c)(2)(iii), the cargo cube, if any, from which such revenue is derived shall be omitted from the cargo-cube mile calculations required herein.

(n) *"Cargo-Cube Mile Relationship"* means the ratio of cargo-cube miles for all cargo carried in the Trade to total cargo-cube miles for all cargo carried in the Service. Because the total of all cargo-cube miles will normally involve a figure of considerable magnitude, the data shall be submitted in terms of thousands of cargo-cube miles. Where the service of the carrier is solely between port pairs in the Trade, and where there are no significant mileage differences between all such port pairs and the ocean rates between all such port pairs are identical, the cargo-cube relationship may be used in lieu of the cargo-cube mile relationship.

(o) *"Vessel Operating Expense"* means:

(1) For carriers required to file Form FMC–378: the total of Direct Vessel, Port, Terminal and Container/Barge Expenses, less Other Revenue.

(2) For carriers required to file Form FMC–377: the total of Direct Vessel and Other Shipping Operations Expenses, less Other Revenue.

(p) *"Vessel Operating Expense Relationship"* means the ratio of total Trade Vessel Operating Expense to total Company Vessel Operating Expense.

(q) *"Related Companies"* means companies or persons that directly or indirectly (through one or more intermediaries) control, or are controlled by, or are under common control with, the reporting carrier. The term "control" shall include actual as well as legal control, whether maintained or exercised through (or by reason of) the circumstances surrounding organizational structure or operation, through (or by) common directors, officers, stockholders, voting trust(s), holding or investment company or companies, or through (or by) any other direct or indirect means, including the power to exercise control.

(r) *"Initial Tariff"* means the first filing of a tariff by a carrier in a specific domestic offshore trade, or the filing of a tariff in a Trade where the carrier does not have an active tariff.

(s) *"Trade Operating Expense"* means the total of all expenses shown on Exhibit B (Income Account), including Federal income taxes.

(t) *"Company Operating Expense"* means the total of all expenses shown on the company-wide income statement, including Federal income taxes.

(u) *"Operating Expense Relationship"* means the ratio of Trade Operating Expense to total Company Operating Expense.

§ 552.6 Forms.

(a) *General.* (1) The submission required by this part shall be submitted in the prescribed format and shall include General Information regarding carrier ownership and stockholders, as well as the following schedules as applicable:

Exhibit A—Rate Base and supporting schedules;
Exhibit B—Income Account and supporting schedules;
Exhibit C—Rate of Return and supporting schedules;
Exhibit D—Application for Waiver; and
Exhibit E—Initial Tariff Filing Supporting Data.

(2) Statements containing the required exhibits and schedules, are described in paragraphs (b), (c), (d), (e) and (f) of this section and are available upon request from the Commission. The required General Information, schedules and exhibits are contained in forms FMC–377 and FMC–378. For carriers required to file form FMC–378, the statements are based on the Uniform System of Accounts for Maritime Carriers prescribed by the Maritime Administration and the Interstate Commerce Commission. For carriers required to file Form FMC–377, the statements are based on the accounts prescribed by the Interstate Commerce Commission for carriers by Inland and Coastal Waterways. The schedules contained in these statements are distinguished from those contained in the Form FMC–378 statements by the suffix "A" (e.g., Schedule A–IV(A)).

(b) *Rate Base (Exhibits A and A(A)).*—(1) *Investment in Vessels (Schedules A–I and A–I(A)).* Each cargo vessel (excluding vessels chartered under leases which are not capitalized in accordance with § 552.6(b)(10)) employed in the Service for which a statement is filed shall be listed by name, showing the original cost to the carrier or to any related company, *plus* the cost of improvements, conversions, and alterations, *less* the cost of any deductions. All additions and deductions made during the period shall be shown on a gross and *pro rata* basis, reflecting the number of days they were applicable during the period. The result of these computations shall be called Adjusted Cost.

(i) The cargo vessels employed in the Service shall be categorized and treated separately as follows:

(A) For those cargo vessels employed exclusively in the Service for the entire period, inclusive of normal periodic lay-ups, the Adjusted Cost shall be included in the total to be allocated to the Trade. If a vessel is permanently withdrawn from the Service during the period and laid-up pending disposition and that vessel has been employed exclusively in the Service for the preceding 12 months, sixty days of the lay-up period may be assigned to the Service. If a vessel is withdrawn from the Service for renovation or converison, and if the carrier certifies that that vessel has been employed exclusively in the Service for the 12-month period immediately prior to withdrawal and will be employed exclusively in the Service for a period of at least 12 months after the renovation or conversion is completed, the Adjusted Cost shall be included in the total to be allocated to the Trade.

(B) For those cargo vessels employed in the Service for less than the entire period, the Adjusted Cost shall be prorated between voyages in the Service and voyages in Other Services. The total number of days of service excludes lay-up days and is therefore likely to be less than the number of days in the reporting period. Lay-up days of vessels in this category will normally be allocated to the respective Services on the same basis used in allocating the Adjusted Cost of such vessels, i.e., active days. However, if one or more of the vessels normally employed in the Service has been diverted temporarily to Other Services in lieu of incurring lay-up expense, no assignment of lay-up time to Other Services is required. That portion of the Adjusted Cost of the vessels not allocated to Other Services shall be included in the total to be allocated to the Trade.

(ii) The total of the adjusted cost of all vessels employed in the Service during the period which has not been allocated to Other Services, as required in § 552.6(b)(1)(i)(B), shall be distributed between Trade and Other Cargo in the cargo-cube mile relationship.

(2) *Accumulated Depreciation—Vessels (Schedules A–II and A–II(A)).* (i) Each cargo vessel (excluding vessels chartered under leases which are not capitalized in accordance with § 552.6(b)(10)) employed in the Service shall be listed separately, showing for each its depreciable life and residual value. For vessels owned the entire year, accumulated depreciation as of the beginning and the end of the year shall be reported and the arithmetic average computed. This amount shall be allocated to the Service and to the Trade in the same proportions as the cost of the vessel was allocated on Schedule A–I or A–I(A). If the depreciable life of any equipment installed on a vessel differs from the depreciation life of the vessel, the cost and the depreciation bases shall be set forth separately.

(ii) For any vessels disposed of during the period, a proportional reduction shall be made in accumulated depreciation corresponding to the similar deduction required by § 552.6(b)(1). The accumulated depreciation upon which the proportional reduction is calculated shall be the average of the accumulated depreciation at the beginning of the year and at date of disposal.

(iii) For any vessels acquired during the period, a proportional addition shall be calculated as one-half of the accumulated depreciation on that vessel at the end of the year.

(3) *Vessel Statistics (Schedules A–III and A–III(A)).* Carriers shall provide vessel statistics as required by Schedule A–III or A–III(A).

(4) *Investment in Other Property and Equipment (Schedules A–IV and A–IV(A)); Accumulated Depreciation Other Property and Equipment (Schedules A–V and A–V(A)).* (i) Actual investment, representing original cost to the carrier or to any related company, in other fixed assets employed in the Service shall be reported as of the beginning of the year. Accumulated depreciation for these assets shall be reported both as of the beginning and as of the end of the year. The arithmetic average of the two amounts shall also be shown and shall be the amount deducted from original cost in determining rate base. Additions and deductions during the period shall also be reported, and the carrier shall report as though all such changes took place at midyear, except for those involving substantial sums, which shall be prorated on a daily basis. Allocation to the Trade shall be based upon the actual use of the specific asset or group of assets within the Trade. For those assets employed in a general capacity, such as office furniture and fixtures, the vessel operating expense relationship shall be employed for allocation purposes. The basis of allocation to the Trade shall be set forth and fully explained.

(ii) With respect to any significant deductions, accumulated depreciation shall be proportionately reduced as required by § 552.6(b)(2)(ii).

(5) *Working Capital (Schedule A–VI).* Working capital for vessel operators shall be determined as average voyage expense. Average voyage expense shall

be calculated on the basis of the actual expenses of operating and maintaining the vessel(s) employed in the Service (excluding lay-up expenses) for a period represented by the average length of time of all voyages (excluding lay-up periods) during the period in which any cargo was carried in the Trade. Expenses for operating and maintaining the vessels employed in the Trade shall include: Direct Vessel Expense, Port Expense, Terminal Expense, Container/Barge Expense, Administrative and General Expense and Interest Expense allocated to the Trade as provided in §§ 552.6(c)(2), 552.6(c)(4) and 552.6(c)(5). For this purpose, if the average voyage, as determined above, is of less than 90 days duration, the expense of hull and machinery insurance and protection and indemnity insurance (accounts 730 and 732, respectively) shall be determined to be 90 days, provided that such allowance for insurance expense shall not, in the aggregate, exceed the total actual insurance expense for the period.

(6) *Working Capital (Schedule A–VI(A)).* Working capital for tug and barge operators shall be determined as the average monthly expense. Average monthly expense shall be equal to one-twelfth of the expense of the carrier during the relevant 12-month period, computed by adding gross Vessel Operating Expense, Administrative and General Expense-Net, Interest Expense, and Inactive Vessel Expense, each as allocated to the Trade, and dividing the total by 12.

(7) *Investment in Other Assets (Schedules A–VII and A–VII(A)); Accumulated Depreciation-Other Assets (Schedules A–VIII and A–VIII(A).* Any other assets claimed by the carrier as components of its rate base shall be set forth separately in a schedule. The basis of allocation to the Trade and computations of percentages employed shall be set forth and fully explained. Where other assets are subject to depreciation, the amount of accumulated depreciation to be subtracted from the original cost in determining the component of rate base shall be the arithmetic average of both the beginning and the end of the year. Capital Construction Funds and other special funds are specifically excluded from rate base.

(8) *Property and Equipment of Related Companies.* Property and equipment of related companies used by the filing carrier in the Trade shall be reported in accordance with §§ 552.6(b)(1), 552.6(b)(2), 552.6(b)(4) and 552.6(b)(7). The cost of such assets shall be that which is recorded on the books of the related company. Where such assets are included in the rate base, the profits or losses from intercompany transactions related to such assets are to be eliminated in accordance with § 552.6(c)(11).

(9) *Capitalization of Interest During Construction (Schedules A–IX and A–IX(A)).* (i) Interest shall be capitalized on all funds (including the carrier's own funds) actually employed in the design, engineering study, performance inspection, construction, reconstruction or reconditioning of a capital asset. Such asset shall be owned in the carrier's name or in the name of any of its related companies. Should a carrier capitalize interest on its assets or those of related companies, it shall produce any information related to these assets upon request of the Commission. Interest on funds expended shall be eligible for capitalization when all of the following conditions and requirements are met:

(A) The construction period is 12 months or greater. The construction period begins when construction work commences on the asset and ends when the asset is ready for use by the carrier. Strike periods during which construction is delayed for 8 or more consecutive days shall not be included in determining whether the 12-month requirement is met; and,

(B) Payments are made on a periodic basis during the period of design and construction.

(ii) Interest shall be calculated starting with the first payment and on each subsequent payment thereafter. The rate employed shall be the average prime rate for the month in which the payment is made, as set forth in the *Federal Reserve Bulletin.*

(iii) A detailed description of the interest calculations shall be submitted for each capital asset included in the rate base of the carrier in the first year of its inclusion. Such description shall be set forth on Schedule A–IX or A–IX(A), "Capitalization of Interest During Construction." Capitalized interest shall be included in the rate base when the asset is included in the rate base, in accordance with § 552.6(b), and in the same allocable amounts as the asset. A schedule shall be provided each time a rate base statement is submitted, setting forth the year in which an interest calculation statement was submitted for each asset which included capitalized construction interest in the rate base.

(iv) The effects of the interest-during construction provisions shall be applicable to all work completed after December 31, 1977.

(10) *Capitalization of Leases (Schedules A–X and A–X(A)).* Leased assets which are capitalized on the carrier's books and which meet the AICPA guidelines for capitalization may also be included in rate base. Schedule A–X or A–X(A), "Capitalization of Leases," shall be submitted setting forth pertinent information relating to the lease and the details of the capitalization calculation. Allocations to the Trade shall follow the requirements of § 552.6(b)(1) *Investment in Vessels,* or § 552.6(b)(4) *Other Property and Equipment.*

(c) *Income Account (Exhibits B and B(A).*—(1) *Operating Revenue (Schedules B–I and B–I(A)).* (i) Revenue allocated to the Trade shall include only revenue earned from the common carriage of cargo in the domestic offshore Trade during the period, except that minor amounts of other cargo may be considered trade cargo in accordance with § 552.2(j). Revenue figures shall be reported in total for the Trade and separately for each of the 15 inbound commodities (listed by tariff descriptions) producing the highest revenues for the inbound portion of the Trade, and for each of the 15 outbound commodities (listed by tariff descriptions) producing the highest revenues for the outbound portion of the Trade. Where fewer than 15 commodities account for at least 90 percent of the total revenue for either the inbound or outbound portion of the Trade, only those commodities need be separately reported. Where the same commodity is carried under several tariff designations having different rates (e.g., potatoes refrigerated, potatoes non-refrigerated, potatoes in bags, potatoes in containers), each of these tariff designations shall be considered as an individual commodity.

(ii) Where the applicable tariff establishes a single freight-all-kinds (FAK) rate for containers that may hold more than one commodity, individual commodity designations shall be disregarded in considering that tariff item for purposes of paragraph (c)(1)(i) of this section.

(2) *Vessel Operating Expense (Schedule B–II).* A vessel operating expense summary for the period in which any cargo was carried in the Service shall be submitted. Allocations to the Trade shall be on the following basis:

(i) For all voyages in the Service, vessel expense shall be allocated to the Trade in the cargo-cube mile or cargo cube relationship, as appropriate. Should any of the elements of vessel expense be directly allocable to specific cargo, such direct allocations shall be made and explained.

(ii) Port, terminal and container/barge expenses shall be assigned directly, to the extent possible, by ports at which incurred, to the Trade and Other Cargo, or otherwise allocated on the basis of cargo cube loaded and discharged at each port.

(iii) Passenger Revenue *less* passenger brokerage, Other Voyage Revenue and Other Shipping Operations Revenues shall be deducted from Vessel Operating Expense. Passenger Revenue—Net and Other Voyage Revenue should be allocated between the Trade and Other Cargo in the cargo-cube mile or cargo-cube relationship, as appropriate. Other Shipping Operations Revenue should be assigned directly, to the extent possible, or otherwise allocated on the basis of cargo cube loaded and discharged at each port. Any direct assignments shall be fully set forth and explained.

(3) *Vessel Operating Expense (Schedule B–IIA).* This schedule shall be submitted by tug and barge operators. where multiple barge units are towed by a single tug, vessel expense shall be allocated on the basis of the cargo-cube relationship.

(4) *Administrative and General Expense (Schedules B–III and B–III(A)).* Administrative and general expenses, *less* agency fees, commissions and brokerage earned, shall be allocated to the Trade using the vessel operating expense relationship. Direct assignments should be made where practical, particularly with respect to advertising expense related to the operation of passenger and combination vessels. Any direct assignment shall be set forth and explained. Charitable contributions shall not be allocated to the Trade. In those instances where a carrier is engaged in other business in addition to shipping, administrative and general expenses (A&G) should be allocated to each business in the ratio of total operating expenses for each business (*less* A&G and income taxes) to total company operating expenses (*less* A&G and income taxes).

(5) *Interest Expense and Debt Payments (Schedules B–IV and B–IV(A)).* This schedule shall set forth the total interest and debt payments, apportioned between principal and interest, short and long-term, on debt and lease obligations. Principal and interest shall be allocated to the Trade in the ratio that Trade rate base *less* working capital bears to company-wide assets *less* current assets. Where related company assets are employed by the filing company, the balance sheet figures on the related company's books for such assets shall be added to the company-wide total in computing the ratio. In those instances where interest expenses are capitalized in accordance with § 552.6(b)(9), a deduction shall be made for the amount so capitalized.

(6) *Inactive Vessel Expense (Schedules B–V and B–V(A)).* Inactive vessel expense shall, in general, be allocated by vessel on the same basis as the investment in such vessel is included in the rate base. Inactive vessel expense applicable to vessels not used in the Service shall be excluded.

(7) *Depreciation and Amortization (Schedules B–VI and B–VI(A)).* Depreciation and amortization of assets included in the rate base shall be allocated on the same bases as are the specific assets.

(8) *Construction-Differential Subsidy Refund (Schedule B–VII).* Construction differential subsidy refunds paid or payable to the Maritime Administration in connection with vessels employed on a part-time basis in the Service and applicable to the period for which a report is being made shall be allocated to the Trade in the ratio that the cargo-cube miles of cargo carried in the Trade bear to the total cargo-cube miles of cargo in the Service. Calculation of expenses incurred due to construction-differential subsidy refunds must be reported on Schedule B–VII.

(9) *Other Income or Expense (Schedules B–VIII and B–VIII(A)).* (i) Any other elements of income or expense, wholly or partially applicable to the Trade, shall be fully explained by a schedule showing details of allocation.

(ii) Operating-differential subsidy refunds under section 605(a) of the Merchant Marine Act, 1936, shall not be allocated to the Trade.

(10) *Provisions for Income Tax.* Federal, State, and other income taxes shall be listed separately. If the company is organized outside the United States, it shall indicate the entity to which it pays income taxes and the rate of tax applicable to its taxable income for the subject year. Federal, State and other income taxes shall be calculated at the statutory rate.

(11) *Related Company Transactions.* Income account transactions with related companies shall be shown net of intercompany profit on the appropriate schedule and allocated to the Trade on the same basis as other items in that schedule.

(d) *Rate of Return (Exhibits C and C(A)).*—(1) *General.* All carriers are required to calculate rate of return on rate base. However, the Commission or individual carriers, at the Commission's discretion, may also employ fixed charges coverage and/or operating ratios.

(2) *Return on Rate Base.* (i) The return on rate base will be computed by *dividing* Trade net income plus interest expense *by* Trade rate base.

(ii) The reasonableness of a carrier's return on rate base will be based on a comparative analysis of the carrier's projected return on rate base with the rate of return on total capital earned by comparable U.S. corporations. This technique, the comparable earnings test, is based on an analysis of the earnings of U.S. corporations over an extended period of time. From these time/series data, the average rate of return earned by U.S. corporations is computed, and, where appropriate, adjusted for current trends in rates of return, the cost of money and relative risk.

(3) *Fixed Charges Coverage Ratio.* (i) The fixed charges coverage ratio shall be computed by *dividing* the total of net income, interest expense, depreciation and amortization expense, and the provision for income taxes as allocated to the Trade *by* the Trade fixed charges. Fixed charges applicable to the Trade are the total of interest expense, principal payments, and capitalized lease obligations;

(ii) In order to evaluate the reasonableness of a carrier's fixed charges coverage ratio, the staff will analyze the debt-coverage ratios for a variety of entities including, but not limited to: (A) public utilities; (B) government-owned corporations; (C) rural electric cooperatives; (D) various municipal enterprises such as airports and hospitals; and (E) various sectors of the transportation industry, including subsidized and unsubsidized ocean carriers. The staff will analyze the subject carrier's debt-coverage ratio in light of the nature of its debt structure (i.e., long term or short term), the overall risk conditions facing the carrier and the market environment within which the carrier is operating.

(4) *Operating Ratio.* (i) The operating ratio will be computed by *dividing* total Trade expenses (adjusted for related company transactions) *by* total Trade revenue.

(ii) The reasonableness of a carrier's operating ratio will be determined by comparing it to the operating ratios of other regulated and non-regulated companies, adjusted for relative risk. In conjunction with the operating ratio, the staff may also consider other financial ratios, such as: (A) Current; (B) leverage; and (C) turnover. The carrier's stability in earnings as compared to that of other firms will also be considered.

(e) *Application for Waiver (Exhibits D and D(A)).* (1) Carriers requesting a waiver of the filing requirement of this part must submit an application (Exhibit

D) and the information required in § 552.2(e).

(2) The data submitted with the application must be certified by the corporate officer responsible for the maintenance and accuracy of the books of account and financial records of the carrier. The certificate shall be notarized and state that the data submitted with the application have been prepared from the regularly maintained books and records of the carrier and that, to the best of the certificant's knowledge, the facts submitted are true and correct.

(f) *Initial Tariff Filing Supporting Data (Exhibits E and E(A)).* (1) Carriers filing initial tariffs as defined in § 552.5(r) shall complete and file Exhibit E and the information required in § 552.2(n).

(2) The data submitted with the filing must be certified by the corporate officer responsible for the maintenance and accuracy of the books of account and financial records of the carrier. The certificate shall be notarized and state that the data have been prepared from the regularly maintained books and records of the carrier and that, to the best of the certificant's knowledge, the facts submitted are true and correct.

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

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 Pub. L. 96–511. The Commission intends that this section comply with 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:

Section	Current OMB Control No.
552.2 (Form FMC–377)	3072–0029
552.2 (Form FMC–378)	3072–0030
552.2 through 552.4	3072–0008
552.6 (Form FMC–377)	3072–0029
552.6 (Form FMC–378)	3972–0030

PART 553—FINANCIAL EXHIBITS AND SCHEDULES OF NON-VESSEL-OPERATING COMMON CARRIERS IN THE DOMESTIC OFFSHORE TRADES

Sec.

553.1 Purpose.
553.2 General requirements.
553.3 Certification.
553.4 Access to and audit of records.
553.5 Definitions.
553.6 Forms.
553.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

Authority: 5 U.S.C. 553; secs. 18(a), 21 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 817(a), 820, 841); and secs. 1, 2, 3(a), 3(b), 4 and 7 of the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 843, 844, 845, 845a and 847).

§ 553.1 Purpose.

(a) The purpose of this part is (1) to establish the methodology that the Federal Maritime Commission (Commission) intends to follow in evaluating proposed rate changes in the domestic offshore trades submitted by non-vessel-operating common carriers (NVO's) subject to the provisions of the Intercoastal Shipping Act, 1933, and (2) to provide for the orderly acquisition of the data required for the methodology so established.

(b) The Commission will employ the operating ratio methodolgy when evaluating proposed rate changes by NVO's, except in any instance where, in its opinion, the application of the operating ratio creates an unreasonable result.

(c) Filing of the information is required only in those instances where the Commission institutes an investigation and hearing with respect to proposed rate changes. Compliance in those instances is mandatory and failure to file the required reports may result in penalties of up to $100 for each day of such default (46 U.S.C. app. 820).

§ 553.2 General requirements.

(a) The rules contained herein are those issued by the Commission to meet the specific requirements of the Intercoastal Shipping Act, 1933, as amended, and will be used to evaluate proposed rate changes in the domestic offshore trades. However, the Commission reserves to itself the right to employ other bases for allocation and calculation in any instances where, in its opinion, the application of the rules and regulations prescribed herein create unreasonable results.

(b) Whenever the Commission institutes an investigation and hearing to determine whether or not an increase or decrease in rates which would affect not less than 50 percent of the tariff items of that NVO in a particular Trade, or which would result in an increase or decrease or not less than 3 percent in its gross revenues in that particular Trade, is just and reasonable, the NVO shall file in duplicate, within 30 days of the publication in the **Federal Register** of the order instituting the investigation and hearing, the following:

(1) An *actual* company-wide balance sheet (Exhibit A–a) as of a date not more than three months prior to the date of filing the proposed rates.

(2) An *actual* statement of income (Exhibit B–a) and supporting schedules covering a 12-month period ending the same date as the balance sheet required in subparagraph (1) of this paragraph.

(3) A *projected* statement of income (Exhibit B–p) and supporting schedules for the 12-month period commencing on the first day of the month following the date on which the changed rates are proposed to become effective (taking into account the effect of the proposed changes); and

(4) *Actual* and *projected* operating ratios described in § 553.6(d) coinciding with the time periods covered by the statement of income required in paragraphs (b)(2) and (b)(3) of this section.

(5) A supplementary data exhibit (Exhibit C) described in § 553.6(e) corresponding to the date of the balance sheet furnished in response to paragraph (b)(1) of this section.

(6) The work papers described in § 553.4(b).

(c) Revenue (except Other Revenue) and costs shall be assigned directly whenever possible, otherwise allocation shall be made in the manner prescribed in § 553.6. However, if the gross revenue from Other Operations does not exceed 5 percent of the total company gross revenue, no segregation of revenue and expenses between Other Operations and the Trade (see definitions, § 553.5(b) and 553.5(c)) is required by this part.

(d) All NVO's subject to these requirements must comply in all material respects with the instructions outlined herein, both as to the submission of the specified exhibits and schedules and as to compliance with the methods prescribed for their preparation. If an NVO has nothing to report on a required schedule, it must submit the schedule with the word "NOTE" printed across its face.

(e) All percentage calculations required by allocations herein shall be carried to two places beyond the decimal point, (e.g., 97.54 percent).

§ 553.3 Certification.

The data required by this part shall be accompanied by a certification by the corporate officer responsible for the maintenance and accuracy of the books of account and financial records of the NVO, stating that:

(a) The books of account have been maintained in accordance with an appropriate system of accounts;

(b) The exhibits and schedules have been prepared from the regularly

maintained books and records of the NVO;

(c) The records so maintained conform to, are reconciled to, or represent the actual financial data subject to the annual independent financial audit;

(d) The allocations have been made in accordance with this part; and,

(e) The financial and statistical data used are supported by an appropriate information gathering system having proper internal controls which have been tested for accuracy.

§ 553.4 Access to and audit of records.

(a) Every NVO shall maintain its records and books of account in an orderly and systematic manner. These records must be kept in such manner as to permit the timely preparation of the exhibits and schedules described in § 553.6(a). As a minimum requirement, every NVO shall retain those records necessary to prepare the documents described in § 553.6(a) for a period of 3 years.

(b) Exhibits and schedules submitted as part of this requirement are to include: (1) All work papers, properly cross-referenced and indexed, which were prepared in support of the exhibits and schedules, and (2) a detailed description of the methods employed in projecting revenues.

(c) In addition, the books and records of the NVO and those of any related company whose financial data is included in any of the exhibits or schedules shall be made available upon request for examination by appropriate Commission personnel. Commission personnel shall be permitted to make copies of these records to the extent they deem necessary.

(d) All exhibits and schedules submitted as part of the filing requirements are to include the work paper reference numbers so that amounts shown can be readily traced to the appropriate work paper.

§ 553.5 Definitions.

For the purpose of this part, the following terms are expressly limited to the definitions listed below:

(a) "*The Service*" means all activities and operations of the NVO, including those regulated by the Commission.

(b) "*Other Operations*" means that part of the Service not subject to the Commission's jurisdiction under 46 CFR Part 550, such as cargoes moving in the foreign commerce of the United States or those regulated by the Interstate Commerce Commission.

(c) "*The Trade*" means that part of the Service subject to the Commission's jurisdiction under 46 CFR Part 550, and as defined under "Domestic Offshore Trade" (below).

(d) "*Domestic Offshore Trade*" means the transportation and handling of common carrier cargo under the terms of a tariff(s) on file with and regulated by the Commission between any one of the five areas of the Continental United States listed in paragraph (d)(1) of this section and one non-contiguous area of the United States listed in paragraph (d)(2) of this section or between two non-contiguous areas of the United States. Where service is offered to or from two or more areas at the same rates (e.g., Atlantic Coast to Puerto Rico and the Virgin Islands) and listed as such in a single tariff, the carriage of cargo to or from those two or more areas may be treated as one domestic offshore trade for the purpose of this part.

(1) The five areas of the Continental United States are:

(i) North Atlantic (Maine to, but not including Hatteras, North Carolina);

(ii) South Atlantic (Hatteras, North Carolina to, but not including Key West, Florida);

(iii) Gulf (Key West, Florida to and including Brownsville, Texas);

(iv) West Coast; and

(v) Great Lakes.

(2) The non-contiguous areas of the United States (including, but not limited to those) to which service is offered under the terms of tariffs on file with the Commission are:

(i) American Samoa;

(ii) Northern Marianas;

(iii) Guam;

(iv) Johnston Island;

(v) Midway Island;

(vi) Puerto Rico;

(vii) Alaska;

(viii) Hawaii;

(ix) U.S. Virgin Islands; and

(x) Wake Island.

(e) "*Cargo Cube*" means the product of the outside dimensions of a unit of cargo expressed in cubic feet. In computing cargo cube for containerized cargo, the outside dimensions of the container, trailer or other equipment shall be used. The height of equipment moving on wheels shall be measured from the ground to the highest point on the equipment. Empty equipment, such as containers, shall be included in the computation of cargo cube only if it is a revenue-producing unit of cargo. Where a NVO finds it more convenient to accumulate such data in terms of twenty-foot equivalent units (TEU's) or metric quantities, these units may be used instead of cargo cube in all instances where cargo cube is cited in this part. Where any of these options are exercised, the NVO shall modify the headings on the prescribed reporting forms to indicate the units in which the data is being reported. For purposes of this part, NVOs are not required to tape measure each unit (e.g., container, trailer, box, carton). However, the computation of cargo cube must be developed after careful consideration of all evidence available to the NVO, including loading documents, the opinions of experienced operating personnel, and sample measurements. In calculating the cube of containers, trailers, or other similar equipment, the NVO may assign a standard length, width and height to a given class of equipment, provided that the actual dimensions of each piece of equipment in the class vary no more than a foot from the standard dimensions.

(f) "*Measurement Ton*"—Equals forty (40) cubic feet.

(g) "*Metric Measurement Ton*"—Equals 35.31 cubic feet, based on the standard 20'x8'x8' container.

(h) "*Twenty-foot Equivalent Unit (TEU)*"—Equals 1,280 cubic feet, based on the standard 20'x8'x8' container.

(i) "*Cargo Cube Relationship*" means ratio of total cargo cube for all cargo carried in the Trade to total cargo cube for all cargo carried in the Service.

(j) "*Line-Haul Transportation*" means all transportation of freight on land other than pickup and delivery and local terminal operations. An example of this would be substituted service, i.e., charging the water rates but moving the cargo part of the way by land.

(k) "*Pickup and Delivery*" means the service provided by the NVO, or its agent, of picking up and delivering cargo from or to a shipper's or consignee's place of business or other location designated by the shipper or consignee pursuant to the NVO's tariff(s) on file with the Commission and not subject to regulation by any other regulatory body.

(l) "*Related Company*" means any company or person that directly or indirectly (through one or more intermediaries) controls, or is controlled by, or is under common control with, the reporting NVO. The term "control" shall include actual as well as legal control, whether maintained or exercised through (or by reason of) the circumstances surrounding organizational structure or operation, through (or by) common directors, officers, stockholders, voting trust(s), holding or investment company or companies, or through (or by) any other direct or indirect means, including the power to exercise control.

(m) "*Total Trade Operating Expenses*" means the total amount allocated to the Trade for the following expenses: ocean transportation, line-

haul transportation, pickup and delivery and terminal.

(n) *"Total Company Operating Expenses"* means the company-wide total of the following expenses: ocean transportation, line-haul transportation, pickup and delivery and terminal.

(o) *"Operating Expense Relationship"* means the ratio of total Trade operating expenses to total Company operating expenses.

§ 553.6 Forms.

(a) *General.* (1) The information required by this part shall be submitted in the prescribed format and shall include:

Exhibit A—Balance Sheet;
Exhibit B—Statement of Income and Supporting Schedules;
Exhibit C—Supplementary Data.

(2) The required exhibits and schedules are described in §§ 553.6(b), 553.6(c), 553.6(d) and 553.6(e), and are available upon request from the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573 (FMC Form 579).

(b) *Balance Sheet (Exhibit A).* The balance sheet shall be prepared from the NVO's books and records in accordance with generally accepted accounting principles and shall be accompanied by the appropriate footnotes.

(c) *Statement of Income (Exhibit B).* (1) A statement of income shall be prepared showing operating results of the Total Company, Other Operations and the Trade.

(2) *Operating Revenue (Schedule B–I).* (i) Revenue allocated to the Trade shall only be revenue earned from the common carriage of cargo in the domestic offshore trade during the period and other revenue as shown on Schedule B–1, except that minor amounts of other cargo may be considered Trade cargo in accordance with § 553.2(c). Revenue figures shall be reported in total for the Trade and separately for each of the 15 outbound and inbound commodities (listed by tariff descriptions) producing the highest revenues for that portion of the voyage. Where fewer than 15 commodities account for at least 90 percent of the total revenue for either the inbound or outbound portion of the voyage, only those commodities need be separately reported. Where the same commodity is carried under several tariff designations having different rates (e.g., potatoes refrigerated, potatoes nonrefrigerated, potatoes in bags, potatoes in containers), each of these tariff designations shall be considered as an individual commodity.

(ii) Where the applicable tariff establishes a single freight-all-kinds (FAK) rate for containers that may hold more than one commodity, individual commodity designations shall be disregarded in considering that tariff items for purposes of paragraph (c)(2)(i) of this section.

(3) *Ocean Transportation Expenses (Schedule B–II).* This schedule shall set forth the number of containers, cubic feet of cargo shipped and amounts paid or owed to each underlying ocean carrier for ocean transportation purchased for the carriage of cargo in Total, for Other Operations and for the Trade.

(4) *Line-Haul Transportation Expenses (Schedule B–III).* This schedule shall set forth the number of cubic feet of cargo carried and amounts paid or owed to motor carriers, railroads or other land carriers for the line-haul transportation of cargo in Total, for Other Operations and for the Trade.

(5) *Pickup and Delivery Expenses (Schedule B–IV).* This schedule shall set forth expenses incurred in the pickup and delivery of cargo in Total, for Other Operations and for the Trade. Assignments to the Trade shall be direct where possible; otherwise, on the cargo cube relationship by location. This schedule shall also set forth the basis under which pickup and delivery charges are assessed for the Trade (e.g., included in base rate or separate charge) and the amount of any charges paid to a related company for pickup and delivery services.

(6) *Terminal Expenses (Schedule B–V).* This schedule shall set forth in detail all expenses incurred in terminal operations for the loading and unloading of containers, the switching and transfer of cargo within the terminal area and any local trucking operations not included in line-haul or pickup and delivery expenses (e.g., between underlying carrier's terminal and the NVO's terminal) in Total, for Other Operations and for the Trade. Assignments to the Trade shall be direct where possible; otherwise, on the cargo cube relationship by location.

(7) *Administrative and General Expenses (Schedule B–VI).* This schedule shall set forth all aministrative and general expenses, including advertising and miscellanous taxes. Depreciation of equipment and amortization of leasehold improvements not assignable to pickup and delivery or terminal expenses shall be included in this schedule. Expenses not directly assigned to the Trade or Other Operations shall be allocated to the Trade on the operating expense relationship. Charitable contributions shall not be allocated to the Trade.

(8) *Other Income or Expense (Schedule B–VII).* Any other elements of income or expense shall be fully explained and supported by B–II "Other Income or Expense". Assignments to the Trade shall be direct where possible; otherwise, on the operating expense relationship. Should this type of assignment appear to be inequitable to either the Trade of Other Operations, a more equitable method shall be employed and the reasons fully explained.

(9) *Provisions for Income Taxes.* Federal, State, and other income taxes shall be listed separately. If the company is organized outside the United States, it shall indicate the entity to which it pays income taxes and the rate of tax applicable to its taxable income for the subject year. Federal, State and other income taxes shall be calculated at the statutory rate.

(10) *Extraordinary Items.* Income or losses of an extraordinary nature shall be set forth and described in an appropriate schedule which is reconcilable to the statement of income. Classification as an extraordinary item shall be in accordance with generally accepted accounting principles. In general, these amounts shall not be assigned or allocated to the Trade.

(11) *Related Company Transportation (Schedule B–VIII).* The net income (loss) after Federal income taxes from transactions in the Service with related companies shall be allocated to the Trade. Such allocations shall be made on the same basis as the specific expense was allocated to the Trade. Income taxes should be assigned to related company transactions based on the statutory tax rate. The methods employed shall be fully explained in Schedule B–VIII, "Related Company Transactions."

(d) *Operating Ratio.* (1) The operating ratio will be computed by *dividing* total Trade expenses (adjusted for related company transactions) *by* total Trade revenue.

(2) The reasonableness of an NVO's operating ratio will be determined by comparing it to the operating ratios of other regulated and non-regulated companies, adjusted for relative risk. In conjunction with the operating ratio, the staff may also consider other financial ratios, such as (i) current, (ii) leverage and (iii) turnover. The NVO's stability in earnings as compared to that of other firms will also be considered.

(e) *Supplementary Data (Exhibit C).* The supplementary data schedule shall set forth information concerning the

identity of and services offered by the NVO. Specific details are set forth in Exhibit D.

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

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. The Commission intends that this section comply with 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:

Section	Current OMB control No.
553.2 (Form FMC–379)	3072–0032
553.2	3072–0031
553.3	3072–0031
553.4	3072–0031
553.6 (Form FMC–379)	3072–0032

PART 555—AUDITS AND AUDITING PROCEDURES IN THE DOMESTIC OFFSHORE TRADES

Sec.
555.1 Purpose.
555.2 Access to records.
555.3 Notice of audit.
555.4 Agents and auditors.
555.5 Confidentiality of information.
555.6 Penalty for disclosure.

Authority: 5 U.S.C. 553; and sec. 43 of the Shipping Act, 1916 (46 U.S.C. app. 841a).

§ 555.1 Purpose.

The purpose of this part is to establish rules governing audits by Federal Maritime Commission auditors of the books and records of carriers engaged in the domestic offshore trades of the United States and who are required to file periodic reports with the Commission pursuant to Part 552 of this Chapter. Such audits are necessary in order that the Commission may discharge its substantive regulatory responsibilities under the Intercoastal Shipping Act, 1933, and section 18(a) of the Shipping Act, 1916, by verifying the required reports.

§ 555.2 Access to records.

The Commission itself, or through duly accredited special agents or auditors, shall at all times have access to all documents, accounts, records, rates, charges, or correspondence used in the preparation of or pertaining to reports filed with the Commission and all underlying working papers (irrespective of by whom prepared) in support of all exhibits and schedules submitted to the Commission, and the Commission or its accredited special agents or auditors shall be permitted to make copies of such records to the extent they deem necessary.

§ 555.3 Notice of audit.

Notice that inspection of a carrier's books and records is desired for the purpose of audit shall be given by the Commission or its duly accredited special agents or auditors, and such inspection shall be at a place and time convenient to the carrier, but such inspection shall not be unduly delayed after reasonable notice is given to the carrier.

§ 555.4 Agents and auditors.

The terms "special agents" or "auditors" shall include any employee of the Commission's Bureau of Tariffs or any other employee of the Commission specifically designated by the Commission or the Director, Bureau of Tariffs.

§ 555.5 Confidentiality of information.

All information obtained by the Commission or its duly accredited special agents or auditors as a result of an inspection or audit carried out pursuant to the provisions of this part shall be withheld from public disclosure and shall be treated as "confidential information" in the files of the Commission; except that any confidential information derived from an inspection or audit may be utilized by the Commission as the basis for a formal proceeding instituted pursuant to section 22 of the Shipping Act, 1916, and/or sections 3 and 4 of the Intercoastal Shipping Act, 1933, and may also be utilized in such a proceeding.

§ 555.6 Penalty for disclosure.

Disclosure of information treated as "confidential" under the provisions of this part will be considered as a violation of Part 500 of this Chapter, which prohibits the misuse by Commission employees of official information obtained through or in connection with Government employment, which information has not been made available to the general public. A violation of Part 500 of this Chapter will result in disciplinary action, ranging from warning to removal. The Commission is of the view that disclosure of such confidential information would also be a violation of 18 U.S.C. 1905, and any disclosure prohibited by the provisions of this part will be referred by the Commission to the Department of Justice for such action as the Department deems appropriate.

Note.—Audits do not fall within the definition of collection of information requests or requirements under the Paperwork Reduction Act. See § 552.91 of this chapter for O.M.B. clearance numbers for reports required to be filed by common carriers in the domestic offshore trades.

PART 558—EXEMPTION OF HUSBANDING AND AGENCY AGREEMENTS UNDER THE SHIPPING ACT, 1916

Subpart A—Husbanding Agreements

Sec.
558.1 Purpose.
558.2 Definition.
558.3 Exemption.
558.4 Termination of approved husbanding agreements.
558.5 Compliance with the filing and approval requirements of section 15.

Subpart B—Agency Agreements

558.10 Purpose and scope.
558.11 Definition.
558.12 Exemption.
558.13 Termination of approved agency agreements.
558.14 Optional section 15 approval.

Authority: 5 U.S.C. 553; and secs. 15, 35 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 814, 833a and 841a).

Subpart A—Husbanding Agreements

§ 558.1 Purpose.

(a) Section 15 of the Shipping Act, 1916 (46 U.S.C. app. 814), requires that certain agreements between common carriers by water and other persons subject to that Act be filed with and approved by the Commission prior to implementation. Section 35 of the 1916 Act, as pertinent in this context, provides that the Commission may by order or rule exempt any class of agreements between persons subject to the Act where it finds that such exemption will not impair effective regulation by the Commission, be unjustly discriminatory, or detrimental to commerce.

(b) In the interest of minimizing unnecessary delay in the implementation of routine husbanding agreements between persons subject to the 1916 Act and to avoid the cost of unnecessary regulation, the Commission is exempting certain husbanding agreements from the filing and approval requirements of section 15.

§ 558.2 Definition.

"Husbanding agreement," as used in this part, means an agreement between a common carrier by water and another person subject to the Shipping Act, 1916, through which the carrier contracts with an agent to handle routine vessel operating activities in port, such as

notifying port officials of vessel arrivals and departures; ordering pilots, tugs, and linehandlers; delivering mail; transmitting reports and requests from the Master to the owner/operators; dealing with passenger and crew matters; and providing similar services related to the above activities. The term does *not* include agreements which provide for the solicitation or booking of cargoes, signing contracts or bills of lading and other related matters, *nor* does it include agreements that prohibit the agent from entering into similar agreements with other carriers.

§ 558.3 Exemption.

Husbanding agreements between persons subject to the 1916 Act are hereby exempted from the filing and approval requirements of section 15. Exempted agreements shall be kept by the parties and shall be available for inspection by the Commission during the term of the agreement and two years thereafter.

§ 558.4 Termination of approved husbanding agreements.

Husbanding agreements which have received section 15 approval shall continue to be approved for the duration of their term or until terminated by the parties.

§ 558.5 Compliance with the filing and approval requirements of section 15.

Notwithstanding the provisions of this part, persons who desire approval of husbanding agreements may continue to submit such agreements to the Commission for section 15 consideration in accordance with ordinary filing procedures.

Subpart B—Agency Agreements

§ 558.10 Purpose and scope.

(a) Section 15 of the Shipping Act, 1916 requires that certain agreements between common carriers by water and other persons subject to that Act be filed with and approved by the Commission prior to implementation. Section 35 of the 1916 Act provides that the Commission, upon application or on its own motion, may by order or rule exempt for the future any class of agreements between persons subject to the Act, or any specified activity of such persons from any requirements of the Act, where it finds that such exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, or detrimental to commerce.

(b) In the interests of minimizing unnecessary expense and delay in the implementation of agency agreements between persons subject to the Act, this part provides for the exemption of certain agency agreements from the filing and approval requirements of section 15.

(c) The exemption does not apply to agency agreements: (1) Where a common carrier is to be an agent for a competing carrier in the same trade, or (2) which permit an agency to enter into similar agreements with more than one carrier in a trade.

§ 558.11 Definition.

"Agency agreement," as used in this part, means an agreement between persons subject to the Shipping Act, 1916, which provides for the agent's solicitation and booking of cargoes, and signing contracts of affreightment and bills of lading, on behalf of a common carrier by water. Such an agreement may or may not also include husbanding service functions and other functions incidental to the performance of duties by agents including processing of claims, maintenance of a container equipment inventory control system, collection and remittance of freight and reporting functions.

§ 558.12 Exemption.

Agency agreements between persons subject to the Act except those: (a) Where a common carrier is to be an agent for a competing carrier in the same trade, or (b) which permit an agent to enter into similar agreements with more than one carrier in a trade, are exempted from the filing and approval requirements of section 15. Exempted agreements shall be kept on file by the parties and shall be available for inspection by the Commission during the term of the agreement and two years thereafter.

§ 558.13 Termination of approved agency agreements.

Agency agreements which have received section 15 approval shall continue to be approved for the duration of their term or until terminated by the parties. When such approved agreements are terminated by the parties, such parties shall immediately notify the Commission.

§ 558.14 Optional section 15 approval.

Notwithstanding the provisions of this part, persons who desire approval of agency agreements may continue to submit such agreements to the Commission for section 15 consideration in accordance with ordinary filing procedures.

Note.—In accordance with 44 U.S.C. 3506(c)(5), any information request or requirement in this part is not subject to the requirements of section 3507(f) of the Paperwork Reduction Act, because there are nine or fewer respondents.

PART 559—EXEMPTION OF CERTAIN AGREEMENTS FROM THE REQUIREMENTS OF SECTION 15, SHIPPING ACT, 1916

Sec.

559.1 Statement of policy and purpose.
559.2 Definitions.
559.3 Exemption of agreements.
559.4 Conditions for exemption of transshipment agreements.
559.5 Form of connecting carrier agreements.
559.6 Termination of approved transshipment agreements.
559.7 Optional Section 15 approval.
559.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

Authority: 5 U.S.C. 553; and secs. 15, 35 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 814, 833a and 841a).

§ 559.1 Statement of policy and purpose.

(a) Section 35 of the Shipping Act, 1916 (46 U.S.C. app. 833a), provides that the Commission, upon application or on its own motion, may by order or rule exempt for the future any class of agreements between persons subject to the Act, or any specified activity of such persons from any requirement of the Shipping Act, 1916, or the Intercoastal Shipping Act, 1933, where it finds that such exemption will not substantially impair effective regulation by the Federal Maritime Commission, be unjustly discriminatory, or be detrimental to commerce.

(b) Compliance is mandatory and failure to meet these filing requirements will result in the party desiring exemption remaining bound by the approval requirements of section 15 of the Shipping Act, 1916 (46 U.S.C. app. 814).

§ 559.2 Definitions.

For the purposes of this part:

(a) *"Nonexclusive transshipment agreement"* means an agreement between a carrier serving a port of origin and a carrier serving a port of destination to establish a through route between such ports via an intermediate port at which the cargo is transferred, which agreement does not prohibit either carrier from entering into similar agreements with other carriers.

(b) *"Equipment interchange agreement"* means an agreement between two or more common carriers by water for the exchange of empty containers, chassis, empty LASH/SEABEE barges, and related equipment, which provides only for the transportation of the equipment as

required, payment therefor, management of the logistics of transferring, handling and positioning equipment, its use by the receiving carrier, its repair and maintenance, damages thereto, and liability incidental to the interchange of equipment, and no other subject.

(c) *"Joint policing agreement"* means an agreement between or among: two or more individual common carriers by water; two or more associations of common carriers by water each operating pursuant to an approved section 15 agreement; or one or more individual common carriers by water and one or more such associations; which agreement provides that its parties may discuss and agree upon any of the following activities concerning cargo inspection and/or self-policing services:

(1) Negotiations for and employment of such services,

(2) Establishment of rules and procedures relating thereto (including the collection of delinquent freight and other tariff charges),

(3) Allocation of the costs of such services, and

(4) The administration and management of such arrangements.

(d) *"Non-substantive agreement"* means an agreement between common carriers by water, acting individually or through approved agreements, which:

(1) Reflects changes in the:

(i) Name of any geographic locality stated therein;

(ii) Name of the agreement or the name of a party to the agreement;

(iii) Names and/or numbers of any other section 15 agreement, or designated provisions thereof referred to in the agreement;

(iv) Table of contents of an agreement;

(v) Date or amendment number through which agreements state they have been reprinted to incorporate prior revisions thereto or which corrects typographical and grammatical errors in the text of the agreement; or

(vi) Numbers or letters of articles or subarticles of agreements and references thereto in the text;

(2) Reflects changes in the titles or persons or committees designated therein or transfers the functions of such persons or committees to other designated persons or committees or which merely establishes a committee; or

(3) Concerns the procurement, maintenance, or sharing of office facilities, furnishings, equipment, supplies and personnel, including employees and contractors, the allocation and assessment of the costs thereof, or the provisions for the administration and management of such agreements by duly appointed individuals.

(e) *"Credit information agreement"* means an agreement between common carriers by water or their duly appointed representatives which provides only for the collection, compilation and exchange of credit experience information. Under such an agreement, the parties cannot discuss or agree on any matter which is required to be published in a tariff pursuant to the Shipping Act, 1916 or any rule published pursuant thereto.

(f) *"Military household goods agreement"* means an agreement between non-vessel-operating common carriers by water in the domestic offshore commerce of the United States concerning the joint loading of used military household goods and personal effects.

§ 559.3 Exemption of agreements.

(a) Agreements as defined in § 559.2 shall be exempt from the provisions of section 15; provided, (1) In the case of a nonexclusive transshipment agreement, the conditions contained in § 559.4 and the form requirements of § 559.5 are met; and (2) That a nonsubstantive agreement which modifies an agreement which is subject to the requirements of section 15 shall be filed with the Commission for informational purposes only within 30 days of its effective date.

(b) Agreements as defined in § 559.2(e) shall be kept by the parties and shall be available for inspection by the Commission during the term of the agreement and two years thereafter.

§ 559.4 Conditions for exemption of transshipment agreements.

(a) Conference agreements shall be modified, where necessary, to provide for transshipment arrangements within the scope of the applicable conference.

(b) Connecting carrier agreements shall be executed between the parties to the transshipment arrangement in the form set forth in § 559.5 and filed with the Commission for information but not for approval, or one party to the agreement may set forth a memorandum of rates and terms in substantially the same form as that provided below. In such case, the signature of the other carrier is not required. Two (2) copies shall be required for informational purposes.

(c) The applicable tariff or tariffs shall provide:

(1) The through rate;

(2) The routings (origin, transshipment and destination ports); additional charges, if any (i.e., port arbitrary and/or additional transshipment charges); and participating carriers; and

(3) A tariff provision substantially as follows:

The rules, regulations, and rates in this tariff apply to all transshipment arrangements between the publishing carrier or carriers and the participating connecting or feeder carrier. Participating connecting or feeder carriers, parties to transshipment arrangements, have agreed to observe the rules, regulations, rates, and routings established herein as evidenced by a connecting carrier agreement on file with the Commission.

§ 559.5 Form of connecting carrier agreements.

The form of connecting carrier agreement which must be filed with the Commission is as follows:

Connecting Carrier Agreement No. ————

Agreement between ———— (herein referred to as the publishing carrier), and ———— (herein referred to as the connecting carrier).

1. This agreement covers and is restricted to the transportation of

———————————————

(General cargo or specified commodities) under through bills of lading issued by the ———— carrier in the trade from/between ports in ———— to/and ports in ———— with transshipment at ————.

2. The connecting carrier, insofar as its functions under this agreement are concerned, concurs in and shall comply with all the terms, conditions, rates, rules, regulations and transshipment routes of the applicable tariff(s) published by ———— (Carrier); identified as ———— (Tariff name); and filed with the Commission pursuant to section 18(a) of the Shipping Act, 1916.

or

2. The carriers party to this agreement shall comply with all terms, conditions, rates rules and regulations of their respectively applicable tariffs filed with the Commission pursuant to section 18(a) of the Shipping Act, 1916 or section 2 of the Intercoastal Shipping Act, 1933, and identified in paragraph 3 hereunder.

3. The through rate shall be apportioned on the basis of —— percent to the publishing carrier and —— percent to the connecting carrier.[1]

4. The expenses of transshipment of such cargo shall be absorbed on the basis of —— percent by the publishing carrier and —— percent by the connecting carrier.[1]

5. This agreement does not bind any of the parties hereto to transship exclusively with the other.

6. Any party to this agreement may terminate its participation herein by giving thirty (30), sixty (60), or ninety (90) days' written notice to the other. A copy of such

———————————————

[1] Variable-paragraphs 3 and 4 may be modified or expanded to show more detail or minimum revenue to one party and, in the case of a combination of local rates, paragraph 3 shall identify the tariffs of each party by tariff name.

notice shall be promptly dispatched to the Commission.

7. This agreement shall terminate concurrently with the cancellation of the tariff referred to in clause 2 above, unless such tariff is superseded by a tariff containing the same terms, conditions, rules, and regulations, and transshipment routes as the tariff which it supersedes and cancels.

8. This agreement and/or any modification thereof shall not be effective prior to the effective date of the applicable tariff(s).[2]

9. (Optional) Each carrier will indemnify and hold the other carrier harmless from all expenses and liabilities it may incur which in any way may arise from or be connected with any loss, damage, delay or misdelivery of goods while in the possession or custody of such other carrier under this agreement, except for any such loss, damage, delay or misdelivery which is directly attributable to the neglect or willful misconduct of the other carrier, its agents, servants or employees.

Dated at —— this —— day of ————, 19 ——.

Publishing Carrier

By ————————————————

(Name and title)

Connecting Carrier

By ————————————————

(Name and title)

§ 559.6 Termination of approved transshipment agreements.

Approved transshipment agreements now on file with the Commission may be terminated and the transshipment operations continued pursuant to the requirements of this part.

§ 559.7 Optional section 15 approval.

Notwithstanding the provisions of this section, persons who desire approval of agreements otherwise exempt under this part may petition the Commission for section 15 determination in accordance with Part 560 of this chapter.

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

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. The Commission intends that this section comply with 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 the Office of Management and Budget (OMB) for each agency information collection requirement:

Section	Current OMB control No.
559.3	3072-0039
559.4	3072-0039
559.5	3072-0039

PART 560—FILING OF AGREEMENTS BY COMMON CARRIERS AND OTHER PERSONS SUBJECT TO THE SHIPPING ACT, 1916

Sec.

560.1 Purpose.
560.2 Definitions.
560.3 Filing of agreements.
560.4 Modifications.
560.5 Supporting statements.
560.6 **Federal Register** notice.
560.7 Comments and protests.
560.8 Disposition of agreement approval requests.
560.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

Authority: 5 U.S.C. 553; and secs. 15, 21, 22 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 814, 820, 821 and 841a).

§ 560.1 Purpose.

(a) This part establishes procedures for: (1) Filing agreement approval requests pursuant to section 15, Shipping Act, 1916 (46 U.S.C. app. 814), including statements in support thereof; (2) filing comments and protests to such agreements, and reponsive pleadings thereto; and (3) the disposition of agreement approval requests. The purpose of this part is to ensure the fair, orderly and expeditious processing of agreement approval requests.

(b) Adherence with the statute and rules of the Commission is mandatory, and persons operating under agreements without prior Commission approval may be liable to penalties and damages for violations of the antitrust laws of the United States and may be subject to civil penalties of up to $1,000 for each day of such default (46 U.S.C. app. 814) and/or disapproval of agreements.

§ 560.2 Definitions.

For the purposes of the provisions in this part, the following definitions of terms used therein shall apply.

(a) *"Agreement"* means an agreement which is a written document and which reflects an understanding, arrangement, or undertaking, between two or more common carriers by water or other persons subject to the Shipping Act, 1916, which is required by section 15 of the Act to be filed with the Commission. The term "agreement" includes, but is not limited to, the following types:

(1) *Freight conference agreement.* An agreement which is denominated as a "conference" by the parties; or an agreement which will or could reasonably be expected to cause the parties to become a dominant force in the trade covered by the arrangement. Such agreements usually contain provisions for:

(i) The fixing of and adherence to uniform rates, charges, and practices relating to the receipt, carriage, and delivery of cargo for all members;

(ii) The filing in the name of the group of a common tariff or tariffs in which all members participate;

(iii) The appointment of a chairman or secretary to conduct the administrative affairs of the parties;

(iv) Such other matters as the parties may agree upon or as may from time to time be required by statute or by regulations of the Commission.

(2) *Rate agreement.* An agreement which is not, will not be, or cannot reasonably be expected to cause the parties to become a dominant factor in the commerce of the United States in the trade covered by the arrangement. Such agreements usually contain provisions for:

(i) The fixing and adherence to uniform rates, charges, and practices relating to the receipt, carriage, and delivery of cargo, for all members;

(ii) The filing in the name of the group of a common tariff or tariffs in which all members participate;

(iii) Such other matters the parties may agree upon or as may from time to time be required by statute or by regulations of the Commission.

(3) *Pooling agreement.* An agreement which provides for the division of the cargo carryings or earnings and/or losses among the parties in accordance with a fixed formula.

(4) *Joint service agreement.* An agreement which establishes a new and separate line or service to be operated by the parties as a joint venture. The new and separate service fixes its own rates, publishes its own tariffs, issues its own bills of lading, and acts generally as a single carrier.

(5) *Sailing agreement.* An agreement which establishes a schedule of ports which each carrier will serve and the frequency of each carrier's calls at those ports.

(6) *Transshipment agreement.* An agreement between a common carrier of freight by water serving a port of origin and a common carrier of freight by water serving a port of destination to establish a joint through rate in which both carriers participate between such ports.

(7) *Cooperative working agreement.* An agreement which establishes exclusive, preferential, or cooperative

[2] Whenever an agreement supersedes a previously approved agreement, the following sentence shall be added at the end of paragraph 8:

This agreement supersedes approved Federal Maritime Commission Agreement No. ——.

working relationships which are subject to section 15 of the Shipping Act, 1916, but which do not fall precisely within any of the arrangements in paragraphs (a)(1) through (a)(6) of this section.

(b) *"Modification"* means an amendment to an approved agreement.

(c) *"Proponents"* means the parties to an agreement for which section 15 approval has been requested pursuant to this part.

§ 560.3 Filing of agreements.

Agreement approval requests shall be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573. Such requests shall consist of a true copy and 15 additional copies of the agreement and all supporting information. Requests shall also be accompanied by a letter of transmittal which summarizes the agreement's contents, and expressly requests Commission approval pursuant to section 15. The true copy shall be signed by each of the proponents personally or by an authorized representative, and shall show immediately below each signature the name, position, and authority of the signer. Requests for approval which do not meet the requirements of this section shall be rejected within 30 days of receipt.

§ 560.4 Modifications.

(a) A request for approval of an agreement modification shall be filed in accordance with § 560.3 and shall identify the page and paragraph to be amended and restate each such paragraph. The language to be excised should be struck through, but not obliterated, and the substituted language, if any, should be inserted directly following that which is to be excised. The new language should be underscored. If the modification does not completely replace approved provisions, the page or pages on which the proposed amendments will appear should be restated with the proposed amendments underscored and placed in proper sequence on the page.

(b) Whenever an approved agreement shall have been modified three times in the manner described in paragraph (a) of this section, the next succeeding modification shall be accomplished by restating the entire agreement, incorporating all previous modifications, and showing the latest change in the manner required by paragraph (a) of this section.

§ 560.5 Supporting statements.

An agreement submitted for approval may be accompanied by a supporting statement, signed by an authorized representative of the proponents, indicating the reasons which caused the making of the agreement and the results intended to flow from its implementation, or other facts or arguments which support approval. Affidavits or other evidence may be attached to such statements. Supporting statements, including all documents, affidavits or other evidence attached thereto, are public records. No claims of confidentiality will be allowed.

§ 560.6 "Federal Register" notice.

Requests for approval which are not rejected pursuant to § 560.3 shall be noticed in the **Federal Register**. The notice shall include:

(a) A short title for the agreement;

(b) The identity of the proponents;

(c) The Federal Maritime Commission agreement number;

(d) A concise summary of the agreement's contents;

(e) A statement that the agreement and any supporting statement, including all documents, affidavits, or other evidence attached thereto, are available for inspection at the Commission's offices;

(f) The final date for filing protests or comments regarding the agreement; and

(g) The name and address of the filing agent.

§ 560.7 Comments and protests.

(a) A comment is a written statement regarding the approvability of an agreement. Comments have no prescribed form or content and are not limited in any way, except by the time limits provided in the **Federal Register** notice. A written communication regarding the approvability of an agreement, not conforming to the requirements of paragraph (b) of this section, shall be considered a comment. Filing a comment shall not necessarily entitle a person to: (1) Any discussion of the comment in a Commission order disposing of the agreement; (2) the institution of any further Commission proceeding; or (3) participation in any further proceeding which may be instituted.

(b) A protest is a written opposition to the approval of an agreement which complies with the requirements of this paragaph. A protest also constitutes an undertaking by the protestant to actively participate as a party in any further proceeding concerning the agreement, and protestants shall be so named in any Commission hearing order which may be issued. Protests shall:

(1) Identify, with particularity, the reasons why the agreement, or any constitutent part, should be disapproved;

(2) Address the accuracy of any statements and conclusions submitted by the proponents pursuant to § 560.5;

(3) Allege facts which support the arguments made in paragraphs (b)(1) and (b)(2) of this section; and

(4) Specify the source or derivation of the facts alleged pursuant to paragraph (b)(3) of this section.

(c) A copy of all comments and protests filed with the Commission shall be served upon the filing agent identified in § 560.6(g) on the same date they are filed with the Commission. A certificate of service attesting that this requirement has been met shall be attached to the comment or protest.

(d) Within 15 days from the date that comments or protests are due (as specified by the **Federal Register** notice or as subsequently extended by the Commission), the proponents or their authorized representative may file a response to each such comment or protest with service to all persons which have filed comments or protests.

(e) Except as provided in this section and § 560.5, or except, in the case of an unprotested agreement, as the Director, Bureau of Agreements and Trade Monitoring may in his/her discretion initiate, or unless specifically requested in writing by the Commission, with copies to the proponents and persons which have filed protests or comments, no other written or oral communication concerning a pending agreement shall be permitted. Amendments or supplements to documents submitted pursuant to § 560.5 and this section shall be permitted in the discretion of the Commission upon a showing of good cause, except that, in no case shall such permission be granted where the agreement has been scheduled and noticed for an agency meeting pursuant to § 503.82 of this chapter. A change in material fact or in applicable law occurring after the submission of the initial statement, comment or protest will normally constitute good cause. Inquiries as to the status of agreements shall be made to the Secretary of the Federal Maritime Commission.

§ 560.8 Disposition of agreement approval requests.

(a) The Commission shall, by conditional or unconditional orders, approve, disapprove or institute further proceedings regarding agreements filed with it.

(b) Further proceedings regarding an agreement will be instituted when:

(1) The Commission, in its discretion, considers further inquiry advisable;

(2) A protest alleges material facts which, if true and reasonably subject to

proof on the basis of their source and derivation, and arguments advanced, would preclude approval of the agreement, except that no further proceeding will be instituted if the disputed factual issues are resolved by the proponents' acceptance of conditions imposed by a conditional order in accordance with paragraph (c) of this section;

(3) The proponents of an agreement which seemingly contravenes the standards of section 15 properly exercise their right to request a further hearing pursuant to paragraph (d)(2) of this section.

(c) The Commission may issue a conditional order prescribing modifications in the agreement necessary to obtain approval when the agreement: (1) Does or appears to contravene the standards of section 15 unless modified; and (2) if so modified, would be approvable without further proceedings. If conditions imposed by the Commission are met within the time specified by a conditional order, the revised version of the agreement will stand approved from the date of receipt. Notice of such date shall be given to proponents or their representative by the Commission.

(d) Failure to meet conditions imposed by the Commission will result in either: (1) The automatic disapproval of the agreement; or (2) the institution of further proceedings by the Commission either on its own initiative or, where the conditional order found that the agreement was unapprovable, pursuant to a request from proponents. Any such request shall include a detailed recital of the facts that they intend to prove at that hearing, a description of evidence intended to be used to prove those facts, and an explanation as to why the facts sought to be proven support the approval of the agreement. If a finding of unapprovability was made, the conditional order will expressly state the date upon which disapproval would take place.

(e) It is unlawful to carry out the provisions of a conditionally approved or disapproved agreement prior to approval by the Commission in this section.

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

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. The Commission intends that this section comply with 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 the Office of Management and Budget (OMB) for each agency information collection requirement:

Section	Current OMB control No.
560.3 through 560.5	3072-0040
560.7	3072-0040
560.8	3072-0040

PART 561—TIME FOR FILING CERTAIN AGREEMENTS UNDER THE SHIPPING ACT, 1916

Sec.

561.1 Statement of Policy.
561.2 Time within which modifications and notices of cancellations must be filed.
561.3 Failure to file.

Authority: 5 U.S.C. 533; and secs. 15, 21 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 814, 820 and 841a).

§ 561.1 Statement of policy.

Some approved agreements on file with the Commission contain a provision specifying the date for their termination. In some instances amendments have been filed with the Commission extending the termination date of such agreements only a short time before the agreement was due to expire. It is the responsibility of the Commission to disapprove, cancel or modify, by order, after notice and hearing, any agreement, or modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be contrary to the public interest, or to be in violation of the Shipping Act, 1916, and to approve all other agreements, modifications, or cancellations. In order to discharge these responsibilities, sufficient time must be allowed for the Commission to comprehensively analyze and consider every agreement, modification and cancellation to determine whether or not it is lawful in the light of the above defined standards. Although the Commission may, from time to time, advise parties to agreements that the agreement is due to expire, parties to agreements cannot rely on Commission notice but are themselves solely responsible for the timely filing of amendments to extend agreements containing termination dates.

§ 561.2 Time within which modifications and notices of cancellations must be filed.

In effectuation of the policy set forth in § 561.1, all modifications and/or notices of cancellations of approved agreements between carriers, or between carriers and other persons subject to the Act, or between other persons subject to the Act, should be filed within the following specified times:

(a) Applications for extension of an approved agreement due to terminate by its own terms, should be filed so that the Commission will receive the application not less than one hundred twenty (120) days prior to the date on which the approved agreement would otherwise terminate.

(b) Modification of an approved agreement, other than as designated in paragraph (a) of this section, should be filed not less than one hundred twenty (120) days prior to the date it is intended that action will begin, change or cease as a result of the provision(s) of the modification.

(c) Notice of cancellation of an approved agreement should be filed not less than sixty (60) days prior to the effective date of cancellation.

§ 561.3 Failure to file.

Failure to file, at least one hundred twenty (120) days in advance of the termination date, an application for the extension of an approved agreement due to terminate by its own terms, could result in the approved agreement terminating prior to Commission action on the filed amendment.

Note.—This part does not contain separate collection of information requests or requirements. See § 560.91 of this chapter for OMB control numbers for the filing of agreements under the Paperwork Reduction Act.

PART 562—CONFERENCE AGREEMENT PROVISIONS RELATING TO CONCERTED ACTIVITIES UNDER THE SHIPPING ACT, 1916

Sec.

562.1 Statement of policy.
562.2 Proposed agreements.
562.3 Filing of minutes.
562.4 Retention of records.
562.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

Authority: 5 U.S.C. 553; and secs. 15, 21 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 814, 820 and 841a).

§ 562.1 Statement of policy.

It is the responsibility of the Commission to insure that parties to agreements approved under section 15, Shipping Act, 1916 are at all times

complying with the requirements of that Act and that their operations are not detrimental to the commerce of the United States, contrary to the public interest or otherwise in violation of the Act. In order to discharge properly this responsibility, the Commission must be fully apprised of the manner in which operations are being and will be carried out and must require that meaningful reports on such activities be furnished the Commission. Compliance is mandatory and failure to file the required reports may result in disapproval of agreements or penalties of up to $100 for each day of such default (46 U.S.C. app. 820).

§ 562.2 Proposed agreements.

In effectuation of the policy set forth in § 562.1, all proposed conference agreements, agreements between or among conferences, and agreements whereby the parties are authorized to fix rates (except two-party rate-fixing agreements and except leases, licenses, assignments or other agreements of similar character for the use of marine terminal property or facilities) submitted to the Commission for approval shall contain a provision stating the manner in which the joint business of the parties may be carried out: i.e., full conference meeting, agents' meeting, principals' meeting, owners' meeting, through committees or subcommittees, telephone or oral polls, or through any other procedure by which the business of the joint parties may be conducted. This provision shall also include quorum requirements and the types of vote necessary to take various actions; i.e., majority, two-thirds, three-fourths, majority plus one, unanimous, etc.

§ 562.3 Filing of minutes.

(a) The parties to each approved conference agreement, agreement between or among conferences, or agreements whereby the parties are authorized to fix rates (except two-party rate-fixing agreements and except leases, licenses, assignments or other agreements of similar character for the use of marine terminal property or facilities) shall, through a designated official, file with the Federal Maritime Commission a report of all meetings describing all matters within the scope of the agreement which are discussed or taken up at any such meeting, and shall specify the action taken with respect to each such matter. For the purpose of this part, the term "meeting" shall include any meeting of parties to the agreement, including meetings of their agents, principals, owners, committees or subcommittes of the parties authorized to take final action in behalf of the parties. If the agreement authorizes final action by telephonic or personal polls of the membership, a report describing each matter so considered and the action taken with respect thereto shall be filed with the Commission. These reports need not disclose the identity of parties that propose actions, or the identity of parties that participated in the discussions of any particular matter.

(b) The reports subject to paragraph (a) of this section shall be filed with the Commission within 30 days after such meetings.

(c) The reports subject to paragraph (a) of this section shall be certified as to accuracy and completeness by the Conference Chairman, Secretary or other designated official.

(d) No report need be filed under paragraph (a) of this section with respect to any discussion of or action taken with regard to rates that, if adopted, would be required to be published in the Commodity Rate Section, Class Rate Section or Open Rate Section of the pertinent tariff on file with the Commission. This reporting exemption does not apply to (1) discussions involving general rate policy, general rate changes, the opening or closing of rates or the removal of items from a dual rate system, or (2) discussions involving items, that, if adopted, would be required to be published in other tariff sections as specified in Part 550 of this chapter.

§ 562.4 Retention of records.

(a) A record of the vote on each question voted on shall be retained by the parties for at least 2 years. These records may be retained by a single party to the agreement, or an administrative official of a conference or ratemaking agreement designated for that purpose.

(b) All reports or circulars, in whatever form, distributed to the parties, which relate to matters within the scope of the approved agreement, shall be retained by the parties for at least 2 years. This record may be retained by a single party to the agreement, or an administrative official of a conference or ratemaking agreement designated for that purpose.

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

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. The Commission intends that this section comply with 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 the Office of Management and Budget (OMB) for each agency information collection requirement:

Section	Current OMB control No.
562.2 through 562.4	3072-0013

PART 564—ADMISSION, WITHDRAWAL AND EXPULSION PROVISIONS OF STEAMSHIP CONFERENCE AGREEMENTS UNDER THE SHIPPING ACT, 1916

Sec.

564.1 Statement of policy.
564.2 Provisions of conference agreements.
564.91 OMB control numbers asssigned pursuant to the Paperwork Reduction Act.

Authority: 5 U.S.C. 553; and secs. 15, 21 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 814, 820 and 841a).

§ 564.1 Statement of policy.

(a) Section 15 of the Shipping Act, 1916, provides that no conference agreement shall be approved, nor shall continued approval be permitted for any agreement, which fails to provide reasonable and equal terms and conditions for admission and readmission to conference membership of other qualified carriers in the trade, or fails to provide that any member may withdraw from membership upon reasonable notice without penalty for such withdrawal.

(b) It is the responsibility of the Federal Maritime Commission under the Shipping Act, 1916, to determine that all conference agreements contain reasonable and equal terms and conditions for admission and readmission to conference membership to qualified carriers according to the requirements set forth in paragraph (a) of this section.

(c) Conference agreements that do not comply with this part may be disapproved, cancelled or modified (46 U.S.C. app. 814). Violations of the provisions of this part may also subject the conference members to a civil penalty of up to $1,000 for each violation (46 U.S.C. app. 831(c)).

§ 564.2 Provisions of conference agreements.

In effectuation of the policy set forth in § 564.1, conference agreements shall contain provisions substantially as follows:

(a)(1) Any common carrier by water which has been regularly engaged as a common carrier in the trade covered by this agreement, or who furnishes evidence of ability and intention in good faith to institute and maintain such a common carrier service between ports within the scope of this agreement, and who evidences an ability and intention in good faith to abide by all the terms and conditions of this agreement, may hereafter become a party to this agreement by affixing its signature thereto.

(2) Paragraph (a)(1) of this section will not preclude the conference from imposing legitimate conditions on membership, including but not necessarily limited to, the payment of an admission fee, payment of any outstanding financial obligations arising from prior membership, or the posting of a security bond or deposit. All such conditions must be made expressed terms of the conference agreement, filed with and approved by the Commission pursuant to section 15 of the Shipping Act, 1916.

(b) Every application for membership shall be acted upon promptly.

(c) No carrier which has complied with the conditions set forth in paragraph (a) of this section shall be denied admission or readmission to membership.

(d) Prompt notice of admission to membership shall be furnished to the Federal Maritime Commission and no admission shall be effective prior to the postmark date of such notice.

(e) Advice of any denial of admission to membership, together with a statement of the reasons therefor, shall be furnished promptly to the Federal Maritime Commission.

(f) Any party may withdraw from the conference without penalty by giving at least 30 days' written notice of intention to withdraw to the conference, except that action taken by the conference to compel the payment of outstanding financial obligations by the resigning member shall not be construed as a penalty for withdrawal.

(g) Notice of withdrawal of any party shall be furnished promptly to the Federal Maritime Commission.

(h) No party may be expelled against its will from this conference except for failure to maintain a common carrier service between the ports within the scope of this agreement (said failure to be determined according to the minimum sailing requirements set forth in this agreement) or for failure to abide by all the terms and conditions of this agreement.

(i) No expulsion shall become effective until a detailed statement setting forth the reason or reasons therefor has been furnished the expelled member and a copy of such notification submitted to the Federal Maritime Commission.

§ 564.91 OMB Control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. The Commission intends that this section comply with 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 the Office of Management and Budget (OMB) for each agency information collection requirement:

Section	Current OMB control No.
564.2	3072-0038

PART 566—SHIPPERS REQUESTS AND COMPLAINTS UNDER THE SHIPPING ACT, 1916

Sec.

566.1 Statement of policy.
566.2 Definition.
566.3 Reports.
566.4 Resident representative.
566.5 Tariff provision.
566.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

Authority: 5 U.S.C. 553; and secs. 15, 18(a), 21 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 814, 817(a), 820 and 841a).

§ 566.1 Statement of policy.

(a) Section 15 of the Shipping Act, 1916, provides that the Commission shall disapprove any agreement after notice and hearing on a finding of failure or refusal to adopt and maintain reasonable procedures for promptly and fairly hearing and considering shippers' requests and complaints.

(b) The Commission deems it to be its responsibility to see to it that ratemaking groups operating under approved section 15 agreements have adopted and are maintaining the reasonable procedures referred to in paragraph (a) of this section. This necessitates continuing observation of the manner in which such procedures are implemented.

(c) Compliance is mandatory and failure to file the required reports may result in disapproval of section 15 agreements or penalties of up to $100 for each day of such default (46 U.S.C. app. 820).

§ 566.2 Definition.

The phrase "shippers' requests and complaints," as used in this part, means any communication requesting a change in tariff rates, rules, or regulations; the protesting of, or objecting to, existing tariff rates, rules, or regulations; objecting to rate increases or other tariff changes; and protests against allegedly erroneous billings due to an incorrect commodity classification, incorrect weight or measurement of cargo, or other implementation of the tariff. Routine requests for rate information, sailing schedules, space availability, and the like are not included in the foregoing.

§ 566.3 Reports.

By January 31 of each year, each conference and each other body with rate-fixing authority under an approved agreement shall file with the Commission a report covering all shippers' requests and complaints received during the preceding calendar year or pending at the beginning of such calendar year. All such reports shall include the following information for each request or complaint:

(a) Date request or complaint was received.

(b) Identity of the person or firm submitting the request or complaint.

(c) Nature of request or complaint, i.e., rate reduction, rate establishment, classification, overcharge, undercharge, measurement, etc.

(d) If final action was taken, date and nature thereof.

(e) If final action was not taken, an identification of the request or complaint as "pending."

(f) If denied, the reason.

§ 566.4 Resident representative.

Conferences and other rate-making groups domiciled outside the United States shall designate a resident representative in the United States with whom shippers situated in the United States may lodge their requests and complaints. The resident representative shall maintain for a period of 2 years a complete record of requests and complaints filed with him by shippers and consignees situated in the United States and its territories. Conferences and other rate-making groups subject to this section may satisfy the reporting requirements of § 566.3 by reporting those requests and complaints filed with the resident agent appointed pursuant to the provisions of this section.

§ 566.5 Tariff provision.

Tariffs issued by or on behalf of conferences and other rate-making groups shall contain full instructions as to where and by what method shippers may file their requests and complaints, together with a sample of the rate request form, if one is used, or, in lieu thereof, a statement as to what supporting information is considered necessary for processing the request or complaint through conference channels. All changes made in such instructions shall be published in said tariffs, supplements thereto, or reissues thereof, in accordance with the tariff filing requirements of section 18(a) of the Shipping Act, 1916.

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

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. The Commission intends that this section comply with 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 the Office of Management and Budget (OMB) for each agency information collection requirement:

Section	Current OMB Control No.
566.3 through 566.5	3072-0007

PART 568—SELF-POLICING REQUIREMENTS FOR AGREEMENTS UNDER THE SHIPPING ACT, 1916

Sec.

568.0 Purpose and scope.
568.1 General requirements.
568.2 Specific requirements: self-policing provisions.
568.3 Policing authorities (minimum requirements).
568.4 Impartial arbitrators (minimum requirements).
568.5 Reporting requirements.
568.6 Two party rate-fixing agreements.
568.7 Exemption from self-policing requirements.
568.8 Factors to be applied to the criteria for obtaining an exemption from self-policing requirements.
568.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

Authority: 5 U.S.C. 533; and secs. 14, 15, 16, 17, 18(a), 21, 35 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 812, 814, 815, 816, 817(a), 820, 833a and 841a).

§ 568.0 Purpose and scope.

(a) Section 15 of the Shipping Act, 1916, prohibits the approval of agreements which are not adequately self-policed. It also contemplates that self-policing provisions be included in certain agreements subject to the Shipping Act, 1916, and that the Commission be kept informed of the manner in which such provisions are being implemented. The provisions of this part are designed to establish minimum standards for judging the adequacy of self-policing activities, assist ocean carriers obtain expeditious approval of their section 15 agreements insofar as self-policing is concerned, provide the Commission with reliable information concerning the nature and performance of self-policing systems, and curtail rebating and other malpractices by ocean carriers.

(b) This part shall apply to all conference and other rate-fixing agreements between common carriers by water in the domestic offshore commerce of the United States (hereafter referred to as "agreements"), whether or not previously approved by the Commission.

(c) Compliance is mandatory and failure to file the required reports may result in disapproval of section 15 agreements or penalties of up to $100 for each day of such default (46 U.S.C. app. 820).

§ 568.1 General requirements.

(a) Every agreement shall contain provisions establishing and describing a system for self-policing its members. These provisions shall describe the methods employed and the standards used to investigate, adjudicate, and penalize breaches of the agreement by the common carriers by water signatory thereto (hereafter referred to as "members"), and shall include within their scope the activities of all persons, firms, associations, or corporations that are agents, employees, or affiliates of members, or are otherwise subject to the control of a member, or which themselves control a member, or are commonly controlled by any person, firm, association, or corporation which controls a member (hereafter referred to as "associates").

(b) Self-policing provisions shall establish both a policing authority and an impartial "arbitrator" or "adjudicator" and describe the functions and authority of each entity. The impartial arbitrator shall be functionally separate and distinct from the policing authority.

(c) No self-policing system shall contain provisions which purport to:

(1) Deny access to or copies of any self-policing records, statistics, reports, or other information (including the identity of members) in contravention of a duly issued order of the Federal Maritime Commission (or a Commission employee with delegated authority to issue such orders); or

(2) Preclude any of its members from disclosing the nature and extent of their own involvement with the self-policing authority (e.g., any damages paid by the member) in any administrative or judicial proceeding to enforce the Shipping Act, 1916.

(d) Compliance with this part shall not relieve rate-fixing bodies of their absolute responsibility to adequately police their activities or preclude the Commission from disapproving an agreement when sufficient evidence of rebating or other malpractices exists to warrant a conclusion that the members' self-policing efforts have been inadequate.

§ 568.2 Specific requirements: self-policing provisions.

Agreements shall contain the following self-policing provisions:

(a) *Breaches (general);* A statement that any violation or breach of any provision of the agreement, or any tariff, rule or regulation promulgated thereunder (hereafter referred to as a "breach"), by any member of the agreement (directly or through an associate) shall subject such member to self-policing sanctions;

(b) *Permissible damages.* A statement specifying the maximum damages, or range of damages, or the method of calculating the damages, which may be assessed against members of the agreement upon finding that such members have committed a breach. Such statement may specify damages for specific breaches and a general category of breaches, or both, and may relate to each and every breach, or to the number of times the member has previously been found guilty of a breach;

(c) *Investigation of breaches.* An effective procedure for investigating all matters which are the subject of complaints or which otherwise suggest or allege the existence of breaches;

(1) The procedure shall require the self-policing authority to:

(i) Receive or gather information concerning breaches from any and all sources;

(ii) Make investigations both in response to complaints and upon its own initiative;

(iii) Examine, audit or inspect, upon demand, with or without notice and wherever located: Any books, records,

accounts, invoices, bills of lading or other documents, cargo, containers, ships, property, and facilities owned, used, or transported by any member of the agreement or its associates which may be relevant to the member's participation in the trade, except that examination of particularly identified materials may be postponed for a reasonable period, pending a prompt determination of relevancy by the impartial arbitrator under conditions which assure that the materials in question are sealed or otherwise kept unaltered during the determination period;

(iv) Adopt and publicize procedures for the filing of complaints;

(v) Compile and retain for at least 5 years a complete and thorough record of all its investigatory and prosecutorial activities, including a description of all complaints, the basis, nature and scope of all self-initiated investigations, and the disposition of all investigations.

(2) The procedure shall require all officers, employees, and associates (including officers, employees and controlling owners) of members to cooperate with, and freely provide information to, the policing authority and its agents;

(d) *Adjudication of breaches.* A procedure for adjudicating alleged breaches which affords accused members the right to a hearing before an impartial arbitrator. The impartial arbitrator shall adjudicate such claims solely and finally, either initially or upon review de novo on the record of an initial determination by the policing authority. "Review de novo on the record" requires the impartial arbitrator to have full authority to affirm, modify or set aside any finding of fact, conclusion of law, or penalty made or imposed by the policing authority;

(e) *Procedural guarantees.* A statement that fundamental fairness will be afforded all members accused of committing a breach (hereafter referred to as "the accused"), which includes the following specific procedural guarantees:

(1) The accused shall be charged in writing, within a reasonable time prior to the initial hearing, in a manner which fairly and clearly discloses the nature of the alleged breach. Such charges need not reveal the identity of the complainant;

(2) The accused shall be furnished with all evidence within a reasonable time prior to the initial hearing, in a manner which fairly and clearly discloses the nature of the alleged breach. Such charges need not reveal the identity of the complainant;

(3) The accused shall be given a full and fair opportunity to rebut or explain any evidence introduced against it and to present evidence which might show mitigating or extenuating circumstances;

(4) The impartial adjudicator shall receive and consider only that evidence which has been furnished to the accused by the self-policing authority or has been furnished by the accused in its defense;

(f) *Designated official.* A statement designating a particular officer or official of the rate-fixing body to be responsible for the filing and certifying of self-policing reports with the Commission in accordance with § 568.5.

§ 568.3 Policing authorities (minimum requirements).

(a) Policing authorities shall have an adequate and qualified staff, adequate facilities and an adequate budget.

(b) Policing authorities shall be headed by, and composed of, persons not otherwise employed by, having any financial interest in, or affiliated with, the conference or rate-fixing body established by the agreement or any member or associate thereof, except that:

(1) An individual or entity may act as the policing authority for more than one rate-fixing body;

(2) An independent certified public accountant (referred to hereafter as an ICPA) may act as the policing authority, even though it has a client which is a member of the agreement or an associate of such member, where such relationship is disclosed prior to being named as the policing authority and it is disqualified from acting as the policing authority with respect to the member which is, or whose associate is, a client of the ICPA. If the ICPA named as the policing authority discloses that it has a member of the agreement or an associate of such member as a client, an alternate policing authority must be appointed to receive and investigate any complaints against such member;

(3) Upon petition to the Commission, an exemption may be sought to allow one or more officers or employees of a rate-fixing body to act as the head of, or be assigned to duties under, the policing authority, if such person or persons are not otherwise employed by, affiliated with, or have any interest in, any member or any associate of a member. Petitions for exemption will not be lightly granted and must include a convincing showing that:

(i) The persons conducting self-policing activities are qualified and their self-policing activities would not substantially conflict with their other duties and responsibilities;

(ii) The agreement is so limited in scope that the retention of an independent self-policing authority would impose an unrealistic financial burden on the members. The number of members, the financial condition of the members, the nature and extent of the trade, the competitive circumstances prevailing in the trade, and other activities of the members both within and without the trade (e.g., participation in other agreements) are all relevant considerations;

(iii) The trade covered by the agreement has been relatively free of rebating or other conduct violative of the Shipping Act in the 5 years preceding the year when exemption is sought and is likely to continue to be characterized by a minimal level of such malpractices.

(c) The policing authority of each agreement shall be required to establish reasonable written procedures for the receipt and investigation of complaints which shall be made available to any person upon request. Such procedures may include special provisions for the handling of written complaints and for summary investigation of frivolous or incomplete allegations (whether written or not). These procedures may not, however, require that complaints be in writing or restrict the class of persons entitled to lodge a complaint.

(d) Policing authorities shall be required to investigate all complaints filed in accordance with their established procedures.

(e) Policing authorities shall be required to conduct self-initiated investigations whenever they receive information providing reasonable cause to do so and to periodically conduct self-initiated investigations into the activities of each member. All self-initiated investigations shall include, but not necessarily be limited to, the unannounced inspection of books, records, accounts, shipping documents, invoices, cargo, ships, containers, equipment, and facilities of the member and its associates.

(f) Policing authorities shall compile and retain for at least 5 years a sufficient written record of their activities to demonstrate compliance with this part. This record shall include:

(1) All complaints received (written or oral), the processing or case numbers assigned to each complaint, a description of the steps taken to investigate each complaint (including hearings or arbitration proceedings), copies or summaries of the evidence gathered, and the final disposition of each investigation;

(2) A chronological log summarizing all information (other than complaints) received or gathered which alleges or suggests the existence of a breach and describing the consideration given to this information, including all reports of unintentional cargo misdescriptions and mismeasurements, anonymous tips, and rumors of malpractices;

(3) A description of all self-initiated investigations, the processing or case numbers assigned to each investigation, a description of all investigatory measures employed (including hearings or arbitration proceedings), copies or summaries of the evidence gathered, and the final disposition of each investigation;

(4) A brief statement as to why each investigation was finally disposed of in the particular manner chosen. This statement shall include an exact description of any breach found to have occurred, any decision of the impartial arbitrator and the nature and amount of any penalty assessed and paid.

§ 568.4 Impartial arbitrators (minimum requirements).

(a) The impartial arbitrator shall be a totally disinterested person or entity, unaffiliated with the rate-fixing body or any member or associate thereof, and may be appointed on a permanent basis or selected on an ad hoc basis from a panel of arbitrators pursuant to traditional rules of commercial arbitration.

(b) The impartial arbitrator shall be vested with final authority to adjudicate disputes and assess damages within the scope of the self-policing system.

(c) The impartial arbitrator shall not perform any other duties under the self-policing system with regard to any matter before it for adjudication, including investigation or prosecution.

§ 568.5 Reporting requirements.

(a) Each rate-fixing body shall mail (air mail postage prepaid) or hand deliver a semiannual report to the secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before January 31 and July 31 of each year covering that body's self-policing and adjudicatory activities during the 6-month period immediately preceding the respective reporting month (i.e., January or June).

(b) Each semiannual self-policing report may exclude the identity of all parties to an allegation of breach, investigation or penalty assessment, but shall contain the following detailed information:

(1) The name and address of the self-policing body employed during the reporting period and a complete description of its staff, facilities, and budget, and the name and address of the impartial arbitrator employed during the reporting period and a description of its qualifications;

(2) The date, location (community or port area where inspection occurred) and nature of each examination or inspection (including audits) of cargo, facilities, shipping documents, or office records performed during the reporting period. The type and approximate number of accounts, documents, cargo containers, and other items inspected shall also be stated. Each such inspection shall be correlated to a particular investigation bearing a processing or case number;

(3) The number of cargo misdescriptions or mismeasurements detected by:

(i) The self-policing authority or any division thereof;

(ii) Any other organization retained by the rate-fixing body to make misrating determinations and regularly report them to the self-policing authority. When such a separate "misrating committee" or similar organization is employed by a rate-fixing body, the self-policing report shall also identify that organization by name and address, and provide a thorough description of its staffing (including other affiliations with the conference or its members), authority and routine activities, and describe the procedures by which it reports its findings to the self-policing authority;

(4) The number of breaches of the agreement (other than unintentional cargo misdescriptions and mismeasurements) which were detected through the investigation of complaints;

(5) The number of breaches of the agreement (other than unintentional cargo misdescriptions and mismeasurements) which were detected by self-initiated investigations.

(6) A thorough summary of the basis, nature, and scope of each investigation commenced during the reporting period, including any hearings or arbitration proceedings. Each investigation shall be identified by a processing number and the summary shall indicate whether the investigation was initiated by complaint or upon the initiative of the self-policing authority;

(7) A list of information received or gathered during the reporting period alleging or suggesting the existence of a breach, but which was not made the subject of an investigation;

(8) A list (by processing number) of investigations commenced in previous reporting periods and still pending, and a description of the action taken with respect to each during the reporting period (including hearings and arbitration proceedings);

(9) A list and description (by processing number) of all final actions taken with respect to investigations of any type. An action is not "final" unless:

(i) The investigation revealed insufficient evidence to establish a breach; or

(ii) The accused was assessed damages, either based on a voluntary settlement or a decision rendered by the policing authority or the impartial arbitrator.

(10) When a final action involves an assessment of penalties, the report shall also include:

(i) A detailed description of the alleged or adjudicated breach, the amount or type of penalty assessed, and whether the assessment was met;

(ii) A list of all other breaches (other than unintentional cargo misdescriptions and mismeasurements) committed by the member during the period subsequent to the effective date of this part, but not greater than 3 years prior to the final action in question.

(c) The report shall clearly indicate those final actions handled by the policing authority and those matters, including rulings on the relevancy of documents or things sought to be examined by the policing authority, handled by the impartial arbitrator.

(d) The reporting officer designated pursuant to § 568.2(f) shall certify under penalty of perjury that the semiannual report has been prepared by the self-policing authority specifically designated by the rate-fixing body to act in full accordance with the requirements of this part during the reporting period. The accuracy and completeness of the report shall be sworn to under penalty of perjury by the head of the designated self-policing authority.

(e) If there are no complaints, investigations, or final actions during the period, the report shall contain an express statement to this effect as to each category of information required by paragraph (b) of this section.

§ 568.6 Two-party rate-fixing agreements.

Rate-fixing agreements with no more than two signatory parties shall be exempt from the requirements of this part.

§ 568.7 Exemption from self-policing requirements.

(a) The provisions of this part require that every conference or other rate-fixing agreement between common carriers by water in the domestic offshore commerce of the United States shall contain provisions establishing

and describing a system for self-policing its members, including designation of a policing authority.

(b) Section 568.3(b) requires that policing authorities be headed by, and composed of, persons not otherwise employed by, having any financial interest in, or affiliated with the conference or rate-fixing body or any member or associate thereof. Provision is made in § 568.3(b)(3), however, for petition to the Commission for an exemption from this "independent neutral body" requirement to allow officers or employees of the conference or rate-fixing body to act as the head of, or be assigned to duties under, the policing authority if such person or persons are not otherwise affiliated with any conference member and the conference establishes that the specific factual conditions of § 568.3(b)(3) are present.

(c) Pending Commission action on the petition for exemption under paragraph (b) of this section, the petitioner is not relieved of the obligation to comply with the independent neutral body requirements of § 568.3(b). Unless and until the Commission grants an exemption, every conference or rate-fixing agreement must provide for the services of a policing authority that fully meets the requirements of § 568.3.

§ 568.8 Factors to be applied to the criteria for obtaining an exemption from self-policing requirements.

This section explains how the Commission applies the factors in § 568.3(b)(3) regarding exemption of conferences and rate-fixing bodies from the independent policing authority requirement of this part:

(a) *Qualifications of conference personnel.* (1) In evaluating the qualifications of a conference employee to perform the requisite self-policing activities, the Commission considers:

(i) Knowledge of, and experience in, the commercial and administrative aspects of the ocean liner industry;

(ii) Investigative/auditing experience and expertise; and

(iii) Current duties, if any, under the conference and elsewhere and whether those duties significantly interfere with the policing function.

(2) The following factors will be considered in determining whether an individual's self-policing activities, including annual audits of each member line, would be substantially affected by other duties and responsibilities:

(i) Number of agreement members;

(ii) Number of sailings, by member, in the trade;

(iii) Scope of agreement;

(iv) Location of carrier member's books and records;

(v) Extent of official duties, including regular attendance at membership meetings;

(vi) Whether the official serves in a similar role as Chairman or Secretary for other agreements;

(vii) The description of the intended self-policing program, including budget authorized;

(viii) Whether cargo inspection duties will be performed; and

(ix) Assistance from other staff member(s).

(b) *Unrealistic financial burden.* In evaluating assertions of an unrealistic financial burden, the Commission considers:

(1) Prospective cost/fee for neutral body self-policing;

(2) How the cost was determined;

(3) Whether the cost represents the lowest bid of a qualified neutral body;

(4) Revenues earned in the trade; and

(5) Any other relevant data which petitioner submits.

(c) *Trade relatively free of malpractices.* The Commission will consider assertions that a given trade has been relatively free of malpractices. The Commission recognizes, however, that prior self-policing systems, which only responded to complaints and did not initiate investigations, may not reflect the full extent of malpractices in a trade.

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

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. The Commission intends that this section comply with 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 the Office of Management and Budget (OMB) for each agency information collection requirement:

Section	Current OMB control No.
568.1 through 568.3	3072-0003
568.5	3072-0003

PART 569—RULES GOVERNING THE RIGHT OF INDEPENDENT ACTION UNDER THE SHIPPING ACT, 1916

Sec.

569.1 Statement of policy.
569.2 Provisions of agreements.
569.3 Implementation of the right of independent action in tariff filing.

Authority: 5 U.S.C. 553; and secs. 15 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 814 and 841a).

§ 569.1 Statement of policy.

(a) Section 15 of the Shipping Act, 1916, provides that no agreement between carriers not members of the same conference or conferences of carriers serving different trades that would otherwise be naturally competitive, shall be approved, nor shall continued approval be permitted, unless in the case of agreements between carriers, each carrier, or in the case of agreements between conferences, each conference, retains the right of independent action.

(b) It is the responsibility of the Commission under the Shipping Act, 1916, to insure that all such agreements contain a provision retaining the right of independent action.

§ 569.2 Provisions of agreements.

(a) In effectuation of the policy set forth in § 569.1, all agreements between carriers not members of the same conference or conferences of carriers serving trades that would otherwise be naturally competitive, shall contain provisions substantially as follows:

The parties hereto (either carriers or conferences as the case may be) agree that with respect to any actions to be taken or procedures to be followed under this agreement, any party, after (insert here a period of time not to exceed ten days) may take action or follow procedures independent of those agreed upon.

(b) The parties may stipulate in the agreement whatever event should commence the running of the notice period, and the mode of communicating the decision to take independent action.

§ 569.3 Implementation of the right of independent action in tariff filing.

It is the policy of the Federal Maritime Commission to promptly resolve any controversies concerning the right of members of rate fixing agreements approved under section 15 of the Shipping Act, 1916, to take independent rate action pursuant to provisions of such agreements and to have such action implemented by amendment of the conference tariff on file with the Commission. In instances where there is a difference of opinion as to the tariff filing obligations or rights of agreement parties, a Commission determination will be made upon submission of the matter to the Commission. The submission may be made by any party to the agreement in accordance with § 502.69 of this chapter.

Note.—In accordance with 44 U.S.C. 3506(c)(5), any information request or requirement in this part is not subject to the requirements of section 3507(f) of the Paperwork Reduction Act, because there are nine or fewer respondents.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-25836 Filed 9-28-84; 8:45 am]

BILLING CODE 6730-01-M

federal register

Monday
October 1, 1984

Part V

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 942

Surface Coal Mining and Reclamation Operations Under a Federal Program for Tennessee; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 942

Surface Coal Mining and Reclamation Operations Under a Federal Program for Tennessee

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the Department of the Interior promulgates a Federal program for regulation of coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands in the State of Tennessee. This includes the surface operations and impacts incident to underground coal mining. This program is necessary in order to regulate surface coal mining activities because of the State's repeal of the Tennessee Coal Surface Mining Act and regulations effective October 1, 1984.

OSM also withdraws approval of the Tennessee regulatory program and separately has proposed to suspend Tennessee's Abandoned Mine Land Reclamation Plan. Approval of the State's regulatory program and Reclamation Plan on August 10, 1982, provided the State with exclusive responsibility for regulating surface coal mining activities and administering a reclamation program for restoring land and water resources adversely affected by past mining practices. The Federal Surface Mining Act, however, makes continued funding for the Reclamation Plan contingent on the State having an approved regulatory program.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: James A. Curry, Field Office Director, OSM, 530 Gay Street, S.W., Knoxville, TN 37902 (Telephone: (615) 673–4504); and Murray Newton, Chief, Branch of Regulatory Programs, Office of Surface Mining, Room 222, 1951 Constitution Avenue, N.W., Washington, DC 20240 (Telephone: (202) 343–5361).

SUPPLEMENTARY INFORMATION: This rulemaking is being made effective October 1, 1984 without the delayed effective date provided for by the Administrative Procedure Act, 5 U.S.C. 553. The repeal of the Tennessee Coal Surface Mining Act and regulations takes effect on October 1, 1984. Unless the Tennessee Federal program were made effective on that date, there would be no law governing coal mining in Tennessee. Therefore, OSM is making this Federal program effective on October 1, 1984, in order to avoid such a regulatory vacuum.

To assist the reader, this preamble is arranged as follows:

I. Withdrawal of State Program Approval
- A. Withdrawal of Regulatory Program Approval
- B. Proposed Suspension of Abandoned Mine Land Plan

II. Federal Programs Generally

III. Tennessee Federal Program
- A. Federal/State Program Interface and Transition
- B. Content and Organization of the Program
- C. Discussion of Program and Disposition of Comments

IV. Other Information

I. Withdrawal of State Program Approval

A. Withdrawal of Regulatory Program Approval

On August 10, 1982, the State of Tennessee received conditional approval of its permanent regulatory program. 47 FR 34753. On April 8, 1983, and again on August 17, 1983, the Director of OSM notified the Governor of Tennessee of problems identified in the State's implementation, maintenance and enforcement of its program, and sought corrective measures pursuant to 30 CFR Part 733. See the notice of public hearing at 48 FR 22541 (May 19, 1983). The State subsequently failed to adequately indicate its intent and capability to implement, maintain and enforce its regulatory program. By final rulemaking notice published on April 18, 1984 (49 FR 15496), OSM assumed direct Federal enforcement of the inspection and enforcement portions of the Tennessee regulatory program pursuant to 30 CFR 733.12 because of the State's failure to adequately implement certain parts of its program. The Tennessee statute and pertinent program regulations that OSM would be enforcing appeared in the Federal Register on May 18, 1984 (49 FR 21140).

By the State's action on May 16, 1984, most of the Tennessee Coal Surface Mining Law of 1980, Tennessee Code Annotated 59–8–301—59–8–339, was repealed effective October 1, 1984. The legislation also repealed the implementing regulations for the regulatory program effective the same date. With the State's action, Secretarial withdrawal of State regulatory program approval became a formality. Under Section 503(a)(1) of the Surface Mining Control and Reclamation Act of 1977 ("SMCRA" or the "Act"), 30 U.S.C. 1253(a)(1), to achieve and retain primacy a coal-producing State must have a law which provides for the regulation of surface coal mining and reclamation operations in accordance with the Act. Pursuant to 30 CFR 733.12(g), the Secretary is to withdraw program approval if the failure of the State to administer or enforce its program cannot be remedied by substitution of Federal enforcement of the program. The State's failure to have a surface mining law cannot be cured merely by substitution of Federal enforcement.

Therefore, OMS today withdraws approval of the Tennessee permanent regulatory program in full effective October 1, 1984. On and after that date, OSM will be the regulatory authority in Tennessee.

B. Proposed Suspension of Abandoned Mine Land Plan

Title IV of the Surface Mining Act establishes an Abandoned Mine Land (AML) program for the purposes of reclaiming and restoring land and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or Federal law. Title IV provides that a State with an approved surface mining regulatory program may have an AML plan approved which gives it the responsibility and primary authority to implement the plan. Tennessee's plan was approved on August 10, 1982. 47 FR 34757.

Section 405(c) of the Act provides that the Secretary shall not approve, fund or continue to fund a State AML program unless that State has an approved State regulatory program pursuant to Section 503 of the Act. Regulations implementing this provision are found in 30 CFR 884.16 and 886.18. Upon withdrawal of regulatory program approval, the Director of OSM must suspend the AML plan.

If the Director determines that a State reclamation plan should be suspended and the AML grants terminated, the Director must notify the State by mail of the proposed action. The notice must state the reasons for the proposed action and provide the State 30 days to show cause why such action should not be taken. The Director will afford the State an opportunity for consultation, including a hearing, if requested, and performance of remedial action prior to suspension. The Director is notifying the Governor of Tennessee by letter of

OSM's intention to suspend Tennessee's Reclamation Plan. After 30 days of the Governor's receipt of this letter, the Director will notify the State that its Abandoned Mine Land Plan has been officially suspended.

Formal suspension of a State's Reclamation Plan will have the following consequences: (1) The State will no longer be eligible to receive its 50% allocation of the AML funds collected within the State; (2) funds which have been allocated to the State but remain unexpended for three years may be withdrawn by the Director and used in any eligible area in the country; and (3) OSM will conduct only limited reclamation efforts in the State addressing only the highest priority problems which threaten the public health and safety.

II. Federal Programs Generally

Under Section 504(a) of the Act, 30 U.S.C. 1254(a), the Secretary of the Interior (the Secretary) is required to promulgate a Federal program in a State for, among other reasons, the failure of a State granted primary regulatory responsibility to adequately implement, enforce and maintain its program. Upon promulgation of a Federal regulatory program, the Secretary becomes the regulatory authority.

Once a decision is made that a Federal regulatory program is necessary for a State, the Secretary must make several determinations in promulgating a program. Section 504(a) of the Act requires that the Secretary take into consideration the nature of the State's terrain, climate, biological, chemical, and other relevant physical conditions. This requirement is also set forth in the regulations for the promulgation of Federal programs, 30 CFR Part 7360. The Act (505(b)) and the regulations (30 CFR 736.22(a)(1)) also provide that if a State has more stringent land use and environmental protection laws or regulations, they shall not be construed to be inconsistent with the Act or the Secretary's regulations. The Secretary believes that the requirements of Section 505(b) can best be met by identifying any State laws and regulations which may impose more stringent environmental controls and by then listing them in the Federal program. If the State's laws or regulations establish more stringent standards than those of the Act or the Secretary's regulations in 30 CFR Chapter VII, or if the State regulates any aspect of the environment which neither the Act nor the Secretary's regulations protect, the Secretary would then specifically preserve those State standards in the Federal program. By identifying any State laws as more stringent than Federal surface coal mining statutory and regulatory standards, however, the Secretary would not be assuming any responsibility to enforce such State laws.

Also, in promulgating a Federal program, Section 504(g) of the Act specifies that any State statutes or regulations which regulate surface mining and reclamation operations are to be identified by the Secretary and will be superseded and preempted to the extent that they interfere with the achievement of the purposes and requirements of the Act and Federal program. This provision is reinforced by Section 505(a) which states that only inconsistent State laws shall be superseded by any provision of the Act or regulation. State statutes and rules regulating the same activities as those covered by the Federal law and regulations and which do not provide as much protection as do the Federal law and regulations are considered to interfere with achievement of the purposes of the Act. Accordingly, they must be identified and preempted.

Federal programs are based on the Secretary's permanent program regulations in 30 CFR Subchapters A, F, G, H, J, K, L, and M. The permanent program regulations implement five essential aspects of the surface coal mining regulatory program: permitting, performance standards, designation of lands as unsuitable for mining, bonding, and inspection and enforcement. These rules form the benchmark for the State regulatory programs since Section 503(a)(7) of the Act requires that the State's rules and regulations be consistent with the Secretary's regulations in order for a State to have a regulatory program approved.

The permanent program rules refer to the "regulatory authority." Under a Federal program, that is the Secretary. Act, 701(22). The Secretary has delegated his authority under the Act to the Assistant Secretary for Land and Minerals Management. Secretarial Order No. 3013 (November 9, 1977); Order No. 3099 (December 22, 1983). With limited exceptions, the Assistant Secretary has in turn redelegated all of this authority under the Act to the Director of OSM. 216 Departmental Manual 1 (November 9, 1977). Thus, the Director of OSM is the official directly responsible for the implementation of a Federal regulatory program.

The parts of the permanent regulatory program rules that must be included in a Federal program are listed in 30 CFR 736.22(b). They include the general requirements and definitions (Parts 700 and 701), the exemption for coal extraction incident to government-financed highway or other construction (Part 707), the designation of lands as unsuitable for surface mining (Parts 760, 761, 762, and 765), permits and permit applications (Subchapter G), small operator assistance (Subchapter K), inspection and enforcement (Parts 842, 843 and 845), and blaster training and certification (Subchapter M). In addition, the provisions in the permanent regulations on protection of employees (Subchapter P) and restrictions on financial interests (Part 706) are applicable to Federal employees who, in the instance of a Federal regulatory program, are directly enforcing the Act.

Federal programs are promulgated by means of cross-referencing the permanent program rules which set the substantive standards. The basis and purpose of these cross-referenced standards are set forth in the **Federal Register** preambles accompanying the final rules in which the standards were adopted. The Federal regulatory program for Tennessee replaces the current 30 CFR 942. Sections on various topics cross-reference the counterpart permanent program rules on those topics. For example, for general requirements for permits and permit applications, § 942.773 of the Tennessee Federal regulatory program cross-references 30 CFR Part 773 of the permanent program rules, stating that 30 CFR Part 773 "shall apply to any person who makes application for a permit for surface coal mining operations." Cross-referencing avoids duplication of the full text of the permanent regulatory program rules for each Federal program.

Where a particular permanent program regulation needed to be modified for use in the Tennessee Federal program, an additional paragraph has been added to modify the permanent regulatory program standards applicable in Tennessee or to add additional requirements or standards. Where more than one standard needed to be modified in any particular permanent program rule, additional paragraphs have been added to the Federal program section. For example, additional performance standards for Tennessee have been added to § 942.816 as paragraphs (b) through (h). This is one means of

implementing the mandate of Section 504(a) of the Act that in promulgating a Federal program the Secretary take into consideration relevant conditions in the State.

One effect of cross-referencing in a Federal program is that if a permanent program rule is revised, the corresponding Federal program rule would be similarly revised. However, the notice of proposed rulemaking would invite comments not only on the proposed rule generally, but also on how it might affect a particular Federal program. If certain changes were needed for a Federal program, then a separate provision would be added to the Federal program provision which is the counterpart to the permanent program rule.

Several provisions of the permanent program rules are already applicable to all Federal programs because they were fully promulgated for application to all regulatory programs and, therefore, need not be cross-referenced. Those provisions are 30 CFR Chapter VII, Subchapter P—Protection of Employees; Part 706—Restrictions on Financial Interests of Federal Employees; and Part 769—Petition Process for Designation of Federal Lands Unsuitable for Surface Coal Mining. 30 CFR Part 764—Designating Lands Unsuitable for Surface Coal Mining is included in this Federal program by cross-reference under § 942.764 to provide a petition process on non-Federal lands in Tennessee. Parts 810 and 840 are also not included because they are unnecessary for a Federal program.

III. Tennessee Federal Program

A. Federal/State Program Interface and Transition

The Federal program for Tennessee is the first such permanent program for a State in which approval of the State regulatory program has been withdrawn. Previously, Federal programs have been promulgated for States which have chosen not to submit programs. See, e.g., the Washington Federal program, 48 FR 7883 (February 24, 1983). In promulgating the previous Federal programs, State statutes and regulations which regulated an aspect of surface coal mining and reclamation were examined to determine whether there were any provisions which would either interfere with a Federal program or set more stringent environmental protection standards. In the case of Tennessee, however, except for retaining very limited authority (as explained below) to regulate surface coal mining and reclamation activities, the State, by passage of the repealing legislation, has chosen to remove itself from any regulatory function in that area.

The Tennessee legislation repealing the State regulatory program statute and regulations establishes several areas of limited State jurisdiction. Criminal penalties are established for any person who willfully and knowingly mines more than 25 tons of coal in any 12 successive calendar months without first obtaining a permit from the "primary regulatory authority pursuant to [the Federal Act] or without a permit for such mine obtained * * * prior to [October 1, 1984] * * *." Exemptions are then set for the extraction of coal incident to government-financed construction and construction operations affecting less than one acre where coal removal is an incidental part of the project.

Under Section 528(1) of the Federal Act, a landowner may remove coal for his noncommercial use free from regulation. Under Section 528(2) of the Act, surface coal mining operations affecting two acres or less are not subject to the Act. And, under Section 528(3), the extraction of coal as an incidental part of government-financed construction is exempt from regulation. Because of these exemptions in the Act, OSM cannot exercise any jurisdiction over such operations. Therefore, OSM is not preempting State regulation of surface coal mining activities which remove more than 25 but less than 250 tons of coal during a 12 successive calendar month period, which affect areas larger than one but less than two acres and which are not part of government-financed construction projects.

Tennessee's repealing legislation mentions the "primary regulatory authority," but does not define the term. Presumably, on October 1, 1984, the Secretary, acting through OSM, will become the "primary" regulatory authority, although the State may regard itself as such for those operations exempt from OSM jurisdiction. Since OSM cannot exert jurisdiction over surface coal mining activities affecting two acres or less, government-financed construction projects incidentally removing coal, or extraction by a landowner for his noncommercial use, OSM cannot issue permits for any such activities. Therefore, only those operations which have obtained a Federal permit under the Tennessee program, which come within the exemptions of Section 528 of the Act, or which are not surface coal mining operations as defined in Section 701(28) of the Act could be allowed to continue without presumably being in violation of the repealing legislation sanctions. Enforcement, nevertheless, would be a matter for the State to pursue where the operation is exempt under the Act. However, OSM retains the right to determine, on a case-by-case basis, whether any surface coal mining operation is affecting more than two acres, is incidental to a government-financed construction project or is conducted by a landowner for his noncommercial use. Furthermore, the Federal program requires a permit for any otherwise nonexempt operations affecting more than two acres. Failure to have such a permit is a violation of the Federal program and is subject to enforcement action by OSM.

The Secretary concludes, therefore, that the provisions of the repealing legislation discussed here do not interfere with achievement of the purposes of the Federal program. Those provisions are not preempted or superseded.

After promulgation of this Federal program, the State will also continue to regulate water quality under the National Pollutant Discharge Elimination System (NPDES). Section 508(a)(9) of the Federal Act requires an applicant to demonstrate how he will comply with, *inter alia*, applicable water quality laws, and Section 702(a)(3) provides that the Act shall not affect the Federal Water Pollution Control Act or any State laws enacted pursuant to that law. OSM's permanent program rules on water quality at 30 CFR 816.41(e) provide for surface water monitoring reporting consistent with the NPDES. Also, 30 CFR 816.42 requires compliance with applicable State and Federal water quality standards and effluent limitations set by the Environmental Protection Agency.

The State Board of Reclamation Review would continue to hear cases before it. Tenn. Code Ann. section 59-8-321. The repealing legislation modified its authority in only a limited way. Under the repealing legislation, the Board retains jurisdiction over (1) all persons who conducted surface coal mining prior to May 3, 1978 and who have not had their bonds fully released, and (2) all persons who have permits issued by the State and who have had bond forfeiture initiated against them. However, the legislation provides with respect to the latter category that if the Secretary exercises jurisdiction over such forfeitures, the retention of jurisdiction is removed.

With respect to the first category, OSM is not asserting jurisdiction over interim program bonds in Tennessee; therefore, Tennessee jurisdiction will not constitute interference with the

achievement of the Federal program's purposes. With respect to the second category, the assumption of Federal enforcement announced on April 18, 1984 (49 FR 15496), indicated that Federal inspectors would be conducting inspections on sites on which bond forfeiture had been initiated. In view of the fact that the State retains a bond made payable to it or has collateral in its possession, OSM will not assume jurisdiction over such sites for purposes of bond forfeiture so long as the State continues to proceed with bond collection and to undertake any reclamation work. Continued administrative action by the Board with respect to bond forfeitures will not interfere with the achievement of the purposes of a Federal program.

OSM has considered whether it can assume any responsibility over those interim program bonds for which the Tennessee Department of Health and Environment has not commenced forfeiture. There is no express requirement under the Act for a reclamation bond until a permanent program permit is to be issued (SMCRA section 509(a)). Although OSM may have authority under Section 201(c) of the Act to require interim program bonds, requiring assignment of existing interim program bonds now made payable to Tennessee could unreasonably interfere with existing contractual relationships. OSM therefore will not seek to assume responsibility over interim program bonds. Nevertheless, under Section 502(c) of the Act, such operations are subject to the interim program performance standards, as is being made clear by final § 942.701(b). OSM will continue to inspect such sites and, should a violation be detected, will take appropriate enforcement action.

One important consequence of the promulgation of a Federal program is the triggering of Federal laws and regulations which are made applicable through federal agency action. One such law is the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.* NEPA compliance is required for certain OSM actions taken after the promulgation of the program, although promulgation of the program itself is exempted from compliance with NEPA by section 702(d) of the Act. Other such laws are identified in 30 CFR 773.12. Compliance with those laws, as well as NEPA, may require that OSM obtain from a permit applicant information beyond that specified in 30 CFR Chapter VII, Subchapter G. Section 942.773(b)(6) has been adopted as proposed in order to allow OSM to require a permit applicant to furnish any additional information.

Section 504(d) of the Act directs the Secretary to undertake, immediately after promulgation of a Federal program, the review of permits issued under the State's previously approved program. With the assumption of Federal enforcement of the Tennessee program, OSM initiated intensive oversight of the State's permitting activities. Upon publication of this final rulemaking notice, that effort is being converted into a review of each permit issued under Tennessee's previously approved program. Where any review shows that a permit revision is required, OSM will give the permittee adequate notice and opportunity to make the required change.

The Federal rules in 30 CFR 774.11 now call for the review of each permit no later than midway through its term. 30 CFR 773.11(d) establishes a procedure for review in the instance of promulgation of a Federal Program. However, that section does not describe the permittee's rights and obligations after being notified that permit changes are necessary. Therefore, final § 942.773(d) (proposed § 942.776) has been adopted to describe the process by which OSM will review permits issued by Tennessee under its permanent regulatory program.

Section 942.773(d) differs somewhat from proposed § 942.776, principally with respect to the responsibilities of the Department's Office of Hearings and Appeals (OHA). The Director believes the decision to suspend or revoke a permit is more appropriately made by OSM, with any appeal then being brought before OHA. Proposed § 942.776 would have given OHA the responsibility for deciding whether to revoke or suspend a permit through their review of an OSM order to the permittees to show cause as to why the permit should not be suspended or revoked. As adopted, § 942.773(d)(3) instead allows the Office to suspend or revoke the permit; § 942.773(d)(4) then provides administrative and judicial review of such a decision in accordance with 30 CFR Part 775.

Under the recently repealed State Coal Surface Mining Law of 1980, Tenn. Code Ann. 59–8–355, operators in Tennessee were required to comply with the performance standards upon the effective date of the statute and regulations adopted pursuant to the statute. This scheme differs from that in the Federal Act, Sections 515 (a) and (b) of which require operators to adhere to permanent program standards upon the issuance of permits. Depending on the pace at which regulatory authorities have been able to process and issue permanent program permits, this can and has occurred much later than Secretarial approval of the regulatory program. Prior to final promulgation of this Federal program, OSM has enforced the performance standards of the Tennessee program whether or not an operator has been issued a permanent program permit, as long as such an operator has filed an application timely. However, on and after the effective date of this Federal program, the permanent program performance standards will be applicable only to those surface coal mining operations in Tennessee which have been issued permanent program permits—either by OSM or the State.

Permanent program permits issued by Tennessee will be reviewed as indicated above, and operators will be given adequate notice and opportunity to revise their permits where OSM determines that such revision is necessary. If there are any operators in Tennessee conducting surface coal mining and reclamation operations who have filed complete applications and have not had permits issued to them, then notwithstanding the provisions of the repealed 59–8–335, the Federal interim program standards, 30 CFR Chapter VII, Subchapter B, will be applicable; the permanent program performance standards will not be applicable to them until permit issuance. Section 942.701(b) has been adopted to make clear as proposed that the interim program rules are applicable to operations which do not have permanent program permits.

For operators who have posted reclamation bonds with the State under its permanent regulatory program or who have given the State collateral to guarantee reclamation, OSM will be reviewing the adequacy of those bonds in the permit review process. If it is determined that a bond amount is inadequate, OSM will notify the operator that additional bond must be posted. Section 942.800(b)(3) requires that the permittee either post a new bond which is payable to "The United States or the State of Tennessee" or provide an executed assignment of any existing acceptable bond adding the United States as payee.

OSM's notice assuming Federal enforcement of the Tennessee program stated that all bonds accepted by the State after that time would have to be made payable to "The United States or the State of Tennessee." 49 FR 15505. This will continue to be a requirement in the Federal program promulgated here today, so as to ease the transition in the

event that the State reassumes primary regulatory authority. All operators who have posted bonds with Tennessee for permits issued under the previously approved State program and against which forfeiture has not been initiated prior to October 1, 1984, will have to post new bonds or will have to execute assignments of the existing bonds. A provision has been added as § 942.800(b)(3) to establish these requirements. OSM is requiring that, not later than October 31, 1984, permittees change the payee of already-posted reclamation bonds to include the United States.

OSM will administer the Small Operator Assistance Program (SOAP) under Subchapter H, Part 795, of the permanent program rules which are cross-referenced in § 942.795. See 48 FR 2272 (January 18, 1983) and 48 FR 44780 (September 30, 1983). In response to a request by the Tennessee Division of Surface Mining, OSM published in the **Federal Register** a notice of its intent to assume responsibility for new SOAP activity effective August 6, 1984. See 49 FR 27506 (July 5, 1984). OSM has now assumed responsibility for administration of the SOAP and is accepting applications for assistance. OSM expects that all prior SOAP contracts awarded by the State will have been completed by October 1, 1984. Application forms for assistance can be secured from the Knoxville Field Office Director. Completed applications should also be submitted to that office. Any small operators notified through the OSM permit review that their permits need revision in connection with the determination of the probable hydrologic consequences or the result of test borings may apply for SOAP assistance in having the work done.

B. Content and Organization of the Program

The content and organization of the Federal program for Tennessee follows the permanent program regulations. But, as discussed above, instead of the full text appearing, each section includes only a reference to the pertinent program regulatory part. No provisions of Tennessee State law (other than those in the recently expired Coal Surface Mining Law) have been identified as being more stringent than the Federal standards, nor have any State laws or rules been identified as interfering with achievement of the purposes of the Federal program. Comment was specifically invited on whether there may be such State laws and regulations; none was identified. (Several Tennessee laws are identified in § 942.762(b) as laws upon which the Office will rely in considering petitions to designate or terminate designation of lands as unsuitable for surface coal mining.)

OSM has examined the Tennessee surface coal mining regulations in order to determine where and how the State chose to establish additional or more specific standards than those in OSM's revised permanent program regulations. Several such standards, involving revegetation success standards for bond release, diversions, sedimentation ponds, underdrains in excess spoil fills, and backfilling and grading timing requirements, were proposed to be added. This issue is discussed below under the "Performance Standards" portion of the preamble.

The content and organization of the proposed Tennessee Federal program are based on the following provisions of the Federal permanent program regulations, 30 CFR Chapter VII:

Subchapter A—General
Subchapter F—Areas Unsuitable for Mining
Subchapter G—Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Systems Under Regulatory Programs
Subchapter H—Small Operator Assistance
Subchapter J—Bond and Insurance Requirements for Bonding of Surface Coal Mining and Reclamation Operations
Subchapter K—Permanent Program Performance Standards
Subchapter L—Permanent Program Inspection and Enforcement Procedures
Subchapter M—Training, Examination, and Certification of Blasters

Technical literature cited by OSM in the preambles to the permanent regulatory program (44 FR 14901–15309; March 13, 1979) and the regulatory reform rulemaking notices ending September 30, 1983, was relied upon in developing the Tennessee Federal program. The reader is referred to those preambles for a discussion of the basis and purpose of these permanent program rules referenced in the Tennessee program without substantive change.

The numbering system of the permanent program regulations has been incorporated into the numbering system for the Tennessee Federal program. Subchapter T in 30 CFR Chapter VII has been established to include regulatory programs by State in alphabetical order. Each State is assigned a part number; the regulatory program for Tennessee is assigned Part 942. The Federal program promulgated here today replaces the previous contents of that part. Program elements have been categorized under headings similar to the subchapter titles of the permanent program CFR parts.

C. Discussion of Program and Disposition of Comments

OSM proposed a Federal program for Tennessee on June 29, 1984 (49 FR 26898). In the preamble to the proposed program, OSM invited comments from all interested persons; announced a public hearing for August 3, 1984, in Knoxville, Tennessee; and set the close of the public comment period for August 8, 1984. OSM subsequently reopened the public comment period until September 5, 1984, and announced and held an additional public hearing on August 31, 1984, in Knoxville (49 FR 32860; August 17, 1984). OSM received comments or testimony from 36 persons. Relevant written or oral comments received are summarized below.

Many comments dealt with procedural or general matters such as the adoption of the State's approved program as the Tennessee Federal program, suspension of Tennessee's Abandoned Mine Land Plan, location of the permitting and assessment functions of the Tennessee Federal program, and use of technical guidelines in lieu of regulations. These comments are discussed in the next part of this rulemaking notice, entitled "General Discussion and Comments." Comments on the specific provisions of the program or on the permanent program rules as they apply to Tennessee are discussed under "Detailed Discussion and Comments."

(1) General Discussion and Comments

1. *Program Options.* Two options were offered for public comment in the proposed Federal program. The first option consisted of cross-referencing the Federal permanent program rules with several additions made to those rules as specified under each of the subject headings of the program parts. Option 2 would have added several more provisions to Option 1. The first would have placed a limitation on the definition of "coal loading facilities" in the definition of "support facilities" in 30 CFR 701.5. The others would have added specific detail to performance standards in four areas: diversions; sedimentation ponds; underdrains in excess spoil fill, and backfilling and grading timing requirements.

The limitation on the term "coal loading facilities" would have made clear to all operators of such facilities whether they were subject to regulation. Under proposed § 942.701(d), OSM jurisdiction have included those coal loading facilities which were "on a permit area" and those which were "the first handling facility for raw coal after

it leaves the permit area of a mine." Thus, any tipple in Tennessee accepting raw coal from a mine would have been subject to regulation. As an alternative test, OSM solicited comments on using a geographic distance test to determine whether a tipple is subject to regulation. The definition in the Act refers to coal loading facilities being "at or near" the mine site, but it does not quantify that standard. The definition of "support facility" indicates that the phrase "resulting from or incident to" connotes an element of proximity. Thus, OSM could have set a particular distance from a mine as the limitation for asserting jurisdiction over coal tipples. OSM could also have adopted a geographic limit in conjunction with the functional test proposed in the option.

Comments received and OSM's disposition of this issue are discussed in Paragraph 47 of this preamble, "Special Performance Standards—Coal Preparation Plants Not Located Within the Permit Area of a Mine."

The performance standards under Option 2 sought comment on the possible addition of detailed standards in four areas: diversions, sedimentation ponds, underdrains in excess spoil fills, and backfilling and grading timing requirements. The proposed criteria for diversions, sedimentation ponds and underdrains for excess spoil fills were, for the most part, taken from the Tennessee program regulations. These, in turn, were based on the previous Federal permanent program regulations. As an alternative to the adoption of the criteria set out in Option 2, proposed § 942.816 (c), (d) and (e), OSM considered not providing any additional standards in the rules but instead issuing technical guidelines. If such guidelines were issued, an operator or engineer could rely on the guidelines for the design of a structure. Designs other than those in the guidelines would be approved on a case-by-case basis if the engineering is sound. A fourth performance standard setting timing requirements for backfilling and grading was offered under proposed § 942.816(f) of Option 2. They would have been the same standards as the previous unrevised Federal permanent program rules in § 816.101(a). See 44 FR 15395 (March 13, 1979).

a. Option 1. Little comment was received on this option. One commenter expressed general support for this option but also indicated that the alternative approach to Option 2, i.e., technical guidelines, has merit and should be carefully considered by OSM. Because of the general lack of support, OSM has decided not to adopt Option 1.

b. Option 2. Option 2 in the proposed rule included all the provisions in Option 1 and added detailed standards in four areas: diversions, sediment ponds, underdrains, and backfilling and grading. Several commenters expressed support for Option 2, while others suggested that OSM use technical guidelines instead of design standards as an alternative to Option 2.

After careful consideration, OSM has decided to adopt a modified Option 2 with the addition of certain other detailed standards discussed in the portion of the preamble pertaining to performance standards. While the Director retains his conviction that performance standards are preferable to design standards, and that giving the regulated community flexibility will foster innovative yet sound approaches to compliance, the Tennessee Federal program presents a unique set of circumstances. OSM has not previously promulgated a Federal program for a State which had been implementing an approved program of its own. The transition from State to Federal primacy offers the potential for confusion among all concerned over both the timing and the substance of required actions. The Director believes that the adoption of modified Option 2 in addition to the above standards is more likely to ease this transition.

OSM considered the proposed option of not adding design criteria, and instead deferring to the applicant's certifying registered professional engineer. OSM considered also publishing technical guidelines in non-regulatory form so that applicants would have the assurance that at least an OSM-approved design would be acceptable to the agency, yet would be able to submit any other design for OSM consideration. OSM would not, however, be able to publish such technical guidelines for another six months or more.

In other circumstances the Director would favor flexibility over specificity. Given the need to process a possibly large number of permit applications at the same time the Agency is reviewing all permits issued by Tennessee, the Director has chosen a modified Option 2. Thus, in several key areas operators will at least be dealing with performance standards which are (1) sufficiently similar to the former Tennessee provisions so as to be recognizable and familiar both to them and to their consultants, and (2) sufficiently specific so as to expedite operator compliance and OSM review.

2. *Adoption of Existing Tennessee State Program Regulations as the Tennessee Federal Program.* A number of commenters urged OSM to adopt the approved Tennessee State program regulations as the Tennessee Federal program. They argued that the approved Tennessee State program was designed to meet the needs of the State, and that OSM had already approved the requirements in this program. Several other commenters presented arguments on the opposite side of this issue, stating that OSM should not include any requirements which are not in the current Federal regulations.

OSM is not adopting the Tennessee program, the authorizing State legislation for which no longer exists. Further, while OSM did approve the more detailed provisions of the State program, this approval was based on OSM's recognition of the discretion given to regulatory authorities by the Surface Mining Control and Reclamation Act, and reflected the Federal regulations in place at the time. Approval of the State program provisions did not mean that OSM necessarily agreed that they were the only means of implementing the Act in Tennessee.

The Tennessee Federal program promulgated here today is a new regulatory program, not a revision or modification of the repealed Tennessee State program. Since the approval of the Tennessee State program, OSM has revised a substantial portion of its permanent rules to reflect the Office's view of the appropriateness of various regulatory provisions. Rather than basing the Tennessee Federal program on State program provisions which are not necessarily the only valid means of implementing the Act in Tennessee, OSM has used the current Federal regulations as its starting point in developing the new Tennessee Federal program. OSM has included those requirements which the Director believes are necessary to provide a workable program in Tennessee under the Federal law.

3. *Suspension of the Tennessee Abandoned Mine Land Plan.* Previous § 942.20 was omitted from the notice proposing the Tennessee Federal program. It has been included in this final program because OSM has not yet formally withdrawn approval of Tennessee's Reclamation Plan, although the Governor has been notified of the Office's intent to do so. Upon formal withdrawal of approval, § 942.20 will be removed.

Fourteen comments were received concerning the suspension of the Abandoned Mine Land Plan in Tennessee. Many commenters

expressed concern over cutbacks in abandoned mine land reclamation in Tennessee. These commenters urged that OSM develop a full Abandoned Mine Land (AML) Program in Tennessee and not limit involvement to emergencies. Two commenters contended that there is no legal requirements for OSM to limit the AML Federal program to emergencies. Several other commenters recommended that the abandoned mine land reclamation continue at the current or an increased level.

OSM's national policy guiding AML reclamation is to complete all priority 1 and 2 and emergency problems before addressing lower priorities. OSM's decision to conduct limited reclamation efforts in Tennessee addressing all the higher priority problems threatening public health and safety is consistent with this policy. In those programs where Title IV and Title V approvals are withdrawn, OSM's policy (notice of which was published in the **Federal Register** on March 15, 1983 (48 FR 10820)) provides for funding for other than emergency projects if the State is working to regain Title IV and Title V approval. Priorities 1 and 2 projects may be done at the discretion of the Secretary. In this regard, the Director notes that Tennessee has indicated its intention to obtain primacy again by the end of 1986.

A number of commenters expressed concern that Tennessee's share of funds collected may be diverted to other States.

Section 402(g)(2) of the Act provides that 50% of the funds collected annually in any State shall be allocated to that State pursuant to an approved Abandoned Mine Lands Program "provided, however, that if funds under this subparagraph (2) have not been expended within three years after their allocation, they shall be available for expenditure in any eligible area as determined by the Secretary." This provision of law has been implemented by the OSM policy statement referred to in the March 15, 1983, **Federal Register** notice cited above (48 FR 10820). Nevertheless, OSM and the Secretary will carefully consider the commenters' concerns before making any discretionary expenditure of these funds.

4. *Impact of Permanent Surface Mining Regulation Litigation on Tennessee Federal Program.* Litigation is currently pending in the United States District Court for the District of Columbia in which many of the recently amended or revised Federal permanent program regulations are being challenged. On July 6, 1984, District Court Judge Thomas Flannery issued the court's decision in so-called "Round I" of *In Re: Permanent Surface Mining Regulation Litigation II,* Civil Action No. 79-1144 (D.D.C., 1984). The decision dealt with regulations for mining on Federal lands, including the definition of "mining plan," State approval of permits, and exceptions to the scope of the definition of "Federal lands," as well as regulations covering offsite support facilities and the scope of the definition of "surface coal mining operations." Commenters stated that since the Federal regulations are being challenged, it would be better to adopt the current State regulations or the original Federal regulations as portions of the Tennessee Federal program.

OSM does not agree with these comments. It would be premature for OSM to substitute either prior Federal regulations or State regulations for validly issued Federal regulations simply because those regulations are being challenged in court. Those regulations remain valid unless and until set aside by a court. Should any regulations be invalidated, OSM will make any required modifications through future rulemaking. This matter is discussed further in paragraph 47, below.

5. *Transition Period from State Primacy to the Tennessee Federal Program.* One commenter offered assistance to OSM in implementing the Federal program in Tennessee and noted the need for the coal industry and coal industry consultants to be fully responsive to new permitting procedures and requirements in order to achieve timely permits. OSM agrees. During September, OSM scheduled and conducted workshops in Chattanooga, Crossville and Caryville to familiarize representatives of the coal industry with the Federal permit application and other permitting requirements.

The Tennessee Division of Surface Mining commented that the State will have a number of applications in process as of October 1, 1984. At the request of the operators and with the agreement of OSM, those applications will be transferred to OSM.

6. *Location of Tennessee Federal Program Functions.* One commenter recommended that both the inspection and enforcement and permitting and bonding functions be centered in one location.

OSM agrees with this comment. Both functions will be at OSM's Knoxville Field Office.

Another commenter requested that assessment of penalties be done in the Knoxville Field Office. OSM is considering this proposal but has not yet decided whether to relocate the assessment function from Washington. OSM notes, however, that any operator issued a violation and assessed a penalty may seek review of the proposed assessment in an informal conference held locally.

7. *National Environmental Policy Act (NEPA).* As stated in the preamble to the proposed Federal program for Tennessee, Section 702(d) of the Act provides that promulgation of a Federal program shall not constitute a major Federal action under the National Environmental Policy Act, 42 U.S.C. 4321.

One commenter objected to 42 U.S.C. 4332(c) of NEPA and cited the potential misuse of the requirements of this section. In view of the provisions of Section 702(d) of the Act, however, the comment is not germane to this rulemaking.

8. *Environmental Impacts of Permitting.* One commenter provided a copy of comments previously submitted to OSM concerning issues to be addressed in the process of evaluating the environmental impacts of permitting. These comments are being considered in the preparation of the document covering the environmental effects of permitting in Tennessee.

9. *Toll-Free Telephone Number.* A commenter requested that OSM establish a toll-free telephone number which citizens could call to report emergencies, obtain information or make complaints.

OSM appreciates the comment and is considering providing a toll-free number. However, a final decision has not been made at this time.

10. *National Pollutant Discharge Elimination System (NPDES).* The State of Tennessee has retained responsibility for the NPDES permit application under the Federal Water Quality Control Act. Several commenters suggested that since the NPDES process interacts so closely with SMCRA requirements and because it entails tasks which appear to be in large degree duplicative of the OSM permit approval process, a memorandum of understanding should be developed with the State of Tennessee.

OSM agrees. Discussions between OSM and the State have taken place and the State is drafting a proposed procedure for interaction between the State and OSM on water quality responsibilities.

11. *Purchase of Coal From Unpermitted Operators.* One commenter recommended retaining the Tennessee requirement that forbids coal buyers

from buying coal from unpermitted operators.

OSM has not accepted this suggestion. Such a prohibition would be a major departure from OSM's regulatory scheme and, consequently, should not be adopted in the Tennessee Federal program without having been proposed for public comment and discussion.

(2) Detailed Discussion and Comments

General. Section 942.700 has four subsections containing general statements on the scope and applicability of the program. No Tennessee laws have been identified as setting standards which are either more stringent than those in the Federal permanent program regulations or which interfere with achievement of the purposes of a Federal program. If any such laws are identified in the future they will be listed in separate additional paragraphs of this section.

Final § 942.701 makes clear the circumstances in which certain currently unpermitted operators may continue to operate until issuance or denial of their permanent program permits. Unless an operation has a permanent program permit, issued either by Tennessee or OSM, compliance with the interim program standards, Subchapter B of 30 CFR Chapter VII, is required, as is the operator's adequate response to OSM requests for any information needed to make a permit application complete. Compliance with the interim program standards can be required under the Act only until a permanent program permit is issued. SMCRA sections 515(a) and 516(b). Although, as explained above, the Tennessee statute and regulations were made applicable to all operations upon program approval, there is no authority under the Act for OSM to apply the permanent program standards until a permanent program permit is issued.

Proposed § 942.701(c) would have required OSM to make records available locally to the public "at the county courthouse or another appropriate public office within the county" of the surface coal mining operation, as well as at the nearest OSM Field Office. Cross-referenced 30 CFR 701.14 requires only that information be made available at the nearest OSM Field Office.

After careful consideration, OSM has concluded that 30 CFR 700.14 provides adequate access to records and that the proposed maintenance of documents at so many locations would have been unnecessarily burdensome and confusing. The Director has decided to adopt instead the same requirement in the Tennessee Federal program as appears in the cross-referenced 30 CFR 700.14. Accordingly, final section 942.701(e) (proposed Section 942.701(c)) provides that records shall be made available to the public at OSM's Knoxville Field Office, which is both the OSM Field Office nearest the Tennessee coalfields and the Office responsible for administering this Federal program.

12. *Definitions. Adjacent Area*—The definition of "adjacent area" remains unchanged from the definition in 30 CFR 701.5. One commenter suggested that the regulation define adjacent areas "as those lands contiguous to the permit area."

The present definition includes those lands contiguous to the permit area that could be expected to be adversely impacted by proposed mining operations, including probable impacts from underground workings. Therefore, no change in the definition is required.

Imminent Danger to the Health and Safety of the Public—One commenter suggested that a change be made in the definition of "imminent danger to the health and safety of the public" to include the protection of property.

The suggestion was rejected; the definition in 30 CFR 701.5 is taken verbatim from the Act.

13. *Applicability—The Two-Acre Exemption.* Section 942.701(a) cross-references several Federal regulations, including 30 CFR 700.11. This regulation sets out the extent of regulatory coverage along with specific exemptions from that coverage. Section 700.11(b) exempts the commercial extraction of coal where the operation has or will have an "affected area" of two acres or less. In the legislation repealing its regulatory program, Tennessee established several areas of continuing State jurisdiction. The State retains the authority to regulate through criminal penalties operations where any person willfully and knowingly mines more than 25 but less than 250 tons of coal in any twelve successive calendar months without obtaining a permit. Excepted from this coverage are projects which involve coal extracted incident to government-financed construction and operations affecting less than one acre where coal removal is an incidental part of the project. Two comments were received. One commenter contended that OSM should incorporate the lower jurisdictional thresholds used by Tennessee into the Tennessee Federal program, rather then the present 250 ton and two-acre limits. The commenter argued that the Federal statutory exemptions should be construed together with regulations found at 30 CFR 736.23(b), leading to the result of adopting the lower Tennessee limits.

OSM does not believe that such a construction is legally supportable. Section 736.23(b) directs that provisions of state law which provide for more stringent land use and environmental control and regulation of surface coal mining operations shall not be preempted and superseded by the Office and shall be incorporated into the State's Federal program. OSM believes that the question here is not one of stringency, but rather whether it has statutory authority to regulate certain classes of opreations. The State has retained authority to regulate where Congress has not given OSM authority to regulate; therefore, the State law does not interfere with the Federal program and will not be preempted or superseded. For this same reason, however, OSM cannot incorporate Tennessee's lower jurisdictional thresholds into the Federal program.

The other commenter stated that there are many locations in Tennessee where less than two-acre coal mining operations could be conducted but that it would not be economically feasible to permit such operations. The commenter implied, but did not specifically request that Tennessee's new law be preempted and superseded.

For the reasons stated previously, OSM has no authority to regulate operations which affect two acres or less and will not interfere with State law concerning such sites.

Areas Unsuitable for Mining. Section 942.761 through 942.764 establish the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter F, Areas Unsuitable for Mining. The effective date for implementing the petition process for designating lands unsuitable for surface mining or for terminating designations has already passed. Section 504(a) of the Act, which defers applicability of Sections 522 (a), (c), and (d), is inapplicable since a State regulatory program was implemented in Tennessee. 30 CFR 736.15(b)(2). No separate section for Federal lands is included because 30 CFR Part 769 is directly applicable and need not be made a part of a Federal program. A paragraph has been added as § 942.762(b) to indicate that the Office will consider lands in Tennessee placed on the State's Natural Areas Registry; designated Natural Areas or Scenic Areas; lands adjoining Scenic Rivers and Scenic Trails in considering any petition to designate lands as unsuitable for surface mining or termination of such a designation. This consideration will be given in the context of lands as defined as "fragile" under 30 CFR 762.5.

A paragraph has been added, as § 942.764(b), to ensure that the State is notified of the designation of areas as unsuitable or for which designations are terminated. This notification will be provided as a courtesy since State agencies apparently will be regulating only limited aspects of surface coal mining operations.

14. *Previous State Decisions on Petitions for Lands Unsuitable for Mining.* The State has considered and decided two petitions to designate lands as unsuitable for surface coal mining. One petition was granted, the other denied. Both, however, are under administrative review. The Federal Act provides no guidance on the extent to which a decision by a State on a petition must be recognized by OSM in the situation at hand. Several commenters recommended that OSM ratify or accept the decision of the Tennessee Commissioner of Health and Environment on both of these, the "Flat Fork Watershed" and the "Douglas Branch" lands unsuitable petitions.

OSM has accepted these comments. OSM will implement these two decisions unless and until those decisions are altered as a result of administrative review or of any subsequent petitions to designate or to terminate a designation. See Section 942.764(c).

Two commenters suggested that OSM continue to use the present Tennessee lands unsuitable regulations, which are similar, but are not identical to OSM's.

OSM has not accepted these comments because of the minor differences between the regulations.

One commenter indicated that OSM's regulations contain no provision to delete certain areas from the permit area. The commenter was concerned that a mining operation may result in adverse impacts to churches, roads, schools, streams, State-owned or scenic areas, and other private or public property.

Section 522(e) of the Act prohibits or limits, subject to valid existing rights, mining in or near certain protected areas and structures, such as parks, schools and churches. Part 761 of the permanent program regulations (cross-referenced at § 942.761 of the Tennessee Federal program) implements these provisions. Therefore, no change was required or made.

One commenter questioned whether a subjective decision can be made as to which fragile lands can be repaired and restored.

OSM disagrees with the commenter's implied answer that such a decision cannot be made fairly, and believes that with the appropriate expertise a fair decision can be made.

One commenter believed that the proposed regulations place an undue burden on petitioners in providing supporting evidence with which most individuals will find it extremely difficult to comply under Tennessee conditions. The commenter suggested adopting the Tennessee regulations.

OSM has not accepted this comment. The supporting evidence required under Tennessee's former program and OSM's Federal program are comparable. The commenter offered no evidence that unique or unusual conditions exist in Tennessee which require accommodation in the Tennessee Federal program with respect to these issues.

Permits and Coal Exploration Approvals. Sections 942.772 through 942.795 establish the same provisions, where applicable and except as explained below, as 30 CFR Chapter VII, Subchapter G, Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Systems Under Regulatory Programs.

15. *Deletion of §§ 942.770, 942.771 and 942.782 from Proposed Rulemaking.* Several commenters observed that proposed §§ 942.770 and 942.771 cross-referenced superseded permanent program regulations.

In revising its permanent program rules, OSM consolidated Parts 770 and 771 into final Part 773, and removed Part 782. 48 FR 44334, September 28, 1983. Also, Part 776, on coal exploration, was replaced by a new Part 772. 48 FR 40636; September 8, 1983. The necessary corrections have been made in the Tennessee Federal program as promulgated here today. Proposed § 942.776, on review of State permits has been redesignated § 942.773(d), and is discussed below.

16. *Coal Exploration.* Section 942.772 addresses the requirements for coal exploration. Several commenters requested that OSM retain the permit and bond requirement of the Tennessee State program for all who remove more than 25 tons of coal in a consecutive 12-month period. The commenters also expressed concern that the OSM term "substantially disturb" is too vague and that the 25 ton limitation would assist in reducing the number of "wildcat" mining operations. One of the above commenters cited 30 CFR 736.23 as requiring OSM to use the Tennessee rules in the Federal program.

OSM has not accepted these comments. The Tennessee program is repealed as of October 1, 1984; therefore, the cited State regulations are no longer in effect. OSM has statutory requirements with respect to the quantity of coal to be removed and the acreage disturbed. Written approval from OSM will be required if more than 250 tons of coal are removed during exploration; if the operator removes less than 250 tons of coal and there may be a substantial disturbance of the natural land surface during such exploration, written notice to OSM is required beforehand. See 30 CFR Part 772.

OSM has added a provision at § 942.772(b) requiring that any person who intends to use mechanized earth moving equipment or to utilize explosives to conduct coal exploration activities must file a written notice of intent with OSM. This provision is in addition to the requirements of 30 CFR 772(a)(11) requiring a written notice of intention to explore from a person intending to conduct coal exploration activities that will substantially disturb the natural land surface. There are a number of reasons for this provision. First, it will aid in enforcement against persons mining coal without a permit under the guise of conducting coal exploration, a practice said by commenters to be occurring in Tennessee. Further, use of mechanized earth moving equipment or explosives in the course of coal exploration is a fairly reliable indication that substantial disturbance to the natural land surface is likely to occur. Thus, it provides clear guidance to individuals conducting such activities that in every instance where mechanized earth moving equipment or explosives are used in exploration they have an obligation to file a written notice with OSM. It should be noted that the term "mechanized earthmoving" equipment will not necessarily cover persons who intend to conduct coal exploration activities through the use of core drilling equipment on existing roads, and that such activities may not require the filing of a notice of intent to explore.

In reference to the "vague" definition of "substantially disturb," the Director believes that OSM's definition is as specific as is practical given the variability of the environmental and technical factors involved.

Section 942.773(b) adds to the requirements under the corresponding permanent program rules in order to provide direction to the permit applicant. This section also establishes a procedure for the handling of permit applications. This is necessary in order to dispose of applications which are grossly deficient early in the processing, to provide a formal procedure for obtaining additional information, and to

indicate the procedure for determinations of completeness.

As proposed, final § 942.773(c) authorizes the Office to obtain permit information beyond that required under 30 CFR Part 773. Such additional information may be required in order to meet the obligations imposed on the Office under the Federal laws identified under 30 CFR 773.12. This provision also allows the Office to obtain information necessary to comply with the National Environmental Policy Act, as discussed above.

A section applicable only to the Tennessee Federal program has been added at § 942.773(d) (proposed as § 942.776) for the review of existing permanent program permits issued under the Tennessee State regulatory program. It is based on Section 504(d) of the Act. Section 773.11(d) of the permanent program rules, in part, implements this provision in the Act. However, there is no specific procedure set out in that regulation under which a permittee who is notified that a revision is required may obtain review of that determination. There is also no provision under which OSM may revoke or suspend the permit of a permittee who fails to conform his or her operation to the Federal program requirements.

Final Section 942.773(d) specifies generally that a State-issued permit is valid; specifies that such permits will be reviewed and if determined not to be in conformity with the Act, notice will be given and a period of time set for conforming the operation to the requirements of the Act; describes the permittee's rights to have such a determination reviewed; and specifies the procedures by which the Office may suspend or revoke the permit. Section 942.773(d) also specifies that the hearing OSM provides the permittee to contest the Office's determination is non-adjudicatory. Adjudicatory procedures become available in the administrative review process before the Department's Office of Hearings and Appeals.

17. *Permitting—Review of Tennessee Permanent Program Permits.* One commenter stated that OSM review of all permanent program permits is critical.

OSM agrees. Section 504(d) of the Act states that all permits issued by the State regulatory authority prior to the effective date of this program are valid, but subject to review by OSM. Section 942.773(d) (proposed as § 942.776) describes the process OSM will use to review all permanent program permits issued by the State of Tennessee. If a permit has been granted contrary to the requirements of the Act, the permittee will be notified and time periods specified to revise the permit and to conform any ongoing surface coal mining operations to the requirements of this part of the Act.

18. *Operators With Pending Permit Applications.* Several commenters were concerned with how OSM would address the issue of pending permit applications, renewals, and expiring permits during the transition period from State primacy to the Federal program. One commenter pointed out that many operators' permits will expire prior to the issuance of new permits. This commenter suggested that OSM develop a rule that would allow operators to continue to operate until the new permit is issued. The commenter further suggested that expiring permits be administratively extended to avoid creating undue hardships on the industry.

The Director is aware of at least three classes of operations in Tennessee which may be operating without permits through no fault of their own: (1) Those with expired or soon-to-expire Tennessee permits; (2) underground operators who have never received Tennessee permits; and (3) facilities covered by the July 6, 1984, District Court opinion cited above.

OSM is aware of the hardship to those operators mining on expired or expiring permits with renewals pending if they are not allowed to mine until they receive the renewal. OSM will address this problem in the following manner. Those operators who are mining on an expired permit or a permit that will expire prior to a new permit being issued will be allowed to continue mining if they submitted a permit application to the State within the time limits established by the Tennessee Division of Surface Mining. These operators will be allowed to continue to mine during the period their permit applications are being reviewed. They will be required to adhere to the performance standards in their previously-issued State permits, at least to the interim program performance standards, and will be subject to OSM inspection and enforcement. However, if during the permit review, the operator fails to submit information requested by OSM for a complete application, his interim operating authority will terminate. See § 942.701(b).

OSM is aware also of operators conducting underground coal mining activities in Tennessee who have not yet received permits. Tennessee allowed these underground operations to continue during State primacy while certain jurisdictional and procedural issues were clarified. For this reason, the Director believes it would be unreasonable to order these operations to shut down on the effective date of this Federal program. Therefore, unpermitted operators in Tennessee conducting underground coal mining operations on October 1, 1984, may be allowed to continue mining if they: (1) Apply to OSM for permits, or authorize transfer to OSM of any permit application pending with the State regulatory authority, within two months of the effective date of this Federal program and (2) if they respond satisfactorily to OSM requests for additional information for a complete permit application. However, if during the permit review, the operator fails to submit information requested by OSM for a complete application, his interim operating authority will terminate. See § 942.701(c).

Finally, the Director is aware of the uncertainty over the jurisdictional status of certain off-site facilities. Final section 942.701(a) has been modified to comply with the court's July 6, 1984, decision in *In Re: Permanent Surface Mining Regulation Litigation II*, Civil Action No. 79-1144 (D.D.C., 1984).

Operators of facilities which are covered by the District Court's ruling and who have not previously submitted permit applications to the State must submit permit applications to OSM within two months of the effective date of this program to be able to continue operations beyond eight months from that effective date. See § 942.701(d). Although the Tennessee State program required the submission of permit applications by these operations, jurisdictional questions prevented implementation. The "two month/eight month" requirement adopted here today is consistent with OSM's intended resolution of the problem on a national basis, as will be explained shortly in a suspension notice.

OSM is currently developing permit application forms for use in Tennessee. In the meantime, a prospective permit applicant should contact OSM's Knoxville Field Office in order to determine the format for an application.

19. *Permitting—Requirements for Permits and Permits Processing.* Section 942.773 cross-references Part 773, which includes Federal requirements for review of permit applications and of permits issued under a State program (30 CFR 773.11(d)).

One commenter suggested that the review should include notice to citizens, so that they might have opportunity to comment on these permits.

OSM rejects this comment. The State was required to have provided

opportunity for public comment during its permit review process. If, however, the Office determines that the State did not adequately address the requirements for public comments, the permittee will be required to do so (30 CFR 773.11(d)(2)).

The commenter also suggested that OSM should have a time limit that continues for only a few months after October 1, 1984, for review and completion of the State-issued permits and review of the bond.

OSM rejects this comment. Section 773.11(d)(2) states that a review of permits issued under the previously approved State program shall begin immediately after the promulgation of a Federal program. While OSM will conduct these reviews as quickly as possible, the workload for review and revision will necessarily control the time frame for completion of the task.

Another commenter suggested that OSM simply replace all existing State permits with OSM permits which contain appropriate findings, adequate bond determination and any conditions necessary to meet the requirements of the Federal program.

OSM rejects this comment. Section 504(d) of the Act envisions a review of each permit rather than a process of automatically converting State permits into Federal ones. Such a reissuance would serve no apparent purpose without a prior review. Thus, § 773.11(d)(2) requires that "immediately following promulgation of a Federal program, the Director shall review the permits issued under the previously approved State program to determine that the requirements of the Act, [Chapter VII], and the Federal program are not violated." The section goes on to state the procedures to be followed if the Director determines that a permit was granted contrary to the requirements of this Act.

Another commenter was concerned that 30 CFR 773.11 (b) and (c) be included in the Tennessee Federal program. These sections provide minimum requirements for submitting and reviewing permits and for coordinating with other laws.

Section 942.773 cross-references Part 773, thereby making §§ 773.11 (b) and (c) applicable to the Tennessee Federal program.

The same commenter also suggested that more specificity should be provided setting forth the information required pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. 4321.

OSM has not accepted this comment since information to comply with NEPA is required in §§ 942.773 (b)(6) and (c), which OSM believes are sufficiently clear.

20. *Permitting—OSM Coordination with Other Agencies and Laws.* Section 773.12 of OSM's permanent program rules, cross-referenced at § 942.773 of the Tennessee Federal program, lists other laws with which the Secretary will coordinate permitting activities. That coordination is required pursuant to § 504(h) of the Act. Among the acts cited in this section are the National Historic Preservation Act of 1966, the Endangered Species Act, the Fish and Widlife Coordination Act, the Migratory Bird Treaty Act, and the Bald Eagle Protection Act.

One commenter suggested that the Tennessee Historical Commission be instructed to comment only on known cultural resources and to not imply that there may be unknown cultural resources within the proposed permit area.

OSM has not accepted this comment, since the Agency has no authority to limit the jurisdiction of the Tennessee Historical Commission.

Another commenter stated that promulgation of a Federal program to regulate surface mining in Tennessee is clearly a Federal undertaking subject to the requirements of Section 106 and other pertinent sections of the National Historic Preservation Act (NHPA).

OSM is aware of the regulations (36 CFR Part 800) that prescribe the mechanisms for complying with Section 106 of NHPA. OSM will coordinate its review of each permit with the State Historic Preservation Officer (SHPO), as required by 30 CFR 773.13(a)(3)(ii). The Office is also attempting to negotiate a Programmatic Memorandum of Agreement with the Advisory Council on Historic Preservation to cover its responsibilities in Tennessee.

One commenter stated that the Tennessee Department of Conservation should be instructed to comment only on known protected species and not to imply that there may be unknown protected species within the proposed permit area. The commenter further stated that the intent of the regulation should be to protect the known protected species, not provide funding for research.

OSM does not accept the comment. In many cases, a proposed minesite may be within the range of a protected species even though it may not be known if the species is actually using the proposed minesite. This may have to be determined in order to comply with the requirements of one of the laws listed above. In such a case, comments of the type to which the commenter objected may be entirely appropriate. The coordination requirement is intended to ensure that applicable provisions of other laws are satisfied. This intent is best served by fostering complete and open communication from agencies working with those laws during the permit review process. Therefore, OSM believes it is not appropriate to attempt to prescribe how agencies may comment in their own areas of expertise.

21. *Permitting—Public Participation in Permit Processing.* Section 773.13(c) provides requirements for requesting and conducting informal conferences pertaining to decisions on permit applications. One commenter requested that OSM establish a policy of holding informal conferences on permit applications in the locality of the minesite. The commenter expressed concern that local citizens who are concerned with a permit have easy access to the informal conference.

OSM agrees. Section 773.13(c)(2)(i) requires OSM to hold the informal conference near the minesite upon request. OSM's practice however, has been to hold all informal conferences in the locality of the minesite; OSM will continue this practice under the Tennessee Federal program.

One commenter suggested that the application completeness determination under § 942.773(b) be made within five days of application submittal and that final action on the permit application should be taken within 120 days of OSM's determination that the application is administratively complete.

OSM rejects this comment. The Office must have the flexibility of establishing a permit review timetable that satisfies the permit review workload within a reasonable time. Although OSM plans to issue permits in the most expeditious manner possible the suggested time limits are arbitrary. Further, the adoption of such time limits would not create any rights to demand that a permit be issued within 120 days of the completeness determination. That is, such a limit would be directory rather than mandatory.

22. *Permitting—Length of Permit Review and Approval Process.* One commenter contended that the normal permit approval process from submittal date to approval date should vary from 120 to 180 days depending on the complexity of the permit application, but that in no event should the review and issuance process extend beyond 180 days.

OSM rejects this comment. Section 773.15(a) requires that the regulatory authority conduct its reviews and issue its written decision, "within a reasonable time." OSM, as the

regulatory authority, will strive to meet the time frame recommended by the commenter; however, due to the large number of permits to be reviewed, OSM may not be able to issue permits within those times.

Another commenter suggested that OSM identify and prioritize transition permits for immediate review and processing. Each permit should be given a priority number based on need and time frame. To expedite the review of these permits, the commenter suggested, a separate task force should be assigned for the review and approval process. The commenter further recommended that, depending on size and complexity of the permit application, OSM initially should consider approving only individual increments. this would reduce the size of acreage to approve and, in most cases, the technical review and complexities of the permit application. Also, this would allow OSM the flexibility of partial approval pending additional information prior to complete approval of the permit applications. As a result, the permittee could continue his existing operation without interruption and comply with additional permit requirements, if necessary, prior to any exploration.

OSM agrees in part with the commenter, particularly with respect to the desirability of establishing within the permitting process a system to address any special needs of permit applicants. While no specific language is being included in this rule, OSM will consider administrative procedures allowing the Office to be responsive to timing needs of permit applicants.

23. *Permitting—Operators with Pattern of Violations, Bond Forfeitures, and/or Past History of Illegal Mining Activities.* Section 773.15(b) of the cross-referenced rules requires that OSM make a finding that the applicant, or the operator specified in the application, does not have a demonstrated pattern of willful violations of the Act. One commenter suggested that OSM adopt the Tennessee provision that no operator who has forfeited a bond can get a permit.

OSM does not believe that the provision is necessary since 30 CFR 773.15(c)(3) requires OSM to deny a permit if any of the numerous requirements in this section are not met. These are sufficient to ensure that the requirements of the program are satisfied. Further, each operator must post a bond adequate to pay for reclamation. Operators who are unable to purchase surety bonds because they have previously forfeited such bonds, will have to post collateral bonds.

One commenter requested that adoption of the provisions of the Tennessee state program which denies permits to subcontractors who have had past violations, or who have had a past history of willful violations. Another Tennessee requirement recommended for adoption was that for denial of a permit to anyone who has been convicted of wildcatting.

OSM has rejected these comments. Section 773.15(b)(1) of the crossed-referenced rules adequately addresses the issue of permit denial for pattern(s) of violations.

Another commenter expressed concern that the Federal regulations concerning criteria for permit approval are not sufficient to ensure that a permit is denied if mining would adversely affect area residents. The commenter urged the adoption of Tennessee's regulations pertaining to criteria for permit approval or denial since they are more complete.

OSM disagrees with the comment and believes that the findings in the Federal regulations are adequate to ensure proper approval or denial of a proposed permit. OSM has chosen to require those findings identified in § 773.15(c) (1)–(11) of the cross-referenced rules, rather than listing a large number of possible findings. The Director believes that lengthening the list of required findings would not change the results of a permit review. Further, this issue has already been addressed in the rulemaking notice discussing the adoption of 30 CFR Part 773. For additional discussion, see 48 FR 44366 (September 28, 1983).

Section 773.19(c) of the cross-referenced rules provide Federal requirements for permit terms. One commenter requested that OSM not issue permits which exceed the expiration date of the NPDES permit, which has a maximum of five years.

OSM rejects this comment. Section 773.19(c) of the cross-referenced rules states that each permit shall be issued for a fixed term of five years or less, unless the requirements of § 778.17 of the cross-referenced rules are met. Section 778.17(b) of the cross-referenced rules states the necessary conditions for an applicant who wishes to have a term exceeding five years in order to obtain necessary financing for equipment and the opening of the operation.

24. *Permitting—Requirement of Number of Copies of Permit Applications to be Submitted to the Office.* Proposed § 942.773(b)(1) would have required that any person applying for a new permit submit five copies of the application to the Office. One commenter suggested that the regulation should require only one for the review process. The commenter argued that additional copies of the same application serve no purpose until the permit is issued.

OSM does not agree. After careful consideration of the Agency's needs, however, OSM has determined that five copies of a permit application should be required both for internal administrative needs and so that a simultaneous review of the application can be conducted by OSM and other interested Federal and State agencies. Therefore, the additional copies of the application do serve a purpose prior to permit issuance.

25. *Permitting—Premining Site Visit by OSM.* Section 773(b)(5) of the cross-referenced rules requires OSM to visit the proposed permit area to determine whether the mining and reclamation plan is consistent with actual site conditions. One commenter expressed support for this requirement.

26. *Permitting—Permit Revisions.* Section 942.774 provides procedures and requirements for permit revisions, renewal, and transfer, assignment or sale of permit rights.

Section 942.774(b) specifies that a "significant" revision of the permit requires public notice and a formal hearing if one is requested. Section 774.13(b) of the cross-referenced rules directs the regulatory authority to establish guidelines for a permit revision. Section 511(a)(2) of the Act provides that any significant alteration in the reclamation plan shall be subject to formal revision. The rule adopted here today provides that a change in the reclamation plan will be considered "significant" if it has the potential to affect the achievement of reclamation as specified in the approved plan.

Section 942.774(c) specifies a period of 30 days within which to submit written comments on an application for approval of a transfer, assignment or sale of a permit. There is no period set in 30 CFR 774.17.

One commenter argued that § 942.774 is unnecessary because ample time and opportunity will be provided to comment on mining operations prior to the permit being issued.

OSM rejects this comment. Section 942.774 is in compliance with 30 CFR Part 774, which sets the minimum requirements for a permit revision, renewal, and transfer.

One commenter stated that § 942.774 (b) and (c) should be more specific in addressing the requirements for permit revisions. The commenter stated that, at a minimum, the permittee should be required to submit an application for revision of a permit at least 90 days

prior to the date on which the changes are expected to be made, with no revisions allowed until the application has been approved. The commenter suggested that the provisions of Tennessee Regulations 0400–1–3–.17 should be included in the Tennessee Federal program.

OSM rejects this comment. The time necessary for review will vary depending upon the extent of the proposed revision. In any event, no revision, renewal, or transfer may take effect until it is approved by OSM.

Another commenter suggested that the definition of a significant revision found in § 942.774(b) is in reality no guideline. The commenter further recommended guidelines on this subject.

OSM is rejecting this comment at this time. The Director believes that the definition found in § 942.774(b) is sufficient to allow the regulatory authority to properly apply the "revision" regulations and review requirements. However, the Office will consider developing guidelines for this purpose if experience shows them to be needed.

One commenter stated that § 774.17 of the cross-referenced rules allows citizen comment concerning transfer, assignment, or sale of permit rights, but does not give a time period in which these comments may be submitted. The commenter suggests 30 days after publication of the newspaper advertisement.

Section 942.774(c) as proposed and adopted addresses this concern.

27. *Permitting—Permit Fees.* A permit fee is required under Section 507(a) of the Act and 30 CFR 777.17. OSM is in the process of developing a permit fee system pursuant to 30 CFR 777.17. Under section 507(a) of the Act, the fee charged an applicant may be less than, but cannot exceed, the actual or anticipated cost of reviewing, administering, and enforcing the permit. However, no fee schedule has yet been established for Federal programs generally, nor is one being adopted at this time for Tennessee. A rulemaking notice is expected to appear in the near future to set a fee schedule for Tennessee, other Federal programs and Federal lands permits.

One commenter expressed concern that OSM would have no control over cost and that any delay in the review process could potentially cause the applicant a financial hardship.

OSM will propose a permit fee rule in the near future. The commenter is addressing an issue more appropriately considered in that rulemaking. Applicants are put on notice that OSM may propose and adopt a rule charging actual costs retroactive to the effective date of this Federal program.

28. *Permitting—Identification of Other Interests.* One commenter stated that § 778.13(c) of the cross-referenced rules should require all owners of 10% or more of any stock in a company to be identified, instead of merely "principal shareholders."

OSM appreciates this comment but notes that § 700.5 ("Definitions") of the cross-referenced rules defines a principal shareholder as any person who is a record or beneficial owner of 10% or more of any class of voting stock.

One commenter stated that § 778.14 of the cross-referenced rules should include subcontractor's past history in a permit application to prevent operators who would otherwise not be allowed to mine from doing so under the names of other companies.

OSM rejects this comment. Section 942.778 states that minimum requirements for legal, financial, compliance, and related information shall apply to any person who makes application for a permit to conduct surface mining and reclamation operations. The applicant is responsible for the work performed by his subcontractors.

One commenter suggested keeping former § 778.19 which required that the identification and status of all other licenses and permits required by other agencies be included in the permit application.

This comment is rejected for the following reasons: Section 778.13(g) of the cross-referenced rules requires Mine Safety and Health Administration (MSHA) numbers for all mine associated structures that require MSHA approval. Section 778.13(d) of the cross-referenced rules requires a statement of any pending surface coal mining and reclamation operations permit application in the United States.

29. *Right-of-Entry Information.* Section 778.15(a) of the cross-referenced rules requires an applicant to provide a description of the documents upon which he bases his legal right to enter and begin surface coal mining and reclamation operations in the permit area. He is also required to state whether that right is the subject of pending litigation. Several commenters suggested that OSM require an operator to show his legal right to enter before a permit is issued. They were concerned that an application could contain false ownership information yet be approved by OSM.

OSM must make the findings at § 773.15(c)(1) of the cross-referenced rules that an application is complete and accurate before a permit is issued. Therefore, the information provided to comply with § 778.15(a) of the cross-referenced rules would be reviewed by OSM prior to permit issuance.

30. *Maps: General Requirements.* Sections 779.24 and 783.24 of the cross-referenced rules identify the information to be included on maps. Sections 779.25 and 783.25 further identify additional data to be on map plans and cross sections. One commenter urged OSM to prescribe standards for the map scale to be used and recommended that it be uniform for all maps.

OSM agrees with the commenters that map scale standards are needed. While OSM has not included such requirements in the Tennessee Federal program, the Office intends to prepare guidelines in the near future on mapping requirements for permit applicants.

31. *Blasting Plan.* One commenter contended that the requirements of § 780.13 of the cross-referenced rules, Blasting Plan, are far too vague to ensure the protection of nearby residents.

OSM has not accepted this comment because this same regulation also requires the applicant to comply with the requirements of Section 30 CFR 816.61 through 816.68 of the cross-referenced rules. These sections contain the general blasting requirements and specific requirements pertaining to preblasting surveys, blasting schedules, blasting signs, warnings and access control, control of adverse effects, and records of blasting operations, and provide adequate protection for nearby residents.

32. *Air Pollution Control Plan.* Section 780.15(b) of the cross-referenced rules requires an air pollution control plan for all mines "if required by the regulatory authority." One commenter suggested that OSM require an air pollution control plan for surface mining operations, underground mines and all coal-related facilities.

OSM has not accepted this suggestion. In its final rulemaking of January 10, 1983 (48 FR 1160), OSM adopted a narrower interpretation of Section 515(b)(4) of the Act. A more detailed discussion of this topic may be found in the above referenced Federal Register notice.

33. *Hydrologic Information.* Section 30 CFR 780.21(b)(1) of the cross-referenced rules addresses information required to establish a baseline for groundwater within the permit area. This section also allows the regulatory authority to request additional information on groundwater should the circumstances warrant. One commenter suggested that OSM require hydrologic information

"within one-half mile with respect to location and ownership and that testing be conducted if the owner desired, to provide baseline data."

OSM has not accepted this suggestion. The commenter did not indicate what the reference point is for the one-half mile distance; in many instances this could be well within the permit boundary of the operation. Further, OSM has the option of requesting additional information with no distance limitation should the baseline information indicate the need for this additional data.

Another commenter recommended that OSM require operators to submit a determination of probable hydrologic consequences (PHC) as a permit condition along with a cumulative hydrologic impact assessment.

PHC information is now required in § 780.21(f) of the cross-referenced rules as part of a permit application. The development of the cumulative hydrologic impact assessment is the responsibility of the regulatory authority under § 780.21(g). This assessment is based on information contained in the permit application, such as the applicant's PHC, and other available information which is representative of the area, and must be completed before the permit is issued.

34. *Steep Slope Mining.* Section 785.15(b) of the cross-referenced rules requires that an application for a permit for mining on steep slopes contain sufficient information to establish that the operation will be conducted consistent with the performance requirements of 30 CFR 826.12.

One commenter contended that the reference to 30 CFR 826.12 has resulted in a gap, since Part 826 was removed by an earlier rulemaking.

The commenter is correct. However, the May 24, 1983 **Federal Register** notice on Backfilling and Grading explains that the performance standards from 30 CFR 826.12 have been moved to 30 CFR 816.107. This notice also removed 30 CFR Part 826 in its entirety. The Office recognizes that this may result in confusion and has initiated steps to correct section 785.15 to show the appropriate cross-reference for steep slope mining. In implementing 30 CFR 785.15, OSM will look to the provisions of 30 CFR 816.107.

35. *Requirements for Special Categories of Mining.* Section 785.16(f) of the cross-referenced rules addresses the requirements for the granting of variances from returning mined land to approximate original contour (ACO) and provides that such variances may be granted only if specific rules are promulgated to cover such actions. One commenter assumed from this that OSM will not grant such variances, since OSM has not promulgated specific rules to govern these variances.

The commenter is incorrect. The permanent program regulations for granting variances from approximate original contour requirements (30 CFR 785.16(f)) provide that variances may be granted only if the regulatory authority has established specific rules to govern such variances. OSM has done so at 48 FR 39892; 30 CFR 816.133(d) (1) through (10) of the cross-referenced rules address the granting of variances and provide the specific criteria required by § 785.16(f). Therefore, no additional criteria are needed or included here.

Small Operator Assistance

Section 942.795 establishes the same standards for the small operators assistance program as are found in Part 795 of the permanent program rules. OSM expects during its administration of the SOAP in Tennessee that Federal funds will be sufficient to provide for the authorized services, and does not expect to exercise its option at 30 CFR 795.11(b). That option allows OSM to establish a formula for allocating limited funds to provide the services pursuant to Part 795.

OSM will award SOAP contracts to qualified laboratories utilizing a streamlined procurement system that complies with the Federal Acquisition Regulations. Prior to issuing a Request for Proposal, OSM will announce its intention through publication in the Commerce Business Daily. Unlike the procedures currently used by Tennessee to develop an independent list of qualified laboratories, OSM will qualify laboratories as part of its contracting process.

Bonding

Section 942.800 establishes the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter J, Bonding and Insurance Requirements for Surface Coal Mining and Reclamation Operations.

A provision has been added as § 942.800(b) specifying the procedure that the Office will follow in reviewing the bonds posted by operators who obtained permanent program permits from Tennessee. If a bond amount is determined to be inadequate, notice will be given and the operator will have the option of replacing the existing bond with an adequate one or of posting an additional bond for the amount of the shortfall.

36. *Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations.* Section 942.800 cross-references Federal regulations found at 30 CFR Part 800. These regulations set out requirements for filing and maintaining bonds and insurance for surface coal mining and reclamation operations. Besides cross-referencing the Federal rule, the final rule states that the Office will review the adequacy of bonds posted with the State for previously issued permanent program permits. Under this provision, the Office will notify any permittee when it determines that the posted bond is inadequate and require that either a new bond in the correct amount be posted and made payable to "the United States or the State of Tennessee" or the original bond be modified to include the United States as co-payee and additional bond be posted to meet the necessary amount. OSM is adopting as proposed a provision requiring all permittees to modify their bonds to include the United States as co-payee within a specified time (30 days) after the effective date of the Tennessee Federal program without direct notice being sent to each individual permittee.

The preamble to the proposed rule contained a request for comments on the disposition of outstanding interim program bonds not in forfeiture proceedings by the effective date of the Federal program. Several comments were received.

One commenter objected to OSM reevaluating existing bonds arguing that the Federal law allows bond amount to be increased only if the disturbed area is increased or reclamation costs increase. Another commenter opposed requiring permittees to amend their bonds to add the United States as a co-payee. Other comments requested that the bonding requirements of the approved Tennessee State program be adopted. One commenter suggested that if sureties are allowed to reclaim sites that they should be required to meet a compliance schedule, as would an operator. This same commenter also requested that bond amounts in the Federal Program be set substantially higher than those previously set by the State.

OSM is adopting the regulation as it was proposed, except that it is also adopting as § 942.800(b)(3) the provision discussed in the preamble to the proposal requiring all permittees under the previously approved State program to modify their bonds to include the United States as co-payee within 30 days from the effective date of the Federal program.

The Office believes that this reevaluation of existing bonds is necessary in order to insure that sites operated during the Federal program

may be properly reclaimed if the operator defaults. Federal regulations at 30 CFR 800.15 require that bonds shall be adjusted to ensure the posted amount is adequate to cover the costs of reclamation under changing circumstances. Further, 30 CFR 800.16(b) requires that bonds be made "payable to the regulatory authority," which, upon the effective date of this Federal program, is OSM. Therefore, each permittee will be required to amend his bond or bonds if necessary to reflect the proper amount and to include the United States as co-payee. Permittees who fail to comply with this requirement will be subject to notices of violation for failure to comply with 30 CFR 800.16(b), cross-referenced at § 942.800 of the Tennessee Federal program.

The Office has studied the suggestions of the commenters that the bonding requirements found in the approved Tennessee State program be adopted in the Federal program. OSM has not adopted this comment. OSM believes that its current national regulations are sufficient for use in the Tennessee Federal program. Nothing in the administrative record for this rulemaking or in previous regulatory experience in Tennessee convinces the Office that its current rules will be inadequate in Tennessee to regulate bonding and insurance requirements.

Concerning the reclaiming of sites by sureties, OSM has the discretion to allow a surety to reclaim a site rather than to pay the proceeds of its posted bond. OSM intends to exercise this discretion only when a surety convinces the Office that the surety is capable of satisfying the reclamation plan for the site and agrees to perform the necessary work according to an agreed upon compliance schedule.

Regarding interim program bonds, a discussion of this subject is contained in the preamble to the proposed Tennessee Federal program (49 FR 26898). After careful examination of its authority under Federal law concerning interim program bonds, the Office has decided that it is required to take all appropriate enforcement action to see that interim program mining sites are reclaimed to applicable Federal standards, including the forfeiture of bonds where the United States is named co-payee.

One commenter expressed concern that OSM would not require bond amounts sufficient to cover reclamation costs.

Section 800.14 of the cross-referenced rules requires that OSM determine the amount of the bond and that the bond amount be sufficient to assure completion of the reclamation plan if the work has to be performed by OSM in the event of forfeiture. In no case will the total bond initially posted for the entire area under one permit be less than $10,000 (30 CFR 800.14(b)). OSM believes that its bond assessment procedures provide for adequate bonds to cover reclamation costs.

The commenter also suggested that provisions be placed in the regulations that control the percentage release and set specific time frames for bond release.

The requirements of § 800.40 of the cross-referenced rules contain the information necessary to satisfy this comment.

Performance Standards. Except where specifically modified for the Tennessee Federal program, § 942.815 through 942.828 make applicable the relevant provisions of 30 CFR Chapter VII. Subchapter K, Permanent Program Performance Standards. Additions to those standards have been adopted at §§ 942.816 and 942.817 as discussed below.

As noted above, § 942.816(b) specifies the performance standards with which a permittee would have to comply. Such a provision is necessary in light of the repeal of the State statute and regulations under which the Tennessee permits were issued. The rule provides that if the permit specifies site-specific standards with which compliance is required, then those standards would apply. However, if the permit is silent or if it references a provision of the repealed Tennessee State program, then the Federal program standards will apply. For example, if the State-issued permit specified the seeding rate for revegetating reclaimed land, then that standard would prevail. If, however, the permit does not so specify, then the standards set in the Federal program will be applicable unless and until they were modified through the permit review undertaken by OSM.

OSM has adopted the revegetation success criteria as proposed, in part because 30 CFR 816.116(a)(1) requires that the regulatory authority establish standards and statistically valid sampling techniques for the measurement of success. Final § 942.816(f) sets forth revegetation success standards and sampling techniques. For pasture or hay land the Office has adopted a standard of 90% ground cover. In addition to this ground cover requirement, final § 942.816(f) requires that the crop production must be equal to or greater than the average county yield as determined by the Tennessee Crop Reporting Service. The 90% standard is usually considered to be the minimum acceptable level of cover for pasture land and is a provision of the former Tennessee State regulatory program. OSM has included a production standard because ground cover alone may not always indicate the capability of reclaimed land to support livestock.

For areas developed as cropland, the Office has used average county yield as the standard for determining reclamation success. Such information will be taken from the Tennessee Crop Reporting Service. Adjustment for local yield variation within the county may be made for disease, pests and weather-induced variations and differences in crop management practices. The Office has adopted this standard because there is insufficient research and experience to establish the reliability of other methods. The rule requires crops to be grown on a representative portion of the permit area that would be sufficient in size to demonstrate successful soil restoration.

Final § 942.816(f)(3) requires 80% ground cover for areas developed for wildlife habitat, recreation, or forest products. The stocking requirement for woody plants will be approved by the Office on a case-by-case basis and specified in the mining and reclamation plan. In approving stocking rates, the Office will rely heavily upon recommendations of the State agencies responsible for the administration of forestry and wildlife programs. The Office believes that case-by-case approval will allow the flexibility necessary to accommodate the specialized requirements of various wildlife and forest management plans. Eighty percent ground cover is believed to be necessary to control erosion on steep terrain that is common to eastern Tennessee coal fields. In applying this and other ground cover standards, the Office will use the definition of ground cover that is in the permanent program rules at 30 CFR 701.5. By that definition, ground cover includes both the aerial parts of living vegetation and litter that is produced naturally on site.

Subparagraph (f)(4) adopts as proposed the requirement of Tennessee permanent program rules which prohibited bare areas larger than one-sixteenth of an acre in size and that total more than 10% of the area seeded. The Office believes that such a provision is necessary to avoid releasing bond on lands that meet the overall cover requirements of 80 or 90% ground cover, but still have localized areas that are not yet stabilized from soil erosion.

Subparagraph (f)(5) requires that the distribution of woody plants within the permit area be consistent with the post-mining land use. This is to ensure that

all growing space is effectively utilized for land uses such as timber production. It also requires mine operators to replant areas where the survival of woody plants was uneven.

Subparagraph (f)(6) specifies that the sampling techniques for measuring woody plant stocking and ground cover shall be in accordance with techniques approved by the Office. The rule also provides for the use of actual crop yields where cropland is the post-mining land use.

All of the above standards have also been adopted as proposed at § 942.817 for underground mining.

37. *Hydrologic Balance: Siltation Structures.* Section 816.46(c)(1)(iii) of the cross-referenced rules appears as proposed in Option 2 of the proposed Tennessee Federal program with modification. The final rule at § 942.816(d) incorporates only the proposed requirements for provision of storage volume of no less than 0.2 acre feet per disturbed acre draining into the basin unless the Office approves a lesser volume. The minimum storage volume is 0.1 acre feet per disturbed acre.

Three commenters suggested that OSM use technical guidelines with alternative designs or approaches for design criteria of sedimentation ponds in lieu of specific regulations. One commenter stated that additional design criteria in these regulations would limit consideration of other suitable techniques that would meet the performance criteria. The commenter went on to say that the design criteria in the approved State program were so rigid that they excluded basin designs from changing in a rapidly changing technology. This commenter recommended that OSM adopt the alternative to Option 2 of issuing technical guidelines in lieu of regulations on design criteria. This commenter was opposed to the requirement that sedimentation ponds be located as near as possible to the disturbed area; 100 feet from streams with a biological community; and be located on the flattest slope practicable but in no case on a slope greater than 20 degrees. This commenter also suggested that the design requirement for 24-hour detention time be eliminated since this requirement would result in basins being two to three times larger than necessary to meet performance standards. The commenter stated that a variance should be allowed for particle size as well as for site specific data and specific gravity. The Commenter also objected to the requirement of a nonclogging dewatering device.

Three commenters felt that the sedimentation pond design criteria of Option 2 should be incorporated in regulation rather than used as technical guidelines. They argued that design standards are reasonable and workable, and would make the program a more easily enforceable program; that engineers would otherwise tend to "rubber stamp" the construction of these facilities; and that such design standards would provide a measure of continuity from the State to the Federal program.

As explained earlier, OSM has decided to adopt only a standard modified from § 816.46(c)(1)(iii) for minimum storage volumes because the standards of § 816.46, for the most part, provide sufficient technical direction to operators while allowing them flexibility.

38. *Contour Mining.* Section 942.816(e)(1) establishes the timing in days or distance for the completion of rough backfilling and grading for contour mining operations.

Two commenters objected to the 60 days or 1500 linear feet limit on contour mine operations. The first commenter suggested unlimited time for completion of backfilling and grading as long as the mine site was free of violations, while the second commenter suggested a maximum of 90 days or 1500 linear feet.

OSM has chosen to use the standard of 60 days or 1500 linear feet for completion of rough backfilling and grading for Tennessee. This standard was previously established in the Federal permanent program regulations and has been adopted by several States as their standard. The final rule provides additional time for backfilling and grading if the operator can demonstrate the need.

39. *Area Mining.* Proposed § 942.816(f)(3), adopted as § 942.816(e)(2), deals with the timing of rough backfilling and grading for area surface mining operations.

One commenter objected to the use in the proposed rule of the term "strip" because of its negative connotation, and suggested that the term "surface" be used instead.

OSM has accepted this suggestion and modified § 942.816(e)(2) accordingly.

One commenter suggested that OSM allow final grading during the first favorable planting season.

OSM has not accepted this comment. This rule deals only with rough backfilling and grading; therefore, the suggestion is not germane.

One commenter stated that the four spoil ridge time was excessive and suggested a two spoil ridge limit instead.

OSM rejects this suggestion since the four spoil ridge concept was the acceptable limit in the previous Federal permanent program regulations and the imposition of a more stringent standard now would be unreasonable.

One commenter stated that an operator should be allowed, when necessary, additional time for backfilling and grading, particularly for mountain top removal operations and hollow fills.

OSM agrees. In the final rule, a provision has been added under which OSM may grant additional time for backfilling and grading if the operator can demonstrate that additional time is necessary.

40. *Diversions: General Requirements.* Final § 942.816(c) specifies additional design criteria for diversions.

Three commenters were opposed to additional design criteria for diversions as given in Option 2 of the proposed rule. Each commenter was in favor of technical guidelines which would allow for variations based on sound engineering practices, and would encourage the use of changing technology. One commenter felt that the addition of design criteria in the regulations would limit the operator's flexibility. The use of technical guidelines would allow the coal industry alternative designs in meeting performance standards. One commenter stated that the addition of the proposed design criteria is not authorized by the Act and arbitrarily imposes standards on the operator that are without statutory authority or justification.

OSM disagrees with the commenters as follows:

(1) The regulations at 30 CFR 816.43(a)(4) (cross-referenced at final § 942.816(c)) give the regulatory authority latitude to specify design criteria for diversions to meet the requirements.

(2) The standards in the final rule are those which Tennessee adopted in the permanent regulatory program, and are based on a proper balance between site-specific flexibility and the need for adequate standards governing design to ensure the proper functioning of diversions.

(3) OSM, as the regulatory authority under a Federal program, may establish design criteria to meet performance standards by specifying both design and performance criteria to ensure that the requirements of the Act are met. Therefore, OSM considers it appropriate, at a minimum, to add the design criteria in the final rule at § 942.816(c).

Several commenters were in favor of the inclusion in regulations of design criteria for diversions. One commenter advocated inclusion of design standards on lining, freeboard, dissipators, and handling of spoil material and topsoil in addition to the criteria in § 942.816(c). The commenter stated that mere implementation in Tennessee of § 816.43(a)(4) of the cross-referenced rules was insufficient to assure that diversions "which protect the integrity of fills and coal waste piles as well as minimizing the run-off that the operator must control from the affected area, will be adequately designed."

OSM agrees with the commenters that additional design criteria pertaining to diversions should be included in the Federal program regulations and has modified § 942.816(c) accordingly. OSM's objective in § 942.816(c) is to achieve conditions after mining comparable to the premining conditions. The requirements adopted, including the additional design criteria of § 942.816(c) pertaining to diversions, will achieve this objective and at the same time will provide the operator with sufficient flexibility. The language in the final rule allows operators to make technical innovations and improvements to achieve these goals without specifying all aspects of stream channel reconstruction.

41. *Use of Explosives: General Requirements.* Section 816.61(d) of this chapter, made applicable through the cross-reference at final § 942.816, relates to blast design and requires the submission of an anticipated blast design for certain areas of blasting. One commenter suggested that OSM retain the Tennessee blasting regulation in repealed Tennessee regulation section 0400–1–14.36(6), which provides additional distance to prevent possible damage from blasting.

It should be pointed out that the above Tennessee regulation did not prohibit blasting from these areas but only requires the approval of the regulatory authority for blasting within lesser distances. OSM must abide by the Federal court's ruling in this matter and cannot prohibit blasting within these areas. See *In Re: Permanent Surface Mining Regulation Litigation I*, No. 79–1144 (May 16, 1980; D.D.C.). However, OSM has required the blaster to take extra steps if needed to ensure prevention of damage.

42. *Use of Explosives: Preblast Survey.* Sections 816.62 (a) and (b) of the cross-referenced rules explain the procedure by which residents within ½ mile of the permit area may obtain a preblast survey. One commenter explained that Tennessee required a preblast survey for dwellings within 1000 feet of the permit area. This commenter felt that OSM should adopt the same requirement.

The Federal regulations must reflect the requirements of the Act, section 515(b)(15)(E) of which requires a preblast survey "upon the request of a resident or owner * * *." Therefore this suggestion is rejected.

43. *Use of Explosives: Blasting Schedule.* Section 816.64(a) of the cross-referenced rules specifies the times when an operator may blast and allows the regulatory authority to specify more restrictive times.

One commenter stated that repealed Tennessee Regulation 0400–114–.33, "Use of Explosives: Surface Blasting Requirements," should not be replaced by 30 CFR 816.66. The commenter also stated that the Tennessee regulation is more stringent and specific in that it prohibits detonation of blasts at night except under special conditions. The commenter recommended that the Tennessee rule with respect to the blasting schedule be retained in its entirety because it was more restrictive. The commenter also recommended that the prohibition on night blasting except under specific conditions be retained.

OSM has accepted both recommendations in part. Final § 942.816(h) has been adopted, in part, in response to the commenters' suggestion that night blasting be banned. That section prohibits blasting between sunset and sunrise, as well as restricting blasting to those times in the blasting schedule except in emergency situations where rain, lightning, or other atmospheric conditions, or operator or public safety requires unscheduled detonations. Finally, this section allows OSM to further limit blasting times.

The commenter also pointed out that the references to one inch per second peak particle velocity in the repealed Tennessee regulations were not consistent with a past court decision on the Federal regulations. The commenter is correct; 30 CFR 816.67(d) provides three alternative means of determining maximum peak particle velocities.

44. *Disposal of Excess Spoil: Drainage Control.* Final § 942.816 contains the requirements for underdrain systems through cross-reference to 30 CFR Part 816. This provision applies to all underdrain systems whether or not the disposal area falls within the definition of a head-of-hollow or valley fill. The requirements are consistent with section 515(b)(22)(D) of the Act.

Several commenters stated that specific design criteria for underdrains were essential and urged the incorporation of the design criteria in the repealed State program into the Tennessee Federal program to provide continuity from the State to the Federal program, because they are tailored to Tennessee and recognize regional mining conditions, and because they have met the Federal requirements and are familiar to industry and citizens. Further, the commenters noted the requirement in 30 CFR 816.71(f)(3) that underdrains "meet any design criteria established by the regulatory authority." Finally, the commenters argued that design criteria were "necessary for environmental and health reasons," and that omission of such criteria would leave a gap in the Federal program and would violate SMCRA requirements. Failure to provide design criteria they contended, would undermine successful enforcement of the performance standards.

One commenter stated that inclusion of design criteria for underdrains would be burdensome to the industry. Another commenter opposed the addition of detailed standards because they would limit consideration of other suitable techniques and would arbitrarily impose additional standards without statutory authority. This commenter proposed issuance of technical guidelines with various allowable alternatives.

OSM agrees with the commenters who favored no specific design requirements for underdrains other than those in 30 CFR 816.71, and is not adopting any additional performance standards for underdrains at this time. The Director believes that § 816.71(f)(3) of the cross-referenced rules provides adequate requirements for underdrains for the reasons set forth in the preamble of the final rule adopting § 8167.71. Successful enforcement of performance standards will be based upon the specific terms of the operation and reclamation plan that is incorporated in the permit, and is not dependent upon additional criteria in § 942.816.

45. *Revegetation Success Standards.* Final § 816.116(f) provides for the application of revegetation success standards in accordance with the approved postmining land use and sets minimum conditions for specific land use. Section 816.116(a)(1) of the cross referenced rules requires the regulatory authority to select standards for success and statistically valid sampling techniques for measuring success. Therefore the addition of revegetation success standards is required in the Federal program for Tennessee.

One commenter objected to the requirement in the proposed rule that vegetation species used for pasture have a demonstrated self-regeneration

capability. The same commenter objected to 80% initial ground cover with a 90% statistical confidence for areas with wildlife habitats. The commenter went on to say that the Federal standards require that only 70% success be achieved. The commenter requested that the proposed standard be modified to equal the Federal standard since it is excessive and more stringent than the Federal rule.

OSM disagrees with the commenter that the proposed revegetation success standard is more stringent than the Federal standard. The Federal rule provides for the application of success standards in accordance with the approved postmining land use and sets minimum conditions for specific land use. The provisions of 30 CFR 816.116(b) allow regulatory authorities flexibility to develop success standards that are tailored to conditions that exist within the State. The rule sets criteria that must be examined to determine success, but it is the regulatory authority's obligation to identify the particular procedures which will be followed. 30 CFR 816.116(b) has been written in a general form because of the variation in natural ground cover conditions throughout the States. Therefore, OSM, in its promulgation of a Federal program in Tennessee, is required to establish standards that are compatible with State conditions. OSM believes it has accomplished this in the final rule on vegetation success standards for Tennessee.

Several commenters felt that standards in addition to those in the proposed rule should be added to incorporate the specific fertilizer, mulch and planting requirements and evaluation set forth in the repealed Tennessee permanent program regulations. One commenter felt that revegetation is more difficult to obtain in contour mining found in Tennessee and that, therefore, the terrain of Tennessee necessitates more specific and stringent standards.

OSM believes that the final rule regarding revegetation success standards is sufficient for the Federal program in Tennessee as it requires specificity in some areas and allows flexibility in others.

46. *Establishment of Design Criteria for Roads.* Final § 942.816(g) provides minimum design standards for primary and ancillary roads.

One commenter stated that many of the performance standards of the proposed Federal program are weaker than the corresponding sections of the State program. He gave as an example the Federal standards pertaining to haul roads, specifically § 816.150(c) concerning design criteria for roads. He pointed out that this section, as well as other sections of the proposed Federal program, gives latitude to the regulatory authority in establishing design criteria.

OSM, as the regulatory authority, is not required to adopt design criteria for roads. OSM's responsibility is to see that any design submitted with a permit application will ensure that operators achieve the required performance standards. However, in response to the commenter concerning the need for design criteria for roads, OSM has revised § 942.816(g) to include specific performance standards for both primary and ancillary roads.

47. *Special Performance Standards—Coal Preparation Plants Not Located Within the Permit Area of a Mine.* Section 942.701 cross-references 30 CFR 701.5(a), "Definitions," under the permanent program. Included in 30 CFR 701.5(a) are the definitions of "coal preparation or coal processing," "coal prepartion plant," and "support facilities." These definitions were the subject of a recent District Court opinion in *In Re: Permanent Surface Mining Regulation Litigation II,* Civil Action No. 79–1144 (D.D.C., July 6, 1984).

The court ruled that the limitations placed on the Secretary's jurisdiction by these definitions improperly narrowed the regulatory scope of the Act. Specifically, the Court held that facilities which in any way leach, chemically process, or physically process coal should be regulated when located away from the minesite even if they do not separate coal from its impurities. The court also held that the test for determining what is a regulated support facility should include a functional test and not be based solely upon a proximity limitation. As a result of this ruling, regulations containing the definitions of "surface coal mining operations," "coal preparation or coal processing," and "coal preparation plant" were remanded to the Secretary to be revised in accordance therewith. Although the definition of "support facility" was not remanded, the court's Memorandum Opinion clearly indicated that it cannot stand.

Consistent with the court's decision, OSM is providing in this Federal program that the definitions of "surface coal mining operations" in § 700.5, and of "coal preparation or coal processing" and "coal preparation plant" at Section 701.5 include facilities which leach, chemically process, or physically process coal. Thus, facilities which crush, screen, or size coal will be regulated wherever located. Also, consistent with the court's decision, OSM has decided not to apply the definition of "support facilities" in § 701.5 of this chapter. Thus, the determination of which "support facilities" are regulated under paragraph (b) of the definition of "surface coal mining operations" at 30 CFR 700.5 will include consideration of the functional relationship of the facilities in question to other regulated activities.

Inspection and Enforcement Procedures. Sections 942.842, 942.843 and 942.845 establish the same provisions as 30 CFR Chapter VII, Subchapter L, Permanent Program Inspection and Enforcement Procedures. No changes were proposed or adopted in those procedures for the Tennessee Federal program.

48. *Federal Inspection and Monitoring.* Section 842.11 of the cross-referenced rules describes the requirements for Federal inspection. One commenter questioned OSM's authority to inspect coal exploration operations that do not create a substantial disturbance.

OSM has such authority. Although reclamation obligations apply only to those exploration operations that substantially disturb the land surface, it would be illogical to hold that the Office was prohibited from inspecting exploration operations to determine whether they were in fact meeting that test. Therefore, OSM rejects the comment.

Another commenter expressed a need for inspection, on weekends, evenings, and holidays as well as a need for a contact person at OSM during those times. The commenter explained that this is needed since "wildcatters" operate during these times.

OSM agrees. OSM has long had the requirement in 30 CFR 842.11(d)(1) that inspections be carried out on an irregular basis, including nights, weekends, and holidays. OSM has in the past and will continue to conduct inspections during these times as the need arises. The Director is reviewing the merits of providing to citizens a mechanism through which they could contact OSM at times outside normal working hours in connection with the possible installation of a toll free telephone number, as discussed under General Comments.

49. *Requests for Federal Inspections.* Section 842.12 of the cross-referenced rules provides requirements for requesting Federal inspections, including the conduct of the inspection, a requester's right to confidentiality, and the right of a person to be present during the inspection.

A commenter expressed the desire for OSM to have a system for keeping

confidential the identity of citizens making complaints.

OSM agrees with the commenter that confidentiality is important in the handling of citizen complaints. Such confidentiality is provided by 30 CFR 842.12, cross-referenced at 942.842 of the Tennessee Federal program. That section provides that the identity of individuals requesting a Federal inspection or providing information on a possible violation or imminent danger or harm shall remain confidential if requested by that person. OSM has procedures to handle citizen complaints confidentially which have been used for several years. These established procedures will be used in Tennessee.

50. *Cessation Orders.* A commenter asserted that 30 CFR 843.11(a)(2)(i), cross-referenced at Section 942.843 of the Tennessee Federal program, "forbids OSM from issuing" cessation orders to operators mining off their permit areas. The commenter was referring to a provision under which mining without a permit is made subject to cessation orders for causing significant imminent harm unless the operations "are an integral, uninterrupted extension of previously permitted operations" and the operator has filed "a timely and complete permit to conduct such operations."

The commenter's concern that OSM would be unable to cease such operations if necessary is unfounded. OSM could issue a notice of violation requiring any unpermitted operations to cease. If necessary, this could then be followed by a failure-to-abate cessation order. Further, the cited provision does not in any sense hinder or prohibit OSM from issuing a cessation order under 30 CFR 843.11(a)(1) to any operator who is creating an imminent danger to health and safety, or who is causing or can reasonably be expected to cause significant imminent harm.

Blaster Training and Certification. The proposed Tennessee Federal program cross-referenced 30 CFR Part 850. The final progam has been corrected to cross-reference the more appropriate (but proposed) 30 CFR Part 855, Certification of Blasters in Federal Program States and on Indian Lands. However, there are no substantive standards for a Federal program for blaster training and certification at present.

51. *Blaster Training and Certification.* One commenter stated that such a program "has been in limbo for years" and insisted that OSM provide such a program promptly.

OSM agrees and has recently proposed a Federal blaster certification program in the **Federal Register** (49 FR 35714; September 11, 1984). It should be pointed out that 30 CFR 850.12(b) requires the development and adoption of a blaster program within twelve months after implementation of a Federal program. OSM intends to comply with that requirement.

IV. Other Information

OSM has examined this Federal program according to the criteria of Executive Order 12291 (46 FR 3193, February 19, 1981) and has determined that it does not constitute a major rule. There would be no major economic impact through adoption of this rule. The coal mining industry in Tennessee is already subject to the regulatory standards similar to those imposed by the Federal program as adopted.

OSM has examined this Federal program pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and determined that it will not have a significant impact on a substantial number of small entities. The impact is no different than the effect of the approval of the State regulatory program.

Section 702(d) of the Act provides that promulgation of a Federal program shall not constitute a major Federal action under the National Environmental Policy Act, 42 U.S.C. 4332. Thus, no Environmental Assessment is required for this rulemaking.

Office of Management and Budget Review

The recordkeeping and reporting requirements of this rule are the same as those of the permanent program regulations which have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507.

Subjects Affected by Rulemaking

In accordance with the **Federal Register** rule at 1 CFR 18.20, OSM has identified the following topics affected by the rulemaking:

List of Subjects in 30 CFR Part 942

Coal mining, Intergovernmental relations, Surface mining, Underground mining, Reporting and recordkeeping requirements.

Accordingly, 30 CFR Part 942 is amended as set forth herein.

Dated: September 25, 1984.

J. Steven Griles,

Acting Assistant Secretary, Land and Minerals Management.

1. Part 942 is revised to read as follows:

PART 942—TENNESSEE

Sec.

942.20 Approval of Tennessee reclamation plan for lands and waters affected by past coal mining.
942.700 Tennessee Federal program.
942.701 General.
942.707 Exemption for coal extraction incident to government-financed highway or other construction.
942.761 Areas designated unsuitable for surface coal mining by act of Congress.
942.762 Criteria for designating areas as unsuitable for surface coal mining operations.
942.764 Processes for designating areas unsuitable for surface coal mining operations.
942.772 Requirements for coal exploration.
942.773 Requirements for permits and permit processing.
942.774 Revision; renewal; and transfer, assignment, or sale of permit rights.
942.775 Administrative and judicial review of decisions.
942.777 General content requirements for permit applications.
942.778 Permit applications—Minimum requirements for legal, financial, compliance, and related information.
942.779 Surface mining permit applications—Minimum requirements for information on environmental resources.
942.780 Surface mining permit applications—Minimum requirements for reclamation and operation plan.
942.783 Underground mining permit applications—Minimum requirements for information on environmental resources.
942.784 Underground mining permit applications—Minimum requirements for reclamation and operation plan.
942.785 Requirements for permits for special categories of mining.
942.795 Small operator assistance program.
942.800 Bond and insurance requirements for surface coal mining and reclamation operations.
942.815 Performance standards—Coal exploration.
942.816 Performance standards—surface mining activities.
942.817 Performance standards—underground mining activities.
942.819 Special performance standards—Auger mining.
942.823 Special performance standards—Operations on prime farmland.
942.824 Special performance standards—Mountaintop removal.
942.827 Special performance standards—Coal preparation plants not located within the permit area of a mine.
942.828 Special performance standards—In situ processing.
942.842 Federal inspections.
942.843 Federal enforcement.
942.845 Civil penalties.
942.855 Certification of blasters.

Authority: Pub. L. 95-87, The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*

§ 942.20 Approval of Tennessee reclamation plan for lands and waters affected by past coal mining.

The Tennessee Reclamation Plan, as submitted on March 24, 1982, is approved. Copies of the approved program are available at:

Office of Surface Mining Reclamation and Enforcement, 530 Gay Street, Suite 500, Knoxville, Tennessee 37902

State of Tennessee Department of Conservation, Division of Surface Mining and Reclamation, 305 West Springvale, Knoxville, Tennessee 37917

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5315, 1100 'L' Street, NW. Washington, D.C. 20240.

§ 942.700 Tennessee Federal Program.

(a) This part contains all rules that are applicable to surface coal mining operations in Tennessee which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(b) Certain of the rules in this part cross-reference pertinent parts of the permanent program regulations in this chapter. The full text of a cross-referenced rule is in the permanent program rule cited under the relevant section of this part.

(c) This part applies to all surface coal mining operations in Tennessee conducted on non-Federal and non-Indian lands. To the extent required by Part 740 of this chapter, this part also applies to operations on Federal lands in Tennessee.

(d) The information collection requirements contained in this part have been approved by the office of Management and Budget under 44 U.S.C. 3507 and assigned the following clearance numbers: 1029–0007, 1029–0009, 1029–0032, 1029–0033, 1029–0034, 1029–0035, 1029–0036, 1029–0038, 1029–0039, 1029–0040, 1029–0041, 1029–0043, 1029–0047, 1029–0048, 1029–0049, 1029–0080.

§ 942.701 General.

(a)(1) Except as provided in paragraphs (a)(2) and (a)(3) of this section § 700.5, 700.11, 700.12, 700.13, 700.14, 700.15 and Part 701 of this chapter shall apply to coal exploration and surface coal mining and reclamation operations.

(2) The definition of "support facilities" in § 701.5 of this chapter shall not apply to surface coal mining and reclamation operations.

(3) The definitions of "surface coal mining operations" in § 700.5, and "coal preparation or coal processing" and "coal preparation plant" in § 701.5 of this chapter shall include facilities which leach, chemically process, or physically process coal.

(b) Surface coal mining and reclamation operations in Tennessee which do not have a permanent program permit issued by the State of Tennessee prior to the effective date of this program, but which filed a permit application on a timely basis and were allowed to operate under the Tennessee State program, may continue to operate until the Office issues or denies a permit if they: (1) Comply with subchapter B of this chapter until issuance or denial of a permit under this program; (2) authorize transfer to OSM of any permit application pending with the State regulatory authority; and (3) provide to the Office on a timely basis any requested additional information necessary to make a complete permit application.

(c) Persons engaged in underground mining activities which do not have and did not apply for a permanent program permit from the State of Tennessee prior to the effective date of this program, but which were allowed to operate under the Tennessee State program, may continue to operate beyond eight months after the effective date of this program if they: (1) Within two months of the effective date of this program apply to OSM for a permit; (2) comply with Subchapter B of this chapter until issuance or denial of a permit under this program; and (3) provide to the Office on a timely basis any requested additional information necessary to make a complete permit application.

(d) Persons operating facilities which leach, chemically process, or physically process coal which do not have a permanent program permit from the State of Tennessee prior to the effective date of this program, may continue to operate beyond eight months after the effective date of this program if they: (1) Within two months of the effective date of this program apply to OSM for a permit; (2) comply with Subchapter B of this chapter until issuance or denial of a permit under this program; and (3) provide to the Office on a timely basis any requested additional information necessary to make a complete permit application.

(e) Records required by § 700.14 of this chapter to be made available locally to the public shall be retained at OSM's Knoxville Field Office.

§ 942.707 Exemption for coal extraction incident to government-financed highway or other construction.

Part 707 of this chapter, Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction, shall apply to surface coal mining and reclamation operations.

§ 942.761 Areas designated unsuitable for surface coal mining by act of Congress.

Part 761 of this chapter, Areas Designated by Act of Congress, shall apply to surface coal mining and reclamation operations.

§ 942.762 Criteria for designating areas as unsuitable for surface coal mining operations.

(a) Part 762 of this chapter, Criteria for Designating Areas as unsuitable for Surface Coal Mining Operations, shall apply to surface coal mining and reclamation operations.

(b) In addition to the lands defined as fragile lands in § 762.5 of this chapter, the Office in evaluating any petition to designate lands as unsuitable or to terminate such designation will consider lands included on the Tennessee Natural Areas Registry under Tennessee Code Annotated (TCA) section 11–14–112, Natural Areas designated by the Tennessee General Assembly under TCA 11–14–108, areas adjoining Tennessee Scenic Rivers designated under TCA 11–13–101, and Scenic Trails designated under TCA 11–11–101.

§ 942.764 Process for designating areas unsuitable for surface coal mining operations.

(a) Part 764 of this chapter, State Process for Designating Areas Unsuitable for Surface Coal Mining Operations, shall apply to surface coal mining and reclamation operations.

(b) The Secretary shall notify the Tennessee Department of Health and Environment of any area designated unsuitable or for which such designation has been requested or terminated.

(c) Unsuitability designations made under the Tennessee State program shall remain valid unless and until terminated.

§ 942.772 Requirements for coal exploration.

(a) Part 772 of this chapter, Requirements for Coal Exploration, shall apply to any person who conducts coal exploration, except for § 772.11(a) regarding written notice of intention to explore, for which paragraph (b) of this section substitutes.

(b) *Notice of intent.* Any person who intends to conduct coal exploration operations outside a permit area during which 250 tons or less of coal will be removed and which may: (1) Substantially disturb the natural land surface, or (2) involve the use of mechanized earth moving equipment or explosives, shall, before conducting

such exploration, file with the regulatory authority a written notice of intention to explore.

§ 942.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, Requirements for Permits and Permit Processing, shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) In addition to the requirements of Part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the application to the Office.

(2) The Office shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The Office may:

(i) Reject a flagrantly deficient application, notifying the applicant of the findings;

(ii) Request additional information required for completeness stating specifically what information must be supplied and the date by which the information must be submitted; or

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by § 942.773(b)(2)(ii) by the specified date, the Office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant concerning its acceptability.

(4) When the application is judged administratively complete, the applicant shall be advised by the Office to file the public notice required by § 773.13 of this chapter.

(5) A representative of the Office shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, roads, and other significant features contained in the application marked by flags.

(6) Adequacy of information to allow the Office to comply with the National Environmental Policy Act, 42 U.S.C. 4322, shall be considered in the determination of a complete application. The Office may require specific additional information from the applicant as any environmental review progresses when such specific information is needed. Failure to submit the additional information by the date(s) requested could result in disapproval of the application.

(c) In addition to the information required by subchapter G of this chapter, the Office may require an applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

(d) *Review of Tennessee State program permits.* In lieu of the provisions of § 773.11(d)(2) of this chapter, the following shall apply:

(1) Beginning on the effective date of this program, the Office will review all permanent program permits issued by the State of Tennessee.

(2) If the Office determines that any State permit was granted contrary to the provisions of the Act, the Office will: (i) Notify the permittee in writing and state the reasons for its determination; (ii) provide the permittee a reasonable time within which to resubmit the permit application in whole or in part, as appropriate; (iii) provide the permittee a reasonable time within which to conform ongoing surface coal mining and reclamation operations to the requirements of this part; and (iv) provide the permittee with the opportunity for a non-adjudicatory hearing to contest the determination by the Office.

(3) If the permittee fails to resubmit the permit application or conform the ongoing surface coal mining and reclamation operations to the requirements of this part within the time specified, the Office may suspend or revoke the permit.

(4) The Office's suspension or revocation of a permit under paragraph (d)(3) of this section shall be subject to administrative and judicial review in accordance with the provisions of Part 775 of this chapter.

§ 942.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights, shall apply to any such actions involving surface coal mining and reclamation operations permits.

(b) Any revision to the approved mining or reclamation plan will be subject to review and approval by the Office. A significant revision to the reclamation plan will be subject to the public notice and hearing provisions of the program prior to approval and implementation. A change in the reclamation plan will be considered significant if it has the potential to affect the achievement of reclamation as specified in the approved plan.

(c) In addition to the requirements of Part 774 of this chapter, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within thirty days of either the publication of the newspaper advertisement required by § 774.17(b)(2) of this chapter or receipt of an administratively complete application, whichever is later.

§ 942.775 Administrative and judicial review of decisions.

Part 775 of this chapter, Administrative and Judicial Review of Decisions, shall apply to all decisions on permits.

§ 942.777 General content requirements for permit applications.

Part 777 of this chapter, General Content Requirements for Permit Applications, shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

§ 942.778 Permit applications—Minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information, shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

§ 942.779 Surface mining permit applications—Minimum requirements for information on evironmental resources.

Part 779 of this chapter, Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 942.780 Surface mining permit applications—Minimum requirements for reclamation and operation plan.

Part 780 of this chapter, Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 942.783 Underground mining permit applications—minimum requirements for information on environmental resources.

Part 783 of this chapter, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, shall apply to any person who makes application to conduct underground coal mining operations.

§ 942.784 Underground mining permit applications—Minimum requirements for reclamation and operation plan.

Part 784 of this chapter, Underground Mining Permit Applications—Minimum requirements for Reclamation and Operation Plan, shall apply to any person who makes application for a permit to conduct underground coal mining operations.

§ 942.785 Requirements for permits for special categories of mining.

Part 785 of this chapter, Requirements for Permits for Special Categories of Mining, shall apply to each person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations as specified therein.

§ 942.795 Small operator assistance program.

Part 795 of this chapter, Small Operator Assistance Program, shall apply to any person making application for assistance under the small operator assistance program.

§ 942.800 Bond and insurance requirements for surface coal mining and reclamation operations.

(a) Except as provided in paragraph (b) of this section, Part 800 of this chapter, Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations Under Regulatory Programs, shall apply to any person conducting surface coal mining and reclamation operations.

(b) (1) The Office shall review the adequacy of the bonds for those operators who posted reclamation bonds with the State of Tennessee under its permanent regulatory program prior to the effective date of this program,who gave the State collateral to guarantee reclamation, or who was required to take either of these actions.

(2) Where the Office determines that a bond amount is inadequate it shall notify the operator that additional bond is required. The operator shall post the required bond or collateral in the amount and within the time required by the Office. All bonds shall be made payable to "The United States or the State of Tennessee."

(3) Not later than 30 days after the effective date of this program each permanent program permittee shall either: (i) Post an acceptable new bond in the required amount made payable to "The United States or The State of Tennessee" or (ii) provide an executed assignment of the required acceptable bond made payable to "The United States or The State of Tennessee."

§ 942.815 Performance standards—Coal exploration.

Part 815 of this chapter, Permanent Program Performance Standards—Coal Exploration, shall apply to any person who conducts coal exploration.

§ 942.816 Performance standards—Surface mining activities.

(a) Except as modified by paragraphs (b) through (h) of this section, Part 816 of this chapter, Permanent Program Performance Standards—Surface Mining Activities, shall apply to any person who conducts surface mining activities in the State of Tennessee.

(b) The permittee shall comply with the site-specific terms of the permit except that references to provisions of the Tennessee State program shall be read to require compliance with the relevant provisions of this part. Where the permit does not specify site-specific standards with which compliance is required, the permittee shall comply with the standards of this Part.

(c) *Diversions.* In lieu of the requirements of § 816.43(a)(4) of this chapter, diversion design shall incorporate the following requirements:

(1) Channel lining shall be designed using standard engineering practices to pass safely the design velocities. Riprap shall comply with the requirement of § 816.71(f)(3) of this chapter, except for sand and gravel.

(2) Freeboard shall be no less than 0.3 feet. Protection shall be provided for transition of flows and for critical areas such as swales and curves. Where the area protected is a critical area as determined by the Office, the design freeboard may be increased.

(3) Energy dissipators shall be installed when necessary at discharge points, where diversions intersect with natural streams and exit velocity of the diversion ditch flow is greater than that of the receiving stream.

(4) Excess excavated material not utilized in diversion channel geometry or regrading of the channel shall be disposed of in accordance with §§ 816.71 through 816.74 of this chapter.

(d) *Hydrologic Balance: Siltation Structures.* In lieu of the requirements of § 816.46(c)(1)(iii)(A) of this chapter, sedimentation ponds shall provide a storage volume of no less than 0.2 acre feet per disturbed acre draining into the basin. The Office may approve lesser sediment storage volumes equal to the sediment calculated to enter the pond between planned cleanout intervals upon submission and approval of a plan for removing sedimentation from the pond which includes a description of the equipment to be used. The minimum sediment storage volume shall be equal to 0.1 acre feet per disturbed acre.

(e) *Backfilling and grading: General requirements.* In addition to the requirements of § 816.102(a)(6) of this chapter, backfilling and grading shall proceed in accordance with the following timing requirements:

(1) *Contour mining.* Rough backfilling and grading shall follow coal removal by not more than 60-days or 1,500 linear feet.

(2) *Area mining.* Rough backfilling and grading shall be completed within 180 days following coal removal and shall not be more than four spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge.

(3) The Office may grant additional time for rough backfilling and grading if the permittee can demonstrate, through the detailed written analysis under Section 780.18(b)(3) of this chapter, that additional time is necessary.

(f) *Revegetation: Standards for success.* In lieu of the requirements of § 816.116 (b)(1) through (b)(6) of this chapter, the following revegetation success standards and sampling techniques shall be used by the Office.

(1) For areas developed for use as pasture or hay production, the ground cover shall be at least ninety percent (90%) and crop production shall be equal to or greater than the average county yield as stated by the Tennessee Crop Reporting Service for the county in which the permit area is located.

(2) For areas developed for use as cropland, crop production shall be equal to or greater than the average county yield as stated by the Tennessee Crop Reporting Service for the county in which the permit area is located. Adjustment for local yield variation within the county may be made for disease, pests, weather-induced variations, and differences in crop management practices.

(3) For areas developed for wildlife habitat, recreational or forest products, the ground cover shall be at least eighty percent (80%) and the stocking of woody plants shall be at least equal the rate specified in the approved mining and reclamation plan.

(i) Minimum stocking levels and planting arrangements shall be specified by the Office on the basis of local and regional conditions and after consultation with the State agencies responsible for the administration of forestry and wildlife programs.

(ii) Trees and shrubs that will be used in determining the success of stocking and the adequacy of plant arrangement shall have utility for the approved postmining land use. At the time of bond release, such trees and shrubs shall be healthy, and at least eighty percent (80%) shall have been in place for at least three growing seasons. No trees and shrubs in place for less than two growing seasons shall be counted in determining stocking adequacy.

(iii) Vegetative ground cover shall not be less than that required to achieve the approved postmining land use.

(4) Bare areas shall not exceed one-sixteenth (1/16) acre in size and total not more than ten percent (10%) of the area seeded.

(5) Distribution of woody plants within the permit area shall be consistent with the post-mining land use.

(6) Sampling techniques for measuring woody plant stocking and ground cover shall be in accordance with techniques approved by the Office. Actual crop yields shall be used to determine production.

(g) *Roads.* In lieu of the requirements of section 816.150(c) of this chapter, roads shall be designed and constructed or reconstructed in compliance with the following standards in order to control subsequent erosion and disturbance of the hydrologic balance.

(1) *Primary Roads.* (i) Except for existing roads and where lesser grades are necessary to control site-specific conditions, the overall grades shall not exceed lv:10h (10 percent); the maximum pitch grade shall not exceed lv:6.5h (15 percent); and there shall be not more than three hundred (300) feet of pitch grade exceeding ten (10) percent within any consecutive one thousand (1,000) feet of primary roads. In no case shall there by any pitch grade over fifteen (15) percent.

(ii) Culvert spacing shall not exceed one thousand (1,000) feet on grades of zero (0) to three (3) percent, eight hundred (800) feet on grades of three (3) to six (6) percent, five hundred (500) feet on grades of six (6) to ten (10) percent, and three hundred (300) feet on grades of ten (10) percent or greater. Culverts shall be installed at closer intervals than the maximum in this part if required by the Office as appropriate for the erosive properties of the soil or to accommodate flow from small intersecting drainages. Culverts may be constructed at greater intervals than the maximum indicated in this part if approved by the Office upon a finding that greater spacing will not increase erosion.

(iii) Culverts shall be covered by compacted fill to a minimum depth of one foot.

(2) *Ancillary Roads.* (i) Field design methods may be utilized for ancillary roads.

(ii) Where lesser grades are necessary to control site-specific conditions overall grade shall not exceed lv:10h (10 percent). Pitch grade shall not exceed lv:5h (20 percent). There shall not be more than one thousand (1,000) consecutive feet of maximum pitch grade.

(iii) Ancillary roads may meander so as to avoid large growths of vegetation and other natural obstructions.

(iv) Compaction on road embankments shall be only to the extent necessary to control erosion and maintain the road.

(v) Temporary culverts and bridges shall be sized to safely pass the one (1) year, six (6) hour precipitation event.

(h) *Use of Explosives.* In lieu of the requirements of § 816.64(a)(2) of this chapter, all blasting shall be conducted between sunrise and sunset. Blasting may not be conducted at times different from those announced in the blasting schedule except in emergency situations where rain, lightning, or other atmospheric conditions, or operator or public safety requires unscheduled blasts. The Office may specify more restrictive time periods for blasting.

§ 942.817 Performance standards—Underground mining activities

(a) Part 817 of this chapter, Permanent Program Performance Standards—Underground Mining Activities, as modified by paragraphs (b)–(f) of this section, shall apply to any person who conducts underground mining activities in the State of Tennessee.

(b) The permittee shall comply with the site-specific terms of the permit except that references to provisions of the Tennessee State program shall be read to require compliance with the relevant provisions of this part. Where the permit does not specify site-specific standards with which compliance is required, the permittee shall comply with the standards of this Part.

(c) *Diversions.* In lieu of the requirements of § 817.43(a)(4) of this chapter diversion design shall incorporate the following requirements:

(1) Channel lining shall be designed using standards engineering practices to pass safely the design velocities. Riprap shall comply with the requirements of § 817.71(f)(3) of this chapter, except for sand and gravel.

(2) Freeboard shall be no less than 0.3 feet. Protection shall be provided for transition of flows and for critical areas such as swales and curves. Where the area protected is a critical area as determined by the Office, the design freeboard may be increased.

(3) Energy dissipators shall be installed when necessary at discharge points, where diversions intersect with natural streams and exit velocity of the diversion ditch flow is greater than that of the receiving stream.

(4) Excess excavated material not utilized in diversion channel geometry or regrading of the channel shall be disposed of in accordance with §§ 817.71 through 817.74 of this chapter.

(d) *Hydrologic balance: Siltation structures.* In lieu of the requirements of § 817.46(c)(1)(ii)(A) of this chapter, sedimentation ponds shall provide a storage volume of no less than 0.2 acre feet per distributed acre draining into the basin. The Office may approve less sediment storage volumes equal to the sediment calculated to enter the pond between planned cleanout intervals upon submission and approval of a plan for removing sediment from the pond which includes a description of the equipment to be used. The minimum sediment storage volume shall be equal to 0.1 acre feet per disturbed acre.

(e) *Revegetation: Standards for success.* In lieu of the requirements of § 817.116 (b)(1) through (b)(6) of this chapter, the following revegatation success standards and sampling techniques shall be used by the Office.

(1) For areas developed for use as pasture or hay production, the ground cover shall be at least ninety percent (90%) and crop production shall be equal to or greater than the average county yield as stated by the Tennessee Crop Reporting Service for the county in which the permit area is located.

(2) For areas developed for use as cropland, crop production shall be equal to or greater than the average county yield as stated by the Tennessee Crop Reporting Service for the county in which the permit area is located. Adjustment for local yield variation within the county may be made for disease, pests, weather-induced variations, and differences in crop management practices.

(3) For areas developed for wildlife habitat, recreational or forest products, the ground cover shall be at least 80 percent (80%) and the stocking of woody plants shall be at least equal to the rate specified in the approved mining and reclamation plan.

(i) Minimum stocking levels and planting arrangements shall be specified by the Office on the basis of local and regional conditions and after consultation with the State agencies responsible for the administration of forestry and wildlife programs.

(ii) Trees and shrubs that will be used in determining the success of stocking and the adequacy of plant arrangement shall have utility for the approved postmining land use. At the time of bond release, such trees and shrubs shall be healthy, and at least eighty percent (80%) shall have been in place for at least three growing seasons. No trees and shrubs in place for less than two growing seasons shall be counted in determining stocking adequacy.

(iii) Vegetative ground cover shall not be less than that required to achieve the approved postmining land use.

(4) Bare areas shall not exceed one-sixteenth (1/16) acre in size and total not more than ten percent (10%) of the area seeded.

(5) Distribution of woody plants within the permit area shall be consistent with the post-mining land use.

(6) Sampling techniques for measuring woody plant stocking and ground cover shall be in accordance with techniques approved by the Office. Actual crop yields shall be used to determine production.

(f) *Roads.* In lieu of the requirements of § 817.150(c) of this chapter, roads shall be designed and constructed or reconstructed in compliance with the following standards in order to control subsequent erosion and disturbance of the hydrologic balance.

(1) *Primary Roads.*

(i) Except for existing roads and where lesser grades are necessary to control site-specific conditions, the overall grade shall not exceed lv:10h (10 percent), the maximum pitch grade shall not exceed lv:6.5h (15 percent), and there shall be not more than three hundred (300) feet of pitch grade exceeding ten (10) percent within any consecutive one thousand (1,000) feet of primary roads. In no case shall there be any pitch grade over fifteen (15) percent.

(ii) Culvert spacing shall not exceed one thousand (1,000) feet on grades of zero (0) to three (3) percent, eight hundred (800) feet on grades of three (3) to six (6) percent, and five hundred (500) feet on grades of six (6) to ten (10) percent, and three hundred (300) feet on grades of ten (10) percent or greater. Culverts shall be installed at closer intervals than the maximum in this part if required by the Office as appropriate for the erosive properties of the soil or to accommodate flow from small intersecting drainages. Culverts may be constructed at greater intervals than the maximum indicated in this part if approved by the Office upon a finding that greater spacing will not increase erosion.

(iii) Culverts shall be covered by compacted fill to a minimum depth of one foot.

(2) *Ancillary Roads.* (i) Field design methods may be utilized for ancillary roads.

(ii) Where lesser grades are necesary to control site-specific condition, overall grade shall not exceed lv:10h (10 percent). Pitch grade shall not exceed 1v:5h (20 percent). There shall not be more than one thousand (1,000) consecutive feet of maximum pitch grade.

(iii) Ancillary roads may meander so as to avoid large growths of vegetation and other natural obstructions.

(iv) Compaction on road embankments shall be only to the exten necessary to control erosion and maintain the road.

(v) Temporary culverts and bridges shall be sized to safely pass the one (1) year, six (6) hour precipitation event.

§ 942.819 Special performance standards—Auger mining.

Part 819 of this chapter, Special Permanent Program Performance Standards—Auger Mining, shall apply to any person who conducts surface coal mining operations which include auger mining.

§ 942.823 Special performance standards—Operations on prime farmland.

Part 823 of this chapter, Special Permanent Program Performance Standards—Operations on Prime Farmland, shall apply to any person who conducts surface coal mining operations on prime farmland.

§ 942.824 Special performance standards—Mountaintop removal.

Part 824 of this chapter, Special Permanent Program Performance Standards—Mountaintop Removal, shall apply to any person who conducts surface coal mining and reclamation operations constituting mountaintop removal.

§ 942.827 Special performance standards—Coal preparation plants not located within the permit area of a mine.

Part 827 of this chapter, Permanent Program Performance Standards—Coal Preparation Plants Not Located Within the Permit Area of a Mine, shall apply to any person who conducts surface coal mining and reclamation operations which include the operation of a coal preparation plant not located within the permit area of a mine.

§ 942.828 Special performance standards—In situ processing.

Part 828 of this chapter, Special Permanent Program Performance Standards—In Situ Processing, shall apply to any person who conducts surface coal mining and reclamation operations which include the in situ processing of coal.

§ 942.842 Federal inspections.

Part 842 of this chapter, Federal Inspections, shall apply to all exploration and surface coal mining and reclamation operations.

§ 942.843 Federal enforcement.

Part 843 of this chapter, Federal Enforcement, shall apply regarding enforcement action on coal exploration and surface coal mining and reclamation operations.

§ 942.845 Civil penalties.

Part 845 of this chapter, Civil Penalties, shall apply to the assessment of civil penalties for violations on coal exploration and surface coal mining and reclamation operations.

§ 942.855 Certification of blasters.

Part 855 of this chapter, Certification of Blasters, shall apply to any person who conducts coal exploration or surface coal mining and reclamation operations.

[FR Doc. 84-25921 Filed 9-28-84; 8:45 am]

BILLING CODE 4310-05-M

federal register

Monday
October 1, 1984

Part VI

Department of the Interior

Fish and Wildlife Service

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 424

Listing Endangered and Threatened Species and Designating Critical Habitat; Amended Procedures To Comply With the 1982 Amendments to the Endangered Species Act; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 424

Listing Endangered and Threatened Species and Designating Critical Habitat; Amended Procedures To Comply With the 1982 Amendments to the Endangered Species Act

AGENCIES: Fish and Wildlife Service, Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service and the National Marine Fisheries Service (Services) amend Part 424 of Title 50 of the U.S. Code of Federal Regulations in order to comply with changes made in the Endangered Species Act of 1973 (Act) by the Endangered Species Act Amendments of 1982 (Amendments). Part 424 is amended to alter the procedures followed by the Services in determining whether species are endangered or threatened and in designating or revising critical habitat. Changes are made in the treatment of petitions from the public, mandatory time limits for various actions, standards under which determinations are made, and other procedural matters.

EFFECTIVE DATE: This rule takes effect on October 31, 1984.

ADDRESS: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Office of Endangered Species, U.S. Fish and Wildlife Service, 1000 North Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–2771), or Dr. Charles Karnella, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, Washington, D.C. 20235 (202/634–7471).

SUPPLEMENTARY INFORMATION: The Services first adopted regulations governing the listing, delisting, and reclassification of species, and the designation and revision of critical habitat, on February 27, 1980 (45 FR 13022). These regulations are codified at 50 CFR Part 424. The Endangered Species Act Amendments of 1982 became law on October 13, 1982, making several changes in the required procedures to be followed under the Act.

In order to implement the changes of the Amendments, the Services proposed to amend 50 CFR Part 424 on August 8, 1983 (48 FR 36062). Comments were invited at that time from all interested parties, and the comment period on the proposal closed on October 7, 1983.

The present final rule essentially adopts the proposal of August 8, 1983. Some minor changes have been made in response to comments, as discussed below in the Summary of Comments and Recommendations. Some minor editorial changes have been made for the sake of clarity.

In addition the terms "endangered," "threatened," and "critical habitat" are not routinely capitalized in the final rule. This change from past practice is adopted to conform more closely with conventional English usage.

Changes made by the Amendments were designed to ensure that decisions in every phase of the listing process are based *solely* on biological considerations, and to prohibit considerations of economic or other nonbiological factors from affecting decisions regarding endangered or threatened status. The legislative history accompanying the Amendments makes it clear that, although economic considerations are relevant for the designation of critical habitat, such considerations should not be taken into account in deciding whether to list a given species. The listing process has been streamlined by reducing the time periods for adopting rules, by consolidating public meeting and hearing requirements, and by providing for the separation of critical habitat designations from the listing process when appropriate.

After receiving a petition to list, delist, or reclassify a species, the Secretary must now act "to the maximum extent practicable" within a 90-day period to publish a finding that the petition does or does not present substantial information indicating that the petitioned action may be warranted. The requirement to make such a finding within 90 days may be waived only if the devotion of staff resources to petition responses would interfere with actions needed to list other species in greater need of protection. Decisions to take one action rather than another must be made in conjunction with a scientifically-based priority system (such a system is embodied in U.S. Fish and Wildlife Service guidelines published September 21, 1983, 48 FR 43098).

Within 12 months of receiving a petition that presents "substantial scientific or commercial information," the Secretary must publish a proposed rule, determine that the petitioned action is not warranted, or determine that the action is warranted but that other listing, delisting, or reclassification actions preclude the preparation of a proposal. In any case, a notice of such findings must be published in the **Federal Register.** If a negative finding is made with regard to a petition, the finding is subject to judicial review.

The Amendments also provide that the 12-month time period may be extended only if the Secretary can demonstrate expeditious progress on other listings, delistings, and reclassifications. Any petition so extended is treated as if resubmitted, and an additional year is allowed for the required action. The justification for failure to propose an otherwise warranted petitioned species is subject to judicial review. Petitions to list, delist, or reclassify species that were pending at the time of passage of the Amendments are also covered by these new provisions.

Petitions to revise critical habitat, or to designate critical habitat concurrently with a listing, are not required to present economic information relevant to the proposed revision or designation. They will be treated in the same manner as other petitions except that the Services need not propose a revision supported by a petition containing substantial scientific information within 12 months of receipt. Rather, they must publish notice of an intended course of action.

Final action on listing, delisting, or critical habitat proposals now must be taken within 1 year of publication of the proposed rule, instead of 2 years as was previously allowed. A 6-month extension is permissible only if there exists substantial disagreement among specialists regarding the sufficiency or accuracy of the required biological data. This 6-month extension is not permissible to allow additional time to conduct economic or other analyses relating to critical habitat designations.

The Amendments restate the general requirement of concurrent listing and critical habitat designation for a given species but authorize listing without the latter in certain circumstances. If a critical habitat designation is found "not prudent," the listing can become final at any time during the 1-year (or 18-month) period. When scientific and commercial information indicates that prompt listing of the species is essential to its

conservation, but the analysis necessary to designate critical habitat has not been completed, the listing must be made final within the 1-year (or 18-month) period without designating critical habitat; the critical habitat segment of the proposal then would be completed and made final separately.

When critical habitat has been deemed "not determinable" within the 1-year (or 18-month) period, the initial 1-year period may be extended by not more than 1 additional year. At the end of the additional year, or earlier, critical habitat must be determined to "the maximum extent prudent." Revisions may be made as new information becomes available.

Finally, the Amendments require that if the Secretary adopts a rule over the objection of a State conservation agency or fails to take an action petitioned by such an agency, a written justification must be provided to the agency.

Summary of Comments and Recommendations

The Services received comments from the following individuals and organizations: the American Association of Port Authorities (AAPA); the Edison Electric Institute (EEI); the National Wildlife Federation (NWF); the Sierra Club, Hawaii Chapter (HSC); the Western Timber Association (WTA); the Wildlife Legislation Fund of America (WLFA); the Alabama Power Company (APC); Chevron U.S.A., Inc. (CUS); Conoco Inc., North American Production (CNAP); Middle South Services, Inc. (MSS); Texas Utility Services, Inc. (supporting the comments of EEI); the U.S. Department of Agriculture, Forest Service (USDA); the Office of the Assistant Secretary of Defense, Manpower, Reserve Affairs, and Logistics (DOD); the Department of Energy; the Office of Federal Activities of the U.S. Environmental Protection Agency (EPA); the Office of Environment and Energy, Department of Housing and Urban Development; the Office of Food and Natural Resources, Department of State (DS); Dr. Mark K. Johnson, of the School of Forestry and Wildlife Management, Louisiana State University; Mr. Richard W. Klukas, Wind Cave National Park; Dr. Lovett E. Williams; the Colorado River Water Conservation District (CRWCD); the Michigan State Department of Natural Resources; the Department of Environmental Resources of the Commonwealth of Pennsylvania; and the Office of Planning and Budget, State of Utah. Joint comments were submitted by the Environmental Defense Fund, Defenders of Wildlife, the Center for Environmental Education, the Humane Society of the United States, the Natural Resources Defense Council, the Friends of the Sea Otter, and the National Audubon Society (EDF).

Many comments expressed general approval of the proposal. Comments of a general nature are addressed below. More specific recommendations and responses follow, organized by the sections of the proposed rule to which they refer.

CUS, noting the Amendments' intention to expedite decisions on listings and delistings, encouraged the Services to avoid using the full time allotted to issue rules, and to especially avoid extensions of listing deadlines. The Services agree with the rationale presented in this comment, that both the species involved and industry project planning are best served by expeditious determinations of species' status. The Services intend listings and delistings to be processed as quickly as possible, consistent with the need to consider carefully all information in formulating rules. It is intended that the provisions for extending deadlines, contained in both the Act and the present procedural rules, will be invoked rarely and only in cases of real need to do so.

EDF expressed concern that determinations regarding the substantiality of petitions not be made according to the listing priority system previously published by the U.S. Fish and Wildlife Service (48 FR 43098, September 21, 1983). The Services regret any impression that may have been given in the preamble to the proposed listing regulations that determinations of substantiality of petitions would follow that priority system. Although considerations of priority may preclude prompt actions in response to petitions, it is not intended that they will affect the substantive finding that must be made regarding substantiality or the later finding that a petitioned action is or is not warranted.

EDF also recommended that a declaration be made that, "species the subject of 'pending proposals' previously withdrawn may be reproposed without regard to when the biological information was developed." The Services consider that this position is clear both in the amended Act and in the proposed regulations. Species withdrawn for purely administrative reasons under the 2-year limit on proposals, which is no longer contained in the Act, may be reproposed whenever information is available to support such a proposal.

Comments expressed contrary opinions with regard to the timing of critical habitat designations. Three (Dr. Gilbert, Mr. Klukas, WTA) held that delaying designation of critical habitat until after the listing of a species would likely benefit the species by expediting listing, while three others (AAPA, CRWCD, HSC) recommended that such designation regularly be concurrent with listing. The Services appreciate the concerns of those who believe that definition and designation of critical habitat in most cases slows the listing process. Although Congress, in passing the Amendments, clearly expressed the intention that the economic considerations connected to critical habitat designation not delay listing, other elements of the designation process clearly slow the pace of listing species. The Services also are aware of the concern that, if critical habitat is not designated concurrently with the listing of a species, potential conflicts may not be identified early enough to be satisfactorily resolved, or important areas of habitat may be inadvertently destroyed. It should be noted, however, that the Services may notify affected organizations and individuals of the habitat needs of species without going through the formal designation of critical habitat.

In making decisions regarding the timing and advisability of critical habitat designations, the Services will apply the requirements of the Act in a reasonable fashion. Legislative history makes clear that Congress intended designation of critical habitat to be beneficial to the conservation of species. Experience has shown, nevertheless, that precise identification of habitat of vulnerable species carries inherent risks of vandalism and taking. In some cases, these risks can be controlled through vigorous enforcement of Section 9 of the Act. In other cases, because of enforcement difficulties, or because no violation of Section 9 may be involved (as in taking of plants on non-Federal land or the destruction of plants even on Federal land without their reduction to possession), designation of critical habitat may have a net adverse effect on a species. It is this net effect, taking into account potential risks and benefits of a particular designation, that will guide the Services in decisions regarding the prudence of a particular designation. The timing of critical habitat designation is explicitly mandated in the Act, along with the possibility of deferring action for a limited time after listing a species when critical habitat is judged not to be determinable concurrently with listing. The latter deferral of designation can allow listings to go forward in a timely manner and critical habitat to be designated later. The Services believe

that these provisions of the Act are accurately reflected in the proposed and final listing regulations.

HSC recommended that provisions be made to include as part of the critical habitat "* * * those portions of the historic range of an endangered species which are still suitable for the species but, because of one or more perturbations to it, no longer occurs there but almost certainly could if such perturbations were removed or adequately ameliorated." The Services note that the Act and the listing regulations allow designation of areas outside the known range of a species when such areas are essential to the species' conservation. These provisions adequately allow for critical habitat designations in unoccupied portions of a species' historic range.

CRWCD recommended that, "* * * where a species listing proposal is known to conflict with a water (or other) resources development project, the agencies should consult closely with the affected entity." The Services agree that early contact and sharing of information with affected entities is desirable and is in the best interests of candidate species as well as sound project planning.

Subpart A—General provisions

Section 424.02 Definitions.

(b) *"Candidate"*—Several commenters (CUS, EDF, NWF, USDA) requested clarification of this term, particularly to differentiate between a candidate species being considered for listing and a species that has already been proposed to be listed. The definition has been altered in the final rule to make this point clear. As stated in the proposed rule, this term is included and defined to reflect the Fish and Wildlife Service's current practice of issuing consolidated notices of review, in which such species are identified.

(c) *"Conservation, conserve, and conserving"*—NWF recommended that this definition be altered to conform to that proposed to be placed at 50 CFR 402.2 (48 FR 29998, June 29, 1983). The Services believe that the two definitions are essentially equivalent and, inasmuch as that proposed at § 424.02 precisely follows the definition contained in the Act, this version is adopted here.

(d) *"Critical habitat"*—CNAP recommended that this definition be altered to require that a positive showing be made (presumably that an area designated is essential to a species' conservation) if critical habitat extends beyond the area actually occupied by a species, and that multiple-use management of critical habitat be provided for. The Services consider both recommendations to fall outside the scope appropriate for a definition. The former is adequately addressed in § 424.12(e). The latter recommendation is consistent with the provisions of the Act and policies of the Services. No limitation, express or implied, on multiple use of areas designated as critical habitat is contained in the Act or has been imposed by the Services, so long as such multiple use is consistent with section 7(a)(2) of the Act.

(e) *"Endangered species"*—CNAP indicated that, to be endangered, a species must be in danger of extinction throughout all or a significant portion of its range, and expressed concern over the, "* * * unjustified listing of subgroups or subspecies by location of a plentiful species (e.g., Tennessee River tributary 'snail darter' and 'Houstonian [sic] toad')." The Services note that both the snail darter (*Percina tanasi*) and the Houston toad (*Bufo houstonensis*) are recognized as full species and listed throughout their ranges. The Services further note that the Act explicitly allows for the listing of infraspecific taxa and, in the case of vertebrate species, populations as well. Thus, any change in this definition that would exclude such entities would be in conflict with the clear provisions of the Act.

(g) *"Plant"*—NWF recommended that this definition be altered to make it conform more closely to the definition of "wildlife" or "fish and wildlife" at § 424.02(n). The Services accept this recommendation for the sake of clarity and uniformity. The definition has been altered in the final rule. This is not viewed as a substantive change, inasmuch as the Services have always interpreted the two definitions as being comparable in scope.

(i) *"Secretary"*—CNAP questioned the appropriateness of having an authorized representative empowered to serve in the place of the Secretary in all cases. The representative referred to is an individual with clearly delegated authority from the Secretary to undertake the actions covered by this rule. Nothing in the Act hinders such a delegation. At present, these authorities have been delegated to the Assistant Secretary of the Interior for Fish and Wildlife and Parks, and the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce.

(k) *"Species"*—Dr. Williams suggested that the Services consider defining this term so that it does not use the term "subspecies," because of the lack of consensus among biologists as to its precise meaning and significance, and because of the likelihood that it would be misinterpreted by individuals lacking an adequate background in biology. The Services appreciate the possible uncertainty that could arise if the term "subspecies" were not interpreted carefully. However, the Act specifically includes this term within its definition of "species," so that its exclusion from the regulatory definition would not be warranted. The Services are confident that they have access to sufficient biological expertise to ensure that the definition of "species" will be interpreted in a manner consistent with accepted biological principles.

Several additional terms were suggested by NWF for inclusion and definition in this section. These were "maximum extent practicable," "promptly," "proposed species," and "substantial information." The Services believe that the first two of these are not used in the regulations in any specialized sense that differs from their common meanings, and that regulatory definition is unnecessary. "Proposed species" was recommended for inclusion solely to draw a distinction between it and "candidate." Inasmuch as this distinction is made in the altered definition of "candidate" finally adopted, the inclusion and definition of a new term is not necessary. The term "substantial information" has specific applicability to findings necessary with regard to petitions. Because of this specific and narrow applicability, it has been defined in § 424.14(b). Inclusion of this definition in § 424.02 is unnecessary and could be misleading.

Subpart B—Revision of the lists

Section 424.10 General.

EDF recommended that this section be broadened to extend the new petition procedures to petitions to designate experimental populations or to treat species as if listed because of similarity of appearance. The Services believe that Congress clearly expressed its intent with regard to the scope of the amended petition provisions, and applied different requirements to each class of petitions covered by the Act. Inasmuch as no provision was made to subject either experimental populations or similarity-of-appearance cases to specific listing procedures under the Act, the Services consider it appropriate to treat such petitions, if received, only under the relevant provisions of the Administrative Procedure Act (5 U.S.C. 553), as opposed to subsections 4 (a) and (b) of the Endangered Species Act.

Section 424.11 Factors for listing, delisting, or reclassifying species.

CNAP responded to this section that, "We do not agree that Congress in using the phrase 'solely on the basis of the best scientific data available to him' (ESA, section 4(b)) ever intended that every scarce creature or plant should be protected at all costs!" The Services note that the listing provisions of the Act, and the regulations intended to implement them, address the identification by the Secretary of species that qualify for the Act's protection. Insofar as these provisions consider the status of a species, Congress has clearly indicated its intention that any costs of eventual protection not be considered as part of the identification and listing process. The exemption procedures in section 7 of the Act are intended to effect any balancing of the costs involved against the value of protecting a species. These provisions of section 7, however, are completely independent of the identification and listing of species that are unlikely to survive without protection under the Act.

Dr. Williams questioned the possibility, allowed in § 424.11(a), of listing taxonomic groups of rank higher than species, noting that, "Taxa above the species level are not biological entities—they are merely components in somebody's classification scheme that reflects their beliefs concerning evolutionary affinities." The Services wish to clarify the intention, stated in the proposed and final regulation, that taxonomic groups at a rank higher than species will be listed only if all their constituent species individually meet the terms of the Act for listing. Listing of the taxon of higher rank then serves as a "short-hand" means of listing all its constituent species.

APC recommended that § 424.11(b) be altered to conform more closely to the wording of section 4(b)(1)(A) of the Act, by adding the material proposed to be located at § 424.11(f) and deleting the phrase "* * *" without reference to possible economic or other impacts of such determination." The Services believe that no substantial change would result from adoption of such a recommendation, and that the rule as proposed more clearly expresses both the provisions of the Act and the instructive language of the Conference Report on the Amendments than would the recommended alternative.

CRWCD indicated concern that "* * * too little emphasis may have been given in the past to the quality and validity of the biological information used by agencies in the listing process." They noted the provision of § 424.11(b) requiring that the Services formulate listings based on the best available scientific and commercial information and recommended that listing decisions not be made on, "* * * shaky scientific foundations or biased analyses." The Services agree that listing decisions should not be made on the basis of faulty or inconclusive information, and affirm their intention to comply fully with relevant provisions of the Act and these regulations. It is their intention to base all listing decisions on the best information available to them when such decisions are made.

EPA recommended that language be added to the preamble of the final rule to clarify why a more precise definition of time is not included in § 424.11(d), which describes the period of time necessary to establish that a listed species has become extinct. The comment expressed understanding that this length of time might vary among the species concerned, in that some species are more cryptic than others. The Services agree and note that survey techniques appropriate to a given species in determining whether it has become extinct will require varying lengths of time to carry out. The Services intend to base delistings due to extinction upon conclusive evidence appropriate for the species in question.

EPA also recommended that § 424.11(d)(2) be altered to make it follow more closely the language of section 4(b)(1)(A) of the Act. This recommendation is accepted, and the final rule is so altered.

Section 424.12 Criteria for designating critical habitat.

CNAP expressed the opinion that, "* * * there must be a positive showing of need before a critical habitat larger than that currently occupied by the species to be protected can be designated." The Services agree that any designation of critical habitat must be based on a finding that such designated area contains features that are essential in order to conserve the species concerned. This finding of need will be a part of all designations of critical habitat, whether or not they extend beyond a species' currently-occupied range.

EEI supported the Services' intention to protect species from "* * * harm that might result if critical habitat were publicized." Nevertheless, the Institute recommended that private parties contemplating development or other activities be provided with information as to whether "non-designated critical habitat" could be affected. The Services note that the term "critical habitat" is not properly applied to an area that has not been formally designated as such by regulation. However, the Services intend to inform private parties of the habitat needs of listed species whenever a potential conflict is identified between contemplated development and the species' conservation, regardless of whether critical habitat has been designated for such species.

EPA recommended that criteria and examples of cases be provided in which it would not be prudent to designate critical habitat because designation would not be beneficial to the species concerned. The Services believe that such decisions must be made on a case-by-case basis. Because of the variations in circumstances, it is not possible to formulate strict criteria according to which decisions regarding the prudence of a critical habitat designation might be made. Nevertheless, it is possible to note some general considerations that may contribute to such decisions. As noted above in response to more general comments, the Services will examine the balance between risk to a species that might be a consequence of designating its critical habitat and benefits that the species might derive from such designation. The risks may be immediate and obvious, such as the taking of a species that has demonstrated commercial value, or more speculative, such as vandalism to a species' habitat as a consequence of wide public notification of its precise boundaries. Experience has also shown that listing of a species may stimulate commercial demand that could not have been predicted beforehand, and that designation of critical habitat may generate public antagonism that could lead to vandalism. Such possibilities will be considered in determining whether a particular designation of critical habitat is prudent. To the extent possible, the Services will attempt to undertake only those regulatory actions of net benefit to the conservation of species and their habitats. In those cases in which the possible adverse consequences would outweigh the benefits of designation of critical habitat, the Services may forego such designation as matter of prudence.

Dr. Williams suggested that designation of critical habitat not be considered determinable, "When habitat requirements are superfluous to the recovery requirements of the species." He noted that this would be appropriate in cases of species affected by such threats as pesticides, exotic animals, or hunting. The Services believe that such classes of threats are often related to habitat in the broad sense, noting that

the presence of a pesticide is an element of the habitat occupied by a species. In any event, such considerations are more properly addressed in determining whether designation is prudent, rather than whether critical habitat is determinable. In cases in which critical habitat designation would not be of benefit to a species, the Services believe that sufficient discretion exists under the Act and § 424.12(a)(1) to forego designation on grounds of prudence.

AAPA recommended deletion of proposed § 424.12(a)(2)(ii), because they failed to, "* * * see how a species can be determined to be endangered if its biological needs are not sufficiently well-known to allow identification of its critical habitat needs." The Services believe that it is possible to determine that a species is endangered or threatened, on the basis of its known and documented decline or evidence of threats to it, without knowing what precise habitat resources the species requires for survival and recovery. This is one reason for which the "determinable" standard was inserted by the Amendments and is reflected, with explanation, in the proposed and final regulations.

EEI recommended that § 424.12(e) be modified to allow designations of critical habitat outside the present geographical range of a species only when such designation is required to prevent the species' extinction. The Services believe that such a change would be inconsistent with the Act's purpose of conserving and recovering species as well as the definitions of critical habitat contained in the Act and these regulations, both of which allow designation of critical habitat beyond a species' known range when such designation is essential for the species' conservation. The Services also disagree with EEI's further statement in this regard that extensions beyond a species' present range are unlikely to occur without artificial assistance, and that such additions to critical habitat are more properly considered under those portions of the Act and proposed regulations treating experimental populations. Designations of critical habitat outside current range are normally undertaken when essential to a species' conservation and to provide for natural range expansion into adjacent suitable habitat or to assure proper management of resources. Neither of these cases is appropriately addressed under provisions governing the establishment of experimental populations.

APC recommended that provisions regarding analysis of impacts of critical habitat designation, proposed to be located at § 424.19, be relocated to § 424.12(c). The Services consider this inadvisable inasmuch as § 424.12 deals with both proposed and final rules to designate critical habitat. Current procedures call for the consideration of economic impacts only after publication of a proposed rule, so that placement of the relevant provisions in § 424.12 would be inappropriate. The final version of § 424.19 has been altered to reflect the proper timing of analyses of critical habitat designations. Reference to the economic considerations for final rules has been included in § 424.12.

EDF recommended that the Services, "* * * not foreclose the authority to designate critical habitat in foreign countries," as proposed in § 424.12(h). The Services believe that the clear instruction of the House Committee on Merchant Marine and Fisheries, contained in its report on the Amendments and implicitly accepted by the Committee of Conference, must control any consideration of designating critical habitat in foreign countries. The House report noted with approval an opinion of the Office of the Solicitor, Department of the Interior, that the Act does not contain authority to designate critical habitat in areas outside U.S. jurisdiction. Given this clear instruction in the legislative history of the Amendments and the original 1973 Act, the Services perceive no discretion to interpret the Act otherwise, and have retained § 424.12(h) in the final rule in order to clarify their position in this regard.

Section 424.13 Sources of information and relevant data.

NWF commented that the statement in the proposal that, "[T]he last sentence of this section would be deleted because a similar provision is proposed to be added to § 424.11(d)," was misleading and incorrect. The Services agree; the reference should have been to § 424.11(c). Inasmuch as this error was part of the section-by-section analysis, rather than the text of the proposed rule, no change in the final rule is necessary. The Services regret any misunderstanding that might have arisen.

EPA recommended that this section be revised to require that the Secretary consult with individuals, agencies, or sovereign nations whenever a specific interest in a species is known to exist on the part of such entities, rather than requiring such contacts only "as appropriate." The Services note that this provision was originally included in § 424.13 to reflect a former provision of section 4(b)(1) of the Act. Although the relevant portion of the Act was removed by the Amendments, the Services have retained the provision for consultation with affected parties. In the absence of any legislated requirement in the amended Act, however, the Services consider it inappropriate to make this provision any more stringent than it was in the proposed version.

Dr. Johnson suggested that the phrase, "if available" be inserted at the beginning of the second sentence of § 424.13, so that the Secretary may review only those data that are available. Inasmuch as a substantive review can only address information that is in hand, the Services believe this qualification to be unnecessary.

CNAP expressed the opinion that "interested parties" must specifically include any person affected by the proposed designation. The Services agree that such persons should be consulted in formulating any proposed change in the lists, and intend to do so. Inclusion of such a statement in the regulations, however, would imply that *only* such persons are to be consulted, and thus would tend to limit the scope of interested parties that might be consulted. The Services believe that such implied limitation would be inadvisable.

Section 424.14 Petitions.

NWF questioned the basis for applying different standards to petitions dealing with critical habitat than those applied to petitions regarding a species' listing. Section 4(b)(3) of the Act explicitly prescribes the different standards to be applied to such petitions; the Services follow the clear language of the Act in this case.

Dr. Johnson suggested that § 424.14(a) be altered to require that a petition contain substantial scientific or commercial information. The Services note that the paragraph in question is intended to identify those elements that must be included in a document for it to be considered a petition. Inasmuch as the Act requires that petitions be evaluated to determine whether they contain such substantial information, it would be contradictory to require such information in order for a document to be considered to be a petition.

NWF requested that a provision be added to this section to require the Secretary, when making a negative finding under § 424.14(b)(1), to so notify the petitioner in writing and explain any deficiencies of information in the petition, so that it could be corrected and resubmitted. Although the Services will notify petitioners of findings and point out the basis on which negative

findings are made, it may not be possible in all cases to furnish a petitioner with specific points of information that might be added to a petition in order for it to provide substantial information. The finding rests not on any artificial compliance with the general guidance of § 424.14(b)(2)(i)–(v), but upon a reasoned evaluation of the information presented and a judgment of whether or not it is sufficient to warrant a review of a species' status. As an example, a petition that failed to adequately establish the existence of a threat to a species recommended for listing could be judged not to have presented substantial information, but it would not necessarily be possible for the Services to detail the precise kinds of information that would be sufficient to document such threat. Because of the speculative nature of any such explanation, the Services do not consider it advisable to establish it as a requirement.

NWF also objected to § 424.14(b)(2)(i)–(v) as proposed, holding that the considerations presented would not always be germane or necessary to the evaluation of a petition. NWF therefore advocated inclusion of an additional paragraph stating that, "Items (b)(2)(i–v), while usually necessary for petition evaluation, shall not be required to demonstrate substantial information." The Services agree in principle with this comment, but do not believe the rule as proposed is unclear on this point. The paragraphs in question are intended only to provide a general guide to the kinds of information the Services believe are necessary to evaluate a petition. They do not establish strict requirements that must be met in order for a petition to be considered substantial, so that a specific qualification of the sort advocated by NWF would be unnecessary.

APC recommended that, in addition to the types of information to be considered in determining whether a petition presents substantial information under § 424.14(b)(2)(ii), the Secretary consider whether a petition describes, "* * * the features of economic and biologic importance of any recommended critical habitat."

The Services note that the Conference Report on the Amendments expressed the intention that petitioners not be required to provide economic information, other than evidence of trade, if any, in connection with a petition to list or delist a species or a petition to revise critical habitat. Thus, it would be inappropriate to require such information among that to be considered under § 424.14(b)(2). Proposed § 424.14(b)(2)(iii) was concerned with information bearing on the appropriateness and extent of any critical habitat designation recommended in a petition primarily concerned with the determination of a species' status. The Services believe that proposed paragraph (iii) adequately outlined the types of information to be considered in evaluating a recommended critical habitat designation on biological grounds. However, to make clear that such information need not be included in a petition in order for it to satisfy the requirement to present substantial information, the proposed paragraph has been removed from the list of considerations to be examined in determining substantiality. The information regarding the concurrent designation of critical habitat is requested from each petitioner but not required in two new concluding sentences to § 424.14(b)(2). The Act's requirement that the Secretary consider economic impacts of such a designation is interpreted as applying directly to the Services, and is not necessarily to be addressed in a petition in order for that petition to be judged substantial.

NWF commented in reference to § 424.14(b)(3) that, "* * * the proposed regulations do not discuss what happens when the Secretary makes a negative finding on a petition, and they completely ignore the judicial review process * * *." Section 424.14(b)(1) requires that any negative 90-day finding on a petition be published in the **Federal Register** with notification being sent to the petitioner. Such publication and notice will constitute the Services' final action with regard to such a petition. The Services recognize the mechanism established by the Amendments to provide judicial review of findings on petitions. This mechanism is in place and available independently of the regulations adopted in Part 424, which are intended to prescribe the procedures to be followed by the Services in implementing the Act. It would appear to be inappropriate and superfluous to provide for such review in the present regulations. The statute speaks for itself.

NWF requested that provisions be made in § 424.14(c) for notification to a petitioner to explain the reason for rejecting a petition to revise critical habitat. The Services note that notice of any negative finding under § 424.14(c) must be published in the **Federal Register.** As noted above in reference to § 424.14(b), the Services intend to notify a petitioner of the reasons for any negative finding regarding substantiality. Nevertheless, it would not be possible to detail in every case the exact type of additional information that would be required to make a positive finding, and the Services do not consider it advisable to mandate such explanation by regulation.

NWF also requested that a provision be added to § 424.14(c) that would make clear that a petition to revise critical habitat is not required to present economic information relevant to the revision recommended. The Services consider it to be clear that no such information is solicited in connection with any class of petition, and thus believe it to be unnecessary to expressly state that such information need not be provided by a petitioner. However, although the Services may not require the submission of economic data with a petition to revise critical habitat, they must consider the economic and other impacts of specifying a particular area as critical habitat before issuing a final rule.

APC recommended that § 424.14(c)(2) refer back to § 424.12(b) in setting out the types of information that must be considered in determining whether a petition to revise critical habitat presents substantial information, rather than establishing the separate standards proposed to be placed at § 424.14(c)(2)(i) and (ii). The Services believe that the standards applied to petitions are sufficiently different from those governing the overall designation of critical habitat that it could be confusing to accept APC's recommendation, and could imply that a higher standard would be applied in judging substantiality of such petitions than is intended by the Act. A petition may fall short of supplying all the information that would be necessary to issue a proposed rule, but still be judged to present substantial information indicating that a revision of critical habitat may be warranted. Inasmuch as the criteria of § 424.12 are aimed at the information needed by the Services to allow them to propose a rule, such critieria would be unnecessarily burdensome if applied to petition findings.

APC also recommended that § 424.14(d) be altered to include a statement that the Secretary designate critical habitat on the basis of the best scientific data available and after taking into consideration the economic and other impacts of the designation. The Services do not believe such a provision would be appropriately placed in § 424.14(d), which deals with petitions to designate critical habitat. The substance

of the recommendation is already provided for in §§ 424.12 and 424.19.

NWF requested that § 424.14(d) be expanded to indicate information standards, time limitations, and appeal provisions for petitions to designate new critical habitat. Because the Act imposes no specific standards for such petitions, the Services see no necessity to adopt such standards administratively. Properly considered, the Act's specific petition procedures appear to be intended as an attention-calling device to ensure that the Services take prompt and appropriate action when newly notified of a situation affecting the welfare of a species or of the apparent inappropriateness of some past listing or designation of critical habitat. Because consideration of designating critical habitat is an integral part of the process of listing a species, it is unlikely that a petition to designate critical habitat for a listed species will be intended to call the Services' attention to a situation of which they were previously unaware. It thus makes sense not to treat petitions to designate critical habitat under standards as stringent as those applied to other petitions.

Section 424.15 Notices of review.

CUS requested a clarification of what was meant by the statement that, "No legal consequences shall arise under the Act as a result of the designation of a species as a candidate for listing." This statement was intended to make clear that species so identified, but not proposed for listing, are not subject to the protections or prohibitions of the Act under sections 7 and 9.

HSC recommended that candidate species be given some legal protection to prevent destruction of the species or their habitats before a listing decision is made. The Services note that the Act makes no provisions for the legal protection of candidate species, and thus none can be afforded in these rules. Nevertheless, it is the belief of the Services, as also recommended by EDF, that such species should be taken into consideration in environmental planning under such laws as the National Environmental Policy Act. Such consideration, however, is not appropriately included in the present rule, which is intended only to govern listing procedures under the authority of the Endangered Species Act.

The Department of State requested that an alteration be made in the notification provisions of this section to ensure that notifications to foreign countries be made through the Secretary of State. This correction has been made in the final rule.

Section 424.16 Proposed rules.

NWF questioned the advisability of including a map in all proposals of critical habitat because of the possibility of thereby increasing the threat to a species by making public the area in which it occurs. When publication of maps would increase threats to species, the Services intend to forego entirely the designation of critical habitat as not prudent. Critical habitat designation will be proposed, and detailed maps published, only when it is judged that such designation will be to the net benefit of the species involved.

AAPA supported the provision contained in § 424.16(c)(1)(ii) for notifying local authorities, but recommended that it be broadened to include all jurisdictions within a local area. The Services intend to notify all known affected local authorities of proposed rules. Section 424.16(c)(1)(iii) has been modified to express this intent.

EPA requested that this section require notification of all appropriate Federal agencies. A provision has been added to the final rule at § 424.16(c)(1)(iii) to make clear that the Services will notify Federal agencies as well as private individuals and organizations known to be affected by a proposal. This is in keeping with existing administrative practice.

The State of Utah requested that provisions be made in § 424.16(c)(1)(vi) for publication of notice of any proposed rule in appropriate scientific journals. The Services note that § 424.16(c)(1)(v) requires notification of appropriate scientific organizations, as required in the Amendments. The Services believe that this provision adequately allows for notification of the scientific community.

NWF requested that § 424.16(c)(2) specifically provide that a comment period may be extended for good cause. The Services note that the paragraph in question provides only minimum periods for public comment, without any express or implied limitation of the maximum period that may be allowed. Nevertheless, the paragraph has been modified in the final rule in order to clarify the Secretary's discretion to extend or reopen a comment period on a proposed rule.

NWF also pointed out that the legislative history of the Amendments indicates that more than one public hearing may be held in connection with a proposed rule. Although the Services do not believe the proposed rule necessarily implied any limitation on the Secretary's discretion to hold more than one hearing, the final version of § 424.16(c)(3) has been modified to make this point clear.

Section 424.17 Time limits and required actions.

EDF requested that § 424.17(a)(1)(iii) (now at § 424.17(a)(1)(iv)) be expanded to indicate that the substantial disagreement concerning the sufficiency or accuracy of data, upon which a 6-month extension may be based, must be a disagreement among scientists knowledgeable about the species in question. The Services agree that this was the intention of the Amendments, and have modified the final rule to make this clear.

NWF recommended that the clarity of the rule would be improved if §§ 424.17(a)(1) (iii) and (iv) were reversed in order. The Services agree and have so modified the final rule.

Section 424.18 Final rules—general.

NWF recommended two minor changes in this section: (1) Specification that a final rule would take effect 30 days after publication, rather than, "not less than" 30 days, and (2) substitution of "proposed regulation" for "regulation" in § 424.18(c). In the first case, the Services note that final regulations adopted pursuant to Part 424 ordinarily do take effect 30 days following publication, but prefer not to make this a regulatory requirement. The second recommendation would conflict with the provisions of the Act as amended, which deal with the adoption, rather than proposal, of a regulation. The paragraph remains as proposed.

WLFA recommended that any justification provided a State agency under § 424.18(c) be required to, "* * * set forth the reasons that the State agency's position was rejected, in sufficient detail and with sufficient supporting data, that the agency may have an evidentiary basis for comparing its position with that of the Secretary." The Services do not believe that Congress intended to establish such a strict standard for justifications to State agencies. Rather, the Services interpret this provision of the Act to provide that State agencies be adequately informed of the basis for any action that is not in agreement with that agency's recommendation. Section 424.18(c) remains in the form proposed.

Section 424.19 Final rules—impact analysis of critical habitat.

MSS recommended that provisions for considering economic and other impacts of critical habitat designations be relocated to § 424.12, because the proposed placement, "* * * diminishes the weight to be given economic impacts in the designation of Critical Habitats."

The Services deliberately placed the substantive consideration of economic impacts of critical habitat designation in a section apart from that discussing the biological criteria for designating critical habitat. This was done in response to the expressed intent of Congress that economic considerations not affect or delay the listing of species. In that designations of critical habitat are customarily included in rules that list species, the consideration of economic impacts before issuance of a proposed rule could inappropriately delay proposal. Once a rule is proposed, however, the Services are ordinarily required to take final action within 1 year and, if economic analyses are not yet complete, must extend the critical habitat portion of a rule while making the listing final. Thus, if economic impacts are not considered until after the proposal stage, the possibility that economic considerations will prevent the listing of a species is reduced. The Services do not believe this represents a diminution in the weight given to the consideration of the economics of a designation, consideration of which will be completed once a proposed listing has been published. Moreover, since the Services expressly solicit public comment on the economic consequences of a given critical habitat proposal, the Services will have the benefit of such comments as they develop a final rule.

EPA requested clarification of the intended scope and methodology of any economic analysis performed on a designation of critical habitat, specifically asking whether environmental as well as economic impacts would be addressed and whether standard cost-benefit techniques would be used. EPA recommended that both classes of impacts be addressed and that the analytical methodology be cited in the final rule. The Services intend that analyses performed under this section will be focused primarily on the economic costs associated with designation, which was the intent of Congress in requiring such analyses. Consideration of biological impacts of critical habitat designation are more properly addressed in determining whether designation is prudent and will be of benefit to a species. The methodology and specific techniques employed have been developed and refined since economic considerations were first required by the 1978 Amendments to the Endangered Species Act. To fully address the issues at hand, these procedures must vary according to the specific area under review. Impacts should not be expected to remain static or to apply uniformly to all cases.

The Services' consideration of economic and other impacts resulting from the designation of critical habitat will cover all activities affecting or affected by the proposed critical habitat designation. The best available data on economic and other impacts must be gathered on the full scope of proposed critical habitat to assist the Services in determining whether adjustments should be made before the critical habitat designation is made final.

EPA requested that this section and § 424.12 be cross-referenced. For the reasons mentioned above in reply to a recommendation from MSS, the Services believe that it is advisable to keep separate the biological and economic considerations that lead to a final designation of critical habitat.

EPA also recommended that the provision of this section that prohibits the Secretary from excluding any area from critical habitat if so doing would result in extinction of the species concerned be altered to prohibit exclusion if so doing would "preclude the recovery of the species." The Services appreciate the inconsistency between the discretion allowed the Secretary in excluding areas from critical habitat and the stated purpose of the Act of providing not only for the survival of species, but for their recovery as well. Nevertheless, the Services must follow the provision of the Act that allows exclusions of certain areas from critical habitat so long as it will not result in extinction of the species concerned. It should be noted that this provision is permissive rather than prescriptive, and does not *require* exclusion of an area from critical habitat under any given set of circumstances.

Section 424.20 Emergency rules.

NWF recommended that this section include a provision that would require the Secretary to, "* * * publish emergency rules in the **Federal Register** within 10 days after they are issued [sic] * * *." The Services assume that this is intended to mean that emergency rules should be published within 10 days after being approved by the Secretary, inasmuch as issuance and publication are the same. The Services intend that emergency rules be published as quickly as possible after approval, but see no need to make this a regulatory requirement.

DOD recommended that this section contain a requirement to notify concerned Federal land managers of emergency rules. The provision for notification of State agencies of emergency rules is adopted directly from the Act. The Services do routinely notify affected Federal agencies as well when adopting emergency rules, but do not believe it necessary to make this a regulatory requirement, since inadvertent failure to comply with such a required notification could then cast doubt on the validity of a rule. Nevertheless, the Services will endeavor to notify Federal land managers of such emergency rules to the maximum extent possible.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The Department of the Interior, as lead agency in the development of this rule, has determined that it is not a major rule as defined by Executive Order 12291; that the rule would not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act (Pub. L. 96–354); and that the rule does not contain any information collection or recordkeeping requirements as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

National Environmental Policy Act

The Fish and Wildlife Service has determined that these proposed regulations are categorically excluded from National Environmental Policy Act (NEPA) requirements (Part 516 of the Departmental Manual, Chapter 6, Appendix I, section 1.4A.(3) categorically excludes the issuance of regulatory procedures when the impacts are limited to administrative or technological effects). This rule is procedural in nature, adopted in strict, non-discretionary compliance with the Amendments and will have no independent environmental consequences.

Author

The principal author of this rule is Dr. John J. Fay, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975).

List of Subjects in 50 CFR Part 424

Administrative practice and procedure, Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, Part 424 of Chapter IV of Title 50 of the U.S. Code of Federal Regulations is revised to read as set forth below:

PART 424—LISTING ENDANGERED AND THREATENED SPECIES AND DESIGNATING CRITICAL HABITAT

Subpart A—General Provisions

Sec.
424.01 Scope and purpose.
424.02 Definitions.

Subpart B—Revision of the Lists

424.10 General.
424.11 Factors for listing, delisting, or reclassifying species.
424.12 Criteria for designating critical habitat.
424.13 Sources of information and relevant data.
424.14 Petitions.
424.15 Notices of review.
424.16 Proposed rules.
424.17 Time limits and required actions.
424.18 Final rules—general.
424.19 Final rules—impact analysis of critical habitat.
424.20 Emergency rules.
424.21 Periodic review.

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. § 1531 *et seq.*).

Subpart A—General Provisions

§ 424.01 Scope and purpose.

(a) Part 424 provides rules for revising the Lists of Endangered and Threatened Wildlife and Plants and, where appropriate, designating or revising their critical habitats. Criteria are provided for determining species to be endangered or threatened and for designating critical habitats. Procedures for receiving and considering petitions to revise the lists and for conducting periodic reviews of listed species also are established.

(b) The purpose of these rules is to interpret and implement those portions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), that pertain to the listing of species and the determination of critical habitats.

§ 424.02 Definitions.

(a) The definitions of terms in 50 CFR 402.02 shall apply to this Part 424, except as otherwise stated.

(b) "Candidate" means any species being considered by the Secretary for listing as an endangered or a threatened species, but not yet the subject of a proposed rule.

(c) "Conservation," "conserve," and "conserving" mean to use and the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

(d) "Critical habitat" means (1) the specific areas within the geographical area currently occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (i) essential to the conservation of the species and (ii) that may require special management considerations or protection, and (2) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species.

(e) "Endangered species" means a species that is in danger of extinction throughout all or a significant portion of its range.

(f) "List" or "lists" means the Lists of Endangered and Threatened Wildlife and Plants found at 50 CFR 17.11(h) or 17.12(h).

(g) "Plant" means any member of the plant kingdom, including, without limitation, seeds, roots, and other parts thereof.

(h) "Public hearing" means an informal hearing to provide the public with the opportunity to give comments and to permit an exchange of information and opinion on a proposed rule.

(i) "Secretary" means the Secretary of the Interior or the Secretary of Commerce, as appropriate, or their authorized representatives.

(j) "Special management considerations or protection" means any methods or procedures useful in protecting physical and biological features of the environment for the conservation of listed species.

(k) "Species" includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any vertebrate species that interbreeds when mature. Excluded is any species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of the Act would present an overwhelming and overriding risk to man.

(l) "State agency" means any State agency, department, board, commission, or other governmental entity that is responsible for the management and conservation of fish, plant, or wildlife resources within a State.

(m) "Threatened species" means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(n) "Wildlife" or "fish and wildlife" means any member of the animal kingdom, including without limitation, any vertebrate, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

Subpart B—Revision of the Lists

§ 424.10 General.

The Secretary may add a species to the lists or designate critical habitat, delete a species or critical habitat, change the listed status of a species, revise the boundary of an area designated as critical habitat, or adopt or modify special rules (see 50 CFR 17.40–17.48 and Parts 222 and 227) applied to a threatened species only in accordance with the procedures of this Part.

§ 424.11 Factors for listing, delisting, or reclassifying species.

(a) Any species or taxonomic group of species (e.g., genus, subgenus) as defined in § 424.02(k) is eligible for listing under the Act. A taxon of higher rank than species may be listed only if all included species are individually found to be endangered or threatened. In determining whether a particular taxon or population is a species for the purposes of the Act, the Secretary shall rely on standard taxonomic distinctions and the biological expertise of the Department and the scientific community concerning the relevant taxonomic group.

(b) The Secretary shall make any determination required by paragraphs (c) and (d) of this section *solely* on the basis of the best available scientific and commercial information regarding a species' status, without reference to possible economic or other impacts of such determination.

(c) A species shall be listed or reclassified if the Secretary determines, on the basis of the best scientific and commercial data available after conducting a review of the species' status, that the species is endangered or threatened because of any one or a combination of the following factors:

(1) The present or threatened destruction, modification, or curtailment of its habitat or range;

(2) Overutilization for commercial, recreational, scientific, or educational purposes;

(3) Disease or predation;

(4) The inadequacy of existing regulatory mechanisms; or

(5) Other natural or manmade factors affecting its continued existence.

(d) The factors considered in delisting a species are those in paragraph (c) of this section as they relate to the definitions of endangered or threatened species. Such removal must be supported by the best scientific and commercial data available to the Secretary after conducting a review of the status of the species. A species may be delisted only if such data substantiate that it is neither endangered nor threatened for one or more of the following reasons:

(1) *Extinction.* Unless all individuals of the listed species had been previously identified and located, and were later found to be extirpated from their previous range, a sufficient period of time must be allowed before delisting to indicate clearly that the species is extinct.

(2) *Recovery.* The principal goal of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service is to return listed species to a point at which protection under the Act is no longer required. A species may be delisted on the basis of recovery only if the best scientific and commercial data available indicate that it is no longer endangered or threatened.

(3) *Original data for classification in error.* Subsequent investigations may show that the best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error.

(e) The fact that a species of fish, wildlife, or plant is protected by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (see Part 23 of this Title 50) or a similar international agreement on such species, or has been identified as requiring protection from unrestricted commerce by any foreign nation, or to be in danger of extinction or likely to become so within the foreseeable future by any State agency or by any agency of a foreign nation that is responsible for the conservation of fish, wildlife, or plants, may constitute evidence that the species is endangered or threatened. The weight given such evidence will vary depending on the international agreement in question, the criteria pursuant to which the species is eligible for protection under such authorities, and the degree of protection afforded the species. The Secretary shall give consideration to any species protected under such an international agreement, or by any State or foreign nation, to determine whether the species is endangered or threatened.

(f) The Secretary shall take into account, in making determinations under paragraph (c) or (d) of this section, those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas.

§ 424.12 Criteria for designating critical habitat.

(a) Critical habitat shall be specified to the maximum extent prudent and determinable at the time a species is proposed for listing. If designation of critical habitat is not prudent or if critical habitat is not determinable, the reasons for not designating critical habitat will be stated in the publication of proposed and final rules listing a species. A final designation of critical habitat shall be made on the basis of the best scientific data available, after taking into consideration the probable economic and other impacts of making such a designation in accordance with § 424.19.

(1) A designation of critical habitat is not prudent when one or both of the following situations exist:

(i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or

(ii) Such designation of critical habitat would not be beneficial to the species.

(2) Critical habitat is not determinable when one or both of the following situations exist:

(i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or

(ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

(b) In determining what areas are critical habitat, the Secretary shall consider those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection. Such requirements include, but are not limited to the following:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally,

(5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

When considering the designation of critical habitat, the Secretary shall focus on the principal biological or physical constituent elements within the defined area that are essential to the conservation of the species. Known primary constituent elements shall be listed with the critical habitat description. Primary constituent elements may include, but are not limited to, the following: roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinator, geological formation, vegetation type, tide, and specific soil types.

(c) Each critical habitat will be defined by specific limits using reference points and lines as found on standard topographic maps of the area. Each area will be referenced to the State(s), county(ies), or other local governmental units within which all or part of the critical habitat is located. Unless otherwise indicated within the critical habitat descriptions, the names of the State(s) and county(ies) are provided for information only and do not constitute the boundaries of the area. Ephemeral reference points (*e.g.*, trees, sand bars) shall not be used in defining critical habitat.

(d) When several habitats, each satisfying the requirements for designation as critical habitat, are located in proximity to one another, an inclusive area may be designated as critical habitat.

Example: Several dozen or more small ponds, lakes, and springs are found in a small local area. The entire area could be designated critical habitat if it were concluded that the upland areas were essential to the conservation of an aquatic species located in the ponds and lakes.

(e) The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.

(f) Critical habitat may be designated for those species listed as threatened or endangered but for which no critical habitat has been previously designated.

(g) Existing critical habitat may be revised according to procedures in this section as new data become available to the Secretary.

(h) Critical habitat shall not be designated within foreign countries or in other areas outside of United States jurisdiction.

§ 424.13 Sources of information and relevant data.

When considering any revision of the lists, the Secretary shall consult as appropriate with affected States, interested persons and organizations, other affected Federal agencies, and, in cooperation with the Secretary of State, with the country or countries in which the species concerned are normally found or whose citizens harvest such species from the high seas. Data reviewed by the Secretary may include, but are not limited to scientific or commercial publications, administrative reports, maps or other graphic materials, information received from experts on the subject, and comments from interested parties.

§ 424.14 Petitions.

(a) *General.* Any interested person may submit a written petition to the Secretary requesting that one of the actions described in § 424.10 be taken. Such a document must clearly identify itself as a petition and be dated. It must contain the name, signature, address, telephone number, if any, and the association, institution, or business affiliation, if any, of the petitioner. The Secretary shall acknowledge in writing receipt of such a petition within 30 days.

(b) *Petitions to list, delist, or reclassify species.* (1) To the maximum extent practicable, within 90 days of receiving a petition to list, delist, or reclassify a species, the Secretary shall make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. For the purposes of this section, "substantial information" is that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. The Secretary shall promptly publish such finding in the **Federal Register** and so notify the petitioner.

(2) In making a finding under paragraph (b)(1) of this section, the Secretary shall consider whether such petition—

(i) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved;

(ii) Contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species;

(iii) Provides information regarding the status of the species over all or a significant portion of its range; and

(iv) Is accompanied by appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps.

The petitioner may provide information that describes any recommended critical habitat as to boundaries and physical features, and indicates any benefits and/or adverse effects on the species that would result from such designation. Such information, however, will not be a basis for the determination of the substantiality of a petition.

(3) Upon making a positive finding under paragraph (b)(1) of this section, the Secretary shall commence a review of the status of the species concerned and shall make, within 12 months of receipt of such petition, one of the following findings:

(i) The petitioned action is not warranted, in which case the Secretary shall promptly publish such finding in the **Federal Register** and so notify the petitioner.

(ii) The petitioned action is warranted, in which case the Secretary shall promptly publish in the **Federal Register** a proposed regulation to implement the action pursuant to § 424.16 of this Part, or

(iii) The petitioned action is warranted, but that—

(A) The immediate proposal and timely promulgation of a regulation to implement the petitioned action is precluded because of other pending proposals to list, delist, or reclassify species, and

(B) Expeditious progress is being made to list, delist, or reclassify qualified species,

in which case, such finding shall be promptly published in the **Federal Register** together with a description and evaluation of the reasons and data on which the finding is based.

(4) If a finding is made under paragraph (b)(3)(iii) of this Section with regard to any petition, the Secretary shall, within 12 months of such finding, again make one of the findings described in paragraph (b)(3) with regard to such petition, but no further finding of substantial information will be required.

(c) *Petitions to revise critical habitat.* (1) To the maximum extent practicable, within 90 days of receiving a petition to revise a critical habitat designation, the Secretary shall make a finding as to whether the petition presents substantial scienific information indicating that the revision may be warranted. The Secretary shall promptly publish such finding in the **Federal Register** and so notify the petitioner.

(2) In making the finding required by paragraph (c)(1) of this section, the Secretary shall consider whether a petition contains—

(i) Information indicating that areas petitioned to be added to critical habitat contain physical and biological features essential to, and that may require special management to provide for, the conservation of the species involved; or

(ii) Information indicating that areas designated as critical habitat do not contain resources essential to, or do not require special management to provide for, the conservation of the species involved.

(3) Within 12 months after receiving a petition found under paragraph (c)(1) of this section to present substantial information indicating that revision of a critical habitat may be warranted, the Secretary shall determine how he intends to proceed with the requested revision, and shall promptly publish notice of such intention in the **Federal Register.**

(d) *Petitions to designate critical habitat or adopt special rules.* Upon receiving a petition to designate critical habitat or to adopt a special rule to provide for the conservation of a species, the Secretary shall promptly conduct a review in accordance with the Administrative Procedure Act (5 U.S.C. 553) and applicable Departmental regulations, and take appropriate action.

§ 424.15 Notices of review.

(a) If the Secretary finds that one of the actions described in § 424.10 may be warranted, but that the available evidence is not sufficiently definitive to justify proposing the action at that time, a notice of review may be published in the **Federal Register.** The notice will describe the measure under consideration, briefly explain the reasons for considering the action, and solicit comments and additional information on the action under consideration.

(b) The Secretary from time to time also may publish notices of review containing the names of species that are considered to be candidates for listing under the Act and indicating whether sufficient scientific or commercial information is then available to warrant proposing to list such species, the names of species no longer being considered for listing, or the names of listed species being considered for delisting or reclassification. However, none of the substantive or procedural provisions of

the Act apply to a species that is designated as a candidate for listing.

(c) Such notices of review will invite comment from all interested parties regarding the status of the species named. At the time of publication of such a notice, notification in writing will be sent to State agencies in any affected States, known affected Federal agencies, and, to the greatest extent practicable, through the Secretary of State, to the governments of any foreign countries in which the subject species normally occur.

§ 424.16 Proposed rules.

(a) *General.* Based on the information received through §§ 424.13, 424.14, 424.15, and 424.21, or through other available avenues, the Secretary may propose revising the lists as described in § 424.10.

(b) *Contents.* A notice of a proposed rule to carry out one of the actions described in § 424.10 shall contain the complete text of the proposed rule, a summary of the data on which the proposal is based (including, as appropriate, citation of pertinent information sources), and shall show the relationship of such data to the rule proposed. If such a rule designates or revises critical habitat, such summary shall, to the maximum extent practicable, include a brief description and evaluation of those activities (whether public or private) that, in the opinion of the Secretary, if undertaken, may adversely modify such habitat, or may be affected by such designation. Any proposed rule to designate or revise critical habitat shall contain a map of such habitat. Any such notice proposing the listing, delisting, or reclassification of a species or the designation or revision of critical habitat shall also include a summary of factors affecting the species and/or critical habitat.

(c) *Procedures.*—(1) *Notifications.* In the case of any proposed rule to list, delist, or reclassify a species, or to designate or revise critical habitat, the Secretary shall—

(i) Publish notice of the proposal in the **Federal Register;**

(ii) Give actual notice of the proposed regulation (including the complete text of the regulation) to the State agency in each State in which the species is believed to occur, and to each county or equivalent jurisdiction therein in which the species is believed to occur, and invite the comment of each such agency and jurisdiction;

(iii) Give notice of the proposed regulation to any Federal agencies, local authorities, or private individuals or organizations known to be affected by the rule;

(iv) Insofar as practical, and in cooperation with the Secretary of State, give notice of the proposed regulation to list, delist, or reclassify a species to each foreign nation in which the species is believed to occur or whose citizens harvest the species on the high seas, and invite the comment of such nation;

(v) Give notice of the proposed regulation to such professional scientific organizations as the Secretary deems appropriate; and

(vi) Publish a summary of the proposed regulation in a newspaper of general circulation in each area of the United States in which the species is believed to occur.

(2) *Period of public comments.* At least 60 days shall be allowed for public comment following publication in the **Federal Register** of a rule proposing the listing, delisting, or reclassification of a species, or the designation or revision of critical habitat. All other proposed rules shall be subject to a comment period of at least 30 days following publication in the **Federal Register.** The Secretary may extend or reopen the period for public comment on a proposed rule upon a finding that there is good cause to do so. A notice of any such extension or reopening shall be published in the **Federal Register,** and shall specify the basis for so doing.

(3) *Public hearings.* The Secretary shall promptly hold at least one public hearing if any person so requests within 45 days of publication of a proposed regulation to list, delist, or reclassify a species, or to designate or revise critical habitat. Notice of the location and time of any such hearing shall be published in the **Federal Register** not less than 15 days before the hearing is held.

§ 424.17 Time limits and required actions.

(a) *General.* (1) Within 1 year of the publication of a rule proposing to determine whether a species is an endangered or threatened species, or to designate or revise critical habitat, the Secretary shall publish one of the following in the **Federal Register:**

(i) A final rule to implement such determination or revision,

(ii) A finding that such revision should not be made,

(iii) A notice withdrawing the proposed rule upon a finding that available evidence does not justify the action proposed by the rule, or

(iv) A notice extending such 1-year period by an additional period of not more than 6 months because there is substantial disagreement among scientists knowledgeable about the species concerned regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned.

(2) If an extension is made under paragraph (a)(1)(iv) of this section, the Secretary shall, within the extended period, take one of the actions described in paragraphs (a)(1) (i), (ii), or (iii) of this section.

(3) If a proposed rule is withdrawn under paragraph (a)(1)(iii) of this section, the notice of withdrawal shall set forth the basis upon which the proposed rule has been found not to be supported by available evidence. The Secretary shall not again propose a rule withdrawn under such provision except on the basis of sufficient new information that warrants a reproposal.

(b) *Critical habitat designations.* A final rule designating critical habitat of an endangered or a threatened species shall to the extent permissible under § 424.12 be published concurrently with the final rule listing such species, unless the Secretary deems that—

(1) It is essential to the conservation of such species that it be listed promptly; or

(2) Critical habitat of such species is not then determinable,

in which case, the Secretary, with respect to the proposed regulation to designate such habitat, may extend the 1-year period specified in paragraph (a) of this section by not more than one additional year. Not later than the close of such additional year the Secretary must publish a final regulation, based on such data as may be available at that time, designating, to the maximum extent prudent, such habitat.

§ 424.18 Final rules—general.

(a) *Contents.* A final rule promulgated to carry out the purposes of the Act will be published in the **Federal Register.** This publication will contain the complete text of the rule, a summary of the comments and recommendations received in response to the proposal (including applicable public hearings), summaries of the data on which the rule is based and the relationship of such data to the final rule, and a description of any conservation measures available under the rule. Publication of a final rule to list, delist, or reclassify a species or designate or revise critical habitat shall also provide a summary of factors affecting the species. A rule designating or revising critical habitat will also contain a description of the boundaries and a map of such habitat and will, to the maximum extent practicable, be accompanied by a brief description and evaluation of those activities (whether public or private) that might occur in the area and which, in the opinion of the

Secretary, may adversly modify such habitat or be affected by such designation.

(b) *Effective date.* A final rule shall take effect—

(1) Not less than 30 days after it is published in the **Federal Register**, except as otherwise provided for good cause found and published with the rule; and

(2) Not less than 90 days after (i) publication in the **Federal Register** of the proposed rule, and (ii) actual notification of any affected State agencies and counties or equivalent jurisdictions in accordance with § 424.16(c)(1)(ii).

(c) *Disagreement with State agency.* If a State agency, given notice of a proposed rule in accordance with § 424.16(c)(1)(ii), submits comments disagreeing in whole or in part with a proposed rule, and the Secretary issues a final rule that is in conflict with such comments, or if the Secretary fails to adopt a regulation for which a State agency has made a petition in accordance with § 424.14, the Secretary shall provide such agency with a written justification for the failure to adopt a rule consistent with the agency's comments or petition.

§ 424.19 Final rules—impact analysis of critical habitat.

The Secretary shall identify any significant activities that would either affect an area considered for designation as critical habitat or be likely to be affected by the designation, and shall, after proposing designation of such an area, consider the probable economic and other impacts of the designation upon proposed or ongoing activities. The Secretary may exclude any portion of such an area from the critical habitat if the benefits of such exclusion outweigh the benefits of specifying the area as part of the critical habitat. The Secretary shall not exclude any such area if, based on the best scientific and commercial data available, he determines that the failure to designate that area as critical habitat will result in the extinction of the species concerned.

§ 424.20 Emergency rules.

(a) Sections 424.16, 424.17, 424.18, and 424.19 notwithstanding, the Secretary may at any time issue a regulation implementing any action described in § 424.10 in regard to any emergency posing a significant risk to the well-being of a species of fish, wildlife, or plant. Such rules shall, at the discretion of the Secretary, take effect immediately on publication in the **Federal Register.** In the case of any such action that applies to a resident species, the Secretary shall give actual notice of such regulation to the State agency in each State in which such species is believed to occur. Publication in the **Federal Register** of such an emergency rule shall provide detailed reasons why the rule is necessary. An emergency rule shall cease to have force and effect after 240 days unless the procedures described in §§ 424.16, 424.17, 424.18, and 424.19 (as appropriate) have been complied with during that period.

(b) If at any time after issuing an emergency rule, the Secretary determines, on the basis of the best scientific and commercial data available, that substantial evidence does not then exist to warrant such rule, it shall be withdrawn.

§ 424.21 Periodic review.

At least once every 5 years, the Secretary shall conduct a review of each listed species to determine whether it should be delisted or reclassified. Each such determination shall be made in accordance with §§ 424.11, 424.16, and 424.17 of this Part, as appropriate. A notice announcing those species under active review will be published in the **Federal Register.** Notwithstanding this section's provisions, the Secretary may review the status of any species at any time based upon a petition (see § 424.14) or upon other data available to the Service.

Dated: July 18, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

Dated: August 22, 1984.

William G. Gordon,

Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

[FR Doc. 84-24766 Filed 9-28-84; 8:45 am]

BILLING CODE 4310-55-M

federal register

Monday
October 1, 1984

Part VII

Department of Justice

Bureau of Prisons

28 CFR Part 545

Control, Custody, Care, Treatment, and Instruction of Inmates; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 545

Control, Custody, Care, Treatment, and Instruction of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: The Bureau of Prisons is publishing its final rule on inmate work and performance pay. Some of the areas discussed include inmate work and program assignments, work conditions, performance pay, and achievement awards. The rule is intended to reduce inmate idleness, while allowing an inmate to improve and/or develop useful job skills, work habits, and experiences that will assist in post-release employment and ensure that activities necessary to maintain day-to-day operations of the institution are completed.

EFFECTIVE DATE: October 1, 1984.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 760, 320 1st Street NW., Washington, D.C. 20534.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724–3062.

SUPPLEMENTARY INFORMATION: In this document the Bureau of Prisons is publishing its final rule on inmate work and performance pay. A proposed rule on this subject was published in the **Federal Register** April 29, 1983 (48 FR 19579 et seq.). Interested persons were invited to submit comments on the proposed rule. Members of the public may submit comments concerning the final rule by writing the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

The Bureau plans to implement its inmate work and performance pay rule on October 1, 1984, so as to coincide with the beginning of a new fiscal year. This will enable the Bureau to assess its performance pay program within an established time period. There were few public comments on the proposed rule, with these either encompassed within the final rule, determined beyond the scope of the Bureau to implement, or set aside for further study. For these reasons, the Bureau finds good cause under 5 U.S.C. 553(d) to make this rule effective without a delay in the effective date.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

Summary of Changes

1. Section 545.20

In § 545.20(a), the word "useful" is substituted for "meaningful". Section 545.20(b) is reworded, with the term "outstanding" deleted. Other sections of the rule describe more specifically what is expected for an inmate to receive performance pay.

2. Section 545.21

Section 545.21(g) is reworded, although its intent is unchanged.

3. Section 545.23

In response to public comment, paragraph (c) is clarified by inserting the phrase, "to the extent medically possible".

4. Section 545.24

Because a work assignment may consist of a non-standard work week, final § 545.24(a) deletes the proposed rule's reference to the scheduled work day not exceeding eight hours. The final rule also deletes the specific reference to work in excess of eight hours being compensated at an overtime rate. An inmate who works beyond the scheduled work day is compensated at the inmate's prevailing rate of pay, and the inmate is eligible to receive bonus pay as set forth in § 545.27. Based on this deletion, final § 545.23(b)(6) refers to bonus pay (and special bonus pay) procedures, rather than the proposed rule's "overtime" procedures.

5. Section 545.25

Paragraph (a) is reworded, although its intent is unchanged. For purpose of clarification, the term "monitoring" is substituted for "supervision" in paragraph (c). In paragraph (e), the term "Central Office" is substituted for the misprinted "General Office" and the term "unallocated" is added to identify the nature of the funds retained.

6. Section 545.27

Paragraph (a) is modified to allow for an inmate to receive a copy of the inmate's position description upon request. Paragraph (b) is clarified by inserting the word "allotted" in referring to inmate work assignments. This clarification is necessary because in the event of prison overcrowding, an institution may have more inmates assigned to a work detail, as required by § 545.23, than it has allocated pay grades. Inmates in a work assignment for which there is no allocated pay grade are eligible for a temporary, flat rate of compensation, pending the opening of an allocated pay grade.

The first sentence of paragraph (c) is deleted, with each institution now being permitted to set their own monthly pay periods, e.g., by the month, or from the 10th of one month to the ninth of the following month. Paragraph (e) is modified. The terms "excellent", "satisfactory", or "unsatisfactory" are deleted and will be replaced by more descriptive guidelines. In addition, the final rule provides an expanded list of examples, rather than a specified list, of categories which may be examined in evaluating an inmate's work performance.

Section 545.27(f), Bonus pay, is expanded by adding the phrase "or appreciably contributed to the work assignment". The final rule also includes an example of a situation whereby an inmate is eligible for bonus pay. Section 545.27(g), Special bonus pay, is clarified by stating that the provision applies only to a "temporary job assignment" determined critical to the institution. The last sentence of both paragraph (f) and (g), which established upper limits on the amount of both bonus and special bonus pay, is deleted from the rule language, but is retained in the Bureau's internal directive as an implementing instruction to staff. Section 545.27(i) is new and requires that each inmate in performance pay status be notified of monthly earnings.

We believe the rule adequately addresses a comment that an inmate be paid for the time the inmate actually works. Section 545.27 (d) and (e)(1) are responsive to this comment, since they provide for an inmate to receive performance pay for that period of time during which the inmate is satisfactorily or better performing work. Thus, if an inmate's workday is seven and one-half hours, the inmate is eligible to receive compensation for seven and one-half hours.

7. Section 545.28

This section has been modified. The first paragraph of proposed § 545.28, now final § 545.28(a), states that an inmate who has worked full-time for 12 consecutive months on an institution work assignment is eligible for a one week (five-day), rather than the proposed rule's six-day, paid vacation at the inmate's prevailing hourly rate. This change recognizes that five days

constitutes the ordinary work week. The recommendation for vacation credit is made from the work supervisor, through the Department Head, to the Unit Team, which has the approval authority. The final rule deletes the proposed rule's reference to the Associate Warden as the approval authority. The Bureau is reassessing proposed paragraphs (a), the first sentence of (b), and (c)–(f) and has decided not to include these provisions in its final rule. Based on this determination, proposed § 545.28(g) becomes final § 545.28(c). The phrase "to continue" is deleted from final paragraph (c).

A commenter suggested that inmates working in non-UNICOR jobs should be paid for vacations and suggested that the rules on inmate performance pay were revised to bring them in line with existing UNICOR wages (see Part 345). While the Bureau has compared the two programs, it is not presently feasible to have identical provisions. Each system has a different focus. Federal Prison Industries (UNICOR) is a government corporation, in effect, a business, that sells goods to other departments or agencies of the United States, whereas the performance pay program focuses primarily on activities necessary to maintain the day-to-day operation of the institution. With respect to paying inmates working in non-UNICOR work assignments for their vacation, the final performance pay rule allows an inmate to take a vacation with pay. No determination has been made concerning an inmate being paid in lieu of taking the vacation. As previously stated, the Bureau is reassessing the entire area of inmate vacations. The Bureau anticipates republishing a proposed rule on this subject.

8. Section 545.29

Because achievement awards are given for educational participation, the final rule establishes the Education Department, rather than the inmate's unit team, as the approving authority for such awards.

9. Section 545.30

Paragraph (b) deletes the non-essential term "lump sum" and also provides an example of a non-monetary award (extra good time).

10. Section 545.31

A new section 545.31, Funds due deceased inmates, is being added to this rule on inmate work and performance pay. A similar section is included in the rule on Inmate Pay, Federal Prison Industries, Inc. (see Part 345, Subpart B). Section 545.31 provides for funds due an inmate for work performed and not yet paid to be made to a legal representative of the inmate's estate or in accordance with the laws of descent and distribution of the state of the inmate's domicile. This provision is intended to set forth the Bureau's statement of policy on funds due deceased inmates. For this reason, the Bureau finds good cause under 5 U.S.C. 553 to publish this section without a notice of proposed rulemaking, an opportunity for public comment, or a delay in effective date.

11. Section 545.32

Based on new § 545.31, proposed § 545.31 becomes final § 545.32.

A commenter, while supportive of the pay provisions in the Bureau's rule, strongly recommends that a percentage (up to 75%) of the inmate's earned compensation be used to render monetary restitution to crime victims and their families. Such a provision, however, is beyond the authority of the Bureau of Prisons and would require the enactment of federal legislation.

List of Subjects in 28 CFR Part 545

Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), 28 CFR Chapter V is amended as set forth below.

Dated: September 27, 1984.

Norman A. Carlson,

Director, Bureau of Prisons.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 545—WORK AND COMPENSATION

In Part 545, Subpart C is added to read as follows:

Subpart C—Inmate Work and Performance Pay Program

Sec.

545.20 Purpose and scope.
545.21 Definitions.
545.22 Institution work and performance pay committee.
545.23 Inmate work/program assignment.
545.24 Inmate work conditions.
545.25 Funding for, and allocation of performance pay.
545.26 Eligibility for performance pay.
545.27 Performance pay provisions.
545.28 Inmate vacations.
545.29 Achievement awards.
545.30 Special awards.
545.31 Funds due deceased inmates.
545.32 Training.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4126, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart C—Inmate Work and Performance Pay Program

§ 545.20 Purpose and scope.

(a) The Bureau of Prisons operates an inmate work program within its institutions. To the extent practicable, the work program (1) reduces inmate idleness, while allowing the inmate to improve and/or develop useful job skills, work habits and experiences that will assist in post-release employment; and (2) ensures that activities necessary to maintain the day-to-day operation of the institution are completed. Sentenced inmates who are physically and mentally able to work are required to participate in the work program. When approved by the Warden or designee, educational or vocational training may be substituted for all or part of the work program.

(b) The Warden may recognize an inmate's work performance or productive participation in specified correctional programs by granting performance pay.

§ 545.21 Definitions.

(a) *Inmate.* For purposes of this rule, the term "inmate" refers to any person committed to, or in the custody of, the U.S. Attorney General.

(b) *Institution Work Assignment.* A work assignment which contributes to the day-to-day operation of the institution (e.g., carpentry, plumbing, food service).

(c) *Industry Assignment.* A Federal Prison Industries (UNICOR) work assignment.

(d) *Full-Time Work Assignment.* A work assignment to which an inmate is assigned for the entire scheduled work day.

(e) *Part-Time Work Assignment.* A work assignment to which an inmate is assigned for only a portion of the scheduled work day. Part-time work assignments are ordinarily made in conjunction with educational and vocational training programs.

(f) *Medically Unassigned.* An inmate who, because of medical restrictions, is unable to be assigned to any work program.

(g) *Light Duty Work Assignment.* A work assignment in which an inmate may, because of physical limitations, temporary or otherwise, only perform limited work functions, e.g., sedentary work, no prolonged standing, no lifting over 25 lbs., etc.

§ 545.22 Institution work and performance pay committee.

(a) The Warden at each Bureau of Prisons institution is to establish an Institution Inmate Work and Performance Pay Committee to administer the institution's work and performance pay program. The Committee is to be comprised of an Associate Warden, the Inmate Performance Pay Coordinator, and any other member(s) the Warden considers appropriate.

(b) The Committee is responsible for approving the following aspects of the institution's inmate work and performance pay program:

(1) Number of inmates on each work detail;

(2) Number of pay grades in each detail;

(3) Job descriptions;

(4) Performance standards;

(5) Budgeting for special act awards; and

(6) Bonus pay/special bonus pay procedures.

§ 545.23 Inmate work/program assignment.

(a) Each sentenced inmate who is physically and mentally able is to be assigned to an institutional or industrial work program. An inmate shall be assigned to an educational or vocational program, on either a full or part-time basis, where this involvement is mandated by Bureau policy (for example, Adult Basic Education (ABE) Program) or statute (for example, Youth Corrections Act). An inmate, for whom educational or vocational participation is not required by either policy or statute, may request and, upon approval of the Warden or designee, will be able to participate in an educational or vacational training program rather than work full-time.

(b) A pre-trail inmate may not be required to work in any assignment or area other than housekeeping tasks in the inmate's own cell and in the community living area. Unless the pre-trial inmate signs a waiver, the Warden may not permit the pre-trial inmate to work with convicted inmates or in any assignment or area other than housekeeping tasks (see Part 551, Subpart J).

(c) Medically unassigned inmates may be required, to the extent medically possible, to perform housekeeping tasks in the inmate's own cell and in the community living area.

(d) In making the work and/or program assignment(s), staff shall consider the inmate's capacity to learn, interests, requests, needs, and eligibility, and the availability of the assignment(s). An inmate's assignment shall be made with consideration of the institution's security and operational needs, and should be consistent with the safekeeping of the inmate and protection of the public.

§ 545.24 Inmate work conditions.

(a) The scheduled work day for an inmate in a federal institution ordinarily consists of a minimum of seven (7) hours.

(b) An inmate is expected to report to the place of assignment at the required time. An inmate may not leave an assignment without permission.

(c) An inmate, regardless of assignment, is expected to perform all assigned tasks diligently and conscientiously. Disciplinary action may be taken against an inmate who refuses to work, who otherwise evades attendance and performance standards in assigned activities, or who encourages others to do so.

(d) Work, vocational, and educational programs are to meet the appropriate minimum standards for health and safety. Safety equipment is to be available where needed.

(e) An inmate is expected to perform the work assignment in a safe manner, using safety equipment as instructed by the Work Supervisor. In the event of any work related injury, an inmate shall notify the Work Supervisor so that appropriate action (for example, medical attention, and submission of necessary reports) may be taken.

§ 545.25 Funding for, and allocation of performance pay.

The Board of Directors Federal Prison Industries (UNICOR) will fund the Bureau's performance pay program.

(a) The Assistant Director, Correctional Programs Division is responsible for overseeing the allocation of performance pay. The Assistant Director shall establish and, as necessary, periodically revise the performance pay hourly rate.

(b) Within the Central Office, the specific authority to allocate performance pay funds to each Region is delegated to the Administrator, Correctional Programs Branch.

(c) Within each Region, the Regional Correctional Programs Administrators are responsible for institution allocations and for monitoring of institution performance pay programs.

(d) Within each institution, each Department Head shall be credited with an equitable share of the performance pay money allocated to the institution.

(e) The Central Office, regional offices and institutions are authorized to hold limited unallocated performance pay in a reserve status. These reserve funds will be used to cover such contingencies as institution mission changes, payment of special act awards, and to cover fluctuations in population within the institutions.

§ 545.26 Eligibility for performance pay.

(a) An inmate may receive performance pay for accomplishments in one or more of the following areas:

(1) Institution work assignment;

(2) Adult Basic Education (ABE) program participation;

(3) General Educational Development (GED) participation;

(4) Apprenticeship training; and

(5) Vocational Training courses (approved by the Bureau of Prisons as certified vocational training instruction).

(b) An inmate is eligible for performance pay from the date of work or program assignment. An inmate is eligible to receive performance pay for each month that the inmate's performance justifies such payment.

§ 545.27 Performance pay provisions.

(a) The Warden shall ensure that all institution work assignments have standardized work descriptions. Each inmate work position is assigned one of four pay grade levels. Factors to consider in assigning a grade level to the specific work position include the position's educational and vocational requirements, physical demands, working conditions (exposed to dusts, odors, etc.), and the degree of responsibility held by the inmate worker. The inmate assigned to a specific work position shall sign, and, if requested, receive a copy of, that position description.

(b) In recognition of budgetary constraints and for the effective management of the overall performance pay program, the percentage of inmates assigned to each grade level is approximately as follows (Grade 1 is highest pay):

Grade 1—5% of the institution's allotted inmate work assignments;

Grade 2—15% of the institution's allotted inmate work assignments;

Grade 3—25% of the institution's allotted inmate work assignments; and

Grade 4—55% of the institution's allotted inmate work assignments.

(c) An inmate may receive performance pay only for that portion of the month that the inmate was working. Performance pay may not be awarded retroactively.

(d) An inmate is eligible to receive performance pay only for those hours during which the inmate is actually performing work or actively

participating in an educational or vocational training program. Absences from the inmate's scheduled assignment for such reasons as call-outs, visits sick call, interviews, or making telephone calls shall be deducted from the monthly number of hours worked and will accordingly reduce the amount of pay received by the inmate.

(e) Work Evaluation—At the end of each month the work detail/program supervisor shall compute on an evaluation form the hours worked by the inmate and the pay to be awarded. The supervisor shall also rate the inmate's performance over the past month in each of several categories. For example, an inmate may be rated in such categories as quality of work, quantity of work, initiative, ability to learn, dependability, response to supervision and instruction, safety and care of equipment, ability to work with others, and overall job proficiency.

(1) An inmate shall receive performance pay only for those hours during which the inmate is satisfactorily or better performing work or is actively participating in an educational/vocational program.

(2) An inmate's monthly pay shall be based on the grade and the number of hours during the month that the inmate's performance was satisfactory. The hourly rate may not be reduced for unsatisfactory performance; the inmate is either paid the hourly rate for an hour of at least satisfactory performance or receives no pay for an hour of unsatisfactory performance.

The work detail/program supervisor shall review the evaluation with the inmate and request that the inmate sign the evaluation form. If the inmate refuses to sign the form, the supervisor shall note this refusal on the evaluation and, if known, the reasons for refusal.

(f) Bonus pay—When the supervisor of an inmate worker or program participant believes the inmate has made exceptional accomplishments or appreciably contributed to the work assignment, the supervisor may recommend that the inmate receive a bonus. For example, an inmate who works in excess of the scheduled work day can qualify for bonus pay. Written justification for the bonus request must be forwarded to the Department Head for approval.

(g) Special bonus pay—An inmate may receive special bonus pay based on the inmate's exceptional work in a temporary job assignment, provided this assignment has been previously identified by the Warden, and approved by the Regional Director, as critical to the institution. When the supervisor of an inmate worker assigned to this temporary job assignment believes the inmate has performed exceptionally well, the supervisor may recommend that the inmate received a special bonus. Written justification for the special bonus request must be forwarded to the Department Head for approval.

(h) An inmate's performance pay, once earned, becomes vested.

(i) Each inmate in performance pay status shall be notified of monthly earnings.

§ 545.28 Inmate vacations.

(a) An inmate who has worked full-time for 12 consecutive months on an institution work assignment is eligible to take a five-day paid vacation at the inmate's prevailing hourly rate. A recommendation for an inmate to receive vacation credit is made by the inmate's work supervisor, through the Department Head, to the Unit Team, who shall approve the request if the inmate's work performance qualifies for vacation credit.

(b) Staff shall schedule an inmate's vacation so it is compatable with shop production and administrative support requirements.

(c) The Warden or designee may authorize an inmate to accumulate vacation credit when:

(1) The inmate is transferred to another institution for the benefit of the government or because of the inmate's favorable adjustment (custody reduction); or

(2) The inmate is placed in a new work assignment in the institution for the benefit of the government or institution, rather than solely at the inmate's request or because of the inmate's poor performance or adverse behavior.

§ 545.29 Achievement awards.

With prior approval of the Education Department, each inmate who completes Adult Basic Education, GED, Vocational Training, or related trades classroom work that is part of a certified apprenticeship program may be granted an achievement award from performance pay funds.

§ 545.30 Special awards.

(a) Inmates who perform exceptional services not ordinarily a part of the inmate's regular assignment may be granted a special award regardless of the inmate's work or program status. Examples of actions which may result in the inmate being considered for a special award are the following:

(1) An act of heroism;

(2) Voluntary acceptance and satisfactory performance of an unusually hazardous assignment.

(3) An act which protects the lives of employees or inmates, or the property of the United States. (This does not apply to informants.)

(4) Suggestions which result in substantial improvements or cost-savings in institutional programs or operations.

(5) Other exceptionally meritorious or outstanding services consistent with the general character of the preceding cases.

(b) The special award may be given in the form of a monetary payment in addition to any other award (e.g., extra good time) given.

(c) The Warden of each institution is empowered to approve special awards not exceeding $150. Awards in excess of this amount may not be made unless approved by the Regional Director.

§ 545.31 Funds due deceased inmates.

Funds due a deceased inmate for work performed and not yet paid shall be made to a legal representative of the inmate's estate or in accordance with the laws of descent and distribution of the State of the inmate's domicile.

§ 545.32 Training.

The Warden shall ensure that staff receive training on their roles in, and on the operation of, the work and performance pay program. The Warden shall also ensure that the inmate population is informed of the work and performance pay program, and of the hourly rates paid to inmate workers.

[FR Doc. 84-26091 Filed 9-28-84; 8:58 am]
BILLING CODE 4410-05-M

federal register

Monday
October 1, 1984

Part VIII

Department of the Treasury

Internal Revenue Service

26 CFR Part 18

Special Election by Commodities Dealers and Options Dealers To Be an S Corporation; Temporary Regulation

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 18

[T.D. 7979]

Special Election by Commodities Dealers and Options Dealers To Be an S Corporation Under Section 102(d)(3) of the Tax Reform Act of 1984

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the time and manner of making the election under section 102(d)(3) of the Tax Reform Act of 1984—a special election by commodities dealers and options dealers to be an S corporation. These regulations provide guidance to persons making this election.

DATE: The regulations are effective September 28, 1984, and apply to elections made under section 102(d)(3) of the Tax Reform Act of 1984.

FOR FURTHER INFORMATION CONTACT: Gail H. Morse of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, Attention: CC:LR:T (LR–188–84), (202) 566–3297, not a toll free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to the election under section 102(d)(3) of the Tax Reform Act of 1984 made by commodities dealers and options dealers that want to be an S corporation.

Guidance with respect to this election in the form of a temporary regulation was previously published in the **Federal Register** on September 10, 1984, at 49 FR 35486 (T.D. 7976). Section 5h.4(m) of those temporary regulations provided guidance to commodities dealers and options dealers that have as a taxable year the calendar year and that were small business corporations as of January 1, 1984. That section also provided that guidance for other commodities dealers and options dealers would be forthcoming. This temporary regulation provides that guidance. Rules for all commodities dealers and options dealers making the election under section 102(d)(3) of the Tax Reform Act of 1984 are contained in these temporary regulations.

Explanation of Provisions

Section 18.1362–1(c) provides rules and examples relating to the election by commodities dealers and options dealers to be an S corporation as provided under section 102(d)(3) of the Tax Reform Act of 1984. Such election must be filed by October 2, 1984. A corporation making the election will have as its taxable year that year which begins on a date set forth in § 18.1362–1(c)(1) and which ends in accordance with the principles of section 1378. Coordination with section 1256 is provided at § 18.1362–1(c)(3).

Special Analyses

The Commissioner of Internal Revenue has determined that this temporary regulation is not a major rule as defined in Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 29, 1983. Accordingly, a Regulatory Impact Analysis is not required.

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The collection of information requirements contained in this regulation have ben submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB, control number 1545–0872.

Drafting Information

The principal author of these regulations is Gail H. Morse of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations both on matters of substance and style.

List of Subjects in 26 CFR Part 18

Income taxes, Subchapter S Revision Act of 1982.

Adoption of Amendments to the Regulations

Accordingly, the following temporary regulations are adopted under Part 18:

Section 18.1362–1 is amended by adding a new paragraph (c) at the end thereof to read as follows:

§ 18.1362–1 Election to be an S corporation.

* * * * *

(c) *Special election by commodities dealers and options dealers before October 2, 1984*—(1) A commodities dealer or an options dealer (as defined in section 1402(i)(2)) that is a small business corporation, as defined in section 1361, and that has been a small business corporation continuously since the beginning of such corporation's taxable year that includes July 18, 1984, may elect under section 102(d)(3) of the Tax Reform Act of 1984 to be an S corporation for a taxable year beginning on the first day of the corporation's taxable year that includes July 18, 1984, and ending on the date that corresponds to the last day of the permitted year approved pursuant to section 1378 and the regulations thereunder. A commodities dealer or options dealer that has not been a small business corporation continuously since the beginning of such corporation's taxable year that includes July 18, 1984, but that becomes a small business corporation before October 2, 1984, and remains a small business corporation until the date of election may elect under section 102(d)(3) of the Act to be an S corporation for a taxable year beginning on the date on which such corporation becomes a small business corporation (but only if the corporation remains a small business corporation until the date of election) and ending on the date that corresponds to the last day of the permitted year approved pursuant to section 1378 and the regulations thereunder.

(2) *Time and manner of making the election.* The election described in paragraph (c)(1) of this section shall be made by the commodities dealer or options dealer in the manner prescribed in § 18.1362–1(a). The election must be made on or before October 1, 1984. In addition to those requirements, the commodities dealer or options dealer must indicate on Form 2553 that the commodities dealer or options dealer is making an election to be an S corporation under section 102(d)(3) of the Act.

(3) *Coordination with section 1256.* If a commodities dealer or options dealer makes an election under section 102(d)(3) of the Act (relating to the subchapter S election) and makes an election under section 102(g)(2) of the Act (relating to the amendments made to section 1256 by section 102 of the Act), the term "taxable year which includes the date of enactment" as used in section 102(g)(2) shall be applied without regard to the election under section 102(d)(3). For purposes of section 102(h) (relating to installment payment of tax), the term "taxable year refered to in subsection (g)(2)" means the first taxable year (after applying the provisions of section 102(d)(3) and of

this paragraph (c)) to which the rules of section 1256, as amended by section 102 of the Act, apply.

(4) *Cross-reference.* Where a commodities dealer or options dealer makes an election under this paragraph (c) which results in a short taxable year, a return for the resulting short taxable year must be filed. See section 443 and the regulations thereunder. In the case of a short taxable year ending on or before October 1, 1984, which results from a corporation making an election under paragraph (c) of this section, the income tax return for such short taxable year shall be filed on or before December 17, 1984, with the service center where the corporation would normally file its return.

(5) *Examples.* The special election by commodities dealers and options dealers to be an S corporation may be illustrated by the following examples:

Example (1). (i) Corporation M, a calendar year taxpayer, has been a small business corporation since 1975. M makes the election under section 102(d)(3) of the Tax Reform Act of 1984 in accordance with the provisions of this paragraph (c), and files the election on October 1, 1984. On Form 2553, M chooses to retain its calendar year. M will be an S corporation for a taxable year beginning on January 1, 1984, and ending December 31, 1984. M will retain S corporation status until such status is terminated.

(ii) If Corporation M above was not a small business corporation until March 15, 1984, the election under section 102(d)(3) of the Act would be effective for a taxable year beginning on March 15, 1984, and ending December 31, 1984. In such case, this would result in two short taxable years, one (as a C corporation) beginning January 1, 1984, and ending March 14, 1984, and one (as an S corporation) beginning March 15, 1984, and ending December 31, 1984. M must file appropriate tax returns reflecting those short taxable years. If M also makes an election under section 102(g)(2) of the Act, the rules of section 1256, as amended by section 102 of the Act, apply to both short taxable years. If M also elects under section 102(h) of the Act, such election is made with respect to the short taxable year beginning January 1, 1984, and ending March 14, 1984, and the first installment prescribed by section 102(h) of the Act is due on December 17, 1984.

Example (2). Corporation N, a fiscal year taxpayer with a taxable year August 1 through July 31, has been a small business corporation since 1975. N makes the election under section 102(d)(3) of the Tax Reform Act of 1984 in accordance with the provisions of this paragraph (c), and files the election on October 1, 1984. Assume that Corporation N cannot establish a business purpose for a taxable year other than a calendar year, and thus indicates on Form 2553 that it is changing to a calendar taxable year. The election causes the following results: (1) N is an S corporation beginning on August 1, 1983, and has a short taxable year beginning on August 1, 1983, and ending on December 31, 1983; and (2) N's next taxable year is the calendar year 1984. The return for the short taxable year beginning August 1, 1983, and ending December 31, 1983, is due on December 17, 1984. If N also makes an election under section 102(g)(2) of the Act, the rules of section 1256, as amended by section 102 of the Act, apply to both the short taxable year beginning August 1, 1983 and ending December 31, 1983, and the calendar 1984 year. If N also elects under section 102(h) of the Act, such election is made with respect to the short taxable year beginning August 1, 1983, and ending December 31, 1983, and the first installment prescribed by section 102(h) of the Act is due on December 17, 1984.

Example (3). Corporation O, a fiscal year taxpayer with a taxable year March 1 through February 28, has been a small business corporation since 1975. O makes the election under section 102(d)(3) of the Tax Reform Act of 1984 in accordance with the provisions of this paragraph (c), and files the election on October 1, 1984. Assume that O cannot establish a business purpose for a taxable year other than a calendar year, and thus indicates on Form 2553 that it is changing to a calendar taxable year. The election is effective for a taxable year beginning March 1, 1984, and ending December 31, 1984.

Approved by the Office of Management and Budget under control number 1545–0872.

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impractical to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

The Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805)

M. Eddie Heironimus,

Acting Commissioner of Internal Revenue.

Approved: September 27, 1984.

Charles E. McClure, Jr.,

Acting Assistant Secretary of the Treasury.

[FR Doc. 84-26115 Filed 9-28-84; 10:28 am]

BILLING CODE 4830-01-M

federal register

Monday
October 1, 1984

Part IX

Federal Home Loan Bank Board

12 CFR Part 563

Brokered Deposits; Extension of Interim Rule on Limitations Applicable to Institutions With Low Net Worth

12 CFR Part 564

Brokered Deposits; Amendment of Effective Date

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 84-527]

Brokered Deposits; Extension of Interim Rule on Limitations Applicable to Institutions With Low Net Worth

Dated: September 26, 1984.

AGENCY: The Federal Home Loan Bank Board.

ACTION: Extension of interim final rule and request for comments.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is extending the effective date of its interim final rule on acceptance of brokered deposits by institutions with low net worth. The current interim rule, which would have expired on October 1, 1984, is extended to February 1, 1985.

DATES: Effective October 1, 1984. Comments must be received by November 30, 1984.

ADDRESS: Comments should be addressed to: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

FOR FURTHER INFORMATION CONTACT: Christopher P. Bolle, Attorney, (202) 377-7057, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: On March 26, 1984, the Board adopted a final rule limiting the extent of FSLIC insurance coverage on accounts placed by or through deposit brokers. *See* 49 FR 13003 (April 2, 1984). That rule has an effective date of October 1, 1984. On the same date, the Board also adopted an interim final rule limiting the amount of brokered deposits in institutions with low new worth to an amount equal to five percent of total deposits. *See* 49 FR 13012 (April 2, 1984) (as amended, 49 FR 18282 (April 30, 1984)). The interim rule was designed to prevent institutions with low net worth from acquiring excessive amounts of brokered deposits between the date of adoption of the insurance rule and its effective date. It therefore was a temporary rule, with an expiration date of October 1, 1984.

On June 20, 1984, the United States District Court for the District of Columbia ruled that the insurance rule was invalid, and enjoined the Board from enforcing the rule. *See F.A.I.C. Securities* v. *U.S., et al.*, Cir. Action No. 84-0959, June 20, 1984 (D.C. Cir.). The court did not, however, rule on the validity of the interim rule which was not at issue. The Board has appealed the court's decision to the United States Court of Appeals for the District of Columbia Circuit, but is concerned that final resolution of the case will not occur until after the October 1, 1984, expiration date of the interim rule.

The Board is therefore extending the effective period of the interim rule to February 1, 1985. The Board hopes that its appeal will have been resolved by that time. If that is not the case, the Board will at that time consider extending the interim rule further or taking some other action which will address its continuing concern about the deleterious effects that misuse of brokered deposits has upon savings institutions. Comments are solicited not only on the substance of the interim rule itself, but also on the question of its further extension should it be necessary for the Board to consider such action.

The Board finds that observance of the public notice and comment period set forth at 5 U.S.C. 552(b) and 12 CFR 508.11 and the delay of the effective date set forth at 5 U.S.C. 552(d) and 12 CFR 508.14 would be impractical and contrary to the public interest for the reasons described above.

List of Subjects in 12 CFR Part 563

Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 563, Subchapter D, Chapter V, of Title 12 of the Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

Revise § 563.4(c) as follows:

§ 563.4 Brokered deposits.

* * * * *

(c) This section expires February 1, 1985.

(12 U.S.C. 1724, 1725, 1726, 1730)

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 84-26098 Filed 9-28-84; 12:06 pm]

BILLING CODE 6720-01-M

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12 CFR Part 564

[No. 84-528]

Brokered Deposits, Amendment of Effective Date

Dated: September 28, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule and request for comments.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is amending its rules with respect to insurance of accounts placed by or through deposit brokers (See 49 FR 13003 (April 2, 1984)), to postpone the effective date of that rule to February 1, 1985. This action is being taken to resolve confusion surrounding the status of the rule in light of ongoing litigation. Other portions of the rule would not be affected by this amendment.

DATE: Effective October 1, 1984. Comments must be received by November 5, 1984.

ADDRESS: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

FOR FURTHER INFORMATION CONTACT: Christopher P. Bolle, Attorney, Office of General Counsel (202-377-7057), Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: On March 26, 1984, the Board, in conjunction with the Federal Deposit Insurance Corporation ("FDIC"), adopted in final form a rule limiting the insurance coverage on accounts placed by or through deposit brokers to $100,000 for all accounts in the same institution placed by or through a deposit broker (the "insurance rule"). See 49 Fed. Reg. 13,003 (April 2, 1984). In order to safeguard against possible liquidity crises brought on by this change in insurance coverage, the rule provided that it would apply only to accounts placed on or after October 1, 1984. This delayed effective date was intended to allow institutions, deposit brokers, and the public an opportunity to adjust to the effects of the rule.

Shortly after the adoption of the rule, suit was filed in the United States District Court for the District of Columbia, challenging the validity of the rule. On June 20, 1984, the Court ruled that the rule was invalid, and enjoined its enforcement. See *F.A.I.C. Securities* v. *U.S.*, CA No. 84-0959 (D.D.C. June 20, 1984). The Board has appealed the District Court decision, but does not anticipate a resolution in the Court of Appeals until early 1985.

Therefore, in order to alleviate uncertainty about the insurance coverage on brokered deposits pending resolution of the litigation, the Board is

hereby postponing the effective date of the insurance rule to February 1, 1985. This postponement will not affect provisions of § 564.12(b) concerning rollovers of funds deposited prior to March 26, 1984.

While the Board recognizes that the actual date of a final judgment on the *F.A.I.C.* suit cannot be predicted, it believes that it is necessary for a postponement of the effective date to be to a date certain, and the current litigation schedule suggests a reasonable possibility of resolution by February 1, 1985.

This rule is being adopted in final form because the Board finds that an immediate resolution of the issues in question is in the public interest, essential to effectuate the purposes of the rule, and is not prejudicial to the interest of any person.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164 (Sept. 19, 1980), the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objectives and legal bases underlying the rule.* These elements have been incorporated elsewhere in the supplementary information regarding the rule.

2. *Small entities to which the rule would apply.* The rule would apply to insured institutions.

3. *Impact of the rule on small institutions.* The rule would alleviate uncertainty with respect to accounts issued by all insured institutions, to the extent that it would have any effect on such institutions.

4. *Overlapping or conflicting federal rules.* There are no federal rules that overlap. duplicate, or conflict with this rule.

5. *Alternatives to the rule.* Other alternatives would not resolve the uncertainty surrounding insurance coverage as efficiently as the rule.

List of Subjects in 12 CFR Part 564

Bank deposit insurance, Banks, Banking, Savings and loan associations.

Accordingly, the Board hereby amends part 564 of Title 12 of the Code of Federal Regulations as set forth below.

PART 564—SETTLEMENT OF INSURANCE

1. The authority citation for Part 564 is as follows:

Authority: 12 U.S.C. 1724, 1725, 1726, 1728, 1730.

2. Revise § 564.12(b) to read as follows:

§ 564.12 Accounts held by or established through intermediaries.

* * * * *

(b) Notwithstanding any other provision of this Part, funds invested in one or more accounts by or through a deposit broker shall be added to any other accounts placed by or through that deposit broker and insured up to $100,000 in the aggregate. This paragraph shall apply to all accounts opened, funds placed in existing accounts, and renewals of existing accounts, where such opening, placements, or renewal occurs on or after February 1, 1985, except that it shall not apply until:

(1) Either October 1, 1986, or the maturity date of the account, whichever is later, with respect to renewals of time deposits in existence on March 26, 1984, provided that: (i) only interests of persons in such accounts as of March 26, 1984, will be recognized for purposes of insurance coverage, and (ii) the identities and interests of such beneficial owners are reflected on the records of the insured institutions by June 30, 1984.

(2) February 1, 1985, with respect to accounts which have no specified maturity date; and

(3) The maturity date of the corresponding loan, with respect to renewals of accounts established prior to February 1, 1985, and held by a person who is, with respect to such accounts, a deposit broker under § 561.2a(a)(2), only if such renewal is mandatory under the terms of the account agreement or trust agreement governing the rights and obligations of the trustee or agent.

* * * * *

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 84–26145 Filed 9–28–84; 12:08 pm]

BILLING CODE 6720–01–M

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Vol. 49, No. 191

Monday, October 1, 1984

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FEDERAL REGISTER PAGES AND DATES, OCTOBER

38525-38926.....1

PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing September 28, 1984
1984

TABLE OF EFFECTIVE DATES AND TIME PERIODS—OCTOBER 1984

This table is for determining dates in documents which give advance notice of compliance, impose time limits on public response, or announce meetings.

Agencies using this table in planning publication of their documents must allow sufficient time for printing production.

In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or a holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Dates of FR publication	15 days after publication	30 days after publication	45 days after publication	60 days after publication	90 days after publication
October 1	October 16	October 31	November 15	November 30	December 31
October 2	October 17	November 1	November 16	December 3	December 31
October 3	October 18	November 2	November 19	December 3	January 2
October 4	October 19	November 5	November 19	December 3	January 2
October 5	October 22	November 5	November 19	December 4	January 3
October 9	October 24	November 8	November 23	December 10	January 7
October 10	October 25	November 9	November 26	December 10	January 8
October 11	October 26	November 13	November 26	December 10	January 9
October 12	October 29	November 13	November 26	December 11	January 10
October 15	October 30	November 14	November 29	December 14	January 14
October 16	October 31	November 15	November 30	December 17	January 14
October 17	November 1	November 16	December 3	December 17	January 15
October 18	November 2	November 19	December 3	December 17	January 16
October 19	November 5	November 19	December 3	December 18	January 17
October 22	November 6	November 21	December 6	December 21	January 21
October 23	November 7	November 23	December 7	December 24	January 21
October 24	November 8	November 23	December 10	December 24	January 22
October 25	November 9	November 26	December 10	December 24	January 23
October 26	November 12	November 26	December 10	December 26	January 24
October 29	November 13	November 28	December 13	December 28	January 28
October 30	November 14	November 29	December 14	December 31	January 28
October 31	November 15	November 30	December 17	December 31	January 29

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $550 domestic, $137.50 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$6.00	Jan. 1, 1984
3 (1983 Compilation and Parts 100 and 101)	7.00	Jan. 1, 1984
4	12.00	Jan. 1, 1984
5 Parts:		
1-1199	13.00	Jan. 1, 1984
1-1199 (Special Supplement)	None	Jan. 1, 1984
1200-End, 6 (6 Reserved)	6.00	Jan. 1, 1984
7 Parts:		
0-45	13.00	Jan. 1, 1984
46-51	12.00	Jan. 1, 1984
52	14.00	Jan. 1, 1984
53-209	13.00	Jan. 1, 1984
210-299	13.00	Jan. 1, 1984
300-399	7.50	Jan. 1, 1984
400-699	13.00	Jan. 1, 1984
700-899	13.00	Jan. 1, 1984
900-999	14.00	Jan. 1, 1984
1000-1059	12.00	Jan. 1, 1984
1060-1119	9.50	Jan. 1, 1984
1120-1199	7.50	Jan. 1, 1984
1200-1499	13.00	Jan. 1, 1984
1500-1899	6.00	Jan. 1, 1984
1900-1944	14.00	Jan. 1, 1984
1945-End	13.00	Jan. 1, 1984
8	7.00	Jan. 1, 1984
9 Parts:		
1-199	13.00	Jan. 1, 1984
200-End	9.50	Jan. 1, 1984
10 Parts:		
0-199	14.00	Jan. 1, 1984
200-399	12.00	Jan. 1, 1984
400-499	12.00	Jan. 1, 1984
500-End	13.00	Jan. 1, 1984
11	7.50	Apr. 1, 1984
12 Parts:		
1-199	9.00	Jan. 1, 1984
200-299	14.00	Jan. 1, 1984
300-499	9.50	Jan. 1, 1984
500-End	14.00	Jan. 1, 1984
13	13.00	Jan. 1, 1984
14 Parts:		
1-59	13.00	Jan. 1, 1984
60-139	13.00	Jan. 1, 1984
140-199	7.00	Jan. 1, 1984
200-1199	13.00	Jan. 1, 1984
1200-End	7.50	Jan. 1, 1984
15 Parts:		
0-299	7.00	Jan. 1, 1984
300-399	13.00	Jan. 1, 1984
400-End	12.00	Jan. 1, 1984
16 Parts:		
0-149	9.00	Jan. 1, 1984
150-999	9.50	Jan. 1, 1984
1000-End	13.00	Jan. 1, 1984
17 Parts:		
1-239	14.00	Apr. 1, 1984
240-End	13.00	Apr. 1, 1984
18 Parts:		
1-149	12.00	Apr. 1, 1984
150-399	15.00	Apr. 1, 1984
400-End	6.50	Apr. 1, 1984
19	17.00	Apr. 1, 1984
20 Parts:		
1-399	7.50	Apr. 1, 1984
400-499	13.00	Apr. 1, 1984
500-End	14.00	Apr. 1, 1984
21 Parts:		
1-99	9.00	Apr. 1, 1984
100-169	12.00	Apr. 1, 1984
170-199	12.00	Apr. 1, 1984
200-299	4.25	Apr. 1, 1984
300-499	14.00	Apr. 1, 1984
500-599	13.00	Apr. 1, 1984
600-799	6.00	Apr. 1, 1984
800-1299	9.50	Apr. 1, 1984
1300-End	6.00	Apr. 1, 1984
22	17.00	Apr. 1, 1984
23	13.00	Apr. 1, 1984
24 Parts:		
0-199	8.00	Apr. 1, 1984
200-499	14.00	Apr. 1, 1984
500-699	6.00	Apr. 1, 1984
700-1699	12.00	Apr. 1, 1984
1700-End	9.50	Apr. 1, 1984
25	14.00	Apr. 1, 1984
26 Parts:		
§§ 1.0-1.169	14.50	Apr. 1, 1984
§§ 1.170-1.300	10.00	Apr. 1, 1984
§§ 1.301-1.400	7.50	Apr. 1, 1984
§§ 1.401-1.500	13.00	Apr. 1, 1984
§§ 1.501-1.640	12.00	Apr. 1, 1984
§§ 1.641-1.850	12.00	Apr. 1, 1984
§§ 1.851-1.1200	14.00	Apr. 1, 1984
§§ 1.1201-End	17.00	Apr. 1, 1984
2-29	13.00	Apr. 1, 1984
30-39	9.00	Apr. 1, 1984
40-299	14.00	Apr. 1, 1984
300-499	9.50	Apr. 1, 1984
500-599	8.00	[1] Apr. 1, 1980
600-End	5.50	Apr. 1, 1984
27 Parts:		
1-199	13.00	Apr. 1, 1984
200-End	12.00	Apr. 1, 1984
28	7.00	July 1, 1983
29 Parts:		
0-99	14.00	July 1, 1984
100-499	6.50	July 1, 1984
500-899	8.00	July 1, 1983
900-1899	7.50	July 1, 1984
1900-1910	8.50	July 1, 1983
*1911-1919	5.50	July 1, 1984
1920-End	8.00	July 1, 1983
30 Parts:		
0-199	7.00	July 1, 1983
200-699	5.50	July 1, 1984
700-End	13.00	Oct. 1, 1983
31 Parts:		
0-199	8.00	July 1, 1984
200-End	6.50	July 1, 1983

Title	Price	Revision Date
32 Parts:		
1–39, Vol. I	8.50	July 1, 1983
1–39, Vol. II	13.00	July 1, 1983
1–39, Vol. III	9.00	July 1, 1983
*40–189	13.00	July 1, 1984
*190–399	13.00	July 1, 1984
400–699	12.00	July 1, 1983
*630–699	12.00	July 1, 1984
700–799	7.50	July 1, 1983
800–999	9.50	July 1, 1984
1000–End	6.00	July 1, 1984
33 Parts:		
1–199	14.00	July 1, 1983
200–End	7.00	July 1, 1983
34 Parts:		
1–299	13.00	July 1, 1983
300–399	8.50	July 1, 1984
400–End	15.00	July 1, 1983
35	5.50	July 1, 1983
36 Parts:		
1–199	6.50	July 1, 1983
200–End	12.00	July 1, 1983
37	8.00	July 1, 1984
38 Parts:		
0–17	7.00	July 1, 1983
18–End	6.50	July 1, 1983
39	8.00	July 1, 1984
40 Parts:		
1–51	7.50	July 1, 1983
52	14.00	July 1, 1983
53–80	14.00	July 1, 1983
81–99	7.50	July 1, 1983
100–149	6.00	July 1, 1983
150–189	6.50	July 1, 1983
190–399	7.00	July 1, 1983
400–424	6.50	July 1, 1983
425–End	13.00	July 1, 1983
41 Chapters:		
1, 1–1 to 1–10	13.00	July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	6.50	July 1, 1983
3–6	7.00	July 1, 1983
7	5.00	July 1, 1983
8	4.50	July 1, 1984
9	13.00	July 1, 1984
10–17	9.50	July 1, 1984
18, Vol. I, Parts 1–5	6.50	July 1, 1983
18, Vol. II, Parts 6–19	7.00	July 1, 1983
18, Vol. III, Parts 20–52	6.50	July 1, 1983
19–100	7.00	July 1, 1983
101	14.00	July 1, 1983
102–End	6.50	July 1, 1983

Title	Price	Revision Date
42 Parts:		
1–60	12.00	Oct. 1, 1983
61–399	7.50	Oct. 1, 1983
400–End	17.00	Oct. 1, 1983
43 Parts:		
1–999	9.00	Oct. 1, 1983
1000–3999	14.00	Oct. 1, 1983
4000–End	7.50	Oct. 1, 1983
44	12.00	Oct. 1, 1983
45 Parts:		
1–199	9.00	Oct. 1, 1983
200–499	6.00	Oct. 1, 1983
500–1199	12.00	Oct. 1, 1983
1200–End	9.00	Oct. 1, 1983
46 Parts:		
1–40	9.00	Oct. 1, 1983
41–69	9.00	Oct. 1, 1983
70–89	5.00	Oct. 1, 1983
90–139	9.00	Oct. 1, 1983
140–155	8.00	Oct. 1, 1983
156–165	9.00	Oct. 1, 1983
166–199	7.00	Oct. 1, 1983
200–399	12.00	Oct. 1, 1983
400–End	7.00	Oct. 1, 1983
47 Parts:		
0–19	12.00	Oct. 1, 1983
20–69	14.00	Oct. 1, 1983
70–79	13.00	Oct. 1, 1983
80–End	13.00	Oct. 1, 1983
48	1.50	[2] Sept. 19, 1983
49 Parts:		
1–99	7.00	Oct. 1, 1983
100–177	14.00	Nov. 1, 1983
178–199	13.00	Nov. 1, 1983
200–399	12.00	Oct. 1, 1983
400–999	13.00	Oct. 1, 1983
1000–1199	12.00	Oct. 1, 1983
1200–1299	12.00	Oct. 1, 1983
1300–End	7.50	Oct. 1, 1983
50 Parts:		
1–199	9.00	Oct. 1, 1983
200–End	13.00	Oct. 1, 1983
CFR Index and Findings Aids	17.00	Jan. 1, 1984
Complete 1984 CFR set	550.00	1984
Microfiche CFR Edition:		
Complete set (one-time mailing)	155.00	1983
Subscription (mailed as issued)	200.00	1984
Individual copies	2.25	1984

[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1984. The CFR volume issued as of Apr. 1, 1980, should be retained.

[2] Refer to September 19, 1983, FEDERAL REGISTER, Book II (Federal Acquisition Regulation).

CFR ISSUANCES 1984
January–July 1984 Editions and Projected October, 1984 Editions

This list sets out the CFR issuances for the **January–July 1984** editions and projects the publication plans for the **October, 1984** quarter. A projected schedule that will include the **January, 1985** quarter will appear in the first **Federal Register** issue of January.

For pricing information on available 1983–1984 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. Individual announcements of the actual release of volumes will continue to be printed in the **Federal Register** and will provide the price and ordering information. The weekly CFR checklist or the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR volumes actually printed.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

Titles revised as of January 1, 1984:

Title
CFR Index

1–2

3 (Compilation)

4

5 Parts:
1–1199
1200–End

6 [Reserved]
7 Parts:
0–45
46–51
52
53–209
210–299
300–399
400–699
700–899
900–999
1000–1059
1060–1119
1120–1199
1200–1499
1500–1899
1900–1944
1945–End

8

9 Parts:
1–199
200–End

10 Parts:
0–199
200–399
400–499
500–End

11 (Revised as of April 1, 1984)

12 Parts:
1–199
200–299
300–499
500–End

13

14 Parts:
1–59
60–139
140–199
200–1199
1200–End

15 Parts:
0–299
300–399
400–End

16 Parts:
0–149
150–999
1000–End

Titles revised as of April 1, 1984:

Title
17 Parts:
1–239
240–End

18 Parts:
1–149
150–399
400–End

19

20 Parts:
1–399
400–499
500–End

21 Parts:
1–99
100–169
170–199
200–299
300–499
500–599
600–799
800–1299
1300–End

22

23

24 Parts:
0–199
200–499
500–699
700–1699
1700–End

25

26 Parts:
1 (§§ 1.0–1–1.169)
1 (§§ 1.170–1.300)
1 (§§ 1.301–1.400)
1 (§§ 1.401–1.500)
1 (§§ 1.501–1.640)
1 (§§ 1.641–1.850)
1 (§§ 1.851–1.1200)
1 (§§ 1.1201–End)
2–29
30–39
40–299
300–499
500–599 (Cover only)
600–End

27 Parts:
1–199
200–End

Titles revised as of July 1, 1984:

Title
28

29 Parts:
0–99
100–499
500–899
900–1899
1900–1910
1911–1919
1920–End

30 Parts:
0–199* (Previously listed as revised as of Oct. 1, 1984)
200–699
700–End

31 Parts:
0–199
200–End

32 Parts:
1–39, Vol. I*
1–39, Vol. II*
1–39, Vol. III*
40–189
190–399
400–629*
630–699
700–799
800–999
1000–End

33 Parts:
1–199*
200–End*
34 Parts:
1–299
300–399
400–End*

35

36 Parts:
1–199
200–End

37

38 Parts:
0–17*
18–End*

39

40 Parts:
1–51*
52*
53–80*
81–99*
100–149*
150–189*
190–399*
400–424*
425–End*

41 Parts:
Ch. 1 (1–1 to 1–10)
Ch. 1 (1–11 to App.)–2
Ch. 3–6*
Ch. 7
Ch. 8
Ch. 9
Ch. 10–17
Ch. 18, Vol. I*
Ch. 18, Vol. II*
Ch. 18, Vol. III*
Ch. 19–100*
Ch. 101
Ch. 102–End

Projected October 1, 1984 editions:

Title
42 Parts:
1–60
61–399
400–End
43 Parts:
1–999
1000–3999
4000–End
44
45 Parts:
1–199
200–499
500–1199
1200–End
46 Parts:
1–40
41–69
70–89
90–139
140–155*
156–165
166–199
200–499
500–End

47 Parts:
0–19
20–69
70–79
80–End
48 Parts:
Ch. 1 (1–51)
Ch. 1 (52–99)
Ch. 2
Chs. 3–6
Chs. 7–14
Chs. 15–End
49 Parts:
1–99
100–177
178–199
200–399
400–999
1000–1199
1200–1299
1300–End
50 Parts:
1–199
200–End