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Wednesday
April 3, 1985

Selected Subjects

Administrative Practice and Procedure
Merit Systems Protection Board

Air Pollution Control
Environmental Protection Agency

Aviation Safety
Federal Aviation Administration

Banks, Banking
Federal Reserve System

Boycotts
International Trade Administration

Claims
National Aeronautics and Space Administration

Education of Disadvantaged
Human Development Services Office

Food Labeling
Food and Drug Administration

Government Procurement
United States Information Agency

Insulation
Federal Trade Commission

Loan Programs—Housing and Community Development
Veterans Administration

Medicaid
Health Care Financing Administration

CONTINUED INSIDE

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Selected Subjects

Contents

Federal Register
Vol. 50, No. 64
Wednesday, April 3, 1985

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.

Rules and Regulations

Federal Register
Vol. 50, No. 64
Wednesday, April 3, 1985

GENERAL ACCOUNTING OFFICE

4 CFR Part 83

Privacy Procedures for Personnel Records

AGENCY: General Accounting Office.

ACTION: Final regulations.

SUMMARY: These regulations establish procedures and limitations designed to protect the privacy of General Accounting Office (GAO) personnel records. While GAO is not subject to the principal requirements of the Privacy Act (Act), 5 U.S.C. 552a, it is GAO policy to conduct its activities, to the maximum extent possible, in a manner consistent with the spirit of the Act and its duties, functions, and responsibilities to the Congress.

EFFECTIVE DATE: May 3, 1985.

FOR FURTHER INFORMATION CONTACT: Suzanne M. Stover-Carr, Attorney-Adviser, Office of the General Counsel, Room 7745, United States General Accounting Office, 441 G Street NW., Washington, D.C. 20548. Tel: (202) 275-5212.

SUPPLEMENTARY INFORMATION: Although GAO is not covered by the principal requirements of the Privacy Act, it has been GAO's position to conform to the spirit of that Act consistent with its duties and functions and responsibility to the Congress. Consequently, GAO published in the **Federal Register** (48 F.R. 39632) proposed regulations entitled "Privacy Procedures for Personnel Records." These regulations do not list either the various systems of personnel records or routine uses of such records which will be published periodically in the **Federal Register**. A listing of existing systems of personnel records and proposed routine uses will appear in the **Federal Register** shortly.

Generally, the comments received on the proposed regulations were technical in nature and recommended specific changes to the proposed regulations but did not criticize their general purpose of scope. The following summarizes those changes made in the proposed regulations.

In § 83.2(b) the "General Services and Controller Division" was substituted for the former "Office of Information Services and Systems," to reflect a recent internal reorganization of the Office.

The definition for "record" in § 83.3(e) has been made consistent with the definition for "record" set forth in the Privacy Act by making it clear that the relevant records about an individual are those that contain his name or other identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, voiceprint or a photograph.

The definition for "system of personnel records" in § 83.3(g) was revised to make clear that GAO's privacy procedures apply only to personnel records.

In § 83.4(b) setting forth one of the conditions of disclosure, the word "required" was substituted for "authorized" to conform to the Privacy Act phrasing. Language was also added stating that GAO may disclose information as provided in § 83.5 (formerly § 83.11) which governs disclosure of information concerning GAO employees.

Section 83.4(k) has been added to reflect the recent amendment to the Privacy Act concerning disclosure to a consumer reporting agency.

Section 83.5 governs responses to a member of the public, prospective employers, and law enforcement officials for access to GAO employee information. Section 83.5 was initially designated §83 .11. However, since it deals with the disclosure of information and § 83.4 deals with the conditions of disclosure, the placement of these two sections together is logical. As a result of this redesignation, §§ 83.5 through 83.10 have been redesignated §§ 83.6 through 83.11, respectively. Paragraphs (f) and (g) of former § 83.11 have been deleted since their content is now contained in § 83.4(g) and § 83.4(a) respectively. Paragraph (k) of former § 83.11 concerning classified material is deleted since disclosure of classified material is provided in § 83.21(a)(1). Paragraph (m) of former § 83.11 concerning medical information has also been deleted, since disclosure of medical information will be governed by the conditions set out in § 83.4.

Paragraph (n) of former § 83.11 concerning investigations was redesignated paragraph (j) of § 83.5 and revised to state that when personnel investigations are provided only on a loan basis by another Federal agency to GAO on the condition that GAO not release such data, GAO will refer parties requesting such information to the originating agency.

This revision was included to assure that GAO does not jeopardize its ability to obtain investigative reports. Also, if the originating agency is subject to the Privacy Act, the records would be protected pursuant to that Act with all the civil and criminal remedies available to any injured party, including a GAO employee.

In § 83.7(d), the time period for publication of notices of systems of records in the **Federal Register** was revised. Publication was changed from "at least every 2 years" to "upon establishment or revision" of the existence or character of a personnel system of records. This change reflects recent changes to the Privacy Act.

Sections 83.7(i)(1) and 83.7(i)(3) have been changed to indicate that GAO shall not only establish but also *maintain* appropriate safeguards to assure the security and confidentiality of personnel records. Similarly, § 87.3(i)(2) has been revised to provide that adequate control procedures are set up so that removed records are properly controlled during such periods of removal.

Section 83.12(a) is clarified to show that an individual may not gain access to his own record if the information is otherwise exempted.

In § 83.17(a) the charge for copying is changed from 10 cents per page to 20 cents per page in order to reflect the cost to GAO.

Section 83.21(a)(1) has been revised to reflect more clearly the fact that all personnel records are exempted from an individual's gaining access to the accounting of disclosure as well as access to the record itself if the record is subject to the provisions of 5 U.S.C. 552(b)(1) of the Freedom of Information Act. That section states that an agency does not have to make available to the public matters that are specifically

authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order.

Section-by-Section Analysis

Section 83.1 Purpose and Scope of Part.

This section establishes the purpose and scope of the proposed regulations, a purpose in harmony with the objectives of the Privacy Act. The regulations apply to systems of personnel records, which are our most important and extensive systems. The disclosure of these and other GAO records will also be governed by 4 CFR Part 81, concerning the public availability of General Accounting Office Records.

Section 83.2 Administration.

The Director, Personnel, of the General Accounting Office is responsible for administering the regulations.

Section 83.3 Definitions.

The definitions used in this part include those terms defined in the Privacy Act, and Office of Personnel Management regulations published at 5 CFR Parts 294–297 (1982).

Section 83.4 Conditions of Disclosure.

The regulations adopt most of the same conditions of disclosure that govern executive agencies under the Privacy Act. If the records are to be so used, the statutory provisions of Title 13, United States Code, concerning disclosure to the Bureau of the Census would control. Also the GAO/OPM/GSA Memorandum of Understanding, reprinted in Appendix I, as well as GSA's own statutory provisions, govern disclosure to the National Archives.

Section 83.5 Specific Disclosures of Information.

The regulations concerning the availability of information generally track the regulations of the Office of Personnel Management concerning availability of records except no special provision is made for medical information.

Also, subsection (j)(2) provides that GAO will refer parties requesting investigative information to the Federal agency from which it originated if GAO receives such information on the condition that it not be released.

Section 83.6 Accounting of Certain Disclosures.

This section adopts accounting provisions similar to those under the Privacy Act, recognizing GAO's record retention schedule.

Section 83.7 GAO Policy and Requirements.

The GAO requirements generally track the requirements imposed on executive agencies under the Privacy Act.

Section 83.8 Standards of Conduct.

This section differs from the Privacy Act in that GAO standards of conduct involve internal controls only, whereas the Privacy Act grants statutory Federal civil and criminal jurisdiction over Privacy Act violations. Since GAO is not covered by the procedural requirements of that Act, it cannot grant similar jurisdiction for individuals to bring a cause of action to the United States courts.

Section 83.9 Social Security Number.

This section reiterates the requirements of section 7 of the Privacy Act, the only section of that Act that is applicable to GAO. Since 1974, GAO has been following the requirements of this section.

Section 83.10 First Amendment Rights.

This section tracks the Privacy Act guarantees of protecting First Amendment rights.

Section 83.11 Official Personnel Folder.

This section deals with the most important record system of personnel systems of records—the Official Personnel Folder. Ownership of the Folder is already established by the GAO/OPM/GSA Memorandum of Understanding (Appendix I); regulations concerning the Folder are consistent with the Office of Personnel Management's regulations concerning the Official Personnel Folders of executive branch agencies.

Section 83.12 Procedures for Individual Access to Records.

This section provides the specific procedures and identification requirements for individual requests for access to GAO personnel records and generally tracks the Office of Personnel Management regulations in this regard.

Section 83.13 Inquiries.

This section provides procedures for individuals in making general inquiries about systems of records.

Section 83.14 Denial of Access Requests.

This section tracks the Privacy Act and gives the requester the right to receive the reason for the denial of his access request and the identification of the official responsible for the decision.

Section 83.15 Request for Amendment of Record.

This section prescribes procedures similar to the Privacy Act whereby an individual can request amendment of a personnel record.

Section 83.16 Administrative Review of Request for Amendment of Record.

This section provides procedures whereby a requester can seek administrative review of GAO's denial of a request for amendment of the requester's record.

Section 83.17 Fees.

This section prescribes fees for obtaining copies of records.

Section 83.18 Rights of Legal Guardians.

This section establishes the rights of legal guardians of incompetent individuals.

Section 83.19 Government Contractors.

This section provides that Government contractors stand in the shoes of GAO personnel when GAO provides, by contract, for the maintenance by or on behalf of GAO of a system of personnel records.

Section 83.20 Mailing Lists.

This section establishes that GAO may not sell or rent mailing lists unless specifically authorized by law.

Section 83.21 Exemptions.

Certain systems of records are exempted from requirements relating to accounting for disclosures and individual access to records. These exemptions generally track those of the Privacy Act.

List of Subjects in 4 CFR Part 83

Administrative practices and procedures, Government employees, Privacy.

Accordingly, Title 4 CFR is amended by the addition of a new Part 83, to read as follows:

PART 83—PRIVACY PROCEDURES FOR PERSONNEL RECORDS

Sec.

Authority: 31 U.S.C. 711(1); Memorandum of Understanding between the U.S. Office of Personnel Management, the National Archives and Records Service of the General Services Administration and the U.S. General Accounting Office; 4 CFR Part 81; 5 CFR Parts 294–297; and 31 U.S.C. 731, *et seq.*

§ 83.1 Purpose and scope of part.

This part describes the policy and prescribes the procedures of the United States General Accounting Office (GAO) with respect to maintaining and protecting the privacy of GAO personnel records. While GAO is not subject to the Privacy Act (Act) (5 U.S.C. 552a), GAO's policy is to conduct its activities in a manner that is consistent with the spirit of the Act and its duties, functions, and responsibilities to the Congress. Application of the Privacy Act to GAO is not to be inferred from the provisions of these regulations. These regulations are designed to safeguard individuals against invasions of personal privacy by requiring GAO, except as otherwise provided by law, to—

(a) Protect privacy interests of individuals by imposing requirements of accuracy, relevance, and confidentiality for the maintenance and disclosure of personnel records;

(b) Inform individuals of the existence of systems of personnel records maintained by GAO containing personal information; and

(c) Inform individuals of the right to see and challenge the contents of personnel records containing information about them.

This part applies to all systems of personnel records (as defined in § 83.3(g)) for which GAO is responsible.

§ 83.2 Administration.

The administration of this part is the duty and responsibility of the Director, Personnel, United States General Accounting Office, 441 G Street NW., Washington, D.C. 20548. To this end, the Director, Personnel, in consultation with the Office of the General Counsel, is authorized to issue such supplemental regulations or procedural directives as may be necessary and appropriate.

(a) The Director, Personnel, shall have general responsibility and authority for implementing this part, including—

(1) Approving all systems of personnel records to be maintained by GAO (whether physically located in GAO's Office of Personnel or elsewhere), including the contents and uses of such systems, accounting methods, and security methods; and

(2) Responding to an individual's request to gain access to or amend his or her own personnel records.

(b) The Director, Personnel, may delegate within GAO any of his functions under this part.

§ 83.3 Definitions.

As used in this part:

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

(b) "Information" means papers, records, photographs, magnetic storage media, micro storage media, and other documentary materials, regardless of physical form or characteristics, containing data about an individual and required by GAO in pursuance of law or in connection with the discharge of official business, as defined by statute, regulation, or administrative procedure;

(c) "Maintain" includes to collect, to use, or to disseminate;

(d) "Personnel record" means any record concerning an individual which is maintained pursuant to GAO's personnel management process or personnel policy setting process;

(e) "Record" means any item, collection, or grouping of information about an individual that is maintained by GAO, including, but not limited to, education, financial transactions, medical history, criminal history, or employment history, that contains the name or other identifying particular assigned to the individual, such as a fingerprint, voice print, or a photograph;

(f) "Routine use" means the disclosure of a record for a purpose which is compatible with the purpose for which it was collected;

(g) "System of personnel records" means a group of personnel records under the control of GAO from which information is retrieved by the name of the individual or by some identifying number, symbol, or other indentifying particular assigned to the individual; and,

(h) "System manager" means the Director of Personnel, his designee, or other GAO official designated by the Comptroller General, who has the authority to decide matters relative to systems of personnel records maintained by GAO.

§ 83.4 Conditions of disclosure.

GAO shall not disclose any record that is contained in a system of personnel records by an means of communication to any person or organization, including another agency, without the prior written consent of the individual to whom the record pertains, unless disclosure of the record would be:

(a) To those officers and employees of GAO who have a need for the record in the performance of their duties; or

(b) Required under regulations implementing the public availability of GAO records published at Part 81 of this chapter, or authorized under § 83.5; or

(c) For a routine use as defined in § 83.3(f); or

(d) To a recipient who has provided GAO with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable; or

(e) To another agency or an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, if the head of the agency or instrumentality has made a written request to GAO specifying the particular record desired and the law enforcement activity for which the record is sought; or

(f) To any person pursuant to a showing of compelling circumstances affecting the health or safety of an individual (not necessarily the data subject) if upon such disclosure notification is transmitted to the last known address of the subject of the personnel record; or

(g) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee of Congress; or

(h) Pursuant to the order of a court of competent jurisdiction or in connection with any judicial or quasi-judicial proceedings; or

(i) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13, United States Code; or

(j) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to

determine whether the record has such value; or

(k) To a consumer reporting agency in accordance with 31 U.S.C. 3711(f).

§ 83.5 Specific disclosure of information.

(a) This section governs responses to a member of the public, prospective employers, and law enforcement officials, for access to information covered by this part. It does not limit in any way other disclosures of information pursuant to other provisions of this part.

(b) The following information about most present and former GAO employees is available to the public:

(1) Name;

(2) Present and past position titles;

(3) Present and past grades;

(4) Present and past salaries; and

(5) Present and past duty stations (which include room numbers, shop designations, or other identifying information regarding buildings or places of employment.

(c) Disclosure of the above information will not be made where the information requested is a list of present or past position titles, grades, salaries, and/or duty stations of Government employees which, as determined by the Director, Personnel, is:

(1) Selected in such a way as to constitute a clearly unwarranted invasion of personal privacy because the nature of the request calls for a response that would reveal more about the employees on whom information is sought than the five enumerated items; or

(2) Would otherwise be protected from mandatory disclosure under an exemption of Part 81 of this title concerning the public availability of GAO records.

(d) In addition to the information that may be made available under paragraph (a) of this section, GAO may make available the following information to a prospective employer of a GAO employee or former GAO employee:

(1) Tenure of employment;

(2) Civil service status;

(3) Length of service in GAO and the Government; and

(4) When separated, the date and reason for separation shown on the required standard form.

(e) In addition to the information to be made available under paragraph (a) of this section, the home address of an employee shall be made available to a police or court official on receipt of a proper request stating that an indictment has been returned against the employee or that complaint, information, accusation, or other writ involving nonsupport or a criminal offense has been filed against the employee and the employee's address is needed for service of a summons, warrant, subpoena, or other legal process.

(f) Except as provided in paragraphs (a) through (e) of this section, and except as provided in this part, information required to be included in an Official Personnel Folder is not available to the public and is protected from disclosure by § 81.6(f) of this chapter.

(g) Personnel Appeal Files. (Those records maintained by the General Accounting Office Personnel Appeals Board of petitions or appeals filed with the Board by GAO employees, former employees, or applicants for employment. Such records do not include any of the investigative files or reports of the Personnel Appeals Board General Counsel. See 4 CFR 28.18(c)). GAO, upon receipt of a request which identifies the individual from whose file the information is sought, shall disclose the following information from a Personnel Appeal File to a member of the public, except when the disclosure would constitute a clearly unwarranted invasion of personal privacy:

(1) Confirmation of the name of the individual from whose file the information is sought and the names of the other parties concerned;

(2) The status of the case;

(3) The decision on the case;

(4) The nature of the action appealed; and

(5) With the consent of the parties concerned, other reasonably identified information from the file.

(h) Leave Records. The annual and sick leave record of an employee, or information from these records, is not to be made available to the public by GAO or other Government agency.

(i) Examinations and Related Subjects. Information concerning the results of examinations will be released only to the individual concerned, and to those parties explicitly designated in writing by the individual. The names of applicants for GAO positions or eligibles on GAO or civil service registers, certificates, employment lists, or other lists of eligibles, or their ratings or relative standings are not information available to the public.

(j) Investigations.

(1) Upon written request, GAO will disclose to the parties concerned any report of personnel investigation under its control, or an extract of the report, to the extent the report is involved in a processed before GAO. For the purpose of this paragraph, the "parties concerned" means the Government employee involved in the proceeding, his or her representative designated in writing, and the representative of GAO involved in the proceeding. Where GAO obtains reports of personnel investigations or information from such reports from other government agencies on condition that it not release such data, GAO will refer parties requesting such information to the originating agency where their request will be processed.

(2) GAO will not make a report of investigation or information from a report under its control available to the public or to witnesses, except as otherwise required under GAO regulations implementing the public availability of records published at Part 81 of this chapter.

§ 83.6 Accounting of certain disclosures.

(a) With respect to each system of personnel records, GAO shall, except for disclosures made under §§ 83.4(a) and 83.4(b), keep an accurate accounting of—

(1) The date, nature, and purpose of disclosure of a record to any person; and

(2) The name and address of the person, agency, or organization to whom the disclosure is made.

(b) Such accounting shall be retained for at least 3 years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

(c) Except for disclosures made under § 83.4(e), the accounting shall be available upon written request to the individual named in the record.

§ 83.7 GAO policy and requirements.

(a) GAO shall maintain in its personnel records only such information about an individual as is relevant and necessary to accomplish an authorized official purpose. Authority to maintain personnel records does not constitute authority to maintain information in the record merely because a need for it may develop in the future. Both Government-wide and internal agency personnel records shall contain only information concerning an individual that is relevant and necessary to accomplish GAO's personnel management objectives as required by statute, GAO internal directive, or formal agreements between GAO and other Federal agencies.

(b) GAO shall make every reasonable effort to collect information about an individual directly from that individual when the information may result in adverse determinations about the individual's rights, benefits, and privileges under Federal programs. Factors to be considered in determining whether to collect the data from the

individual concerned or a third party are:

(1) The nature of the information is such that it can only be obtained from another party;

(2) The cost of collecting the information directly from the individual is unreasonable when compared with the cost of collecting it from another party;

(3) There is virtually no risk that information collected from other parties, if inaccurate, could result in a determination adverse to the individual concerned;

(4) The information supplied by an individual must be verified by another party; or

(5) Provisions are made, to the greatest extent practical, to verify information collected from another party with the individual concerned.

(c) GAO shall inform each individual whom it asks to supply information for a personnel record, on the form which it uses to collect the information or on a separate form that can be retained by the individual, of—

(1) The authority for the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(2) The principal purpose or purposes for which the information is intended to be used;

(3) The routine uses which may be made of the information, as published pursuant to paragraph (d)(4) of this section; and

(4) The effects, if any, of not providing all or any part of the requested information;

(d) Subject to the provisions of paragraph (i) of this section, GAO shall publish in the **Federal Register**, upon establishment or revision, a notice of the existence and character of its systems of personnel records. Such notice shall include—

(1) The name and location(s) of each system of personnel records;

(2) The categories of individuals about whom records are maintained in each such system;

(3) The categories of records maintained in each system of personnel records;

(4) Each routine use of the records contained in each system of personnel records, including the categories of users and the purpose(s) of such use;

(5) The policies and practices of GAO regarding storage, retrievability, access controls, retention, and disposal of the records;

(6) The title and business address of the GAO official who is responsible for maintaining each system of personnel records;

(7) GAO procedures whereby an individual can ascertain whether a system of personnel records contains a record pertaining to the individual;

(8) Procedures whereby an individual can request access to any record pertaining to him contained in any system of personnel records, and how the individual may contest its content; and

(9) The categories of sources of records in each system of personnel records.

(e) GAO shall maintain all records which it uses in making any determination about any individual with such accuracy, relevancy, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(f) GAO shall, prior to disseminating any record about an individual to any person other than a Federal agency, make all reasonable efforts to reassure that such records are accurate, complete, timely, and relevant for GAO's purposes;

(g) GAO shall make reasonable efforts to serve notice on an individual or his authorized representative when any personnel record on such individual is being made available to any person under compulsory legal process as soon as practicable after service of the subpoena or other legal process;

(h) GAO shall establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of personnel records or files or in maintaining any record, and to instruct each person with respect to such rules and requirements of this part, including any other rules and procedures adopted pursuant to this part;

(i)(1) GAO shall establish and maintain appropriate administrative, technical and physical safeguards to ensure the security and confidentiality of personnel records. At a minimum, these controls shall require that all persons whose official duties require access to and use of personnel records be responsible and accountable for safeguarding those records and for ensuring that the records are secured whenever they are not in use or under the direct control of authorized persons. Generally, personnel records should be held, processed, or stored only where facilities and conditions are adequate to prevent unauthorized access;

(2) Except for access by the data subject, only employees whose official duties require and authorize access shall be allowed to handle and use personnel records, in whatever form or media the records might appear. To the extent feasible, entry into personnel record storage areas shall be similarly limited. Documentation of the removal of records from storage areas must be kept so that adequate control procedures can be established to assure that removed records are returned intact on a timely basis and properly controlled during such period of removal.

(3) In addition to following the above security requirements, managers of automated personnel records shall establish and maintain administrative, technical, physical, and security safeguards for data about individuals in automated records, including input and output documents, reports, punched cards, magnetic tapes, disks, and on-line computer storage. As a minimum, the safeguards must be sufficient to:

(i) Prevent careless, accidental, or unintentional disclosure, modification, or destruction of identifiable personal data;

(ii) Minimize the risk of improper access, modification, or destruction of identifiable personnel data;

(iii) Prevent casual entry by persons who have no official reason for access to such data;

(iv) Minimize the risk of unauthorized disclosure where use is made of identifiable personal data in testing of computer programs;

(v) Control the flow of data into, through, and from computer operations;

(vi) Adequately protect identifiable data from environmental hazards and unnecessary exposure; and

(vii) Assure adequate internal audit procedures to comply with these procedures.

(4) The disposal of identifiable personal data in automated files is to be accomplished in such a manner as to make the data unobtainable to unauthorized personnel. Unneeded personal data stored on reusable media, such as magnetic tapes and disks, must be erased prior to release of the media for reuse.

(j) At least 30 days prior to publication of information under paragraph (d)(4) of this section, GAO shall publish in the **Federal Register** notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to GAO.

§ 83.8 Standards of conduct.

(a) GAO employees whose official duties involve the maintenance and handling of personnel records shall not disclose information from any personnel record unless disclosure is part of their official duties or required by statute, regulation, or internal procedure.

(b) Any GAO employee who makes an unauthorized disclosure of personnel records or a disclosure of information derived from such records, knowing that such disclosure is unauthorized, or otherwise knowingly violates these regulations, shall be subject to appropriate disciplinary action. GAO employees are prohibited from using personnel information not available to the public, obtained through official duties, for commercial solicitation or sale, or for personal gain. Any employee who knowingly violates this prohibition shall be subject to appropriate disciplinary action.

§ 83.9 Social Security number.

(a) GAO may not require individuals to disclose their Social Security Number (SSN) unless disclosure would be required—

(1) Under Federal statute; or

(2) Under any statute, executive order, or regulation that authorizes any Federal, State, or local agency maintaining a system of records that was in existence and operating prior to January 1, 1975, to request the SSN as a necessary means of verifying the identity of an individual.

(b) Individuals asked to voluntarily provide their SSN shall suffer no penalty or denial of benefits for refusing to provide it.

(c) When GAO requests an individual to disclose his or her SSN, it shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

§ 83.10 First amendment rights.

Personnel records or entries thereon describing how individuals exercise rights guaranteed by the First Amendment to the United States Constitution are prohibited, unless expressly authorized by statute or by the individual concerned, or unless pertinent to and within the scope of an authorized law enforcement activity. These rights include, but are not limited to, free exercise of religious and political beliefs, freedom of speech and the press, and freedom to assemble and to petition the Government.

§ 83.11 Official Pesonnel Folder.

(a) GAO shall establish and maintain an Official Personnel Folder for each of its employees, except as provided in the GAO/U.S. OPM/GSA Memorandum of Understanding (see subsection (b)). Except as provided for in Federal Personnel Manual (FPM) Supplement 293–31 there will be only one Official Personnel Folder maintained for each employee.

(b) GAO/U.S. OPM/GSA Memorandum of Understanding. The Memorandum of Understanding agreed to by the U.S. General Accounting Office, the U.S. Office of Personnel Management (U.S. OPM), and the National Archives and Records Service of the General Services Administration (GSA), Appendix I, constitutes the official and sole agreement concerning the continuity and coordination of the Official Personnel Folder.

(c) GAO policy is to assure continuity and coordination of the Official Personnel Folder when a person, for whom an Official Personnel Folder has been established, separates from GAO, or transfers to or from GAO from or to a Federal agency subject to regulations of the U.S. OPM relating to Official Personnel Folders. GAO will maximize the pooling of information between itself and those Federal agencies subject to U.S. OPM rules and regulations concerning the Official Personnel Folder so that a GAO employee may transfer to and from other Federal agencies with one complete and informative Official Personnel Folder.

(d) Ownership of Official Personnel Folder.

(1) The Official Personnel Folders of individuals whose employment with GAO terminated prior to October 1, 1980, are the records of U.S. OPM and are under the jurisdiction and control of U.S. OPM.

(2) The Official Personnel Folders of current GAO employees whose GAO employment began on or after October 1, 1980, and who have had no previous employment by an executive branch agency of the Federal government shall be under the jurisdiction and control of, and are the records of GAO. GAO shall retain jurisdiction over such records even when they are transferred to an executive branch agency.

(3) The Official Personnel Folders of current GAO employees who were employed prior to October 1, 1980, by either GAO or an executive branch agency shall be under the control of GAO, but those records established prior to October 1, 1980, by GAO, and all records established as a result of employment by an executive branch agency shall remain under the jurisdiction of, and be part of the records of, U.S. OPM.

(4) GAO will maintain those Official Personnel Folders containing records of employment by an executive branch Federal agency, or by GAO prior to October 1, 1980, in compliance with regulations of the U.S. OPM in accordance with the procedures contained in the Memorandum of Understanding and the provisions of regulations of U.S. OPM contained in 5 CFR Parts 293, 294, and 297, as well as the provisions of FPM Chapters 293, 294, and 297.

(e) Maintenance and Content of Folder. GAO shall maintain in the Official Personnel Folder the reports of selection and other personnel actions named in section 2951 of title 5, United States Code. The Folder shall also contain permanent records affecting the employee's status and service as required by U.S. OPM instructions and as designated in FPM Supplement 293–31.

(f) Use of Existing Folders upon Transfer or Reemployment. In accordance with paragraph (a) of this section, GAO shall request the transfer of the Official Personnel Folder for a person who was previously employed with a Federal agency that maintains such a Folder. The Folder so obtained shall be used in lieu of establishing a new Official Personnel Folder.

(1) When a person for whom an Official Personnel Folder has been established transfers from GAO to another Federal agency that maintains the Folder, GAO shall, on request, transfer the Folder to the new employing agency.

(2) Before transferring the Official Personnel Folder, GAO shall—

(i) Remove those records of a temporary nature filed on the left side of the Folder; and

(ii) Ensure that all permanent documents of the Folder are complete, correct, and present in the Folder in accordance with FPM Supplement 293–31.

(g) Disposition of Folders of Former Federal Employees.

(1) Folders containing the personnel records of individuals separated from employment with GAO will be retained by GAO for 30 days after separation, and may be retained for an additional 60 days. Thereafter, the Folder shall be transferred to the same location and in the same manner as Official Personnel Folders of persons separated from Federal agencies which are subject to U.S. OPM regulations in accordance with the Memorandum of Understanding.

(2) GAO shall remove temporary records from the Folder before it is transferred in accordance with guidelines applicable to Federal agencies which are subject to U.S. OMP regulations.

(3) If a former GAO employee is reappointed in the Federal service, the employee's Folder shall, upon request,

be transferred to the new employing agency.

(h) Access Requests and Amendments to the Official Personnel Folder. Requests for access to, disclosure from, correction of, or amendments to documents contained in the Official Personnel Folder will be made in accordance with the Memorandum of Understanding.

§ 83.12 Procedures for individual access to records.

(a) Upon written request by any individual outside of GAO or upon written or oral request by any officer or employee of GAO to gain access to his or her record or to any information pertaining to the individual which is contained in a system of personnel records, and not otherwise exempted, GAO shall permit the individual and upon the individual's request a person of his or her own choosing to accompany him or her, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him or her, except that GAO may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence. When access to the records has been granted by a system manager or designee:

(1) Inspection in person may be made in the office designated in the system notice during the hours specified by GAO.

(2) Upon the determination of the designated GAO official, records may be transferred to a GAO office more convenient to the data subject to review.

(3) Generally, GAO will not furnish certified copies of records. Where certified copies of records are to be furnished, they may be mailed at the request of the data subject or, as determined by GAO, only after payment of any fee levied in accordance with §83.17 is received.

(4) In no event shall original records be made available for review by the individual except in the presence of a system manager or designee.

(b) The general identifying information items that the designated GAO official may ask to be furnished before a specific inquiry is granted include:

(1) Full name, signature, and home address;

(2) Picture identification card;

(3) The current or last place and dates of Federal employment, if appropriate; and

(4) Social security number (for those systems of records retrieved by this identifier).

(c) A request or inquiry from someone other than the individual to whom the information pertains shall contain such documents or copies of documents that establish the relationship or authorize access as follows:

(1) When the requester is the parent or legal guardian of a data subject who is a minor, the requester shall identify the relationship with the data subject and furnish a certified or authenticated (e.g. notarized) copy of any document establishing parentage or appointment as legal guardian.

(2) Where the requester is the legal guardian of a data subject who has been declared incompetent by the courts, the requester shall identify the relationship with the data subject and furnish a certified or authenticated copy of the court's appointment of guardianship.

(3) Where the requester is a representative of the data subject, the requester shall identify the relationship with the data subject or the data subject's parent or legal guardian, and furnish documentation designating the representative as having the authority to act on behalf of the data subject.

(d) When the requester appears in person and cannot be identified by sight and signature, proof of identity is required as follows:

(1) When a request is from the data subject, the means of proof, in order of preference, are:

(i) A document bearing the individual's photograph and signature (for example, driver's license, passport, or military or civilian identification card); or

(ii) Two documents bearing the individual's signature (for example, Medicare card, unemployment insurance book, employer identification card, major credit card, professional, draft, or union membership card).

(2) When a request is made by the parent, legal guardian, or authorized representative of the data subject, the means of identifying the requester and his or her authority for acting on behalf of the data subject shall be as prescribed in paragraph (c) of this section. In addition, the requester shall establish the identity of the data subject by requiring the identifying information in paragraph (b) of this section.

(e) When a written inquiry or request is received from the data subject, or from the data subject's parent, legal guardian, or authorized representative, it should be signed and—

(1) For an inquiry, contain sufficient identifying information about the data subject to permit searching of the record system(s) and to permit response; and

(2) For an access request—

(i) From the data subject, contain sufficient information to locate the record and establish that the requester and the data subject are the same (e.g. matching signatures); or

(ii) From the data subject's parent, legal guardian, or authorized representative, contain sufficient information to locate the record, match identity with the data subject, and such documentation of association or authorization as is prescribed in paragraphs (c) and (d) of this section.

(f) The signed request from the data subject, or from the data subject's parent, legal guardian, or authorized representative specified in paragraph (c) of this section shall be sufficient proof of identity of the requester, unless for good cause, the system manager or designee determines that there is a need to require some notarized or certified evidence of the identity of the requester.

§ 83.13 Inquiries.

(a) General inquiries to request assistance in identifying which system of records may contain a record about an individual may be made in person or by mail to the Director, Personnel.

(b) An inquiry that requests GAO to determine if it has, in a given system of personnel records, a record about the inquirer, should be addressed to the official identified in the **Federal Register** notice for that system. Inquirers should specify the name of the system of personnel records, if known, as published in the **Federal Register**. Such inquiries should contain the identifying data prescribed in § 83.12 before a search can be made of that particular system of records.

§ 83.14 Denial of access requests.

(a) If an access request is denied, the official denying the request shall give the requester the following information:

(1) The official's name, position title, and business mailing address;

(2) The date of the denial;

(3) The reasons for the denial, including citation of appropriate sections of this or any other applicable part; and

(4) The individual's opportunities for further administrative consideration, including the name, position title, and address of the GAO official (see paragraph (c) of this section) responsible for such further review.

(b) Denial of a request for access to records will be made only by the official GAO designee and only upon a determination that:

(1) The record is subject to an exemption under § 83.21 when the

system manager has elected to invoke the exemption; or

(2) The record is information compiled in reasonable anticipation of a civil action or proceeding; or

(3) The data subject or authorized representative of the data subject refuses to abide by procedures for gaining access to records.

(c) A request for administrative review of a denial shall be made to the Assistant Comptroller General for Human Resources, United States General Accounting Office, 441 G Street, NW, Washington, D.C. 20548. The Assistant Comptroller General shall acknowledge receipt of a request for administrative review of a denial of access within 10 working days after receipt of the request. If it is not possible to reach a decision within an additional 10 working days, the requester shall be informed of the approximate date (within 30 working days) when such a decision may be expected.

(d) In reaching a decision, the Assistant Comptroller General will review the criteria prescribed in this section which were cited as the basis for denying access, and may seek additional information as deemed necessary.

§ 83.15 Request for amendment of record.

(a) Individuals may request the amendment of their records in writing or in person by contacting the system manager or designee indicated in the notice of systems of records published by GAO in the **Federal Register**. Time limits will be measured from receipt at the proper office.

(b) A request for amendment should include the following:

(1) The precise identification of the records sought to be amended, deleted, or added.

(2) A statement of the reasons for the request, with all available documents and material that substantiate the request.

(c) GAO shall permit an individual to request amendment of a record pertaining to the individual. Not later than 10 working days after the date of receipt of such request, the designated GAO official shall acknowledge in writing such request and, promptly, either—

(1) Make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(2) Inform the individual of the refusal to amend the record in accordance with his or her request, the reason for the refusal, and the name and business address of the GAO official responsible for the refusal.

(3) The GAO offical shall permit an individual who disagrees with the refusal by the designated GAO official to amend his or her record to request review of such refusal. A request for administrative review of a denial shall be made in accordance with § 83.16.

(4) In any disclosure containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under § 83.16(d), GAO shall clearly note any portion of the record which is disputed and provide copies of a concise statement of the reasons for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed.

(5) Nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(d) If necessary, the official authorized to rule on a request for amendment may seek additional information pertinent to the request to assure that a fair, equitable, and accurate decision is reached.

(e) The following criteria will be considered by the system manager or designee in reviewing initial requests for amendment of records:

(1) The sufficiency of the evidence submitted by the data subject;

(2) The factual accuracy of the information submitted and the information in the record;

(3) The relevancy, necessity, timeliness, and completeness of the information in light of the purpose for which it was collected;

(4) The degree of possibility that denial of the request could result in unfair determinations adverse to the data subject;

(5) The character of record sought to be amended;

(6) The propriety and feasibility of complying with specific means of amendment requested by the data subject; and

(7) The possible involvement of the record in a judicial or quasi-judicial process.

§ 83.16 Administrative review of request for amendment of record.

(a) A request for administrative review of GAO's denial to amend a record in GAO's system of personnel records shall be addressed to the Assistant Comptroller General for Human Resources, United States General Accounting Office, 441 G Street, NW, Washington, D.C. 20548. The Assistant Comptroller General shall acknowledge receipt of a request for administrative review of a denial of amendment within 10 working days.

(b) If a decision cannot be made within an additional 10-day period, a letter will be sent within that time explaining the delay and furnishing an expected date for the decision. A decision on the request must be made within 30 working days after receipt of the request. Only for good cause shown, and at the discretion of the Assistant Comptroller General for Human Resources can this time limit be extended. Any extension requires written notification to the requester explaining the reason for the extension and furnishing a new expected date for the decision. Generally, such extension shall be for no more than an additional 30 working days.

(c) When a request for administrative review of an amendment denial is submitted, the individual must provide a copy of the original request for amendment, a copy of the initial denial, and a statement of the specific reasons why the initial denial is believed to be in error.

(d) An individual requesting an amendment of a record has the burden of supplying information in support of the propriety and necessity of the amendment request. The decision on the request will then be rendered based on a review of the data submitted. The GAO official is not required to gather supporting evidence for the individual and will have the right to verify the evidence which the individual submits.

(e) Amendment of a record will be denied upon a determination by the system manager or designee that:

(1) The record is subject to an exemption from the provisions of this part, allowing amendment of records;

(2) The information submitted by the data subject is not accurate, relevant, or of sufficient probative value;

(3) The amendment would violate a statute or regulation;

(4) The individual refuses to provide information which is necessary to process the request to amend the record; or

(5) The record for which amendment is requested is a record presented in a judicial or quasi-judicial proceeding, or maintained in anticipation of being used in a judicial or quasi-judicial proceeding, when such record is or will become available to the individual under that proceeding.

(f) If, after review, the Assistant Comptroller General for Human Resources also refuses to amend the record in accordance with the request, the individual will be permitted to file with the system manager or designee of the system of records concerned a concise statement setting forth the

reasons for his or her disagreement. Any such statement of disagreement will be treated in accordance with paragraph (c)(4) of § 83.15.

§ 83.17 Fees.

(a) Generally, GAO's policy is to provide the first copy of any record or portion thereof, furnished as a result of this part, at no cost to the data subject or authorized representative. However, in cases where GAO deems it appropriate (for example, where the record is voluminous), the system manager or designee in his or her discretion may charge a fee when the cost for copying the record (at a rate of 20 cents per page) would be in excess of ten dollars ($10).

(b) There shall be no fees charged or collected from a data subject for the following:

(1) Search for or retrieval of the data subject's records;

(2) Review of the records;

(3) Making a copy of a record when it is a necessary part of the process of making the record available for review;

(4) Copying at the initiative of GAO without a request from the individual;

(5) Transportation of the record; and

(6) Making a copy of an amended record to provide the individual with evidence of the amendment.

(c) Certification of authenticity shall be $10 for each certificate, which fee may be waived in the discretion of the system manager or designee.

§ 83.18 Rights of legal guardians.

For the purposes of this part, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

§ 83.19 Government contractors.

When GAO provides by a contract for the operation by or on behalf of GAO of a system of personnel records to accomplish a function of GAO, GAO shall, consistent with its authority, cause the requirements of this part to be applied to such system. Any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered, for the purposes of this part, to be an employee of GAO. Contractor employees will be required to observe the confidentiality requirements of this part. Violations of this part by contractor employees may be a sufficient ground for contract termination.

§ 83.20 Mailing lists.

An individual's name and address may not be sold or rented by GAO unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

§ 83.21 Exemptions.

(a) All personnel records are exempted from §§ 83.6(c), 83.12, 83.13, 83.14, and 83.15, relating to making an accounting of disclosures available to the data subject or his authorized representative and access to and amendment of the records and other sections relating to procedural requirements of the above-cited sections if the record is:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and is in fact classified pursuant to such Executive order. *See* 31 U.S.C. 716(e)(1) and 718(b)(3) concerning the applicability of these requirements to GAO.

(2) Investigatory material compiled for law enforcement purposes: *Provided, however,* That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled to by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an express or implied promise that the identity of the source would be held in confidence;

(3) Maintained in connection with providing protection services to the President of the United States or other individuals pursuant to section 3056 of Title 18, United States Code;

(4) Required by statute to be maintained and used solely as statistical records;

(5) Investigatory material compiled solely for the purposes of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of the source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an express or implied promise that the identity of the source would be held in confidence (*see* § 83.5(j)(1) for the procedure to be used to obtain investigative data originated by other Government agencies);

(6) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) Evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an express or implied promise that the identity of the source would be held in confidence.

Appendix I—Memorandum of Understanding

This memorandum of understanding constitutes an agreement between the U.S. Office of Personnel Management (OPM), the National Archives and Records Service of the General Services Administration (NARS), and the U.S. General Accounting Office (GAO) concerning:

(1) The maintenance of the Official Personnel Folder (OPF) of an individual who has been employed in a position subject to the provisions of Title 5, U.S.C. and to the regulations and procedures issued by OPM to govern the Federal civil service, and also in a position subject to the GAO Personnel Act of 1980 (Pub. L. 96-191) and its implementing regulations and procedures;

(2) The exchange of personnel documents and data between the Federal civil service administered by OPM and the personnel system administered by GAO;

(3) The establishment of procedures for processing requests for access to, disclosure from, and amendment of documents in the OPF of an individual who has service under both personnel systems;

(4) The establishment of procedures to be followed by the National Personnel Records Center (NPRC) when responding to requests pertaining to separated employees in any of the following circumstances:

(a) When the OPF contains documentation resulting from employment in both systems;

(b) When a request is received for transfer of an OPF between systems;

(c) When processing a request for an OPF, and that OPF contains only records of GAO employment since October 1, 1980;

(5) The agreement of the parties to consult and cooperate in matters relating to the establishment and revision of personnel procedures which may have mutual effect so as to insure the sharing of essential information while minimizing the recordkeeping burden of all three parties.

It is recognized that adjustments to this memorandum may be needed from time to time in order to conform to program changes imposed by statute, executive order, or other appropriate authority. Such adjustments will be made by mutual agreement between the parties and will be appended to this agreement.

Legal and Administrative Provisions

The Privacy Act of 1974 and the Freedom of Information Act (as amended)

Records maintained by the Legislative Branch of the Federal Government, including the GAO, are not covered by the Privacy Act of 1974 (5 U.S.C. 552a) or the Freedom of Information Act (5 U.S.C. 552). Both Acts, however, do for the most part apply to those records established as a result of employment in a position subject to regulations and procedures issued by OPM since such records remain the property of OPM even when in the physical possession of GAO.

Title 5, U.S.C.

The General Accounting Office Personnel Act of 1980 (Pub. L. 96–191) exempts the GAO personnel system from most of the provisions of Title 5, U.S.C. and from most of the regulations and procedures issued by OPM. Personnel recordkeeping by GAO prior to October 1, 1980 was conducted under the provisions of Title 5, U.S.C.

Executive Order 12107

Executive Order 12107, "Relating to the Civil Service Commission and Labor Management in the Federal Service," designated the OPF maintained by most Federal agencies as the property of OPM. However, GAO is not a Government agency subject to the provisions of this executive order.

Use of Existing OPFs upon Transfer to or Reemployment by GAO

Current Federal Employees

When GAO hires an individual who is currently employed by a Federal agency which maintains OPFs in accordance with OPM regulations, GAO will request that agency to transfer the subject employee's OPF. In making such a request GAO will follow the procedures contained in FPM Supplement 293–31, and the losing agency will furnish the OPF to GAO within the time frame prescribed in that PFM Supplement.

Former Federal Employees

When GAO hires an individual who was formerly employed by a Federal agency (including a former GAO employee who was previously employed by that agency prior to October 1, 1980) which maintained OPFs in accordance with OPM regulations, and such individual is not currently employed by the Federal government, GAO will request the individual's OPF from the National Personnel Records Center (NPRC). In making such requests, GAO will follow the procedures contained in FPM Supplement 293–31, and NPRC will furnish the OPF within the established time frames therein.

Establishment and Maintenance of OPFs

GAO shall establish and maintain an OPF for each of its employees. Althought GAO is not bound by OPM regulations and procedures relating to OPFs, GAO agrees to follow the OPF maintenance procedures contained in FPM Supplement 293–31, in so far as is practicable. In order to: (1) Minimize the burden and paperwork inherent in establishing and operating an independent personnel recordkeeping system; (2) insure the sharing of essential information and personnel records between the two systems; and (3) insure proper maintenance of documents related to OPM-controlled functions, e.g., civil service retirement, Federal Employee's Health Benefits (FEHB), and Federal Employee's Government Life Insurance (FEGLI).

Ownership of OPFs

Former GAO Employees

The OPFs of individuals whose employment with GAO terminated prior to October 1, 1980, are under the jurisdiction and control of, and are part of the records of OPM.

Current GAO Employees

The OPFs of current GAO employees whose GAO employment began on or after October 1, 1980, and who have had no previous employment by an Executive Branch agency of the Federal Government shall be under the jurisidiction and control of, and part of the records of GAO. GAO shall retain jurisdiction over such records even when they are transferred to an Executive Branch agency.

The OPFs of current GAO employees who were employed by either GAO prior to October 1, 1980, or an Executive Branch agency shall be under the control of GAO but those records established prior to October 1, 1980 by GAO, and all records established as a result of employment by an Executive Branch agency shall remain under the jurisdiction of, and be part of the records of, OPM.

GAO agrees to maintain those OPFs containing records of employment by an Executive Branch Federal agency, or by GAO prior to October 1, 1980, in compliance with OPM regulations in accordance with the procedures contained in this memorandum and the provisions of OPM regulations contained in 5 CFR Parts 293, 294, and 297, as well as the provisions of FPM Chapters 293, 294, and 297.

Transfer of OPFs from GAO

When a person who is currently employed by GAO, and for whom GAO maintains an OPF, transfers to an Executive Branch agency of the Federal Government, GAO shall, when requested, transfer the OPF to the new employing agency. However, before such transfer, GAO shall:

—Remove any temporary records filed in the OPF by GAO; and

—Ensure that all long term documents in the OPF are completed and correct and that all documents relevant to areas remaining under OPM control (e.g., retirement, FEHB, and FEGLI) are filed in OPF in accordance with the requirements of FPM Supplement 293–31.

OPFs of individuals separated from employment by GAO, but not transferring to another agency, will be retained by GAO and forwarded to NPRC in accordance with GAO regulations. The OPF will be transferred to the NPRC in the same manner as an OPF of an individual separated from an Executive branch agency subject to OPM regulations. Such OPFs shall be purged of temporary material in accordance with guidelines established by OPM in FPM Supplement 293–31 and this memorandum, prior to transfer to NPRC. When such OPFs are received by NPRC, they will be maintained in accordance with the procedures and practices governing OPFs of Executive branch agencies subject to OPM regulations, including the release of OPFs or data therefrom in the same manner as with all other OPM controlled OPFs.

Use of Existing OPFs Upon Transfer From GAO to an Executive Branch Agency

When an individual who was employed by GAO on or after October 1, 1980, is transferred to, or after a break in service is subsequently reemployed by an Executive branch agency subject to OPM regulations, that agency will request the OPF from GAO or NPRC (as appropriate) in accordance with the procedures contained in FPM Supplement 293–31, and shall use that OPF in lieu of establishing a new OPF. However, records contained in such an OPF which were created by GAO for employment after October 1, 1980, are to remain in the OPF and are not to be purged or modified in any way by the Executive branch agency.

Use of SF 66, Official Personnel Folder Jackets by GAO

GAO will use the SF 66, Official Personnel Folder jacket issued by OPM. However, GAO agrees to mark or annotate the front of all GAO OPFs with the letters "GAO" in order to provide for easy identification by NPRC personnel.

Responding to FOIA Requests

OPF In Custody of GAO

When GAO has custody of an OPF containing records of employment in an Executive branch agency subject to OPM regulations including employment by GAO prior to October 1, 1980, and GAO receives a request citing either the Freedom of Information Act (FOIA) or GAO's own procedures (if any) which equate to that Act for information about the subject individual, GAO shall respond in accordance with its own regulations. When GAO is processing the request it will:

—Consult with OPM before releasing records or data created by an Executive Branch agency or by GAO previous to October 1, 1980; and

—Inform requesters that, insofar as there is a denial of records or data created under OPM's regulations, the requester may address a request for review to: General Counsel, U.S. Office of Personnel Management, Washington, D.C. 20415

Current Executive Branch Employee

When an executive branch agency receives a request under the FOIA for information contained in an OPF, and:

—That OPF contains data resulting from employment in GAO on or after October 1, 1980; and

—The agency determines that the request should be denied,

the agency will provide the requester with a decision in accordance with its regulations. In addition, the agency will inform the requester that, insofar as the decision to deny may relate to records created as a result of the individual's employment by GAO, the requester should address any request for review of the denial of access to those records to: General Counsel, U.S. General Accounting Office, Washington, D.C. 20548.

Review of denials of access to other records will be subject to applicable agency regulations and procedures.

Former Federal Employees

When OPM processes a request under the FOIA for records found in the OPF of a former Federal employee and that individual has service in both the Executive branch and in GAO on or after October 1, 1980, OPM will process that request in accordance with applicable regulations. When OPM is processing the request it will:

—Consult with GAO before releasing records or data created by GAO on or after October 1, 1980; and

—Inform the requester that, insofar as there is a denial of records or data created by GAO, the requester may address a request for review to: General Counsel, U.S. General Accounting Office, Washington, D.C. 20548

Privacy Act Requests

Current Employees of GAO Access

Requests for access to personnel records by current employees of GAO will be processed by GAO in accordance with GAO regulations and procedures. However, when processing requests for records which were created by an Executive branch agency subject to OPM regulations and procedures (including GAO prior to October 1, 1980), or for records created by GAO subject to OPM control (e.g., FEGLI, FEHS, retirement), GAO agrees to provide at least the same procedural rights and benefits as apply to the processing of similar requests by an Executive branch agency.

Amendment

Requests for amendment of personnel records by current employees of GAO will be processed in accordance with GAO regulations and procedures. However, when processing requests to amend records which:

—Are contained in an OPF; and

—Were created during a period of employment by an Executive branch agency subject to OPM regulations and procedures; or

—Were created by GAO prior to October 1, 1980; or

—Were created by GAO since October 1, 1980, and relate to an area which remains subject to OPM regulations and procedures;

GAO agrees to abide by OPM regulations contained in 5 CFR Part 297, and procedures contained in FPM Chapter 297. In addition, GAO agrees to consult with OPM prior to acting on any such request and to notify requesters of a right to appeal an adverse decision relating to the amendmnent of records subject to OPM control to: Assistant Director for Workforce Information, U.S. Office of Personnel Management, 1900 E Street, NW, Washington, D.C. 20415.

Current Employees of Executive Branch Agencies

Access

When processing a request for access to an OPF by a current employee who has previously worked for GAO on or after October 1, 1980, an Executive branch agency will follow OPM's regulations and procedures applicable to other Privacy Act access requests. However, if there is any question as to the propriety of releasing a document created by GAO on or after October 1, 1980, that agency shall consult with GAO.

Amendment

When processing a request for amendment of a record contained in an OPF of an individual who was previously employed by GAO, an Executive branch agency shall first determine whether the record involved was created by GAO on or after October 1, 1980. When the Executive branch agency determines that the record was created by GAO before October 1, 1980, the agency shall proceed to consider the request for amendment in accordance with OPM regulations contained in 5 CFR Part 297, and FPM Chapter 297. When the record in question was created by GAO prior to October 1, 1980, the Executive branch agency may (if it deems appropriate) consult with GAO prior to rendering a decision. When the request deals with a record created by GAO on or after October 1, 1980, the Executive Branch agency will:

—Notify the requester that the record in question was created by the GAO on or after the effective date of the GAO Personnel Act of 1980, and that it is subject to GAO regulations and procedures; and

—Forward the record in question, the request for amendment and all supporting evidence to: Director of Personnel, U.S. General Accounting Office, Washington, D.C. 20548.

Former Employees

Access

Requests for access to records contained in the OPF of an individual who is not currently employed in an Executive branch agency subject to OPM regulations, or in GAO, shall be processed by OPM in accordance with procedures contained in FPM Chapter 297. When some of the records in question were created by GAO on or after October 1, 1980, and the OPM office processing the request has a question as to the propriety of releasing one or more such documents, it may consult with GAO prior to rendering a decision.

Amendment

Request for amendment of records contained in the OPF of an individual who is not currently employed in an Executive branch agency subject to OPM regulations, or in GAO, shall be processed as follows:

—If all of the records in question were created by GAO on or after October 1, 1980, and are not subject to OPM control, the requester shall be notified that the records in question are under the jurisdiction and control of GAO, and the request shall be transferred to: General Counsel, U.S. General Accounting Office, Washington, D.C. 20548.

—If some of the records in question were created by GAO on or after October 1, 1980, and those records are not subject to OPM control, OPM will: process that portion of the records subject to its control in accordance with regulations contained in 5 CFR Part 297 and FPM Chapter 297; will notify the requester that part of the records requested to be amended were created by GAO after the enactment of the GAO Personnel Act of 1980, and that those records are subject to GAO's sole jurisdiction and control; and will transfer the request, the records in question, a copy of the OPM decision, and any available background information to: General Counsel, U.S. General Accounting Office, Washington, D.C. 20548.

NPRC Procedures Relating to this Memorandum of Understanding

NPRC will process requests for OPFs in its physical custody in accordance with the following instructions:

—When NPRC receives a request from an Executive branch agency for the OPF of a former GAO employee, NPRC will forward that OPF to the requesting agency;

—When NPRC receives a request from GAO for the OPF of a former Executive branch employee, NPRC will forward that OPF to GAO;

—When the request is from an Executive branch agency for an OPF which contains records of employment both in the Executive branch and in GAO, NPRC will forward the OPF to the Executive branch agency;

—When the request is from GAO for an OPF which contains records of employment both in the Executive branch and in GAO, NPRC will forward the OPF to GAO;

—When NPRC receives a direct request for access to or amendment of an OPF which contains records of employment both in the Executive Branch and/or GAO prior to October 1, 1980 as well as in GAO after October 1, 1980, NPRC will:

• Forward the request and the OPF to the following address if the individual was last employed by an Executive branch agency (including GAO prior to October 1, 1980): Assistant Director for Workforce Information U.S. Office of Personnel Management 1900 E. Street, N.W. Washington, D.C. 20415

• Forward the request and the OPF to the following address if the individual was last employed by GAO (on or after October 1, 1980):

Director of Personnel
U.S. General Accounting Office
Washington, D.C. 20548

—When NPRC receives as request for verification of employment data or for a transcript of employment, it will process that request as it would any other for the same information;
—NPRC will provide a transcript of employment when requested by a former employee of the Executive Branch or GAO;
—Requests received at NPRC from former employees seeking copies of documents or information from an OPF containing records of employment both in the Executive branch and in GAO (on or after October 1, 1980), will be forwarded either to OPM or GAO as indicated above, together with the appropriate OPF.

Requests Received from Researchers and Genealogists

NPRC will respond to requests received from genealogists, researchers, or other unauthorized third parties for information concerning individuals who were employed by GAO on or after October 1, 1980, by providing only the following information:

—Name of employee;
—Past and present position titles;
—Past and present grades;
—Past and present salaries; and
—Past and present duty stations.

Requests for additional information, or requests which provide information indicating that the individual is deceased will be forwarded to the legal custodian of the record for direct response.

Requests for Documents from the OPF

When NPRC receives a request either from a former employee or an authorized third party for information or photocopies of specified documents filed in the OPF, the request and the OPF in question will be forwarded to the legal custodian for direct response.

Requests From Federal Investigators

NPRC will grant Federal investigators access to OPFs of former GAO employees subject to the same procedures and limitations which apply to granting investigators access to OPFs under the custody and control of OPM. Such investigators shall be allowed to photocopy any material in such OPFs.

Coordination and consultation

OPM, NARS, and GAO agree that there is a need for continuing close cooperation and consultation concerning the exchange of personnel documents and data and the applicability of procedures relating to the maintenance and use of OPFs and that matters of mutual concern which may arise, but are not covered by this memorandum, will be mutually resolved.

The Assistant Director for Workforce Information of OPM, the Assistant Archivist for Federal Records Centers of NARS and The Director of Personnel of GAO are designated as the coordinators and contact points for the establishment and oversight of relevant procedures, and will assign staff members to implement this agreement. Additional detailed agreements that the coordinators jointly establish will be considered to be a part of this agreement.

Procedures and Regulations Issued to Implement this memorandum

It is agreed that OPM, NARS, and GAO may issue regulations and procedures to implement this memorandum of understanding. The coordinators agree that they will consult concerning the development and issuance of such regulations and procedures, and that when such regulations or procedures are issued, a copy will be furnished to the other parties to this agreement.

Approved:

Dated: June 11, 1982.

Felix R. Brandon, II,

Director of Personnel, U.S. General Accounting Office.

Dated: May 20, 1982.

Dr. Philip A.D. Schneider,

Assistant Director for Workforce Information, U.S. Office of Personnel Management.

Dated: July 12, 1982.

G.N. Scaboo,

Acting Assistant Archivist for Federal Records Centers, National Archives and Records Service, General Services Administration.

Dated: March 28, 1985.

Charles A. Bowsher,

Comptroller General of the United States.

[FR Doc. 85-7868 Filed 4-2-85; 8:45 am]
BILLING CODE 1610-02-M

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 307 and 316

Veterans Readjustment Appointments; Temporary and Term Employment

AGENCY: Office of Personnel Management.

ACTION: Interim rule.

SUMMARY: This interim rule reflects the statutory changes in the expiration date and amendments for use of the Veterans Readjustment Appointment (VRA) authority. The VRA statutory authority, cited in Pub. L. 97-72, expired on September 30, 1984. On October 24, 1984, the President signed Pub. L. 98-543, "Veterans' Benefits Improvement Act of 1984." This law revises the VRA authority and extends the expiration date through September 30, 1986. Consequently, a corresponding change in 5 CFR Parts 307 and 316 must be made.

DATE: Effective: May 3, 1985. Comments: Must be received by June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Don A. Smith, Chief, Evaluations Division, Office of Affirmative Employment Programs, (202) 632-7082.

SUPPLEMENTARY INFORMATION: On September 30, 1984, Pub. L. 97-72, which was the statutory base for the VRA Program, expired. On October 24, 1984, the President signed Pub. L. 98-543, which revised and extended the VRA Program through September 30, 1986 under 38 U.S.C. 2014. The revisions increase the maximum grade level for appointments from GS-7 to GS-9; provide for limited appeal rights for VRA appointees who are terminated during their first year of employment; and replace the semiannual VRA report with an annual report. OPM is required by law to issue and amend regulations governing the VRA Program.

Pursuant to section 553(b)(3)(B) of title 5 of the United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and making this effective 30 days after publication. The regulation is being made effective immediately to ensure maximum consistency with Pub. L. 98-543, "Veterans' Benefits Improvement Act of 1984," which provides that the Veterans Readjustment Appointment Program be revised and extended through September 30, 1986 under 38 U.S.C. 2014.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal Government employees.

List of Subjects

5 CFR Part 307

Government employees, Reporting requirements, Veterans.

5 CFR Part 316

Government employees, Veterans.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, OPM is amending Parts 307 and 316 of Title 5 of the Code of Federal Regulations as follows:

PART 307—VETERANS READJUSTMENT APPOINTMENTS

1. The authority for Part 307 reads as follows:

Authority: 5 U.S.C. 3301, 3302; E.O. 11521, 3 CFR 1970 Comp., p. 912; 38 U.S.C. 2014.

2. In § 307.102(b), "1984" is changed to "1986."

3. In § 307.103(a), "GS–7" is changed to "GS–9."

4. In § 307.105, the single paragraph is redesignated as paragraph (a) and paragraph (b) is added to read as follows:

§ 307.105 Conditions of employment.

* * * * *

(b) Veterans readjustment appointees are entitled to limited appeal protections during their first year of service as set forth in § 315.806 of this chapter.

5. Section 307.107 is revised to read as follows:

§ 307.107 Reporting requirement.

As provided by 38 U.S.C. 2014 (d) and (e), OPM will, on at least an annual basis, obtain information and submit to the Congress a report on Government-wide progress in implementing the veteran readjustment appointment authority.

PART 316—TEMPORARY AND TERM EMPLOYMENT

§ 316.302 [Amended]

6. In § 316.302, paragraph (c)(2)(iii) in the second sentence, "GS–7" and "1984" are changed to "GS–9" and "1986" respectively.

(5 U.S.C. 3301, 3302, 3304(c); 38 U.S.C. 2014; E.O. 12362)

§ 316.402 [Amended]

7. In § 316.402, paragraph (b)(4)(iii) in the second sentence, "GS–7" and "1984" are changed to "GS–9" and "1986" respectively.

(5 U.S.C. 3312; 22 U.S.C. 2506, 93 Stat. 371, E.O. 12137; 5 U.S.C. 3301, 3302, 3304(c); 38 U.S.C. 2014; E.O. 12362)

[FR Doc. 85–7884 Filed 4–2–85; 8:45 am]

BILLING CODE 6325–01–M

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Publication of Revised Merit Systems Protection Board Appeal Form

AGENCY: Merit Systems Protection Board.

ACTION: Publication of Revised Appeal Form.

SUMMARY: The Board announces publication of a new MSPB Appeal Form, Appendix I of 5 CFR Part 1201, which has been revised in format to facilitate the filing of appeals with the Board. The Board has arranged for copies of the new form (Optional Form 283 (11/84)) to be made available to agencies through their normal procurement channels from the General Services Administration. The Board's regulations at 5 CFR 1201.21(c) require each agency to provide a copy of the appeal form to any employee to whom it has issued a personnel decision notice on a matter appealable to the Board.

EFFECTIVE DATE: April 3, 1985.

FOR FURTHER INFORMATION CONTACT: Michael H. Hoxie, Director, Information Services Division, Office of the Clerk of the Board, Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, D.C. 20419, (202) 653–7200.

SUPPLEMENTARY INFORMATION: The Board's revision of the appeal form (Edition 11/84) does not constitute a substantive change over the previous appeal form (Edition 5/80) and the latter will remain valid for purposes of filing appeals with the Board. However, the Board encourages agencies and employees to order and use the new appeal form since it has been revised to improve the accuracy and completeness of appeal filings. The following summarizes the significant changes in format of the revised form:

(1) *Instructions.* The instructions type size was expanded to improve readability, and instructions were added regarding premature appeals and other matters to improve completeness and legibility of appeal filings.

(2) *Copies.* The new instructions request one original and one copy (the old form requested three copies) reflecting the internal MSPB change to a single file system.

(3) *Spacing and Wording.* The overall spacing and wording of the form's information blocks were changed to help improve the accuracy and completeness of responses.

(4) *Hearing/Representative.* The previous Part III, "Hearing" section, was divided, and a "Designation of Representative" section was established as Part IV. The old line 27B signature block, and the old line 28 witness blocks were eliminated because they were not necessary.

(5) *Part V—RIF.* The previous Part IV, "Reduction-in-Force" (RIF), is now Part V.

Please note that the Voluntary Expedited Appeal Form, Appendix 1–A to 5 CFR Part 1201, remains valid for the purposes of appeals filed in Board regional offices where the voluntary expedited appeals procedure is in effect.

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Government employees.

Dated: March 28, 1985.

For the Board.

Herbert E. Ellingwood,

Chairman.

Accordingly, 5 CFR Part 1201, Appendix I, is revised as follows:

BILLING CODE 7400–01–M

UNITED STATES MERIT SYSTEMS PROTECTION BOARD

APPEAL

AGENCY USE ONLY

INSTRUCTIONS:

THE PURPOSE OF THIS FORM IS TO HELP YOU PROVIDE IMPORTANT INFORMATION TO THE U.S. MERIT SYSTEMS PROTECTION BOARD ("THE BOARD") WHEN YOU FILE AN APPEAL. YOU ARE NOT REQUIRED TO USE THIS FORM, AND YOU ARE NOT LIMITED TO ANSWERING THE QUESTIONS ON THE FORM IF YOU FEEL THERE IS OTHER INFORMATION YOU WISH TO PROVIDE. HOWEVER, IF YOU DO NOT USE THE FORM, YOUR APPEAL DOCUMENTS MUST COMPLY WITH THE BOARD'S REGULATIONS. YOUR AGENCY'S PERSONNEL OFFICE WILL PROVIDE YOU WITH A COPY OF THESE REGULATIONS AND THE BOARD ADVISES YOU TO REVIEW THEM.

ALL APPEALS FILED BEFORE AGENCY ACTION HAS BEEN TAKEN WILL BE CONSIDERED PREMATURE AND WILL BE RETURNED WITHOUT ACTION.

ALL APPELLANTS WHO ELECT TO USE THIS FORM SHOULD COMPLETE PARTS I THROUGH IV. ONLY THOSE WHO ARE APPEALING REDUCTION IN FORCE (RIF) ACTIONS ARE REQUIRED TO COMPLETE PART V. THE INFORMATION MUST BE TYPED OR PRINTED CLEARLY. ANSWER ALL QUESTIONS AND USE "N/A" WHEN THE QUESTION IS NOT APPLICABLE TO YOUR APPEAL. ALL APPELLANTS MUST SIGN AND DATE THE FORM IN THE SPACE PROVIDED AT THE END OF PAGE 4 FOR IT TO BE ACCEPTED BY THE BOARD, AND TO INDICATE APPROVAL OF THE CONTENTS OF THE ENTIRE FORM.

YOU MAY SUPPLEMENT YOUR RESPONSE TO ANY QUESTION IN THE SPACE PROVIDED ON PAGE 4 OR, IF NEEDED, ON SEPARATE SHEETS OF PAPER. IF SEPARATE SHEETS ARE USED, PLEASE PUT YOUR NAME AND SOCIAL SECURITY NUMBER AT THE TOP OF EACH PAGE. INDICATE BY NUMBER WHICH QUESTION YOU ARE ANSWERING, AND ATTACH THE EXTRA PAGES TO THE FORM.

WHERE TO FILE—YOU OR YOUR REPRESENTATIVE ARE REQUIRED TO FILE ONE ORIGINAL AND ONE COPY OF THIS FORM, TOGETHER WITH ITS ATTACHMENTS, WITH THE BOARD'S REGIONAL OFFICE IDENTIFIED IN THE DECISION NOTICE PROVIDED BY THE AGENCY. FILING MUST BE MADE EITHER BY PERSONAL DELIVERY DURING NORMAL BUSINESS HOURS TO THE APPROPRIATE BOARD REGIONAL OFFICE OR BY MAIL ADDRESSED TO THAT OFFICE. THE BOARD RECOMMENDS BUT DOES NOT REQUIRE THAT YOU USE CERTIFIED MAIL.

PRIVACY ACT STATEMENT

This form requests personal information which is relevant and necessary to reach a decision in your appeal. The U.S. Merit Systems Protection Board collects this information in order to process appeals under its statutory and regulatory authority. Since your appeal is a voluntary action you are not required to provide any personal information in connection with it. However, failure to supply the U.S. Merit Systems Protection Board with all the information essential to reach a decision in your case could result in the rejection of your appeal.

You should know that the decisions of the U.S. Merit Systems Protection Board on appeal are final administrative decisions and, as such, are available to the public under the provisions of the Freedom of Information Act. Additionally, it is possible that information contained in your appeal file may be released as required by the Freedom of Information Act. Some information about your appeal will also be used in depersonalized form as a data base for program statistics.

PART I. APPELLANT IDENTIFICATION

1. NAME *(Last, first, middle)*

2. SOCIAL SECURITY NUMBER

3. PRESENT ADDRESS *(Number and street, city, state, and ZIP code)* YOU ARE REQUIRED TO NOTIFY THE BOARD OF ANY ADDRESS CHANGE IN ORDER TO INSURE THE CORRECT DELIVERY OF A DECISION.

4. HOME PHONE *(Include area code)*

5. OFFICE PHONE *(Include area code)*

PART II. APPEALED ACTION

6. BRIEFLY DESCRIBE THE *AGENCY ACTION* YOU WISH TO APPEAL AND ATTACH ANY RELEVANT DOCUMENTS *(e.g., a Notice of Proposed Action, a Form 50, or Agency Appeal Decision)*

7. NAME AND ADDRESS OF ACTING AGENCY *(Including Bureau, or other Division as well as street address, city, state, and ZIP code)*

8. APPELLANT'S POSITION TITLE AT TIME OF ACTION

9. GRADE AT TIME OF ACTION

10. SALARY AT TIME OF ACTION

$ PER

11. ARE YOU A VETERAN OR ENTITLED TO THE EMPLOYMENT RIGHTS OF A VETERAN? ☐ YES ☐ NO	12. EMPLOYMENT STATUS ☐ Temporary ☐ Applicant ☐ Retired ☐ Permanent ☐ Term	13. IF RETIRED, DATE OF RETIREMENT (Month, day, year)

14. TYPE OF SERVICE ☐ Competitive ☐ Excepted	15. LENGTH OF GOVERNMENT SERVICE	16. LENGTH OF SERVICE WITH ACTING AGENCY	17. WERE YOU SERVING A PROBATIONARY OR TRIAL PERIOD AT THE TIME ACTION WAS TAKEN BY THE AGENCY? ☐ YES ☐ NO

18. DATE WRITTEN PROPOSED ACTION NOTICE RECEIVED (Month, day, year) (Attach copy)	19. DATE FINAL DECISION NOTICE RECEIVED (Month, day, year) (Attach Copy)	20. EFFECTIVE DATE OF ACTION (Month, day, year)

21. WHY DO YOU THINK THE AGENCY WAS WRONG IN TAKING THIS ACTION? (Explain briefly)

22. WHAT ACTION WOULD YOU LIKE THE BOARD TO TAKE ON THIS CASE?

23. IF YOU BELIEVE YOU WERE DISCRIMINATED AGAINST BY THE AGENCY BECAUSE OF EITHER YOUR RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, MARITAL STATUS, POLITICAL AFFILIATION, HANDICAPPING CONDITION, OR AGE, INDICATE SO AND EXPLAIN WHY YOU BELIEVE IT TO BE TRUE. YOU MUST INDICATE, BY EXAMPLES, HOW YOU WERE DISCRIMINATED AGAINST.

24. HAVE YOU FILED A FORMAL DISCRIMINATION COMPLAINT CONCERNING THE MATTER WHICH YOU ARE SEEKING TO APPEAL WITH YOUR AGENCY OR ANY OTHER AGENCY?

☐ YES (Attach copy) ☐ NO

24A. IF YES, DATE FILED (Month, day, year)	24B. PLACE FILED (Agency and location)	24C. HAS THERE BEEN A DECISION? ☐ YES (Attach copy) ☐ NO

25. HAVE YOU, OR ANYONE IN YOUR BEHALF, FILED A FORMAL GRIEVANCE WITH YOUR AGENCY CONCERNING THIS MATTTER, UNDER A NEGOTIATED GRIEVANCE PROCEDURE PROVIDED BY A COLLECTIVE BARGAINING AGREEMENT?

☐ YES *(Attach copy)* ☐ NO

25A. IF YES, DATE FILED *(Month, day, year)*	25B. PLACE FILED *(Agency and location)*	25C. HAS DECISION BEEN ISSUED? ☐ YES *(Attach copy)* ☐ NO
25D. IF YES, DATE FILED *(Month, day, year)*	25E. NAME OF ISSUING OFFICIAL	25F. TITLE OF ISSUING OFFICIAL

PART III. HEARING

26. YOU HAVE A RIGHT TO A HEARING ON THIS APPEAL. IF YOU DO NOT WANT A HEARING, THE BOARD WILL MAKE ITS DECISION ON THE BASIS OF THE DOCUMENTS YOU AND THE AGENCY SUBMIT. IF NO SQUARE IS CHECKED, THE BOARD WILL PRESUME YOU ARE WAIVING A HEARING. *DO YOU WANT A HEARING?*

☐ YES ☐ NO

IF YOU CHOOSE TO HAVE A HEARING THE BOARD WILL NOTIFY YOU WHEN AND WHERE IT IS TO BE HELD.

PART IV. DESIGNATION OF REPRESENTATIVE

27. YOU HAVE THE RIGHT TO DESIGNATE SOMEONE TO REPRESENT YOU ON THIS APPEAL. IF HE/SHE AGREES TO DO SO, THIS PERSON DOES NOT HAVE TO BE AN ATTORNEY. THE AGENCY HAS A RIGHT TO CHALLENGE YOUR CHOICE OF A REPRESENTATIVE IF THERE IS A CONFLICT OF INTEREST OR POSITION. YOU MAY CHANGE YOUR DESIGNATION OF A REPRESENTATIVE AT A LATER DATE, IF YOU SO DESIRE, BUT MUST NOTIFY THE BOARD PROMPTLY OF ANY CHANGE.

27A. "I HEREBY DESIGNATE _____ TO SERVE AS MY REPRESENTATIVE DURING THE COURSE OF THIS APPEAL. I UNDERSTAND THAT MY REPRESENTATIVE IS AUTHORIZED TO ACT ON MY BEHALF."

27B. REPRESENTATIVE'S ADDRESS AND PHONE NUMBER	27C. REPRESENTATIVE'S SIGNATURE	27D. DATE
	27E. REPRESENTATIVE'S EMPLOYER	

PART V. REDUCTION-IN-FORCE (RIF)

INSTRUCTIONS: FILL OUT THIS PART ONLY IF YOU ARE APPEALING FROM A REDUCTION-IN-FORCE (RIF). YOUR AGENCY'S PERSONNEL OFFICE CAN FURNISH YOU MOST OF THE INFORMATION REQUESTED BELOW.

28. RETENTION GROUP OR SUB-GROUP	29. SERVICE COMPUTATION DATE	30. HAS YOUR AGENCY OFFERED YOU ANOTHER POSITION RATHER THAN SEPARATING YOU? ☐ YES ☐ NO
31. TITLE OF POSITION OFFERED	32. GRADE OF POSITION OFFERED	33. SALARY OF POSITION OFFERED $ PER
34. LOCATION OF POSITION OFFERED	35. DID YOU ACCEPT THIS POSITION? ☐ YES ☐ NO	

36. EXPLAIN WHY YOU BELIEVE YOU SHOULD NOT HAVE BEEN AFFECTED BY THE REDUCTION-IN-FORCE *(Explanations could include: You were placed in the wrong retention group or subgroup; an error was made in the computation of your service computation date; competitive area was too narrow; improperly reached for separation from competitive level; an exception was made to the regular order of selection; full 30-day notice was not given; you believe you can "bump" a person in a lower retention group or subgroup; or any other reasons. Please provide as much information as possible regarding each reason.)*

37. SUPPLEMENTAL ANSWER SPACE

ATTENTION—THIS APPEAL MUST BE SIGNED

I CERTIFY that all of the statements made in this Appeal are true, complete, and correct to the best of my knowledge and belief.	SIGNATURE OF APPELLANT	DATE SIGNED

☆ U.S. GOVERNMENT PRINTING OFFICE : 1984 O - 461-275 (337)

[FR Doc. 85-7900 Filed 4-2-85; 8:45 am]
BILLING CODE 7400-01-C

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 85-306]

European Larch Canker

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: On May 4, 1984, an interim rule was published in the **Federal Register** which added new "Subpart—European Larch Canker" to the Domestic Quarantine Notices. On September 20, 1984, an interim rule was published in the **Federal Register** amending the interim rule of May 4, 1984, by revising areas designated as regulated areas. This document affirms without change the interim rule of May 4, 1984, as amended by the interim rule of September 20, 1984. These actions are necessary to prevent the artificial spread interstate of European larch canker into noninfested areas of the United States.

EFFECTIVE DATE: April 3, 1985.

FOR FURTHER INFORMATION CONTACT: E. Elliott Crooks, Senior Staff Officer, Regulatory Services Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8249.

SUPPLEMENTARY INFORMATION: A document published in the **Federal Register** on May 4, 1984 (49 FR 18989-18995) amended the Domestic Quarantine Notices (7 CFR Part 301) by adding new "Subpart-European Larch Canker" (contained in 7 CFR 301.91 *et seq.*, and referred to below as the regulations). The regulations quarantined the State of Maine for European larch canker, *Lachnellula willkommii* (Dasyeypha), a dangerous plant disease, and designated certain areas in Maine as "regulated areas", designated certain articles as "regulated articles", and established regulations governing the interstate movement of regulated articles from regulated areas. Subsequently, on September 20, 1984, another document was published in the **Federal Register** (49 FR 36815-36817) amending "Subpart—European Larch Canker" by expanding areas previously designated as regulated areas, and by designating new areas as regulated areas because of the spread of European larch canker within the State of Maine.

Comments were solicited for 60 days after the publication of each amendment. No comments were received on either amendment. Further, the factual situations set forth in the documents of May 4, 1984, and September 20, 1984, still provide a basis for these amendments. Accordingly, it has been determined that the amendment published in the **Federal Register** on May 4, 1984, should remain effective as revised by the amendment published in the **Federal Register** on September 20, 1984.

Executive Order and Regulatory Flexibility Act

These amendments have been issued in conformance with Executive Order 12291 and have been determined to be not "major rules." Based on information compiled by the Department, it has been determined that the amendments of May 4, 1984, and September 20, 1984, will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

The Administrator of the Animal and Plant Health Inspection Service has determined that the amendments of May 4, 1984, and September 20, 1984, will not have a significant economic impact on a substantial number of small entities. These actions only affected the interstate movement of regulated articles from portions of Hancock, Knox, Lincoln, Waldo, and Washington Counties in Maine by imposing restrictions on the movement of such articles. Further, information from the Maine Forest Service and the USDA Forest Service, indicates that the items designated as regulated articles (namely, logs, pulpwood, branches, twigs, plants, scion and other propagative material from larch trees) have little commercial value, and there is very little interstate movement of these regulated articles for commercial purposes or otherwise.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, European Larch Canker, Plant diseases, Plants (agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, the interim rule published at 49 FR 18989-18995 on May 4, 1984, as amended by the interim rule published at 49 FR 36815-36817 on September 20, 1984, is adopted as a final rule.

Authority: 7 U.S.C. 161, 162; 7 U.S.C. 150dd, 150ee; 7 CFR 2.17, 2.51, 371.2(c).

Done at Washington, D.C., this 28th day of March 1985.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85-7899 Filed 4-2-85; 8:45 am]

BILLING CODE 3410-34-M

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7 CFR Part 301

[Docket No. 85-319]

Golden Nematode, Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the "Golden Nematode" quarantine and regulations by designating a previously nonregulated area in Livingston County, New York, as a generally infested area. The quarantine and regulations impose restrictions on the interstate movement of certain articles from suppressive areas and generally infested areas in New York. This amendment is necessary as an emergency measure in order to prevent the artificial spread interstate of golden nematode.

DATES: Effective date of this interim rule is April 3, 1985.

Written comments concerning this interim rule must be received on or before June 3, 1985.

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

FOR FURTHER INFORMATION CONTACT:
Gary E. Moorehead, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8295.

SUPPLEMENTARY INFORMATION:

Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication without opportunity for a public comment period on this interim action. Due to the possibility that golden nematode could be artificially spread interstate to noninfested areas of the United States, a situation exists requiring immediate action to better control the spread of this pest.

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

Background

The golden nematode is a plant pest which is highly destructive to potatoes and other solanaceous plants. It is undoubtedly the most serious pest threatening the American potato industry. Potatoes cannot be grown economically on land containing large numbers of the nematode.

The golden nematode has been determined to occur in the United States only in parts of New York. The "Golden Nematode" quarantine and regulations (7 CFR 301.85 *et seq.*) quarantine the State of New York because of the golden nematode, and restrict the interstate movement from areas in New York designated as regulated areas of articles designated as regulated articles because of the golden nematode. Such restrictions are necessary for the purpose of preventing the artificial spread of the golden nematode.

Regulated areas are those areas in which the golden nematode has been found or in which there is reason to believe that the golden nematode is present or which it is deemed necessary to regulate because of their proximity to infestation or their inseparability for quarantine enforcement purposes from infested localities. Regulated areas are divided into suppressive areas and generally infested areas. Suppressive areas are regulated areas where eradication of the golden nematode is undertaken as an objective. Generally infested areas are regulated areas not designated as suppressive areas. Restrictions are imposed on the interstate movement of regulated articles from generally infested areas and suppressive areas in order to prevent the artificial movement of golden nematode to noninfested areas and to prevent the reinfestation of suppressive areas where the golden nematode no longer occurs.

As an emergency measure, the following area in Livingston County in New York which was previously a nonregulated area, is designated as a generally infested area:

New York

Livingston County. The towns of Avon, Caledonia, Geneseo, Groveland, Leicester, Lima, Livonia, Mount Morris, West Sparta, and York.

Based on soil sample surveys conducted by inspectors of the U.S. Department of Agriculture and the New York Department of Agriculture and Markets, it has been determined that the golden nematode has spread to certain areas beyond the outer perimeter of areas previously designated as generally infested areas. Therefore, as an emergency measure, it is necessary to designate such area as golden nematode generally infested area and impose restrictions on the interstate movement of regulated articles from this area in accordance with the regulations in order to prevent the artificial spread of the golden nematode.

Executive Order 12291 and Regulatory Flexibility Act

This interim rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this interim rule will have an annual effect on the economy of less than $4,000; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

The Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities. This action affects the interstate movement of regulated articles from a specified area in Livingston County in New York. Based on information compiled by the U.S. Department of Agriculture it has been determined that there are thousands of small entities that move regulated articles interstate from New York and many more thousands of small entities that move regulated articles interstate from other States. However, based on such information, it has been determined that fewer that 32 small entities move regulated articles interstate from the specified area affected by this action. Further, the annual overall economic impact from this action is estimated to be less than $4,000.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Golden Nematode, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Under the circumstances referred to above, § 301.85–2a of the Golden Nematode quarantine and regulations (7 CFR 301.85–2a) is amended by revising the entries under New York to read as follows:

§ 301.85–2a Regulated areas; suppressive and generally infested areas.

* * * * *

New York

(1) *Generally infested area:*

Cayuga County. The town of Montezuma.

Genesee County. The towns of Elba and Byron.

Livingston County. The towns of Avon, Caledonia, Geneseo, Groveland, Leicester, Lima, Livonia, Mount Morris, West Sparta, and York.

Nassau County. The entire county.

Orleans County. The towns of Barre and Clarendon.

Seneca County. The town of Tyre.

Steuben County. The towns of Prattsburg and Wheeler; that area known as "Arkport Muck" located in the town of Dansville and bounded by a line beginning at a point where the Conrail right-of-way (Erie Lackawanna Rail Road) intersects County Road 52 (known as Burns Road), then north and northeast along County Road 52 to its junction with New York Route 36, then south and southeast along New York Route 36 to its intersection with the Dansville Town line, then west along the Dansville Town line to its intersection with the Conrail right-of-way (Erie Lackawanna Rail Road), then north and northwest along the Conrail right-of-way to the point of beginning; and the Werth, Dale, farm, known as the "Werthwhile Farm," located in the town of Cohocton on the north side of County Road 5 (known as Brown Hill Road), and 0.2 mile west of the junction of County Road 5 with County Road 58 (known as Wager Road).

Suffolk County. The entire county.

Wayne County. The town of Savannah.

(2) *Suppressive area:*

Yates County. The town of Italy.

Authority: 7 U.S.C. 150dd, 150ee; 7 CFR 2.17, 2.51, and 371.2(c).

Done at Washington, D.C., this 29th day of March 1985.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85-7898 Filed 4-2-85; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Reg. E; EFT-2]

Electronic Fund Transfers; Official Staff Commentary Update

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final official staff interpretation.

SUMMARY: The Board is publishing revisions to the official staff commentary to Regulation E (Electronic Fund Transfers). The commentary applies and interprets the requirements of Regulation E and is a substitute for individual staff interpretations of the regulation. The revisions represent final action on proposed changes published for comment in December 1984, and include new material and changes in existing material.

EFFECTIVE DATES: April 1, 1985, except for the revision to question 7–18.5 applicable to foreign-initiated transfers, which is effective October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Gerald P. Hurst or John C. Wood, Senior Attorneys, or Richard S. Garabedian, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202) 452–3667 or (202) 452–2412.

SUPPLEMENTARY INFORMATION: (1) *General.* The Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) governs any transfer of funds that is electronically initiated and that debits or credits a consumer's account. This statute is implemented by the Board's Regulation E (12 CFR Part 205). Effective September 24, 1981, an official staff commentary (EFT–2, Supp. II to 12 CFR Part 205) was published to interpret the regulation.

The commentary is designed to provide guidance to financial institutions in applying the regulation to specific situations. The commentary is updated periodically to address significant questions that arise. There have been two updates so far, the first on April 6, 1983 (48 FR 14880), and the second on October 18, 1984 (49 FR 40794). A proposed third update was published for comment on December 4, 1984 (49 FR 47405); this notice contains the final version.

(2) *Explanation of revisions.* Question 2–28 addresses robberies at automated teller machines (ATMs). Many of the commenters that discussed the proposed version believed that the reference to "at gunpoint" narrowed the application of the interpretation too much. The final version incorporates a change to respond to these comments.

Question 5–4.5 has been substantially changed from the proposed version. The proposal would have barred financial institutions from issuing validated personal identification numbers (PINs) on an unsolicited basis, if the PIN would permit a debit card previously issued for point-of-sale (POS) transactions to be used at ATMs. A number of commenters argued that the proposal would greatly inhibit the provision of new services and the implementation of new technology. In its final form, the interpretation sanctions the issuance of PINs, but an institution may not impose liability on the consumer for unauthorized transactions involving use of the PIN until the consumer has indicated acceptance of the PIN. (For a discussion of PIN issuance in connection with existing credit cards, see comment 12(a)(1)–8 in the official staff commentary to Regulation Z, published elsewhere in this **Federal Register** issue.)

Questions 7–18.5 and 11–11.5 relate to amendments to Regulation E adopted by the Board on October 11, 1984 (49 FR 40794), which cover all debit card transactions whether or not an electronic terminal is involved. The amendments also extended the time periods for resolution of errors involving POS debit card transactions; the longer periods parallel those applicable to foreign-initiated transfers.

Question 7–18.5 reverses an existing interpretation; until now, disclosure of the longer error resolution time periods in the case of foreign-initiated transfers has not been required because they are relatively infrequent (as compared, for example, to POS debit card transactions). The revised interpretation requires that the disclosures for accounts subject to foreign-initiated or POS debit card transactions state the extended time periods. The rationale for the revision as to foreign-initiated transfers is that institutions would have to revise their disclosures for POS transactions anyway, and therefore including references to foreign-initiated transactions would present little or no additional burden. Industry comment suggested, however, that some small institutions hold consumer accounts that could be affected by foreign-initiated transfers but not by POS transactions. Accordingly, the effective date of the revision to question 7–18.5 is deferred to October 1, 1985, for the disclosure applicable to foreign-initiated transfers (but not POS transactions), to minimize the compliance burden for such institutions.

Some commenters asked that the Board provide new model forms for disclosing the longer time periods. The change required in the error resolution disclosure is minimal, and therefore new model forms appear unnecessary. The existing model form could be adopted, for example, by simply inserting, after references to 10 business days, a phrase such as "(20 business days, in the case of a transfer resulting from a point-of-sale debit card transaction or a transfer initiated outside the United States)." A similar parenthetical phrase could be inserted after the reference to 45 days. Or, a paragraph could be added to the disclosure, stating the longer time periods that are applicable to foreign-initiated and POS transactions.

Question 11–11.5 discusses what transactions qualify as POS for purposes of the longer error resolution periods. Some commenters wanted additional types of transactions (for example, transactions at ATMs in merchant locations) to be treated as POS debit card transactions. No change has been made on this point, however. The regulatory amendment of October 1984 expanding the time periods was intended to grant relief in connection with the new coverage of certain POS

debit card transactions; ATM transactions, in contrast, have been covered since the inception of the regulation, and thus institutions should already have in place procedures that are in compliance with the 10-business-day and 45-calendar-day deadlines.

List of Subjects in 12 CFR Part 205

Banks, Banking, Consumer protection, Electronic fund transfers, Federal Reserve System, Penalties.

(3) *Text of revisions.* The revisions to the Official Staff Commentary on Regulation E (EFT–2, Supp. II to 12 CFR Part 205) read as follows:

* * * * *

Section 205.2 Definitions and Rules of Construction

* * * * *

Q 2–28: *Unauthorized transfers—forced initiation.* A consumer is forced by a robber (at gunpoint, for example) to withdraw cash at an ATM. Do the liability limits for unauthorized transfers apply?

A. *Yes.* The transfer is unauthorized for purposes of Regulation E. Under these circumstances, the actions of the robber are tantamount to use of a stolen access device. (§§ 205.2(l) and 205.6)

* * * * *

Section 205.5 Issuance of Access Devices

* * * * *

Q 5–4.5: *Unsolicited issuance—PINs.* May a financial institution issue, without a specific request, validated personal identification numbers (PINs), thus allowing consumers to use their existing debit cards at automated teller machines or at merchant locations with POS terminals that require PINs?

A: Yes. A validated PIN may be issued to an existing debit card holder without a specific request provided the PIN cannot be used alone to make an electronic fund transfer. The institution may impose no liability on the consumer for unauthorized transfers involving use of the PIN, however, until this new combination of debit card and PIN becomes an "accepted access device" under the regulation. The card-PIN combination can be treated as an accepted access device, for example, if the card and PIN have been used and the consumer does not dispute having used them. (§§ 205.5(a) and 205.2(a))

* * * * *

Section 205.7 Initial Disclosure of Terms and Conditions

* * * * *

Q 7–18.5: *Error-resolution disclosure—extended time periods.* The regulation expands the time periods for resolving errors that involve transfers initiated outside the United States or transfers resulting from POS debit card transactions, from 10 to 20 business days and from 45 to 90 calendar days. Must the error-resolution disclosure reflect the longer time periods with respect to accounts on which these types of transfers can be made?

A: A financial institution's error-resolution disclosures must reflect its actual procedures. An institution that takes advantage of the longer time periods applicable to POS and foreign-initiated transfers must therefore disclose the longer periods in its error-resolution disclosures. Similarly, an institution that relies on the exception from provisional recrediting (for accounts subject to Regulation T) must phrase its disclosures accordingly. (§§ 205.7(a)(10)), 205.8(b), and 205.11 (c)(3) and (c)(4)).

* * * * *

Section 205.11 Procedures for Resolving Errors

* * * * *

Q 11–11.5: *POS debit card transactions.* The deadlines for investigating errors are extended for all transfers resulting from POS debit card transactions, regardless of whether an electronic terminal is involved. For purposes of these deadlines, what types of transactions can be viewed as POS debit card transactions?

A: POS debit card transactions generally take place at merchant locations, but also include mail and telephone orders of goods or services involving a debit card. Transactions at ATMs, however, are not POS even though the ATM may be in a merchant location. (§ 205.11(c)(4))

* * * * *

(15 U.S.C. 1601 *et seq.*)

Board of Governors of the Federal Reserve System, March 28, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85–7882 Filed 4–2–85; 8:45 am]

BILLING CODE 6210–01–M

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12 CFR Part 226

[Reg. Z; TIL–1]

Truth in Lending; Official Staff Commentary Update

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final official staff interpretation.

SUMMARY: The Board is publishing in final form changes to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z and is a substitute for individual staff interpretations of the regulation. The revisions address a variety of questions that have arisen about the regulation concerning such matters as the assumption provision, surcharges, discounted variable-rate disclosures, and implementation of the statutory change to the open-end right of rescission.

EFFECTIVE DATE: April 1, 1985, but reliance optional until October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Contact the following attorneys in the Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452–2412 or (202) 452–3867:

Subpart A—Richard Garabedian, Gerald Hurst

Subpart B—Richard Garabedian, Adrienne Hurt

Subpart C—Susan Werthan, Steven Zeisel

SUPPLEMENTARY INFORMATION: (1) *General.* Effective October 13, 1981, an official staff commentary (TIL–1, Supp. I to 12 CFR Part 226) was published to interpret Regulation Z (12 CFR Part 226). The commentary is designed to provide guidance to creditors in applying the regulation to specific transactions. The commentary is updated periodically to address significant questions that arise.

There have been three general updates so far—the first in September 1982 (47 FR 41338), the second in April 1983 (48 FR 14882), and the third in April 1984 (49 FR 13482). There was also a limited update concerning fees for the use of automated teller machines, which was adopted in October 1984 (49 FR 40560). This notice contains the fourth general update, which was proposed for comment on December 4, 1984 (49 FR 47406). The changes are effective on April 1, 1985. Although creditors are free to rely on the provisions as of that date and are protected if they do so, they need not follow the revisions until October 1, 1985, the uniform effective date provided for in section 105(d) of the revised Truth in Lending Act.

(2) *Explanation of revisions.* Following is a brief description of the revisions to the commentary and how they differ, if at all, from those proposed:

Subpart A—General

Section 226.2 Definitions and Rules of Construction.

2(a) Definitions.

2(a)(15) "Credit Card".

Comment 2(a)(15)–2 is revised to make clear that certain types of access devices that are used at wholesale petroleum distribution terminals—whether or not credit is involved—are not considered credit cards under Regulation Z. The comment has been revised from the proposal to address points raised by the commenters. First, language has been added to clarify that devices other than cards would also be excluded from the regulation's credit card definition if those devices in fact served the purpose described in the

comment. The Comment also has been modified to indicate that, in order to come within the terms of the exclusion, the device need not be required both to gain access to the facility and also to obtain the petroleum products.

2(a)(17) "Creditor".

Paragraph 2(a)(17)(i).

Comment 2(a)(17)(i)–8 is added to explain how the numerical tests for determining who is a "creditor" should be applied to loans made by employee savings plans. It provides that the numerical test should be applied to the plan as a whole rather than to the individual account. The final comment has been revised from the proposal to make clear that it does not apply to plans in which the participants' accounts constitute individual trusts.

2(a)(20) "Open-End Credit".

Comment 2(a)(20)–5 is revised to correct a potential contradiction caused by the language "specific approval for each extension." Because "verification" of credit information—which is permissible under the open-end credit definition—necessarily involves "approval" if a credit extension is not denied after verifying the credit information, the "specific approval" language may have been confusing. The revised provision, therefore, does not contain that language. The comment continues to mean, however, that, while creditors may verify credit information on an open-end credit plan before authorizing additional credit extensions, they may not undertake activities such as requiring a new application for each additional credit extension, without jeopardizing a program's status as an open-end credit plan.

Section 226.4 Finance Charge.

4(a) Definition.

The first sentence of comment 4(a)–3 is revised to clarify which charges by third parties are excluded from the finance charge. The revision makes clear that, in order to be excluded, the charge must be imposed on the consumer and the creditor must not retain the charge. The final comment has been reworded from the proposal to make it easier to read and understand.

Subpart B—Open-End Credit

Section 226.7 Periodic Statement.

7(h) Other Charges.

Comment 7(h)–4 is added to make clear that, in disclosing "other charges" on the periodic statement, creditors have the flexibility to disclose them individually or as a total, as long as the charges are still itemized and identified by type.

Section 226.9 Subsequent Disclosure Requirements.

9(d) Finance Charge Imposed at Time of Transaction.

Comment 9(d)–1 is totally rewritten since the ban on credit card surcharges expired on February 27, 1984. Section 226.9(d) requires the disclosure of the amount of any finance charge, such as a credit card surcharge, that is imposed by a person other than the card issuer on a consumer for using a credit card. Revised comment 9(d)–1 makes clear that such finance charges must be disclosed to consumers prior to their being committed to purchasing property or services.

The final comment has been revised from the proposal to more clearly reflect the regulatory requirement to disclose the amount of the surcharge. In addition, at the suggestion of several commenters, the examples that were in the supplementary information to the proposal are now included in the comment. More detailed guidance on the disclosure requirements for surcharges may prove necessary in the future should surcharges continue to be permitted.

Section 226.12 Special Credit Card Provisions.

12(a) Issuance of Credit Cards.

Paragraph 12(a)(1).

Comment 12(a)(1)–8 is added to make clear that card issuers may issue, without a specific request from the consumer, a personal identification number (PIN) to existing cardholders, provided the PIN cannot be used by itself to obtain credit. The example given in the final comment has been revised from the proposal to clarify that the PINs might be issued to allow existing credit cards to be used at electronic terminals at point-of-sale, as well as at ATMs. (For a discussion of PIN issuance for use with existing debit cards, see question 5–4.5 in the update to the official staff commentary to Regulation E, published elsewhere in this **Federal Register** issue.)

Section 226.15 Right of Rescission.

15(a) Consumer's Right to Rescind.

Paragraph 15(a)(1).

Comment 15(a)(1)–2 is revised to reflect the amendment to the Truth in Lending Act in Pub. L. 98–479 which permanently exempts from the right of rescission individual transactions made on an open-end line of credit in accordance with a previously established credit limit.

References

Reference to section 205 of Pub. L. 98–479 is added to the References section to reflect the permanent exemption from the right of rescission for individual credit extensions made on an open-end credit line.

Subpart C—Closed-End Credit

Section 226.17 General Disclosure Requirements.

17(a) Form of Disclosures.

Paragraph 17(a)(1).

Comment 17(a)(1)–5 is revised to clarify that other conditions of assumption, in addition to the currently-allowed reference to a due-on-sale clause, may be briefly reflected in the assumption policy disclosure under § 226.18(q).

17(b) Time of Disclosures.

Comment 17(b)–2, regarding conversion of open-end to closed-end credit, is expanded to address the question of the basis for disclosures when an open-end plan is converted to a variable-rate closed-end transaction. The revision makes clear that, where closed-end disclosures are delayed in accordance with the comment, the disclosures should reflect the rate in effect at the time of conversion.

Section 226.18 Content of Disclosures.

18(f) Variable Rate.

Comment 18(f)–5 is revised to add recent federal adjustable rate mortgage regulations to the list of variable rate regulations for which footnote 43 to § 226.18(f) may be used. Creditors making disclosures in accord with the rules issued by the Department of Housing and Urban Development (49 FR 23580) need not make the variable rate disclosures required by § 226.18(f).

Comment 18(f)–5 is also revised to reflect a new citation to the variable rate regulation of the Federal Home Loan Bank Board. The revision is technical and reflects no substantive change in the comment.

Comment 18(f)–8 is revised to clarify the application of the discounted variable rate rules to some types of variable rate transactions. A paragraph is added to explain that transactions in which the only difference between the initial rate and the index rate at consummation results from a change in the index are not discounted transactions. Material also is added to address plans that have a built-in delay

between index changes and implementation of those changes. In calculating a composite annual percentage rate for these plans, creditors may use an index value within a certain period before consummation. Finally, premium loans are specifically referenced, and editorial changes are made to clarify some of the explanatory material.

18(k) Prepayment.

Comment 18(k)–2 is revised to delete the example regarding student loans with loan fees, in order to make the comment more consistent with comment 18(k)–3. Comment 18(k)–2 illustrates transactions that may require disclosures under both § 226.18(k)(1), regarding penalties for prepayment of simple interest transactions, and § 226.18(k)(2), regarding rebates for prepayment of precomputed transactions. Comment 18(k)–3 clarifies that prepaid finance charges do not require rebate disclosures. Since loan fees in student loans are normally prepaid finance charges, the continued use of that type of transaction as an example of a loan requiring a rebate disclosure is inappropriate and may cause confusion. The deletion of the example is a technical revision and does not affect the substance of either comment.

18(q) Assumption Policy.

Comment 18(q)–1 is revised to clarify the disclosure required when uncertainty exists as to the assumability of the obligation. Under the revision, the uncertain nature of a future assumption should be reflected in the disclosure, in order to more adequately inform consumers.

Section 226.23 Right of Rescission.

23(f) Exempt Transactions.

Comment 23(f)–8 is added to clarify the application of the right of rescission to close-end credit transactions arising from the conversion of an open-end credit account. Where consummation of both the closed-end and open-end credit occurs at the time the consumer enters into the open-end agreement, the closed-end disclosures may be delayed until conversion, as provided by comment 17(b)–2. Comment 23(f)–8 makes clear that, if the creditor has previously complied with the rescission requirements on the open-end account, no new right of rescission applies on the conversion of an account secured by the consumer's principal dwelling.

List of Subjects in 12 CFR Part 226

Advertising, Banks, banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Truth in lending.

PART 226—[AMENDED]

(3) *Text of revisions.* The revisions to the commentary (TIL–1, Supplement I to 12 CFR Part 226) read as follows:

Supplement I—Official Staff Commentary—TIL–1

SUBPART A—General

* * * * *

Section 226.2 Definitions and Rules of Construction

2(a) Definitions

* * * * *

2(a)(15) "Credit Card"

* * * * *

2. *Examples.* Examples of credit cards include:

- A card that guarantees checks or similar instruments, if the asset account is also tied to an overdraft line or if the instrument directly accesses a line of credit
- A card that accesses both a credit and an asset account (that is, a debit-credit card)
- An identification card that permits the consumer to defer payment on a purchase
- An identification card indicating loan approval that is presented to a merchant or to a lender, whether or not the consumer signs a separate promissory note for each credit extension

In contrast, credit card does not include, for example:

- A check guarantee or debit card with no credit feature or agreement, even if the creditor occasionally honors an inadvertent overdraft.
- Any card, key, plate, or other device that is used in order to obtain petroleum products for business purposes from a wholesale distribution facility or to gain access to that facility, and that is required to be used without regard to payment terms.

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2(a)(17) "Creditor"

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Paragraph 2(a)(17)(i)

* * * * *

8. *Loans from employee savings plans.* Some employee savings plans permit participants to borrow money up to a certain percentage of their account balances. Unless each participant's account is an individual trust, the numerical tests should be applied to the plan as a whole rather than to the individual accounts, even if the loan amount is determined by reference to the balance in an individual account and the repayments are credited to the individual account.

* * * * *

2(a)(20) "Open-End Credit"

* * * * *

5. *Reusable line.* The total amount of credit that may be extended during the existence of an open-end plan is unlimited because available credit is generally replenished as earlier advances are repaid. A line of credit is self-replenishing even though the plan itself has a fixed expiration date, as long as during the plan's existence the consumer may use the line, repay, and reuse the credit. The creditor may verify credit information such as the consumer's continued income and employment status or information for security purposes. This criterion of unlimited credit distinguishes open-end credit from a series of advances made pursuant to a close-end credit loan commitment.* * *

* * * * *

Section 226.4 Finance Charge

* * * * *

4(a) Definition

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3. *Charges by third parties.* Charges imposed on the consumer by someone other than the creditor for services not required by the creditor are not finance charges, as long as the creditor does not retain the charges.

For example:

- A fee charged by a loan broker to a consumer, provided the creditor does not require the use of a broker (even if the creditor knows of the loan broker's involvement or compensates the broker)
- A tax imposed by a state or other governmental body on the credit transaction that is payable by the consumer (even if the tax is collected by the creditor)

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Subpart B—Open-End Credit

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Section 226.7 Periodic Statement

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7(h) Other Charges

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4. *Itemization—types of "other charges".* Each type of "other charge" (such as late payment charges, over-the-credit-limit charges, ATM fees that are not finance charges, and membership fees) imposed during the cycle must be separately itemized; for example, disclosure of only a total of "other charges" attributable to both an over-the-credit-limit charge and a late payment charge would not be permissible. "Other charges" of the same type may be disclosed, however, individually or as a total. For example, three ATM fees of $1 may be listed separately or as $3.

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Section 226.9 Subsequent Disclosure Requirements

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9(d) Finance Charge Imposed at Time of Transaction

1. *Disclosure prior to imposition.* A person imposing a finance charge at the time of honoring a consumer's credit card must disclose the amount of the charge, or an explanation of how the charge will be determined, prior to its imposition. This must be disclosed before the consumer becomes obligated for property or services that may be paid for by use of a credit card. For example, disclosure must be given before the consumer

has dinner at a restaurant, stays overnight at a hotel, or makes a deposit guaranteeing the purchase of property or services.

* * * * *

Section 226.12 Special Credit Card Provisions

* * * * *

12(a) Issuance of Credit Cards

Paragraph 12(a)(1)

* * * * *

8. *Unsolicited issuance of PINs.* A card issuer may issue personal identification numbers (PINs) to existing credit cardholders without a specific request from the cardholders, provided the PINs cannot be used alone to obtain credit. For example, the PINs may be necessary if consumers wish to use their existing credit cards at automated teller machines or at merchant locations with point-of-sale terminals that require PINs.

* * * * *

Section 226.15 Right of Rescission

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15(a) Consumer's Right to Rescind

Paragraph 15(a)(1)

* * * * *

2. *Exceptions.* Although the consumer generally has the right to rescind with each transaction on the account, section 125(e) of the act provides an exception: the creditor need not provide the right to rescind at the time of each credit extension made under an open-end credit plan secured by the consumer's principal dwelling to the extent that the credit extended is in accordance with a previously established credit limit for the plan. This limited rescission option is available whether or not the plan existed prior to the effective date of the act.

* * * * *

References

Statute: Sections 113, 125, 130, and the Housing and Community Development Technical Amendments Act of 1984, Sec. 205 (Pub. L. 98-479).

* * * * *

1981 Changes: Section 226.15 reflects the statutory amendments of 1980, providing for a limited right of rescission when individual credit extensions are made in accordance with a previously established credit limit for an open-end credit plan. The 1980 amendments provided that this limited rescission right be available for a three-year trial period. However, Pub. L. 98-479 now permanently exempts such individual credit extensions from the right of rescission. * * *

* * * * *

Subpart C—Closed-End Credit

Section 226.17 General Disclosure Requirements

17(a) Form of Disclosures

Paragraph 17(a)(1)

* * * * *

5. *Directly related.* The segregated disclosures may, at the creditor's option, include any information that is directly related to those disclosures. Directly related information includes, for example, the following:

* * * * *

• A statement that a due-on-sale clause or other conditions on assumption are contained in the loan document. For example, the disclosure given under § 226.18(q) may state, "Someone buying your home may, subject to conditions in the due-on-sale clause contained in the loan document, assume the remainder of the mortgage on the original terms."

* * * * *

17(b) Time of Disclosure

* * * * *

2. *Converting open-end to closed-end credit.* If an open-end credit account is converted to a closed-end transaction under a written agreement with the consumer, the creditor must provide a set of closed-end credit disclosures before consummation of the closed-end transaction. If consummation of the closed-end transaction occurs at the same time as the consumer enters into the open-end agreement, the closed-end credit disclosures may be given at the time of conversion. If disclosures are delayed until conversion and the closed-end transaction has a variable-rate feature, disclosures should be based on the rate in effect at the time of conversion. (See the commentary to § 226.5 regarding conversion of closed-end to open-end credit.)

* * * * *

Section 226.18 Content of Disclosures

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18(f) Variable Rate

* * * * *

5. *Other variable-rate regulations.* Transactions in which the creditor is required to comply with and has complied with variable-rate regulations of other federal agencies are exempt from the requirements of § 226.18(f), by virtue of footnote 43. Those variable-rate regulations include the adjustable mortgage loan instrument regulation issued by the Federal Home Loan Bank Board (12 CFR 545.33), the adjustable-rate mortgage regulation issued by the Comptroller of the Currency (12 CFR Part 29) and the adjustable-rate mortgage regulations issued by the Department of Housing and Urban Development (24 CFR Parts 203 and 234). The exception in footnote 43 is also available to creditors that are required by state law to comply with the federal variable-rate regulations noted above and to creditors that are authorized by title VIII of the Depository Institutions Act of 1982 (Pub. L. 97-320) to make loans in accordance with those regulations. Creditors using this exception should comply with the timing requirements of those regulations rather than the timing requirements of Regulation Z in making the variable-rate disclosures.

* * * * *

8. *Discounted variable-rate transactions.* In some variable-rate transactions, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate charged to consumers is lower than the rate would be if it were calculated using the index or formula. However, in some cases the initial rate may be higher. In a discounted transaction, for example, a creditor may calculate interest rates according to a formula using the six-month Treasury bill rate plus a 2 percent margin. If the Treasury bill rate at consummation is 10 percent, the creditor may forego the 2 percent spread and charge only 10 percent for a limited time, instead of setting an initial rate of 12 percent.

• When creditors use an initial interest rate that is not calculated using the index or formula for later rate adjustments, the disclosures should reflect a composite annual percentage rate based on the initial rate for as long as it is charged and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation. The rate at consummation need not be used if a contract provides for a delay in the implementation of changes in an index value. For example, if the contract specifies that rate changes are based on the index value in effect 45 days before the change date, creditors may use the index value in effect not more than 45 days before consummation in calculating a composite annual percentage rate.

• The effect of the multiple rates must also be reflected in the calculation and disclosure of the finance charge, total of payments, and payment schedule.

• If a loan contains a rate or payment cap that would prevent the initial rate or payment, at the time of the first adjustment, from changing to the rate determined by the index or formula at consummation, the effect of that rate or payment cap should be reflected in the disclosures.

• Because these transactions involve irregular payment amounts, an annual percentage rate tolerance of ¼ of 1 percent applies, in accordance with section § 226.22(a)(3) of the regulation.

• Examples of discounted variable-rate transactions include:

—A 30-year loan for $100,000 with no prepaid finance charges and rates determined by the Treasury bill rate plus 2 percent. Rate and payment adjustments are made annually. Although the Treasury bill rate at the time of consummation is 10 percent, the creditor sets the interest rate for one year at 9 percent, instead of 12 percent according to the formula. The disclosures should reflect a composite annual percentage rate of 11.63 percent based on 9 percent for one year and 12 percent for 29 years. Reflecting those two rate levels, the payment schedule should show 12 payments of $804.62 and 348 payments of $1,025.31. The finance charge should be $266,463.32 and the total of payments $366,463.32.

—Same loan as above, except with a 2 percent rate cap on periodic adjustments. The disclosures should reflect a composite annual percentage rate of 11.53 percent based on 9 percent for the first year, 11 percent for the second year, and 12 percent for the remaining 28 years. Reflecting those

three rate levels, the payment schedule should show 12 payments of $804.62, 12 payments of $950.09, and 336 payments of $1,024.34. The finance charge should be $265,234.76, and the total of payments $365,234.76.

–Same loan as above, except with a 7½ percent cap on payment adjustments. The disclosures should reflect a composite annual percentage rate of 11.64 percent, based on 9 percent for one year and 12 percent for 29 years. Because of the payment cap, five levels of payments should be reflected. The payment schedule should show 12 payments of $804.62, 12 payments of $864.97, 12 payments of $929.86, 12 payments of $999.60, and 312 payments of $1,070.03. The finance charge should be $277,037.96, and the total of payments $377,037.96.

This paragraph does not apply to variable-rate loans in which the initial interest rate is set according to the index or formula used for later adjustments, but is not set at the value of the index or formula at consummation. For example, if a creditor commits to an initial rate based on the formula on a date prior to consummation, but the index has moved during the period between that time and consummation, a creditor should base its disclosures on the initial rate.

* * * * *

18(k) Prepayment

* * * * *

2. *Rebate-penalty disclosure.* A single transaction may involve both a precomputed finance charge and a finance charge computed by application of a rate to the unpaid balance (for example, mortgages with mortgage-guarantee insurance). In these cases, disclosures about both prepayment rebates and penalties are required. Sample form H-15 in appendix H illustrates a mortgage transaction in which both rebate and penalty disclosures are necessary.

* * * * *

18(q) Assumption Policy

1. *Policy statement.* In many mortgages, the creditor cannot determine, at the time disclosure must be made, whether a loan may be assumable at a future date on its original terms. For example, the assumption clause commonly used in mortgages sold to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation conditions an assumption on a variety of factors such as the creditworthiness of the subsequent borrower, the potential for impairment of the lender's security, and execution of an assumption agreement by the subsequent borrower. In cases where uncertainty exists as to the future assumability of a mortgage, the disclosure under § 226.18(q) should reflect that fact. In making disclosures in such cases, the creditor may use phrases such as "subject to conditions," "under certain circumstances," or "depending on future conditions." The creditor may provide a brief reference to more specific criteria such as a due-on-sale clause, although a complete explanation of all conditions is not appropriate. For example, the disclosure may state, "Someone buying your home may be allowed to assume the mortgage on its original terms, subject to certain conditions, such as payment of an assumption fee." See comment 17(a)(1)-5 for an example for a reference to a due-on-sale clause.

* * * * *

Section 226.23 Right of Rescission

* * * * *

23(f) Exempt Transactions

* * * * *

8. *Converting open-end to closed-end credit.* Under certain state laws, consummation of a closed-end credit transaction may occur at the time a consumer enters into the initial open-end credit agreement. As provided in the commentary to § 226.17(b), closed-end credit disclosures may be delayed under these circumstances until the conversion of the open-end account to a closed-end transaction. In accounts secured by the consumer's principal dwelling, no new right of rescission arises at the time of conversion, assuming that the right of rescission was previously provided on the open-end account pursuant to § 226.15.

* * * * *

Board of Governors of the Federal Reserve System, March 28, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-7883 Filed 4-2-85; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

Statement of Policy on Capital; Correction

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Statement of Policy on Capital; correction.

SUMMARY: This document corrects a statement of policy that appeared on page 11138 of the **Federal Register** of Tuesday, March 19, 1985. The action is necessary to conform the statement of policy to a definitional correction that was made to the FDIC's final rule on capital maintenance (12 CFR Part 325), and to correct typographical errors.

FOR FURTHER INFORMATION CONTACT: Robert F. Storch, Planning and Program Development Specialist, Division of Bank Supervision, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, D.C. 20429, (202) 389-4761.

Correction

FR Doc. 85-6427, issued March 19, 1985, is corrected as follows:

1. On page 11139, the term "adjusted total assets" in the last paragraph of the first column is corrected to read "total assets".

2. On page 11139 in the third column, under the caption "Capital Plans", the words "total ratios" are corrected to read "total capital ratios".

3. On page 11140 in the first column, the second caption is corrected to read *"Savings Banks With a Mutual Form of Ownership"*.

Dated: March 28, 1985.

Federal Deposit Insurance Corporation.

Hoyle Robinson,

Executive Secretary.

[FR Doc. 85-7896 Filed 4-2-85; 8:45 am]

BILLING CODE 6714-01-M

12 CFR Part 325

Capital Maintenance; Correction

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule that appeared on page 11128 of the **Federal Register** of Tuesday, March 19, 1985. The action is necessary to conform provisions of the regulation to the definition of "total assets" contained in § 325.2(k).

FOR FURTHER INFORMATION CONTACT: Robert F. Storch, Planning and Program Development Specialist, Division of Bank Supervision, (202) 389-4761, or Peter M. Kravitz, Senior Attorney, Legal Division, (202) 389-4171, 550 17th Street NW., Washington, D.C. 20429.

Correction

The following corrections are made in FR Doc. 85-6429 in the issue of March 19, 1985:

1. On page 11134 11 lines counting from the bottom of the second column, the words "intense of analysis" are corrected to read "intensive analysis".

2. On page 11135 in the 11th and 12th lines at the top of the third column, "(12 U.S.C. 8(a) and (b))" is corrected to read "(12 U.S.C. 1818(a) and (b))".

3. On page 11137, the term "adjusted total assets" is corrected to read "total assets" each time it appears in § 325.4(c) introductory text, (c)(1) and (c)(2).

Dated: March 28, 1985.

Federal Deposit Insurance Corporation.

Hoyle Robinson,

Executive Secretary.

[FR Doc. 85-7897 Filed 4-2-85; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket N. 85-AWP-7]

Proposed Alternation of Control Zone and Transition Area Description; Santa Barbara, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: An amendment to the existing description of the Santa Barbara Municipal Airport (Lat. 34°25'35" N., Long. 119°50'20" W.) Control Zone and Transition Area is necessary due to the decommissioning of an outer marker (OM) used in used in the legal descriptions. This action will provide only editorial amendments to a reference point used in the descriptions.

EFFECTIVE DATE: May 1, 1985.

ADDRESSES: The official docket may be examined in the Office of Western-Pacific Regional Counsel, Room 6W14, at 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Airspace and Procedures Branch, Room 6E4, at the above address.

FOR FURTHER INFORMATION CONTACT: Curtis Alms, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (213) 536-6649.

List of Subjects in 14 CFR Part 71

Control zones and Transition areas, aviation safety.

The Proposed Amendment

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

§ 71.171 Santa Barbara, California [Revised].

Within a 5-mile radius of Santa Barbara Municipal Airport (lat. 34°25'35" N., long. 119°50'20" W.); within 2 miles each side of the Santa Barbara ILS localizer west course, extending from the 5-mile Radius Zone to a point lat. 34°25'31" N., long. 119°57'28" W.

§ 71.181 Santa Barbara, California [Revised].

That airspace extending upward from 700 feet above the surface within 2-miles each side of the Santa Barbara ILS localizer west course, extending from a point lat. 34°25'31" N., long. 119°57'28" W. to 2-miles west of that point, between the arcs of a 5-mile radius circle and 8.5 mile radius circle centered on the Santa Barbara Municipal Airport (lat. 34°25'35" N., long. 119°50'20" W.), extending clockwise from a line 2-miles north. of the 089° bearing from the Santa Barbara LMM to a line 2.5 miles south of the 115° bearing from the LMM; and within 2-miles east and 7-miles west of the Santa Barbara VORTAC 196° radial, extending from a 5-miles radius circle centered on the Santa Barbara Municipal Airport to 15.5 miles south of the VORTAC; and that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 35°35'00" N., long. 120°05'00" W.; to lat. 35°05'00" N., long. 120°05'00" W.; to lat. 35°05'00" N., long. 119°30'00" W.; to lat. 34°20'00" N., long. 119°30'00" W.; to lat. 34°20'00" N., long. 120°00'00" W.; to lat. 34°08'00" N., long. 120°00'00" W.; to lat. 34°08'00" N., long. 120°26'00" W.; to lat. 34°06'15" N., long. 120°30'00" W.; to lat. 34°24'00" N., long. 120°30'00" W.; to lat. 34°24'45" N., long. 120°27'20" W.; to lat. 34°35'00" N., long. 120°31'40" W.; to lat. 34°39'50" N., long. 120°31'15" W.; to lat. 34°46'15" N., long. 120°26'40" W.; to lat. 34°49'00" N., long. 120°27'15" W.; to lat. 34°59'32" N., long. 120°41'50" W.; to lat. 35°10'00" N., long. 120°55'00" W.; to lat. 35°21'00" N., long. 121°03'00" W.; to lat. 35°33'00" N., long. 121°03'00" W.; to lat. 35°33'00" N., long. 120°40'30" W.; to lat. 35°22'25" N., long. 120°31'50" W.; to lat. 35°31'40" N., long. 120°15'00" W.; to lat. 35°35'35" N., long. 120°18'10" W.; thence to the point of beginning.

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 an air traffic procedure and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

(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 Los Angeles, California, on March 22, 1985.

George Harvey,

Acting Director, Western-Pacific Region.

[FR Doc. 84-7876 Filed 4-2-85; 8:45 am]

BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1214

Space Transportation System

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR Part 1214 by revision subpart 1214.11, "NASA Astronaut Candidate Recruitment and Selection Program." The process for selection of astronauts to support Space Shuttle mission operations is being revised to enable NASA to establish and maintain an integrated pool of qualified civilian applicants from which to select astronaut candidates. This will streamline the overall process to allow astronaut selections by NASA within a period of 3 to 4 months instead of 12 to 15 months.

These procedures concern agency management and personnel and are therefore exempt under 5 U.S.C. 553(a)(2) from notice and public comment requirements.

EFFECTIVE DATE: April 3, 1985.

ADDRESS: Office of Space Flight, Code M, National Aeronautics and Space Administration, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Charles F. Perry, 202/453-1889.

SUPPLEMENTARY INFORMATION: The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, since it will not exert a significant economic impact on a substantial number of small entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1214

Payload Specialist, Mission Manager, NASA-Related Payload, Mission Specialist, Investigator Working Group, Government Employees, Government Procurement, Security Measures, Space Transportation and Exploration, SSUS Procurement, Small Self-Contained Payloads, Reimbursement for Shuttle Services, Authority of Space Transportation Systems (STS) Commander, Articles Authorized to be Carried on Space Transportation System Flights, Space Transportation System Personnel Reliability Program, Nonscientific Payloads, Space Flight Participants.

PART 1214—SPACE TRANSPORTATION SYSTEM

14 CFR Part 1214 is amended by revising subpart 1214.11 to read as follows:

Subpart 1214.11—NASA Astronaut Candidate Recruitment and Selection Program

Sec.
1214.1100 Scope.
1214.1101 Announcement.
1214.1102 Evaluation of applications.
1214.1103 Requesting candidates.
1214.1104 Evaluation and ranking of highly qualified candidates.
1214.1105 Final ranking.
1214.1106 Selection of astronaut candidates.
1214.1107 Notification.

Authority: 42 U.S.C. 2473.

Subpart 1214.11—NASA Astronaut Candidate Recruitment and Selection Program

§ 1214.1100 Scope.

It is NASA policy to maintain an integrated Astronaut Corps. This Subpart 1214.11 sets forth NASA procedures and assigns responsibilities for recruitment and selection of astronaut candidates. It applies to all pilot and mission specialist astronaut candidate selection activities conducted by the National Aeronautics and Space Administration.

§ 1214.1101 Announcement.

(a) Astronaut candidate opportunities will be announced by the Johnson Space Center (JSC) on a nationwide basis and open to the general public on a continuing basis, and republicized annually, unless specifically cancelled by NASA.

(b) Civilian applicants may apply at any time.

(c) JSC is responsible for implementing and refining the astronaut candidate application process to minimize the effort required to file and/or update applications.

(d) Military personnel on active duty must apply through and be nominated by the military service with which they are affiliated. Military nominees will not be part of the continuing pool of applicants. The Military services will normally convene their internal selection board annually during the latter part of the year and provide nominees to NASA early the following year. The military nominees will be evaluated by NASA and the military services will be notified promptly of those nominees who are finalists.

(e) The Assistant Administrator for Equal Opportunity Programs, NASA Headquarters, will provide assistance in the recruiting process.

§ 1214.1102 Evaluation of applications.

(a) All incoming applications will be reviewed by the JSC Personnel Office to determine whether or not applicants meet basic qualifications. Those not meeting the basic qualification requirements will be so notified in writing and will not be eligible for further consideration. Those meeting the basic qualification requirements will have their applications retained for review by designated rating panels.

(b) The JSC Director, or designee, will appoint discipline experts who will review and rate qualified applicants into one of three levels: Qualified, Well Qualified, or Highly Qualified.

(c) Efforts will be made to assure that minorities and females are included among these discipline experts.

(d) The criteria for each level will be developed by JSC and will serve as the basis for the ratings. The evaluation will be based on the extent to which the individual's academic achievements, experience, and special qualifications relate to the astronaut candidate position. Reference information on those rated "Highly Qualified" will be obtained. The JSC Personnel Officer will monitor this process to assure adherence to applicable rules and regulations.

(e) Medical documentation on the Highly Qualified will be evaluated by the JSC medical staff and an initial medical determination made. Applicants may be contacted for further information if necessary. Only medically qualified applicants will be referred for final evaluation and possible interview and selection. Those who are not medically qualified will be so informed and will not be eligible for further consideration.

§ 1214.1103 Requesting candidates.

(a) The JSC Director, or designee, is responsible for identifying the need for additional astronaut candidates and for obtaining necessary approval to make selections.

(b) Once such approval has been obtained, the JSC Director will request the list of Highly Qualified applicants from the JSC Personnel Officer.

(c) The date of this request will determine the cutoff date for acceptance of applications for that selection. Applications received after the date of the request will be maintained and processed for the next selection.

§ 1214.1104 Evaluation and ranking of highly qualified candidates.

(a) The JSC Director, will appoint a selection board consisting of discipline experts and such other persons as appropriate to further evaluate and rank those Highly Qualified applicants certified to the JSC Director by the JSC Personnel Officer.

(b) Efforts will be made to assure that minorities and females are included on this board.

(c) Those Highly Qualified applicants who are determined to be the "best qualified" will be invited to the Johnson Space Center for an interview, orientation, and detailed medical evaluation.

(d) Background investigations will be initiated on those applicants rated best qualified.

§ 1214.1105 Final ranking.

Final rankings will be based on a combination of the selection board's initial evaluations and the results of the interview process. Veteran's preference will be included in this final ranking in accordance with applicable regulations.

§ 1214.1106 Selection of astronaut candidates.

The selection board will recommend to the JSC Director its selection of candidates from among those finalists who are medically qualified. The number and names of candidates selected to be added to the corps will be approved, as required, by JSC/NASA management and the Associate Administrator for Space Flight, prior to notifying the individuals or the public.

§ 1214.1107 Notification.

Selectees and appropriate military services will be notified and the public informed. All unsuccessful qualified applicants will be notified of nonselection and given the opportunity to update their applications and indicate their desire to receive consideration for future selections.

James M. Beggs,
Administrator.

[FR Doc. 85-7871 Filed 4-2-85; 8:45 am]
BILLING CODE 7510-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 369

[Docket No. 50337-5037]

Restrictive Trade Practices or Boycotts

AGENCY: International Trade Administration, Commerce.

ACTION: Interpretation.

SUMMARY: The Department is clarifying the application of its antiboycott regulations (15 CFR Part 369) to certain

contractual language, purporting to involve unilateral and specific selection of suppliers, which has recently appeared in contractual proposals emanating from boycotting countries.

EFFECTIVE DATE: April 3, 1985.

FOR FURTHER INFORMATION CONTACT: Jon Paugh, Director, Compliance Policy Division, Office of Antiboycott Compliance, U.S. Department of Commerce (202-377-4550).

SUPPLEMENTARY INFORMATION: In an earlier interpretation, the Department reviewed a contractual clause regarding unilateral and specific selection which was then in use in certain boycotting countries. Supplement No. 1 to Part 369. The Department concluded that agreement to the clause recited therein fell within the exception for unilateral and specific selection contained in § 369.3(c) and that compliance with unilateral and specific selections subsequently made pursuant to that clause would be permissible if the selections met all of the requirements of § 369.3(c).

The Office of Antiboycott Compliance has recently become aware of new contractual language which has some superficial similarity to that discussed in the earlier interpretation but which differs in important ways from that earlier language. To avoid any possible confusion concerning the status of this language under the regulations, the Office is now providing this interpretation of the antiboycott regulations.

This interpretative rule is exempt from notice and comment requirements of the Administrative Procedure Act and will become effective upon publication in the **Federal Register**.

This interpretation is not subject to the requirements of the Regulatory Flexibility Act.

This interpretation does not impose a burden under the Paperwork Reduction Act of 1980.

List of Subjects in 15 CFR Part 369

Boycotts, Foreign trade, Reporting and recordkeeping requirements, Restrictive trade practices, Trade practices.

Interpretation

The principal author of this interpretation is Jon Paugh, Director, Compliance Policy Division, Office of Antiboycott Compliance. The following appendix is added to Part 369 as Supplement 13.

PART 369—[AMENDED]

Supplement No. 13

Summary

This interpretation considers boycott-based contractual language dealing with the selection of suppliers and subcontractors.

While this language borrows terms from the "unilateral and specific selection" exception contained in 15 CFR 369.3(c), it fails to meet the requirements of that exception. Compliance with the requirements of the language constitutes a violation of the regulatory prohibition of boycott-based refusals to do business.

Regulatory Background

Section 369.2(a) prohibits U.S. persons from refusing or knowingly agreeing to refuse to do business with other persons when such refusal is pursuant to an agreement with, requirement of, or request of a boycotting country. That prohibition does not extend to the performance of management, procurement or other pre-award services, however, notwithstanding knowledge that the ultimate selection may be boycott-based. To be permissible such services: (1) Must be customary for the firm or industry involved and (2) must not exclude others from the transaction or involve other actions based on the boycott. 15 CFR 369.2(a)(6), "Refusals to Do Business", and ex. (xiii).

A specific exception is also made in the regulations for compliance (and agreements to comply) with a unilateral and specific selection of suppliers or subcontractors by a boycotting country buyer. 15 CFR 369.3(c). In Supplement No. 1 to the Regulations, the following form of contractual language was said to fall within that exception for compliance with unilateral and specific selection:

> The Government of the boycotting country (or the First Party), in its exclusive power, reserves its right to make the final unilateral and specific selection of any proposed carriers, insurers, suppliers of services to be performed within the boycotting country, or of specific goods to be furnished in accordance with the terms and conditions of this contract.

The Department noted that the actual steps necessary to comply with any selection made under this agreement would also have to meet the requirements of § 369.3(c) to claim the benefit of that exception. In other words, the discretion in selecting would have to be exercised exclusively by the boycotting country customer and the selection would have to be stated in the affirmative, naming a particular supplier. 15 CFR 369.3(c)(4)(5).

Analysis of the New Contractual Language

The Office of Antiboycott Compliance has learned of the introduction of a new contractual clause into tender documents issued by boycotting country governments. This clause is, in many respects, similar to that dealt with in Supplement No. 1, but several critical differences exist.

The clause states:

> *Boycott of [Boycotted Country]*
>
> In connection with the performance of this Agreement, Contractor acknowledges that the import and customs laws and regulations of [boycotting country] apply to the furnishing and shipment of any products or components thereof to [boycotting country]. The Contractor specifically acknowledges that the aforementioned import and customs laws and regulations of [boycotting country] prohibit, among other things, the importation into [boycotting country] of products or components thereof: (A) Originating in [boycotted country] (B) Manufactured, produced and furnished by companies organized under the laws of [boycotted country] and (C) Manufactured, produced or furnished by Nationals or Residents of [boycotted country].
>
> The Government, in its exclusive power, reserves its right to make the final unilateral and specific selection of any proposed Carriers, Insurers, Suppliers of Services to be performed within [boycotting country] or of specific goods to be furnished in accordance with the terms and conditions of this Contract.
>
> To assist the Government in exercising its right under [the preceding paragraph], Contractor further agrees to provide a complete list of names and addresses of all his Sub-Contractors, Suppliers, Vendors and Consultants and any other suppliers of the service for the project.

The title of this clause makes clear that its provisions are intended to be boycott-related. The first paragraph acknowleges the applicability of certain boycott-related requirements of the boycotting country's laws in language reviewed in Supplement No. 1, Part II.B. and found to constitutie a permissible agreement under the exception contained in § 369.3(a-1) for compliance with the import requirements of a boycotting country. The second and third paragraphs together deal with the procedure for selecting subcontractors and suppliers of services and goods and, in the context of the clause as a whole, must be regarded as motivated by boycott considerations and intended to enable the boycotting country government to make boycott-based selections, including the elimination of blacklisted subcontractors and suppliers.

The question is whether the incorporation into these paragraphs of some language from the "unilateral and specific selection" clause approved in Supplement No. 1 suffices to take the language outside § 369.2(a)'s prohibition on boycott-based agreements to refuse to do business. While the first sentence of this clause is consistent with the language discussed in Supplement No. 1, the second sentence significantly alters the effect of this clause. The effect is to draw the contractor into the decision-making process, thereby destroying the unilateral character of the selection by the buyer. By agreeing to submit the names of the suppliers it plans to use, the contractor is agreeing to give the boycotting country buyer, who has retained the right of final selection, the ability to reject, for boycott-related reasons, any supplier the contractor has already chosen. Because the requirement appears in the contractual

provision dealing with the boycott, the buyer's rejection of any supplier whose name is given to the buyer pursuant to this provision would be presumed to be boycott-based. By signing the contract, and thereby agreeing to comply with all of its provisions, the contractor must either accept the buyer's rejection of any supplier, which is presumed to be boycott-based because of the context of this provision, or breach the contract. In these circumstances, the contractor's method of choosing its subcontractors and suppliers, in anticipation of the buyer's boycott-based review, cannot be considered a permissible pre-award service because of the presumed intrusion of boycott-based criteria into the selection process. Thus, assuming all other jurisdictional requirements necessary to establish a violation of Part 369 are met, the signing of the contract by the contractor constitutes a violation of § 369.2(a) of the regulations because he is agreeing to refuse to do business for boycott reasons.

The apparent attempt to bring this language within the exception for compliance with unilateral and specific selections is ineffective. The language does not place the discretion to choose suppliers in the hands of the boycotting country buyer but divides this discretion between the buyer and his principal contractor. Knowing that the buyer will not accept a boycotted company as supplier or subcontractor, the contractor is asked to use his discretion in selecting a single supplier or subcontractor for each element of the contract. The boycotting country buyer exercises discretion only through accepting or rejecting the selected supplier or contractor as its boycott policies require. In these circumstances it cannot be said that the buyer is exercising a right of unilateral and specific selection which meets the criteria of § 369.3(c). For this reason, agreement to the contractual language discussed here would constitute an agreement to refuse to do business with any person rejected by the buyer and would violate § 369.2(a).

Dated: March 27, 1985.

William V. Skidmore,

Director, Office of Antiboycott Compliance.

[FR Doc. 85-7964 Filed 4-2-85; 8:45 am]

BILLING CODE 3510-DT-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-3150]

Sentronic Controls Corp., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this Consent Order, among other things, requires three Chicago, Ill. corporations and three individuals engaged in the advertising, sale and distribution of an ultrasonic pest control product called the "Pest Sentry," to cease representing that the Pest Sentry or any other ultrasonic pest control device will eliminate cockroaches, rats, mice, and other such pests from a home or place of business; eliminate them within a specified period of time; prevent them from entering or remaining in an area where the product is being used; and serve as an effective alternative to the use of conventional pest control products. The Order further bars the firms from making any performance or effectiveness claims for ultrasonic pest control devices unless they possess and rely on competent and reliable substantiating evidence when making those claims.

DATE: Complaint and Order issued February 21, 1985.[1]

FOR FURTHER INFORMATION CONTACT: FTC/H 214, Edwin Dosek, Washington, D.C. 20580 (202) 523-3660.

SUPPLEMENTARY INFORMATION: On Friday, July 6, 1984, there was published in the **Federal Register**, 49 FR 27773, a proposed consent agreement with analysis In the Matter of Sentronic Controls Corporation, a corporation; International Marketing & Manufacturing, Inc., a corporation; Unigraf, Inc., a corporation; Stanley Stewart; Anne K. Stewart; and Richard Muller, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form or order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its modified order to cease and desist, as set forth below, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.0 Advertising falsely or misleadingly; § 13.20 Comparative data or merits; § 13.170 Qualities or properties of product or service; § 13.170-46 Insecticidal or repellant; § 13.170-80 Rodenticidal; § 13.190 Results; § 13.205 Scientific or other relevant facts. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures; § 13.533-45 Maintain records. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1575 Comparative data or merits; § 13.1710 Qualities or properties; § 13.1730 Results; § 13.1740 Scientific or other relevant facts. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure; § 13.1885 Qualities or properties; § 13.1895 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Ultrasonic pest control products, Trade practices.

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

Before the Federal Trade Commission

[Docket No. C-3150]

Decision and Order

In the matter of Sentronic Controls Corporation, a corporation; International Marketing & Manufacturing, Inc., a corporation; Unigraf, Inc., a corporation; Stanley Stewart, Anne K. Stewart, and Richard Muller.

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

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

1. Respondents Sentronic Controls Corporation and International Marketing and Manufacturing, Inc. are Illinois corporations with their offices and principal places of business located at 730 North LaSalle Street, Chicago, Illinois.

Respondent Unigraf, Inc. is an Illinois corporation with its principal place of business located at 60 West Erie Street, Chicago, Illinois.

Resnonent Stanley Stewart is an officer of SCC and an officer of IMM. Respondent Anne K. Stewart is an officer of IMM. Respondent Richard Muller is a director of SCC and an officer and director of Unigraf.

As such, the individual respondents formulate, direct and control the policies, acts and practices of said corporations, and their business addresses are the same as those for said corporations.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

Order

Part I

It is ordered that respondents Sentronic Controls Corporation, a corporation, its successors and assigns, and its officers, International Marketing & Manufacturing, Inc., a corporation, its successors and assigns, and its officers, Unigraf, Inc., a corporation, its successors and assigns, and its officers, and Stanley Stewart, Anne K. Stewart and Richard Muller, individually and as officers of said corporations, and respondents' agents, representatives, distributors, and employees, directly or through any corporation, subsidiary, division of other device, in connection with the advertising offering for sale, sale or distribution of the Pest Sentry (PS–1500) or any other pest control product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission act, do forthwith cease and desist from:

A. Representing, directly or by implication, that respondents' Pest Sentry (PS–1500) or any such ultrasonic product will:

(1) Eliminate cockroaches, rats, mice and other pests from a home or place of business;

(2) Eliminate rodent and insect problems from a home or place of business within two to six weeks, or within any other specified period of time;

(3) Prevent rodents and insects from entering or remaining in an area where the ultrasonic product is in use in a home or place of business;

(4) Protect, from rodent and insect infestations, areas up to 1500 square feet in a home or place of business, or within any other specified square footage area;

(5) Serve as an effective alternative to the use of conventional products such as sprays, powders, traps or other chemicals in providing protection from insect and rodent infestation.

B. Representing, directly or by implication, any performance characteristic of any pest control product unless at the time of making such representation respondents possess and rely upon competent and reliable evidence which substantiates the representation. Evidence shall be competent and reliable only if tests, experiments, analyses, research studies, or other evaluations are conducted in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant professions or sciences to yield accurate, reliable, and reproducible results.

C. Representing directly or by implication, that any pest control product is effective in providing protection from insect and rodent infestation in a home or place of business unless at the time of making such representation respondents possess and rely upon competent and reliable evidence which either directly relates to such home or place of business use conditions or which can properly be applied to such conditions.

Part II

It is further ordered that for three years after the last date of dissemination of the relevant representation respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying copies of all materials relied upon to support any representation covered by Part I of this Order, and copies of all documents in respondents' possession that contradict, qualify, or otherwise call into question any such representations, including complaints from consumers.

Part III

It is further ordered that respondents shall for a period of three years:

A. Distribute a copy of this Order to all managerial employees, distributors, independent sales agents and retailers present and future.

B. Notify each present and future distributor or sales representative that the failure to comply with the Order may result in cancellation of the distributorship or other selling agreement with respondents.

C. Require all distributors, independent sales agents and retailers to report to respondents semi-annually all consumer requests for refund and their action taken in response to such requests.

Part IV

It is further ordered that for a period of ten years:

A. Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of this Order.

B. The individual respondents named herein shall promptly notify the Commission of the discontinuance of their present pest control product business or employment and of their affiliation with any new pest control product business or employment, stating the nature of the business or employment in which the individual is newly engaged as well as a description of duties and responsibilities in connection with such new business or employment and the address of such new business and employment.

Part V

It is further ordered that respondents shall, within sixty (60) days after service upon it of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Issued: February 21, 1985.

By the Commission. Chairman Miller dissenting.

Emily H. Rock,

Secretary.

[FR Doc. 85–7891 Filed 4–2–85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 85–22]

Changes to the Customs Service Field Organization: Columbia-Snake: Boise, Idaho; Colorado Springs, Colorado

AGENCY: Customs Service, Treasury.

ACTION: Final rule; correction.

SUMMARY: This document corrects a portion of a recent final rule that modified the field organization of the Customs Service. T.D. 85–22, published

on February 5, 1985 (50 FR 4973), implemented § 238 of the Trade and Tariff Act of 1984 (Pub. L. 98–573), by establishing a new Customs district, port of entry, and station. A printing error in the description of the Boise, Idaho, port of entry is being corrected. Also, the description of the new Columbia-Snake district is being corrected to conform to Congressional intent. The new district headquarters is located in Portland, Oregon, and the district falls entirely within the Customs Pacific region.

FOR FURTHER INFORMATION CONTACT: Richard Coleman, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202–566–8157).

Corrections

The following corrections are made to FR Doc. 85–2887, published as T.D. 85–22, appearing on 4973 in the issue of February 5, 1985 (50 FR 4973):

1. On page 4973 at the top of column three, the word "Cleveland" in the description of the Boise, Idaho, port of entry, is corrected to read "Cloverdale".

2. On page 4974, the items in columns one and two describing the amendments to § 101.3, Customs Regulations (19 CFR 101.3), are corrected as follows:

(a) Item 2 is removed.

(b) Item 3 is redesignated as 2 and revised to read as follows, "2. In that part of the table describing the Pacific Region, the "Area" column directly opposite "Portland, Oreg." is revised to read, "The State of Oregon, the State of Idaho below 47° latitude, and the State of Washington counties of Adams, Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Skamania, Wahkiakum, Walla Walla, and Whitman, and that part of Pacific County, south of a line that would be in effect if the northern boundary of Wahkiakum County were extended westward to the Pacific Ocean."

(c) Item 4 is redesignated as 3 and revised to read as follows, "3. Also in the Pacific Region, the following is added in the "Ports of entry" column to correspond to the new area description of "Portland, Oreg."

* * * * *

Ports of Entry

"COLUMBIA–SNAKE CUSTOMS DISTRICT, PORTLAND, OREGON

Astoria (including territory described in T.D. 73–338). Boise, Idaho (Pub. L. 98–573 T.D. 85–22) Coos Bay, Oreg. (E.O. 4094, Oct. 28, 1924; E.O. 5193, Sept. 14, 1929; E.O. 5445, Sept. 16, 1930; E.O. 9533, Mar. 23, 1945; 10 FR 3173). Longview (including territory described in T.D. 73–338). Newport, Oreg."

(d) Item 5 is redesignated as 4. The text remains unchanged.

Dated: March 27, 1985.

William von Raab,

Commissioner of Customs.

[FR Doc. 85–7927 Filed 4–2–85; 8:45 am]

BILLING CODE 4820–02–M

VETERANS ADMINISTRATION

38 CFR Part 36

Loan Guaranty; Redefinition of the Term "Lender"

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is amending its regulations to redefine the term "lender." The revised definition includes individual owners, company and corporate officers, and other employees of the firms engaged in any phase of mortgage lending with the assistance of VA guaranty and insurance programs. The amendments also provide for the suspension of any participating lender employing a suspended person in any position with responsibility in the decisionmaking process.

The purpose is to give the VA flexibility to apply sanctions to individuals who are found to have committed fraud or were responsible for material misrepresentations in the soliciting, processing, servicing or approval of loan applications submitted to the VA for guaranty or insurance.

The authority to impose suspensions on lender employees will be a major deterrent to suspended persons moving their employment from one organization to another where they may continue to practice fraudulent or irregular activities in the soliciting, processing, or servicing of VA loans or loan applications.

EFFECTIVE DATE: May 2, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Administration, Washington, D.C. 20420, (202) 389–3042.

SUPPLEMENTARY INFORMATION: On April 5, 1984, the VA published in the **Federal Register** (49 FR 13553) proposed amendments to 38 CFR 36.4202, 36.4216, 36.4301 and 36.4331, the Loan Guaranty regulations. Public comments were requested on a proposal to amend the definition of lender to include individual owners, company and corporate officers, and other employees of the firms engaged in any phase of mortgage lending with the assistance of VA guaranty and insurance programs. The proposal also provided for the suspension of any participating lender employing a suspended owner, company or corporate officer, or other person as a loan solicitor, loan servicer, loan processor, office manager, or an employee in any other position with responsibility in the decisionmaking process.

The governing statutes and regulations currently provide that the Administrator may, subject to notice and the opportunity for a hearing, suspend a lender or holder from obtaining guaranty or insurance of loans or from the right to the guaranty or insurance of any loans made or purchased after the date of its suspension. These sanctions may be imposed on a finding by the VA that a lender has failed to maintain adequate loan accounting records, or to demonstrate proper ability to service loans adequately, or to exercise proper credit judgment, or has willfully or negligently engaged in practices otherwise detrimental to the interest of veterans or of the Government.

The term "lender" is currently defined in 38 CFR 36.4202(g) as "the payee or assignee or transferee of an obligation at the time it is guaranteed." The term is similarly defined in section 36.4301 but includes "insured loans." Under these definitions, when fraud or other serious irregularities are found in loan applications which are guaranteed or insured by the VA, the lending institution may be suspended under authority of the statute. The statute does not provide for the suspension of individual owners, officials, or other employees of the lender. However, under previous legal precedents and opinions, the suspension of a lender may also apply to principals and officers of a lender who were personally involved in the irregular practices or who have a major responsibility in the decisionmaking process.

These amendments define the term "lender" in the regulations to include principals, officers, and other employees. They provide specific regulatory authority for sanctioning an individual who is directly responsible for material misrepresentation or fraud in the origination or servicing of a loan. The amendments also provide for the suspension of an individual who is in a supervisory or managerial position and who either willfully or negligently encourages or overlooks irregular practices by employees under his or her supervision or otherwise does not exercise supervisory controls of employees taking actions which are

deterimental to veterans or the Government.

The amendments make it possible for the VA to suspend individual lender employees who are responsible for fraud or material misrepresentation in processing or servicing VA loans without the necessity of first suspending the lender for whom that employee is working. Some large lenders operate regionally or nationwide. It is not always possible for these lenders to monitor and to fully supervise the processing and servicing of loans in the many different locations. In some cases the lender is unaware of the irregular conduct of the employee and cannot detect the fraud or other irregularity from a review of the completed loan application package. It would be inequitable in some circumstances to suspend an entire regional or national lender because of the improper conduct of one or more employees of that firm in one of its branch offices. It would, however, be appropriate for the VA to suspend the errant employee or employees in that office from further participation in soliciting, processing, or servicing of VA loans. This situation demonstrates the need for a revision of the regulations so that for suspension purposes the definition of a lender shall include officers, principals, and other employees who make or conspire with others to use false, fictitious, or fraudulent statements, representations, or documents in any loan application or other document submitted to the VA for the purpose of securing VA guaranty or insurance of a loan.

Under present procedure, a notice of suspension to a lender is effective as to agents, representatives, and correspondents when acting for or on behalf of the person or entity suspended. When these individuals, including employees of the suspended lender, are not specifically included in a lender suspension, they may then be employed by a different lender with impunity. Individual employee suspensions would be an effective method of preventing these employees from being hired by a different lending organization where they might continue fraudulent or irregular practice in the soliciting, processing, or servicing of VA loans or loan applications.

These amendments, in addition to the revision of the definition of a lender, provide a means for the VA to suspend any lender who employs a suspended person as a loan processor, loan solicitor, or who is in a managerial capacity with responsibility in the decisionmaking process. Any lender so suspended will have a right to notice and an opportunity for a hearing in the same manner as any other program participant that has been sanctioned by the VA. Termination on the employment of the suspended lender or employee by the secondary employer would automatically terminate its suspension.

Three responses were received from the public on the proposed amendments, all of which favored the redefinition of a lender and extension of the authority of the VA to suspend individual employees of lending firms and lenders who employ previously suspended individuals.

One commentator made five specific suggestions for additions to these amendments to ensure clarity and procedural fairness. They suggested that a lender employing a previously suspended individual should not be suspended unless it had actual knowledge of the prior suspension. Under current procedures a lender is given 20 days notice by the VA of its intention to suspend that lender and states the specifications on which the action is based. That lender then has the opportunity to terminate the employment of the previously suspended individual and by so doing would avoid suspension.

The commentator has suggested that the VA disseminate its suspension list of all suspended program participants quarterly. Although it has been determined that the identity of suspended lenders should not be withheld under the provisions of the Privacy Act it would be impractical to provide the suspension list to the many hundreds of program participants on a regular basis. Although routine distribution of the list of suspendees would not be practical the information will be available to interested firms and individuals by contacting the local VA regional office or Central Office in Washington, D.C. Lenders who are contemplating hiring a new employee who has previously worked in the industry may protect against hiring a previously suspended individual by contacting the local VA regional office to ascertain whether that individual is in a suspended status.

Another suggestion was that the VA should not invoke a reciprocal suspension on program participants previously denied participation under the National Housing Act by the Secretary of Housing and Urban Development unless there is a clear connection between the conduct supporting the earlier sanction and the lender's or employee's responsibilities to the VA. This is and has been the rule of the VA since enactment of the law allowing reciprocal sanctions based on action of the Secretary. The suspension of participants sanctioned by the Secretary are not automatic but are based on a careful review of the facts supporting the earlier sanction. When the basis for sanctions imposed by the Secretary has no connection with the rules and regulations governing VA loan activity by a lender, no reciprocal sanction is imposed.

The commentator suggested the VA clearly define "failure to maintain adequate loan accounting records, failure to demonstrate proper loan servicing, or failure to exercise proper credit judgment." This language is not a proposed rule but is essentially a part of the specific language of the statute authorizing lender suspension. The VA has never tried to characterize the specific acts or omissions of lenders which might arise under this authority because of the many possible deficiencies which could arise in these areas of loan accounting records, loan servicing, and credit judgment. All lenders engaged in VA loan activities have been furnished the guidelines required by the VA for handling these matters. They should be aware of what is required in these areas and govern themselves accordingly. Therefore, it would not be practicable or appropriate for the VA to attempt to itemize all of the possibilities which might arise under this specific statutory provision.

Another suggestion was that the VA give notice and an opportunity for a presuspension hearing before taking suspension action. Current procedures for lender sanctions provide for presuspension notice by furnishing a notice of intention to suspend at a future specified date. It allows the lender an opportunity to appear and show cause as to why a suspension should not be invoked prior to the specified date of the intended sanction. The lender may also file a brief setting out the reasons why the sanctions should not be imposed. When either of these actions are taken by the lender, action on the proposal is withheld until further review is performed by the VA. In the few instances in which it is determined that the actions of the lender are so flagrant that any continued participation in the program would cause irreparable harm to veterans or to the Government, immediate sanctions may be imposed without a prior hearing. This authority is seldom invoked.

Another organization made general comments on three points. It suggested that VA procedures insure that suspension actions are preceded by notice and an opportunity for a hearing

and appeal. The regulations are quite explicit in this regard. In all cases in which lender sanctions are proposed, the lender is afforded ample opportunity to respond to a proposed suspension and, if suspension is invoked, it has full due process rights for a formal administrative hearing.

This commentator also suggested that the VA publish detailed standards for the "adequacy of records," "proper credit judgment" and "proper ability to service loans adequately" and that the VA provide notice to participating lenders of the prior suspensions of individuals. As pointed out above, the VA believes that it would be impracticable to attempt to reduce the statutory language to specifics or to provide suspension lists to all participating lenders. A list of suspended lenders will be furnished to any interested firm.

One commentator suggested that the VA may issue a single suspension notice naming both an employee and the employer and not provide for separate answers to the charges or for separate hearings in cases of appeals. In all lender suspensions current practice provides for suspension of the lender, and its principals and officers who have the decisionmaking responsibilities. The VA will still use that procedure in most suspensions since it is generally not possible to definitely establish that the basis for the suspension rests with a specific employee who is not a principal or officer of the firm. In such cases the VA procedures provide for a single hearing for the firm and its principals and officers. It would not be possible to provide separate hearings for the firm and its principals and officers in such cases. In all instances of the suspension of a lender and a named individual who is not a principal or officer, the parties are entitled to separate hearings if they request individual hearings. Suspension notices will inform individuals of their right to a separate hearing. This revised regulation primarily redefines a "lender" and makes no changes in the hearings and appeal procedure.

Technical amendments have also been made to the appropriate sections of the regulations to change the term "mobile home" to "manufactured home." These changes are made so that the terminology of the regulations will be in conformity with the language of Pub. L. 97-306, 96 Stat. 1429, enacted October 14, 1982.

The Administrator has certified that these regulation changes will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 through 612. Pursuant to 5 U.S.C. 605(b), these regulations are exempt form the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reasons for this certification are that the changes will not directly affect any small entity except to the extent that it may be precluded from employing a small number of suspended individuals. Small entities which are private and nonprofit organizations and small government jurisdictions will not be affected. Present regulations already permit suspensions of responsible officials of a lender. In the case of lenders which are small entities, as distinguished from large corporate lenders, the VA's authority to suspend such officials will not change significantly because of the positions which they generally hold in the small business. That is, individual positions covered under these amended regulations will in most instances be occupied, in the case of small lenders, by individuals holding positions already subject to suspension under the existing regulations.

These regulations will not impact on the public or private sectors as "major rules" as that term is defined in Executive Order 12291. They will not have an annual effect on the economy of $100 million or more, and will not cause a major increase in costs or prices for consumers or individual industries; nor will they have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(Catalog of Federal Domestic Assistance Program numbers 64.114 and 64.119.)

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing Loan programs—housing and community development, Manufactured Homes, Veterans.

These amendments are promulgated under the authority granted the Administrator by sections 210(c), 1803, 1804, and 1819, title 38, United States Code

Approved: March 18, 1985.

By direction of the Administrator:

Everett Alvarez, Jr.,

Deputy Administrator.

PART 36—[AMENDED]

38 CFR Part 36, LOAN GUARANTY, is amended as follows:

1. In the center heading proceeding § 36.4201, the word "MOBILE" is changed to "MANUFACTURED".

2. In § 36.4202, paragraph (g) is revised to read as set forth as follows; and paragraphs (j), (k), (m), (n), and (o) are amended by replacing the word "mobile" with "manufactured" wherever it appears and by adding the cite "(sec. 406, Pub. L. 97-306)" at the end of those paragraphs.

§ 36.4202 Definitions

* * * * *

(g) *Lender.* The payee or assignee or transferee of an obligation at the time it is guaranteed. This term also includes any sole properietorship, partnership, or corporation and the owners, officers, and employees of a sole proprietorship, partnership, or corporation engaged in the origination, procurement, transfer, servicing, or funding of a loan which is guaranteed by the VA. (38 U.S.C. 1804(d); 1819(g))

* * * * *

3. Section 36.4216 is amended by changing the word "chairman" to "chairperson" in paragraph (e) and by revising paragraph (a) to read as follows:

§ 36.4216 Disqualification of lenders.

(a) A lender or holder may be suspended from obtaining guaranty of loans or from the right to the guaranty in respect to any loan made or purchased after the date of its suspension, except as provided in paragraph (h) of this section, whenever any of the employees designated in § 36.4221(b) finds that the lender or holder (hereinafter referred to as lender) has failed to maintain adequate loan accounting records, or to demonstrate proper ability to service loans adequately, or to exercise proper credit judgment, or has declined to make a guaranteed manufactured home loan to an eligible veteran because of the applicant's race, color, religion, sex, or national origin, or has willfully or negligently engaged in practices otherwise detrimental to the interests of veterans of the Government, or has been refused the benefits of participation under the National Housing Act pursuant to a determination of the Secretary of Housing and Urban Development. Suspension of a lender shall be effected only when specifically authorized by the Administrator, the Deputy Administrator, or by the Chief Benefits Director, Department of Veterans Benefits. In any case in which suspension has been so authorized and: (1) An indictment has been secured or a criminal information has been filed against the lender in connection with a transaction involving 38 U.S.C. 1819, or (2) is based upon action taken by the Secretary of Housing and Urban Development, an immediate suspension

may be effected. A lender may also be suspended under this section if it is owned by, or employs as an officer, loan solicitor, loan processor, loan servicer, loan supervisor, office manager, or in any other position, a person who engages in or is responsible for the processing or servicing of VA guaranteed or insured loans if that person has been previously suspended by the VA under this section. In any other case in which the Director of a regional office has obtained Central Office authorization to initiate suspension proceedings, prior written notice of intention to apply the suspension sanction shall be furnished to the lender concerned. (38 U.S.C. 1804(d); 1819(g))

* * * * *

4. Section 36.4301 is amended by revising the definition of "Lender" to read as follows:

§ 36.4301 Definitions * * *

* * * * *

Lender. The payee or assignee or transferee of an obligation at the time it is guaranteed or insured. This term also includes any sole proprietorship, partnership, or corporation and the owners, officers and employees of a sole proprietorship, partnership, or corporation engaged in the origination, procurement, transfer, servicing, or funding of a loan which is guaranteed or insured by the VA. (38 U.S.C. 1804(d); 1819(g))

* * * * *

5. Section 36.4331 is amended by revising paragraph (a) to read as follows:

§ 36.4331 Disqualification of lenders.

(a) A lender or holder may be suspended from obtaining guaranty or insurance of loans or from the right to the guaranty or insurance in respect to any loan made or purchased after the date of its suspension, except as provided in paragraph (h) of this section, whenever any of the employees designated in § 36.4342(b) finds that the lender or holder (hereinafter referred to as lender) has failed to maintain adequate loan accounting records, or to demonstrate proper ability to service loans adequately, or to exercise proper credit judgment, or has declined to make a guaranteed or insured home loan to an eligible veteran because of the applicant's race, color, religion, sex, or national origin, or has willfully or negligently engaged in practices otherwise detrimental to the interests of veterans or of the Government or has been refused the benefits of participation under the National Housing Act pursuant to a determination of the Secretary of Housing and Urban Development. Suspension of a lender shall be effected only when specifically authorized by the Administrator, the Deputy Administrator, or by the Chief Benefits Director, Department of Veterans Benefits. In any case in which suspension has been so authorized and (1) an indictment has been secured or a criminal information has been filed against the lender in connection with a transaction involving 38 U.S.C. ch. 37, or (2) is based upon action taken by the Secretary of Housing and Urban Development, an immediate suspension may be effected. A lender may also be suspended under this section if it is owned by, or employs as an officer, loan solicitor, loan processor, loan servicer, loan supervisor, office manager, or in any other position, a person who engages in or is responsible for the processing or servicing of VA guaranteed or insured loans if that person has been previously suspended by the VA under this section. In any other case in which the Director of a regional office has obtained Central Office authorization to initiate suspension proceedings, prior written notice of intention to apply the suspension sanction shall be furnished to the lender concerned. (38 U.S.C. 1804(d); 1819(g))

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[FR Doc. 85-7834 Filed 4-2-85; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 4F3118/R748; FRL-2809-5]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide oxyfluorfen in or on the raw agricultural commodity artichokes. This regulation to establish a maximum permissible level for residues of oxyfluorfen in or on artichokes was requested by Rohm and Haas Co.

EFFECTIVE DATE: Effective on March 3, 1985.

ADDRESS: Written objections, identified by the document control number [PP 4F3118/R748], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington D.C. 20460.

Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of August 8, 1984 (49 FR 31756), which announced that Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105, had filed pesticide petition 4F3118 to EPA proposing that 40 CFR 180.318 be amended by establishing a tolerance for residues of the herbicide oxyfluorfen [2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene] and its metabolites containing the diphenyl ether linkage in or on the raw agricultural commodity artichokes at 0.05 part per million.

No comments were received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the tolerance include a rat oral median lethal dose (LD_{50}) with an LD_{50} greater than 5.0 grams (g) per kilogram of body weight (bw); a rat cytogenetic test (purified oxyfluorfen), negative; an Ames assay (technical) positive; Ames assay (purified oxyfluorfen), negative; a host-mediated assay (purified oxyfluorfen), negative; an Unscheduled DNA Synthesis (UDS) Assay (technical), negative; a rat teratology study with no terata at 1,000 mg/kg of bw (highest dose) and a fetotoxic no-observed-effect level (NOEL) of 100 mg/kg of bw; a rabbit teratology study with no terata at 30 mg/kg (highest dose) and a fetotoxic NOEL of 10 mg/kg; a 3-generation rat reproduction study with a NOEL of 10 ppm (0.5 mg/kg of bw); a 2-year rat chronic feeding/oncogenicity study with a NOEL of 40 ppm (2.0 mg/kg of bw); a 20-month mouse-feeding study (chronic feeding/oncogenicity) with a NOEL of 2 ppm (0.3 mg/kg of bw); and a 2-year dog-feeding study with a NOEL of 100 ppm (5.0 mg/kg of bw).

Based on the NOEL of 2 ppm in the chronic mouse-feeding study and a 100-fold safety factor, the acceptable daily intake (ADI) has been set at 0.003 mg/kg day with a maximum permissible intake

(MPI) of 0.18 mg/day for a 60-kg person. This tolerance and previously established tolerances result in a theoretical maximum residue contribution of 0.03942 mg/day in a 1.5-kg diet and use 21.90 percent of the ADI.

There are no regulatory actions pending against this pesticide. Oxyfluorfen was the subject of a Rebuttable Presumption Against Registration (RPAR) process and a Notice of Determination that was published in the **Federal Register** of June 23, 1982 (47 FR 27118).

One of the solvents used in the production of technical oxyfluorfen, perchloroethylene (PCE), has been shown to produce liver tumors in mice. The Agency has concluded that potential benefits from use of oxyfluorfen outweigh risks from PCE, provided oxyfluorfen products are produced with no more than 200 ppm PCE Contaminant. The producer of oxyfluorfen has verified that oxyfluorfen formulations contain a maximum of 200 ppm PCE.

The pesticide is considered useful for the purpose for which the tolerances are sought. The metabolism of the pesticide is adequately understood for use on artichokes, and an adequate analytical method, gas chromatography, is available for enforcement purposes. Because there are no feed items involved, there will be no problem of secondary residues in meat, milk, and eggs.

Based on the information cited above, the Agency has determined that the establishment of the tolerance for residues of the pesticide in or on the commodity will protect the public health. Therefore, the tolerance is established as set forth below.

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

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerance or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

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

Dated: March 21, 1985.

Steven Schatzow,

Director, Office of Pesticides Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.381 is amended by adding, and alphabetically inserting, the raw agricultural commodity artichokes in the table, to read as follows:

§ 180.38 Oxyfluorfen; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Artichokes	0.05
* * * * *	

[FR Doc. 85-7821 Filed 4-2-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 4F2975/R747; FRL-2809-4]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the fungicide thiabendazole in or on dry beans. This regulation to establish the maximum permissible level for residues of thiabendazole in or on the raw agricultural commodity was requested by Merck and Co., Inc.

EFFECTIVE DATE: Effective on April 3, 1985.

ADDRESS: Written objections, identified by the document control number [4F2975/R747], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail:

Henry M. Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of November 23, 1983 (48 FR 52974), which announced that Merck and Co., Inc., P.O. Box 2000, Rahway, NJ 07065, had filed a pesticide petition 4F2975 with EPA The petition proposed that 40 CFR 180.242 be amended by establishing a tolerance for residues of the fungicide thiabendazole [2-(4-thiazolyl) benzimidazole] in or on the raw agricultural commodity dry beans at 0.1 part per million (ppm).

There were no comments received in response to the notice filing.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the tolerance include an acute oral lethal dose rat study (median lethal dose (LD_{50}) = 3.3 grams per kilogram (g/kg)); an acute oral lethal dose mouse study (LD_{50} = 3.8 g/kg); a 2-year rat-feeding study with a no-observed-effect level (NOEL) of 10 mg/kg/day that was negative for oncogenic potential under the conditions of the study up to, and including, 160 mg/kg/day; a 2-year dog-feeding study with a NOEL of 50 mg/kg/day; a mouse oncogenicity feeding study with a negative oncogenic potential under the conditions of the study up to, and including, 799.5 mg/kg/day; a rat teratology study that was negative at 80 mg/kg; a rabbit teratology study that was negative at 800 mg/kg; a mouse reproduction study with a NOEL of 150 mg/kg/day; and a rat reproduction study with a NOEL of 20 mg/kg/day. Based on the 2-year rat-feeding study (NOEL = 10 mg/kg/day) and using a 100-fold safety factor, the allowable daily intake (ADI) is 0.10 mg/kg/day; the maximum permissible intake (MPI) is 6.0 mg/day for a 60-kg person. Established tolerances and this tolerance result in a maximum theoretical exposure of 2.4712 mg/day for a 60-kg person and utilize 41.18 percent of the ADI. Tolerances have previously been established for residues of thiabendazole in or on a variety of raw agricultural commodities

(40 CFR 180.242). There are no regulatory actions pending against continued registration of the pesticide, and there are no other considerations involved in establishing this tolerance. The metabolism of thiabendazole is adequately understood, and an adequate analytical method, spectrophotometric analysis, is available for enforcement purposes.

Based on the information cited above, the Agency has determined that the establishment of the tolerance for the fungicide thiabendazole in or on the raw agricultural commodity dry beans will protect the public health. Therefore, the regulation is established by amending 40 CFR 180.242, as set forth below.

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

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(d)(2), 68 Stat. 512, 21 U.S.C. 346a(d)(2))

List of Subjects in 40 CFR Part 180

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

Dated: March 21, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.242(a) is amended, by adding the tolerance for dry beans, to read as follows:

§ 180.242 Thiabendazole; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Beans (dry)	0.1
* * * * *	

[FR Doc. 85-7822 Filed 4-2-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 435 and 436

[BERC-507-F]

Medicaid Program; Federal Financial Participation for Inmates in Public Institutions and Individuals in an Institution for Mental Disease or Tuberculosis

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule brings regulations into conformance with the Medicaid statute by clarifying that no Federal financial participation (FFP) is available for any services furnished to certain institutionalized individuals. These are individuals who are inmates of public institutions which are not medical institutions or patients under age 65 in institutions for mental diseases or tuberculosis. In accordance with statute, an exception is provided for individuals under age 22 who are receiving covered inpatient services in psychiatric facilities. Prior regulations provided that FFP was available for noninstitutional services furnished during the month in which the individual became an inmate or patient and the last month of institutionalization and were inconsistent with the statute.

EFFECTIVE DATE: May 3, 1985.

FOR FURTHER INFORMATION CONTACT: Roy Trudel, 301-594-9128.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1905(a) of the Social Security Act (the Act) prohibits Federal payments for services provided to inmates of public institutions which are not medical institutions or to individuals under age 65 who are patients in an institution for mental diseases or tuberculosis unless these individuals are under age 22 and are receiving covered inpatient services in psychiatric facilities. The intent of this provision is to ensure that Medicaid funds are not used to finance care which traditionally has been the responsibility of State and local governments. Aside from the exceptions specified in section 1905(a) of the Act, FFP has never been available for institutional services provided to patients in public institutions or under age 65 in institutions for mental diseases or tuberculosis. (For purposes of this preamble, we refer to institutional services as inpatient psychiatric or tuberculosis services provided to the individual who is a patient or inmate. We refer to noninstitutional services as all other services covered under the State plan.)

In a proposed rule (NPRM) published in the March 31, 1983 **Federal Register** (48 FR 13446), we proposed to revise Medicaid regulations at 42 CFR 435.1008(b) and 435.1004(b) to bring our regulations into conformance with section 1905(a) of the Act. Under the prior regulations, FFP was allowed during the first and last months of institutionalization for noninstitutional services provided under the State plan to otherwise eligible individuals who under the statute, were inmates of public institutions or patients of mental or tuberculosis institutions. This exception in the regulations was not based on the statute, but rather on a judgment that such an arrangement would be more administratively convenient for States. (When current regulations were published, States generally did not have sophisticated claims processing systems. However, the situation has changed and most States now have a mechanized claims processing and information retrieval system which enables them to determine when noninstitutional services furnished to certain institutionalized individuals are no longer covered.)

As explained in the preamble to the NPRM, we decided to change our regulations and ensure that Medicaid funds are not used to finance care for institutionalized individuals who have traditionally been the responsibility of State and local governments. We concluded that, in this case, a policy of administrative convenience (which is not a statutory requirement) should not take precedence over a specific statutory provision.

II. Provisions of the Regulations

After consideration of public comments received following our proposal, we are adopting the provisions of the proposed regulations without change in this final rule. (The comments

and our responses to them, are found in section III of this preamble.) As proposed, we are amending 42 CFR 435.1008 and 436.1004 to preclude the availability of FFP for all services provided to individuals who are inmates of public institutions (which are not medical institutions) or to individuals under age 65 who are patients in institutions for mental diseases or tuberculosis, from the date of admission to the date of discharge. By the term "institution for tuberculosis", we mean an institution traditionally thought of as a tuberculosis sanitarium. Under the policy set forth in this rule, FFP will not be available for Medicaid services provided from the date of admission until the date of discharge. However, in accordance with section 1905(a)(16) of the Act, we will continue to provide FFP for services furnished to individuals under age 22 who are receiving inpatient psychiatric services as defined in 42 CFR 440.160. These final regulations do not affect Federal matching funds for services to individuals who are *not* residing in (i.e. have been discharged from) these facilities. FFP will continue to be available for covered services furnished to an eligible individual during any part of the month in which the individual is not an inmate of a public institution or a patient in an institution for mental diseases or tuberculosis. The provisions of this rule do not affect individual eligibility under Medicaid but rather FFP for services furnished to certain institutionalized individuals.

III. Public Comments

Thirty comments were received from States, professional organizations and local health departments. The majority of comments were received voiced opposition to the proposed regulations for the reasons discussed below. All comments were considered in drafting these final regulations.

A. General Comments

Comment: Seven respondents stated that the proposed regulations were contrary to Congressional intent because a 1965 Senate Report (S. Rep. No. 404, Part 1) refers to FFP for a partial month of services provided to eligible individuals admitted to an institution and to the administrative inconvenience of having to segregate bills by the day of month on which services were provided.

Response: We do not agree that these regulations contradict Congressional intent. The language at section 1905(a) of the Act specifically excludes FFP for any services provided to inmates of public institutions or patients under age 65 in an institution for mental diseases or tuberculosis. The plain language of the statute thus clearly precludes FFP for all such services.

Comment: Three commenters felt that there was no basis for eliminating FFP for noninstitutional services provided to inmates of public institutions or patients of institutions for mental diseases or tuberculosis.

Response: We believe the statute (section 1905(a) of the Act) clearly justifies these regulations. The language of this provision prohibits FFP for all services to individuals in certain types of institutions (with specified exceptions). Specifically, subparagraphs (A) and (B) following section 1905(a)(18) provide that no FFP is available ". . . with respect to care or services for any individual who is an inmate of a public institution . . ." or ". . . with respect to care or services for any individual who has not attained 65 years of age and who is a patient in an institution for tuberculosis or mental diseases."

Comment: One respondent thought that our statement that the purpose of section 1905(a) is to ensure that Medicaid funds are not used to finance care which has traditionally been the responsibility of State and local governments, was unfounded since States and local governments do not have adequate finances for acute inpatient psychiatric care.

Response: Even under our present regulations, FFP has not been available beyond the first and last months of institutionalization for any care provided to inmates of public institutions and individuals under age 65 in institutions for mental diseases or tuberculosis (except for those under age 22 in qualified psychiatric facilities).

We recognize that States and local governments may be reassuming financial responsibility for such care; however, we believe this was contemplated by Congress since the statute clearly precludes FFP for services provided to certain institutionalized individuals in certain types of institutions.

Comment: One professional association commented that the regulations allowing FFP for services furnished to eligible individuals during the month in which they become patients of an institution for mental diseases did not limit FFP to services "not provided by the institution". They questioned why this distinction was made in the proposed rule and requested that it not be retained in the final rule.

Response: Since section 1905(a) of the Act (with limited exceptions) precludes *any* payment with respect to care or services for inmates of public institutions or patients under age 65 of institutions for mental diseases or tuberculosis, we have made this statutory exclusion clear in these regulations. That is, the exclusion in the statute and regulations applies to both services provided by the institution and to services rendered by other Medicaid providers to institutionalized individuals in the types of facilities specified by the law.

Comment: One respondent stated that Medicaid payments should be available for disabled individuals of all ages dually entitled to Medicare and Medicaid, to cover Medicare deductibles and copayments.

Response: The availability of FFP for services provided under Medicaid is determined by law. The only legal exceptions to the preclusion of FFP for inmates of public institutions or patients in institutions for mental diseases or tuberculosis are those which are specified in the law at section 1905(a) of the Act.

Comment: Two commenters stated that the proposed rule would negatively affect the care provided to patients by causing premature discharges or disrupting Medicaid benefits.

Response: We do not believe that this change will significantly affect patient care. Changes as a result of these regulations do not require the termination of any services. Rather they place the responsbility for payment for care provided during those portions of the first and last months during which an individual is in a facility outside the federally-assisted Medicaid program.

Comment: One State mental health department requested that HCFA "hold harmless" States that received reimbursement for services provided in public institutions.

Response: We cannot legally "hold harmless" States that received reimbursement for services provided which are not covered services; thus any State which received FFP for such services is subject to recovery action. We note, however, that since our regulations specifically allowed payment for covered noninstitutional services to eligible institutionalized individuals during the first and last months of institutionalization, FFP for such services furnished up to the effective date of this regulation will not be subject to recovery.

B. Economic Impact of the Regulations

Comment: One commenter contended that contrary to the Secretary's certification under 5 U.S.C. 605(b) as enacted by the Regulatory Flexibility

Act (Pub. L. 96–354), these regulations would have a significant impact on providers of services.

Response: We continue to believe this policy will not significantly affect providers of these services. However, we do agree that State governments will be affected to the extent that they reassume the responsibility for full funding of services provided to inmates of public institutions and some patients in institutions for mental diseases or tuberculosis. However, since State governments are not considered small entities under the provisions of the Regulatory Flexibility Act, we consider the Secretary's certification accurate.

Comment: Several commenters questioned the statement in the preamble to the NPRM that a regulatory impact analysis is not needed. They stated that HCFA failed to account for the impact on States of eliminating FFP for partial month institutional and noninstitutional services.

Response: HCFA is aware that these regulations will have some impact on State governments. As stated earlier in this preamble, (aside from the exceptions specified in section 1905(a)) FFP has never been available for institutional services provided to patients in public institutions or under age 65 in institutions for mental diseases or tuberculosis. Thus, the impact on State governments is reduced only to the loss of FFP for noninstitutional services for the months of entry and discharge in the institution. Additional, State governments are not considered small entities for purposes of the Regulatory Flexibility Act. Further, as we noted in the preamble to the NPRM, even though we were unable to develop exact cost estimates because of insufficient data, there was no evidence to suggest that the results of this change will exceed the $100 million a year criteria. Accordingly, we do not believe an impact statement is necessary.

Comment: Several respondents stated that the proposed regulations would impact negatively on both State and local governments. They noted that reduced FFP could result in the elimination of other State and local programs or hinder the capacity of those governments to provide care to patients.

Response: As previously stated, we acknowledge that these regulations will have some impact on State governments. We do not believe that the impact on local governments will be great. However, because of the statutory exclusion for all services to individuals in public institutions which are not medical institutions and individuals in institutions for mental disease between the ages of 22 and 64, or under age 65 in institutions for tuberculosis, we believe it is necessary to issue these regulations.

Comment: One State social services department commented that the proposed regulations would penalize States which use various cost containment mechanisms that depend on the availability of FFP for partial months.

Response: We do not believe that these regulations preclude State governments from establishing cost containment mechanisms which provide fiscal disincentives for more costly institutional placement when this placement is inappropriate. We recognize that under these regulations States will have to assume the costs of those mechanisms associated with partial month institutionalization in the types of institutions for which FFP is not available.

Comment: One respondent noted that general hospital psychiatric units routinely shift the costs of acute psychiatric care from Medicare to Medicaid for dually entitled individuals who run out of Medicare psychiatric benefits. The respondent alleged that institutions for mental diseases (IMDs) often follow the same practice for dually entitled Medicare patients who run out of Medicare psychiatric benefits around the time of their discharge to an IMD, so that, IMDs have been claiming for a partial month of institutional services under Medicaid.

According to the respondent, these regulations prevent IMDs from following this practice and would result in additional cost-shifting to the Medicaid program because hospitals would retain the patients. Additionally, because of the loss of revenue, IMDs would prematurely discharge patients.

Response: In limiting Medicaid funds for psychiatric services, the statute refers only to services for those under 65 in institutions for mental diseases and tuberculosis except for covered inpatient services in psychiatric facilities for individuals under age 22. While it is true that general hospital psychiatric units are not affected by these regulations, most admissions to such units are for acute psychiatric episodes which generally do not extend beyond the number of hospital days in a Medicare-benefit period; therefore, we do not believe there are many opportunities under these circumstances for general hospitals to shift costs to the Medicaid program. In regard to premature discharges and institutions losing revenue, services need not be terminated because the only change to occur is the locus of responsibility for a portion of certain expenses during partial months of care.

C. Administrative Effects of the Regulations

Comment: One commenter stated that the expected administrative costs to States under the proposed regulations would exceed any savings to the Federal government realized by disallowing FFP for services provided during a partial month of institutionalization.

Response: We do not believe that these regulations will cause undue administrative burden or expense to State governments, given the sophistication of existing mechanisms for administering the Medicaid program. At least 90 percent of the jurisdictions participating in the Medicaid program currently have an approved mechanized claims processing and information retrieval system or have received approval on an advanced planning document to implement a system. The system has the capability of determining when noninstitutional services furnished to certain institutionalized individuals are no longer covered. Based upon this existing capability, we believe States will not have difficulty in implementing this regulation change. However, any administrative burdens resulting from these regulations are outweighed by the need to fully effectuate Congressional intent as expressed in the statute.

Comment: One State human resources department questioned the administrative feasibility of the regulations. Medicaid eligibility is determined prospectively and inappropriate claims for partial months are not identified until after services have been provided. They contend that HCFA should maintain the policy set forth at 42 CFR 435.1004, which permit FFP to continue through the end of the second month following the month in which a determination of ineligibility is made.

Response: These regulations will not affect eligibility under Medicaid; they preclude FFP for services provided to individuals admitted to specific types of institutions. Regulations at 42 CFR 435.1004 do not apply to this situation. We do not believe this change in the regulations is administratively unrealistic or that it will cause a serious disruption to State governments' administration of Medicaid programs.

Comment: One State recommended that HCFA provide a "hold harmless" period of time to allow States to react to a change in Medicaid eligibility.

Response: The regulations do not affect Medicaid eligibility; therefore, a special period of time is not needed.

Comment: One respondent noted that Federal and State regulations require

advance notice if Medicaid benefits are adversely affected. Since it is impossible for a State to anticipate when a recipient will become an inmate of a public institution, the proposed regulations are contrary to Federal advance notice requirements.

Response: Federal regulations (42 CFR 431.211) require advance notice when eligibility for the Medicaid program is adversely affected. These regulations do not apply to this situation; advance notice is not required when an otherwise eligible recipient receives services for which FFP is not available.

Comment: One State commented that it provides eligibility for the entire month in which an individual is determined to be Medicaid eligible and guarantees reimbursement to providers during that month. The State believes that the proposed regulations would jeopardize the reliance providers have in this system and cause many of them to withhold services.

Response: The regulations do not affect Medicaid eligibility, but rather the availability of FFP for services provided to individuals in certain institutions. A State can continue to guarantee reimbursement to providers for the remainder of the month of admission, but at 100 percent State cost.

Comment: One State human resources department noted that it uses SSI eligibility criteria to determine Medicaid eligibility. Compliance with the proposed regulations, therefore, would require the State not to accept SSI eligibility criteria for affected individuals.

Response: As noted above, these regulations do not affect Medicaid eligibility; therefore, States can continue to use SSI eligibility criteria to determine Medicaid eligibility. However, States must apply these regulations to determine which services provided to eligible individuals can be claimed for FFP. We note that up to now, States have had to apply the rules set forth in this regulation whenever the individual is in an institution for more than one month.

IV. Impact Analysis

Executive Order 12291

The Secretary has determined that these regulations do not meet the criteria for a "major rule", as defined by section 1(b) of Executive Order 12291. That is, the regulations will not—

- Have an annual effect on the economy of $100 million or more;
- Result in a major increase in costs or prices for consumers, any industries, any government agencies, or any geographic regions; or
- Have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

In terms of any future program costs, we cannot provide an exact estimate since we are unable to determine with specificity—

1. The number of eligible individuals located in public institutions which are not medical institutions or who are under age 65 and in institutions for mental disease or tuberculosis which are not psychiatric hospitals for persons age 22 and under,
2. How many of these individuals will require covered noninstitutional services during the portion of the month after admission to an institution, and
3. What the specific costs for any of these services would be.

In addition, we do not believe that State governments will incur undue administrative burden or expense as a result of publishing this final rule. For example, as stated earlier, at least 90 percent of the jurisdictions participating in the Medicaid program currently have an approved mechanized claims processing and information retrieval system or have received approval on an advanced planning document to implement a system. Based upon the system's existing capability to determine when noninstitutional services furnished to certain institutionalized individuals are no longer covered, we believe States will have little, if any, difficulty implementing this regulation. Any administrative burdens that States may incur are outweighed by the need to fully effectuate Congressional intent as expressed in the statute.

However, there is no evidence that any difference in costs will exceed the $100 million threshold. Since the threshold will not be exceeded, a regulatory impact analysis is not required.

Regulatory Flexibility Act

The Secretary certifies under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that these regulations will not have a significant economic impact on a substantial number of small businesses, nonprofit entities or small local governments. Generally, the policy will not significantly impact the providers of these services. Public institutions and State governments will be affected in that they will reassume responsibility for full funding of services provided to inmates of public institutions and some patients in institutions for mental diseases or tuberculosis. However, State governments are not considered small entities under the provisions of the Act. As discussed in the Executive Order analysis, an actuarial estimate of cost avoidance has not been determined, and there is no indication that these provisions are likely to result in a significant impact on a substantial number of small entities.

List of Subjects

42 CFR Part 435

Aid to families with dependent children, Aliens, Categorically needy, Contracts (Agreements—State Plan), Eligibility, Grant-in-aid program—health, Health facilities, Medicaid, Medically needy, Reporting requirements, Spend-down, Supplemental security income (SSI).

42 CFR Part 436

Aid to families with dependent children, Aliens, Contracts, (Agreements), Eligibility, Grant-in-aid program—health, Guam, Health facilities, Medicaid, Puerto Rico, Supplemental security income (SSI), Virgin Islands.

42 CFR Parts 435 and 436 are amended as set forth below:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA AND THE NORTHERN MARIANA ISLANDS

The authority citation for Part 435 reads as follows:

Authority.— Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

1. Section 435.1008 is amended by revising paragraphs (a) and (b) to read as follows:

§ 435.1008 Institutionalized individuals.

(a) FFP is not available in expenditures for services provided to—

(1) Individuals who are inmates of public institutions as defined in § 435.1009; or

(2) Individuals under age 65 who are patients in an institution for tuberculosis or mental diseases unless they are under age 22 and are receiving inpatient psychiatric services under § 440.160 of this subchapter.

(b) The exclusion of FFP described in paragraph (a)(2) of this section does not apply during that part of the month in which the individual is not an inmate of a public institution or a patient in an institution for tuberculosis or mental diseases.

* * * * *

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

The authority citation for Part 436 reads as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. Section 436.1004 is amended by revising paragraphs (a) and (b) to read as follows:

§ 436.1004 Institutionalized individuals.

(a) FFP is not available in expenditures for services provided to—

(1) Individuals who are inmates of public institutions as defined in § 435.1009; or

(2) Individuals under age 65 who are patients in an institution for tuberculosis or mental diseases unless they are under age 22 and are receiving inpatient psychiatric services under § 440.160 of this subchapter.

(b) The exclusion of FFP described in paragraph (a)(2) of this section does not apply during that part of the month in which the individual is not an inmate of a public institution or a patient in an institution for tuberculosis or mental diseases.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: May 18, 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: January 17, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-7885 Filed 4-2-85; 8:45 am]

BILLING CODE 4120-01-M

UNITED STATES INFORMATION AGENCY

48 CFR Ch. 19

Acquisition Regulation

AGENCY: United States Information Agency.

ACTION: Final rule.

SUMMARY: This rule establishes the United States Information Agency Acquisition Regulation (IAAR) as Chapter 19 of Title 48, Code of Federal Regulations. The IAAR implements and supplements the Federal Acquisition Regulation (FAR), Title 48 CFR Chapter 1. The IAAR contains the United States Information Agency's significant policies and procedures on government procurement. The IAAR supersedes the IAPR Procurement Regulation (41 CFR Chapter 19).

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: Mary H. Wood, Policy and Procedures Staff, Office of Contracts, U.S. Information Agency, 330 C Street, SW., Room 1611, Washington, D.C. 20547, telephone (202) 485-6404.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Rulemaking was published on Page 37020 of the **Federal Register** on September 20, 1984 and invited comments by October 22, 1984.

We have changed within the provision and clause headings the date to February 1985 to coincide with date of publication of this final rule.

Executive Order 12291

This rule is exempt from the provisions of Executive Order 12291, with the exception of section 5 in accordance with OMB Bulletin 85-7 dated December 14, 1984.

Regulatory Flexibility Act

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

Paperwork Reduction Act

The information collection and recordkeeping requirements that are imposed on the public by this rule have been cleared by the Office of Management and Budget (OMB) in accordance with section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq. OMB Control No. 3116-0185, Expiration date December 31, 1987.

List of Subjects in 48 CFR Ch. 19

Government procurement.

Title 48 Chapter 19 Code of Federal Regulations is established as set forth below:

CHAPTER 19—UNITED STATES INFORMATION AGENCY

General Structure

SUBCHAPTER A—GENERAL

Part 1901—United States Information Agency Acquisition Regulation System

Part 1902—Definitions of Words and Terms

Part 1903—Improper Business Practices and Personal Conflicts of Interest

Part 1904—Administrative Matters

SUBCHAPTER B—ACQUISITION PLANNING

Part 1909—Contractor Qualifications

Part 1910—Specifications, Standards and Other Purchase Descriptions

Part 1912—Contract Delivery or Performance

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

Part 1913—Small Purchase and Other Simplified Purchase Procedures

Part 1915—Contracting by Negotiation

Part 1917—Special Contracting Methods

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

Part 1919—Small Business and Small Disadvantaged Business Concerns

Part 1922—Application of Labor Laws to Government Acquisitions

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

Part 1927—Patents, Data, and Copyrights

Part 1932—Contract Financing

SUBCHAPTER G—CONTRACT MANAGEMENT

Part 1942—Contract Administration

Part 1946—Quality Assurance

SUBCHAPTER H—CLAUSES AND FORMS

Part 1952—Solicitation Provisions and Contract Clauses

Part 1953—Forms

SUBCHAPTER A—GENERAL

PART 1901—UNITED STATES INFORMATION AGENCY ACQUISITION REGULATION SYSTEM

Sec.

1901.000 Scope of part.

Subpart 1901.1—Purpose, Authority, Issuance

1901.101 Purpose.

1901.102 Authority.

1901.103 Applicability.

1901.104 Issuance.

1901.104-1 Publication and code arrangement.

1901.104-2 Arrangement of regulations.

Subpart 1901.4—Deviations from the FAR

1901.403 Individual deviations.

1901.404 Class deviations.

Subpart 1901.6—Contracting Authority and Responsibilities

1901.601 General.

1901.602 Contracting officers.

1901.602-1 Authority.

1901.670 Ratification of unauthorized commitments.

Sec.
1901.670–1 Authority.
1901.670–2 Definitions.
1901.670–3 Procedures.
1901.670–4 Limitations on exercise of authority.
1901.670–5 Nonratifiable commitments.

Authority: 40 U.S.C. 486(c).

1901.000 Scope of part.

This part describes the method by which the United States Information Agency implements and supplements the Federal Acquisition Regulation and contains policies and procedures that implement and supplement Chapter 1 of the Federal Acquisition Regulation (48 CFR).

Subpart 1901.1—Purpose, Authority, Issuance

1901.101 Purpose.

This subpart establishes the United States Information Agency Acquisition Regulation (IAAR) as Chapter 19 of the Federal Acquisition Regulations System (48 CFR Chapter 19) and states the relationship of the IAAR to the Federal Acquisition Regulation (FAR), 48 CFR Chapter 1.

1901.102 Authority.

The USIA Acquisition Regulation is prescribed by the Director of the United States Information Agency pursuant to the authority of the Reorganization Plan No. 2 of 1977 and the Federal Property and Administrative Services Act of 1949, as amended, and other applicable law.

1901.103 Applicability.

Except where a deviation is specifically authorized in accordance with Subpart 1901.4 or otherwise authorized by law, the FAR and the IAAR govern all USIA acquisitions within the United States.

1901.104 Issuance.

1901.104–1 Publication and code arrangement.

(a) The IAAR is published in the Federal Register and, in cumulative form in the Code of Federal Regulations (CFR).

(b) The IAAR is issued as Chapter 19 of Title 48, CFR.

1901.104–2 Arrangement of regulations.

The IAAR uses the same numbering system and arrangement used in the FAR. Where the IAAR implements the FAR, it is numbered and captioned to correspond to the FAR. Where there is no corresponding material in the FAR, numbers beginning with 70 or higher are assigned to the IAAR supplementing part. Where the subject matter is the FAR requires no implementation, the IAAR contains no corresponding part.

Subpart 1901.4—Deviations From the FAR

1901.403 Individual deviations.

Deviations from the IAAR or the FAR in individual cases shall be authorized by the Agency Procurement Executive or a designee unless FAR 1.405(e) is applicable. The request shall cite the specific part of the IAAR or FAR from which it is desired to deviate; shall set forth the nature of the deviation(s); and shall give the reason for the action requested.

1901.404 Class deviations.

Class deviations affecting more than one contracting action shall be authorized only by the Agency Procurement Executive, unless FAR 1.405(e) is applicable, and shall be subject to the limitations set forth in FAR 1.404. Requests shall include the same information as cited in 1901.403.

Subpart 1901.6—Contracting Authority and Responsibilities

1901.601 General.

The Director, Office of Contracts, is designated the Agency Procurement Executive. The Agency Procurement Executive is delegated the full delegable authority of the Director of this Agency with respect to the acquisition of goods and services by contract and such other methods as may be prescribed in the FAR. The Agency Procurement Executive is delegated overall responsibility by the Director for the Agency's contracting activities.

1901.602 Contracting officers.

1901.602–1 Authority.

USIA Contracting Officers designated by name on Certificates of Appointment by the Agency Procurement Executive are authorized to enter into, administer, and terminate contracts and make related determinations and findings, subject to all requirements and limitations set forth in the Certificate of Appointment. A list of USIA employees who have been appointed as Contracting Officers and the limits of their authority is available from the Policy and Procedures Staff, Office of Contracts.

1901.670 Ratification of unauthorized commitments.

1901.670–1 Authority.

Only contracting officers acting within the scope of their authority (see FAR 1.602) may enter into contracts on behalf of the Government. Subject to the limitations in 1901.670–4, the Agency Procurement Executive may ratify an unauthorized commitment, provided:

(a) The Government has obtained a benefit resulting from the unauthorized commitment;

(b) The Agency Procurement Executive could have granted or had the authority to enter into the commitment at the time it was made and still has the authority to do so; and

(c) The resulting contract would otherwise have been proper if made by an authorized contracting officer.

1901.670–2 Definitions.

"Ratification," as used in this section, means that act of approving an unauthorized commitment, by an official who has the authority to do so, for the purpose of paying for supplies or services provided to the Government as a result of the unauthorized commitment.

"Unauthorized commitment," as used in this section, means an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into a contract on behalf of the Government.

1901.670–3 Procedures.

USIA components shall process unauthorized commitments using the ratification authority set forth herein in lieu of referral of such actions to the General Accounting Office for resolution as "quantum meruit/quantum valebant" claims.

1901.670–4 Limitations on exercise of authority.

The authority in 1901.670–1, may be exercised only where—

(a) Supplies or services have been provided to and accepted by the Government;

(b) The contracting officer determines the price to be fair and reasonable;

(c) The contracting officer recommends payment and legal counsel concurs in the recommendation;

(d) Funds are available and were available at the time the unauthorized commitment was made; and

(e) Administrative settlement of the unauthorized commitment would not involve a claim subject to resolution under the Contract Disputes Act of 1978.

1901.670–5 Nonratifiable commitments.

Cases that are not ratifiable under this section may be subject to resolution as recommended by the General Accounting Office under its claim procedure (4 GAO 5.1), or as authorized by FAR Part 50. Legal advice should be obtained in these cases.

PART 1902—DEFINITIONS OF WORDS AND TERMS

Subpart 1902.1—Definitions

1902.101 Definitions

As used throughout this regulation, the following words and terms are used as defined in this subpart unless (a) the context in which they are used clearly requires a different meaning or (b) a different definition is prescribed for a particular part or portion of a part.

"Agency" means the United States Information Agency, acting through any of its duly authorized officials.

"Agency Procurement Executive" means the Director, Office of Contracts.

"AR/CO" means Authorized Representative of the Contracting Officer (See 1942.202-70).

"Contracting activity" means the Office of Contracts, which has the responsibility to contract for the acquisition of supplies and services (including construction).

"Head of the agency" (also called "Agency head") means the Agency Director or Deputy Director; and the term "authorized representative" means any person, persons or board (other than the contracting officer) authorized to act for the Head of the Agency.

"Purchasing Activity" means an office with one or more Level I or Level II Small Purchases Contracting Officer(s) exercising limited redelegations of contracting officer authority.

"USIA" means the United States Information Agency.

(40 U.S.C. 486(c))

PART 1903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Sec.

Authority: 40 U.S.C. (486(c).

1903.000 Scope of part.

This Part implements FAR Part 3, cites USIA regulations on employee responsibilities and conduct, establishes responsibility for reporting violations and related actions, and provides for authorization of exceptions to policy.

Subpart 1903.1—Safeguards

1903.101 Standards of conduct.

1903.101-2 Solicitation and acceptance of gratuities by Government personnel.

USIA employees and their spouses, minor children, and members of their households may not solicit, accept, or agree to accept any gratuity for themselves, members of their families, or others, either directly or indirectly, from or on behalf of an actual or prospective contractor of USIA. This general prohibition does not apply to the following:

(a) Gifts, gratuities, favors, entertainments, loans or any other thing of monetary value received on account of close family or personal relationships, when the circumstances make it clear that it is the relationship rather than the business of the persons concerned which is the motivating factor;

(b) Acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans;

(c) Acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value;

(d) Acceptance of rates and discounts offered to employees as a class. Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance.

(e) Contractor provided transportation, meals, or overnight accommodations in connection with official business when arrangements for Government or commercial transportation, meals, or accommodations are clearly impracticable. Unless prior approval of the Agency Procurement Executive has been obtained, a full report of the circumstances of the acceptance shall be made to the employee's supervisor for inclusion in the contractor's file.

1903.101-3 Agency regulations.

(a) *General.* USIA regulations on Employee Responsibilities and Conduct are contained in 22 CFR Part 10. All personnel involved in acquisition actions shall become familiar with the statutory and regulatory prohibitions. Any questions concerning them shall be referred to the Agency's Office of the General Counsel.

(b) *Non-Disclosure of proposed acquisition.* Agency personnel, particularly requirements officers, project officers, technical staff and their supervisors often need to discuss standard commercial products or services, new manufacturing techniques, processes and equipment with members of industry in their efforts toward the goal of obtaining a quality product or service for the Agency. During these discussions, Agency personnel shall not disclose any information on a specific acquisition, especially its funding and scheduling. Information on proposed acquisitions shall be released concurrently to all prospective contractors in a common solicitation.

1903.103 Independent pricing.

1903.103-2 Evaluating the certification.

Whenever an offer is rejected under FAR 3.103-2 or the Certificate of Independent Price Determination is suspected of being false, the Contracting Officer shall report the situation to the Inspector General through the Agency Procurement Executive for referral to the Attorney General in accordance with FAR 3.303.

Subpart 1903.2—Contractor Gratuities to Government Personnel

1903.203 Reporting suspected violations of the Gratuities clause.

USIA personnel, particularly Contracting Officers, shall promptly report, by memorandum, suspected violations of the Gratuities clause in solicitations or contracts to the Agency Procurement Executive.

1903.204 Treatment of Violations.

Suspected violations shall be treated as provided in the USIA debarment and suspensions procedures in 1909.4.

Subpart 1903.2—Reports of Suspected Antitrust Violations

1903.301 General.

The Contracting Officer shall report any instances of suspected collusion or other violations of antitrust laws in connection with competitive acquisitions to the General Counsel through the Agency Procurement

Executive for possible referral to the Attorney General in Accordance with FAR Subpart 3.3.

Subpart 1903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1903.602 Exceptions.

To avoid potential conflicts of interest or the appearance of preferential treatment, it is USIA policy not to award contracts, purchase orders, grants or cooperative agreements to Government employees or their family members or business concerns owned or controlled by Government employees or their family members. Exceptions to this policy must be approved by the Agency Director or Agency Procurement Executive and supported by written Findings and Determination. A contract with an employee for services may result in violation of the dual salary compensation statutes (5 U.S.C. 5533). Nothing in this paragraph is intended to render inapplicable the conflict of interest prohibition set out in 18 U.S.C. 208.

1903.670 Contracts between USIA and former employees.

To avoid conflicts of interest or the appearance of preferential treatment, purchase orders, contracts, grants or cooperative agreements with former employees of USIA, or with firms in which former employees or their family members are known to have controlling interest, may be entered into within two years following separation from employment only with the written approval of the Agency Director. A written justification shall be made a part of the file. The justification must address the issue of conflict of interest and conclude that it does not exist; or that in spite of its existence, the Agency's ability to meet its mission would be seriously harmed without the award.

PART 1904—ADMINISTRATIVE MATTERS

Subpart 1904.70—Procurement Requests

1904.7001 General.

(a) Procurement requests will be prepared and submitted to the contracting office in accordance with Agency procedures.

(b) Except in unusual circumstances, the contracting office will not issue solicitations until an approved procurement request, containing a certification that funds are available, has been received. However, the contracting office may take all necessary actions up to the point of contract award prior to the receipt of the approved procurement request certifying that funds are available when:

(1) Such action is necessary to meet critical program schedules;

(2) It has been established that program authority has been issued and that funds to cover the acquisition will be available prior to the date set for contract award or contract modification;

(3) A person at a level above the contracting officer authorizes such action prior to the issuance of the solicitation, and the contract file is properly documented; and

(4) The solicitation document clearly indicates that the award is subject to the availability of funds.

(c) The procurement request shall be assigned within the contracting office to an individual who, if not the contracting officer, will be responsible to the contracting officer for conducting the business aspects of the transaction. This individual shall review the request to ensure that it complies with the FAR and this Regulation and that the information contained in the request is in sufficient detail to prepare presolicitation and solicitation documents. The contracting officer, or other designated individual in the contracting office, shall discuss uncertain requirements or inconsistencies in the procurement request with the initiator of the request and obtain clarification prior to taking any further action.

(40 U.S.C. 486(c))

SUBCHAPTER B—ACQUISITION PLANNING

PART 1909—CONTRACTOR QUALIFICATIONS

Subpart 1909.4—Debarment, Suspension, and Ineligibility

Sec.
1909.403 Definitions.
1909.404 Consolidated list of debarred, suspended, and ineligible contractors.
1909.406 Debarment, suspension, and ineligibility.
1909.406-3 Procedures.

Authority: 40 U.S.C. 486(c).

Subpart 1909.4—Debarment, Suspension, and Ineligibility

1909.403 Definitions.

The Agency Procurement Executive, is designated the "debarring official" and the "suspending official" as defined in FAR 9.403 and is designated as the agency official authorized to make the decisions required in FAR 9.405)a, 9.405-1(b), 9.405-2, 9.406-1(c), and 9.407-1(d).

1909.404 Consolidated list of debarred, suspended, and ineligible contractors.

(a) The Policy and Procedures Staff, Office of Contracts, shall be responsible for the maintenance and distribution of the GSA Consolidated List of Debarred, Suspended, and Ineligible Contractors. It will be coordinated with the Solicitation Mailing List and appropriate notations will be made on both lists, when additions or deletions are necessary. Contracting Officers shall notify the Policy and Procedures Staff, Office of Contracts, of their distribution needs and shall ensure the list is used effectively.

(b) The Agency Procurement Executive (or designee) is responsible for notifying GSA of the information required by FAR 9.404(b).

1909.406 Debarment, suspension, and ineligibility.

1909.406-3 Procedures.

(a) *Investigation and referral.* Any officer of the Agency who becomes aware of circumstances which may serve as a basis for a debarment, suspension, or ineligibility shall report the circumstances by memorandum to the Agency Procurement Executive for consideration of debarment, suspension or ineligibility action.

(b) *Decision-making process.* (1) Contractors shall be given the opportunity to submit, in person, in writing, or through a representative, information and arguments in opposition to a proposed debarment or suspension. All rebuttals shall be addressed to the Agency Procurement Executive. However, if a response to the proposed debarment or suspension is not received by the Agency Procurement Executive within 30 calendar days of receipt of the notice, the debarment or suspension shall become final.

(2) If a contractor, or a representative, desires to present information and arguments in person to the Agency Procurement Executive, an oral presentation will be held within 20 calendar days of receipt of the request, unless a longer period of time is requested by the contractor. Hearings will be held before a three-person fact-finding board composed of one member each from the Office of General Counsel and Congressional Liaison, the Bureau of Management, and the Office of Contracts, other than the initiating officer. The fact-finding board shall deliver written findings to the Agency Procurement Executive (together with a transcription of the proceedings, if made) within 10 calendar days after the hearing. The findings shall resolve any

facts in dispute based on a preponderance of the evidence presented and determine whether a cause for debarment or suspension exists.

(c) *Debarring/suspending official's decision.* The debarring/suspending official's final decision shall be made in writing in accordance with FAR 9.406–3 and notice of the decision will be given in accordance with FAR 9.406–3. A copy of the notice shall be given to the affected agency component.

PART 1910—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.

Authority: 40 U.S.C. 486(c).

1910.004–70 Brand name products or equal.

(a) *General.* Consistent with the policy stated in FAR 10.004(a)(2), USIA acquisitions will generally not be based on a specifically identified product or feature(s) thereof. However, under unusual circumstances such an approach may be used as described below.

(b) *Citing brand name products.* Brand name or equal purchase descriptions shall cite all brand name products known to be acceptable and of current manufacture. If the use of a brand name or equal purchase description results in the purchase of an acceptable brand name product which was not listed as an "equal" product, a reference to that brand name product should be included in the purchase description for later acquisitions. If a brand name product is no longer applicable, the reference thereto shall be deleted from subsequent purchase description.

(c) *Specifying essential characteristics.* (1) It is imperative that brand name or equal purchase descriptions specify each physical or functional characteristic of the product that is essential to the intended use. Failure to do so may result in a defective solicitation and the necessity to resolicit the requirements. (See 1910.004–73) Care must be taken to avoid specifying characteristics that cannot be shown to materially affect the intended end use and which unnecessarily restrict competition.

(2) When describing essential characteristics, permissible tolerances should be indicated. Avoid specifying a characteristic (e.g., a specific dimension) of a brand name product unless it is essential to the Government's need. The contracting officer must be able to justify the requirement.

1910.004–71 Limits on the use of brand name or equal purchase descriptions.

(a) *General.* The use of brand name or equal purchase descriptions in solicitations is intended to promote competition by encouraging the offering of products that are equal in all material respects to brand name products cited in such descriptions. Identification by brand name does not indicate a preference for the products mentioned but indicates the quality and characteristics of products that will meet the Government's needs. Where a component of an item is described in the solicitation by a brand name or equal purchase description and the contracting officer determines that application of the provision of 1952.210–70 would be impracticable, the requirement to include the entry described in 1910.004–72(a) shall not apply. If the provision is included in the solicitation for other reasons, there also shall be included in the solicitation a statement to identify either the component parts (described by brand name or equal descriptions) to which the provision applies or those to which it does not apply. This also applies to accessories related to an end item where a brand name or equal purchase description of the accessories is a part of the description of an end item. Brand name or equal descriptions shall not be used to acquire a particular product under the guise of competitive acquisition to the exclusion of other products that would meet the actual needs.

(b) In small purchases within the open market limitations, brand name policies and procedures shall be applicable to the extent practicable.

(c) *Approval required.* A brand name or equal purchase description shall not be used unless it has been approved at one level above the contracting officer.

1910.004–72 Solicitations, brand name or equal descriptions.

(a) An entry substantially as follows shall be prominently inserted in the item listing after each item or component part of an end item to which a brand name or equal purchase description applies.

Bidding On:
Manufacturer's Name: _____
Brand: _____
No. _____

(b) Because bidders frequently overlook the requirements of the clause at 1952.210–70 "Brand Name or Equal," the following note shall be inserted in the item listing after each brand name or equal item (or component part), or at the bottom of each page, listing several such items, or in a manner that may otherwise direct the offeror's attention to this clause.

Offerors offering other than brand name items identified herein should furnish with their offers adequate information to ensure that a determination can be made as to equality of the product(s) offered (see the provision "Brand Name or Equal" set forth in 1952.210–70 of the solicitation.)

(c) If offeror samples are requested for brand name or equal acquisitions, the above notice shall not be included in the solicitation.

1910.004–73 Offer evaluation and award, brand name or equal descriptions.

An offer may not be rejected for failure of the offered product to equal a characteristic of a brand name product if it was not specified in the brand name or equal description. However, if it is clearly established that the unspecified characteristic is essential to the intended end use, the solicitation is defective and no award may be made. In such cases, the contracting officer should resolicit the requirements, using a purchase description that sets forth the essential characteristics.

1910.004–74 Procedure for negotiated procurements and small purchases.

(a) The policies and procedures prescribed for sealed bid procurements shall be generally applicable to negotiated procurements.

(b) The clause set forth at 1952.210–70 may be adapted for use in negotiated procurements. If use of the clause is not practicable (as may be the case in unusual and compelling urgency purchases), suppliers shall be suitably informed that proposals offering products different from the products referenced by brand name will be considered if the contracting officer determines that the offered products meet fully the salient characteristics requirements of the solicitation.

(c) In small purchases within open-market limitations, such policies and procedures shall be applicable to the extent practicable.

1910.011 Solicitation provisions and contract clauses.

The Contracting Officer shall include the provision at 1952.210–70, Brand Name or Equal, in solicitations for which brand name or equal purchase is used.

PART 1912—CONTRACT DELIVERY OR PERFORMANCE

Subpart 1912.70—Delays

1912.701 Delays.

The Contracting Officer shall insert the clause at 1952.212-70 in all USIA contracts.

(40 U.S.C. 486(c))

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1913—SMALL PURCHASES AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 1913.1—General

Sec.
1913.106-70 Data to support small purchases over $1,000.
1913.107 Solicitation and evaluation of quotations.

Subpart 1913.2—Blanket Purchase Agreements

1913.201 General.
1913.203 Establishment of blanket purchase agreements.
1913.203-1 General.

Subpart 1913.4—Imprest Fund

1913.404 Conditions for use.
1913.405 Procedures.

Subpart 1913.5—Purchase Orders

1913.505 Purchase order and related forms.
1913.505-2 Agency order forms in lieu of Optional and Standards Forms.

Authority: 40 U.S.C. 486(c).

Subpart 1913.1—General

1913.106-70 Data to support small purchases over $1,000.

Form IA-21, Abstract of Quotations (see 1953.370-21) may be used to satisfy documentation requirements of FAR 13.106(c).

1913.107 Solicitation and evaluation of quotations.

(a) Standard Form 18, Request For Quotations, shall be used to obtain written quotations as prescribed in FAR 13.107(a) unless an equivalent form has been authorized for use by the Agency Procurement Executive. (See also FAR 53.103). Exceptions under this subpart shall be processed through the Agency Procurement Executive.

(b) Quotations on standard contractor quotation forms may be accepted when they provide sufficient information for fair and equal competitive evaluation.

Subpart 1913.2—Blanket Purchase Agreements

1913.201 General.

The Agency Procurement Executive may require that only contracting officers make purchases under a blanket purchase agreement.

1913.203 Establishment of blanket purchase agreements (BPA's).

1913.203-1 General.

Blanket purchase agreements shall be established and administered in accordance with Agency instructions.

Subpart 1913.4—Imprest Fund

1913.404 Conditions for use.

Imprest funds may be used for small purchases when the transaction does not exceed $150 ($300) under emergency conditions.

1913.405 Procedures.

(a) The individual making an approved purchase from the imprest fund shall be responsible for compliance with documentation requirements.

(b) The individual having acquisition authority to approve purchases from the imprest fund shall be responsible for checking the authorized purchase requisition for compliance with the internal control requirements.

Subpart 1913.5—Purchase Orders

1913.505 Purchase order and related forms.

1913.505-2 Agency order forms in lieu of Optional and Standard Forms.

(a) Optional Forms 347 and 348 shall be used as prescribed in FAR 13.505 unless an equivalent form has been authorized for use by the Agency Procurement Executive (or Designee). Exceptions may be granted, on a case by case basis, in order to accommodate computer-generated purchase order forms. Exception approval for over printing (FAR 53.104) is not needed.

(b) USIA Form IA-44 (see 1953.370-44) is authorized for use when obtaining nonpersonal services on an intermittent basis for such services as script writers, translators, narrators, etc.

PART 1915—CONTRACTING BY NEGOTIATION

Subpart 1915.1—General Requirements for Negotiation

1915.106 Contract clauses.

1915.106-70 Key personnel and facilities.

Whenever contractor selection has been substantially predicated on the contractor's possession of special capabilities (i.e. personnel and/or facilities) the contracting officer shall include the clause at 1952.215-70 in the awarded contract.

(40 U.S.C. 486(c))

PART 1917—SPECIAL CONTRACTING METHODS

Subpart 1917.1—Multiyear Contracting

1917.102 Policy.

When consistent with 22 U.S.C. 1472(b), the Head of the Agency may approve multiyear contracts up to five years.

(40 U.S.C. 486(c))

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1919—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 1919.2—Policies.

Sec.
1919.201 General policy.
1919.201-70 Director, Office of Small and Disadvantaged Business Utilization.

Authority: 40 U.S.C. 486(c).

Subpart 1919.2—Policies

1919.201 General policy.

The Agency Procurement Executive shall also serve as the Director, Office of Small and Disadvantaged Business Utilization (OSDBU).

1919.201-70 Director, Office of Small and Disadvantaged Business Utilization.

The Director, OSDBU, is responsible for the implementation and execution of the small, and small, disadvantaged business programs required by sections 8 and 15 of the Small Business Act, as amended, and provides guidance and advice, as appropriate, to agency program and contracts officials. The Director, OSDBU, is the central point of contact for general inquiries concerning the small and disadvantaged business programs from industry, the Small Business Administration (SBA), and from the Congress. The Director, OSDBU, shall represent the Agency in discussions with other Government agencies on small and small disadvantaged business matters.

PART 1922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1922.3—Contract Work Hours and Safety Standards Act

Sec.
1922.305 Contract clauses.

Subpart 1922.4—Labor Standards for Contracts Involving Construction

1922.470 Contract clauses.

Subpart 1922.70—Service Contract Act of 1965

1922.7001 Clause for contracts over $2,500.

Authority: 40 U.S.C. 486(c).

Subpart 1922.3—Contract Work Hours and Safety Standards Act

1922.305 Contract clauses.

The Contracting Officer shall insert the clauses at 1952.222–82 and 1952.222–83 in lieu of the clause at FAR 52.222–4 until such time as the latter is updated to reflect the requirements of DOL Regulations, 29 CFR 5.5(c), implemented by FPR Temp. Reg. 70, dated June 28, 1983, 48 FR 31028 July 6, 1983.

Subpart 1922.4—Labor Standards for Contracts Involving Construction

1922.470 Contract clauses.

(a) Except as required by 1922.470(b), every construction contract in excess of $2,000 (or of such other amount as may be specificallly indicated) for work within the United States shall include the following clauses:

Davis-Bacon Act (40 U.S.C. 276a–276a–7) clause of 1952.222–70.

Contract Work Hours and Safety Standards Act Overtime Compensation (40 U.S.C. 327–333) clause at 1952.222–71.

Apprentices and Trainess clause at 1952.222–72.

Payrolls and Basic Records clause at 1952.222–73.

Compliance with Copeland Act Requirements clause at 1952.222–74.

Withholding clause at 1952.222–75.

Subcontracts clause at 1952.222–76.

Contract Termination; Debarment clause at 1952.222–77.

Disputes Concerning Labor Standards clause at 1952.222–78.

Compliance with Davis-Bacon and Related Act Requirements clause at 1952.222–79.

Certification of Eligibility clause at 1952.222–80.

(b) Every construction contract in excess of $2,000 for work outside the United States, but which is nevertheless subject to the Contract Work Hours and Safety Standards Act as set forth in FAR Subpart 22.3, shall include the Work Hours and Safety Standards Act Overtime Compensation clause at 1952.222–71.

Subpart 1922.70—Service Contract Act

1922.7001 Clause for contract over $2,500.

The Contracting Officer shall insert in full text the clause at 1952.222–81, Service Contract Act of 1965, As Amended, in solicitations and contracts, in excess of $2,500, or in an indefinite amount, the principal purpose of which is to furnish services through the use of service employees.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1927—PATENTS, DATA, AND COPYRIGHTS

Subpart 1927.4—Rights in Data and Copyrights

Sec.

Authority: 40 U.S.C. 486(c).

Subpart 1927.4—Rights in Data and Copyrights

1927.400 Scope of subpart.

This subpart sets forth policies, procedures, and instructions with respect to (a) rights in data and copyrights and (b) requirements for data.

1927.401 Definitions.

"Computer Software," as used in this subpart means computer programs, computer data bases, and documentation thereof.

"Data," as used in this subpart, means recorded information, regardless of form or the media on which it may be recorded. The term includes computer software. The term does not include information incidental to contract administration, such as contract cost analysis or any financial, business and management information required for contract administration purposes.

"Form, fit, and function data," as used in this subpart, means data relating to, and sufficient to enable, physical and functional interchangeability; as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements.

"Limited-rights," as used in this subpart, means the rights of Government in limited-rights data, as set forth in a Limited Rights Notice if included in the data rights clause of the contract.

"Limited-rights data," as used in this subpart, means data that embodies trade secrets or is commercial or financial and confidential or privileged, to the extent that such data pertains to items, components or processes developed at private expense, including minor modifications thereof. (Agencies may, however, adopt the following alternate definition: "Limited-rights data," as used in this subpart, means data developed at private expense that embodies trade secrets or is commercial or financial and confidential or privileged.)

"Restricted computer software," as used in this subpart, means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is published copyrighted computer software.

"Restricted rights," as used in this subpart, means the rights of the Government in restricted computer software as set forth in a Restricted Rights Notice if included in a data rights clause of the contract or as otherwise may be included or incorporated in the contract.

"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 material. 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 of financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

"Unlimited rights," as used in this subpart, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

1927.402 Policy.

(a) It is necessary for the U.S. Information Agency in order to carry out its missions and programs, to acquire or obtain access to many kinds of data produced during or used in the performance of its contracts. Such data may be required to: obtain competition among suppliers; fulfill certain responsibilities for disseminating and publishing the results of USIA activities; insure appropriate utilization of the results of research, development, and demonstration activities; and meet other programmatic and statutory

requirements. At the same time, the Government recognizes that its contractors may have a property right or other valid economic interest in certain data resulting from private investment, and that protection from unauthorized use and disclosure of this data is necessary in order to prevent the compromise of such property right or economic interest, avoid jeopardizing the contractor's commercial position, and maintain the Government's ability to obtain access to our use of such data.

(b) The protection of this data by the Government is necessary to encourage qualified contractors to participate in Government programs and apply innovative concepts to such programs. The specific procedures and prescriptions for use of solicitation provisions and contract clauses set forth below are framed in light of the above considerations to strike a balance between the Government's needs and the contractor's property rights and economic interests.

1927.403 Procedures.

(a) *General.* All contracts that require data to be produced, furnished, or acquired must contain terms that delineate the respective rights and obligations of the Government and the contractor regarding the use, duplication, and disclosure of such data, except certain contracts resulting from sealed bidding that require only existing data (other than limited-rights data and restricted computer software) to be delivered and reproduction rights are not needed for such data. As a general rule, the data rights clause at 1952.227–70, Rights in Data—General, where determined appropriate by the Agency as discussed in paragraph (b), below, is to be used for this purpose. However, certain types of contracts, the particular subject matter of a contract, or the intended use of the data, may require the use of other clauses or no clause at all, as discussed in paragraphs (c), (d), (e), and (f) below.

(b) *Basic Rights in Data.*—(1) *Summary.* The clause at 1952.227–70, Rights in Data—General, is structured to strike a balance between USIA's needs in carrying out its missions and programs and the contractor's needs to protect property rights and valid economic interests in certain data arising out of private investment. This clause enables the contractor to protect from unauthorized use and disclosure data that qualifies as limited-rights data or restricted computer software (see paragraph (b)(2) below for an alternate definition of limited-rights data). This clause also specifically delineates the categories or types of data that USIA is to acquire with unlimited rights (see paragraph (b)(3) below). The contractor may protect qualifying limited-rights data and restricted computer software under this clause by either withholding such data from delivery to USIA, or when USIA has a need to obtain delivery of limited-rights data or restricted computer software, by delivering such data with limited rights or restricted rights with authorized notices on the data. (See paragraphs (b)(4) and (5) below.) In addition, this clause enables contractors to establish and/or maintain copyright protection for data first produced and/or delivered under the contract, subject to certain license rights in the Government. (See paragraph (b)(6) below.) This clause also includes procedures that apply when the Government questions whether notices on data are authorized (see paragraph (b)(7) below) or when a contractor wishes to add or correct omitted or incorrect notices on data (see paragraph (b)(8) below); addresses the contractor's right to release, publish or use certain data involved in contract performance (see Paragraph (b)(9) below); and provides for the possibility for the Government to inspect certain data at the contractor's facility (see paragraph (b)(10) below).

(2) *Alternate definition of limited-rights data.* In the clause at 1952.227–70, Rights in Data—General, in order for data to qualify as limited-rights data, in addition to being data that either embodies a trade secret or is data that is commercial or financial and confidential or privileged, such data must also pertain to items, components, or processes developed at private expense, including minor modifications thereof. However, where appropriate, the contracting officer may determine to adopt in the clause the alternate definition for limited-rights data that does not require that such data pertain to items, components, or processes developed at private expense; but rather that the data that either embodies a trade secret or is commercial or financial and confidential or privileged be produced at private expense in order to qualify as limited-rights data. As an example, the alternate definition may be used where the principal purpose of a contract does not involve the development, use or delivery of items, components, or processes that are intended to be acquired for use by or for the Government (either under the contract in question or any anticipated follow-on contracts relating to the same subject matter). Other examples include contracts for market research and surveys, economic forecasts, socioeconomic reports, educational material, health and safety information, management analysis, and related matters.

(3) *Unlimited-rights data.* Under the clause at 1952.227–70, Rights in Data-General, the Government acquires unlimited rights in the following data except as provided in paragraph (b)(6) below for copyrighted data: (i) Data first produced in the performance of a contract; (ii) form, fit, and function data delivered under contract; (iii) data (except as may be included with restricted computer software) that constitutes manuals or instructional and training material for installation, operation, or routine maintenance and repair delivered under a contract; and (iv) all other data delivered under the contract unless such data qualifies as limited-rights data or restricted computer software. If any of the foregoing data is published copyrighted data, the Government acquires it under a copyright license as set forth in paragraph (b)(6) below rather than with limited rights or restricted rights.

(4) *Protection of limited-rights data.* (i) The contractor may protect data (other than unlimited rights data or published copyrighted data) that qualifies as limited-rights data under the clause at 1952.227–70, Rights in Data-General, by withholding such data from delivery and providing form, fit, and function data in lieu thereof; or, if and USIA specifies the delivery of the data, by delivering such data with limitations on its use and disclosure. These two modes of protection afforded the contractor (i.e., withhold, or deliver with limited rights) are provided for in paragraph (g) of the clause at 1952.227–70, Rights in Data—General. Subparagraph (g)(1) of this clause allows the contractor to withhold limited-rights data and provide form, fit, and function data in lieu thereof. Alternate II adds subparagraph (g)(2) to this clause to enable USIA selectively to obtain the delivery withheld or withholdable data with limited rights. The limitations on the Governments rights to use and disclose limited-rights data when the clause is used are set forth in a "Limited Rights Notice" that the contractor is required to affix to such data. The specific limitations in the Notice are described below.

(ii) Limited-rights data delivered to the Government with the Limited Rights Notice contained in subparagraph (g)(2) will not, without permission of the contractor, be used by the Government for purposes of manufacture, and will not be disclosed outside the Government except for certain limited

purposes as may be set forth in the Notice, and then only if the Government makes the disclosure subject to prohibition against further use and disclosure by the recipient. The following are examples of specific purposes which may be selected by an agency and added to the Limited Rights Notice of subparagraph (g)(2) of the clause:

(A) Use by support service contractors.

(B) Evaluation by nongovernment evaluators.

(C) Use by other contractors participating in the USIA program of which this contract is a part, for information and use in connection with the work performed under their contracts.

(D) Emergency repair or overhaul work.

(E) Release to a foreign government, as the interests of the United States may require, for information or evaluation, or for emergency repair of overhaul work by such Government.

(iii) As an aid in determining whether the clause should be used with its Alternate II, the provision at 1952.227.71, Notification of Limited Rights Data and Restricted Computer Software, may be included in any solicitation containing the clause at 1952.227–70, Rights in Data—General. In addition, the need for Alternate II should be considered during the negotiations of a contract, particularly if negotiations are based on an unsolicited proposal. However, use of the clause at 1952.227–70, Rights in Data—General, without Alternate II does not preclude this Alternate from being used subsequently by amendment during contract performance should the need arise for delivery of limited-rights data that has been withheld or identified as withholdable.

(5) *Protection of restricted computer software.* (i) If computer software qualifies as restricted computer software, the clause at 1952.227–70, Rights in Data—General, permits the contractor to protect such software by either withholding it from delivery and providing form, fit, and function data in lieu thereof; or if USIA specifies delivery of the software, by delivering the software with restricted rights regarding its use, disclosure, and reproduction. The two modes of protection afforded the contractor (i.e. withhold or deliver with restricted rights) are provided for in paragraph (g) of the clause at 1952.227–70, Rights in Data—General. Subparagraph (g)(1) of this clause allows the contractor to withhold restricted computer software and provide form, fit, and function data in lieu thereof. Alternate III adds subparagraph (g)(3) to this clause to enable the Government selectively to obtain delivery of the withheld or withholdable computer software with restricted rights. The restrictions on the Government's right to use, disclose, and reproduce restricted computer software when the clause is used with its Alternate III are set forth in a "Restricted Rights Notice" that the contractor is required to affix to such computer software. When restricted computer software delivered with such Notice is published copyrighted computer software, it is acquired with a restricted copyright license, without disclosure prohibitions, as also set forth in the Notice. The specific restrictions in the Notice are set forth below.

(ii) Restricted computer software delivered with the Restricted Rights Notice of subparagraph (g)(3) will not be used or reproduced by the Government, or disclosed outside the Government, except that the computer software may be:

(A) Used, or copied for use in or with the computer for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(B) Used, or copied for use in or with a backup computer if the computer or computers for which it is acquired is inoperative;

(C) Reproduced for safekeeping (archives) or backup purposes;

(D) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of any derivative software incorporating restricted computer software are made subject to the same restricted rights; and

(E) Disclosed and reproduced by support contractors or their subcontractors, subject to the same restrictions under which USIA acquired the software.

(iii) The restricted rights set forth in 1927.403(b)(5)(ii) above are the minimum rights the Government normally obtains with restricted computer software and will automatically apply when such software is acquired under the Restricted Rights Notice of subparagraph (g)(3) of the clause. However, either greater or lesser rights, consistent with the purposes and needs for which the software is to be acquired, may be specified in the contract. Any additions to, or limitations on, the restricted rights set forth in the Restricted Rights Notice of subparagraph (g)(3) of the clause are to be expressly stated in the contract; or, with approval of the contracting officer, in a collateral agreement incorporated in and made part of the contract. (See paragraph (d)(2) below.)

(iv) As an aid in determining whether the clause should be used with its Alternate III, the provision at 1952.227–71, Notification of Limited Rights Data and Restricted Computer Software, may be included in any solicitation containing the clause at 1952.227–70, Rights in Data—General. In addition, the need for Alternate III should be considered during negotiations of a contract, particularly if negotations are based on an unsolicited proposal. However, use of the clause at 1952.227–70, Rights in Data—General, without Alternate III does not preclude this Alternate from being used subsequently by amendment during contract performance, should the need arise for the delivery of restricted computer software that has been withheld or identified as withholdable.

(6) *Copyrighted data*—(i) *Data first produced in the performance of a contract.* (A) In order to enhance the transfer or dissemination of information produced at Government expense, contractors may be permitted to establish claim to copyright subsisting in data first produced in the performance of work under a contract containing the clause at 1952.227–70, Rights in Data—General. This right is granted in subparagraph (c)(1) of the clause for any data first produced under the contract. USIA may, however, specifically exclude items or categories of data from the right of the contractor to establish claim to copyright when appropriate; for example, where the data is to be disseminated in useful form by the Government. Also, agencies having programs for the transfer or dissemination of information resulting from its programs may, by use of the clause, include a substitute subparagraph (c)(1) in the clause to limit the right of the contractor granted in subparagraph (c)(1) to establish claim of copyright to scientific and technical articles based on or derived from work performed under the contract and published in academic, professional, or technical journals. However, permission may be granted to establish claim to copyright in all other data in accordance with the procedures set forth below.

(B) Usually permission for a contractor to establish claim to copyright for data first produced under the contract will be granted when copyright protection will enhance the appropriate transfer or dissemination of such data. The request for permission must be in writing, and may be made either at the time of contracting or subsequently during contract performance. It should identify the data involved or furnish a copy of the data

for which permission is requested, as well as a statement as to the intended publication or dissemination media or other purpose for which copyright is desired. The request normally will be granted unless: (*1*) The data consists of a report that represents the official views of USIA or that USIA is required by statute to prepare; (*2*) the data is intented primarily for internal use by the Government; (*3*) the data is of the type that USIA itself distributes to the public under an established program; or (*4*) USIA determines that limitation on distribution of the data is in the national interest.

(C) Whenever a contractor establishes claim to copyright subsisting in data first produced in the performance of a contract, the Government normally is granted a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute to the public, perform publicly and display publicly by or on behalf of the Government, for all such data, as set forth in subparagraph (c)(1) of the clause at 1952.277–70, Rights in Data—General. However, USIA may on a case-by-case basis or on a class basis obtain on equitable terms a license of lesser scope than set forth in subparagraph (c)(1) of the clause if USIA determines that such lesser license will substantially enhance the transfer or dissemination of any data first produced under the contract.

(ii) *Data not first produced in the performance of a contract.* (A) Contractors are not to incorporate in data delivered under contract any data not first produced under the contract with the copyright notice of 17 U.S.C. 401 or 402 without either: Acquiring for, or granting to the Government and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data; or obtaining permission from the contracting officer to do otherwise. However, if computer software not first produced under contract is delivered with the copyright notice of 17 U.S.C. 401 or 402, the Government's license will be as set forth in subparagraph (g)(3) if included in the clause at 1952.277–70, Rights in Data—General, or as otherwise may be provided in a collateral agreement incorporated in or made part of the contract.

(B) Contractors delivering data with an authorized limited rights or restricted rights notice and a copyright notice of 17 U.S.C. 401 or 402 should modify the copyright notice to include the following (or similar) statement: "Unpublished—all rights reserved under the copyright laws." If this statement is omitted, the contractor may be afforded opportunity to correct it in accordance with 1927.403(b)(8). Otherwise, data delivered with a copyright notice 17 U.S.C. 401 or 402 may be presumed to be published copyrighted data subject to the applicable rights set forth in (b)(6)(i)(A) above, without disclosure limitations or restrictions.

(C) If contractor action causes limited rights or restricted rights data to be published with copyright notice after its delivery to the Government, the Government is relieved of disclosure and use limitations and restrictions regarding such data, and the contractor should advise the Government and request that a copyright notice be placed on the data, and acknowledge the applicable copyright license.

(7) *Unauthorized marking of data.* The Government has, in accordance with paragraph (e) of the clause at 1952.227–70, Rights in Data—General, the right either to return to the contractor data containing markings not authorized by that clause or to cancel or ignore such markings. However, markings will not be cancelled or ignored without making written inquiry of the contractor and affording the contractor at least 30 days to substantiate the propriety of the markings. The contracting officer will also give the contractor notice of any determination made based on any response by the contractor. Any such determination to cancel or ignore the markings shall be a final decision under the Contract Disputes Act. Failure of the contractor to respond to the contracting officer's inquiry within the time afforded may, however, result in Government action to cancel or ignore the markings. The above procedures may be modified in accordance with USIA regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request for data thereunder.

(8) *Omitted or incorrect notices.* (i) Data delivered under a contract containing the clause at 1952.227–70, Rights in Data—General, without a limited-rights notice or restricted rights notice, or without a copyright notice, shall be presumed to have been delivered with unlimited rights, and the Government assumes no liability for the disclosure, use or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the contractor may within six months (or a longer period approved by the contracting officer for good cause shown) request permission of the contracting officer to have omitted limited rights or restricted rights notices, as applicable, placed on qualifying data at the contractor's expense, and the contracting officer may agree to so permit if the contractor—

(A) Identifies the data for which a notice is to be added or corrected;

(B) Demonstrates that the omission of the proposed notice was inadvertent;

(C) Establishes that use of the proposed notice is authorized; and

(D) Acknowledges that the Government has no liability with respect to any disclosure or use of any such data made prior to the addition of the notice or resulting from omission of the notice.

(ii) The contracting officer may also (A) permit correction at the contractor's expense of incorrect notices if the contractor identifies the data on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or (B) correct any incorrect notices.

(9) *Release, publication and use of data.* (i) In the clause at 1952.227–70, Rights in Data—General, paragraph (d) provides that contractors normally have the right to use, release to others, reproduce, distribute, or publish data first produced or specifically used by the contractor in the performance of a contract; however, to the extent the contractor receives or is given access to data that is necessary for the performance of the contract and the data contains restrictive markings, the contractor agrees to treat the data in accordance with such markings, unless otherwise specifically authorized in writing by the contracting officer.

(ii) USIA may, on a case-by-case basis, or on a class basis, place further limitations or restrictions on the contractor's right to use, release to others, reproduce, distribute or publish any data first produced (but not data specifically used) in the performance of the contract. Such restrictions are not to be imposed on a class basis unless they are pursuant to statutory requirements, determined to be necessary in the furtherance of USIA mission objectives, or determined to be necessary in support of specific USIA programs.

(10) *Inspection of data at the contractor's facility.* USIA may obtain the right to inspect data at the contractor's facility by use of paragraph (j) of the clause to provide that right in the clause at 1952.227–70, Rights in Data—General. The data subject to inspection may be data withheld or withholdable under subparagraph (g)(1) of the clause, or any data specifically

used in the performance of the contract. Such inspection may be made by the contracting officer or representative for the purpose of verifying a contractor's assertion regarding the limited rights or restricted rights status of the data, or for evaluating work performance under the contract. This right may be exercised at all reasonable times up to three years after acceptance of all items to be delivered under the contract. The contract may specify data items that are not subject to inspection under paragraph (j) of the clause. If the contractor demonstrates to the contracting officer that there would be a possible conflict of interest if inspection were made by a particular representative, the contracting officer shall designate an alternate representative.

(c) *Production of special works.* [Reserved]

(d) *Acquisition of existing data other than limited-rights data.* [Reserved]

(e) *Specific Acquisition of Unlimited Rights in Technical Data.* (1) Notwithstanding 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 1952.227–75, Rights in Technical Data—Specific Acquisition, shall be used.

(f) *Architect-Engineer and Construction Contracts*—(1) *General.* This section sets forth policies, procedures, implementing instructions, solicitation provisions, and contract clauses pertaining to data, copyrights, and designs unique to the acquisition of construction and architect-engineer services.

(2) *Acquisition and Use of Plans, Specifications, and Drawings*—(i) *Plans and Specifications and As-Built Drawings.* Insert the clause at 1952.227–76 Government Rights (Unlimited), in solicitations and contracts calling for architect-engineer services or in contracts for construction involving architect-engineer services.

(ii) *Shop Drawings for Construction.* In acquiring shop drawings for construction, the Government shall obtain the unlimited rights 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 1952.227–77, Rights in Shop Drawings.

(3) *Contracts for Construction Supplies and Research and Development Work.* The solicitation provisions and contract clauses in Subpart 1927.4 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 (i) construction supplies or materials as such, as distinguished from construction as defined in FAR 36.102; (ii) experimental, developmental, or research work, or test and evaluation studies of structures, equipment, processes, or materials for use in construction; or (iii) both. The right of the Government and others to use, duplicate, or disclose such 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.

(4) *Mixed Contracts.* When solicitations and resulting contracts call for (i) supplies or materials, (ii) experimental, developmental or research work, or (iii) both, in addition to either construction or architect-engineer work, the solicitation provisions and contract clauses in Subpart 1927.4 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 solicitation and contracts for construction or architect-enginner 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 experimental, developmental, or research work, or to both, and which of the solicitation provisions and contract clauses apply only to the construction or architect-engineer work.

1927.404 Acquisition of data.

(a) *General.* (1) It is important to recognize and maintain the conceptual distinction between contract terms whose purpose is to identify the data required for delivery to, or made available to, the Government (i.e. data requirements) and those contract terms whose purpose is to define the respective rights of the Government and the contractor in such data (i.e. data rights). This section relates to data requirements; 1927.403 relates to the data rights.

(2) It is the Government's practice to determine, to the extent feasible, its data requirements in time for inclusion in solicitations. The data requirements are subject to revision during contract negotiations. Since the preparation, reformatting, maintenance and updating, cataloging, and storage of data represents an expense to both the Government and the contractor, efforts should be made to keep the contract data requirements to a minimum.

(3) To the extent feasible, all known data requirements, including the time and place for delivery and any limitations and restriction to be imposed on the contractor in the handling of the data, shall be specified in the contract.

(b) *Additional data requirements.* Recognizing that in some contracting situations, such as experimental, developmental, research, or demonstration contracts, it may not be possible or appropriate to ascertain all the data requirements at the time of contracting, the clause at 1952.227–72,

Additional Data Requirements, is provided to enable the subsequent ordering by the Government of additional data first produced or specifically used in the performance of such contracts as the actual requirements become known. Data may be ordered under the clause at any time during contract performance or within a period of three years after acceptance of all items to be delivered under the contract. The contractor is to be compensated for converting the data into the prescribed form, for reproduction, and for delivery. In order to minimize storage costs for the retention of data, the contractor may be relieved of retention requirements for specified data items by the contracting officer at any time during the retention period required by the clause. Any data ordered under the clause will be subject to the Rights in Data—General clause in the contract and data authorized to be withheld under that clause will not be required to be delivered under this Additional Data Requirements clause.

1927.405 Solicitation provisions and contracts clauses.

(a) *Rights in Data—General.* (1) The contracting officer shall insert the clause at 1952.227–70, Rights in Data—General, (see 1927.403(b)) in solicitations and contracts if it is contemplated that data will be produced, furnished, or acquired under the contract, except that such clause shall not be used in solicitations and contracts—

(i) For the production of special works. [Reserved]

(ii) For the separate acquisition of existing works. [Reserved]

(iii) When all technical data to be delivered is to be acquired with unlimited rights pursuant to the policy at 1927.403(e) in which case the clause at 1952.227–75, Rights in Technical Data—Specific Acquisition shall be used;

(iv) When performance will be limited solely to architect-engineer services or construction pursuant to the policy at 1927.403(f), in which case the clause at 1952.227–76, Government Rights (Unlimited) applies;

(v) To be performed outside the United States, its possessions, and Puerto Rico, in which case the contracting officer may prescribe different clauses (see paragraph (k) below).

(2) If the contracting officer determines, in accordance with 1927.403(b)(2), to adopt the alternate definition of "Limited Rights Data" in paragraph (a) of the clause, the clause shall be used with its Alternate I.

(3) If USIA needs to obtain the delivery of limited-rights data the clause shall be used with its Alternate II (see 1927.403(b)(4)). The contracting officer shall assure that the purposes, if any, for which limited-rights data is to be disclosed outside the Government are included in the "Limited Rights Notice" of subparagraph (g)(2) of the clause in accordance with 1927.403(b(4). The contract may exclude identified items of data from delivery under subparagraph (g)(2) of the clause. Alternate II may be used at the time of contracting or subsequently by amendment if the need to acquire limited-rights data arises during contract performance.

(4) If USIA needs to obtain the delivery of restricted computer software, the clause shall be used with its Alternate III (see 1927.403(b)(5).) Any greater or lesser rights regarding the use, duplication, or disclosure of restricted computer software than those set forth in the Restricted Rights Notice of subparagraph (g)(3) of the clause must be specified in the contract. Alternate III may be used at the time of contracting or subsequently by amendment if the need to acquire restricted computer software arises during contract performance.

(5) If USIA wishes to limit the automatic right of the contractor to establish claim to copyright subsisting in data first produced in the performance of the contract to scientific and technical articles based on or derived from the work performed under the contract and published in academic, technical, or professional journals, the clause shall be used with its Alternate IV. (See 1927.403(b)(6).) Alternate IV provides a substitute subparagraph (c)(1) in the clause with such limitation. This subparagraph (c)(1) does, however, allow the contracting officer to give permission to the contractor to establish claim to copyright subsisting in other data first produced in the performance of the contract, either at the time of contracting or subsequently during contract performance, in accordance with 1927.403(b)(6).

(6) If USIA needs to have the right to inspect certain data at a contractor's facility, the clause shall be used with its Alternate V. (See 1927.403(b)(10).) Alternate V adds a paragraph (j) to the clause to provide for such right, including the limitations thereon. Inspection may be by the contracting officer or representative, and may be made at all reasonable times up to 3 years after acceptance of all items to be delivered under the contract. The contract may specify data items that are not to be subject to inspection under paragraph (j) of the clause. If the contractor demonstrates to the contracting officer that there would be a possible conflict of interest if inspection were made by a particular representative, the contracting officer shall designate an alternate representative.

(b) If USIA desires to have an offeror state in response to a solicitation, to the extent feasible, whether limited-rights data or restricted computer software is likely to be used in meeting the data requirements set forth in the solicitation, the contracting officer shall insert the provision at 1952.227–71, Notification of Limited-Rights Data and Restricted Computer Software, in any solicitation containing the clause at 1952.227–70, Rights in Data—General. The contractor's response will provide an aid in determining whether the clause should be used with Alternate II and/or Alternate III. (See 1927.403(b) (4) and (5).)

(c) The contracting officer shall insert the clause at 1952.227–72, Additional Data Requirements, in solicitations and contracts involving experimental, developmental, research, or demonstration work unless all the requirements for data are believed to be known at the time of contracting and specified in the contract. (See 1927.404.) This clause may also be used in other contracts when considered appropriate. If the clause at 1952.227–70, Rights in Data—General, is used in the contract with its Alternates II or III, the contracting officer may permit the contractor to identify data the contractor does not wish to deliver, and may specifically exclude in the contract any requirement that such data be delivered under paragraphs (g)(2) or (g)(3) of that clause or ordered for delivery under the Additional Data Requirements clause if such data is not necessary to meet the Government's requirements for data. Also, the contracting officer may alter the Additional Data Requirements clause by deleting the term "or specifically used".

(d) Special Works [Reserved]

(e) Existing Works [Reserved]

(f) The contracting officer shall insert the clause at 1952.227–75, Rights in Technical Data—Specific Acquisition, in solicitations and contracts when all technical data is to be acquired with unlimited rights in accordance with 1927.403(e) (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 1927.403–2(e) (1), (2), and (3). The clause shall not be used under any other circumstances.

(g) The contracting officer shall insert the clause at 1952.227-76, Government Rights (Unlimited) in solicitations and contracts in accordance with 1927.403(f)(2)(i).

(h) The contracting officer shall insert the clause at 1952.227-77, Rights in Shop Drawings, in solicitations and contracts in accordance with 1927.403(f)(2)(ii).

(i) While no specific clause of this subpart need be included in contracts for the separate acquisition of existing computer software, the contracting officer shall assure that the contract contains terms to obtain sufficient rights for the Government to fulfill the need for which the software is being acquired and is otherwise consistent with 1927.403(d)(2).

(j) While no specific clause of this subpart need be included in contracts solely for the acquisition of books, publications and similar items in the exact form in which such items exist prior to the request for purchase (i.e., the off-the-shelf purchase of such items) (see 1927.403(d)(3)), if reproduction rights are to be acquired the contract shall include terms addressing such rights. (See 1927.403(d)(3).)

(k) The contracting officer may prescribe, as appropriate, clauses consistent with the policy of section 1927.402 in contracts to be performed outside the United States, its possessions, and Puerto Rico.

(l) The Contracting Officer shall insert the clause at 1952.227-78, Disposition of Prints and Videotape Recordings in License Agreements which limit the period for distribution and exhibition of video-tape programs and films.

PART 1932—CONTRACT FINANCING

Subpart 1932.1—General

1932.111 Contract clauses.

(a) The contracting officer shall insert one of the clauses at 1952.232-70 and 1952.232-71, Payment Due Date, in solicitations and contracts. The contracting officer shall select the clause that is applicable to the type of supplies or services being procured.

(b) The contracting officer shall insert the clauses 1952.232-72, Interest on Overdue Payments, in solicitations and contracts.

(c) The contracting officer shall insert the clause at 1952.232-73, Invoice Requirements, in solicitations and contracts for supplies or services which require the submission of invoices.

(d) The contracting officer shall insert the clause at 1952.232-74, Method of Payment, in all solicitations and contracts, except those which are subject to simplified small purchase procedures.

(40 U.S.C. 486(c))

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1942—CONTRACT ADMINISTRATION

Subpart 1942.2—Assignment of Contract Administration

1942.202-70 Authorized Representative of the Contracting Officer (AR/CO).

The Contracting Officer may designate an appropriately qualified Government employee to act as the Authorized Representative of the Contracting Officer (AR/CO). Such designation shall apply to a single contract, must be in writing, and shall define the scope and limitations of the AR/CO's authority. The instrument designating an AR/CO shall not contain authority to sign or agree to any contract or major modification to a contract. Contractual commitments shall be made only by a duly certified contracting officer. The Contracting Officer shall insert the clause at 1952.242-70, Authorized Representative of the Contracting Officer, in solicitations and contracts when an individual is to be selected and designated by the Contracting Officer to perform administration of a given contract(s).

(40 U.S.C. 486(c))

PART 1946—QUALITY ASSURANCE

Subpart 1946.7—Warranties

1946.704 Authority for use of warranties.

(a) The procurement request initiator is responsible for preparing a written recommendation for those purchases deemed to be appropriate for application of warranty provisions. The recommendation shall state why a warranty is appropriate by specifically addressing the criteria set forth in FAR 46.703. The recommendation shall also identify the specific parts, subassemblies, assemblies, systems, or contract line items to which a warranty should apply.

(b) Prior to solicitation of the requirement, the contracting officer shall make a written determination when a warranty provision is to be included.

(40 U.S.C. 486(c))

SUBCHAPTER H—CLAUSES AND FORMS

PART 1952—SOLICITATION PROVISIONS AND CONTRACTS CLAUSES

Sec.

Subpart 1952.1—Instructions for Using Provisions and Clauses

Sec.

Subpart 1952.2—Texts of Provisions and Clauses

Authority: 40 U.S.C. 486(c).

1952.000 Scope of part.

This part implements and supplements FAR Part 52 which sets forth solicitation provisions and contract clauses for use in the acquisition of personal property and nonpersonal services (including construction).

Subpart 1952.1—Instructions for Using Provisions and Clauses

1952.102-2 Incorporation in full text.

All IAAR provisions and clauses shall be incorporated in solicitations and/or contracts in full text.

1952.104 Procedures for modifying and completing provisions and clauses.

IAAR provisions and clauses shall not be modified (see FAR 1952.101(a) unless authorized by the Director, Office of Contracts, and when so authorized, contracting officers must comply with the procedures in FAR 1952.104.

Subpart 1952.2—Texts of Provisions and Clauses

1952.200 Scope of subpart.

This subpart sets forth the full text of all IAAR provisions and clauses.

1952.210-70 Brand name or equal.

As prescribed in 1910.011 insert the following provision when a "brand name or equal" purchase description is used in the solicitation:

Brand Name or Equal (Feb. 85)

(As used in this provision the term "brand name" includes identification of products by make and model.)

A. If items called for by this solicitation have been identified in this schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Solicitations offering "equal" products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the offer and are determined by the Government to meet fully the salient characteristics requirements listed in the solicitation.

B. Unless the offeror clearly indicates in the offer that an "equal" product is being offered, the offer shall be considered as offering a brand name product referenced in the solicitation.

C. 1. If the offeror proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the solicitation, or such product shall be otherwise clearly identified in the offer. The evaluation of offers and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the offeror or identified in the offer as well as other information reasonably available to the contracting activity. CAUTION TO OFFERORS. The contracting activity is not responsible for locating or securing any information which is not identified in the offer and reasonably available to the contracting activity. Accordingly, to insure that sufficient information is available, the offeror must furnish as a part of the offer all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting activity to (i) determine whether the product offered meets the salient characteristics requirement of the solicitation, and (ii) establish exactly what the offeror proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the contracting activity.

2. If the offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, it shall (i) include in the offer a clear description of such proposed modifications and (ii) clearly mark any descriptive material to show the proposed modifications.

3. Modifications proposed after date for receipt of offers to make a product conform to a brand name product referenced in the solicitation will not be considered.

(End of Clause)

1952.212-70 Notice of delays.

As prescribed at 1912.70, insert the following clause in all contracts:

Notice of Delay (Feb. 85)

If the Contractor becomes unable to complete the contract work at the time(s) specified because of technical difficulties, notwithstanding the exercise of good faith and diligent efforts in the performance of the work called for hereunder, the Contractor shall give the Contracting Officer written notice of the anticipated delay and the reasons therefor. Such notice and reasons shall be delivered promptly after the condition creating the anticipated delay becomes known to the Contractor but in no event less than forty-five (45) days before the completion date specified in this contract, unless otherwise directed by the Contracting Officer. When notice is so required, the Contracting Officer may extend the time specified in the Schedule for such period as deemed advisable.

(End of Clause)

1952.215-70 Key personnel and facilities.

As prescribed in 1915.106-70 insert the following clause in appropriate contracts:

Key Personnel and Facilities (Feb. 85)

The personnel and/or facilities listed below (or as specified in the Schedule of this contract) are considered essential to the work being performed hereunder. Prior to removing, replacing, or diverting any of the specified individuals or facilities, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract. No diversion shall be made by the Contractor without the written consent of the Contracting Officer; provided, that the Contracting Officer may ratify in writing the change and such ratification shall constitute the consent of the Contracting Officer required by this clause. The personnel and/or facilities listed below (or as specified in the Schedule of this contract) may, with the consent of the contracting parties, be amended from time to time during the course of the contract to either add or delete personnel and/or facilities, as appropriate.

(End of Clause)

1952.222-70 Davis-Bacon Act (40 U.S.C. 276a-276a-7).

As prescribed in 1922.403(a) the contracting officer shall insert the following clauses:

Davis-Bacon Act (40 U.S.C. 276a-276a-7) (Feb. 85)

(a) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled "Apprentices and Trainees." Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all time by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b)(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract

shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bond fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator of the Wage and Hour Division, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator of the Wage and Hour Division, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (b)(2) or (b)(3) of this clause, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. *Provided*, That the Secretary of Labor has found, upon written request of the Contractor, that applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(e) Paragraphs (a) through (d) of the clause shall apply to this contract to the extent that it is (1) a prime contract with the Government subject to the Davis-Bacon Act, or (2) a subcontract also subject to the Davis-Bacon Act under such prime contract.

(End of Clause)

1952.222-71 Contract Work Hours and Safety Standards Act Overtime Compensation (40 U.S.C. 327-333).

As prescribed at 1922.403(a), the contracting officer shall insert the following clause:

Contract Work Hours and Safety Standards Act Overtime Compensation (40 U.S.C. 327-333) (Feb. 85)

(a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 8 hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or in excess of forty hours in such workweek, whichever is greater.

(b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause, in the sum of $10 for each calendar day for which such individual was required or permitted to work in excess of 8 hours or in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer shall upon his/her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) *Subcontracts.* The Contractor of subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (d) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of Clause)

1952.222-72 Apprentices and Trainees.

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

Apprentices and Trainees (Feb. 85)

(a) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other

than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination of the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(End of Clause)

1952.222-73 Payrolls and basic records.

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

Payrolls and Basic Records (Feb. 85)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under paragraph (d) of the clause entitled "Davis-Bacon Act" that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. The information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents, Government Printing Office. The Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause entitled "Payrolls and Basic Records" and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deduction have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this clause.

(4) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or the Department of Labor or their authorized representatives. The Contractor and subcontractors shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(End of Clause)

1952.222-74 Compliance with Copeland Act Requirement.

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

Compliance With Copeland Act Requirement (Feb. 85)

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(End of Clause)

1952.222-75 Withholding.

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

Withholding (Feb. 85)

The Contracting Officer shall upon his/her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentices, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Prime Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(End of Clause)

1952.222-76 Subcontracts.

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

Subcontracts (Feb. 85)

The Contractor or subcontractor shall insert in any subcontracts the clauses entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act-Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Act Requirements," "Withholding," "Subcontracts," "Contract Termination-Debarment," "Disputes Concerning Labor Standards," "Compliance With Davis-Bacon and Related Act Requirements," and "Certification of Eligibility," and such other clauses as the Contracting Officer may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited above.

(End of Clause)

1952.222-77 Contract termination; debarment.

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

Contract Termination; Debarment (Feb. 85)

A breach of the contract clauses entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act-Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Act Requirements," "Subcontracts," "Compliance With Davis-Bacon and Related Act Requirements," and "Certification of Eligibility," may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(End of Clause)

1952.222-78 Disputes concerning labor standards.

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

Disputes Concerning Labor Standards (Feb. 85)

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of Clause)

1952.222-79 Compliance with Davis-Bacon and Related Act Requirements.

As prescribed in 1922.403(a), the contracting officer shall insert the following clauses:

Compliance With Davis-Bacon and Related Act Requirements (Feb. 85)

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(End of Clause)

1952.222-80 Certification of eligibility.

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

Certification of Eligibility (Feb. 85)

(a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person of firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(End of Clause)

1952.222-81 Service Contract Act of 1965.

As prescribed in 1922.1006 insert the following clause:

Service Contract Act of 1965, As Amended (Feb. 85)

(a) This contract is subject to the Service Contract Act of 1965, as amended (41 U.S.C. 351 et seq.) and is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor issued thereunder (29 CFR Part 4).

(b)(1) Each service employee employed in the performance of this contract by the contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this contract.

(2)(i) If there is such a wage determination attached to this contract, the contracting officer shall require that any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this section. (The information collection requirements contained in the following paragraphs of this section have been approved by the Office of Management and Budget under OMB control number 1215-0150.)

(ii) Such conforming procedure shall be initiated by the contractor prior to the performance of contract work by such unlisted class of employee. A written report of the proposed conforming action, including information regarding the agreement or disagreement of the authorized representative of the employees involved or, where there is no authorized representative of the employees themselves, shall be submitted by the contractor to the contracting officer no later than 30 days after such unlisted class of employees performs any contract work. The contracting officer shall review the proposed action and promptly submit a report of the action, together with the agency's recommendation and all

pertinent information including the position of the contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the contracting officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the contracting officer who shall promptly notify the contractor of the action taken. Each affected employee shall be furnished by the contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option or extension of an existing contract, or in any other case where a contractor succeeds a contract under which the classification in question was previously conformed pursuant to this section, a new conformed wage rate and fringe benefits may be assigned to such conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the contractor shall advise the contracting officer of the action taken but the other procedures in paragraph (b)(2)(ii) of this section need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined pursuant to paragraphs (b)(2)(i) and (ii) of this section shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with paragraphs (b)(2)(i) through (v) of this section, the Wage and Hour Division shall make a final determination of conformed classification, wage rate and/or fringe benefits which shall be retroactive to the date such class of employees commenced contract work.

(3) If, as authorized pursuant to section 4(d) of the Service Contract Act of 1965 as amended, the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after 1 year and not less often than once every 2 years, pursuant to wage determinations to be issued by the Wage and Hour Division, Employment Standards Administration of the Department of Labor as provided in such Act.

(c) The contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably thereto by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential payments in cash in accordance with the applicable rules set forth in Subpart D of 29 CFR Part 4, and not otherwise.

(d)(1) In the absence of a minimum wage attachment for this contract, neither the contractor nor any subcontractor under this contract shall pay any person performing work under the contract (regardless of whether they are service employees) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this provision shall relieve the contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(2) If this contract succeeds a contract, subject to the Service Contract Act of 1965 as amended, under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 4.1b(b) of 29 CFR Part 4 apply or unless the Secretary of Labor or his authorized representative finds, after hearing as provided in 4.10 of 29 CFR Part 4 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 4.11 of 29 CFR Part 4, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract. 53 Comp. Gen. 401 (1973). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(e) The contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract. (Approved by the Office of Management and Budget under OMB control number 1215-0150.)

(f) The contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services, and the contractor or subcontractor shall comply with safety and health standards applied under 29 CFR Part 1925.

(g)(1) The contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from

the completion of the work records containing the information specified in paragraphs (g)(1) (i) through (vi) of this section for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor. (Sections 4.6(g)(1) (i) through (iv) approved by the Office of Management and Budget under OMB control number 1215–0017 and sections 4.6(g)(1) (v) and (vi) approved under OMB control number 1215–0150.):

(i) Name and address and social security number of each employee.

(ii) The correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation of each employee.

(iii) The number of daily and weekly hours so worked by each employee.

(iv) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(v) A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this contract but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or authorized representative pursuant to the labor standards clause in paragraph (b) of this section. A copy of the report required by the clause in paragraph (b)(2)(ii) of this section shall be deemed to be such a list.

(vi) Any list of the predecessor contractor's employees which had been furnished to the contractor pursuant to 4.6(l)(2).

(2) The contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce such records, the contracting officer, upon direction of the Department of Labor and notification of the contractor, shall take action to cause suspension of any further payment or advance of funds until such violation ceases.

(4) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(h) The contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR Part 4), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(i) The contracting officer shall withhold or cause to be withheld from the Government prime contractor under this or any other Government contract with the prime contractor such sums as an appropriate official of the Department of Labor requests or such sums as the contracting officer decides may be necessary to pay underpaid employees employed by the contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the agency may, after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of these clauses relating to the Service Contract Act of 1965, may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost.

(j) The contractor agrees to insert these clauses in this section relating to the Service Contract Act of 1965 in all subcontracts subject to the Act. The term "contractor" as used in these clauses in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government prime contractor."

(k)(1) As used in these clauses, the term "service employee" means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Part 541 of Title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent provision of those regulations. The term "service employee" includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(2) The following statement is included in contracts pursuant to section 2(a)(5) of the Act and is for *informational purposes only:*

The following classes of service employees expected to be employed under the contract with the Government would be subject, if employed by the contracting agency, to the provisions of 5 U.S.C. 5341 or 5 U.S.C. 5332 and would, if so employed, be paid not less than the following rates of wages and fringe benefits:

Employee class	Monetary wage-fringe benefits

(l)(1) If wages to be paid or fringe benefits to be furnished any service employees employed by the Government prime contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government prime contractor shall report such fact to the contracting officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance, such agreements shall be reported promptly after negotiation thereof. (Approved by the Office of Management and Budget under OMB control number 1215–0150.)

(2) Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a contractor (predecessor) or successor (sec. 4.173 of Regulations, 29 CFR Part 4), the incumbent prime contractor shall furnish to the contracting officer a certified list of the names of all service employees on the contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor contractors of each such service employee. The contracting officer shall turn over such list to the successor contractor at the commencement of the succeeding contract. (Approved by the Office of Management and Budget under OMB control number 1215–0150.)

(m) Rulings and interpretations of the Service Contract Act of 1965, as amended, are contained in Regulations, 29 CFR Part 4.

(n)(1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract pursuant to section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(o) Notwithstanding any of the clauses in paragraphs (b) through (m) of this section relating to the Service Contract Act of 1965, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by

section 2(a)(1) or 2(b)(1) of the Service Contract Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of that Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Service Contract Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in Parts 525 and 528 of Title 29 of the Code of Federal Regulations.

(p) Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program.

(q) An employee engaged in an occupation in which he or she customarily and regularly receives more than $30 a month in tips may have the amount of tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531: *Provided, however,* That the amount of such credit may not exceed $1.24 per hour beginning January 1, 1980, and $1.34 per hour after December 31, 1980. To utilize this proviso:

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act Minimum wage through the combination of direct wages and tip credit; (approved by the Office of Management and Budget under OMB control number 1215–0017);

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(r) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be revolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 4, 6 and 8. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of Clause)

1952.222–82 Contract Work Hours and Safety Standards Act—Overtime Compensation (40 U.S.C. 327–333) (Nonconstruction only).

As prescribed in 1922.305 insert the following clause:

Contract Work Hours and Safety Standards Act Overtime Compensation (40 U.S.C. 327–333) (Feb. 85)

This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

(a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 8 hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or in excess of forty hours in such workweek, whichever is greater.

(b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen, and guards, employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of $10 for each calendar day for which such individual was required or permitted to work in excess of 8 hours or in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer shall upon his/her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (d) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of Clause)

1952.222–83 Payrolls and basic records (Nonconstruction only).

As prescribed in 1922.305 insert the following clause:

Payrolls and Basic Records (Feb. 85)

(a) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the contract work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(b) The records to be maintained under paragraph (a) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, and transcription by the Contracting Officer or the Department of Labor or their authorized representatives. The Contractor and subcontractors will permit such representatives to interview employees during working hours on the job.

(End of Clause)

1952.227-70 Rights in data—General.

(a) As prescribed in 1927.405(a)(1) insert the following clause:

(a) *Definitions:*

"Data," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term shall be construed broadly; it includes all writings within the scope of Article 1, Section 8, Clause 8 of the United States Constitution, as well as all works subject to copyright under Title 17, United States Code. The term does not include information incidental to contract administration, such as contract cost analysis or financial, business, and management information required for contract administration purposes.

"Computer software," as used in this clause, means computer programs, computer data bases, and documentation thereof.

"Form, fit, and function data," as used in this clause, means data describing, and sufficient to enable, physical and functional interchangeability; as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements.

"Limited-rights data," as used in this clause, means data that embodies trade secrets or is commercial or financial and confidential or privileged, but only to the extent that the data pertains to items, components, or processes developed at private expense, including minor modifications thereof.

"Restricted computer software," as used in this clause, means computer software developed at private expense and that is a trade secret, is commercial or financial data which is confidential or privileged, or is published copyrighted computer software.

"Unlimited rights," as used in this clause, means the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

"Limited rights," as used in this clause, means the rights of the Government in limited-rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this clause.

"Restricted rights," as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) if included in a this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract.

(b) *Allocation of rights.* (1) Except as provided in paragraph (c) below regarding copyright, the Government shall have unlimited rights in—

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitutes manuals or instructional and training material for installation, operation, or routine maintenance and repair, and

(iv) All other data delivered under this contract unless otherwise provided for limited-rights data or restricted computer software in accordance with paragraph (g) below.

(2) The contractor shall have the right to—

(i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract unless provided otherwise in paragraph (d) below;

(ii) Protect form unauthorized disclosure and use that data which is limited-rights data or restricted computer software to the extent provided in paragraph (g) below;

(iii) Substantiate use of, add, or correct limited rights or restricted rights notices, and to take other appropriate action, in accordance with paragraphs (e) and (f) below; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in subparagraph (c)(1) below.

(c) *Copyright.* (1) Data first produced in the performance of this contract. Except as otherwise specifically provided in this contract, the Contractor may establish claim to copyright subsisting in any data first produced in the performance of this contract. When claim to copyright is made, the contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 to the data when such data is delivered to the Government, and include that notice as well as acknowledgement of Government sponsorship on the data when published or deposited in the U.S. Copyright Office. The contractor grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behelf of the Government, for all such data.

(2) Data not first produced in the performance of this contract. The contractor shall not, without prior written permission of the contracting officer, incorporate into data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402 unless the contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (1) above; provided, however, that if such data is computer software, the Government shall acquire a copyright license as set forth in subparagraph (g)(3) below if included in this contract, or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.

(3) The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) *Release, publication and use of data.* (1) The contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the contractor in the performance of this contract, except as may be provided otherwise below in this paragraph.

(2) The contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contains restrictive markings, the contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the contracting officer.

(e) *Unauthorized marking of data.* (1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract is marked with the notices specified in subparagraphs (g)(2) or (g)(3) below and use of such is not authorized by this clause, the contracting officer may either return the data to the contractor, or cancel or ignore the markings. However, markings will not be cancelled or ignored unless—

(i) The contracting officer makes written inquiry to the contractor concerning the propriety of the markings, providing the contractor 30 days to respond; and

(ii) The contractor fails to respond within the 30 day period (or such longer time approved by the contracting officer for good cause shown), or the contractor's response fails to substantiate the propriety of the markings.

(2) The contracting officer shall consider the contractor's response, if any, and determine whether the markings shall be cancelled or ignored. The contracting officer shall furnish written notice to the contractor of the determination, which shall be a final decision under the Contract Disputes Act.

(3) The above procedures may be modified in accordance with regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request for data thereunder.

(f) *Omitted or incorrect markings.* (1) Data delivered to the Government without any notice authorized by paragraph (g) below, or without a copyright notice, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the contractor may request, within six months (or such longer time approved by the contracting officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the contractor's expense, and the contracting officer may agree to do so if the contractor—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The contracting officer may also (i) permit correction, at the contractor's expense, of incorrect notices if the contractor identifies the data on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(g) *Protection of limited-rights data and restricted computer software.* (1) When data other than that listed in subdivisions (b)(2) (i), (ii), and (iii) above, is specified to be delivered under this contract and qualifies as either limited-rights data or restricted computer software, the contractor, if it desires to continue protection of such data, shall withhold such data and not furnish it to the Government under this contract. As a condition to this withholding the contractor shall identify the data being withheld and furnish form, fit and function data in lieu thereof. Limited-rights data that is formatted as a computer data base for delivery to the Government is to be treated as limited-rights data and not restricted computer software.

(2)–(3) (Reserved)

(h) *Subcontracting.* The contractor has the responsibility to obtain from its subcontractors all data and right therein necessary to fulfill the contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the contractor shall promptly bring such refusal to the attention the contracting officer and not proceed with subcontract award without further authorization.

(i) *Relationship to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(b) *Alternate I.* As prescribed in 1927.405(a)(2) substitute the following definition for "Limited Rights Data" in paragraph (a) of the clause:

"Limited-rights data," as used in this clause, means data produced at private expense that embodies trade secrets or is commercial or financial and confidential or privileged.

(c) *Alternate II.* As prescribed in 1927.405(a)(3) insert the following subparagraph (g)(2) in the clause:

(g)(2) Notwithstanding subparagraph (g)(1) above, the contract may identify and specify the delivery of limited-rights data, or the contracting officer may require by written request the delivery of limited-rights data that has been withheld or would otherwise by withholdable. If delivery of such data is so required, the contractor may affix the following "Limited Rights Notice" to the data and the Government will thereafter treat the data, subject to the provisions of paragraphs (e) and (f) above, in accordance with such Notice:

Limited Rights Notice

(a) This data is submitted with limited rights under Government contract No ——— (subcontract ———, if appropriate). It may be reproduced and used by the Government with the express limitation that it will not, without permission of the contractor, be used for purposes of manufacture or disclosed outside the Government; except that the Government may disclose this data outside the Government for the following purposes, if any, provided that the Government makes such disclosure subject to prohibition against further use and disclosure:

(The contracting officer may list additional purposes as set forth in 1927.403(b)(4).)

(b) This Notice shall be marked on any reproduction of this data, in whole or in part.

(End of Notice)

(d) *Alternate III.* As prescribed in 1927.405 (a)(4) insert the following subparagraph (g)(3) in the clause:

(g)(3) Notwithstanding subparagraph (g)(1) above, the contract may identify and specify the delivery of restricted computer software, or the contracting officer may require by written request the delivery of restricted computer software that has been withheld. If delivery of such computer software is so required, the contractor may affix the following "Restricted Rights Notice" to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (e) and (f) above, in accordance with the Notice:

Restricted Rights Notice

(a) This computer software is submitted with restricted rights under Government Contract No. ——— (and subcontract ——— if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided below or as otherwise expressly stated in the contract.

(b) This computer software may be—

(1) Used or copied for use in or with the computer for which it was acquired, including use at any Government installation to which such computer may be transferred;

(2) Used with a backup computer if the computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software shall be subject to the same restricted rights; and

(5) Disclosed and reproduced for use by support contractors or their subcontractors in accordance with subparagraphs (1) through (4) above, provided the Government makes such disclosure subject to these restricted rights.

(d) Any other rights or limitations regarding the use, duplication or disclosure of this computer software are to be expressly stated in the contract.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

(ii) Where it is impractical to include the above Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice (Short Form)

Use, reproduction, or disclosure is subject to restrictions set forth in Contract No. ——— (and subcontract ——— if appropriate) with ——— (name of contractor and subcontractor).

(End of Notice)

(e) *Alternate IV.* As prescribed in 1927.405(a)(5) substitute the following subparagraph (c)(1) in the clause:

(c)(1) Data first produced in the performance of this contract. Unless provided otherwise in subparagraph (d) below, the contractor may establish claim to copyright subsisting in scientific and technical, or professional journals. The prior, express written permission of the contracting officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract in accordance with USIA Acquisition Regulation 1927.403(b)(8). When claim, to copyright is made, the contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 to the data when such data is delivered to the Government, and include that notice as well as acknowledgement of Government sponsorship on the data when published or deposited in the U.S. Copyright Office. The contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data.

(f) *Alternate V.* as prescribed in 1927.405(a)(6), add the following paragraph (j) to the clause:

(j) The contractor agrees, except as may be otherwise specified in this contract for specific data items listed as not subject to this paragraph, that the contracting officer or an authorized representative may, at all reasonable times up to three years after acceptance of all items to be delivered under this contract, inspect at the contractor's facility any data withheld under subparagraph (g)(1) of this clause, or any data specifically used in the performance or verifying the contractor's assertion pertaining to the limited rights or restricted rights status of the data. Where the contractor whose data is to be inspected demonstrates to the contracting officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the contracting officer shall designate an alternate inspector.

(End of clause)

1952.227–71 Notification of limited-rights data and restricted computer software.

As prescribed in 1927.405(b) insert the following provision in solicitations that include the clause at 1952.227–70, Rights in Data—General:

Notification of Limited-Rights Data and Restricted Computer Software (Feb. 85)

(a) This solicitation sets forth the work to be performed and the Government's known requirements for data (as defined in USIA Acquistion Regulation, 1927.401). Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements

clause (USIA Acquisition Regulation 1952.227-73) if included in the contract. Any data delivered under the resulting contract will be subject to the Rights in Data—General clause (USIA Acquisition Regulation 1952.227-71) that is to be included in this contract. Under this clause, a contractor may withhold from delivery data that qualifies as limited-rights data or restricted computer software, and delivered form, fit, and function data in lieu thereof. This clause also may be used with Alternates II and/or III to obtain delivery of limited-rights data or restricted computer software with limited rights or restricted rights. In addition, use of alternate V with this clause provides the Government with the right to inspect such data at the contractor's facility.

(b) As an aid in determining the Government's need to include any of the above Alternates in the clause at 1952.227-70, Rights in Data—General, the offeror's response to this solicitation shall, to the extent feasible, either state that none of the data qualifies as limited-rights data or restricted computer software, or identify which of the data qualifies as limited-rights data or restricted computer software. Any identification of limited-rights data or restricted computer software in the offeror's response is not determinative of the status of such data should a contract be awarded to the offeror.

1952.227-72 Additional data requirements.

As prescribed in 1927.405(c), insert the following clause in solicitations and contracts involving experimental, developmental or research work, except those awards using small purchase procedures. This clause may be used in solicitations and contracts for other types of work after consultation with legal counsel:

Additional Data Requirement (Feb. 85)

(a) In addition to the data (as defined in the Rights in Data—General clause included in this contract) specified elsewhere in this contract to be delivered, the contracting officer may at any time during contract performance or within a period of three years after acceptance of all items to be delivered under this contract, order any data first produced or specifically used in the performance of this contract.

(b) The Rights in Data—General clause included in this contract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the contractor to deliver any data: (1) The withholding of which is authorized by the Rights in Data—General clause of this contract; or (2) which is specifically identified in this contract as not subject to this clause.

(c) When data is to be delivered under this clause, the contractor will be compensated for: (1) Converting the data into the prescribed form, (2) reproduction; and (3) delivery.

(d) The contracting officer may release the contractor from the requirements of this clause for specifically indentified data items at any time during the three-year period set forth in (a) above.

1952.227-73 Rights in Data—Special Works. [Reserved]

1952.227-74 Rights in Data—Existing Works. [Reserved]

1952.227-75 Rights in Technical Data—Specific Acquisition.

As prescribed in 1927.405(f), insert the following clause:

Rights in Technical Data—Specific Acquisition (Feb. 85)

(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 able or used to define a design or process or to procure, produce, support, maintain, or operate material. 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 1952.227-75 (Feb. 85).

(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 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 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)

1952.227-76 Government rights (unlimited).

As prescribed in 1927.405(g), insert the following clause:

Government Rights (Unlimited) (Feb. 85)

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 copyrights 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)

1952.227-77 Rights in shop drawings.

As prescribed in 1927.405(h), insert the following clause:

Rights in Shop Drawings (Feb. 85)

(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)

1952.227-78 Disposition of prints and videotape recordings.

As prescribed in 1927.405(j) insert the following clause in License Agreements:

Disposition of Prints and Videotape Recordings (Feb. 1985)

If the Agency elects to discontinue distribution and exhibition hereunder, or upon expiration of the term of this License Agreement, the Agency will destroy all prints and erase all videotape recordings of the Film. A certificate(s) attesting to such destruction and/or erasure will be furnished the Licensor upon its written request.

(End of Clause)

1952.232-70 Payment due date: F.O.B. Destination or F.A.S. Vessel.

As prescribed in 1932.111(a), insert a clause substantially the same as the following in contracts for supplies when delivery is on an F.O.B. Destination of F.A.S. Vessel basis or in service contracts for nonrecurring work payable upon completion of performance. Contracts providing advance payments or contracts for utilities covered by tariff are excluded:

Payment Due Date—F.O.B. Destination of F.A.S. Vessel (Feb. 85)

A. Payments under the contract will be due on the ———* calendar day after the later of:

(1) The date of actual receipt of a proper invoice in the office designated to receive the invoice, or

(2) The date the supplies or services are accepted by the Government.

B. For the purpose of determining the due date for payment and for no other purpose, acceptance will be deemed to occur on the ———** calendar day after the date of delivery of the supplies or completion of service performance in accordance with the terms of the contract.

C. If the supplies or services are rejected for failure to conform to the technical requirements of the contract, such as damage in transit or otherwise, the provisions in paragraph (b) of this clause will apply to the new delivery of replacement supplies or satisfactory completion of the services.

D. The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made.

(End of Clause)

*The contracting officer should insert an appropriate number (e.g., 30 days, unless some other number of days is necessary).

**The contracting officer should insert a number (e.g., 15 days, unless some other number of days is necessary).

1952.232-71 Payment due date; F.O.B. Origin.

As prescribed in 1932.111(a), insert a clause substantially the same as the following in contracts for supplies when delivery is on as F.O.B. Origin basis with inspection and acceptance at source and proof of shipment (e.g., a GBL) is to be required to be furnished with the invoice and in nonpersonal service contracts when the contractor's invoice covers services performed on a recurring basis with periodic billings:

Payment Due Date—F.O.B. Origin (Feb. 85)

A. Payments under this contract will be due on the ———* calendar day after the date of actual receipt of a proper invoice in the office designated to receive the invoice. The invoice must include proper documentation that the supplies have been delivered to and accepted for shipment by an approved carrier; or in the case of services, that the services have been rendered and accepted.

B. However, when the contract specifies that inspection and acceptance will take place at the ultimate destination point, payment for items shipped F.O.B. Origin will not constitute final acceptance.

C. The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made.

(End of Clause)

*The contracting officer should insert an appropriate number (e.g., 30 days, unless some other number of days is necessary).

1952.232-72 Interest on overdue payments.

As prescribed in 1932.111(b), insert the following clause in solicitations and contracts for supplies and services, including construction, and in leases of real property.

Interest on Overdue Payments (Feb. 85)

(a) The Prompt Payment Act, Pub. L. 97-177 (96 Stat. 85, 31 U.S.C. 1801) is applicable to payments under this contract, except contracts providing advance payments or contracts for utilities covered by tariff, and requires the payment to contractors of interest on overdue payments and improperly taken discounts.

(b) Determinations of interest due will be made in accordance with the provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125.

(End of Clause)

1952.232-73 Invoice requirements.

As prescribed in 1932.111(c), insert the following clause in solicitations and contracts for supplies or services which require the submission of invoices:

Invoice Requirements (Feb. 85)

Invoices shall be submitted in an original and one (1) copy to the Government office designated in this contract or on the delivery order to receive invoices. To constitute a proper invoice, the invoice must include the following information and/or attached documentation:

(1) Name of the business concern and invoice date.

(2) Contract number, or other authorization for delivery of property or services.

(3) Description, price, and quantity of property and services actually delivered or rendered.

(4) Shipping and payment terms, and such other substantiating documentation or information as required by the contract.

(5) Name (where practicable), title, phone number, and complete mailing address of responsible official to whom payment is to be sent.

(End of Clause)

1952.232-74 Method of payment.

As prescribed in 1932.111(d), insert the following clause in solicitations and contracts:

Method of Payment (Feb. 85)

A. Payments under this contract will be made either by check or by wire transfer through the Treasury Financial Communications System at the option of the Government.

B. The Contractor shall forward the following information in writing to the Contracting Officer not later than 7 days after receipt of notice of award:

(1) Full name (where practicable), title, phone number, and complete mailing address of responsible official(s) (i) to whom check payments are to be sent, and (ii) who may be contacted concerning the bank account information requested below.

(2) The following bank account information required to accomplish wire transfers:

(i) Name, address, and telegraphic abbreviation of the receiving financial institution.

(ii) Receiving financial institution's 9-digit American Bankers Association (ABA) identifying number for routing transfer of funds. (Provide this number only if the receiving financial institution has access to the Federal Reserve Communications System.)

(iii) Recipient's name and account number at the receiving financial institution to be credited with the funds.

(iv) If the receiving financial institution does not have access to the Federal Reserve Communications System, provide the name of the correspondent financial institution through which the receiving financial institution receives electronic funds transfer messages. If a correspondent financial institution is specified, also provide:

(a) Address and telegraphic abbreviation of the correspondent financial institution.

(b) The correspondent financial institution's 9-digit ABA identifying number for routing transfer of funds.

C. Any changes to the information furnished under paragraph B. of this clause shall be furnished to the Contracting Officer in writing at least 30 days before the effective date of the change. It is the Contractor's responsibility to furnish these changes promptly to avoid payments to erroneous addresses or bank accounts.

D. The document furnishing the information required in paragraphs B. and C. must be dated and contain the signature, title, and telephone number of the Contractor official authorized to provide it, as well as the Contractor's name and contract number.

(End of Clause)

1952.242-70 Authorized Representative of the Contracting Officer.

As prescribed in 1942.202-70 insert the following clause in solicitations and contracts:

Authorized Representative of the Contracting Officer (Feb. 85)

The Contracting Officer will appoint by letter an Authorized Representative of the Contracting Officer (AR/CO) who will be given the responsibility of ensuring that the work conforms to the requirements of the contract and such other responsibilities as are specifically identified in the letter of authorization, unless specifically delegated such authority, in writing, by the Contracting Officer. The AR/CO *shall not* have the authority to make changes in the scope or terms and conditions of the contract; *only* the Contracting Officer has such authority. THE RESULTANT CONTRACTOR IS HEREBY FOREWARNED THAT IT MAY BE HELD FULLY RESPONSIBLE FOR ANY CHANGES NOT AUTHORIZED IN ADVANCE, IN WRITING, BY THE CONTRACTING OFFICER, AND MAY BE DENIED COMPENSATION FOR ANY ADDITIONAL WORK PERFORMED WHICH IS NOT SO AUTHORIZED.

(End of Clause)

PART 1953—FORMS

Subpart 1953.3—Illustrations of Forms

Sec.
1953.300 Scope of subpart.
1953.370 USIA forms.

Authority: 40 U.S.C. 486(c)

Subpart 1953.3—Illustrations of Forms

1953.300 Scope of subpart.

This subpart contains illustrations of some forms referenced in this IAAR.

1953.370 USIA forms.

This section contains illustrations of USIA forms references in this IAAR.

Note.—IAAR forms are not published in the **Federal Register** or in the Code of Federal Regulations. Forms may be obtained by writing: Office of Contracts, United States Information Agency, Washington, DC 20547. For the convenience of the user, a list containing section numbers, form numbers and form titles appears below:

Sec.
1953.370-21 USIA Form IA-21, Abstract of Quotations.
1953.370-44 USIA Form IA-44, Requisition-Purchase—Order-Invoice for Professional Services.

Dated: March 27, 1985.

Philip R. Rogers,

Director, Office of Contracts.

[FR Doc. 85-7932 Filed 4-2-85; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Amendment No. 192-49; Docket PS-81]

Transportation of Natural and Other Gas by Pipeline; Ovality of Field Bends in Steel Pipe

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

ACTION: Final rule.

SUMMARY: This amendment removes the ovality limitation requirement of 2½ percent of the nominal diameter for a field bend made in steel pipe during construction of transmission lines and mains. This limitation was operational in origin (i.e., to permit the passage of internal "pigging" devices) and has been found to be redundant because of other performance requirements that each bend have a smooth contour, be free of mechanical damage, and must not impair the serviceability of the pipe. Experience has also shown that the rule was unnecessary for safety.

EFFECTIVE DATE: May 3, 1985.

FOR FURTHER INFORMATION CONTACT: William A. Gloe, (202) 426-2082, regarding the content of this amendment, or the Dockets Branch, (202) 426-3148, regarding copies of the amendment or other information in the docket file for this proceeding.

SUPPLEMENTARY INFORMATION:

Background

Section 192.313, Bends and elbows, is contained in the minimum Federal safety standards for gas pipelines to provide for the structural integrity of field pipe bends and for elbows in steel transmission lines and mains. Requirements of the section were largely derived from the 1968 edition of the industry standard, ANSI B31.8, and were later modified by a rulemaking action and issuance of Amendments 192-26 and 195-10 (14 FR 26018; June 24, 1976). Amendment 192-26 revised § 192.313 while Amendment 195-10 concurrently revised § 195.212 of 49 CFR Part 195, the minimum Federal safety standards for hazardous liquid pipelines. As resulted from that rulemaking, § 192.313(a) reads as follows:

§ 192.313 Bends and elbows.

(a) Each field bend in steel pipe, other than a wrinkle bend made in accordance with § 192.315, must comply with the following:

(1) A bend must not impair the serviceability of the pipe.

(2) For pipe more than 4 inches in nominal diameter, the difference between the maximum and minimum diameter at a bend must not be more than 2½ percent of the nominal diameter.

(3) Each bend must have a smooth contour and be free from buckling, cracks, or any other mechanical damage.

(4) On pipe containing a longitudinal weld, the longitudinal weld must be as near as practicable to the neutral axis of the bend unless:

(i) The bend is made with an internal bending material; or

(ii) The pipe is 12 inches or less in outside diameter or has a diameter to wall thickness ratio less than 70.

In the 1976 rulemaking it was stated that MTB intends to propose deletion of the ovality restriction in § 192.313. MTB averred, however, in the preamble of the final rule that the deletion could not be made in that proceeding because it had not been proposed in the advance notice or the Notice of Proposed Rulemaking (NPRM). Comments were occasioned on the ovality restriction for the reason that MTB had proposed amending § 195.212 to include the restriction in the hazardous liquid pipeline safety regulations, then existing in Part 192 as § 192.313(a)(4). The following excerpt from the preamble (41 FR 26017) describes evaluation of the comments and the decision to exclude the restriction from Part 195:

Ovality—For pipe more than 4 inches in nominal diameter, § 192.313(a)(4) provides a numerical restriction on ovality due to bending. The liquid pipeline bending regulations do not contain a similar requirement. Because the ovality restriction limits wall thinning and excessive strain due to bending, MTB proposed that § 195.212 be amended to include the ovality limitation now existing in § 192.313(a)(4). This proposal resulted in a considerable amount of negative comment. Commenters pointed out that the proposed ovality requirement is twice as restrictive as the current industry practice and more stringent than the ovality limitation in pipe manufacturing specifications. In the latter case, if the proposal were adopted, pipe from a manufacturer could exceed the ovality restriction before being bent. Another commenter pointed out that liquid pipeline carriers have not filed with the Department any reports of failures caused by bends with excessive ovality.

Based on all the comments to Notice 75–7, MTB now believes that a numerical restriction on ovality is not necessary to provide for the safety of a steel pipeline subjected to field bending. Rather, MTB believes that the performance standards involving smoothness, mechanical damage, and serviceability are sufficient to protect against material damage due to bending. In effect, these standards also limit ovality because excessive ovality would impair the serviceability of a pipeline or cause mechanical damage. It further appears that the ovality restriction now existing in 192.313(a)(4) is derived from a provision of the 1968 addition [sic] of the ANSI B31.8 Code which was based on an operating consideration, e.g., passage of internal cleaning and inspection equipment, rather than a strength of materials consideration. Consequently, the proposed ovality amendment to § 195.212 is not adopted.

Although a numerical restriction on the ovality of field bends was shown to be unnecessary, further action was not taken due to the apparent absence of problems in meeting the requirement. Thus, the subject remained inactive until receipt of a January 25, 1984, petition from the Interstate Natural Gas Association of America (INGAA) for deletion of § 192.313(a)(2) (as the requirement has since been designated). The petition stated:

INGAA is not aware of ovality being a problem in construction, operation or safety; in fact, to the best of our knowledge ovality has not been connected with the cause of a single pipeline failure. Furthermore, with the retention of the requirements in Section 192.313(a)(1) and (a)(3), and we are not suggesting their elimination, it is our opinion the specific ovality limits contained in (a)(2) are unnecessary and do not contribute toward improving public safety.

NPRM and Discussion of Comments

A notice was published in the Federal Register on October 31, 1984 (49 FR 43728), proposing to delete the ovality restriction from Part 192, in agreement with conclusions of the previous rulemaking and the INGAA January 1984 petition. Favorable letter comments were received from all of the 12 respondents, consisting of oil and gas pipeline operators, a pipeline contractor, industry associations, and the Iowa State Commerce Commission.

In its comment, the Iowa Commission expressed concern that the ability of a bend to permit passage of internal cleaning or inspection equipment is relevant to pipeline safety and should not be ignored. MTB agrees. In fact, this issue was considered before in Amendments 192–26 and 195–10 regarding bending of pipe for gas and hazardous liquid pipelines. In deciding not to adopt a proposed ovality restriction for liquid pipelines while at the same time adopting a proposed performance standard regarding pipe serviceability, MTB stated:

The requirement of the existing § 192.313(a)(1) that a bend may not impair the serviceability of the pipe was proposed to be added to § 195.212 as necessary to provide for continued safe bends. There were no adverse comments to this proposal. The requirement is particulary meaningful in the absence of an ovality restriction. If, for instance, a pipeline is so out-of-round that it prevents the passage of cleaning scrapers and other equipment necessary for safe operation of the pipeline, the pipeline's serviceability would be impaired. (41 FR 26017)

MTB believes the existing performance requirement that "[a] bend must not impair the serviceability of the pipe" (§ 192.313(a)(1)) is sufficient to assure that bends do not interfere with operations by preventing the passage of internal cleaning or inspection devices. A more stringent regulation such as the current ovality restriction is not needed for this purpose because internal cleaning or inspection activities normally are closely monitored by operator personnel. Therefore, MTB concludes that there is no need for a specific restriction on the ovality of field pipe bends in Part 192 to provide for structural safety and the safety consideration raised by the Iowa Commission is covered by the existing performance standard regarding serviceability. This conclusion is supported by an informative background comment from the Columbia Gas System Research Department that the 2½ percent ovality requirement initially was self-imposed by the industry for operating and economic reasons, and not for safety.

Advisory Committee Review

Section 4(b) of the Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1673(b)), requires that each proposed amendment to a safety standard established under that statute be submitted to a 15-member advisory committee for its consideration. The committee, composed of persons knowledgeable about transportation of gas by pipeline, considered the proposed amendment to § 192.313 at a meeting in Washington, D.C., on October 30, 1984. The Committee found the proposed amendment, as set forth in the NPRM, to be technically feasible, reasonable, and practicable.

Classification

This final rule is not "major" under Executive Order 12291 because it will have a positive effect on the economy of less than $100 million a year, will result in cost savings to consumers, industry, and governmental agencies, and no adverse effects are anticipated. Also, it is not "significant" under Department of Transportation Policies and Procedures (44 FR 11034; February 26, 1979). Further, MTB has determined that this final rule does not require a full Regulatory Evaluation under those procedures. While the rule would provide definite cost savings for operators in some cases, the difference between the existing and revised requirements and the frequency at which savings would occur should result only in a minor cost savings impact on the gas pipeline industry as a whole.

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires a review of certain rules proposed after January 1, 1981, for their effects on small businesses, organizations, and governmental bodies. I certify that this final rule will not have a significant economic impact on a substantial number of small entities, because few, if any, gas pipeline operators who would be classed as small entities engage in the field bending of large steel pipe, and therefore such operators would not be affected by this rulemaking.

List of Subjects in 49 CFR Part 192

Pipeline safety, Pipe bends and elbows.

PART 192—[AMENDED]

In view of the foregoing, MTB amends 49 CFR 192.313(a) by removing paragraph (a)(2) and redesignating paragraphs (a)(3) and (a)(4) as (a)(2) and (a)(3), respectively.

(49 U.S.C. 1672 and 1804; 49 CFR 1.53, and Appendix A of Part 1)

Issued in Washington, D.C., on March 29, 1985.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 85–7931 Filed 4–2–85; 8:45 am]

BILLING CODE 4910-60-M

Proposed Rules

Federal Register
Vol. 50, No. 64
Wednesday, April 3, 1985

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 24185, Notice No. 84-11B]

Fire Protection Requirements for Cargo or Baggage Compartments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This notice announces the reopening of the comment period for Notice of Proposed Rulemaking (NPRM) No. 84-11 (49 FR 31830; August 8, 1984), which invites comments relative to amending Part 25 of the Federal Aviation Regulations (FAR) to upgrade the fire safety standards for cargo or baggage compartments in transport category airplaines by establishing new fire test criteria and by limiting the volume of Class D compartments. This reopening is necessary to afford all interested parties an opportunity to present their views on the proposed rulemaking.

DATES: Comments must be received on or before June 3, 1985.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Officer of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 24185, 800 Independence avenue SW., Washington, D.C. 20591; or delivered in duplicate to: Room 916, 800 Independence Avenue SW., Washington, D.C. 20591. All comments must be marked: Docket No. 24185. Comments may be inspected in Room 916 weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Regional Counsel (ANM-7), FAA, Northwest Mountain Region 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Comments in the information docket may be inspected in the Office of the Regional Counsel Weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gary L. Killion, Manager, Regulations Branch, Regulations and Policy Office, ANM-110, Aircraft Certification Division, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2112.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals contained in this notice are invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments, in duplicate, to the Rules Docket address above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments will be available in the Rules Docket for examination by interested persons both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comment to Docket No. 24185." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of Notice No. 84-11 by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center (APA-430), 800 Independence Avenue SW., Washington, D.C. 20591; or by calling (202) 426-8058. Communications must identify Notice No. 84-11. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

On May 7, 1984, the FAA issued Notice No. 84-11 (49 FR 31830; August 8, 1984). In that notice the FAA proposed to amend Part 25 of the FAR to upgrade the fire safety standards for cargo or baggage compartments in transport category airplanes by establishing new fire test criteria and by limiting the volume of Class D compartments. These proposals are the results of research and fire testing conducted by the FAA at its Technical Center. The FAA invited interested persons to submit comments and suggestions as to future action regarding this rulemaking. Because of requests received from persons wishing more time in which to study the proposal and prepare their comments, the FAA issued Notice No. 84-11A (49 FR 40041; October 12, 1984) which reopened the comment period for an additional 90 days. That comment period closed January 10, 1985. In light of further cargo liner testing conducted by the FAA at its Technical Center, the Aircraft Industries Association and the Air Transport Association requested meetings with the FAA to discuss the test results as well as additional comments on the Notice. These meetings were held and copies of the minutes have been placed in the Rules Docket for public inspection. Additionally, a report entitled "Suppression and Control of Class C Cargo Compartment Fires," issued in February 1985, which documents the test results, has been placed in the Rules Docket. In order to afford the public an opportunity to review these documents, the FAA is reopening the comment period on Notice 84-11 for 60 days.

Reopening of Comment Period

In consideration of the need for public participation in determining future action regarding this rulemaking, the FAA concludes that the comment period should be reopened.

Accordingly, the comment period for Notice No. 84-11 is reopened and will close on June 3, 1985.

Conclusion

This document reopens the comment period on an NPRM to afford the public and industry with additional time in which to review and respond to this notice. The FAA has determined that this document involves a proposed regulation which is not considered to be significant as defined in Department of Transporation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and is not major as defined in Executive Order 12291, and the FAA certifies that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities since few, if any, small entities are involved.

List of Subjects in 14 CFR Part 25

Aviation safety, Aircraft, Air transportation, Safety, Tires.

(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, January 12, 1983); and 14 CFR 11.45)

Issued in Seattle, Washington, on March 19, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-7873 Filed 4-2-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AWA-19]

Proposed Establishment of VOR Federal Airways—TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a low altitude Federal Airway structure using the new Frankston, TX, very high frequency omni-directional radio range and distance measuring equipment (VOR/DME) installation for the enhancement of the traffic flow within the Houston Air Route Traffic Control Center (ARTCC) area.

DATES: Comments must be received on or before May 16, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southwest Region, Attention: Manager, Air Traffic Division, Docket No. 85-AWA-19, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Mr. Brent A. Fernald, Airspace and Air Traffic Rules Branch (ATO-230), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 426-8626.

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 in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AWA-19." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a low altitude VOR Federal Airway structure with a new segment of V-569 from Lufkin, TX, to Scurry, TX, and by creating a new airway from Leona, TX, to Quitman, TX. V-569 is a new airway scheduled to take effect on June 6, 1985. The segments proposed in this notice would extend the V-569 route structure and amend the description of V-569, effective on or after its planned effective date of June 6. The new routes would utilize the new Frankston, TX, VOR/DME (FZT) facility (lat. 32°04'28.12" N., long. 95°31'50.28" W.), upon completion of the installation, to facilitate and enhance the traffic flow within the Houston ARTCC area. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

VOR Federal airways, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

§ 71.123 [Amended]

V-569 will be added effective June 6, 1985. The following is an alteration to

the original description of V-569, effective upon the establishment.

V-569 [Amended]

By removing the words "to Lufkin." and by substituting the words "Lufkin; Frankston, TX; to Scurry, TX."

V-583 [New]

From Leona, TX, via Frankston, TX; to Quitman, TX.

(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 Washington, D.C., on March 26, 1985.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85-7874 Filed 4-2-85; 8:45 am]

BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1261

Processing of Monetary Claims (General); Claims Collection and Off-Set Standards

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: NASA proposes to amend 14 CFR Part 1261 by revising Subpart 1261.4 (Collection of Civil Claims of the United States Arising Out of the Activities of the National Aeronautics and Space Administration), and by adding new Subparts 1261.5 (Administrative Offset) and 1261.6 (Salary Offset). The regulations reflect changes pursuant to the Debt Collection Act of 1982 (Pub. L. 97-365, enacted October 25, 1982), as implemented by the Federal Claims Collection Standards issued jointly by the General Accounting Office and the Department of Justice (4 CFR Parts 101-105, of March 9, 1984, at 49 FR 8889), and by the Office of Personnel Management (5 CFR Part 550, Subpart K, §§ 550.1101-550.1106, issued July 3, 1984, at 49 FR 27470).

DATE: Written comments must be received by June 3, 1985.

ADDRESS: Office of General Counsel, Code GS, National Aeronautics and Space Administration, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Sara Najjar, 202-453-2432.

SUPPLEMENTARY INFORMATION: These regulations comply with the joint regulation of the General Accounting Office (GAO) and the Department of Justice (DJ), and the regulation of the Office of Personnel Management (OPM). Comments which have been considered and rejected or accepted by those agencies should not be submitted to NASA. Consequently, commenters should familiarize themselves with the GAO/DJ/OPM regulations and limit their comments to standards specifically adopted by NASA to accommodate NASA functions.

Miscellaneous.

These regulations do not constitute a major rule for the purpose of Executive Order 12291 (46 FR 13193, February 19, 1981).

These regulations will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (Pub. L. 96-354, September 19, 1980; 5 U.S.C. 601 et seq.).

List of Subjects in 14 CFR Part 1261

Administrative practice and procedures, Claims, Debt collections, Administrative offset, Government employees, Pay administration, Salary offset.

PART 1261—PROCESSING OF MONETARY CLAIMS (GENERAL)

14 CFR Part 1261 is amended by revising Subpart 1261.4 and by adding Subparts 1261.5 and 1261.6 to read as follows:

Subpart 1261.4—Collection of Civil Claims of the United States Arising Out of the Activities of the National Aeronautics and Space Administration

Sec.

Subpart 1261.5—Administrative Offset of Claims

Subpart 1261.6—Collection by Offset from Indebted Government Employees

Authority: 42 U.S.C. 2473(c)(1); 31 U.S.C. 3701; 31 U.S.C. 3711 et seq.; 5 U.S.C. 5514; 4 CFR Parts 101-105; 5 CFR Part 550, Subpart K, §§ 550.1101—550.1106.

Subpart 1261.4—Collection of Civil Claims of the United States Arising Out of the Activities of the National Aeronautics and Space Administration (NASA)

§ 1261.400 Scope of subpart.

(a) These regulations do the following:

(1) prescribe standards for the administrative collection, compromise, suspension or termination of collection, and referral to the General Accounting Office (GAO), and/or to the Department of Justice (DJ) for litigation, of civil claims as defined by 31 U.S.C. 3701(b), arising out of the activities of NASA;

(2) designate the responsible NASA officials authorized to effect actions hereunder; and

(3) require compliance with the GAO/DJ joint regulations at 4 CFR Parts 101-105 and the Office of Personnel Management (OPM) regulations at 5 CFR Part 550, Subpart K.

(b) Failure to comply with any provision of the GAO/DJ or OPM regulations shall not be available as a defense to any debtor (4 CFR 101.8).

(c) These regulations do not include any claim based in whole or in part on violation of the anti-trust laws; any claim as to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim; tax claims; or

Federal interagency claims (4 CFR 101.3).

§ 1261.401 Definitions.

(a) Claim and debt—The terms denote a civil claim arising from the activities of NASA for an amount of money, or return or value of property (see 4 CFR 101.5), owing to the United States from any person, organization, or entity, except another Federal agency. The words "claim" and "debt" have been used interchangeably and are considered synonymous.

(b) Delinquent debt—The debt is "delinquent" if it has not been paid by the date specified in the initial written notification (e.g., § 1261.407) or applicable contractual agreement, unless other acceptable (to NASA) payment arrangments have been made by that date, or if, at any time thereafter, the debtor fails to satisfy an obligation under the payment agreement.

(c) Referral for litigation—Referral through the NASA installation's legal counsel to the Department of Justice (Main Justice or the United States Attorney, as appropriate) for legal proceedings.

§ 1261.402 Delegation of authority.

The following NASA officials are delegated authority, as qualified by §1261.403, to take such action as it authorized by these regulations to collect, compromise, suspend/terminate collection, and upon consultation with and through legal counsel, to refer the claim (as applicable) to the GAO or Department of Justice:

(a) For field installations, with regard to Subpart 1261.4 and Subpart 1261.5: the Director of the Installation or a designee who reports directly to the Installation Director. A copy of such designation, if any, shall be sent to the Director, Financial Management Division, NASA Headquarters.

(b) For Headquarters, with regard to Subpart 1261.4 and Subpart 1261.5: the Associate Administrator for Management or a designee who reports directly to the Associate Administrator for Management. A copy of such designation, if any, shall be sent to the Director, Financial Management Division, NASA Headquarters.

(c) With respect to the analysis required by § 1261.413: the NASA Comptroller or designee.

(d) NASA wide, with regard to subpart 1261.6: The NASA Comptroller or designee.

(e) NASA wide, for complying with pertinent provisions under these regulations for agency hearing or review (see § 1261.408(b), § 1261.503, and § 1261.603(c)): the NASA General Counsel or designee.

§ 1261.403 Consultation with appropriate officials: negotiation.

(a) The authority pursuant to § 1261.402 to determine to forgo collection of interest, to accept payment of a claim in installments, or, as to claims which do not exceed $20,000, exclusive of interest and related charges, to compromise a claim or to refrain from doing so, or to refrain from, suspend or terminate collection action, shall be exercised only after consultation with legal counsel for the particular installation and the following NASA officials or designees, who may also be requested to negotiate the appropriate agreements or arrangements with the debtor:

(1) With respect to claims against contractors or grantees arising in connection with contracts or grants—the contracting officer and the financial management officer of the installation concerned.

(2) With respect to claims against commercial carriers for loss of or damage to NASA freight shipment—the cognizant transportation officer or the official who determined the amount of the claim, as appropriate, and the financial management officer of the installation concerned.

(3) With respect to claims against employees of NASA incident to their employment—the personnel officer and the financial management officer of the installation concerned.

(b) The appropriate counsel's office shall review and concur in the following:

(1) All communications to and agreements with debtors relating to claims collection.

(2) All determinations to compromise a claim, or to suspend or terminate collection action.

(3) All referrals of claims, other than referrals to the Department of Justice pursuant to § 1261.404(b)(1).

(4) All documents releasing debtors from liability to the United States.

(5) All other actions relating to the collection of a claim which in the opinion of the official designated in or pursuant to § 1261.402 may affect the rights of the United States.

§ 1261.404 Services of the Inspector General.

(a) At the request of an official designated in or pursuant to § 1261.402, the Office of the Inspector General will, where practicable, conduct such investigations as may assist in the collection, compromise, or referral of claims of the United States, including investigations to determine the location and financial resources of the debtors.

(b) Any claim which, in the opinion of an official designated in or pursuant to § 1261.402 or § 1261.403, may indicate fraud, presentation of a false claim, or misrepresentation, on the part of the debtor or any other party having an interest in the claim, shall be referred by the designated official to the Inspector General (IG), NASA Headquarters, or to the nearest office of the NASA IG. After an investigation as may be appropriate, the IG shall:

(1) Notice the official, from whom the claim was received, of the findings and refer the claim to the Department of Justice in accordance with the provisions of 4 CFR 101.3; or

(2) If it is found that there is no such indication of fraud, the presentation of a false claim, or misrepresentation, return the claim to the official from whom it was received.

§ 1261.405 Subdivision of claims not authorized; other administrative proceedings.

(a) *Subdivision of claims.* Claims may not be subdivided to avoid the $20,000 ceiling, exclusive of interest, penalties, and administrative costs, for purposes of compromise (§ 1261.414) or suspension or termination of collection (§ 1261.416). The debtor's liability arising from a particular transaction or contract shall be considered a single claim (4 CFR 101.6).

(b) *Required administrative proceedings.* Nothing contained in these regulations is intended to require NASA to omit, foreclose, or duplicate administrative proceedings required by contract or other applicable laws and implementing regulations (4 CFR 101.7).

§ 1261.406 Aggressive collection action; documentation; minimum amount excluded.

(a) NASA shall take aggressive action, on a timely basis with effective follow-up, to collect all claims of the United States for money or property arising out of NASA activities, and to cooperate with the other Federal agencies in debt collection activities.

(b) All administrative collection action shall be documented and the bases for compromise, or for termination or suspension of collection action, should be set out in detail. Such documentation, including the Claims Collection Litigation Report under § 1261.417(e), should be retained in the appropriate claims file.

§ 1261.407 Demand for payment; limitation periods.

(a) Appropriate written demands shall be made promptly upon a debtor of the

United States in terms which inform the debtor of the consequences of failure to cooperate. A total of three progressively stronger written demands at not more than 30-day intervals will normally be made unless a response to the first or second demand indicates that a further demand would be futile and the debtor's response does not require rebuttal. In determining the timing of demand letters, NASA will give due regard to the need to act promptly so that, as a general rule, if necessary to refer the debt to the Department of Justice for litigation, such referral can be made within 1 year of the agency's final determination of the fact and the amount of the debt. When necessary to protect the Government's interests (for example, to prevent the statute of limitations, 28 U.S.C. 2415, from expiring), written demand may be preceded by other appropriate actions, including immediate referral for litigation.

(b) The initial demand letter should inform the debtor of:

(1) the basis for the indebtedness and whatever rights the debtor may have to seek review within the agency;

(2) the applicable standards for assessing interest, penalties, and administrative costs (§ 1261.412); and

(3) the date by which payment is to be made, which normally should be not more than 30 days from the date that the initial demand letter was mailed or hand delivered. The responsible official should exercise care to insure that demand letters are mailed or hand delivered on the *same day* that they are actually dated. Apart from these requirements, there is no prescribed format for demand letters. However, as appropriate to the circumstances, the responsible official may consider including, either in the initial demand letter or in subsequent letters, such items as the NASA's willingness to discuss alternative methods of payment, or intentions with respect to referral of the debt to the Department of Justice for litigation.

(c) NASA should respond promptly to communications from the debtor, within 30 days whenever feasible, and should advise debtors who dispute the debt to furnish available evidence to support their contentions.

(d) If either prior to the initiation of, any time during, or after completion of the demand cycle, a determination to pursue offset is made, then the procedures specified in Subparts 1261.5 and 1261.6, as applicable, should be followed. The availability of funds for offset and NASA's determination to pursue it release the agency from the necessity of further compliance with paragraphs (a), (b), and (c) of this section. If the agency has not already sent the first demand letter, the agency's written notification of its intent to offset must give the debtor the opportunity to make voluntary payment, a requirement which will be satisfied by compliance with the notice requirements of § 1261.502 or § 1261.603(a), as applicable.

(e) NASA should undertake personal interviews with its debtors whenever this is feasible, having regard for the amounts involved and the proximity of agency representatives to such debtors; and may attempt to effect compromise of the claim in accordance with § 1261.414.

(f) When a debtor is employed by the Federal government or is a member of the military establishment or the Coast Guard, and collection by offset cannot be accomplished in accordance with Subpart 1261.6, the employing agency will be contacted for the purpose of arranging with the debtor for payment of the indebtedness by allotment or otherwise in accordance with section 206 of Executive Order No. 11222, May 8, 1965, 30 FR 6469, which provides that:

> An employee is expected to meet all just financial obligations, especially those—such as Federal, State, or local taxes—which are imposed by law. (4 CFR 102.81).

§ 1261.408 Use of consumer reporting agency.

(a) The term "consumer reporting agency" has the meaning provided in the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701 (a)(3)), which reads:

> (A) A consumer reporting agency as that term is defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f); or
>
> (B) A person that, for money or on a cooperative basis, regularly—
>
> (i) Gets information on consumers to give the information to a consumer reporting agency; or
>
> (ii) Serves as a marketing agent under an arrangment allowing a third party to get the information from a consumer reporting agency.

(b) NASA Headquarters, Financial Management Division, shall be the focal contact between NASA and consumer reporting agencies. The following procedures shall apply when such agencies are employed by NASA:

(1) After the appropriate notice pursuant to 5 U.S.C. 552a(e)(4) has been published, NASA may disclose, in accordance with 5 U.S.C. 552a(b)(12), information about a debtor to a consumer reporting agency. Such information may include:

(i) That a claim has been determined to be valid and is overdue (including violation by debtor of a repayment plan or other claim settlement agreement);

(ii) The name, address, taxpayer identification number, and any other information necessary to establish the identity of the individual responsible for the claim;

(iii) Amount, status, and history of the claim;

(iv) Program or pertinent activity under which the claim arose.

(2) Before disclosing the information specified in paragraph (b)(1) of this section, NASA shall comply with 31 U.S.C. 3711(f) by:

(i) Taking reasonable action to locate the individual if a current address is not available;

(ii) If a current address is available, noticing the individual by certified mail, return receipt requested, that: the designated NASA official has reviewed the claim and determined that it is valid and overdue; within not less than 60 days after sending this notice, NASA intends to disclose to a consumer reporting agency the specific information to be disclosed under paragraph (b)(1) of this section; the individual may request a complete explanation of the claim, dispute the information in the records of NASA about the claim, and file for an administrative review or repeal of the claim or for reconsideration of the initial decision on the claim.

(3) If an administrative review or reconsideration is requested, the responsible official or designee shall refer the request to the appropriate NASA legal counsel for an impartial review and determination by counsel or designee based on the entire written record. If the reviewer cannot resolve the question of indebtedness based upon the available documentary evidence, verified written statements by the debtor or the responsible official may be requested on any pertinent matter not addressed by the available record.

(c) If the information is to be submitted to a consumer reporting agency, the responsible official shall obtain a verified statement from such agency which gives satisfactory assurances that the particular agency is complying with all laws of the United States related to providing consumer credit information; and thereafter insure that the consumer reporting agency is promptly informed of any substantial change in the condition or amount of the claim, or on request of such agency, promptly verify or correct information about the claim.

§ 1261.409 Contracting for collection services.

(a) When NASA determines that there is a need to contract for collection services, the following conditions must attach:

(1) The authority to resolve disputes, compromise claims, suspend or terminate collection action, and refer the matter for litigation must be retained by NASA;

(2) The contractor shall be subject to the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m), and to applicable Federal and State laws and regulations pertaining to debt collection practices—for example, the Fair Debt Collection Practices Act (15 U.S.C. 1692), and 26 U.S.C. 6103(p)(4) and applicable regulations of the Internal Revenue Service;

(3) The contractor must be required to account strictly for all amounts collected; and

(4) The contractor must agree to provide any data contained in its files relating to collection actions and related reports, current address of debtor, and reasonably current credit information upon returning an account to NASA for subsequent referral to the Department of Justice for litigation.

(b) Funding of collection service contracts:

(1) NASA may fund a collection service contract on a fixed-fee basis—that is, payment of a fixed fee determined without regard to the amount actually collected under the contract. However, such contract may be entered into only if and to the extent provided in the appropriation act or other legislation, except that this requirement does not apply to the use of a revolving fund authorized by statute. Accordingly, payment of the fixed-fee must be charged to available agency appropriations. See 4 CFR 102.6(b) (1) and (3).

(2) NASA may also fund a collection service contract on a contingent-fee basis—that is, by including a provision in the contract permitting the contractor to deduct its fee from amounts collected under the contract. The fee should be based on a percentage of the amount collected, consistent with prevailing commercial practice. See 4 CFR 102.6(b)(2).

(3) Except as authorized under paragraph (b)(2) of this section, or unless otherwise specifically provided by law, NASA must deposit all amounts recovered under collection service contracts (or by NASA employees on behalf of the Agency) in the Treasury as miscellaneous receipts pursuant to 31 U.S.C. 3302. See 4 CFR 102.6(b)(4).

§ 1261.410 Suspension or revocation of license or eligibility; liquidation of collateral.

(a) In seeking the collection of statutory penalties, forfeitures, or debts provided for as an enforcement aid or for compelling compliance, NASA will give serious consideration to the suspension or revocation of licenses or other privileges for any inexcusable, prolonged, or repeated failure of a debtor to pay such a claim. In the case of a contractor under 48 CFR Chapter 18, NASA will comply with the debarment, suspension, and ineligibility requirements of the NASA Federal Acquisition Regulation Supplement (NASA/FAR Supplement) at 48 CFR 1809.4, published on March 29, 1984, at 49 FR 12404–12405. Likewise, in making, guaranteeing, insuring, acquiring, or participating in loans, NASA will give serious consideration to suspending or disqualifying any lender, contractor, broker, borrower, or other debtor from doing further business with it or engaging in programs sponsored by it if such a debtor fails to pay its debts to the Government within a reasonable time. The failure of any surety to honor its obligations in accordance with 31 U.S.C. 9305 must be reported to the Treasury Department at once. Notification that a surety's certificate of authority to do business with the Federal Government has been revoked or forfeited by the Treasury Department will be forwarded by that Department to all interested agencies.

(b) If NASA is holding security or collateral which may be liquidated and the proceeds applied on debts due it through the exercise of a power of sale in the security instrument or a nonjudicial foreclosure, it should do so by such procedures if the debtor fails to pay the debt within a reasonable time after demand, unless the cost of disposing of the collateral will be disproportionate to its value or special circumstances require judicial foreclosure. NASA will provide the debtor with reasonable notice of the sale, an accounting of any surplus proceeds, and any other procedures required by applicable contract or law. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety or insurance concern unless such action is expressly required by statute or contract.

§ 1261.411 Collection in installments.

(a) Whenever feasible, and except as otherwise provided by law, debts owed to the United States, together with interest penalties, and administrative costs as required by § 1261.412, should be collected in full in one lump sum. This is true whether the debt is being collected by administrative offset or by another method, including voluntary payment. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments. Debtors who represent that they are unable to pay the debt in one lump sum must submit financial statements. If NASA agrees to accept payment in regular installments, it will obtain a legally enforceable written agreement from the debtor which specifies all of the terms of the arrangement and which contains a provision accelerating the debt in the event the debtor defaults. The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the Government's claim in not more than 3 years. Installment payments of less than $50 per month should be accepted only if justifiable on the grounds of financial hardship or for some other reasonable cause. If the claim is unsecured, an executed confess-judgment note, comparable to the Department of Justice Form USA–70a, should be obtained from a debtor when the total amount of the deferred installments will exceed $750. Such notes may be sought when an unsecured obligation of a lesser amount is involved. When attempting to obtain confess-judgment notes, the debtor should be provided with written explanation of the consequences of signing the note, and documentation should be maintained sufficient to demonstrate that the debtor has signed the note knowingly and voluntarily. Security for deferred payments other than a confess-judgment note may be accepted in appropriate cases. NASA, at its option, may accept installment payments notwithstanding the refusal of a debtor to execute a confess-judgment note or to give other security.

(b) If the debtor owes more than one debt and designates how a voluntary installment payment is to be applied as among those debts, that designation must be followed. If the debtor does not designate the application of the payment, agencies should apply payments to the various debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

§ 1261.412 Interest, penalties, and administrative costs.

(a) Pursuant to 31 U.S.C. 3717, NASA shall assess interest, penalties, and administrative costs on debts owed to the United States. Before assessing these charges, NASA must mail or hand deliver a written notice to the debtor explaining the requirements concerning the charges (see § 1261.407(b)).

(b) Interest shall accrue from the date on which notice of the debt and the interest requirements is first mailed or hand delivered to the debtor (on or after October 25, 1982), using the most current address that is available to the agency. If an "advance billing" procedure is used—that is, a bill is mailed before the debt is actually owed—it can include the required interest notification in the advance billing, but interest may not start to accrue before the debt is actually owed. Designated officials should exercise care to insure that the notices required by this section are dated and mailed or hand delivered on the same day.

(c) The rate of interest assessed shall be the rate of the current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate), as prescribed and published by the Secretary of the Treasury in the **Federal Register** and the Treasury Fiscal Requirements Manual Bulletins annually or quarterly, in accordance with 31 U.S.C. 3717. NASA may assess a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the interests of the United States. The rate of interest, as initially assessed, shall remain fixed for the duration of the indebtedness, except that where a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, NASA may set a new interest rate which reflects the current value of funds to the Treasury at the time the new agreement is executed. Interest should not be assessed on interest, penalties, or administrative costs required by this section. However, if the debtor defaults on a previous repayment agreement, charges which accrued but were not collected under the defaulted agreement shall be added to the principal to be paid under a new repayment agreement.

(d) NASA shall assess against a debtor charges to cover administrative costs incurred as a result of a delinquent debt—that is, the additional costs incurred in processing and handling the debt because it became delinquent as defined in § 1261.401(b). Calculations of administrative costs should be based upon acutal costs incurred or upon cost analyses establishing an average of actual additional costs incurred by the agency in processing and handling claims against other debtors in similar stages of delinquency. Administrative costs may include costs incurred in obtaining a credit report or in using a private debt collector, to the extent they are attributable to delinquency.

(e) NASA shall assess a penalty charge, not to exceed 6 percent a year, on any portion of a debt that is delinquent as defined in § 1261.401(b) for more than 90 days. This charge need not be calculated until the 91st day of delinquency, but shall accrue from the date that the debt became delinquent.

(f) When a debt is paid in partial or installment payments, amounts received by the agency shall be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and third to outstanding principal.

(g) NASA must waive the collection of interest on the debt or any portion of the debt which is paid within 30 days after the date on which interest began to accrue. NASA may extend this 30-day period, on a case-by-case basis, if it reasonably determines that such action is appropriate. Also, NASA may waive, in whole or in part, the collection of interest, penalties, and/or administrative costs (assessed under this section) under the criteria specified in § 1261.414 relating to the compromise of claims (without regard to the amount of the debt), or if NASA determines that collection of these charges would be against equity and good conscience or not in the best interests of the United States. See 4 CFR 102.13(g). Such optional waivers should be handled on a case-by-case basis, in consultation with officials designated under § 1261.403. Examples of situations in which NASA may consider waiving interest and other related charges are:

(1) Pending consideration of a request for reconsideration or administrative review;

(2) Acceptance of an installment plan or other compromise agreement, where there is no indication of lack of good faith on the part of the debtor in not repaying the debt, and the debtor has provided substantiating information of inability to pay or other unavoidable hardship which reasonably prevented the debt from being repaid.

(h) Where a mandatory waiver or review statute applies, interest and related charges may not be assessed for those periods during which collection action must be suspended under § 1261.416(c)(3).

(i) *Exemptions.* (1) The provisions of 31 U.S.C. 3717 do not apply to:

(i) Debts owned by any State or local government;

(ii) Debts arising under contracts which were executed prior to, and were in effect on (i.e., were not completed as of) October 25, 1982;

(iii) Debts where an applicable statute, regulation required by statute, loan agreement, or contract either prohibits such charges or explicitly fixes the charges that apply to the debts involved; or

(iv) Debts arising under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States.

(2) NASA may, however, assess interest and related charges on debts which are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

§1261.413 Analysis of costs; automation; prevention of overpayments, delinquencies, or defaults.

The Office of the NASA Comptroller will:

(a) Issue internal procedures to provide for periodic comparison of costs incurred and amounts collected. Data on costs and corresponding recovery rates for debts of different types and in various dollar ranges should be used to compare the cost effectiveness of alternative collection techniques, establish guidelines with respect to points at which costs of further collection efforts are likly to exceed recoveries, and assist in evaluating offers in compromise.

(b) Consider the need, feasibility, and cost effectiveness of automated debt collection operation.

(c) Establish interial controls to identify causes, if any, of overpayments, delinquencies, and defaults, and establish procedures for corrective actions as needs dictate.

§ 1261.414 Compromise of claims.

(a) Designated NASA officials (see § 1261.402 and (§ 1261.403) may compromise claims for money or property arising out of the activities of the agency where the claim, exclusive of interest, penalties, and administrative costs, does not exceed $20,000, prior to the referral of such claims to the General Accounting Office, or to the Department of Justice for litigation. The Comptroller General may excercise such compromise authority with respect to claims referred to the General Accounting Office (GAO) prior to their further referral for litigation. Only the Comptroller General may effect the compromise of a claim that arises out of an exception made by the GAO in the account of an accountable officer.

including a claim against the payee, prior to its referral by the GAO for litigation.

(b) When the claim, exclusive of interest, penalties, and administrative costs, exceeds $20,000, the authority to accept the compromise rests solely with the Department of Justice. NASA should evaluate the offer, using the factors set forth in paragraphs (c) through (f) of this section, and may recommend compromise for reasons under one, or more than one, of those paragraphs. If NASA then wishes to accept the compromise, it must refer the matter to the Department of Justice, using the Claims Collection Litigation Report. See § 1261.417(e) or 4 CFR 105.2(b). Claims for which the gross amount is over $100,000 shall be referred to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530. Claims for which the gross original amount is $100,000 or less shall be referred to the United States Attorney in whose judicial district the debtor can be found. The referral should specify the reasons for the agency's recommendation. If NASA has a debtor's firm written offer of compromise which is substantial in amount and the agency is uncertain as to whether the offer should be accepted, it may refer the offer, the supporting data, and particulars concerning the claim to the General Accounting Office or to the Department of Justice. The General Accounting Office or the Department of Justice may act upon such an offer or return it to the agency with instructions or advise. If NASA wishes to reject the compromise, GAO or Department of Justice approval is not required.

(c) A claim may be compromised pursuant to this section if NASA cannot collect the full amount because of the debtor's inability to pay the full amount within a reasonable time, or the refusal of the debtor to pay the claim in full and the Government's inability to enforce collection in full within a reasonable time by enforced collection proceedings. In determining the debtor's inability or refusal to pay, the following factors, among others, may be considered:

(1) Age and health of the debtor;

(2) Present and potential income;

(3) Inheritance prospects;

(4) The possibility that assets have been concealed or improperly transferred by the debtor;

(5) The availability of assets or income which may be realized by enforced collection proceedings; and

(6) The applicable exemptions available to the debtor under State and Federal law in determining the Government's ability to enforce collection. Uncertainty as to the price which collateral or other property will bring at forced sale may properly be considered in determining the Government's ability to enforce collection. The compromise should be for an amount which bears a reasonable relation to the amount which can be recovered by enforced collection procedures, having regard for the exemptions available to the debtor and the time which collection will take.

(d) A claim may be compromised if there is a real doubt concerning the Government's ability to prove its case in court for the full amount claimed, either because of the legal issues involved or a bona fide dispute as to the facts. The amount accepted in compromise in such cases should fairly reflect the probability of prevailing on the legal question involved, the probabilities with respect to full or partial recovery of a judgment, paying due regard to the availability of witnesses and other evidentiary support for the Government claim, and related pragmatic considerations. In determining the litigative risks involved, proportionate weight should be given to the probable amount of court costs and attorney fees pursuant to the Equal Access to Justice Act which may be assessed against the Government if it is unsuccessful in litigation. See 28 U.S.C. 2412.

(e) A claim may be compromised if the cost of collecting the claim does not justify the enforced collection of the full amount. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, paying heed to the time which it will take to effect collection. Costs of collecting may be a substantial factor in the settlement of small claims, but normally will not carry great weight in the settlement of large claims. In determining whether the cost of collecting justifies enforced collection of the full amount, it is legitimate to consider the positive effect that enforced collection of some claims may have on the collection of other claims. Since debtors are more likely to pay when first requested to do so if an agency has a policy of vigorous collection of all claims, the fact that the cost of collection of any one claim may exceed the amount of the claim does not necessarily mean that the claim should be compromised. The practical benefits of vigorous collection of a small claim may include a demonstration to other debtors that resistance to payment is not likely to succeed.

(f) *Enforcement policy.* Statutory penalties, forfeitures, or debts established as an aid to enforcement and to compel compliance may be compromised pursuant to this part if the agency's enforcement policy in terms of deterrence and securing compliance, both present and future, will be adequately served by acceptance of the sum to be agreed upon. Mere accidental or technical violations may be dealt with less severely than willful and substantial violations.

(g) Compromises payable in installments are to be discouraged. However, if payment of a compromise by installments is necessary, a legally enforceable agreement for the reinstatement of the prior indebtedness less sums paid thereon and acceleration of the balance due upon default in the payment of any installment should be obtained, together with security in the manner set forth in § 1261.411, in every case in which this is possible.

(h) If the agency's files do not contain reasonably up-to-date credit information as a basis for assessing a compromise proposal, such information may be obtained from the individual debtor by obtaining a statement executed under penalty of perjury showing the debtor's assets and liabilities, income, and expenses. Forms such as Department of Justice Form OBD–500 or OBD–500B may be used for this purpose. Similar data may be obtained from corporate debtors using a form such as Department of Justice Form OBD–500C or by resort to balance sheets and such additional data as seems required. Samples of the Department of Justice forms are available from the Office of the NASA General Counsel. Neither a percentage of a debtor's profits nor stock in a debtor corporation will be accepted in compromise of a claim. In negotiating a compromise with a business concern, consideration should be given to requiring a waiver of the tax-loss-carry-forward and tax-loss-carry-back rights of the debtor.

(i) *Joint and several liability.* When two or more debtors are jointly and severally liable, collection action will not be withheld against one such debtor until the other or others pay their proportionate shares. NASA will not attempt to allocate the burden of paying such claims as between the debtors but will proceed to liquidate the indebtedness as quickly as possible. Care should be taken that a compromise agreement with one such debtor does not release the agency's claim against the remaining debtors. The amount of a compromise with one such debtor shall not be considered a precedent or as morally binding in determining the amount which will be required from

other debtors jointly and severally liable on the claim.

§ 1261.415 Execution of releases.

Upon receipt of full payment of a claim, or the amount in compromise of a claim as determined pursuant to § 1261.414, the official designated in § 1261.402 will prepare and execute, on behalf of the United States, an appropriate release, which shall include the provision that it shall be void if procured by fraud, misrepresentation, the presentation of a false claim, or mutual mistake of fact.

§ 1261.416 Suspending or terminating collection action.

(a) The standards set forth in this section apply to the suspension or termination of collection action pursuant to 31 U.S.C. 3711(a)(3) on claims which do not exceed $20,000, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. NASA may suspend or terminate collection action under this part with respect to claims for money or property arising out of activities of the agency, prior to the referral of such claims to the General Accounting Office or to the Department of Justice for litigation. The Comptroller General (or designee) may exercise such authority with respect to claims referred to the General Accounting Office prior to their further referral for litigation.

(b) If, after deducting the amount of partial payments or collections, if any, a claim exceeds $20,000, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with the Department of Justice. If the designated official believes suspension or termination may be appropriate, the matter should be evaluated using the factors set forth in paragraphs (c) and (d) of this section. If the agency concludes that suspension or termination is appropriate, it must refer the matter, with its reasons for the recommendation, to the Department of Justice, using the Claims Collection Report. See § 1261.417(e) or 4 CFR 105.2(b). If NASA decides not to suspend or terminate collection action on the claim, Department of Justice approval is not required; or if it determines that its claim is plainly erroneous or clearly without legal merit, it may terminate collection action regardless of the amount involved, without the need for Department of Justice concurrence.

(c) *Suspension of Collection Activity.*—(1) *Inability to locate debtor.* Collection action may be suspended temporarily on a claim when the debtor cannot be located after diligent effort and there is reason to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim, with due consideration for the size and amount which may be realized thereon. The following sources may be of assistance in locating missing debtors: telephone directories; city directories; postmasters; drivers' licence records; automobile title and registration records; state and local government agencies; the Internal Revenue Service (see 4 CFR 102.16); other Federal agencies; employers, relatives, friends; credit agency skip locate reports, and credit bureaus. Suspension as to a particular debtor should not defer the early liquidation of security for the debt. Every reasonable effort should be made to locate missing debtors sufficiently in advance of the bar of the applicable statute of limitations, such as 28 U.S.C. 2415, to permit the timely filing of suit if such action is warranted. If the missing debtor has signed a confess-judgment note and is in default, referral of the note for the entry of judgment should not be delayed because of the debtor's missing status.

(2) *Financial condition of debtor.* Collection action may also be suspended temporarily on a claim when the debtor owns no substantial equity in realty or personal property and is unable to make payments on the Government's claim or effect a compromise at the time, but the debtor's future prospects justify retention of the claim for periodic review and action, and:

(i) The applicable statute of limitations has been tolled or started running anew; or

(ii) Future collection can be effected by offset, notwithstanding the stutute of limitations, with due regard to the 10-year limitation prescribed by 31 U.S.C. 3716(c)(1); or

(iii) The debtor agrees to pay interest on the amount of the debt on which collection action will be temporarily suspended, and such temporary suspension is likely to enhance the debtor's ability to fully pay the principle amount of the debt with interest at a later date.

(3) *Request for waiver or administrative review.* If the statute under which waiver or administrative review is sought is "mandatory," that is, if it prohibits the agency from collecting the debt prior to the agency's consideration of the request for waiver or review (see *Califano* v. *Yamasaki*, 422 U.S. 682 (1979)), then collection action must be suspended until either: the agency has considered the request for waiver/review; or the applicable time limit for making the waiver/review request, as prescribed in a written notice has expired and the debtor, upon notice, has not made such a request. If the applicable waiver/review statute is "permissive," that is, if it does not require all requests for waiver/review to be considered, and if it does not prohibit collection action pending consideration of a waiver/review request (for example, 5 U.S.C. 5584), collection action may be suspended pending agency action on a waiver/review request based upon appropriate consideration, on a case-by-case basis, as to whether:

(i) There is a reasonable possibility that waiver will be granted or that the debt (in whole or in part) will be found not owing from the debtor;

(ii) The Government's interests would be protected, if suspension were granted, by reasonable assurance that the debt could be recovered if the debtor does not prevail; and

(iii) Collection of the debt will cause undue hardship.

(4) If the applicable statutes and regulations would not authorize refund by the agency to the debtor of amounts collected prior to agency consideration of the debtor's waiver/ review request (in the event the agency acts favorably on it), collection action should ordinarily be suspended, withour regard to the facotrs specified for permissive waivers, unless it appears clear, based on the request is frivolous and was made primarily to delay collection. See 4 CFR 104.2.

(d) *Termination of collection activity.* Collection activity may be terminated and NASA may close its file on the claim based on the following:

(1) *Inability to collect any substantial amount.* Collection action may be terminated on a claim when it becomes clear that the Government cannot collect or enforce collection of any significant sum from the debtor, having due regard for the judicial remedies available to the Government, the debtor's future financial prospects, and the exemptions available to the debtor under State and Federal law. In determining the debtor's inability to pay, the following factors, among others, may be considered: age and health of the debtor; present and potential income; inheritance prospects; the possibility that assets have been conscealed or improperly transferred by the debtor; the availability of assets or income which may be realized by enforced collection proceedings.

(2) *Inability to locate debtor.* Collection action may be terminated on a claim when the debtor cannot be located, and either:

(i) There is no security remaining to be liquidated, or

(ii) The applicable statute of limitations has run and the prospects of collecting by offset, notwithstanding the bar of the statute of limitations, are too remote to justify retention of the claim.

(3) *Cost will exceed recovery.* Collection action may be terminated on a claim when it is likely that the cost of further collection action will exceed the amount recoverable thereby.

(4) *Claim legally without merit.* Collection action should be terminated immediately on a claim whenever it is determined that the claim is legally without merit.

(5) *Claim cannot be substantiated by evidence.* Collection action should be terminated when it is determined that the evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable and efforts to induce voluntary payment are unavailing.

(e) *Transfer of Claim.* When NASA has doubt as to whether collection action should be suspended or terminated on a claim, it may refer the claim to the General Accounting Office for advice. When a significant enforcement policy is involved in reducing a statutory penalty or forfeiture to judgment, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, such as the suspension or revocation of a license or the privilege of participating in a Government sponsored program, NASA may refer such a claim for litigation even though termination of collection activity might otherwise be given consideration under paragraphs (d) (1) and (2) of this section. Claims on which NASA holds a judgment by assignment or otherwise will be referred to the Department of Justice for further action if renewal of the judgment lien or enforced collection proceedings are justified under the criteria discussed in this section.

§ 1261.417 Referrals Department of Justice (DJ) or General Accounting Office (GAO).

(a) *Prompt referral.* Except as provided paragraphs (b) and (c) of this section, claims on which aggressive collection action has been taken in accordance with § 1261.406 and which cannot be compromised, or on which collection action cannot be suspended or terminated, in accordance with § 1261.414 and § 1261.416, shall be promptly referred to the Department of Justice for litigation.

(1) Claims for which the gross original amount is over $100,000 shall be referred to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530.

(2) Claims for which the gross original amount is $100,000 or less shall be referred to the United States Attorney in whose judicial district the debtor can be found. Referrals should be made as early as possible, consistent with aggressive agency collection action and the observance of the regulations contained in this subpart, and in any event, well within the period for bringing a timely suit against the debtor. Ordinarily, referrals should be made within 1 year of the agency's final determination of the fact and the amount of the debt.

(3) *Minimum amount.* NASA is not to refer claims of less than $600, exclusive of interest, penalties, and administrative costs, for litigation unless:

(i) Referral is important to a significant enforcement policy; or

(ii) The debtor not only has the clear ability to pay the claim but the Government can effectively enforce payment, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government.

(b) Claims arising from audit exceptions taken by the GAO to payments made by agencies must be referred to the GAO for review and approval prior to referral to the Department of Justice for litigation, unless NASA has been granted an exception by the GAO. Referrals shall comply with instructions, including monetary limitations, contained in the GAO Policy and Procedures Manual for Guidance to Federal Agencies and paragraphs (e) and (f) of this section.

(c) When the merits of the claim, the amount owed on the claim, or the propriety of acceptance of a proposed compromise, suspension, or termination are in doubt, the designated official should refer the matter to the General Accounting Office for resolution and instructions prior to proceeding with collection action and/or referral to the Department of Justice for litigation.

(d) Once a claim has been referred to GAO or to the Department of Justice pursuant to this section, NASA shall refrain from having any contact with the debtor about the pending claim and shall direct the debtor to GAO or to the DJ, as appropriate, when questions concerning the claim are raised by the debtor. GAO or the DJ, as appropriate, shall be immediately notified by NASA of any payments which are received from the debtor subsequent to referral of a claim under this section.

(e) *Claims Collection Litigation Report (CCLR).* Unless an exception has been granted by the Department of Justice in consultation with the General Accounting Office, the Claims Collection Litigation Report (CCLR), which was officially implemented by NASA, effective March 1, 1983, shall be used with all referrals of administratively uncollectible claims. As required by the CCLR, the following information must be included:

(1) *Report of prior collection actions.* The report must contain a checklist or brief summary of the actions previously taken to collect or compromise the claim. If any of the administrative collection actions have been omitted, the reason for their omission must be provided. GAO, the United States Attorney, or the Civil Division of the Department of Justice may return claims at their option when there is insufficient justification for the omission of one or more of the administrative collection actions enumerated in this subpart (see 4 CFR Part 102).

(2) *Current address of debtors.* The current address of the debtor, or the name and address of the agent for a corporation upon whom service may be made must be stated if known. Reasonable and appropriate steps will be taken to locate missing parties in all cases. Referrals to the Department of Justice for the commencement of foreclosure or other proceedings, in which the current address of any party is unknown, will be accompanied by a listing of the prior known addresses of such party and a statement of the steps taken to locate that party.

(3) *Credit data.* The report must also include reasonable current credit data which indicate that there is a reasonable prospect of effecting enforced collection from the debtor, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government. Such credit data may take the form of:

(i) A commercial credit report;

(ii) An agency investigative report showing the debtor's assets, liabilities, income, and expenses;

(iii) The individual debtor's own financial statement executed under penalty of perjury reflecting the debtor's assets, liabilities, income, and expenses; or

(iv) An audited balance sheet of a corporate debtor.

(4) Reasons for credit data omissions. The credit data may be omitted if:

(i) A surety bond is available in an amount sufficient to satisfy the claim in full;

(ii) The forced sale value of the security available for application to the Government's claim is sufficient to satisfy the claim in full;

(iii) NASA wishes to liquidate loan collateral through judicial foreclosure but does not desire a deficiency judgment;

(iv) The debtor is in bankruptcy or receivership;

(v) The debtor's liability to the Government is fully covered by insurance, in which case NASA will furnish such information as it can develop concerning the identity and address of the insurer and the type and amount of insurance coverage; or

(vi) The status of the debtor is such that credit data is not normally available or cannot reasonably be obtained, for example, a unit of State or local government.

(f) *Preservation of evidence.* Care will be taken to preserve all files, records, and exhibits on claims referred or to be referred to the Department of Justice for litigation. Under no circumstances should original documents be sent to the Department of Justice or the United States Attorney without specific prior approval to do so. Copies of relevant documents should be sent whenever necessary.

Supart 1261.5—Administrative Offset of Claims

§ 1261.500 Scope of subpart.

(a) This subpart applies to collection of claims by administrative offset under section 5 of the Federal Claims Collection Act of 1966 as amended by the Debt Collection Act of 1982 (31 U.S.C. 3716), other statutory authority, or the common law; it does not include "Salary Offset," which is governed by Subpart 1261.6, infra. Consistent with 4 CFR 102.3, collection by administrative offset will be undertaken by NASA on all liquidated or certain in amount claims in every instance in which such collection is determined to be feasible and not otherwise prohibited.

(b) Whether collection by administrative offset is feasible is a determination to be made by NASA on a case-by-case basis, in the exercise of sound discretion. NASA will consider not only whether administrative offset can be accomplished, both practically and legally, but also whether offset is best suited to further and protect all of the Government's interests. In appropriate circumstances, NASA may give due consideration to the debtor's financial condition; or whether offset would tend to substantially interfere with or defeat the purposes of the program authorizing the payments against which offset is contemplated. For example, under a grant program in which payments are made in advance of the grantee's performance, offset will normally be inappropriate.

(c) NASA is not authorized by 31 U.S.C. 3716 to use administrative offset with respect to:

(1) Debts owed by any State or local Government;

(2) Debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States; or

(3) Any case in which collection of the type of debt involved by administrative offset is explicitly provided for or prohibited by another statute. However, unless otherwise provided by contract or law, debts or payments which are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority.

§ 1261.501 Definition

"Administrative offset"—the term, as defined in 31 U.S.C. 3701(a)(1), means "withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government."

§ 1261.502 Notification procedures.

(a) Before collecting any claim through administrative offset, a 30-day written notice must be sent to the debtor by certified mail, return receipt requested. The notice must include:

(1) The nature and amount of the debt;

(2) NASA's intention to collect by administrative offset; and

(3) An explanation of the debtor's rights under 31 U.S.C. 3716(a), or other relied upon statutory authority, which must include a statement that the debtor has the opportunity, *within* the 30-day notice period, to:

(i) Inspect and copy records of NASA with respect to the debt;

(ii) Request a review by NASA of its decision related to the claim; and

(iii) Enter into a written agreement with the designated official (see § 1261.402) to repay the amount of the claim. However, sound judgment should be exercised in determining whether to accept a repayment agreement in lieu of offset. The determination should balance the Government's interest in collecting the debt against fairness to the debtor. If the debt is delinquent and the debtor has not disputed its existence or amount, NASA should accept a repayment agreement in lieu of offset only if the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

(b) NASA may effect administrative offset against a payment to be made to a debtor prior to the completion of the procedures required by paragraph (a) of this section if:

(1) Failure to take the offset would substantially prejudice the Government's ability to collect the debt, and

(2) The time before the payment is to be made does not reasonably permit the completion of those procedures. Such prior offset must be promptly followed by the completion of those procedures. Amounts recovered by offset but later found not to be owed to the Government shall be promptly refunded.

(3) In cases where the procedural requirements of paragraph (a) of this section had previously been provided to the debtor in connection with the same debt under some other statutory or regulatory authority, such as pursuant to a notice of audit disallowance or salary offset under Subpart 1261.603, the agency is not required to duplicate those requirements before taking administrative offset.

§ 1261.503 Agency records inspection; hearing or review.

(a) NASA shall provide the debtor with a reasonable opportunity for an "oral hearing" when:

(1) An applicable statute authorizes or requires the agency to consider waiver of the indebtedness involved, the debtor requests waiver of the indebetedness, and the waiver determination turns on an issue of credibility or veracity; or

(2) The debtor requests reconsideration of the debt and the agency determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary-type hearing, although significant matters discussed at the hearing should be carefully documented. See 4 CFR 102.3(c)(1). Such hearing may be an informal discuss-interview with the debtor, face-to-face meeting between debtor and cognizant NASA personnel, or written formal submission by the debtor and response by the NASA cognizant personnel with an opportunity for oral presentation. The hearing will be conducted before or in the presence of an official designated by the NASA

General Counsel or designee on a case-by-case basis. The decision of the reviewing-hearing official should be communicated in writing (no particular form is required) to the affected parties, and will constitute the final administrative decision of the agency.

(b) Paragraph (a) of this section does not require an oral hearing with respect to debt collection systems in which determinations of indebtedness or waiver rarely involve issues of credibility or veracity and NASA has determined that review of the written record is ordinarily an adequate means to correct prior mistakes. In administering such a system, the agency is not required to sift through all of the requests received in order to accord oral hearings in those few cases which may involve issues of credibility or veracity. See 4 CFR 102.3(c)(2).

(c) In those cases where an oral hearing is not required or granted, NASA will nevertheless accord the debtor a "paper hearing"—that is, the agency will make its determination on the request for waiver or reconsideration based upon a review of the available written record. See 4 CFR 102.3(c)(3). In such case, the responsible official or designee shall refer the request to the appropriate NASA legal counsel for review and determination by counsel or designee.

(d) A request to inspect and/or copy the debtor's own debt records or related files, and/or for a hearing or review accompanied by a statement of the basis or grounds for such hearing or review, must be submitted within 30 calendar days of the receipt of the written notice under § 1261.502(a). A reasonable time to inspect and copy records will be provided during official working hours, but not to exceed 5 business days, unless a verified statement showing good cause requires a longer period. Any suspension of collection or other charges during the period of the inspection, or hearing or review, shall comply with § 1261.412 and § 1261.416. Requests for or consideration of compromising the debt must comply with § 1261.414.

§ 1261.504 Interagency requests.

(a) Requests to NASA by other Federal agencies for administrative offset should be in writing and forwarded to the Office of the NASA Comptroller, NASA Headquarters, Washington, DC 20546.

(b) Requests by NASA to other Federal agencies holding funds payable to the debtor should be in writing and forwarded, certified return receipt, as specified by that agency in its regulations; however, if such rule is not readily available or identifiable, the request should be submitted to that agency's office of legal counsel with a request that it be processed in accordance with their internal procedures.

(c) Requests to and from NASA should be processed within 30 calendar days of receipt. If such processing is impractical or not feasible, notice to extend the time period for another 30 calendar days should be forwarded 10 calendar days prior to the expiration of the first 30-day period.

(d) Requests from or to NASA must be accompanied by a certification that the debtor owes the debt (including the amount) and that the provisions of (or comparable to) Subpart 1261.5 or Subpart 1261.6, as applicable, have been fully complied with. NASA will cooperate with other agencies in effecting collection.

§ 1261.505 Multiple debts.

When collecting multiple debts by administrative offset, NASA will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstnaces of the particular case, paying special attention to applicable statutes of limitations.

§ 1261.506 Limitation periods.

NASA may not initiate administrative offset to collect a debt under 31 U.S.C. 3716 more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsiblity to discover and collect such debts. Determination of when the debt first accrued is to be made in accordance with existing law regarding the accrual of debts, such as under 28 U.S.C. 2415. See 4 CFR 102.3(b)(3).

§ 1261.507 Civil Service Retirement and Disability Fund.

(a) Unless otherwise prohibited by law, NASA may request that moneys which are due and payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset in reasonable amounts in order to collect in one full payment or a minimal number of payments debts owed to the United States by the debtor. Such requests shall be made to the appropriate officials of the Office of Personnel Management (OPM) in accordance with the OPM regulations (see 5 CFR 831.1801–831.1807).

(b) When making a request for administrative offset under paragraph (a) of this section, NASA shall include a written certification that:

(1) The debtor owes the United States a debt, including the amount of the debt;

(2) NASA has complied with the applicable statutes, regulations, and procedures of the Office of Personnel Management; and

(3) NASA has complied with the requirements of this Subpart 1261.5 which implements 4 CFR 102.3, including any required hearing or review.

(c) Once NASA has decided to request administrative offset under this section, the request should be made as soon as practical after completion of the applicable procedures in order that the Office of Personnel Management may identify and "flag" the debtor's account in anticipation of the time when the debtor requests or becomes eligible to receive payments from the Fund. This will satisfy any requirement that offset be initiated prior to expiration of the applicable statute of limitations. At such time as the debtor makes a claim for payments from the Fund, if at least a year has elapsed since the offset request was originally made, the debtor should be permitted to offer a satisfactory repayment plan in lieu of offset upon establishing that changed financial circumstances would render the offset unjust.

(d) If NASA collects part or all of the debt by other means before deductions are made or completed pursuant to paragraph (a) of this section, the designated official should act promptly to modify or terminate the Agency's request to OPM for offset.

(e) OPM is not required or authorized by 4 CFR 102.4 to review the merits of NASA's determination with respect to:

(1) The amount and validity of the debt;

(2) Waiver under an applicable statute; or

(3) Provide or not provide an oral hearing.

§ 1261.508 Offset against a judgment.

Collection by offset against a judgment obtained by a debtor against the United States shall be accomplished in accordance with 31 U.S.C. 3728.

Subpart 1261.6—Collection by Offset From Indebted Government Employees

§ 1261.600 Purpose of subpart.

This subpart implements 5 U.S.C. 5514 in accordance with the OPM regulation and establishes the procedural requirements for recovering pre-

judgment debts from the current pay account of an employee through what is commonly called salary offset, including a situation where NASA (the current paying agency) is not the employee's creditor agency. Salary offset to satisfy a judgment or a court determined debt is governed by section 124 of Pub. L. 97-276 (October 2, 1982), 5 U.S.C. 5514 note.

§ 1261.601 Scope of subpart.

(a) *Coverage.* This subpart applies to agencies and employees as defined in § 1261.602.

(b) *Applicability.* This subpart and 5 U.S.C. 5514 apply in recovering certain prejudgment debts by administrative offset, except where the employee consents to the recovery, from the current pay account of an employee. Because it is an administrative offset, debt collection procedures for salary offset which are not specified in 5 U.S.C. 5514 and this Subpart should be consistent with Subpart 1261.5.

(1) *Excluded debts or claims.* The procedures contained in this subpart do not apply to debts or claims arising under the Internal Revenue Code of 1954 as amended (26 U.S.C. 1 et seq.), the Social Security Act (42 U.S.C. 301 et seq.), or the tariff laws of the United States, or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705, employee training expenses in 5 U.S.C. 4108, and debts determined by a court as provided in 5 U.S.C. 5514 note).

(2) *Waiver requests and claims to the General Accounting Office.* This subpart does not preclude an employee from requesting waiver of a salary overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with procedures prescribed by the General Accounting Office. Similarly, in the case of other types of debts, it does not preclude an employee from requesting waiver, if waiver is available under any statutory provision pertaining to the particular debt being collected.

§ 1261.602 Definitions.

For purposes of this subpart:

(a) "Agency" means an Executive Agency as defined by section 105 of Title 5 of the United States Code, the U.S. Postal Service, the U.S. Postal Rate Commission, and a Military Department as defined by section 102 of Title 5 of the United States Code.

(b) "Creditor agency" means the agency to which the debt is owed.

(c) "Debt" means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

(d) "Disposable pay" means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. NASA must exclude deductions listed in OPM's garnishment regulations at 5 CFR 581.105(b) through (f) to determine disposable pay subject to salary offset.

(e) "Employee" means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

(f) "Paying agency" means the agency employing the individual and authorizing the payment of his or her current pay.

(g) "Salary offset" means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(h) "Waiver" means the cancellation, remission, forgiveness, or nonrecovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other law.

§ 1261.603 Procedures for salary offset.

If NASA is both the paying and creditor agency, the following requirements must be met before a deduction is made from the current pay account of an employee.

(a) *Written notice.* The employee must be sent a minimum of 30 days written notice, which specifies:

(1) The origin, nature and amount of the indebtedness, and the official to contact within the agency (ordinarily, the designated financial management official for the particular installation);

(2) The intention of the agency to initiate collection of the debt through salary offset by deductions from the employee's current disposable pay, stating the amount, frequency, proposed beginning date, and duration of intended deductions (the amount to be deducted for any period, without the consent of the employee, may not exceed 15 percent of disposable pay);

(3) An explanation of any interest, penalties, or administrative costs included in the amount, and that such assessment must be made unless excused in accordance with § 1261.412;

(4) The right for an opportunity (which does not toll the running of the 30-day-day period) to inspect and copy NASA records relating to the debt or to request and receive (if reasonable) a copy of such records, provided that such opportunity must be exercised on or before the 15th day following receipt of the notice and can be conducted only during official working hours for a reasonable period of time not to exceed 5 working days;

(5) If not previously provided, the opportunity (under terms agreeable to NASA) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the authorized agency official (see § 1261.402) and documented in NASA's files (see § 1261.407(d));

(6) An opportunity for a hearing, as provided in paragraph (c) of this section, on the agency's determination concerning the existence and amount of the debt, and the terms of the repayment schedule (in the case of an employee whose repayment schedule is established other than by written agreement);

(7) The hearing request should be addressed to the Office of the NASA General Counsel or to the Office of Chief Counsel of the NASA installation involved, as appropriate; counsel's name and address will be as stated in the notice.

(8) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(9) Unless there are applicable contractual or statutory provisions to the contrary, that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

(b) *Exception to entitlement to written notice.* NASA is not required to comply with paragraph (a) of this section for any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

(c) *Petition filing; hearing; decision and review.* The notice described in paragraph (a) of this section should include the following provisions, which may be copied and attached to the notice.

(1) The employee may petition for a hearing, but such petition *must be in writing and received* by NASA on or before the 15th day following receipt of the notice, and include a statement of the reasons for such hearing. No particular form is required, and a timely, legible letter request (with the stated reasons) will suffice; however, the employee must sign the petition and include with it, with reasonable specificity, all the supporting facts and evidence, including a list of the witnesses, if any.

(2) The petition should be addressed to the agency counsel designated in the notice, but the hearing will be conducted by an official not under the supervision or control of the NASA Administrator or by appointment of an administrative law judge. Notice of the name and address of the hearing official will be sent to the employee within 10 days of receipt of petition. A hearing official will be designated on a case-by-case basis under reimbursable arrangements or through direct payment as events may warrant.

(3) The timely filing of the petition will stay the commencement of collection; and the final decision on the hearing will be issued at the earliest practicable date, but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings.

(4) Any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) disciplinary procedures appropriate under Chapter 75 of Title 5, United States Code, 5 CFR Part 752, or any other applicable statutes or regulations;

(ii) penalties under the False Claims Act, Sections 3729–3731 of Title 31, United States Code, or any other applicable statutory authority; or

(iii) Criminal penalties under sections 288, 287, 1001, and 1002 of Title 18, United States Code, or any other applicable statutory authority.

(5) The form and content of the hearing will be determined by the hearing official depending on the nature and complexity of the transaction giving rise to the debt. The hearing is not an adversarial adjudication, and need not take the form of an evidentiary hearing. However, depending on the particular facts and circumstances, the hearing may be analogous to a fact-finding proceeding with oral presentations; or an informal meeting with or interview of the employee; or formal written submissions, with an opportunity for oral presentation, and decision based on the available written record. Ordinarily, hearings may consist of informal conferences before the hearing official in which the employee and agency officials will be given full opportunity to present evidence, witnesses, and argument. The employee may represent himself or herself or be represented by an individual of his or her choice. The hearing official must maintain a summary record of the hearing provided under this subpart. (For additional guidance, see § 1261.503.)

(6) The decision will be in writing and state:

(i) the facts purported to evidence the nature and origin of the alleged debt;

(ii) the respective positions of the agency and of the employee;

(iii) the hearing official's analysis (which address the employee's/agency's grounds, the amount and validity of the alleged debt, and (where applicable) the repayment schedule; and

(iv) the hearing official's findings and conclusions.

(7) The hearing official will notify the employee, the NASA Comptroller or designee, and the designated agency counsel of the decision.

(8) The decision of the hearing official shall constitute the Final Administrative Decision of the agency.

(d) *Petition after the time expiration.* No petition for a hearing is to be granted if made after the 15-day period prescribed in paragraph (c)(1) of this section, unless the employee can show to the satisfaction of the agency official indicated on the notice that the delay was caused by circumstances beyond his or her control (for example, proven incapacity, illness, or hospitalization), or that the agency did not give notice of the time limit and the employee was otherwise unaware of such limit.

(e) *Limitation on amount and duration of deductions.* Ordinarily, debts must be collected in one lump-sum payment. However, if the employee is financially unable to pay in one lump sum or if the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection must be made in installments. The size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay (see § 1261.411), but the amount deducted for any period must not exceed 15 percent of the disposable pay from which the deduction is made (unless the employee has agreed in writing to the deduction of a greater amount). Deduction must commence with the next full pay interval (ordinarily, the next biweekly pay period). Such installment deductions must be made over a period not greater than the anticipated period of active duty or employment, as the case may be, except as provided in paragraph (f) of this section.

(f) *Determining ability to pay.* An offset may produce an extreme financial hardship for an employee if it prevents the employee from meeting costs necessarily incurred for essential subsistence expenses for food, reasonable housing, clothing, transportation, and medical care. In determining whether an offset would prevent the employee from meeting the essential subsistence expenses, the employee may be required to show income from all sources (including spouse and dependents, if applicable), list all known assets, explain exceptional expenses, and produce any other relevant factors.

(g) *Liquidation from final check; other recovery.* If the employee retires or resigns from Federal service, or if his or her employment or period of active duty ends before collection of the debt is completed, the balance may be deducted from the final salary payment and any remaining balance from the lump-sum leave, if applicable. If the debt is not fully paid by offset from any final payment due the former employee as of the date of separation, offset may be made from later payments of any kind due the former employee from the United States (as provided in Subpart 1261.5, including offset from the Civil Service Retirement and Disability Fund under § 1261.507).

(h) *Interest, penalties, and administrative costs.* Assessment of interest, penalties, and administrative costs, on debts being collected under this subpart, shall be in accordance with § 1261.412 which implements 4 CFR 102.13.

§ 1261.604 Non-waiver of rights by involuntary setoff.

The employee's involuntary payment of all or any portion of the debt, being collected under this subpart, must not be construed as a waiver of any rights which the employee may have under an existing written contract applicable to the specific debt or under any other pertinent statutory authority for the collection of claims of the United States or the agency.

§ 1261.605 Refunds.

(a) NASA will promptly refund to the employee amounts paid or deducted under this subpart when:

(1) A debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation); or

(2) The employee's paying agency is directed by an administrative or judicial order to refund amounts deducted from his or her current pay.

(b) Refunds are not to bear any interest unless the law applicable to that particular debt specifically requires or permits a stated interest amount on refunds.

§ 1261.606 Salary offset request by a creditor agency other than NASA (the current paying agency).

(a) *Format of the request.* Upon completion of the procedures established by the creditor agency under 5 U.S.C. 5514, the creditor agency must:

(1) Complete and certify the appropriate debt claim form specified by OPM;

(2) Certify, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued, and that the creditor agency's regulations implementing 5 U.S.C. 5514 have been approved by OPM;

(3) If the collection must be made in installments, the creditor agency must also advise NASA of the number of installments to be collected, the amount of each installment, and the commencing date of the first installment, if a date other than the next officially established pay period is required; and

(4) Unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures and the writing or statement is attached to the debt claim form, the creditor agency must also indicate the action(s) taken under 5 U.S.C. 5514(a)(2) and give the date(s) the action(s) was/were taken.

(b) *Limitation period.* The creditor agency may not initiate offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, except as provided in § 1261.506, which implements 4 CFR 102.3(b)(3).

(c) *Employees who are separating or have separated.*—(1) *Employees who are in the process of separating.* If the employee is in the process of separating, the creditor agency must submit its debt claim to the employee's paying agency for collection as provided in 5 CFR 550.1104(1) of the OPM regulations [§ 1261.603(f) of this subpart] for "liquidation from final check." NASA must then certify the total amount of its collection and notify the creditor agency and the employee as provided in paragraph c(3) of this section. If NASA is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Funds, or other similar payments, it should notify the creditor agency and forward the copy of the debt claim and certification to the agency responsible for making such payments as notice that a debt is outstanding. However, the creditor agency, not NASA, must submit a properly certified claim to the agency responsible for making such payments before collection can be made.

(2) *Employees who have already separated.* If the employee is already separated and all payments due from NASA have been paid, NASA must return the claim to the creditor agency for any further collection, indicating the employee's date of separation and the current employment and mailing address[es], if known.

(3) *Employee who transfers from NASA to another Federal agency.*—(i) *Certification of amount collected.* If, after the creditor agency has submitted the debt claim to NASA, the employee transfers to another Federal agency before the debt is collected in full, NASA must then certify the total amount of the collection made on the debt. A copy of the certification should be furnished the employee, and another copy furnished to the creditor agency along with notice of the employee's transfer.

(ii) *Official personnel folder insertion; new paying agency.* The original of the debt claim form must be inserted in the employee's official personnel folder along with a copy of the certification of the amount which has been collected. Upon receiving the official personnel folder, the new paying agency must resume the collection from the employee's current pay account and notify the employee and the creditor agency to repeat the due process procedures described by 5 U.S.C. 5514 and this subpart in order to resume the collection. However, it will be the responsibility of the creditor agency to review the debt upon receiving NASA's notice of the employee's transfer to make sure the collection is resumed by the new paying agency.

(d) *Processing the debt claim upon receipt.*—(1) *Incomplete claim.* If NASA receives an improperly completed debt claim form, it must return the request with a notice that procedures under 5 U.S.C. 5514 and this subpart must be provided and a properly completed debt claim form received before action will be taken to collect from the employee's current pay account.

(2) *Complete claim.* If NASA receives a properly completed debt claim form, deductions should be scheduled to begin prospectively at the next officially established pay interval. A copy of the debt claim form must be given to the debtor, along with notice of the date deductions will commence if different from that stated on the debt claim form.

(3) NASA is not required or authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt as stated in the debt claim form.

James M. Beggs,

Administrator.

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FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 792-3233]

The Korman Corp.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require a Trevose, Pa. homebuilder, developer and real estate manager, among other things, to cease representing that it will correct any problems due to faulty materials, workmanship or design, unless the firm corrects the problem within a reasonable time after being informed of the defect by the homeowner. The firm would also be barred from failing to perform its warranty obligations within a reasonable period of time and remedy non-warranted problems that the company has represented that it will correct. Should a written warranty be offered in connection with the sale of a home, a notice would have to be conspicuoulsy displayed in sales offices advising that a free copy of the warranty is available upon request. All limitations on, disclaimers of, or exclusions from coverage under the written warranty would have to be clearly and conspicuously disclosed within both the warranty and each sales contract used by the firm. If homes are covered by a written warranty, the firm would have to use a prescribed dispute settlement process to resolve warranty disputes, and provide a written description of that process to each home purchaser. The

Order would additionally require the company to provide repairs or reimbursements, in accordance with redresss procedures set forth in the Order, to eligible homeowners who bought their homes since October 1, 1978 and still own those homes; and to maintain specified files for a period of three years.

DATE: Comments must be received on or before June 3, 1985.

ADDRESS: Comments should be directed to FTC/Office of the Secretary, Room 136, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: James Leonard, Chicago Regional Office, Federal Trade Commission, 55 East Monroe Street, Suite 14371, Chicago, IL 60603 (312) 353–4423.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Trade practices.

Before the Federal Trade Commission

In the Matter of the Korman Corporation, a corporation.

[File No. 792–3233]

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Korman Corporation, and it now appearing that the Korman Corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between The Korman Corporation, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent The Korman Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal place of business located at 2 Neshaminy Interplex, Trevose, PA 19407.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirements that the Commission's decision contain a statement of findings of facts and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

8. With respect to the unfair or deceptive acts or practices which are alleged in the complaint and which occurred before the date of service of this order, the Commission hereby waives all claims it may have against respondent for consumer redress under Section 19 of the Federal Trade Commission Act, 15 U.S.C. 57b.

Order

For purposes of this Order and all appendices attached hereto, the following definitions shall apply:

1. "Korman" shall mean respondent The Korman Corporation and its successors and assigns.

2. "Home" shall mean a new single-family residential unit in the United States which is a detached structure or an attached or semi-attached townhouse or twin unit and which is offered for sale or is sold to the general public by Korman.

3. A "specific problem" shall mean any single problem or any set of problems resulting from the same cause and involving the same component(s) or defect(s). For example, two or more leaking windows caused by improper installation shall be deemed a "specific problem."

I

It is ordered that respondent The Korman Corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the construction, advertising, offering for sale, or sale of any home in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Representing, directly or by implication, that Korman will correct or otherwise remedy any problem due to faulty materials, workmanship or design unless Korman does, in fact, correct or otherwise remedy such problem within a reasonable time after the homeowner has notified Korman of the problem; provided, however, that Korman may specify a reasonable method(s) that a homeowner must use to so notify Korman.

B. Failing to perform any warranty obligation, including correction of any problem inadequately repaired by Korman, within a reasonable time after the homeowner has made a request for warranty work; provided, however, that Korman may specify in its warranty a reasonable method(s) that a homeowner must use to make such a request, and provided further that nothing herein shall preclude Korman from denying or contesting in good faith a warranty claim reasonably believed to be without merit, or in such cases from invoking any rights provided by law.

C. Failing, when Korman represents, directly or by implication, that it will correct or otherwise remedy any problem not covered by a warranty, to correct or otherwise remedy such problem within a reasonable time after the homeowner has notified Korman of the problem; provided, however, that Korman may specify a reasonable method(s) that a homeowner must use to so notify Korman.

II

It is further ordered, that, in connection, with any offering for sale of a home for which Korman provides a written warranty, Korman shall:

A. Clearly and conspicuously display in each sales office a notice that a copy of the warranty may be obtained free of charge upon request.

B. Provide a copy of the warranty to each prospective purchaser upon request.

C. Provide a copy of the warranty to each purchaser before or at the time of execution of the sales contract for the home.

D. Disclose clearly and conspicuously within the warranty and within each sales contract used by Korman any limitations on, disclaimers of, or exclusions from coverage under the written warranty or under any warranty under state law; provided, however, that Korman shall not make any representation, written or oral, concerning any such limitation, disclaimer or exclusion where such limitation, disclaimer or exclusion is prohibited by state or federal law.

III

It is further ordered that, in connection with any sale after the date of service of this Order of a home for which Korman provides a written warranty, Korman shall use a dispute settlement process conforming to Appendix A of this Order to handle disputes concerning Korman's performance under the warranty and shall provide each purchaser with a written description of such dispute settlement process before or at the time of execution of the sales contract for the home; provided, however, that nothing herein shall prohibit Korman from using a form of sales contract which clearly and conspicuously provides that the homeowner agrees to resort to such dispute settlement process before pursuing any other remedy provided by law.

VI

It is further ordered that if after the date of service of this Order Korman denies a request for warranty work Korman shall, within forty-five (45) days after receipt of the request, provide the homeowner with a detailed written statement of reasons for the denial, together with notice of the homeowner's right to submit any warranty dispute to a dispute settlement process conforming to Appendix A of this Order and with notice that at the homeowner's request Korman will send the homeowner a written description of such process and the form(s) needed to initiate such process; provided, that Korman shall not be deemed to have denied a request for warranty work if it informs a homeowner who has made an oral complaint that a complaint must be made in writing.

V

It is further ordered that, for each homeowner who purchased a home from Korman from October 1, 1978, to the date of service of this Order and who is still an owner of that home as of the date of service of this Order, Korman shall establish and abide by redress procedures conforming to Appendix B of this Order for any claim relating to the pre- or post-settlement inspection of such homeowner's home or made by such homeowner under Korman's written warranty, provided that:

A. In the case of a claim relating to a pre- or post-settlement inspection, the problem had been listed on the Pre-/Post-Settlement Inspection Report or other inspection report at the time of the pre- or post-settlement inspection; or in the case of a warranty claim, the homeowner made the claim to Korman within the time period required by the warranty and there is credible written evidence in Korman's or the homeowner's possession to establish that the claim was then made; provided, however, that a record of a telephone message in Korman's possession shall not by itself establish that the claim was then made;

B. The claim has not been satisfied, and the value of the unsatisfied claim relating to a specific problem is established by credible written evidence to be $500 or more, measured:

1. For repairs already made, by the home-owner's out-of-pocket expenses to make the repairs or have them made; and

2. For repairs not yet made, by the estimated cost of repair by a contractor; and

C. In the case where the homeowner has modified the home in a manner that substantially increases the cost of repairing or otherwise correcting a problem, Korman shall not be required to bear the increase in cost of repair or correction resulting from the modification.

VI

It is further ordered that Korman shall maintain the following records and shall make such records available to the Commission for inspection and copying upon reasonable notice:

A. For three years after the date of service of this Order, all documents related to requests for redress under Part V of this Order, including action taken in response thereto; and

B. For three years after the sale of any home, all documents relating to any such home and to:

1. Korman's issuance of a written warranty to any purchaser;

2. Any request for warranty work, including action taken in response thereto; and

3. Any dispute handled under the dispute settlement process required by Part III of this Order.

VII

It is further ordered that Korman shall notify the Commission at least thirty (30) days before any proposed change in Korman's corporate status, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this Order.

VIII

It is further ordered that Korman shall, within thirty (30) days of the date of service of this Order, distribute a copy of this Order to (a) each of Korman's operating subsidiaries and divisions, and (b) each officer and supervisory employee of Korman and of said subsidiaries and divisions who is engaged in the construction, advertising, offering for sale, or sale of any home or in customer service related to any home sold by Korman.

IX

It is further ordered that within ninety (90) days after the date of service of this Order, and again within ninety (90) days after the completion of Korman's obligations under Part V of this Order or within two years after the date of service of this Order, whichever comes first, Korman shall file with the Commission a report, in writing, setting forth in detail the manner in which it has complied with this Order.

X

It is further ordered that all provisions of this Order except Part I shall expire ten (10) years after the date of service of this Order.

Appendix A.—Dispute Settlement Process

The dispute settlement process required by this Order shall include the following:

1. The process shall be organized and staffed to ensure the fair and timely disposition of all disputes.

2. The process shall be available to homeowners for a filing fee of up to $75 during the three years after the date of service of this Order, a fee of up to $100 during the fourth through sixth years after the date of service of this Order, and a fee of up to $125 thereafter. One filing fee shall cover multiple disputes that are filed simultaneously. The filing fee shall be refunded if each dispute filed under the fee is settled before a hearing is held under Paragraph 6 below.

3. After a homeowner files a dispute, written acknowledgement of the filing shall be sent to the homeowner.

4. The process shall use an independent Dispute Settler who is knowledgeable about home construction.

5. The Dispute Settler shall:

(a) Be bound by the provisions of Korman's written warranty and any express or implied warranties arising from state law; and

(b) Use a consistent set of standards, such as the Home Owners Warranty Program Quality Standards, relevant provisions of the building code in the jurisdiction in which the home is located, and other relevant information to interpret the warranty provisions.

6. Unless otherwise agreed to by the homeowner and Korman, the Dispute Settler shall hold a hearing and render a decision in writing within sixty (60) days after the dispute is filed or, if Korman is a participant in an informal dispute settlement procedure for which the Commission has granted an exception to the 40-day requirement in 16 CFR 703.5(d), within the time period established by such exemption, whichever is longer. The decision shall determine:

(a) What corrective action, if any, Korman shall take in response to the homeowner's warranty claim(s); and

(b) The time allowed after Korman receives the homeowners's acceptance of a decision for Korman to perform such corrective action or otherwise settle the dispute.

A copy of the decision shall be mailed to the homeowner within one week after the Dispute Settler renders the decision. If the homeowner is required by the sales contract to resort to this dispute settlement procedure before pursuing any other remedy provided by law, he/she will be deemed to have fulfilled that requirement if a decision is not rendered within the required time period.

7. The Dispute Settler's decision shall be binding on both Korman and the homeowner if the homeowner accepts the decision. If the homeowner rejects the decision, he/she shall have the right to pursue any other legal remedies available. At the time the homeowner receives a copy of the decision, he/she shall be provided with a form enabling him/her to accept the decision, along with notice that if a homeowner does not accept the decision by signing and returning it to Korman within forty-five (45) days of receiving a copy of the decision and the aforesaid form, the homeowner shall be deemed to have rejected the decision, and Korman shall be under no obligation to comply with the decision.

8. If the homeowner accepts the decision, Korman shall comply with the decision.

Appendix B.—Redress Procedures

The redress procedures required by this Order shall include the following:

1. Within sixty (60) days after the date of service of this Order, Korman shall send by postage-paid first-class mail addressed to the original owner(s) of any home sold by Korman from October 1, 1978, to the date of service of this Order a letter identical in content to that in Appendix C together with a copy of the written warranty for such home and claim forms identical in content to those in Appendix D; provided, however, that Korman is not required to make such a mailing to any home which Korman knows is no longer owned, in whole or in part, by any person who purchased the home from Korman.

2. Within sixty (60) days after the date of the mailing required by Paragraph 1, the homeowner shall mail or deliver a claim to Korman or forfeit any right to repairs or reimbursement under this Order.

3. Within sixty (60) days after receipt of any claim for redress, Korman shall provide the homeowner with a written description of the dispute settlement process required by Paragraph 5 of this Appendix and with the form(s) needed to initiate such process and shall respond in writing to the homeowner by either:

(a) Offering to settle the claim within a stated time by performing specified remedial measures and/or paying an amount of money, and at the same time informing the homeowner of his/her right to accept or reject the offer, along with notice that:

(i) If the homeowner accepts the offer, he/she has the right to submit any dispute over Korman's performance under the offer to the dispute settlement process; and

(ii) If the homeowner rejects the offer, he/she has the right to submit the disputed claim to the dispute settlement process; or

(b) Denying the claim and at the same time giving the homeowner a detailed written statement of reasons for the denial, along with notice that the homeowner has the right to submit the denied claim to the dispute settlement process.

4. If the homeowner accepts the offered remedy, Korman shall perform the remedy within the time promised.

5. The dispute settlement process shall include the following:

(a) The process shall be organized and staffed to ensure the fair and timely disposition of all disputes.

(b) The process shall be available to homeowners for a filing fee of up to $75. One filing fee shall cover multiple disputes that are filed simultaneously. The filing fee shall be refunded if a decision rendered under subparagraph (f) below includes an award of reimbursement of the filing fee.

(c) After a homeowner files a dispute, written acknowledgement of the filing shall be sent to the homeowner.

(d) The process shall use an independent Dispute Settler who is

knowledgeable about home construction.

(e) To decide warranty claims and to decide claims relating to a per- or post-settlement inspection, the Dispute Settler shall:

(i) Be bound by the provisions of Korman's written warranty, the relevant pre- or post-settlement inspection report, and any express or implied warranties arising from state law and

(ii) Use a consistent set of standards, such as the Home Owners Warranty Program Quality Standards, relevant provisions of the building code in the jurisdiction in which the home is located, and other relevant information to interpret the warranty provisions and the pre- or post-settlement inspection report.

(f) Unless otherwise agreed to by the homeowner and Korman, the Dispute Settler shall hold a hearing and render a decision in writing within sixty (60) days after the dispute is filed. The decision shall:

(i) Include reimbursement of the filing fee unless the arbitrator determines that each of the homeowner's claims was not substantially justified;

(ii) Determine what corrective action, if any, Korman shall take in response to the homeowner's warranty claims(s) or claims(s) relating to a pre- or post-settlement inspection; and

(iii) Determine the time allowed after Korman receives the homeowner's acceptance of a decision of Korman to perform such corrective action or otherwise settle the dispute. A copy of the decision shall be mailed to the homeowner within one week after the Dispute Settler renders the decision.

(g) The Dispute Settler's decision shall be binding on both Korman and the homeowner if the homeowner accepts the decision. At the time the homeowner receives a copy of the decision, he/she shall be provided with a form enabling him/her to accept the decision, along with notice that:

(i) If the homeowner accepts the decision, both he/she and Korman shall be bound by the decision, and the homeowner shall have the right to submit any dispute over the actual performance of the decision to the dispute settlement process at no cost to the homeowner; provided, however, that the homeowner's submission of such dispute must be made within sixty (60) days after Korman's performance of the decision;

(ii) If the homeowner does not accept the decision, neither he/she nor Korman shall be bound by the decision, and the homeowner shall have the right to pursue any other legal remedies available; and

(iii) if the homeowner does not accept the decision by signing and returning it to Korman within forty-five (45) days of receiving a copy of the decision and the aforesaid form, the homeowner shall be deemed to have rejected the decision, and Korman shall be under no obligation to comply with the decision.

(h) If the homeowner accepts the decision, Korman shall comply with the decision.

Appendix C.—Redress Letter

Dear Korman Homeowner: This letter is to notify you that you may be entited to have certain repairs made to your home at no cost to you. You may also qualify for reimbursement of money you have already spent repairing your home. Korman is doing this because of an agreement with the Federal Trade Commission and our desire to make you, the Korman homeowner, a comfortable and satisfied homeowner.

If you purchased your home from us on or after October 1, 1978, and if you were still the owner on [date of service of the Order], You may be entitled to certain repairs or reimbursement for claims you made under Korman's written warranty or for items listed during the pre- or post-settlement inspection of your home. A copy of the warranty is enclosed.

For a warranty claim to be eligible for repairs or reimbursement, it must be a claim covered by the warranty and there must be credible written evidence that you made the claim within the time period required by the warranty. A claim related to a pre- or post-settlement inspection must be for a problem that was listed on your inspection report.

A claim is eligible for repair or reimbursement only if the claim relates to a specific problem and the value of the claim is $500 or more. A "specific problem" is any single problem or a set of problems resulting form the same cause and involving the same component(s) of defect(s). For example, two or more leaking windows caused by improper installation would be a "specific problem." To determine whether a claim meets the $500 requirement, you can measure the value of the claim like this:

For repairs which have already been done, the value of a claim is measured by your out-of-pocket expenses to make the repairs or have them made. You must have written evidence (cancelled checks, receipts, etc.) or your out-of-pocket expenses and must submit this evidence with your claim.

For repairs which have not yet been done, the value of a claim is measured by the estimated cost of repair by a contractor. The contractor's estimate must be in writing and must be detailed enough to show how the estimate was calculated. You must submit the estimate with your claim.

Please note that if you have modified the part of your home affected by a problem, and if you made the modification in a manner that substantially increases the cost of repairing the problem, we will not bear the increase in repair cost resulting from the modification. For example, if you finished your basement and thus covered up a problem, we are not responsible for the cost of refinishing your basement after our repair work.

The eligibility requirements for warranty claims and for claims related to your pre- or post-settlement inspection are summarized below.

Warranty Claims

You are eligible for repairs or reimbursement under the warranty if all of the following are true:

1. You experienced a problem that was covered by the warranty. See the enclosed warranty for a description of covered problems.

2. You or Korman has credible written evidence that you made a claim concerning the problem within the time period required by the warranty. If you do not have a copy of a letter or some other record showing that you made a claim, we will check our customer files for any record of your complaint about the problem. If our files contain, for example, a letter from you or a Korman work order authorizing repair of the problem, this would show that you made a warranty claim. But a phone message in our files will not by itself establish that you made a claim.

3. The value of a claim related to a specific problem is $500 or more.

4. Korman did not repair the problem or inadequately repaired the problem. Repair is considered to be inadequate if it failed to meet industry standards.

Claims Related to the Pre- or Post-Settlement Inspection

You are eligible for repairs or reimbursement for this type of claim if all of the following are true:

1. The problem was listed on your "Pre-/Post-Inspection Report" or other inspection report. If you do not have a copy of your inspection report, we will check our files for it.

2. The value of a claim related to a specific problem is $500 or more.

3. Korman did not repair the problem or inadequately repaired the problem. Repair is considered to be inadequate if it failed to meet industry standards.

What You Must Do

If you think are eligible for repairs or reimbursement, please fill out the enclosed "Claim Form" and mail it in the enclosed pre-addressed envelope to:

(Name)
The Korman Corporation
2 Neshaminy Interplex
Trevose, PA 19407

You must mail or deliver this claim form to us by (60 days from the mailing date of this letter). If you miss this deadline, you will not be eligible for repairs or reimbursement. Remember to keep a copy of your claim and a record of the date you mail it, just in case your claim gets lost in the mail.

Korman will review your claim(s) in accordance with industry standards for homebuilders. Within 60 days of receiving your letter we will tell you whether we will honor your claim. If we dispute any part of your claim, we will tell you why. If you are not satisfied with what we offer you as a repair or reimbursement, you will have the right to take the dispute to an impartial arbitrator. We will explain the details of the arbitration program when we reply to your claim.

If you have any questions about this repair and reimbursement program, call (name of Korman representative) at (phone number) between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday.

Very truly yours,

The Korman Corporation

Enclosures:
Copy of your warranty
Claim forms
Self-addressed envelope

Appendix D.—Claim Form

This claim form must be mailed or delivered to us by (60 days from the mailing date of the letter of notification). If you miss this deadline, you will not be eligible for repairs or reimbursement.

Today's date _____

I. Homeowner Information

Name(s) of Homeowner(s) _____
Telephone (Home) _____
(Work) _____
Mailing Address _____
(Street)
_____
(City) (State) (Zip Code)

II. Address of Korman Home

The address of my (our) Korman home is:
_____
(Street)
_____
(City) (State) (Zip Code)
(Name of Subdivision) _____

III. Eligibility To Submit a Claim

A. I (we) bought my (our) home:
MARK ONE
( ) From Korman
( ) From another party

Note.—To be eligible for repairs or reimbursement, you must have bought *directly* from Korman.

B. The date of settlement/closing on my (our) Korman home was:
(Enter date you took title). _____

Note.—To be eligible for repairs or reimbursement, you must have bought your home *on or after October 1, 1978.*

C. On (date of service of the Order):
MARK ONE
( ) I was (we were) the owner of this Korman home.
( ) I was (we were) no longer the owner of the Korman home.

Note.—To be eligible for repairs or reimbursement, you must have been the owner as of (date of service of the Order).

IV. Warranty Claims

Instructions

- List each problem separately, using additional sheets of paper if necessary.
- Remember that each problem must have a value of $500 or more.
- Describe in detail the nature of each problem.
- Attach a copy (*not* originals) of any written evidence you have that shows you made a claim concerning the problem within the time period required by the warranty. This can be a copy of a letter or any other record showing that you notified us about the problem. If you do not have written evidence that you made a warranty claim about a problem, we will check our customer files to see if we have any record showing that you made a claim within the warranty time period. A telephone message in our files will not by itself establish that you made a timely warranty claim. *If there is no other written evidence in either our possession or yours that you made a timely claim, we can deny your claim for a problem.*
- If you are requesting repair of a problem, describe the repair below and attach a copy (*not* the original) of a contractor's estimate of the cost of repair. The contractor's estimate must be detailed enough to show how the estimate was calculated.
- If you are requesting reimbursement of money you spent for repairs, describe the repairs and your expenses below and attach a copy (*not* originals) of cancelled checks or receipts showing that you paid for repairs. Also attach a copy (*not* originals) of any other document(s) showing what repairs were made and what you paid for them.

Claim(s) for repairs or reimbursement under the warranty

I (we) request The Korman Corporation to make repairs or reimbursement under the warranty for the following problem(s):

[Describe the repairs which you request and/or the repairs and expenses for which you request reimbursement]

V. Claims Related to the Pre-Settlement or Post-Settlement Inspection

Instructions

- List each problem separately, using additional sheets of paper if necessary.
- Remember that each problem must have a value of $500 or more.
- Describe in detail the nature of each problem.
- Attach a copy (*not* originals) of your "Pre-/Post-Settlement Inspection Report" or other inspection report. If you do not have your inspection report, we will look for it in our files. If a problem was not listed on the inspection report, it is *not* eligible for repair or reimbursement.
- If you are requesting repair of a problem, describe the repair below and attach a copy (*not* the original) of a contractor's estimate of the cost of repair. The contractor's estimate must be detailed enough to show how the estimate was calculated.
- If you are requesting reimbursement of money you spent for repairs, describe the repairs and your expenses below and attach a copy (*not* originals) of cancelled checks or receipts showing that you paid for repairs. Also attach a copy (*not* originals) of any other document(s) showing what repairs were made and what you paid for them.

Claim(s) for repairs or reimbursement under the pre- or post-settlement inspection

I (we) request The Korman Corporation to make repairs or reimbursement for the following problem(s) related to the pre- or post-settlement inspection:

[Describe the repairs which you request and/or the repairs and expenses for which you request reimbursement]

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the Korman Corporation ("Korman"), a homebuilder, developer, and real estate manager in the Philadelpia metropolitan area.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint accompanying the proposed consent order alleges that Korman has engaged in unfair and deceptive acts and practices in violation of Section 5 of the Federal Trade Commission Act by frequently failing to make repairs promised under its written warranty and during home inspections. The complaint also alleges that when Korman has made promised repairs, it has done so only after delays often exceeding five months.

If the proposed consent order becomes final, it will prohibit Korman from:

(1) Representing that it will correct problems due to faulty materials, workmanship, or design unless Korman does in fact correct these problems within a reasonable time;

(2) Failing to perform warranty obligations within a reasonable time; and

(3) Failing to correct within a reasonable time problems not coverd by a warranty when Korman has represented that it will correct these problems.

For ten years the proposed order will also require Korman, if it sells homes covered by a written warranty, to give homeowners the opportunity to arbitrate warranty disputes.

Homeowners who bought their homes from Korman since October 1, 1978 and who still own their homes will be eligible for free repairs or cash reimbursement under the proposed order. Repairs or reimbursement will be made if the homeowners have unrepaired problems covered by the warranty which cost $500 or more to repair, and there is written evidence that the problems were reported to Korman during the warranty period. Repairs or reimbursement will also be made for unrepaired problems listed on an inspection report during the pre- or post-settlement inspection and which cost $500 or more to repair. If a homeowner has a dispute over a claim for repairs or reimbursement, the homeowner will have the right to arbitrate the dispute for a fee of $75, which will be refunded to the homeowner unless the arbitrator determines that the claim was not substantially justified.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 85-7886 Filed 4-2-85; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 460

Regulatory Flexibility Act Review of Trade Regulation Rule Concerning Labeling and Advertising of Home Insulation.

AGENCY: Federal Trade Commission.

ACTION: Summary of comments.

SUMMARY: On May 25, 1984, the Federal Trade Commission ("FTC") published a notice in the **Federal Register** [1] regarding the Trade Regulation Rule Concerning Labeling and Advertising of Home Insulation (the "Rule" or "R-value Rule"), 16 CFR Part 460. The Notice, published in accordance with the requirements of the Regulatory Flexibility Act, 5 U.S.C. 610 (1982), solicited comments and data on whether the R-value Rule has had a significant economic impact on small entities, and if so, whether the Rule should be amended to minimize any such significant economic impact on small entities.[2] The Notice requested that all comments and data be submitted to the Commission no later than June 25, 1984.[3] This Notice summarizes the comments received.

FOR FURTHER INFORMATION CONTACT: Kent C. Howerton, (202) 376-8934, or Lee J. Plave, (202) 376-2805, Attorneys, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (the "RFA"), requires that the FTC conduct a periodic review of rules which have or will have a significant economic impact upon a substantial number of small entities.

The R-value Rule concerns home insulation labels, fact sheets, advertisements, and other promotional materials in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.* Any violation of the Rule constitutes an unfair and deceptive act or practice under section 5 of that Act, and is subject to civil penalties of up to $10,000 per violation.

The Rule requires that members of the home insulation industry follow certain requirements in the manufacture, distribution, promotion, installation and sale of home insulation products. Manufacturers must test their products to determine R-value (a measure of heat resistance) in accordance with specified scientific standards. The R-value for each product must be listed on the package label. The label must also contain information regarding the type of insulation, the dimensions or other coverage area information, and disclosures defining the term "R-value" and concerning installation instructions. Manufacturers also must provide to retailers and installers fact sheets for their products which must include specified disclosures and product information. Retailers and installers must make these fact sheets available to consumers who ultimately buy home insulation. Installers and sellers of new homes must provide consumers with a contract or receipt specifying certain information pertinent to the insulation installed in the home. In addition, all advertising for home insulation (except television advertising, *see* 45 FR 54702 (1980)) which makes certain claims must include designated product information and certain specific disclosures. The Rule was promulgated on August 27, 1979, 44 FR 50242 (1979), became effective on September 29, 1980, 45 FR 54702 (1980), and remains in full force and effect, except for disclosure requirements for television advertising.

The FTC, in accordance with the RFA, solicited comments and data (49 FR 22104) on whether the R-value Rule has had a significant economic impact on a substantial number of small entities and if they have, whether the Rule should be amended to minimize any significant economic impact on small entities.

Questions were posed on: (1) The economic impact of the Rule on small entities, (2) the continued need for the Rule, (3) the burdens, if any, that compliance with the Rule places on

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[1] 49 FR 22104 (May 25, 1984) (the "Notice").

[2] The definition of the term "small entity" is set out in the Notice. *Id.*

[3] The comments have been placed in the public record for this proceeding under Category Z (Regulatory Flexibility Act Review—Public Comments) in FTC File No. 215-59. The comments have been labeled Documents Z-1 through Z-28.

small entities and whether any such burdens are the same as those experienced under standard business practices, (4) the changes that might be made to the Rule which would minimize its effect on small entities, (5) the extent to which the Rule overlaps, duplicates or conflicts with other regulations, and (6) any changed conditions that may have occurred which affect the Rule.

Twenty-eight parties submitted comments. Seventeen comments contained information relevant to the questions asked. The other comments were not directly responsive, but rather discussed other specific concerns of the commenters.[4]

Based upon the comments received the Commission has no basis to conclude that the R-value Rule has had a significant economic impact upon a substantial number of small entities. Accordingly, the Commission has concluded that the R-value Rule should not be amended.

A. Question (1)

Has the Rule had a significant economic impact (costs and/or benefits) on a substantial number of small entities? Please describe the details of any such significant negative and/or positive economic impact.

Almost all of the comments which addressed this question were very general, stating that the Rule was still needed and that it did not have an adverse substantial economic impact upon small entities.[5] Several commenters specifically noted that because strong enforcement of the Rules tends to protect the integrity of the product, they have benefitted from the Rule. Other comments mentioned a positive impact from the Rule and encouraged the Commission to vigorously enforce the R-value Rule. For example, one commenter stated that "[w]e have experienced a substantial increase in interest in our product in Florida following the enforcement procedures by state agencies. We would expect a similar experience in other states if the FTC actively enforces [the R-value Rule]." [6]

Two parties [7] suggested that the Rule has had a negative impact upon their businesses due to an alleged lack of enforcement activity. These two parties indicate that "honest" installers and contractors who comply with the R-value Rule are placed at a competitive disadvantage compared to those who do not comply. These comments suggest that the Rule should be revoked so that all members of the industry could compete on an even footing—even though the footing may be based on representations which the Commission deemed unfair and deceptive when it issued the Rule.[8]

One commenter stated that the Rule has had an adverse impact upon cellulose insulation manufacturers.[9] The commenter claims that when the Rule took effect, there were between 600 to 800 manufacturers of cellulose insulation, but that the number has fallen to about 200 at present. The commenter states that larger mineral wool manufacturers have larger budgets for research and development than do smaller cellulose manufacturers, which has led to an alleged concentration in the insulation market. The commenter alleges that the decline and concentration in the industry shows that the R-value Rule has had a negative impact upon small entities (particularly cellulose manufacturers). However, the comment demonstrates no causal relation between the Rule and the drop in the number of manufacturers of cellulose insulation. Indeed, this decline in numbers could be attributed to any of a myriad number of factors, included among which are economic conditions and the decline in new home construction in recent years. In addition, if it is true that larger manufacturers spend more than smaller manufacturers on research and development it is clearly not a result of the Rule.

The comments received that address this question do not provide a basis to conclude that the Rule has had a significant impact on a substantial number of small entities.

B. Question (2)

Is there a continued need for the Rule and all of its requirements?

The consensus of the commenters was that there is definitely a continued need for the R-value Rule. Several of these comments suggested that there is a need for a greater emphasis on enforcement activity by the Commission.[10]

An official of the Farmers Home Administration of the U.S. Department of Agriculture noted that:

Without honest and standardized labeling, the consumer, including home builders, would have no practical way of evaluating products on the market. Standardized labeling of products greatly aids home financing agencies such as FmHA in administering

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[4] Nine comments addressed concerns over the use of foil-faced building products in the state of Florida: Wilkinson Insulation Co., Document No. Z-4; West Coast Insulation, Document No. Z-7; L.C. Cassiday & Sons Florida, Inc., Document No. Z-8; Florida Chapter of the Insulation Contractors Association of America, Document No. Z-9; U-Back Insulation Contractors Inc., Document No. Z-11; Magic Triangle Inc., Document No. Z-13; Dierco Supply Corp. of Tampa, Document No. Z-15; Gale Enterprises, Inc., Document No. Z-23; and Quality Fiberglas Industries, Inc., Document No. Z-26.

Another commenter alleged that some manufacturers sell scrap material for blowing wool which could create "a large margin of error . . . ." Carolina Insulating of Charlotte, Inc., Document No. Z-2. Finally, another interested party voiced its concern that the fiberglass, rockwool and foam insulation industries were not providing accurate R-value figures. Johnnie Walker & Associates, Document No. Z-20.

[5] State of South Carolina Office of the Governor ("South Carolina"), Document No. Z-1 at 2; National Manufactured Housing Federation ("NMFH"), Document No. Z-10 at 1; State of Georgia, Office of the Governor, Office of Consumer Affairs ("Georgia"), Document No. Z-16 at 2; Rock Wool Mfg. Co., Document No. Z-19 at 1; Celotex Corp. Document No. Z-17 at 1; Manufactured Housing Institute ("MHI"), Public Document No. Z-21 at 1.

[6] American Rockwool, Inc., Document No. Z-5. *See also* Rockwool Industries, Document No. Z-3 ("A positive economic impact would be enjoyed if the rule were enforced . . . ."); Dow Chemical U.S.A., Document No. Z-22 at 1 (The Rule "has brought *added* attention to product quality control, product labeling, literature verification, advertising disclosure statements, compliance forms, and . . . educational training." (emphasis supplied)); Insulation Contractors Assoc., Document No. Z-27 at 1 ("A positive economic impact is achieved by the current rule. It helps to eliminate high R-value claims and the attendant inflated prices."). Another party commented that the Rule is ineffective and difficult to follow in the context of new homes sales, but concluded that "[w]e need help, but in the form of enforcement, not new or watered down regulations." Energy Saving People, Inc., Document No. Z-12.

[7] Applegate Insulation Systems, Document No. Z-14 at 3; R.J. Marshall Co., Document No. Z-24.

[8] Applegate Insulation Systems alleges that "most" contractors sell losse-fill insulation based on blown density rather than settled density. Document No. Z-14 at 3. In the Statement of Basis and Purpose for the Rule ("SBP"), the Commission recognized that such insulation settles after it is blown into place, and that such settling reduces the R-value of the area in which the insulation is installed. 44 FR 50218, 50220 (1979). The Commission specifically noted that the industry also agreed that such insulation should be tested (and installed) at its "settled density", to more accurately reflect its actual thermal performance over time. *Id.* Loose-fill insulation is properly installed by blowing it into an area, such as an attic, based upon a coverage chart which indicates how many bags of insulation need to be used to achieve the desire R-value after settling has occurred.

[9] Applegate Insulation Systems, Document No. Z-14 at 2-3.

[10] *See supra* notes 6-7 and accompanying text. *See also* South Carolina, Document No. Z-1 at 2 ("A few $10,000 fines in each state would help the consumers get what they [pay for]."); American Rockwool, Document No. Z-5 ("The Rule is good. The consumer can be served well. Small manufacturers can compete. The key is enforcement."); Celotex Corp., Document No. Z-17 at 1 ("There is a continued need for this labeling rule . . . but only if [it] is vigorously and consistently enforced.").

energy conservation policies in our construction programs.[11]

The comment received from the State of Georgia's Office of Consumer Affairs noted that Georgia recently adopted a regulation similar to the R-value Rule.[12] The comment states that Georgia's regulation will be adversely affected if the FTC decides to alter the R-value Rule.[13] The Georgia comment goes on to state that there is a continued need for the Rule, citing, as an example, the "severe problems associated with the installation of blown insulation in [Florida]."[14]

The Minnesota Department of Energy and Economic Development echoed a similar theme, commenting that the "[t]he lack of effective, meaningful standards would be disastrous for consumers, and alone should warrant continuing these regulations." [15] In addition, the Attorney General of the State of Minnesota observed that:

> The disclosure and performance requirements of the Rule also bind manufacturers to at least a minimal standard of accountability, at all levels of distribution and also provide a legal basis for action if insulation is found to be defective or sub-standard, or otherwise not in accordance with the disclosures provided by the manufacturer.[16]

Three comments recommended that the Rule be eliminated.[17] One party suggested that due to sheer numbers of contractors, the Rule is physically impossible to enforce. Because of this, the commenter suggested that "it is better to be without [the Rule] so that literal law-abiding contractors and manufacturers are not put at a competitive disadvantage by trying to follow the letter of the law when the majority of their competition continues to ignore the Rule." [18] The same observation was made by another commenter which suggested that "[i]nformational guidelines would make the buyer aware of the R-value principle without the cost of government enforcement."[19] Finally, the president of the Central Texas Division of U.S. Home Corporation asserted that the disclosures mandated by the Rule are misleading because they refer to the heat resistance of the insulation material alone instead of the heat resistance of a wall, ceiling or roof, as a unit. He concluded that the Rule should be completely eliminated, noting that "[t]hose of us that are doing a good job will continue to do so. Those of us that aren't, won't sell houses and will go out of business and the problem will be mitigated."[20]

The comments provide a basis to conclude that there is a continued need for the Rule. The comments received from large and small manufacturers, installers and State and Federal government agencies express general agreement that there is a continued need for the Rule, and urge the Commission to place a greater emphasis on enforcement in the future. Those comments which suggest that the Rule should be abolished do not provide a reasonable or factual basis as support for their assertions, and do not outweigh the clear support and need expressed for continuation of the Rule.

C. Question (3)

(a) What burdens, if any, does compliance with the Rule place on small entities?

(b) To what extent are these burdens ones which entities would also experience under standard and present business practice?

The responses to these questions indicated that the Rule does not place significant burden upon small entities. The comments identified recordkeeping, labeling, and "becoming familiar with all insulation manufacturers' recommendations" as common burdens.[21]

Another comment noted, however, that manufacturers "are only required to document and deliver performance information they would need in any event for their product labeling to the consumer. . . . The nominal cost of product testing for purposes of quality control and labeling [is] simply a cost of doing business." [22]

None of the comments received indicated that the R-value Rule places a significant burden upon small entities. Accordingly, there is no basis to find that the Rule places a significant burden on small entities. Any burdens which are imposed by the Rule are similar to those that would be experienced under standard and prudent business practice.[23]

D. Question (4)

What changes, if any, should be made to minimize the economic effect on small entities?

The general consensus of the commenters in response to this question was that no changes need be made to the R-value Rule.[24] Some comments suggested tha a more active enforcement program would be appropriate in the future.[25] Another comment recommended that small entities should be made aware of manufacturers' recommendations and specifications.[26]

Two comments recommended that the Rule be amended to exempt the manufactured housing industry.[27] In their comments, both the National Manufactured Housing Federation ("NMHF") and the Manufactured Housing Institute ("MHI") cite the fact that the U.S. Department of Housing and Urban Development ("HUD") regulates the manufactured housing industry. These HUD regulations, according to the comments, render application of the R-value Rule to their industry, "wastefully redundant."[28] Specifically noted is a

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[11] Farmers Home Administration, U.S.D.A., Document No. Z-6.

[12] Georgia, Document No. Z-16 at 1.

[13] *Id.* at 2-4.

[14] *Id.* at 3. The State of Florida recently conducted an investigation of insulation disclosures in the sale of new homes. That inquiry determined that problems exist in regard to the accuracy of those disclosures. *See also supra* note 5 and accompanying text.

[15] Minnesota Department of Energy and Economic Development ("Minnesota DEED"), Document No. Z-18 at 2.

[16] Minnesota Attorney General, Document No. Z-25 at 1-2.

[17] Applegate Insulation Systems, Document No. Z-14; R.J. Marshall Co., Document No. Z-24; U.S. Home Corp., Central Texas Division, Document No. Z-28.

[18] Applegate Insulation Systems, Document No. Z-14 at 3.

[19] R. J. Marshall Co., Document No. Z-24. While a primary goal of the Commission in issuing this Rule was to inform consumers of the R-value principle, an equally important aim of the Rule was to enable consumers to use R-value information to compare insulation products and select those with the greatest efficiency and potential for energy savings. SBP, 44 FR at 50218.

[20] U.S. Home Corp., Central Texas Division, Document No. Z-28 at 3.

[21] Dow Chemical U.S.A., Document No. Z-22 at 2. *See also* Celotex Corp., Document No. Z-17 at 1; Georgia, Document No. Z-16 at 3; NMHF, Document No. Z-10 at 2.

[22] Celotex Corp., Document No. Z-17 at 1.

[23] The Insulation Contractors Association observed that whatever burdens the Rule imposes, they are essentially the same as those experienced under a standard and prudent business practice, but that "not every business is operated prudently." Document No. Z-27 at 1.

[24] *See, e.g.*, South Carolina, Document No. Z-1 at 2; Rockwool Industries, Document No. Z-3 at 1; Georgia, Document No. Z-16 at 3; Minnesota DEED, Document No. Z-18 at 2; Rock Wool Mfg Co., Document No. Z-19 at 1; Minnesota Attorney General, Document No. Z-25 at 2; Insulation Contractors Association, Document No. Z-27 at 1.

[25] *See supra* note 10 and accompanying text.

[26] Dow Chemical U.S.A., Document No. Z-22 at 2.

[27] NMHF, Document No. Z-10; MHI, Document No. Z-21.

[28] NMHF, Document N. Z-10 at 2.

proposed amendment to the HUD regulations which would require sellers of manufactured homes to provide a "technical information sheet", to be prepared by the manufacturer, that would provide R-value information for the insulation in the home.[29] NMHF characterizes the R-value Rule as duplicating the requirements of the proposed HUD regulation.[30]

The comments of NMHF and MHI do not provide a basis for the conclusion that the Rule ought be amended to exclude the manufactured housing industry. The Commission rejected [31] a 1980 petition for such an exemption.[32] At that time, the petitioners asserted that the R-value Rule was unnecessary because of the construction standards issued by HUD.[33] The Commission determined that the existing HUD regulations do not require disclosure of comparative insulation information which could be used to compare competing mobile (or manufactured) homes.[34] The existing HUD regulations, like some state and local building codes, require a minimum level of thermal performance in mobile homes.[35] However, when issuing the Rule, the Commission found that mere minimum performance standards which do not require insulation R-value disclosures to new homes purchasers are not an adequate substitute for such R-value disclosures to consumers.[36] In addition, the proposed amendments to the HUD regulations would simply require that such manufacturers prepare a technical information sheet which would state, in R-values, the level of insulation contained in various purchase options available to the consumer.[37] Section 460.16 of the R-value Rule requires that consumers be given information concerning the type, thickness and R-value of the insulation installed in each part of a new home. It appears that printed information required under Section 460.16 of the R-value Rule would also be sufficient to satisfy the requirements of the proposed amendments to the HUD regulations. Finally, in their comments, NMHF and MHI assets that inasmuch as HUD is the "prime" regulator of their industry, HUD should be allowed to administer the R-value Rule instead of the FTC.[38] In turning down their exemption petition, the Commission observed that "all housing is subject to some form of local or federal standards; that mobile homes are subject to the HUD standard should not preclude mobile home sellers from disclosing comparative information under the Rule."[39]

In sum, there is no basis upon which to conclude that the Rule should be amended, in any manner, to minimize its economic effect on small entities.

E. Question (5)

To what extent does the Rule overlap, duplicate or conflict with other Federal, State or Local governmental rules?

Only a few comments directly addressed this question. The State of Georgia, as noted in Section B, above, has adopted a regulation similar to the R-value Rule.[40] Several comments noted that although some States have regulations covering this topic the R-value Rule does not generally overlap, duplicate or conflict with other regulations.[41]

NMHF commented that the R-value Rule "duplicates" the HUD regulations, discussed above concerning manufactured housing.[42] However, to the extent that those regulations require *some* informational disclosure, they are merely proposed amendments to the HUD regulations, not yet finalized rules. In addition, the proposed amendments to HUD's regulations do not require disclosure of the R-value information required under § 460.16 of the Rule. Therefore, no additional burden would be imposed upon small entities, even if the proposed amendments to the HUD regulations were to be issued.

F. Question (6)

Have technology, economic conditions or other factors changed in the area affected by the Rule since its promulgation in 1979 and, if so, what effect do these changes have on the Rule or those covered by it?

The comments received which addressed this question indicate that technological, economic and other changes have not affected the Rule and those covered by it in any way which would warrant amending the Rule.[43] The Celotex Corporation concluded its comment by noting that "[a]lthough the energy crunch is not with us today to the degree it was a few years ago, we must continue to encourage enlightened energy efficiency as a way of life in all aspects in order to keep our country from becoming more energy dependent in the future."[44]

List of Subjects in 16 CFR Part 460

Advertising, Insulation, Labeling, Trade practices.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85-7887 Filed 4-2-85; 8:45 am]

BILLING CODE 6750-01-M

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 410

Proposed Amendment to Comprehensive Plan and Water Code of the Delaware River Basin

AGENCY: Delaware River Basin Commission.

ACTION: Proposed rule and public hearing record; extension of comment period.

SUMMARY: Notice is hereby given that the Delaware River Basin Commission has extended the comment period to April 17, 1985 for submission of written testimony on a proposed amendment to the Commission's Comprehensive Plan and *Water Code of the Delaware River Basin* in relation to well registration. The proposed amendment calls for the

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[29] *Id.* at 1.

[30] *Id.* at 2. *Cf.*, MHI, Document No. Z-21. MHI incorrectly characterized the proposed HUD regulation as requiring disclosure not of R-values of insulation alone, but the thermal performance levels for the walls, floors and ceilings as an *insulating unit.*

[31] 48 FR 2969 (Jan. 24, 1983).

[32] NMHF, MHI, and the Indiana Manufactured Housing Association petitioned the Commission for an exemption from the R-value Rule. The Commission granted a temporary stay during the pendency of its review. 45 FR 68927 (Oct. 17, 1980). Later, the Commission solicited public comments on the proposed exemption. 46 FR 41080 (Aug. 14, 1981).

[33] 45 FR at 68927.

[34] 45 FR at 2972.

[35] *Id. See* 24 CFR §§ 3280.501-3280.511 (1984).

[36] SBP, 44 FR at 50232.

[37] 48 FR 37136, 37173 (Aug. 16, 1983) (to be codified at 24 CFR 3280.510) (proposed Aug. 16, 1983).

[38] NMHF, Document No. Z-10 at 2; MHI, Document No. Z-21 at 2. In discussing this matter with HUD staff, FTC staff was advised that while NMHF and MHI object to the application of the R-value Rule on the grounds that HUD is the primary regulator of their industry, they also object to regulation by HUD on the grounds that they are regulated by the FTC.

[39] 48 FR at 2973.

[40] *See supra* text accompanying notes 12-14.

[41] Rockwool Industries, Document No. Z-3 at 1; Minnesota DEED, Document No. Z-18 at 1; Dow Chemical U.S.A., Document No. Z-22 at 2; Minnesota Attorney General, Document No. Z-25 at 2; Insulation Contractors Association, Document No. Z-27 at 1.

[42] NMHF, Document No. Z-10 at 2. *See also* MHI, Document No. Z-21 at 2. HUD, however, specifically noted that it was evaluating its proposed amendments in relation to the R-value Rule "to ensure that manufacturers will not be subject to duplicative regulation." 48 FR at 37142.

[43] Rockwool Industries, Document No. Z-3 at 2; Georgia, Document No. Z-16 at 3; Rock Wool Mfg Co., Document No. Z-10 at 1; Celotex Corp., Document No. Z-17 at 2; Dow Chemical U.S.A., Document No. Z-22 at 2-3; Insulation Contractors Association, Document No. Z-27 at 2.

[44] Celotex Corp., Document No. Z-17 at 2.

registration by the four signatory states of all new and existing wells or projects that withdraw 10,000 gallons per day or more during any 30-day period.

DATES: A public hearing was held on March 27, 1985 in Philadelphia, Pennsylvania as first noticed in the February 22, 1985 **Federal Register**, Vol. 50, No. 36, pages 7350 and 7351 and corrected in the March 7, 1985 **Federal Register**, Vol. 50, No. 45, pages 9284 and 9285. Written testimony received by the Secretary and postmarked on or before April 17, 1985 will be included in the hearing record.

ADDRESS: Written comments should be submitted to Susan M. Weisman, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission, Telephone (609) 883–9500.

Authority: Delaware River Basin Compact (75 Stat. 688).

Susan M. Weisman,

Secretary.

March 28, 1985.

[FR Doc. 85–7880 Filed 4–2–85; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700 and 761

Applying the Prohibitions of the Surface Mining Act to the Surface Impacts of Underground Coal Mining

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of intent to conduct rulemaking.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) intends to propose a rule and develop a complete administrative record on the applicability of the prohibitions in sections 522(e) (4) and (5) of the Surface Mining Act which prohibit mining within one hundred feet or three hundred feet of certain specified structures or facilities. The rulemaking will focus on how these prohibitions apply to underground coal mining. Of particular importance in the rulemaking will be the relationship of section 522(e) and mining-related subsidence.

FOR FURTHER INFORMATION CONTACT: Brent Wahlquist, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240, (202) 343–4264.

SUPPLEMENTARY INFORMATION: Section 522(e) of the Surface Mining Control and Reclamation Act of 1977, 30 USC 1201 *et seq.* (the Act), prohibits surface coal mining operations in certain enumerated areas, subject to valid existing rights. Section 522(e)(4) of the Act prohibits surface coal mining operations within one hundred feet of the outside right-of-way line of any public road, subject to certain exceptions. Section 522(e)(5) of the Act bans such operations within one hundred feet of a cemetery, as well as within three hundred feet of any public building, school, church, community or institutional building, public park, and, unless waived by the owner, any occupied dwelling. The term "surface coal mining operations" is defined in section 701(28) of the Act and 30 CFR 700.5 of the regulations as including, subject to the requirements of Section 516 of the Act, "surface operations and surface impacts incident to an underground coal mine. . . ."

OSM implemented sections 522(e) (4) and (5) of the Act through the promulgation of 30 CFR 761.11 (1984). Because 30 CFR 761.11 (d), (e), (f) and (g) and the definition of "surface coal mining operations" do little more than repeat the relevant language of sections 522(e) (4) and (5) and 701(28) of the Act, respectively, these regulations do not address the interrelationship between the section 522(e) mining prohibitions and the definition of "surface coal mining operation" in detail.

In its January 21, 1985 reply brief in the pending challenge to § 761.11 in *In Re: Permanent Surface Mining Regulation Litigation*, No. 79–1144 (D.D.C. 1984), the National Wildlife Federation has focused on the possible ambiguities in § 761.11 which have existed since 1979. It is apparently unclear whether OSM's rules have the effect of prohibiting underground mining operations related to the features and facilities within the distance limits enumerated in sections 522(e) (4) and (5) of the Act. The resolution of this issue could have important consequences for the underground mining industry.

Accordingly, for the purpose of determining how the prohibitions of section 522(e) (4) and (5) and 30 CFR 761.11 (d), (e), (f) and (g) apply, OSM intends to propose a rule which will address the issue of what is a "surface impact" incident to underground mining subject to the requirements of Section 516. The rulemaking will fully explore the attendant legal, policy, environment and potential economic considerations.

Dated: March 29, 1985

John D. Ward,

Director, Office of Surface Mining.

[FR Doc. 85–7935 Filed 4–2–85; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–3–FRL–2810–1; EPA Docket No. AM013WV]

Proposed Revision to the West Virginia State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: The State of West Virginia has submitted regulations pertaining to the Prevention of Significant Air Quality Deterioration (PSD). The regulations have been determined to be equivalent to the Federal requirements contained in 40 CFR 51.24. EPA is proposing approval of the West Virginia PSD regulations as a revision of the West Virginia State Implementation Plan (SIP). The State submittal also meets the requirements of the Clean Air Act and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

DATE: Comments must be submitted on or before May 3, 1985.

ADDRESSES: Copies of the PSD regulations submitted by West Virginia are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Programs Branch, 6th & Walnut Streets, Curtis Building, Philadelphia, PA 19106, Attn: Michael Giuranna (3AM11)

West Virginia Air Pollution Control Commission, 1558 Washington Street, East, Charleston, West Virginia 25311, Attn: Carl G. Beard, II

FOR FURTHER INFORMATION CONTACT: Mike Giuranna (3AM11), PA/WV Section at the EPA, Region III address above, or telephone (215) 597–9189.

SUPPLEMENTARY INFORMATION: On June 13, 1984, the State of West Virginia submitted to the Environmental Protection Agency Regulation XIV ("Permits for the Construction and Modification of Stationary Sources of Air Pollution for the Prevention of Significant Deterioration") and requested that it will be reviewed and processed as a revision of the West Virginia State Implementation Plan (SIP).

The West Virginia PSD regulations are, in most instances, identical to those contained in 40 CFR 51.24. However, West Virginia did not adopt separate regulations dealing with obtaining variances from maximum allowable increases in sulfur dioxide and particulate matter in Class I areas but simply incorporated the EPA's regulations set forth in 40 CFR 51.24(p)(4), (5), (6) and (7) by reference. This procedure is acceptable to EPA. Also, in accordance with 40 CFR 51.4, a public hearing regarding this SIP revision was held on September 13, 1983.

Under the PSD Program the WVAPCC will be issuing permits and establishing emission limitations that may be affected by the Stack Height Regulation which was proposed by EPA on November 9, 1984 (49 FR 44818). For this reason EPA will request, in a letter, that the WVAPCC agree to enforce the Stack Height Regulation which was proposed in the above mentioned notice. We will also request that the WVAPCC revise their regulations when the final Stack Height Regulation is promulgated and that they inform all permit applicants that their PSD permits may then be subject to change. EPA will also request, in the same letter, that West Virginia commit to clarify several matters related to their PSD Regulations. These commitments are listed in the technical support document which is available for public inspection at the locations referenced above. EPA will not commence final rulemaking before these maters are resolved.

Conclusion

The PSD regulations have been reviewed and have been determined to meet the requirements of the Clean Air Act and 40 CFR 51.24. They are therefore being proposed for approval as a revision of the West Virginia SIP.

EPA invites the public to comment on whether this revision should be approved. Comments should be submitted to the EPA, Region III address given above.

Administrative Procedures

EPA's final decision to approve or disapprove the proposed revision will be based on the comments received and on a determination of whether the revision conforms to the requirements of section 110(a)(2) of the Clean Air Act and of 40 CFR Part 51.

The Office of Management and Budget has exempted this rule from the requirments of section 3 of Executive Order 12291. Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur Oxides, Nitrogen dioxides, Lead, Particulate matter, Carbon Monoxide, Hydrocarbons, Intergovernmental relations.

(Secs. 110 and 301, Clean Air Act)

Dated: January 14, 1985.

Stanley Laskowski,

Acting Regional Administrator.

[FR Doc. 7914 Filed 4-2-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 166

[OPP-250065; FRL 2808-2]

Exemption of Federal and State, Agencies for use of Pesticides Under Emergency Conditions; Notification to Secretary of Agriculture of Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretary of Agriculture.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of the U.S. Department of Agriculture a proposed regulation that would revise EPA's regulations on exempting Federal and State agencies from certain requirements for the use of pesticides under emergency conditions. This action is required by section 25(a)(2)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT:

By mail: Franklin Gee, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

Office location and telephone number: Rm. 1120B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-0592).

SUPPLEMENTARY INFORMATION: Section 25(a)(2)(A) of FIFRA provides that the Administrator shall provide the Secretary of Agriculture with a copy of any proposed regulation at least 60 days prior to signing it for publication in the **Federal Register**. If the Secretary comments in writing regarding the proposed regulation within 30 days after receiving it, the Administrator shall issue for publication in the **Federal Register**, with the proposed regulation, the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing within 30 days after receiving the proposed regulation, the Administrator may sign the proposed regulation for publication in the **Federal Register** anytime after the 30-day period.

Pursuant to FIFRA section 25(a)(3), a copy of this proposed regulation has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(Sec. 25, Stat. 973 as amended (7 U.S.C. 136 et seq.)

Dated: March 22, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85-7660 Filed 4-2-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR PART 180

[PP 4E2974/P363; FRL 2807-8]

Cyano(3-Phenoxyphenyl) Methyl-4-Chloro-Alpha-(1-Methylethyl) Benzeneacetate; Proposed Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for residues of the insecticide cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methylethyl) benzeneacetate in or on the raw agricultural commodity collards. The proposed regulation to establish a maximum permissible level for residues of the insecticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number [PP 4E2974/P363], must be received on or before May 3, 1985.

ADDRESS: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

In person, bring comments to: Rm 236, CM #2, 1921 Jefferson Davis Highway, Arlington, Va. 22202.

Information sumitted as a comment concernig this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be

disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in RM. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Donald Stubbs, Emergency Response and Minor use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1192).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 4E2974 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the Agricultural Experiment Stations of Alabama, Georgia, Maryland, North Carolina, and Oklahoma.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the insecticide cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methylethyl)benzeneacetate in or on the raw agricultural commodity collards at 10 parts per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance were an acute oral rat toxicity study with a median lethal dose (LD_{50} of 1 to 3 grams (g)/kilogram (kg) (water vehicle) and 450 milligrams (mg)/kg of body weight (bw) (dimethylsulfoxide vehicle); a 90-day dog feeding study with a no-observed-effect level (NOEL) of 500 ppm (12.5 mg/kg, highest dose tested); a 90-day rat feeding study with a NOEL of 125 ppm (6.25 mg/kg); an 18-month mouse feeding study with a NOEL of less than 100 ppm (15 mg/kg) with no oncogenci effects observed under the conditions of the study at dosage levels of 100, 800, 1,000 and 3,000 ppm (3,000 ppm being the highest dosage level tested in the study); a 24-month mouse feeding study with a NOEL of 10 to 50 ppm (1.5 to 7.5 mg/kg) for males and 50 to 250 ppm for females (7.5 to 37.5 mg/kg), no oncogenic effects were noted at dosage levels of 10, 50, 250, and 1,250 ppm (1,250 ppm being the highest dosage level tested); a 24-month rat feeding study that demonstrated no oncogenic effects at 1,000 ppm (50 mg/kg, only level tested, significantly decreased body weight was observed at this dose level); a 2-year rat feeding study with a NOEL of 250 ppm (12.5 mg/kg, highest level fed), no oncogenic effects were observed; a three-generation rat reproduction study with a NOEL of 250 ppm (12.5 mg/kg, highest level fed); teratology studies (in mice and rabbits), each negative at 50 mg/kg/day (highest dose tested); and the following mutagenicity studies: mouse dominant lethal (negative at 100 mg/kg of bw, which was the highest level fed); mouse host-mediated bioassay (negative at 50 mg/kg of bw, which was the highest level fed); Ames test *in vitro* (negative), and a bone marrow cytogenic study in Chinese hamster (negative at 25 mg/kg of bw). The following studies assessing neurological effects were performed: a hen study negative at 1.0g/kg of bw for 5 days repeated at 21 days; a rat (8-day) acute study with a NOEL of 200 mg/kg of bw; a 15-month rat feeding study which resulted in a systemic NOEL of 500 ppm (25 mg/kg) and a NOEL of 1,500 ppm (75 mg/kg) with respect to nerve damage.

The acceptable daily intake (ADI), based on the 2-year rat feeding study (NOEL of 12.5 mg/kg, or 250 ppm) and using a 100-fold safety factor, is calculated to be 0.1250 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 7.5 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.9134 mg/day; the current action for collards will increase the TMRC by 0.01226 mg/day, 1.34 percent. Published and pending tolerances utilize 34.54 percent of the ADI; the current action will utilize an additional 0.16 percent.

The nature of the residues is adequately understood and an adequate analytical method, electron-capture gas chromatography, is available for enforcement purposes. There are presently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency and the fact that there are no animal feed items involved, there will be no secondary residues in meat, milk, poultry or eggs; the tolerance established by amending 40 CFR 180.379 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 4E2974/P363]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

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

Dated: March 21, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR 180.379 be amended by adding and

alphabetically inserting the raw agricultural commodity collards, to read as follows:

§ 180.379 Cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methyl-ethyl)benzeneacetate; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Collards	10
* * * * *	

[FR Doc. 85-7662 Filed 4-2-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 264

[FRL-2810-2]

Hazardous Waste Management; Preparation of Permits for Hazardous Waste Land Treatment, Storage, and Disposal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Notice of extension of public comment period.

SUMMARY: This notice extends the public comment period for the *Permit Writers' Guidance Manual for Location of Hazardous Waste Land Storage and Disposal Facilities—Phase I: Criteria for Location Acceptability and Existing Applicable Regulations* to June 7, 1985.

FOR FURTHER INFORMATION CONTACT: Glen Galen, Office of Solid Waste (WH-565E), U.S. EPA, 401 M Street, SW., Washington, D.C. 20460, (202) 382-4678.

SUPPLEMENTARY INFORMATION: The announcement of availability of the guidance manual was made in the **Federal Register** on February 7, 1985 (50 FR 5268). Public comment was invited and commentors were asked to submit their remarks by April 8, 1985. However, distribution of the manual to requestors was unexpectedly delayed. Consequently, the EPA is providing interested parties with adequate opportunity to comment by extending the comment period by 60 days from the original deadline. The comment period is now extended until June 7, 1985.

Dated: March 21, 1985.

Jack W. McGraw,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 85-7913 Filed 4-2-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Part 1301

Head Start Program

AGENCY: Administration for Children, Youth, and Families (ACYF), Office of Human Development Services (OHDS), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule requests comments from the public on a proposed change in the Head Start program regulations governing the recruitment and selection of Head Start staff. We are proposing to require that local program recruitment and selection policies require a declaration from all individuals prior to employment, listing: (1) All pending and prior criminal arrests and charges and their disposition related to child abuse, neglect and/or child sexual abuse; and (2) all felony convictions and current criminal charges. In addition, the policies must specify that prior to permanent employment, individuals must be interviewed, that their personal and employment references must be checked, and that a State and national criminal record check must be made, to the extent permitted by State law.

We are also proposing that the policies must require that the grantee or delegate agency will expicitly advise every employee and volunteer that sexual activity with children is illegal, and have a plan for responding to suspected or reported abuse of Head Start children whether it occurs inside or outside the program. The purpose of these proposed changes is to help prevent the possibility of child abuse and neglect in Head Start programs.

DATE: In order to be considered, comments on this proposed rule must be received on or before June 3, 1985.

ADDRESS: Please address comments to: Clennie H. Murphy, Jr., Deputy Associate Commissioner, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, D.C. 20013.

It would be helpful if agencies and organizations would submit their comments in duplicate. Beginning June 17, 1985, comments will be available for public inspection in Room 5754, 400 6th Street SW., Washington, D.C. 20201, Monday through Friday between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Terry R. Lewis, 202-755-8208.

SUPPLEMENTARY INFORMATION:

I. Program Purpose

Head Start is a national program providing comprehensive developmental services primarily to low-income preschool children, age three to the age of compulsory school attendance, and their families. To help enrolled children to achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. In addition, Head Start programs are required to provide for the direct participation of parents of enrolled children in the development, conduct,and direction of local programs. In FY 1984, Head Start served 442,100 children through a network of more than 1,280 grantees and more than 670 delegate agencies which have an approved written agreement with the grantee to operate Head Start program.

While Head Start is targeted primarily on children whose families have incomes below the poverty line or are eligible for public assistance, the Administration for Children, Youth and Families' (ACYF) policy permits up to 10 percent of the Head Start children in local programs to be from families who do not meet these low income criteria. Head Start also requires that a minimum of 10 percent of enrollement opportunities be made available to handicapped children. Such children are expected to be enrolled in the full range of Head Start services and activities in a setting with their non-handicapped peers, and to receive needed special education and related services.

II. Purpose of the NPRM

The proposed amendment to the exiting regulations governing local Head Start grantee and delegate agency personnel policies is in response to reports of child abuse and neglect that have surfaced recently in a small number of child care programs across the nation . The Administration for Children, Youth and Families proposes to emphasize the importance of careful screening of employees in Head Start programs by requiring that Head Start programs have formal personel policies and procedures in place that will provide safeguards against the possibility of abuse and neglect, including sexual abuse, occuring in the Head Start program. In an effort to prevent sexual abuse, we propose that all employees and volunteers be advised that sexual activity with children is illegal. We also propose that grantees or delegate agencies develop a plan for responding to known or suspected abuse or sexual abuse of Head Start children

whether it occurs inside or outside the program.

III. Discussion of the Proposed Regulation

Current regulations at 45 CFR 1310.31 require that all Head Start grantees and delegate agencies have written personnel policies and include a list of items to be addressed in those policies. The proposed rule would further specify that these policies must provide that, before an employee is hired on a permanent basis, he or she will sign a declaration related to prior criminal arrests and convictions, and the agency will have conducted an interview of applicants and a check of personal and employment references, and that a State and national criminal record check of convictions for crimes related to child abuse and neglect be conducted, to the extent permitted by State law. This will allow the agency to hire an individual for a probationary period, if necessary, until all references and record checks are completed.

We are proposing that agencies be permitted to exclude from the declaration requirement offenses, other than offenses related to child abuse and/or child sexual abuse, committed by prospective employees prior to their 18th birthday which were finally adjudicated in a juvenile court or under a youth offender law. The reason we have proposed this exclusion is the fact that most States have a policy of sealing juvenile records. Courts take this action under the theory that potential damage to the youth of revealing convictions for criminal behavior outweighs any possible benefit to the public or future employers of having such information.

This exclusion underscores the importance of a comprehensive personal and employment reference check conducted with those individuals who have come in contact with the applicant on a day-to-day basis.

The Department views the above policy changes as essential safeguards. However, these changes must be complemented by continued parental involvement and vigilance.

Grantees should be aware that $25 million has been made available to States under the Social Services Block Grant (SSBG) for the purpose of training, including training in the prevention of child abuse in child care settings. These additional funds are intended as an incentive to States to establish laws and regulations by September 30, 1985 for national criminal record checks, employment history and background checks for operators, employees and staff of all child care providers and certain juvenile facilities. The SSBG agency in each State can provide details on planned State activities for the use of the additional $25 million and on any procedures developed for carrying out the employment history, background and nationwide criminal record checks.

In addition, the Department plans to make additional funds available to States through the National Center on Child Abuse and Neglect to assist States to develop and implement the new requirements.

Section 1301.31(e) also proposes to require that the grantee or delegate agency will explicitly advise every employee and volunteer that sexual activity with children is illegal, and develop a plan for responding to suspected or reported child abuse whether it occurs inside or outside the program.

We are proposing these changes to help prevent the possibility of child abuse and neglect and child sexual abuse in Head Start programs and to assure that grantees and delegate agencies are aware of State and/or local procedures and have a plan for responding to suspected or reported instances of child abuse and neglect.

The proposed rule requires these changes in personnel policies governing recruitment and selection of staff as a minimum. Head Start grantees and delegate agencies are, of course, encouraged to adopt additional personnel policies which safeguard, to the greatest extent possible, against child abuse, neglect and child sexual abuse.

IV. Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules, which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. The Department concludes that these regulations are not major rules within the meaning of the Executive Order because they do not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria.

Regulatory Flexibility Act of of 1980

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" an analysis must be prepared describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations, and small entities. While these regulations would affect small entities, these requirements are not substantial and in many instances the small entities may already meet some of the proposals. For these reasons, the Secretary certifies that these rules will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pub. L. 96-511, all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirement inherent in a proposed and final rule. These proposed rules do contain information collection requirements or increase Federal paperwork burden on the public or private sector. Section 1301.31 of this proposed rule contains information collection requirements. As required by the Paperwork Reduction Act of 1980, we will submit a copy of this proposed rule to the Executive Office of Management and Budget (OMB) for its review of the information collection requirements. Other organizations and individuals desiring to submnit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3201), Washington, D.C. 20503, Attention: Judy McIntosh, Desk Officer for HHS/HDS.

List of Subjects in 45 CFR 1301

Administrative practice and procedure, Education of disadvantaged, Grant programs/social programs, Child abuse and neglect.

(Catalog of Federal Domestic Assistance Program Number 13.600, Project Head Start)

Dated: January 29, 1985.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

Approved: March 13, 1985.

Margaret M. Heckler,

Secretary, Department of Health and Human Services.

PART 1301—[AMENDED]

For the reasons set forth in the Preamble, 45 CFR Part 1301, Subpart D, is proposed to be amended as follows:

1. The authority citation for Part 1301 is revised to read as follows:

Authority: Pub. L. 97–35, Title VI, Subchapter B, 95 Stat. 499 et seq. (42 U.S.C. 9831 et seq.), as amended by Pub. L. 98–558, Title I, 98 Stat. 2878 et seq. (42 U.S.C. 9831 et seq.).

2. Section 1301.31 is amended by reprinting paragraphs (a) and (b) for the convenience of the reader and by adding new paragraphs (c), (d), and (e) as follows:

§ 1301.31 Personnel policies.

(a) Head Start agencies shall establish personnel policies for themselves and their delegate agencies. At a minimum, such policies must govern the following: Staff qualifications, recruitment and selection, classification of positions, salaries, employee benefits (including leave, holidays, overtime, and fringe benefits), conflicts of interest, official travel, career development, performance evaluations, and employee management relations (including employee grievances and adverse actions).

(b) The policies shall be in writing, approved by the Head Start Policy Council or Committee, and made available to all Head Start grantee and delegate agency employees.

(c)(1) The policies must require that, before any employee is hired on a permanent basis, he or she must sign a declaration which lists:

(i) All pending and prior criminal arrests and charges and their disposition related to child abuse, neglect and/or child sexual abuse; and

(ii) All felony convictions and current criminal charges.

(2) The declaration required by paragraph (c)(1)(ii) of this section may exclude:

(i) Traffic fines of $50.00 or less;

(ii) Any offense, other than an offense related to child abuse and/or child sexual abuse, committed before the prospective employee's 18th birthday which was finally adjudicated in a juvenile court or under a youth offender law;

(iii) Any conviction the record of which has been expunged under Federal or State law; and

(iv) Any conviction set aside under the Federal Youth Corrections Act or similar State authority.

(d) The policies governing recruitment and selection of staff must provide that, before an employee is hired on a permanent basis, the grantee or delegate agency will have conducted:

(1) An interview of the applicant; and

(2) A check of personal and employment references to be provided by the applicant, including verification of the accuracy of the information provided by the applicant.

(3) A check to determine if the applicant has a criminal record at the State or national level of crimes related to child abuse and neglect, to the extent permitted by State law.

(e) The policies must require that the grantee or delegate agency will:

(1) Explicitly advise every employee and volunteer that sexual activity with children is illegal; and

(2) Develop a plan for responding to suspected or reported child abuse or sexual abuse of Head Start children whether it occurs inside or outside the program.

[FR Doc. 85–7808 Filed 4–2–85; 8:45 am]
BILLING CODE 4130–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 22, and 25

[Gen. Docket No. 84–1234; RM–4247; Gen. Dockets 84–689 and 84–690; RM–4426]

Land Mobile Satellite and Radiodetermination Satellite Services; Order Extending Time for Filing Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; Extension of comment period.

SUMMARY: The Common Carrier Bureau issues a Memorandum Opinion and Order responding to requests for extension of time in this proceeding concerning the use of radio frequencies in a Land Mobile Satellite Service and a Radiodetermination Satellite Service (published in the **Federal Register** on February 28, 1985, 50 FR 8149).

DATES: Complete applications for MSS must be received on or before April 30, 1985. Applications for RDSS must be received on or before April 5, 1985.

ADDRESS: Federal Communications Commission, 1919 M St., NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Jacqueline Spindler, International Policy Division, Common Carrier Bureau, (202) 632–4047.

SUPPLEMENTARY INFORMATION:

Memorandum Opinion and Order

In the Matter of Amendment of Parts 2, 22, and 25 of the Commission's Rules to Allocate Spectrum for, and to Establish Other Rules and Policies Pertaining to, the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services; General Docket 84–1234, RM–4247; Amendment of the Commission's Rules to Allocate Spectrum for, and to Establish Rules and Policies Pertaining to the Use of Radio Frequencies and the Licensing of Space and Earth Stations in a Radiodetermination Satellite Service, General Dockets, 84–689 and 84–690, RM–4426.

Adopted March 25, 1985.
Released March 26, 1985.
By the Chief, Common Carrier Bureau.

1. The Notice of Proposed Rulemaking to establish a land mobile satellite service (MSS) was released on January 28, 1985, and set March 29, 1985 as the due date for applications for such a service. The application date also applied to radio determination satellite service (RDSS), as noted at para. 44 in the MSS NPRM. In a footnote in the NPRM (n. 79), the Commission stated that "requests for reasonable extensions of the application period will be entertained." We have received extension requests from Skylink Corporation (Skylink) and Mobile Satellite Corporation (Mobilesat), together with supporting comments from Omninet Corporation (Omninet), and an opposition from Geostar Corporation (Geostar).[1]

2. Skylink argues for an extension of time based on several factors: the uncertainty of the L-band allocation, the fact that the MSS "clarification" was released only two weeks before the application date,[2] and the complexity, noted by the Commission in its NPRM, of MSS applications. Skylink also argues for a unified filing rather than the two-part application process established by the March 15 Public Notice. The two-part process, according to Skylink, raises difficulties in determining what information should be filed at each time, presents the possibility of "copycat" applications, and fails to alleviate the insufficiency of time. Mobilesat seconds the arguments supporting an extension of time, referring to the Skylink request, but suggests that the application process remain bifurcated. Omninet states its strong feeling that any extension of time

[1] We have also received a Motion for Modification from Global Land Mobile Satellite, Inc., asking that the Demand Study required by the NPRM be due on the Second (May 28) filing date rather than the first (March 29) date. This request is granted in part to the extent that we extend the March 29 date.

[2] The clarification took the form of a Public Notice, released March 15, 1985. It established a two-part application process, with "supplemental" applications (to meet Appendix B, satellite service, requirements) due May 28.

for MSS applications must be accompanied by a matching extension for RDSS applications. Omninet cites the Commission's determination, stated in its MSS NPRM, that the procedural dates for the two services should be identical so that applicants would not be foreclosed from submitting combined proposals. Geostar objects that to delay the RDSS procedure by another month is not justified and would severely prejudice it and other RDSS applicants.

3. In view of the arguments submitted in these motions, the Commission's express intention to entertain reasonable extension requests, and various informal expressions of concern from prospective applicants and other interested parties, we are persuaded that a brief extension of time for MSS applications is justified and necessary. We are further persuaded that the bifurcated application process creates more problems than it solves and should be abandoned. Because the addition of Appendix B requirements is basically a change in format rather than substance, and because we are by this order extending the March 29 due date, we do not foresee any significant difficulties for applicants in meeting a single application date of April 30, 1985. The Commission stated that the RDSS and MSS procedures should go forward in such a way as to allow a single applicant to apply to provide both services; this does not, however, require that the procedures have identical filing dates. We find that a further delay of one month in the RDSS proceedings would unduly prejudice RDSS applicants and is unjustifiable, and that these considerations outweigh concerns regarding the public availability of any joint application. Because of the shortness of this notice to RDSS applicants, however, we will postpone that service's filing date to April 5, 1985. Comments and petitions on the applications in both proceedings will be due thirty days after public notice of their filing.

4. Accordingly, it is ordered that the motion of Skylink Corporation that all MSS applications, in completed form, be due on April 30, 1985 is granted.

5. It is further ordered that the request of Geostar Corporation that the RDSS application date not be postponed is granted, to the extent noted above. These applications are therefore due on April 5, 1985.

6. This Order is issued under § 0.291 of the Commission's rules and *Order Delegating Authority*, FCC 82-435, released October 6, 1982, and is effective on its release date. Petitions for reconsideration under § 1.106 or applications for review under § 1.115 of the rules of this order may be filed within 30 days of the date of the public notice of this Order (see § 1.4(b)(2)).

7. The Secretary shall see that this Order is printed in the **Federal Register**.

Albert Halprin,

Chief, Common Carrier Bureau.

[FR Doc. 85-7929 Filed 4-2-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

Federal Acquisition Regulation (FAR); Definition of Women-Owned Small Businesses

Correction

In FR Doc. 85-6796 appearing on page 11523 in the issue of Friday, March 22, 1985, in the third column, under **SUPPLEMENTARY INFORMATION,** in the twelfth line, "representatives" is corrected to read "representations".

BILLING CODE 1505-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1152

[Ex Parte No. 274 (Sub-13)]

Rail Abandonments—Use of Rights-of-Ways as Trails

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments to notice of proposed rulemaking.

SUMMARY: At 50 FR 7200, February 21, 1985, the Commission proposed rules to provide for early notice to interested persons of the possibility of making a trails use request, and to allow interested persons to request use of rail rights-of-way as trails as long as they provide information concerning their willingness and ability to comply with certain financial requirements. The comments were due 30 days after **Federal Register** publication on March 25, 1985. At the request of numerous parties, the due date has been postponed 30 days to April 24, 1985.

DATE: Comments are due April 24, 1985.

ADDRESS: An original and 10 copies of comments referring to Ex Parte No. 274 (Sub-No. 13) should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Wayne A. Michel, (202) 275-7657.

By the Commission, Reese H. Taylor, Jr., Chairman.

Dated: March 25, 1985.

James H. Bayne,

Secretary.

[FR Doc. 85-7910 Filed 4-2-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 50329-5029]

Atlantic Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: NOAA issued a proposed rule March 20, 1985 (50 FR 11215), to modify buy-boat operating procedures. This proposed rule is within the framework of the 1983 recommendations of the International Commission for the Conservation of Atlantic Tunas and prohibits buy-boat operations when the daily limit for giant Atlantic bluefin tuna in the General category is one fish per day per vessel. NOAA extends the public comment period for an additional two weeks, because the initial response to the proposed rule indicates that a longer public comment period would be in the best interest of the public. A number of constituents suggested they needed more time to discuss the issue among themselves prior to responding to the proposed rule.

DATES: The public comment period is extended from April 4, 1985, to April 18, 1985.

ADDRESS: Send comments to NMFS, Northeast Region, Management Division, State Fish Pier, Gloucester, MA 01930-3097. Mark "Comments on 1985 Atlantic bluefin tuna proposed rulemaking" on the outside of the envelope.

FOR FURTHER INFORMATION CONTACT: William C. Jerome, Jr., 617-281-3600, extension 325; or David S. Crestin, 617-281-3600, extension 253.

Dated: March 28, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-7890 Filed 3-29-85; 3:31 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 50, No. 64
Wednesday, April 3, 1985

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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Programmatic Memorandum of Agreement Regarding Replacement of Historic Bridges in the State of Wyoming

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: The Advisory Council on Historic Preservation proposes to execute a Programmatic Memorandum of Agreement pursuant to § 800.8 of the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), with the Federal Highway Administration, U.S. Department of Transportation, and the Wyoming State Historic Preservation Officer, providing for the management of historic bridges which must be replaced. The proposed Programmatic Memorandum of Agreement will establish mechanisms by which historic bridges will be managed, taking into account the public interest, to meet the requirements of section 106 of the National Historic Preservation Act (16 U.S.C. 470(f)).

Comments due: May 3, 1985.

ADDRESS: Executive Director, Advisory Council on Historic Preservation, Western Division of Project Review, 730 Simms Street, Room 450, Golden, Colorado 80401.

Dated: March 28, 1985.

John M. Fowler,

Acting Executive Director.

[FR Doc. 85-7872 Filed 4-2-85; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

March 29, 1985.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, 404-W Admin. Bldg., Washington, D.C. 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. Attention: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Reinstatement

- Economic Research Service
- US Milled Rice Distribution Survey
- Biennially
- Businesses or other for-profit; Small businesses or organizations; 20 responses; 80 hours; not applicable under 3504(h)
- Shelby H. Holder, (501) 740-0583.

New

- Farmers Home Administration
- 7 CFR 1944-N, Housing Preservation Grants
- On occasion, Quarterly
- Individuals or households; State or local governments; Non-profit institutions; 3,800 responses; 9,700 hours; not applicable under 3504(h)
- John Pentecost, (202) 382-8983.

Jane A. Benoit,

Departmental Clearance Officer.

[FR Doc. 85-7949 Filed 4-2-85; 8:45 am]

BILLING CODE 3410-01-M

Office of the Secretary

Section 22 Import Fees; Determination of Quarterly Import Fees On Sugar

AGENCY: Office of the Secretary; USDA.

ACTION: Notice.

SUMMARY: Headnote 4(c) of Part 3 of the Appendix to the Tariff Schedules of the United States (TSUS) requires the Secretary of Agriculture to determine on a quarterly basis the amount of the fees which shall be imposed on imports of raw and refined sugar (TSUS items 956.05 956.15 and 957.15) under the authority of section 22 of the Agricultural Adjustment Act of 1933, as amended. This notice announces those determinations for the second calendar quarter of 1985. However, the application of the fee to TSUS item 956.15 has been suspended and the fees on TSUS items 956.05 and 957.15 have been changed by Presidential Proclamation effective April 1, 1985.

EFFECTIVE DATE: April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Robert G. Harper, Foreign Agricultural Service, Department of Agriculture, Washington, D.C. 20250 (202-382-9061).

SUPPLEMENTARY INFORMATION: By Presidential Proclamation No. 5164, dated March 19, 1984, Headnote 4 of Part 3 of the Appendix to the TSUS was amended to provide for the imposition of quarterly adjusted fees on imports of raw and refined sugar (TSUS items 956.05, 956.15, and 957.15). Paragraph (c)(ii) of Headnote 4 provides that the quarterly adjusted fee for item 956.15 shall be the amount by which the average of the adjusted daily spot (domestic) price quotions for raw sugar for the 20 consective market days immediately preceding the 20th day of the month preceding the calendar

quarter during which the fee shall be applicable (as reported by the New York Coffee, Sugar, and Cocoa Exchange), expressed in United States cents per pound, in bulk, is less than the market stabilization price. The market stabilization price for the second calendar quarter of 1985 is 21.57 cents per pound. Paragraph (c)(i) of Headnote 4 further provides that the quarterly adjusted fee for items 956.05 and 957.15 shall be the amount of the fee for item 956.15 plus one cent.

The average of the adjusted daily spot (domestic) price quotations for raw sugar for the applicable period prior to the second calendar quarter of 1985 has been calculated to be 18.8515 cents per pound. This would result in a fee of 2.7185 cents per pound for item 956.15, since the adjusted average spot price is less than 21.57 cents. Accordingly, the fee for items 956.05 and 957.15 for the second calendar quarter of 1985 would be 3.7185 cents per pound.

Headnote 4(c) requires the Secretary of Agriculture to determine and announce the amount of the quarterly fees no later than the 25th day of the month preceding the calendar quarter during which the fees shall be applicable. The Secretary is also required to certify the amounts of such fees to the Commissioner of Customs and file notice thereof with the **Federal Register** prior to the beginning of the calendar quarter during which the fees shall be applicable. This notice is therefore being issued in order to comply with the requirements of Headnote 4(c). However, the President has signed an emergency proclamation suspending the application of the fee the TSUS item 956.15 and has changed the fees on TSUS items 956.05 and 957.15 to one cent per pound effective April 1, 1985.

Notice is hereby given that, in accordance with the requirements of Headnote 4(c) of Part 3 of the Appendix to the Tariff Schedules of the United States, it is determined that the quarterly adjusted fees for raw and refined sugar (TSUS items 956.05, 956.15, and 957.15) for the second calendar quarter of 1985 would be as follows:

Item	Fee (cents per lb.)
956.05	3.7185
956.15	2.7185
957.15	3.7185

However, the President has signed an emergency proclamation suspending the application of the fee to TSUS item 956.15 and changing the fees for TSUS items 956.05 and 957.15 to one cent per pound, effective April 1, 1985.

Signed at Washington, D.C. on March 29, 1985.

Frank W. Naylor, Jr.,

Acting Secretary of Agriculture.

[FR Doc. 85-7956 Filed 3-39-85; 4:49 pm]

BILLING CODE 3410-10-M

Agricultural Marketing Service

National Advisory Committee for Tobacco Inspector Services; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I) announcement is made of the following Committee meeting:

Name: National Advisory Committee for Tobacco Inspection Services.

Date: April 23, 1985.

Place: The Ramada Inn, 525 Waller Avenue, Lexington, Kentucky, 40504.

Purpose: To review various regulations issued pursuant to the Tobacco Inspection Act (49 Stat. 731; 7 U.S.C. 511 *et seq.*), to hear from individuals who have requested to address the Committee and who have been prescheduled to do so, and to discuss the level of tobacco inspection and related services and the fees and charges associated with providing these services.

The meeting is open to the public. Public participation will be limited to written statements submitted before or at the meeting unless otherwise requested by the Committee Chairperson. Persons, other than members, who wish to address the Committee at the meeting are requested to contact Lionel S. Edwards, Director, Tobacco Division, Agricultural Marketing Service, 300 12th Street SW., U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-2567.

Dated: March 29, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-7950 Filed 4-2-85; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

1984-85 Milk Price Support Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determination of milk price support level and Commodity Credit Corporation purchase prices.

SUMMARY: This Notice of Determination provides that the level of price support for milk containing 3.67 percent milkfat for the period April 1, 1985, through September 30, 1985, shall be $12.10 per hundredweight. It also establishes prices at which butter, cheese and nonfat dry milk (NDM) will be purchased by the Commodity Credit Corporation (CCC) in order to carry out the support of the price of milk at that level.

EFFECTIVE DATE: April 1, 1985..

FOR FURTHER INFORMATION CONTACT: Indulis Kancitis, Dairy Division, ASCS-USDA, 5741 South Building, P.O. Box 2415, Washington, D.C. 20013 (202-447-3385).

The Final Regulatory Impact Analysis regarding the actions of this Notice of Determination is available from Charles N. Shaw, Dairy/Sweeteners Group, ASCS-USDA, P.O. Box 2415, Washington, D.C. 20013, (202) 447-7601..

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "major" since the provisions of this notice will have an effect on the economy exceeding $100 million.

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

The Regulatory Flexibility Act is not applicable to this notice since CCC is not required to publish a notice of proposed rulemaking with respect to the subject matter of this notice. Section 102(b) of the Dairy and Tobacco Adjustment Act of 1983 (Pub. L. 98-180) requires that the provisions of section 201(d) of the Agricultural Act of 1949, as amended by the 1983 Act, be implemented without regard to the provisions requiring notice and other public procedures for public participation in rulemaking as set forth in 5 U.S.C. 553, or in any directive of the Secretary of Agriculture.

This notice is not expected to have any significant impact on the quality of the human environment. In addition, this action will not adversely affect environmental factors such as water quality or air quality. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is required.

This program/activity is not subject to the provisions of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

On December 16, 1983, a notice was published in the Federal Register (48 FR 55886) establishing the level of price support at $12.60 per hundredweight for

milk containing 3.67 per centum milkfat for the period December 1, 1983, through September 30, 1985. That level of price support was established under the provisions of section 201(d) of the 1949 Act, as amended by Section 102 of the 1983 Act.

Section 201(d), as amended, further provides that if the Secretary of Agriculture estimates on April 1, 1985, that for the twelve-month period beginning on that date the CCC net price support purchases of dairy products would be in excess of six billion pounds milk equivalent, the Secretary may reduce the price support rate in effect on that date in the amount of 50 cents per hundredweight.

CCC supports the price of milk through the purchase of nonfat dry milk, butter and cheese. It is estimated that if the level of price support were continued at $12.60, CCC net price support purchases of such products for the twelve-month period beginning April 1, 1985, would be 11.7 billion pounds, milk equivalent. Since this estimate of CCC net price support purchases exceeds 6 billion pounds, milk equivalent, it has been determined that the level of price support in effect on April 1, 1985, shall be reduced from $12.60 per hundredweight by the amount of 50 cents per hundredweight. This notice implements that reduction.

It has been further determined that a level of support of $12.10 effective April 1, 1985, will assure an adequate supply of pure and wholesome milk to meet current needs. The reduction in the level of price support to $12.10 per hundredweight is needed to bring about a reduction in the currently excessive purchases and costs of the program. Even with the reduction in the price support level, it is expected that CCC net purchases for the twelve month period beginning April 1, 1985, will be 9.1 billion pounds milk equivalent.

Accordingly, the price of milk shall be supported, effective April 1, 1985, at a rate equivalent to $12.10 per hundredweight for milk containing 3.67 per centum milkfat. While this level of price support is effective for the period April 1, 1985, through September 30, 1985, a further adjustment in the level of price support may be made on July 1, 1985, in accordance with section 201(d) of the 1949 Act, as amended, based upon estimates of CCC net price support purchases of dairy products under the milk price support program for the twelve-month period beginning on that date.

It has been determined that the purchase by CCC of butter, cheese and nonfat dry milk produced on or after April 1, 1985, at the prices set forth in this notice will support the price of milk at a rate equivalent to $12.10 per hundredweight for milk containing 3.67 per centum milkfat.

Determination

Accordingly, the level of support for milk and the prices at which CCC will purchase the products of milk shall be as follows:

(a) The level of support for the period April 1, 1985, through September 30, 1985, shall be $12.10 per hundredweight for milk containing 3.67 percent milkfat.

(b) Effective Apr. 1, 1985, CCC purchase prices for butter, cheese and nonfat dry milk shall be as follows:

	Products Produced before Apr. 1, 1985 and graded and offered by Apr. 15, 1985 (dollars per pound)	Products Produced on or after April 1, 1985 or not graded and offered prior to Apr. 15, 1985 (dollars per pound)
Butter, 64- and 68-lb. blocks: (U.S. Grade A or higher)	[1] 1.4625	[2] 1.4325
Nonfat dry milk (spray), 50-lb. bags: (U.S. Extra Grade, but not more than 3.5 percent moisture)		
Nonfortified	0.91	0.8475
Fortified (Vitamins A and D)	0.9225	0.8575
Cheddar cheese, standard moisture basis:		
40- and 60-pound blocks, U.S. Grade A or higher (No vat shall contain more than 38.5 percent moisture)	1.3475	[3] 1.2875
500 lb. in fiber barrels, U.S. Extra Grade (No vat shall contain more than 36.5 percent moisture)	1.3175	[3] 1.2450

[1] This is the purchase price at New York City and Jersey City, Newark and Secaucus, New Jersey. The price of butter at any other point outside these cities will be the price at New York City minus 80 percent of the lowest domestic railroad through freight rate for frozen butter in effect on October 1 of each marketing year from such other point to New York City. The appropriate freight rate will be calculated on a per pound gross-weight basis for a 60,000-pound carlot. However, the price at any location shall be not less than the purchase price at New York City minus 3 cents per pound. In the area consisting of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland and Virginia, CCC will purchase only bulk butter produced in that area; butter produced in other areas is ineligible for offering to CCC in such states.

[2] Single nationwide price for butter at all locations.

[3] The cheese price will be adjusted for moisture content, except that the price adjustment for cheese with a moisture content of less than 34 percent will not exceed that for cheese with a moisture content of 34 percent.

(c) Any further adjustment in the level of support or CCC purchase prices will be announced by the Secretary of Agriculture in a notice published in the **Federal Register**.

(Sec. 201(d) of the Agricultural Act of 1949, as amended (7 U.S.C. 1446(d)); and secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714b and 714c))

Signed at Washington, D.C. on March 29, 1985.

John R. Block,

Secretary of Agriculture.

[FR Doc. 85-7934 Filed 3-29-85; 4:00 pm]

BILLING CODE 3410-05-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Minority Business Development Agency

Title: DOC Grantee Contract Awards Report

Form No.: Agency—None; OMB—None

Type of Request: New collection

Burden: 2,000 respondents; 2,000 reporting hours

Needs and Uses: The Department of Commerce, in responding to the requirements of E.O. 12432, will collect information on contract awards made by grant recipients receiving funding of $25,000 or more. The information will allow the Department to measure its progress in assisting minority firms

Affected Public: Individuals or households, state and local governments, businesses or other for-profit institutions, Federal agencies or employees, non-profit institutions, small business or organizations

Frequency: Semi-annually

Respondent's Obligation: Voluntary

OMB Desk Officer: Timothy Sprehe, 395-4814.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: March 27, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85-7918 Filed 4-2-85; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: 1985 Company Organization Survey (COS)

Form No.: Agency—NC-9901, NC-9907; OMB—0607-0444

Type of Request: Revision of a currently approved collection

Burden: 89,000 respondents; 75,092 reporting hours

Needs and Uses: The 1985 COS is needed to continually update and maintain the Census file of company and establishment records. The data will be used to assign establishment level payroll and employment size codes and to summarize the data by SIC, geographic location, and employment size groups for the County Business Patterns publication for the multiestablishment portion of the economic universe

Affected Public: Farms, businesses or other for-profit institutions, non-profit institutions, small businesses or organization

Frequency: Annually
Respondent's Obligation: Mandatory
OMB Desk Officer: Timothy Sprehe, 395-4814.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Date: March 28, 1985.

Edward Michals,
Departmental Clearance Officer.

[FR Doc. 85-7919 Filed 4-2-85; 8:45 am]
BILLING CODE 3510-07-M

Bureau of the Census

Census Advisory Committee (CAC) of the American Economic Association (AEA), the CAC of the American Marketing Association (AMA), the CAC of the American Statistical Association (ASA), and the CAC on Population Statistics; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463 as amended by Pub. L. 94-409), we are giving notice of a joint meeting followed by separate and jointly held (described below) meetings of the CAC of the AEA, CAC of the AMA, CAC of the ASA, and the CAC on Population Statistics. The joint meeting will convene on April 25, 1985, at the Westpark Hotel, 1900 North Fort Myer Drive, Arlington, Virginia 22209.

The CAC of the AEA is composed of 9 members appointed by the President of the AEA. It advises the Director, Bureau of the Census, on technical matters, accuracy levels, and conceptual problems concerning economic surveys and censuses; reviews major aspects of the Bureau's programs; and advises on the role of analysis within the Bureau.

The CAC of the AMA is composed of 9 members appointed by the President of the AMA. It advises the Director, Bureau of the Census, regarding the statistics that will help in marketing the Nation's products and services and on ways to make the statistics the most useful to users.

The CAC of the ASA is composed of 12 members appointed by the President of the ASA. It advises the Director, Bureau of the Census, on the Bureau's programs as a whole and on their various parts, considers priority issues in the planning of censuses and surveys, examines guiding principles, advises on questions of policy and procedures, and responds to Bureau requests for opinions concerning its operations.

The CAC on Population Statistics is composed of four members appointed by the Secretary of Commerce and five members designated by the President of the Population Association of America from the membership of that Association. The CAC on Population Statistics advises the Director, Bureau of the Census, on current programs and on plans for the decennial census of population.

The agenda for the combined meeting that will begin at 8:45 a.m. and end at 12:15 p.m. is: (1) Introductory remarks by the Director, Bureau of the Census, including staff changes and Bureau organization, budget and program developments, and other topics of current interest; (2) 1987 economic and agriculture censuses—issues in focus; (3) on-line maintenance of the Standard Statistical Establishment List data base; (4) update on 1990 census planning and operations, including (a) census tests, (b) criteria for site selection, and (c) status of automation—1985-1986 census test; (5) update on the Survey of Income Participation; and (6) Regional Outreach and Data Dissemination Program—what is it? and how do we evaluate it?

The agendas for the four committees in their separate and jointly held meetings that will begin at 1:30 p.m. and adjourn at 5:15 p.m. on April 25, 1985, are as follows:

The CAC of the ASA: (1) Census Bureau response to previous Committeee recommendations and Bureau activities of special interest to the CAC of the ASA, (2) quality and comparability of personal income data from surveys and the decennial census (joint with the other committtees), (3) automated matching, and (4) methodological changes in population estimates (joint with CAC on Population Statistics).

The CAC on Population Statistics: (1) Census Bureau response to previous Committee recommendations and Bureau activities of special interest to the CAC on Population Statistics, (2) quality and comparability of personal income data from surveys and the decennial census (joint with the other committees), (3) valuation of noncash benefits (joint with CAC of the AMA and CAC of the AEA), and (4) methodological changes in population estimates (joint with the CAC of the ASA).

The CAC of the AMA: (1) Census Bureau response to previous Committee recommendations and Bureau activities of special interest to the CAC of the AMA, (2) update on the Longitudinal Establishment Data file and the Harmonized System, (3) quality and comparability of personal income data from surveys and the decennial census (joint with the other committees), (4) valuation of noncash benefits (joint with CAC on Population Statistics and CAC of the AEA), and (5) transportation data issues (1983 Commodity Transportation Survey and proposed 1985 survey) (joint with the CAC of the AEA).

The CAC of the AEA: (1) Census Bureau response to previous Committee recommendations including an update on construction statistics and Bureau activities of special interest to the CAC of the AEA, (2) quality and comparability of personal income data from surveys and the decennial census (joint with the other committees), (3) valuation of noncash benefits (joint with

CAC on Population Statistics and CAC of the AMA), and (4) transporation data issues (1983 Commodity Transportation Survey and proposed 1985 survey) (joint with CAC of the AMA).

The agendas for the April 26 meetings that will begin at 8:45 a.m. and adjourn at 3:00 p.m. are:

The CAC of the ASA: (1) Automated coding (joint with the CAC on Population Statistics), (2)(concurrent seasonal adjustment and diagnostic procedure for determining seasonal adjustability (joint with CAC of the AEA), (3) development and discussion of recommendations, and (4) continued Committee and Bureau staff discussions and plans and suggested agenda for the next meeting.

The CAC on Population Statistics: (1) Automated coding (joint with CAC of the ASA), (2) 1990 census content and results of local public meetings, (3) development and discussion of recommendations, and (4) continued Committee and Bureau staff discussions and plans and suggested agenda for the next meeting.

The CAC of the AMA: (1) Industry statistics—new data needs (joint with CAC of the AMA), (2) electronic reporting in economic surveys, (3) reconstructing the Standard Industrial Classification (SIC)—consistency versus change (joint with CAC of the AMA), (4) development and discussion of recommendations, and (5) continued Committee and Bureau staff discussions and plans and suggested agenda for the next meeting.

The CAC of the AEA: (1) Industry statistics—new data needs (joint with CAC of the AMA), (2) concurrent seasonal adjustment and diagnostic procedure for determining seasonal adjustability (joint with CAC of the ASA), (3) reconstructing the SIC—consistency versus change (joint with CAC of the AMA), (4) development and discussion of recommendations, and (5) continued Committee and Bureau staff discussions and plans and suggested agenda for the next meeting.

All meetings are open to the public, and a brief period is set aside on April 26 for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Committee Liason Officer at least 3 days before the meeting.

Persons wishing additional information concerning these meetings or who wish to submit written statements may contact the Committee Liaison Officer, Mr. Melvin Hendry, Bureau of the Census, Room 3061, Federal Building 3, Suitland, Maryland. (Mailing address: Washington, D.C. 20233). Telephone (301) 763–3856.

Dated: March 29, 1985.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 85–7946 Filed 4–2–85; 8:45 am]

BILLING CODE 3510–07–M

Foreign-Trade Zones Board

[Order No. 296]

Resolution and Order Approving the Application of the Foreign-Trade Zone of Southeast Texas, Inc., for Foreign-Trade Zones in the Beaumont, Port Arthur and Orange, Texas Customs Port of Entry Areas

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Foreign-Trade Zone of Southeast Texas, Inc., a Texas non-profit corporation affiliated with the Beaumont, Port Arthur and Orange Navigation Districts and Jefferson County, filed with the Foreign-Trade Zones Board (the Board) on May 7, 1984, and amended on November 5, 1984, requesting a grant of authority for establishing, operating, and maintaining three general-purpose Foreign-Trade Zones in the Beaumont, Port Arthur and Orange, Texas, Customs port of entry areas, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application, subject to the condition that activation of approved zone space beyond 200 acres at Site 2 of the Port Arthur zone requires further Board approval.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zones. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 20th day of March 1985, pursuant to Order of the Board. The three attached grants of authority, one for each of the above ports of entry, are incorporated in this order.

Foreign-Trade Zones Board

Malcolm Baldrige,

Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

Grant To Establish, Operate, and Maintain a Foreign-Trade Zone in the Beaumont, TX, Port of Entry Area

Whereas, by an Act of Congress approved June 18, 1934, an Act "to provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Foreign-Trade Zones of Southeast Texas, Inc., (the Grantee) has made application (filed May 7, 1984, Docket No. 21–84, 49 FR 20747, and amended on November 5, 1984, 49 FR 44779) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone at sites in Jefferson and Orange Counties, Texas, adjacent to the Beaumont Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 115 at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone sites in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 20th day of March 1985, pursuant to Order of the Board.

Foreign-Trade Zones Board

Malcolm Baldrige,

Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

Grant To Establish, Operate, and Maintain a Foreign-Trade Zone in the Port Arthur, TX, Port of Entry area

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Foreign-Trade Zone of Southeast Texas, Inc., (the Grantee) has made application (filed May 7, 1984, Docket No. 21–84, 49 FR 20747) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone at sites in Jefferson County, Texas, adjacent to the Port Arthur Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 116 at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Any activation of approved zone space at Site 2 beyond 200 acres requires further Board approval.

Activation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone sites in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 20th day of March 1985, pursuant to Order of the Board.

Foreign-Trade Zones Board

Malcolm Baldrige,

Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

Grant To Establish, Operate, and Maintain a Foreign-Trade Zone in the Orange, TX, Port of Entry Area

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Foreign-Trade Zone of Southeast Texas, Inc., (the Grantee) has made application (filed May 7, 1984, Docket No. 21–84, 49 FR 20747) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone at sites in Orange County, Texas, adjacent to the Orange Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 117 at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations;

Activation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all

necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone sites in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 20th day of March 1985, pursuant to Order of the Board.

Foreign-Trade Zones Board
Malcolm Baldrige,
Chairman and Executive Officer.

Attest:
John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 85-7893 Filed 4-2-85; 8:45 am]
BILLING CODE 3510-DS-M

[Order No. 297]

Resolution and Order Approving the Application of the Foreign-Trade Zone of Southeast Texas, Inc., for a Special-Purpose Subzone Within the Beaumont Customs Port of Entry

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Foreign-Trade Zone of Southeast Texas, Inc., filed with the Foreign-Trade Zones Board (the Board) on November 8, 1984, requesting special-purpose subzone status for Bethelehem Steel Corporation's Beaumont Shipyard in Jefferson County, Texas, adjacent to the Beaumont Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest, if approval is subject to certain conditions, approves the application subject to the following conditions: (1) Any steel plate, angles, shapes, channels, rolled sheet stock, bars, pipes and tubes, classified under Schedule 6, Part 2, Subp. B, TSUS, and not incorporated into merchandise otherwise classified, and which is used in manufacturing shall be subject to Customs duties in accordance with applicable law, if the same item is then being produced by a domestic steel mill; and (2) in addition to the annual report, Bethlehem shall advise the Board's Executive Secretary as to significant new contracts with appropriate information concerning foreign purchases otherwise dutiable, so that the Board may consider whether any foreign dutiable items are being imported for manufacturing in the subzone primarily because of subzone status and whether the Board should consider requiring Customs duties to be paid on such items.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone in Jefferson County, TX, Adjacent to the Beaumont Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Foreign-Trade Zone of Southeast, Texas, Inc., grantee of Foreign-Trade Zone No. 115, has made application (filed October 30, 1984, Docket No. 49–84, 49 FR 44779) in due and proper form to the Board for authority to establish a special-purpose subzone at Bethlehem Steel Corporation's Beaumont Shipyard in Jefferson County, Texas, adjacent to the Beaumont Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied if approval is given subject to the conditions stated in the resolution;

Now, therefore, in accordance with the application filed October 30, 1984, the Board hereby authorizes the establishment of a subzone at Bethlehem's Beaumont Shipyard, designated on the records of the Board as Foreign-Trade Subzone No. 115A at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations, and those stated in the resolution accompanying this action, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefore.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 20th day of March 1985, pursuant to Order of the Board.

Foreign-Trade Zones Board
Malcolm Baldrige,
Chairman and Executive Officer.

Attest:
John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 85-7892 Filed 4-2-85; 8:45 am]
BILLING CODE 3510-DS-M

International Trade Administration

[C-122-404]

Preliminary Affirmative Countervailing Duty Determination; Live Swine and Fresh, Chilled and Frozen Pork Products from Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to producers or exporters in Canada of live swine and fresh, chilled and frozen pork products. The bonding/deposit rate is Can$0.053/lb.

We have notified the United States International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to suspend liquidation of all entries of live swine and fresh, chilled and frozen pork products from Canada that 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 on entries of these products in the amount equal to the estimated net subsidy.

If this investigation proceeds normally, we will make our final determination by June 10, 1985.

EFFECTIVE DATE: April 3, 1985.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-0161.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that there is reason to believe or suspect that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to producers or exporters in Canada of live swine and fresh, chilled and frozen pork products. For purposes of this investigation, the following programs are found to confer subsidies:

Federal Program

- Hog Stabilization Payments Provided Under the Agricultural Stabilization Act.
- Record of Performance Program.
- Hog Carcass Settlement Program.

Provincial Programs

- New Brunswick Hog Price Stabilization Program.
- Nova Scotia Pork Price Stabilization Program.
- Prince Edward Island Price Stabilization Program.
- Newfoundland Provincial Government Loans to Pork Producers.
- British Columbia Swine Producers Farm Income Plan.
- Alberta Pork Producer's market Insurance Plan.
- Saskatchewan Hog Assured Returns Program.
- Manitoba Hog Income Stabilization Plan.
- Ontario Weaner Pig Stabilization Plan.
- Quebec Farm Income Stabilization Insurance.
- Quebec Meat Sector Rationalization Program.

The bonding/deposit rate is Can$0.053/lb.

Case History

On November 2, 1984, we received a petition from the National Pork Producers Council (NPPC) on behalf of the domestic pork producers, which include hog producers and packers of unprocessed pork products. Seven domestic pork packers are co-petitioners. In compliance with the filing requirements of section 355.26 of our regulations (19 CFR 355.26), the petition alleged that producers or exporters in Canada of live swine and fresh, chilled and frozen pork products directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure or threaten material injury to a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate countervailing duty investigation, and on November 23, 1984, we initiated such an investigation (49 Fed. Reg. 47079). We stated that we expected to issue a preliminary determination by January 28, 1985. On January 4, 1985, we determined this investigation to be "extraordinarily complicated," as defined in section 703(c)(1)(B) of the Act. Therefore, we extended the period for making our preliminary determination to 65 until April 1, 1985 (50 Fed. Reg. 1613).

Since Canada is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the ITC of our initiation. On December 19, 1984, the ITC determined that there is a reasonable indication that these imports materially injure a U.S. industry (49 FR 50315).

We presented a questionnaire concerning the allegations to the government of Canada in Washington, D.C. on December 11, 1984. On January 29, 1985, we received a response to the questionnaire. We received supplemental responses on February 19, 20, March 5, 11, and 14, 1985.

Subsequent to our initiation, we received timely requests for exclusion from several Canadian firms. Questionnaires were presented to these firms in order that the Department might determine the extent to which they may have benefited from the alleged subsidy programs. Responses were received on February 25, 1985.

There are approximately 37,000 known producers and exporters in Canada of live swine and fresh, chilled and frozen pork products. For purposes of this preliminary determination the period for which we are measuring subsidization is the Government of Canada's 1984 fiscal year—April 1, 1983, to March 31, 1984.

Standing of Petitioner

The petition was filed by the National Pork Producers Council, an association of domestic hog growers, naming as the products to be investigated imports of live swine, and fresh, chilled and frozen pork products from Canada. Because the petitioner is an association of hog growers, respondents challenged its standing to file a petition against fresh, chilled and frozen pork products, as well as live swine.

According to section 702(b) of the Act, a petitioner must be a domestic interested party filing on behalf of an industry. 19 U.S.C. 1671a(b). Under section 771(9)(C) of the Act, an association of producers of a like product is an interested party qualified to be a petitioner. A like product, in turn, is defined in section 771(10) as like or most similar in characteristics and uses to the product under investigation. 19 U.S.C. 1677(10). NPPC members produce the like product, at least insofar as live swine are the product under investigation.

The second requirement for standing is that the petitioner file on behalf of an industry, which section 771(4) of the Act describes as all or most of the domestic producers of the like product. 19 U.S.C. 1677(4). As representative of the United States hog growers, NPPC clearly has filed on their behalf.

Seven pork packers, including one of the largest in the United States, are now co-petitioners. As producers of fresh, chilled and frozen pork products, they produce the product like the pork products under investigation and are therefore domestic interested parties qualified to be petitioners. Of those packers who advised the Department of their positions, a substantial majority either gave unqualified support to the petition or urged us to include pork products in the scope of the investigation of live swine from Canada. The co-petitioners satisfy the statutory requirements for filing on behalf of an industry. We find that the petitioners and co-petitioners have standing, having filed a petition on behalf of producers of live swine and fresh, chilled and frozen pork products. Since we have found that inclusion of the seven packers as co-petitioners provides standing with respect to pork products, we need not address whether the NPPC on behalf of the hog growers has standing with respect to pork products.

Scope of the Investigation

The products covered by this investigation are live swine and fresh, chilled and frozen pork products, as currently provided for in items 100.8500, 106.4020 and 106.4040 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the Federal Register (49 FR 18006).

Consistent with our practice in preliminary determinations, where a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

All values referred to are in Canadian dollars.

Upstream Issue

Respondents argue that benefits bestowed on live swine are not subsidies on fresh, chilled and frozen pork products unless the Department determines that there is an upstream subsidy within the meaning of section 771(A) of the Act, as amended by section 613(a) of the Trade and Tariff Act of 1984. We disagree. In his floor statement presenting to the Senate the bill as approved by the Conference Committee, Senator Dole defined upstream subsidies as subsidies on "inputs or components of the finished product" (130 Cong. Rec. S. 13970, daily ed. Oct. 9, 1984). Inputs (or parts) and components are transformed into different articles in the production process. For example, bolts used in producing engines are transformed in the process. The finished product (an engine) is different from the part.

No such transformation occurs here. The pork meat industry can be characterized as a single, continuous line of production. The pork meat is *not* transformed into a different article during its various stages (from live swine to fresh, chilled and frozen pork meat). The pork meat remains substantially unchanged. Moreover, the product yielded by each stage has no commercial use except in the next stage of production.

The primary, if not the sole, purpose of all segments of the industry is to produce a single end product—pork meat. Thus, unlike bolts, which can be used as parts in a variety of finished products besides engines, the raw material here (live swine) is only used to produce one finished product—pork meat. The fact that beyond this stage many separate processed products can be made (e.g., bacon and canned ham) is irrelevant. The key is that there is a single continuous line of production from live swine to pork meat.

Congress recognized the special nature of agriculture and foresaw that analyses of subsidies and injury involving agricultural products would be different from analyses of industrial products. Congress explicitly noted that the ITC faced special problems in determining the appropriate industry in agricultural cases. (See S. Rep. No. 249, 96th Cong., 1st Sess. 88 (1979)). Indeed, this report uses livestock as the example where growers and packers could be considered as one industry. Although Congress did not explicitly comment on the issue before us, logic dictates that since growers and packers can be considered as the same industry, and there is a single, continuous line of production resulting in one end product (that is not substantially transformed during the production process), a subsidy to any segment of the pork meat industry is applicable to the output of the industry.

In light of this decision, the requests for exclusion submitted by certain Canadian packers will not be considered. Based upon our analysis of the petition and the responses to our questionnaire, we preliminarily determine the following:

I. Programs Determined to Confer Subsidies

We preliminarly determine that subsidies are provided to producers or exporters in Canada of live swine and fresh chilled and frozen pork products under the following programs:

A. Federal Programs.—1. *Hog Stabilization Payments Provided Under the Agricultural Stabilization Act.* The Agricultural Stabilization Act (ASA) of 1957–58 was enacted to provide for the stabilization of the prices of certain agricultural commodities. Three groups of commodities are explicitly provided for within the ASA (cattle, hogs and sheep; industrial milk and industrial cream; and corn, soy beans, oats and barley) Other natural or processed agricultural products, with certain exceptions, may be designated by the Governor in Council. Programs of the ASA are administered by the Agricultural Stabilization Board (the Board), whose members are appointed by the Governor in Council.

The Board has the duty to take such action in accordance with the ASA as is necessary to stabilize the prices of the covered agricultural commodities at their prescribed prices, and the power to "pay to producers of an agricultural commodity . . . the amount by which the prescribed price exceeds a price determined by the Board to be the average price by which the commodity is sold . . ." Chapter A–9, section 10(1)(b).The mechanism by which the stabilization payment is determined is as follows: (1) "base price" is established, which is the average price of the commodity in representative markets for the 5-year period immediately preceding the year in review; (2) "prescribed price" is determined by taking a minimum of 90 percent of the base price and adjusting it

by an index reflecting changes in production costs; and (3) "average market return price" for the commodity for the year in review is established. The difference between the prescribed price and the average market return price is the amount of the gross stabilization payment.

In fiscal year 1984, because the average market return price for hogs of Can$66.98/hundredweight, fell short of the prescribed price of Can $71.75/hundredweight., the federal government authorized a stabilization payment of Can$4.77/hundredweight, or Can$8.19/hog, this amount was reduced by approximately 20 percent to reflect the proportion of Canadian production which was exported in fiscal year 1984, resulting in a net payment of Can$6.54/hog. All producers who sold hogs of index 80 (a grading factor) or better for slaughter were eligible for benefits under this program provided they submitted an application with appropriate proof of sale and slaughter. For 1983–84, there was a participation ceiling of 12,000 hogs per producer. However, while payments for fiscal year 1984 were authorized, no payments were actually disbursed during the period.

To avoid double counting, the federal government deducted the amount of any provincial stabilization payment from the federal stabilization payment before it reimbursed each producer. If the provincial payment was greater than or equal to the federal payment, the federal government made no stabilization payment. If the federal payment exceeded the provincial payout, the federal government paid the producer the difference between the federal and provincial stabilization payments.

Respondents have claimed that ASA payments are not countervailable because they are provided to more than a specific enterprise or industry, or group of enterprises or industries. In support of their claim, they cite a previous Department ruling that benefits provided to the agricultural sector are not limited in availability within the meaning of section 771(5)(B). *See Final Negative Countervailing Duty Determination: Fresh Cut Flowers from Mexico* (49 FR 15007).

We disagree with respondents' claim. Based on the information received, we find that ASA payments are made only to selected agricultural producers and that the level of price stabilization payments varies, at the discretion of the Agricultural Stabilization Board, from commodity-to-commodity. As such, we cannot conclude that ASA payments are available to more than a specific enterprise or industry, or group of enterprises or industries.

The legislation establishing the ASA program specifically lists "named products" that are eligible for price support payments: Livestock (cattle, hogs and sheep), certain dairy products (industrial milk and industrial cream), and certain grains (corn, soy beans, oats and barley). The ASA further allows the Governor in Council to designate other agricultural products ("designated products") for coverage.

Thus, three types of products are singled out in the legislation. Each year, prescribed prices are calculated for these named products, and if the prescribed price is less than the average market return price, payments can be authorized. Moreover, the ASA directs that for named products prescribed prices will be calculated as at least 90 percent of the base price (adjusted by a production cost index).

This treatment of named products can be compared to that of designated products. Designated products are only considered for ASA payments if the Governor in Council so directs. There apparently is no automatic calculation of a prescribed price and potential for ASA payments, as is the case with named products. Also, there is no legally mandated coefficient to be applied to the base price of designated products.

A second aspect of the scheme which leads us to conclude that ASA payments benefit a specific enterprise or industry, or group of enterprises or industries is the lack of neutrality in the formula for calculating the prescribed price. As noted above, there is not a prescribed coefficient for designated products. Even among the named products, there is discretion in setting the coefficient to be applied to the base price. Ninety percent only serves as a minimum.

Therefore, unlike the benefits discussed in *Flowers*, ASA payments are made to selected agricultural products in specific amounts and the specific rates of support provided depend upon the commodity in question. Hence, we preliminarily determine that ASA income support payments made to Canadian hog producers are countervailable.

In reaching this preliminary conclusion, we have focused primarily on the apparent selectivity in entitlement to ASA payments. Respondents have provided us with information that many agricultural products have been eligible for payments as designated products. Therefore, they have argued, the program is provided *de facto* to agriculture in general. We will seriously consider this issue for our final determination and invite interested parties' views.

Calculation of Benefit

In deciding whether to allocate the benefit arising from stabilization payments to the year of receipt or over time, we have examined whether the program under which the payments are authorized is recurring or non-recurring (exceptional), *i.e.*, has the program been established for a period of years, or is it designed as a "one-time, shot-in-the-arm" subsidy program for the live swine industry? In the case of recurring programs, we would allocate the benefit to the year of receipt; in non-recurring programs, we would allocate the benefit over time.

The support for this approach derives from the legislative history surrounding the Trade Agreements Act of 1979, where both the House and Senate Reports singled out "non-recurring subsidy grants or loans" for special treatment:

> Reasonable methods of allocating the value of such subsidies over the production or exportation of the subsidies benefiting from the subsidy must be used.

S. Rep. No. 249, 96th Cong., 1st Sess. 85 (1979). *See also* H. Rep. No. 317, 96th Cong., 1st Sess. 75 (1979).

In the case, we have determined that the Federal Hog Stabilization Program is long-standing. It was established in 1957 by the Agricultural Stabilization Act. Annual market prices and five-year prescribed prices have been calculated for at least the last 5 years; stabilization payments have been authorized for 3 of the last 5 years. In addition, we have no reason to believe that the program will not continue. For these reasons, we have determined that the benefits provided under this program are not exceptional and should, therefore, be allocated to the year of receipt.

Because no federal stabilization payments were received during the period we investigated, and because we are allocating the benefits to the year of receipt, we find that no subsidy was received under this program during the period we investigated. However, in cases where changes have occurred after the period for which we are measuring subsidization and prior to a preliminary determination, and where the changes are verifiable, the Department's practice is to adjust the bonding/deposit rate to correspond as nearly as possible to the eventual duty liability. *See Final Affirmative Countervailing Duty Determination: Oil Country Tublar Goods from Brazil* (49 FR 46570) and *Final Affirmative Countervailing Duty Determination: Certain Cast Iron Pipe Fittings from Brazil* (50 FR 8755). In this case, because

1984 federal stabilization payments are not being made, we are adjusting the bonding/deposit rate to reflect those payments. We calculated the adjusted bonding rate by applying the federal payment of Can $6.54/hog to all eligible hogs. We then divided that value by the total weight of the products under investigation. This calculation resulted in a bonding/deposit rate of Can $0.26/lb.

2. *The Record of Performance Program.* The Canadian Swine Record of Performance Program (ROP) is a national herd testing system designed to assist swine producers in improving breeding stock and to encourage the production of a uniformly wholesome, high quality pork product at minimal production costs. In accordance with the guidelines formulated by the Canadian Swine Record of Performance Advisory Board and Agriculture Canada, the ROP provides for performance testing on the farm and at central test stations for backfat thickness and growth rates. Information from the testing program enables within-herd ranking and comparison of animals for genetic merit. The Canadian government funds this program.

Because this program is limited to a specific industry, we preliminarily dertermine it to be counteravilable. To calculate the benefit, we divided the total value of the government contribution to the program during the period for which we are measuring subsidization by the total weight of the products under investigation. This resulted in a subsidy rate of Can $0.001/lb.

3. *Hog Carcass Settlement System.* Hog carcasses and meat in Canada are graded under the Hog Carcass Grading Regulations, pursuant to the federal Livestock Grading Program and the Canada Agricultural Products Standards Act. The cost of the hog marketing grading program is borne by the federal government. Participation in this program is voluntary—and producer can get grading services who sends hogs to a government inspection plant. While the government of Canada has stated that grading programs similar to this program are available to a wide spectrum of agricultural products, it has not provided any evidence to that effect. Therefore, we preliminarily determine this program to be countervailable because it appears to be limited to a specific industry.

We calculated the benefit by dividing the total weight of the products under investigation. This resulted in a subsidy rate of Can $0.001/lb.

B. *Provincial Stabilization Programs*—1. *Alberta Pork Producers' Market Insurance Program (PPMIP).* Pursuant to the Marketing of Agricultural Products Act, the PPMIP was created in 1981 to succeed the Stop Loss Program. The program assures hog producers in Alberta a specified level of return over certain production costs. It is administered by the Alberta Pork Producers Marketing Board (the Board), and is funded by a 1981 Can$10 million grant from the government of Alberta, by loans secured by the provincial government, by premiums paid by participating hog producers, and by interest earned on the foregoing.

Participation in the program is voluntary; however, once producers have elected to participate in the program they must continue to do so for its duration. All hog producers which were registered with the Board are eligible. For stabilization payments on increased herds (over 10 percent more than the number of hogs marketed in the immediately preceding year) producers must seek and obtain Board approval. Without such approval, the producer will be liable for premium payments due to excess production without receiving additional stabilization payments.

Support levels are adjusted quarterly to reflect fluctuations in the cost components of hog production. Support payments are calculated weekly, and paid monthly based on the difference between the support level and weekly average market price. In fiscal year 1984, the provincial share of the support payments made to hog producers averaged Can$2.93/hog.

2. *British Columbia Swine Producers—Farm Income Plan (SPFIP).* Created in 1979 pursuant to British Columbia's Farm Income Insurance Act, the SPFIP assures hog producers in British Columbia a specified level of return over certain basic production costs. The program is administered by the provincial Ministry of Agriculture and Food, the British Columbia Federation of Agriculture and the British Columbia Pork Producers' Association. The program is funded by contributions, in roughly equal proportions, by the provincial government and participating hog producers.

Participation in the program is voluntary and is open to all producers who are members of the British Columbia Pork Producers' Association and who have an annual production capacity of 300 eligible market hogs. Certain participation ceilings restrict the number of hogs for which the program provides coverage. There are also payment ceilings, above which benefits are reduced.

Participating hog producers receive stabilization payments in calendar quarters during which certain costs of production exceed market returns. Costs of production and market returns are determined monthly by the administering authorities. Stabilization payments are made quarterly and are equal to the difference between costs of production and market return, multiplied by the number of eligible hogs sold, less a discount representing the producer's contribution. Producers make contributions to SPFIP in all quarters, regardless of whether costs of production exceed market returns. In fiscal year 1984, the provincial share of the support payment to hog producers averaged Can$10.73/hog.

3. *Manitoba Hog Income Stabilization Plan (HISP).* Created in 1983 pursuant to The Farm Income Assurance Plans act, the HISP provides price support payments to hog producers in Manitoba. The program is administered by the provincial Ministry of Agriculture and the Manitoba Hog Producers' Marketing Board. It is funded by premiums from participating producers and from the government of Manitoba. The government also makes loans to HISP, if needed, during periods when payouts are made to producers.

Participation in the program is voluntary and is open to all producers registered with the Manitoba Hog Producers' Marketing Board. Coverage is limited to 1,250 hogs per calendar quarter, per producer, with special provision for higher ceilings for multiple family unit producers.

Participating producers receive payments at the end of each quarter in which the market price for hogs falls below a support level. This price support level is 87 percent of a cost of production model, which is recalculated each quarter. Producer premiums are deducted from the proceeds realized upon the sale of hogs. Provincial government contributions account for approximately 30 percent of the stabilization payment; the balance is funded by members' premiums, up to a maximum of 2 percent of the sale price. In fiscal year 1984, the provincial share of the support payment to hog producers averaged Can$5.26/hog.

4. *The New Brunswick Hog Stabilization Program (NBHSP).* The NBHSP, a joint program of the New Brunswick Department of Agriculture and the Hog Marketing Board (the Board), was established in 1974. Its purpose is to assure hog producers greater income stability, to enable hog producers to remain in the business during periods of low hog prices, and to provide a more uniform volume of pork production for the processing industry.

All hog producers in New Brunswick who market hogs through the Board are eligible to participate in this program. The maximum quarterly eligibility is equal to 25 percent of the producer's previous twelve-month production level. Each producer may carry forward any unused eligibility for a maximum of three additional quarters.

The Board establishes the price at which farmers make the required contributions. When the weekly market price exceeds this level, hog producers make the required contribution. If the weekly market price increases, the required contribution increases proportionately up to Can$2.50/hog.

In addition, the Board establishes a stabilization price which is based on certain production costs. When the average weekly price falls below the stabilizing price, the Board will make deficiency payments equal to the difference between the average weekly price and the stabilization price. In fiscal year 1984, this program was in a deficit position. Producers were not required to fund their share of the deficiency payment through a premium, but received a loan from the province to cover their share of the payment. We have no information on the terms or conditions of their loans. In fiscal year 1984 the deficiency payment, which may include loans, was Can$18.26/hog.

5. *Nova Scotia Pork Price Stabilization Program (NSPPSP).* Pursuant to the Nova Scotia Natural Products Act, NSPPSP is administered by the Pork Producers Marketing Board of Nova Scotia (the Board) pursuant to the Nova Scotia Pork Marketing Plan of August 9, 1983. The purpose of the program is to assure price stability with respect to the production of hogs by compensating farmers for fluctuations in the hog price sycles and by assuring that producers consistently recover direct operating costs. Participation is open to all hog producers who market hogs through the Board. Maximum eligibility is established annually according to the producers' existing production facilities.

The NSPPSP is funded by producer contributions to the Pork Price Stabilization Fund. Each quarter, the Board sets and reviews the price at which producers contribute to the fund (the contribution price) and the price at which they receive payments from the fund (the stabilization price, which is set to reflect current, direct, out-of-pocket operating costs). When the weekly market price exceeds the producers' contribution price, the Board deducts the amount of the contribution from the sale price and deposits it in the Stabilization Fund. When the weekly market price falls below the stabilization price, the Board pays the producer the full amount of the difference between the weekly market price and the stabilization price. In fiscal year 1984, this program was in a deficit position. Producers were not required to fund their share of the deficiency payment through a premium, but received a loan from the province to cover their share of the payment. We have no information on the terms or conditions of their loans. In fiscal year 1984, the deficiency payment, which may include loans was Can$16.74/hog.

6. *Ontario Weaner Pig Stabilization Plan.* This program was initiated on April 1, 1980, pursuant to Ontario's Farm Income Stabilization Act. Ontario does not have a price stabilization program for slaughter hogs; this program covers only weaner pigs. A weaner pig is a swine, at the stage of production at which it has been separated from the sow, but before it becomes a pig and eventually a slaughter hog. This program is intended to contribute towards providing income stabilization to sow weaner producers. It is administered by the Farm Income Stabilization Commission on Ontario's Ministry of Agriculture and Food.

Particpation in the program is voluntary and is open to all sow weaner producers in Ontario with a minimum of four sows. A producer's participation is limited to the number of weaner pigs produced by 100 sows in any production period. (Production periods under this program are 6-month time periods, from April 1 to September 30 and from October 1 to March 31 of the following year.) The cost of this program is shared by the provinical government, which pays two-thirds of the costs, and participating producers which pay one-third.

Participating producers receive suport payments in any production period in which the average market price for that period is below a support price. This support price is calculated at 95 percent of the average price in the five years immediately preceding the production period, adjusted for cash-cost changes. Price and cash costs are those used in the Federal ASA program for slaughter hogs. Payments are calculated on a slaughter hog basis and then converted to a per sow basis by formula. In fiscal year 1984, the provincial payments under this program amounted to Can$3,660,444.

7. *The Prince Edward Island (PEI) Price Stabilization Program.* In accordance with the PEI Natural Products Marketing Act, the PEI Hog Commodity Marketing Board established the PEI Price Stabilization Program in 1973. The purpose of the program is to provide income stability to hog producers by compensating them for fluctuations in prices caused by traditional hog-price cycles.

The Price Stabilization Fund is made up of equal producer and provincial government contributions. Contributions are made when the weekly average market price for hogs exceeds a predetermined level and are increased proportionally as the average weekly price for hogs increases. If the weekly market price for hogs falls below the contribution level no payments are made. If the weekly market price declines below a second predetermined level (the stabilization price). The PEI Hog Commodity Marketing Board will pay the producer a deficiency payment equal to of one-half the difference between the depressed market price and the stabilization price. Support levels are recalculated quarterly in March, June, September and December.

Participation in the program is voluntary; there are no minimum production requirements. However, producers are only eligible to receive deficiency payments on the number of hogs equal to the average number of hogs marketed in the previous quarter, up to a ceiling of 4,000 hogs in four consecutive quarters. In fiscal year 1984, the provincial share of the support payment to hog producers averaged Can $9.33/hog.

8. *Quebec: Farm Income Stabilization Insurance.* The 1981 Act Respecting Farm Income Stabilization Insurance was enacted to guarantee a net annual income to participating producers. The program is administered by the Regie des Assurances Agricoles du Quebec (Regie), which annually decides the level at which it supports agricultural producers.

In order to participate in this program, Quebec producers must agree to stay with the program for at least 5 years and produce at least 100 hogs and own 15 sows during the first year, with a participation ceiling of 5,000 hogs or 400 sows.

At the end of each year, the Regie calculates the level of stabilization income, which is based on a farm production model designed to cover fixed costs, variable costs and producers' remuneration. The provincial government annually assesses participants for contributions to the income stabilization fund. These funds make up one-third of the Stabilization Insurance Fund. The provincial government provides the balance. In fiscal year 1984, the provincial share of the support payment to hog producers averaged Can $15.08/hog.

9. *Saskatchewan Hog Assured Returns Program (SHARP).* SHARP was established in 1976 pursuant to the Saskatchewan Agricultural Returns Stabilization Act and provides stabilization payments to hog producers in Saskatchewan at times when market prices fall below certain production costs. The program is administered by the Saskatchewan Pork Producers' Marketing Board on behalf of the provincial Department of Agriculture.

Participation in the program is voluntary and is open to all hog producers in the province. Coverage is limited to 1,500 hogs per producer each calendar quarter. During the period we investigated, nearly 75 percent of all hogs marketed in Saskatchewan were covered by the program.

This program is funded by contributions from participating producers and by matching amounts from the provincial government. Producer contributions range from 1.5 to 4.5 percent of market returns on the sale of hogs which are covered by the program. Whenever the balance in the SHARP account is insufficient to make payments to participants, the provincial government loans the needed funds to the Program.

The stabilization price under this program is the total of all cash production costs plus 75 percent of non-cash costs. This price is determined each calendar quarter. Stabilization payments are made at the end of each quarter to each participating producer whose average price for hogs marketed in that quarter is less than the stabilization price. However, in order to make a stabilization payment, the difference between average market price obtained and the stabilization price must be least Can$1.00. For fiscal year 1984, the provincial share of the support payment to hog producers averaged Can$8.09/hog.

Summary of Provincial Stabilization Programs

Stabilization plans similar to these programs may also be available with respect to some other agricultural commodities in each of the provinces cited above. However, neither the government of Canada nor the provincial governments have provided information on (1) the other commodities receiving stabilization payments, (2) the value of those payments, and (3) the mechanism by which those payments are determined. Therefore, for purposes of this preliminary determination, we find that benefits under these plans are provided to a specific industry, and are countervailable.

Calculation of Benefits

We have determined that the various provincial stabilization benefits are being provided under recurring government programs, and have, therefore, allocated the benefits to the year of receipt. For each province, we calculated the total stabilization payment made during the period for which we are measuring subsidization (after netting out producer contributions), and divided that value by the total weight of the products under investigation. In those provinces where deficiency payments may be in the form of loans (Nova Scotia and New Brunswick) we have treated the entire amount as having been received, because we did not have information on the terms and conditions of the loans. Adding the benefits found for the provincial stabilization programs together resulted in a bonding/deposit rate of Can$0.025/lb.

D. *Other Provincial Programs*—1. *Newfoundland: Low-Interest Loans to Provincial Pork Producers.* In 1983–84, the Newfoundland provincial government provided loans to provincial pork producers. We have not received any information as to the terms or conditions of these loans. However, the Canadian federal government estimates a benefit to the hog producers of Can$0.85/hog. For purposes of this preliminary determination, we have applied this value to all hogs sold in Newfoundland, and have calculated a benefit under this program of Can$0.00002/lb.

2. *Quebec: Grants to Pork Packers under the Meat Sector Rationalization Program.* Between 1975 and 1978, the Quebec Ministry of Agriculture, Fisheries and Food instituted the meat Sector Rationalization Program. The purposes of the program are: (1) To encourage the development of the Quebec meat sector, (2) to ensure Quebec producers with viable, sustained outlets for their production, (3) to provide the industry with a competitive advantage, and (4) to direct businesses to new markets.

Under this program the Quebec Ministry of Agriculture, Fisheries and Food provides technical assistance and grants for the establishment, standardization, expansion, or modernization of slaughterhouses, processing plants, or plants preparing foods containing meat. All businesses operating or wishing to operate such a facility are qualified to participate in this program. Total capital costs must exceed Can$10,000 and processors may not depreciate new equipment to the extent of any grant.

Because benefits under this program are limited to the meat sector, we preliminarily determine that they are provided to a specific enterprise or industry, or group of enterprises or industries, and are therefore countervailable. The Government of Quebec has reported that three packers currently in operation have received benefits under this program. Using the grant methodology, we have calculated a benefit of Can$0.00005/lb.

II. Programs Determined Not To Confer Subsidies

We preliminarily determine that subsidies are not being provided to producers or exporters in Canada of live swine and fresh, chilled and frozen pork products under the following programs:

A. *Federal Financing Programs.*—1. *Farm Credit Act.* Canada's Farm Credit Act of 1959 provides long-term loans to individual farmers, farming corporations, and cooperative farm associations for the acquisition of farm land and for a broad array of agricultural operations. The program is administered by the Farm Credit Corporation.

Loans are for a maximum term of thirty years and must be secured. With two exceptions, these loans are made at a fixed annual rate of interest which is 1 percent above a base rate. This base rate is the same as the yield on government of Canada bonds with maturities of five to ten years. The exceptions to the above are (1) loans which were approved between October 18, 1979, and March 31, 1980, at a fixed rate of 12 percent per annum, and (2) a special provision for interest rates on loans approved on or after November 15, 1968, part of the proceeds of which are used to repay prior loans under this program.

2. *Farm Syndicates Credit Act.* The Farm Syndicates Credit Act provides long-term loans to farming corporations, cooperative farm associations and other farm associations for the purchase or improvement of farm buildings and land, and for the acquisition of farm machinery. The program is administered by the Farm Credit Corporation.

Loans are made for up to Can$100,000, on terms which vary according to the use of the proceeds. Interest rates are prescribed by the Farm Credit Corporation and are set at levels which cover the Corporation's cost of money and its administrative expenses.

3. *Special Farm Assistance Programs.* Under this program, long-term loans were available to distressed farming enterprises. The program ended on June 28, 1984.

Summary of Federal Financing Programs

The enabling federal legislation indicates that financing under these Federal plans is available without restriction to the producers of any agricultural product in Canada. Because the programs do not designate specific products for receipt of financing or establish differing terms for specified products, we preliminarily determine that the Federal financing programs for agriculture are available to more than a specific enterprise or industry, or group of enterprises or industries, and hence are not countervailable. At verification, we will carefully look at the availability of funds under these programs. *See Final Negative Countervailing Duty Determination: Fresh Cut Flowers from Mexico* (49 FR 15007).

B. *Provincial Programs.*—1. *Grant Programs in Quebec.* (a) *Grants under the Act to Promote the Development of Agricultural Operations.* Under the Act to Promote the Development of Agricultural Operations, grants are provided to assist farmers in carrying out improvements on their farms.

(b) *Grants to Provincial Pork Packers under the Quebec Industrial Assistance Act (IAA)* The IAA was established in 1971 to promote economic development in Quebec. Through it, the government of Quebec may make low-interest loans, grants, loan guarantees, and may purchase shares in manufacturing and commercial operations. Two pork packers received grants under this program.

Summary of Quebec Grant Programs

Because the programs do not designate specific products for receipt of funding to establish differing terms for specified products, we preliminarily determine that the Quebec grant programs for agriculture are available to more than a specific enterprise or industry, or group of enterprises or industries, and hence are not countervailable. At verification, we will carefully look at the availability of funds under these programs.

2. *Financing Programs in Quebec.* (a) *Low-Interest Financing under an Act to Promote Long-Term Farm Credit by Private Institutions.* The Office du Credit Agricole du Quebec offers low-cost financing to agricultural producers who maintain a profitable farm as their primary occupation and who demonstrate a need for such financing. The Act permits lenders to make variable-interest, low-cost long-term loans to borrowers so that the interest charged does not exceed the prime rate plus ½ percent. In addition, twice a year the Office reimburses a part of the interest, equal to half the difference between 4 percent and the interest charged, to the borrower. On loans granted before November 23, 1983, the Office returns to the producer the portion of the interest exceeding 2½ percent on the first Can$15,000 and the portion exceeding 8 percent on the next Can$135,000 (Can$185,000 for group operations).

(b) *Low-interest Financing under the Farm Credit Act.* Under the Farm Credit Act, the Office du Credit Agricole du Quebec can make long-term loans on conditions similar to those in the Act to Promote Long-Term Farm Credit by Private Institutions. The interest charged is 2.5 percent on the first Can$15,000 and 8 percent on the remaining amount up to Can$150,000 (or Can$200,000 for group operations). Since August 1, 1978, the Office has ceased making loans although it may, under exceptional circumstances, make loans when private lenders are unable to do so. In addition, the Fonds d'Assurances-prete Agricoles et Forestiers guarantees loans and lines of credit extended to farmers by private institutions under the Farm Credit Act even though these loans carry no interest subsidy.

(c) *Low-Interest Guaranteed Loans under An Act to Promote Farm Improvement.* The Office du Credit Agricole guarantees medium-term loans of up to Can$200,000, whose variable interest-rate may not exceed the prime rate plus ½ percent. Twice a year the Office reimburses borrowers a portion of the interest equal to 3 percent on the first Can$15,000 of loans. All farmers who maintain profitable farms as their primary occupation, and who demonstrate a need for such financing, qualify.

(d) *Interest-Free Loans under the Act to Promote the Establishment of Young Farmers.* The Act to Promote the Establishment of Young Farmers was promulgated on September 1, 1982. It permits newly established farmers between the ages of 18 and 40 to receive interest subsidies equal to the net interest payable for five years on the first Can$50,000 of a loan.

(e) *Low Interest Mortgages under the Farm Loan Act.* The Farm Loan Act permits the Office du Credit Agricoles du Quebec to reimburse a portion of the interest on the first Can$15,000 of a mortgage granted by the Farm Credit Corporation of Canada. The Office will reimburse one half of the difference between 4 percent and the rate charged by the Office. On loans granted by the Farm Credit Corporation of Canada (FCC) before November 21, 1981, the Office reimburses the difference between 2½ percent and the rate charged by the FCC on these loans.

Summary of Quebec Financing Plans

Because the programs do not designate specific products for receipt of funding nor do they establish differing terms for specified products, we preliminarily determine that the Quebec financing programs for agriculture are available to more than a specific enterprise or industry, or group of enterprises or industries, and hence are not countervailable. At verification, we will carefully look at the availability of funds under these programs.

(3) *New Brunswick.* (a) *Financing Provided Under the Farm Adjustment Act of 1980.* Under the Farm Adjustment Act of 1980, the Farm Adjustment Board was empowered to make loans for the purchase of farms and farmland, farm buildings, equipment, and for the conversion of short-term liabilities to medium- and long-term obligations; and to make loans and grants for the conversion of ineffectively used land to more effective use. In addition, the Farm Adjustment Board may conduct research, investigations and feasibility studies to assist in land-use or land-management projects aimed at increasing income and employment in rural areas.

(b) *Loans, Leases and Purchasing Rights under the Farm Adjustment Act of 1984.* The New Brunswick Regulations under the Farm Adjustment Act of December 20, 1984 permits the Farm Adjustment Board to extend loans, lease property and sell land to qualifying farmers.

Summary of New Brunswick Financing Programs

Because the programs do not designate specific products for receipt of funding or establish differing terms for specified products, we preliminarily determine that the New Brunswick financing programs for agriculture are available to more than a specific enterprise or industry, or group of enterprise or industries, and hence are not countervailable. At verification, we will carefully look at the availability of funds under these programs.

4. *Nova Scotia Loans Received Under the Agriculture and Rural Credit Act.* The Agriculture and Rural Credit Act establishes the Nova Scotia Farm Loan Board whose purpose is to make low-interest loans for agricultural purposes. Because the programs do not designate specific products for receipt of funding or establish differing terms for specified products, we preliminarily determine that the Nova Scotia financing programs

for agriculture are available to more than a specific enterprise or industry, or group of enterprises or industries and hence are not countervailable. At verification, we will carefully look at the availability of funds under these programs.

5. *Alberta Agricultural Development Corporation.* The Agricultural Development Corporation provides low-interest loans and loan guarantees to farming operations, including hog producers. Because the programs do not designate specific products for receipt of funding or establish differing terms for specified products, we preliminarily determine that the Alberta financing programs for agriculture are available to more than a specific enterprise or industry, or group of enterprises or industries and hence are not countervailable. At verification, we will carefully look at the availability of funds under these programs.

6. *British Columbia: Interest Free Loans and Loan Guarantees by British Columbia Ministry of Agriculture and Food.* Under British Columbia's Agricultural Credit Act, interest-free loans and loan guarantees are provided to eligible farmers. Because the programs do not designate specific products for receipt of funding or establish differing terms for specified products, we preliminarily determine that the Alberta financing programs for agriculture are available to more than a specific enterprise or industry, or group of enterprises or industries, and hence are not countervailable. At verification, we will carefully look at the availability of funds under these programs.

V. Programs Determined Not To Be Used

We preliminarily determine that producers or exporters in Canada of live swine and fresh, chilled and frozen pork products did not use the following programs:

A. *Ontario Red Meat Plan.* Under this program, various grants and services are provided by Ontario's Ministry of Agriculture and Food to producers of beef and sheep. Benefits are not available to producers or exporters of live swin and fresh, chilled and frozen pork products.

B. *Swine Sales Assistance Policy.* This program is designed to promote the distribution within Ontario of pure-bred animals of superior quality. Grants of Can$2.50 per animal, to a maximum of Can$100 per sale may be made to Breeders' Clubs. These grants are to assist in defraying the costs of conducting consignment sales. No payments were made under this program during the period we investigated.

IV. Programs for Which More Information Is Needed

A. *Ontario Farm Tax Reduction Program.* This program, which orginated in 1970, provides rebates of 60 percent of municipal property taxes on farmland to all eligible farmers in Ontario. For farm property to be eligible, annual municipal property taxes must be at least Can$20, and it must realize a gross annual production of Can$5,000 if located in eastern and northern Ontario, and Can$8,000 if located elsewhere in the province. Farmers who have received such rebates for a property and convert it to non-farm use must repay all debates of the preceding ten years, with interest.

This program appears to be countervailable as a regional subsidy within the Province. However, we need more information regarding benefits received by the producers of live swine and fresh, chilled and frozen pork products during the period we investigated.

B. *British Columbia-Partial Interest Reimbursement.* This program operates to reimburse farmers in British Columbia for part of the interest on loans. The government of British Columbia has not provided the enabling legislation for this program. Further informaiton is needed to determine whether benefits under this program are limited to a specific enterprise or industry, or group of enterprises or industries, in specific regions of the Province.

C. *Manitoba Agricultural Credit Corporation Loan Guarantees.* The government of Manitoba, through the Manitoba Agricultural Credit Corporation, provides guarantees for short-term loans to farmers for general operating expenses. The enabling legislation for this program has not been provided. Further information is needed to determine whether or not benefits under this program are limited to a specific enterprise or industry, or group of enterprises or industries, in specific regions of the Province.

D. *New Brunswick Loan Guarantee Under the Livestock Incentives Act, January 1976.* The Livestock Incentives Act of January 1976 empowers the Ministers of Agriculture and Rural Development to pay a lender the amount of loss sustained by it as a result of a livestock loan if the terms of the loan were consistent with government regulations. In addition, the Minister may extend a grant to farmers or on their behalf, if the farmers conducted their operations in accordance with a farm plan approved by government officials. Further information is needed to determine whether or not benefits under this program are limited to a specific enterprise or industry, or group of enterprises or industries. To the extent that this program may be countervailable, we also need more information regarding benefits received by the producers of live swine and fresh, chilled and frozen pork products during the period we investigated.

E. *Saskatchewan Financial Assistance for Livestock and Irrigation.* Under this program, low-interest loans are made available to farmers for the production of livestock, including swine, and to finance irrigation of farmland. Loans to each particpant are limited to Can$350,000. Further information is needed to determine whether or not benefits under this program are limited to a specific enterprise or industry, or group of enterprises or industries, in specific regions of the province.

F. *Saskatchewan: Livestock Investment Tax Credit.* Saskatchewan's 1984 Livestock Tax Credit Act provides a tax credit of Can$3.00 per hog for hogs slaughtered between March 22, 1984, and December 31, 1986. Producers and other eligible claimants must own the hogs for a minimum feeding period of 60 days and either slaughter them themselves or market them for immediate slaughter. There is a Can$100 deduction from the credit in each year in which this tax credit is claimed. Any unused portion of the tax credit may be carried forward by the claimant for up to seven years after the year in which not used.

Because these tax credits were not available until the 1984 tax year, for which returns would be filed no earlier than 1985, it is virtually impossible to quantify the value of these benefits based on the information we now have. We will seek additional information regarding the benefits provided under this program at verification.

V. Program Determined Not To Exist

A. *Proposed Tripartite Red Meat Stabilization Programs.* Proposals exist for the introduction of stabilization programs for five sectors of red meat production in Canada, including one for hog producers. These would provide national uniformity in support levels within each sector and would replace the existing federal and provincial programs. These proposals are now in the discussion stage; thee is not yet any legislative foundation for them. Accordingly, we determine that this program does not exist.

Verification

In accordance with section 776(a) of the Act, we will verify the data used in

making our final determination. As previously stated, if any statement in the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidattion of all entries of live swine and fresh, chilled and frozen pork products from Canada which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to require a cash deposit or bond for each such entry of this merchandise of Can$0.053/lb. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) 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 determine whether these imports materially injure or threaten material injury to a U.S. industry 120 days after the Department makes its preliminary affirmative determination or 45 days after its final affirmative determination, whichever is latest.

Public Comment

In accordance with § 355.35 of our regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on May 9, 1985, at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, room B-099, at the above address within 10 days of the publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least 10 copies of pre-hearing briefs must be submitted to the Deputy Assistant Secretary by May 3, 1985. Oral presentations will be limited to issues reaised in the briefs. All written views should be filed in accordance with 19 CFR 355.34, within 30 days of the publication of this notice, at the above address and in at least 10 copies.

This notice is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: March 26, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-7847 Filed 4-2-85; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing New Specific Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Hong Kong

March 29, 1985.

Under the terms of paragraph 7(e)(IV) of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 23, 1982, as amended, between the Government of the United States and Hong Kong, the United States Government has converted the following categories to specific limit categories for the 1985 agreement year:

Category	Description	12-mo. limit
337	Playsuits	* 652,800
359 pt.[1]	Vests	* 2,019,600
359 pt.[2]	Coveralls	* 969,000
359 pt.[3]	Infants' Sets	* 5,796,228
369 pt.[4]	Shop Towels	* 1,191,012
605 pt.[5]	Thread	* 481,395
649	Brassieres	* 564,974
652	Underwear	* 3,583,365
659 pt.[6]	Knit Swimwear	* 411,316
659 pt.[7]	Coveralls	* 1,071,000

[1] In Category 359, only TSUSA numbers 379.0258, 379.0664, 379.3949, 379.5700, 379.5820, 383.0648, 383.0652, 383.4200, and 383.4320.
[2] In Category 359, only TSUSA numbers 379.0822, 379.6410, 383.0828 and 383.5027.
[3] In Category 359, only TSUSA numbers 383.0350, 383.0855, 383.3060, and 383.5057.
[4] In Category 369, only TSUSA number 366.2740.
[5] In Category 605, only TSUSA number 310.9140.
[6] In Category 659, only TSUSA numbers 379.2340, 379.3170, 370.9100, 379.9570, 383.1920, 383.2239, 383.8300, 383.8400 and 383.9255.
[7] In Category 659, only TSUSA numbers 379.9605, 379.1325, 383.2005, 383.2327, 383.8605 and 383.9210.
* Dozen.
* Pounds.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782) and Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

The purpose of this notice is to advise the public of these 1985 limits.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-7923 Filed 4-2-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Navy

Naval Research Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Personnel Research and Development Center (NPRDC) Review Team of the Naval Research Advisory Committee Panel on Laboratory Oversight will meet on April 18-19, 1985, at the Naval Personnel Research and Development Center, San Diego, California. The agenda will include technical briefings from NPRDC which will assist the team in their efforts to make a thorough evaluation of the scientific, technical and engineering health of the activity. The first session of the meeting will commence at 8:30 a.m. and terminate at 4:00 p.m. on April 18. The second and final session will commence at 8:30 a.m. and terminate at 5:30 p.m. on April 19. All sessions of the meeting will be open to the public.

The purpose of the meeting is to examine the scientific, technical, and engineering health of NPRDC.

For further information concerning this meeting contact: Commander M.B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217-5000, Telephone number (202) 696-4870.

Dated: March 29, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85-7928 Filed 4-2-85; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before May 3, 1985.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 426-7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: March 29, 1985.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Special Education and Rehabilitative Services

Type of Review Requested: Reinstatement
Title: Three-year State Plan for Vocational Rehabilitation Services Under Title I of the Rehabilitation Act, as amended
Agency Form Number: ED (RSA)—SPVR
Frequency: Annually; Three-year cycle
Affected Public: State or local governments
Reporting Burden: Responses: 83; Burden Hours: 1,600
Recordkeeping Burden: Recordkeepers: 83; Burden Hours: 6.6

Abstract: Title I of the Rehabilitation Act of 1973 as amended authorizes grants to assist State Vocational Rehabilitation (VR) agencies in providing vocational rehabilitation services to handicapped individuals so that they may prepare for and engage in gainful employment to the extent of their capabilities. Each State submits a State plan in order to receive Federal funds.

Type of Review Requested: Revision
Title: Quarterly Cumulative Caseload Report
Agency Form Number: ED 113
Frequency: Quarterly
Affected Public: State or local governments
Reporting Burden: Responses: 328; Burden Hours: 328
Recordkeeping Burden: Recordkeepers: 82; Burden Hours: 82

Abstract: Section 13 of the Rehabilitation Act of 1973 as amended by Pub. L. 98-221 requires the Secretary to report on activities and expenditures under the Act. This report, submitted by State Vocational Rehabilitation Agencies, provides caseload data used to track numbers and types of clients served and caseload flow through the Vocational Rehabilitation system.

Office of Planning, Budget and Evaluation

Type of Review Requested: New
Title: Evaluation of Indian Controlled Schools
Agency Form Number: P75-3P
Frequency: One time
Affected Public: Local educational agencies; schools operated by Indian tribes or Indian organizations
Reporting Burden: Responses: 2,811; Burden Hours: 2,933.7
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The information will provide a factual basis for evaluating the payroll costs, academic standards and attendance levels in Indian controlled schools. The affected public includes those schools and selected public of Bureau of Indian Affairs' schools, and the students and staff within them. The information will be used by Congress in determining future funding levels for the Indian controlled schools.

[FR Doc. 85-7968 Filed 4-2-85; 8:45 am]

BILLING CODE 4000-1-M

Economic Regulatory Administration

[Docket No. ERA-FC-84-006; OFP Case No. 61047-9243-20-24]

Order Granting to AES Placerita, Inc., an Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted to AES Placerita, Inc. (AES Placerita), a permanent cogeneration exemption from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), its proposed electric powerplant to be located in Newhall, California. The exemption granted permits the use of natural gas as the primary energy source for the identified powerplant.

The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: The order and its provisions shall take effect on June 3, 1985.

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, D.C. 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT:

K.E. Workman, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-073, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202) 252-1730

Steven E. Ferguson, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: On January 31, 1984, AES Placerita filed a petition with ERA requesting a

permanent cogeneration exemption for its proposed electric powerplant from the prohibitions of Title II of FUA.[1] AES Placerita proposes to construct and operate a cogeneration facility that will include two Brown Boveri Type 8 gas turbines (85.2 MW total output) coupled with two waste heat recovery boilers, one capable of producing 250,000 pph of 1015 psia, 85% saturated steam, and one generating 181,750 pph of 598 psia, 887°F steam and 34,000 pph of 769 psia, 309°F steam for delivery to a single steam turbine. The steam turbine produces approximately 16.8 MW of electricity.

The cogeneration facility will occupy six and one-half acres, and an associated water storage site will occupy one-half acre.

The cogeneration facility will be operated 24 hours per day, 7 days per week. Downtime for scheduled and unscheduled maintenance is anticipated for a maximum of 33 days per year.

Natural gas will be the sole fuel utilized, and there will be no emergency standby fuel. Also, no fuel will be stored on the site.

Based on a 91% annual fee factor of 7972 hours per year operations, the following are the average annual production and fuel rates forecasted for the facility.

Electric Production—782,810,000 kWh/yr
Steam Export—1,992,900,000 lbs/yr
Fuel Consumption—72,741$\times 10^6$ Btu/yr LHV
(Natural Gas)—80,625$\times 10^6$ Btu/yr HHV.

AES Placerita intends to use steam injection at the rate of 1.8 pounds of steam per pound of fuel to control emissions of nitrogen oxides. A selective catalytic reduction process will also be used to reduce nitrogen oxide emissions. An oxidation catalyst to control carbon monoxide emissions will be installed within each boiler. Efficient combustion and a clean fuel will provide Best Available Control Technology (BACT) for the other pollutants.

AES Placerita, Inc., will obtain approximately 945 gallons of water per minute from the TOSCO Enhanced Oil Recovery Corporation (TEORCO) as a by-product of TEORCO's steam injection process for oil recovery. (The water is currently reinjected into the ground by TEORCO.) The majority of the water will be used to produce process steam for TEORCO. Water for NO_x control and the steam-electric generation boiler (approximately 150 gpm with an additional 20 gpm required intermittently) will be obtained from the Newhall County Water District and will be further treated in a demineralizer unit.

There will be two sources of liquid effluents from the project. Neutralized chemicals and blowdown water form one effluent stream of approximately 210 gallons per minute. Spent regenerate chemicals (dilute sulfuric acid and sodium hydroxide) and rinse water from the cogeneration facility demineralizer will be neutralized. This water, the cooling tower blowdown, and the boiler blowdown will then be injected into the ground along with TEORCO's returned process water.

TEORCO currently has a permit to inject its process water, and this permit will be amended to include the 210 gpm of cogeneration process water.

A septic tank system will be provided on-site for the cogeneration facility for its sanitary waste water effluent.

The cogeneration facility is classified as an electric powerplant under FUA because more than 50 percent of its net annual electric generation will be sold.

On September 28, 1984, AES Placerita submitted an amended petition for permanent exemption. On October 22, 1984, an extension was granted for 45 days until December 7, 1984. Notice of that extension was published in the **Federal Register** on November 1, 1984 (49 FR 44011). On December 5, 1984, an additional extension was granted to AES Placerita for 90 days until March 7, 1985. Notice of that extension was published in the **Federal Register** on December 18, 1984 (49 FR 49168). On February 6, 1985, AES Placerita submitted an amended petition for permanent exemption.

Basis For Exemption Order

The permanent exemption granted by ERA to the powerplant is based upon AES Placerita's certification, pursuant to section 212(c) of FUA and 10 CFR 503.37(a)(1), that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the congeneration facility, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum and natural gas and an alternate fuel in a cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In addition to the exhibits containing the bases for the certification (as required by 10 CFR 503.37(c)), AES Placerita also submitted an environmental impact analysis, as required under 10 CFR 503.13.

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to the proposed powerplant in the **Federal Register** on March 8, 1984 (49 FR 8671), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701 (f) and (g) of the Act, ERA provided copies of the petition to the Environmental Protection Agency for comments.

During this period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed on April 23, 1984. No comments were received and no hearing was requested.

NEPA Compliance

After review of AES Placerita's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that AES Placerita has satisfied the eligibility requirements for the requested exemption as set forth in 10 CFR 503.37(a)(1). Therefore, pursuant to section 212(c) of FUA, hereby grants a permanent cogeneration exemption of AES Placerita to permit the use of natural gas as the primary energy source for its powerplant to be located in Newhall, California.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this action may petition for judicial reveiw thereof at any time before the 60th day following the publication of this order in the **Federal Register**.

[1] Title II of FUA prohibits the use of petroleum and natural gas as a primary energy source in new powerplants and certain new major fuel burning installations. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA were published in the **Federal Register** at 46 FR 59872 (December 7, 1981). A revised final rule governing eligibility and evidentiary requirements for the cogeneration exemption was issued on June 25, 1982 (47 FR 29209 (July 6, 1982)).

Issued in Washington, D.C., March 15, 1985.

Robert L. Davies,

Director, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-7943 Filed 4-2-85; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Petroleum Supply Reporting System (PSRS) Forms

AGENCY: Energy Information Administration, DOE.

ACTION: Solicitation of comments concerning proposed changes to the petroleum supply reporting system forms and notice of public hearing.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy solicits comments concerning proposed changes to the Petroleum Supply Reporting System forms. In an effort to maximize public participation in the discussion of revisions to these forms, the EIA will conduct a public hearing on Thursday, May 9, 1985, in Room 1E245 of the Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, beginning at 9:00 a.m. (edt).

DATE: Those wishing to provide oral testimony at the public hearing must request to speak at the hearing by 4:30 p.m. Friday, April 19, 1985, and must submit a copy of their presentation to the EIA by 4:30 p.m. Monday, April 29, 1985.

Those wishing to provide written comments only must submit a copy of their comments to the EIA by 4:30 p.m. Friday, May 3, 1985.

ADDRESS: Send comments, requests to speak at the hearing, and written presentations to: Susan J. Harris, Office of Oil and Gas, Energy Information Administration, Department of Energy, Mail Stop 2H-058, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-5992.

To obtain copies of the proposed forms and instructions, contact: Petroleum Supply Division, Energy Information Administration, Department of Energy, Mail Stop 2H-058, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-4052.

SUPPLEMENTARY INFORMATION:

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93-275), and the Department of Energy (DOE) Organization Act (Pub. L. 95-91), the Energy Information Administration (EIA) is obliged to publish, and otherwise make available to the public, high-quality statistical data that reflect national and regional petroleum supply activity as accurately as possible.

To meet this responsibility, as well as internal DOE requirements that are dependent on accurate data, the EIA conducts statistical surveys that encompass each significant primary petroleum supply activity in the U.S.

II. Current Actions

In keeping with DOE's mandated responsibilities, the EIA proposes changes in the following petroleum supply data collection forms:

Weekly Refinery Report (Form EIA-800)
Weekly Bulk Terminal Report (Form EIA-801)
Weekly Product Pipeline Report (Form EIA-802)
Weekly Crude Oil Stock Report (Form EIA-803)
Weekly Imports Report (Form EIA-804)
Weekly Shipments From Puerto Rico to the United States Report (Form EIA-805)
Monthly Refinery Report (Form EIA-810)
Monthly Bulk Terminal Report (Form EIA-811)
Monthly Product Pipeline Report (Form EIA-812)
Monthly Crude Oil Report (Form EIA-813)
Monthly Imports Report (Form EIA-814)
Monthly Shipments From Puerto Rico to the United States Report (Form EIA-815)
Annual Refinery Report (Form EIA-820).

In addition, EIA proposes to redesignate the following forms and to incorporate them into the PSRS.

	Old No.	New No.
Weekly Crude Watch Report	EIA-739	EIA-806
Monthly International Energy Agency Import/Stocks-at-Sea Report	EIA-142	EIA-818
Petroleum Facility Operator Identification Survey.	EIA-747	EIA-825

The proposed changes and modifications are designed to reduce respondent burden, to increase consistency between the weekly, monthly, and related petroleum supply publications, and to reduce ambiguity in instructions.

The proposed changes are summarized below:

1. Form EIA-800 (Weekly Refinery Report): a. Begin collecting data on stocks of liquefied petroleum gases and other petroleum products.

2. Form EIA-801 (Weekly Bulk Terminal Report): a. Begin collecting data on stocks of liquefied petroleum gases, other petroleum products, and unfinished oils.

3. Form EIA-802 (Weekly Product Pipeline Report): a. Begin collecting data on stocks of liquefied petroleum gases, other petroleum products, and unfinished oils.

4. Form EIA-803 (Weekly Crude Oil Stocks Report): a. Begin collecting data on stocks of unfinished oils.

5. Form EIA-804 (Weekly Imports Report):

a. Expand the number of source countries for crude oil imports to include OPEC countries not presently identified (Kuwait, Qatar, Ecuador, Gabon) and countries that are gaining prominence as import sources (Angola, People's Republic of China).

b. Begin collecting data on imports of motor gasoline blending components and unfinished oils.

c. Require companies shipping petroleum from Puerto Rico to the United States to report on the Form EIA-804 instead of Form EIA-805, "Weekly Shipments From Puerto Rico to the United States."

6. Form EIA-805 (Weekly Shipments From Puerto Rico to the United States Report): a. Eliminate Form EIA-805. Respondents to the Form EIA-805 will now report on Form EIA-804.

7. Form EIA-806 (Weekly Crude Watch Report): a. Form designation changed from Form EIA-739. Data elements and instructions are unchanged.

8. Form EIA-810 (Monthly Refinery Report): a. Reduce the amount of information collected on still gas and liquefied refinery gases by eliminating the requirement to separately identify refinery receipts, inputs, production, shipments, fuel use and losses, and stocks intended for petrochemical use and for other use. These two end-use categories are now combined.

9. Form EIA-811 (Monthly Bulk Terminal Report): a. Begin collecting data on stocks of unfinished oils.

10. Form EIA-812 (Monthly Product Pipeline Report): a. Begin collecting data on stocks of unfinished oils and movements of unfinished oils between PAD Districts.

11. Form EIA-813 (Monthly Crude Oil Report): a. Begin collecting data on stocks of unfinished oils and movements of unfinished oils between PAD Districts.

12. Form EIA-814 (Monthly Imports Report):

a. Reduce the number of categories of natural gas liquids and liquefied petroleum gases from 19 to 5: i.e.,

ethane, propane, normal butane, isobutane, and pentanes-plus.

b. Add storage and certain end-use facilities (e.g. electric utility power plants) to the types of facilities for which the imported oil is destined. This will aid in the identification of further processing activities and expected end use.

c. Eliminate the requirement to indicate under which section of the oil import regulations an item was imported.

d. Separately identify four categories of unfinished oils imports: naphthas and lighter, kerosene and light gas oils, heavy gas oils, and residuum.

e. Require companies shipping petroleum products from Puerto Rico to the United States to report on the Form EIA–814 instead of the Form EIA–815, "Monthly Shipments From Puerto Rico to the United States."

13. Form EIA–815 (Monthly Shipments From Puerto Rico to the United States Report): a. Eliminate Form EIA–815. Respondents to the Form EIA–815 will now report on Form EIA–814.

14. Form EIA–818 (Monthly International Energy Agency Imports/Stocks-at-Sea Report): a. Form designation changed from Form EIA–142. Data elements and instructions are unchanged.

15. Form EIA–820 (Annual Refinery Report): a. Begin collecting data on the average heat content of crude oil, liquefied petroleum gases, natural gas, still gas, petroleum coke, coal used as fuel at refineries, and steam and electricity purchased for use at refineries.

16. Form EIA–825 (Petroleum Facility Operator Identification Survey): a. Form designation changed from Form EIA–747. Data elements and instructions are unchanged.

III. Comments and Public Hearing Procedures

A. Written Comments

The EIA invites the public to comment on these proposed changes and provides the following guidelines to assist in preparation of responses.

If you are a possible data provider:

(1) How many hours, including time for research, computation, preparation and administrative review, will it take your firm to change from current reporting procedures to the proposed procedures during the first year of reporting?

(2) How many hours will your firm require in subsequent years of reporting?

(3) Estimate the initial cost of modifying your systems to be able to respond to the revised forms, including direct and indirect costs associated with the data collection. Direct costs should include all one-time and recurring costs, such as development, assembly, equipment, ADP and other administrative costs.

(4) Estimate the cost in subsequent years of reporting.

(5) Do you agree with each of the proposed changes? Are there additional changes that you would recommend?

If you are a data user:

(1) Do you need data at the levels of aggregation that would be available using the modified (new) forms; that is: do the products, frequency, market categories and geography reflect your needs?

(2) Do you need any of the elements of information that would be eliminated by this proposal? For what purposes would you use these data?

(3) How could the forms be improved to better meet your specific data needs?

Comments will be summarized and consolidated in EIA's submission to the Office of Management and Budget and will become a matter of public record.

B. Public Hearings

1. Procedures for Request to Make Oral Presentation

The time and place for the hearing are indicated in the "Dates" and "Address" sections above.

The EIA invites any interested person wishing to provide oral testimony on these forms to request to speak at the hearing no later than 4:30 p.m. Friday, April 19, 1985, and to provide a copy of the presentation to the EIA by 4:30 p.m. Monday, April 29, 1985.

Such a presentation should describe major points of interest or concern and include, if appropriate, a statement indicating why the individual is a proper representative of a class of persons that has such an interest or concern. A telephone number where this individual may be contacted during the day should also be provided. The EIA will notify each person selected to speak at the hearing by Tuesday, April 30, 1985. Persons selected should bring 25 copies of their written presentations to the hearing.

2. Conduct of the Hearing

The EIA will schedule the presentations and establish the procedures governing the conduct of the hearing. Any person desiring to present oral testimony will be allowed to do so, time permitting. Although time constraints may limit the number of persons who will be allowed to speak, the EIA will consider all comments submitted. Likewise, the length of each presentation may be limited based on the number of persons requesting to be heard. An EIA official will preside at the hearing. This will not be a judicial or evidentiary-type hearing, and there will be no cross-examination of persons presenting statements. Any other procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer. A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained in the EIA and made available for inspection at the DOE Freedom of Information Office, Room 1E–190, 1000 Independence Avenue, S.W., Washington, D.C. 20585, between the hours of 8:30 a.m. and 4.30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

Issued in Washington, D.C., on March 28, 1985.

Yvonne M. Bishop,

Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 85–7944 Filed 4–2–85; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Energy Research Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Energy Research Advisory Board (ERAB).

Date and Time: May 1, 1985 from 9:00 a.m. to 4:30 p.m., May 2, 1985 from 9:00 a.m. to 3:30 p.m.

Place: U.S. Department of Energy, 1000 Independence Avenue, SW, Room 8–E089, Washington, DC 20585.

Contact: Sarah Goldman, U.S. Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 252–5444.

Purpose of the Parent Board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative Agenda: The specific agenda items and times are frequently subject to last minute changes. Visitors planning to attend for a specific topic should confirm the time prior to and during the day of the meeting.

Draft Agenda

May 1

9:00 a.m.—Administrative Items
—Minutes of last meeting
—Plans for summer meeting
—Future meeting dates through 1986

9:30 a.m.—Long Range Energy R&D Stategy Study Steering Committee Overview
10:15 a.m.—Break
10:30 a.m.—Report from Supply Subpanel
11:15 a.m.—Report from Demand Subpanel
12:00 Noon—Lunch
1:00 p.m.—Electronic mail demonstration
1:30 p.m.—Report from Infrastructure Subpanel
2:15 p.m.—Report from Research Subpanel
3:00 p.m.—Break
3:15 p.m.—Strategy Study: next steps
4:00 p.m.—Discussion of DOE activities
4:20 p.m.—Public Comment (10 minute rule)
4:30 p.m.—Adjourn

May 2

9:00 a.m.—Materials Facilities Report
10:00 a.m.—Further Reviews of NRC Reports
10:15 a.m.—Break
10:30 a.m.—Clean Coal Technologies Report
12:00 Noon—Lunch
1:00 p.m.—Report from International Panel
2:00 p.m.—National Energy Policy Plan Status
2:50 p.m.—Public Comment (10 minute rule)
3:00 p.m.—Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Sarah Goldman at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on March 28, 1985.

J. Robert Franklin,
Deputy Advisory Committee Management Officer.

[FR Doc. 85–7903 Filed 4–2–85; 8:45 am]
BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. ER85–264–000]

Duquesne Light Co.; Order Accepting for Filing and Suspending Rates, Granting Intervention, Denying Motion To Reject, Ordering Summary Disposition, and Establishing Hearing and Price Squeeze Procedures

Issued March 29, 1985.

On January 30, 1985, Duquesne Light Company (Duquesne) tendered for filing, under the abbreviated filing requirements provided for in § 35.13(a)(2) of the Commission's regulations, a proposed increase in its rates for full requirements service to the Borough of Pitcairn, Pennsylvania (Pitcairn).[1] The proposed rates would increase revenues by approximately $158,000 (34.3%), based on the calendar year 1983 test period. Duquesne requests that the proposed rates become effective on April 1, 1985.

Notice of the company's filing was published in the Federal Register,[2] with comments due on or before March 1, 1985. On March 6, 1985, Pitcairn filed an untimely motion to intervene and protest, [3] in which it moves to reject the company's filing or, alternatively requests a five month suspension and a hearing. Pitcairn asserts that Duquesne's filing is deficient for failure to comply with §§ 35.13(d)(5) and 35.13(d)(7) of the Commission's filing requirements which govern submission of workpapers and attestation by an accounting representative. In support of its request for a maximum suspension, Pitcairn raises cost of service issues, including: Rate base, rate of return, cost allocation, and the proposed late payment provision. Finally, Pitcairn alleges price squeeze.

On March 22, 1985, Duquesne filed an answer to Pitcairn's pleading. The company opposes Pitcairn's untimely motion to intervene and denies Pitcairn's allegations regarding the requests for rejection and suspension. Duquesne also contends that the issue of price squeeze has not been plead with sufficient specificity to enable it to respond and that the issue should therefore not be permitted to be raised in this proceeding.

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), we find, despite Duquesne's opposition, that good cause exists to grant Pitcairn's untimely intervention, given its interest, the early stage of this proceeding, and the apparent absence of any prejudice or delay.

Under the Commission's abbreviated filing requirements, submission of the workpapers and the attestation specified in §§ 35.13(d)(5) and 35.13(d)(7) is not required. We note that Duquesne has satisfied the preconditions to making an abbreviated filing under our regulations and has substantially complied with those filing requirements. Therefore, we shall deny Pitcairn's motion for rejection.

Duquesne has filed to synchronize the test year interest expense used in its income tax calculation. The Commission has consistently held that, for tax allowance purposes, the interest expenses should be computed as the product of the weighted cost of debt used for rate of return purposes and the allocated rate base.[4] Therefore, we shall order summary disposition with respect to the interest synchronization issue. However, because the dollar effect of this decision is relatively small, we shall not require Duquesne to refile at this time.

Our preliminary review of Duquesne's filing and the pleadings indicate that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing and suspend them as ordered below.

In *West Texas Utilities Company*, 18FERC ¶ 61,189 (1982), we explained that where our preliminary examination indicates that proposed rates may be unjust and unreasonable but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension. Here, our examination suggests that the proposed rates may not result in substantially excessive revenues. Therefore, we shall suspend Duquesne's proposed rates for one day, to become effective, subject to refund, on April 2, 1985.

In accordance with the Commission's policy and practice established in *Arkansas Power and Light Company*, 8 FERC ¶ 61,131 (1979), we shall phase the price squeeze issue raised by Pitcairn.[5]

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[1] Designated as: Duquesne Light Company, Supplement No. 8 to Rate Schedule FPC No. 11, (Supersedes Supplement No. 7).

[2] 50 FR 7371 (February 22, 1985).

[3] Pitcairn states that it received the notice of the filing on February 21, 1985, and was under the mistaken belief that it had 30 days from the date of the notice to file its motion to intervene. Pitcairn also contends that Duquesne has not been prejudiced by its delay in filing.

[4] *E.g., Public Service Company of New Mexico*, 17 FERC ¶ 61,123 at 61,249 (1981), *reh denied*, 18 FERC ¶ 61,036 (1982).

[5] We are not persuaded by Duquesne's argument that Pitcairn has not adequately raised the issue of price squeeze in this proceeding. We note that, under the Commission's phased price squeeze procedures, a party seeking to pursue a price squeeze claim must make a prima facie case at the conclusion of the rate phase of a proceeding in any event. At that point, we will be able to assess the sufficiency of Pitcairn's allegations pursuant to § 2.17 of the Commission's regulations.

The Commission Orders

(A) Pitcairn's untimely motion to intervene is hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) Pitcairn's motion to reject Duquesne's filing is hereby denied.

(C) Summary disposition is hereby ordered, as noted in the body of this order, with respect to the interest synchronization issue. Duquesne shall reflect this summary disposition in its compliance cost of service at the conclusion of this proceeding.

(D) Duquesne's proposed rates are hereby accepted for filing and are suspended for one day, to become effective, subject to refund, on April 2, 1985.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of Duquesne's proposed rates.

(F) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(G) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(H) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, for consideration of price squeeze, would be just and reasonable. The presiding judge may modify this schedule for good cause. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(I) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7936 Filed 4-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ID-1958-002, et al.]

Frederic E. Greenman et al.; Interlocking directorate applications

March 28, 1985.

Take notice that the following filings have been made with the Commission:

1. Frederic E. Greenman

[Docket No. ID-1958-002]

Take notice that the following supplemental application was filed by Frederic E. Greenman on March 15, 1985, pursuant to section 305(b) of the Federal Power Act, for authority to hold the following positions:

Title and Company

Director—Connecticut Yankee Atomic Power Company
Director—Maine Yankee Atomic Power Company
Clerk—Massachusetts Electric Company
Assistant Secretary—New England Electric Transmission Corporation
Director and Vice President—New England Hydro-Transmission Corporation
Director, Vice President, and Assistant Clerk—New England Hydro-Transmission Electric Company, Inc.
Vice President and Assistant Clerk—New England Power Company
Director—Vermont Yankee Nuclear Power Corporation
Director—Yankee Atomic Electric Company.

Comment date: April 15, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Robert King Wulff

[Docket No. ID-2163-000]

Take notice that the following application was filed by Robert King Wulff on March 15, 1985, pursuant to section 305(b) of the Federal Power Act, for authority to hold the following positions:

Assistant Clerk—Massachusetts Electric Company
Clerk—New England Power Company.

Comment date: April 15, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. William R. Gould

[Docket No. ID-1926-001]

Take notice that on February 28, 1985, William R. Gould filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director—Southern California Edison Company
Director—Ecolaire Prime, Inc.
Director—Ecolaire Incorporated.

Comment date: April 19, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Robert H. McLaren

[Docket No. ID-2162-000]

Take notice that the following applicaiton was filed by Robert H. McLaren on March 15, 1985, pursuant to section 305(b) of the Federal Power Act, for authority to hold the following positions:

Title and Company

Assistant Treasurer—New England Electric Transmission Corporation
Assistant Treasurer—New England Power company.

Comment date: April 15, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7941 Filed 4-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-188-000, et al.]

Mountain Fuel Resources, Inc., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Mountain Fuel Resources, Inc.

[Docket No. CP85-188-000]

March 27, 1985.

Take notice that on December 20, 1984, Mountain Fuel Resources, Inc. (Resources), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP85-188-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon the service provided to Mountain Fuel Supply Company (Supply) at two existing points of interconnection with Colorado Interstate Gas Company (CIG), for the account of Wycon Chemical Company (Wycon), located in Sweetwater County, Wyoming, under the abandonment authorization issued in Docket No. CP82-491-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Resources proposes to abandon the service provided to Supply for the account of Wycon under Resources' FERC Rate Schedules CD-1 and X-33 at the pipleline interconnection between Resources and CIG at Resources' Kanda Compressor Station (Kanda) and Resources' Green River Interconnection with CIG's pipeline facilities (Green River) located in Sweetwater County, Wyoming.

Supply requests, by a letter dated December 18, 1984, that Resources suspend deliveries to it for the account of Wycon at Kanda and Green River effective January 31, 1985, in response to Wycon's letter dated November 13, 1984, notifying Supply of Wycon's intent to terminate the June 3, 1982, Gas Purchase and Sales Agreement, as amended, between Wycon and Supply effective January 11, 1985, it is asserted.

Comment date: May 13, 1985, in accordance with Standard Paragraph G at the end of this notice.

2. Trunkline Gas Company

[Docket No. CP85-345-000]

March 27, 1985.

Take notice that on March 7, 1985, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP85-345-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Natural Gas Pipeline Company of America (NGPL), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to transport gas for NGPL from a proposal point of receipt in Eugene Island Block 361, offshore Louisiana, at a proposed point of interconnection between the facilities of Tarpon Transmission Company (Tarpon) and NGPL in Eugene Island Block 361, for delivery to NGPL at an existing point of interconnection with NGPL in Cameron Parish, Louisiana. Applicant states that it would transport up to 25,000 Mcf of natural gas per day on a firm basis and up to 6,000 Mcf of natural gas per day on an interruptible basis pursuant to a gas transportation agreement dated February 13, 1985. It is said that Tarpon would seek Commission authorization to provide Applicant with the Eugene Island Block 361 point of receipt pursuant to an amendment dated February 14, 1985, to the transportation agreement between Tarpon and Applicant dated February 15, 1977. It is further said that Tarpon received authorization to provide transportation service on behalf of Applicant by Commission order dated August 4, 1977, in Docket No. CP77-315. The proposed service, it is said, is the most efficient and economical means of transporting the gas for NGPL.

Applicant states that NGPL would pay a monthly demand charge of $246,250 for firm service and 32.40 cents per Mcf for the interruptible service.

Comment date: April 17, 1985, in accordance with Standard Paragraph F at the end of this notice.

3. Northwest Central Pipeline Corporation

[Docket No. CP85-314-000]

March 27, 1985.

Take notice that on February 25, 1985, Northwest Central Pipeline Corporation (Applicant), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85-314-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the continued transportation of gas for Frito-lay, Inc. (Frito-Lay), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it proposes to continue transporting gas, which Frito-lay purchases from Garfield Gas Gathering Company in Oklahoma County, Oklahoma, and Cowley County, Kansas, to Gas Service Company for redelivery to Frito-lay in Shawnee County, Kansas, for a term ending June 1, 1986, and month-to-month thereafter until cancelled by either party. Applicant proposes to transport a volume of 2,000 Mcf of gas per day tendered to Applicant for Frito-Lay's account, as well as any excess volumes Frito-Lay may request Applicant to transport, such volumes to be transported on a best-efforts, interruptible basis.

Applicant further states that Frito-Lay would pay Applicant the then effective rates and provisions, including added incentive charge, set forth in Applicant's FERC Gas Tariff, Original Volume No. 2.

The gas is currently being transported under authorization issued in Docket No. CP84-568-000 pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205).

Comment date: April 17, 1985, in accordance with Standard Paragraph F at the end of this notice.

4. National Fuel Gas Supply Corporation

[Docket No. CP85-348-000]

March 26, 1985.

Take notice that on March 8, 1985, National Fuel Gas Supply Corporation (National Fuel), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP85-348-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Chautauqua Hardware Corporation (Chautauqua), under the certificate issued in Docket No. CP83-4-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

National Fuel proposes to transport up to 215 MMBtu's equivalent of natural gas per day on an interruptible basis on behalf of Chautauqua from June 1 through June 30, 1985.

It is stated that the gas to be purchased by Chautauqua involves gas supplies previously under contract to and released by National Fuel. In this regard, National Fuel submits that the released gas that would be transported under the arrangement would be treated as gas taken for purposes of any take-or-pay obligations National Fuel may have with respect to the seller. It is further submitted that National Fuel's service agreements with its traditional resale customers do not contain minimum bill provisions. Last, National Fuel indicates that the gas to be sold by the seller, Vineyard Oil & Gas Company, is subject to Natural Gas Policy Act of 1978 section 107 and a current contract price equal to the highest commodity rate of any pipeline supplier from whom National Fuel is making discretionary puchases in any given month.

National Fuel states that the natural gas would be transported and delivered to National Fuel Gas Distribution Corporation which, in turn, would deliver the natural gas to Chautauqua at

its facilities in Jamestown, New York, pursuant to the terms of a natural gas transportation agreement dated February 1, 1985. National Fuel further states that it proposes to charge Chautauqua a transportation rate pursuant to its Rate Schedule T-2, which rate is currently 26.72 cents per Mcf, plus 2 percent retainage for shrinkage.

National Fuel indicates that no new facilities would be necessary for the proposed transportation. The natural gas would be used at Chautauqua's facility for boiler fuel.

Natural Fuel also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. National Fuel will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: May 10, 1985, in accordance with Standard Paragraph G at the end of this notice.

5. K N Energy, Inc.

[Docket No. CP85-297-000]

March 28, 1985.

Take notice that on February 20, 1985, K N Energy, Inc. (KN), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP85-297-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate sales taps for the delivery of gas to end-users under the certificate issued in Docket Nos. CP83-140-000, CP83-140-001, and CP83-140-002 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

K N proposes to construct and operate three new sales taps to provide gas service of 120 Mcf annually for Darwin Hoffman in Greeley County, Kansas, 1,200 Mcf annually for Frank Soukup in Holt County, Nebraska, and 1,000 annually for Margaret Ackuman in Franklin County Nebraska. K N states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps will have no significant impact on K N's peak day and annual deliveries.

Comment date: May 13, 1985, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7940 Filed 4-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8537-001]

Pure Energy Co.; Surrender of Preliminary Permit

March 29, 1985.

Take notice that Pure Energy Company, Permittee for the proposed Patria Project No. 8537, has requested that its preliminary permit be terminated. The preliminary permit was issued on December 11, 1984, and would have expired on May 31, 1986. The project would have been located on Wolf Creek, near Bridgeport, in Mono County, California.

The Permittee filed the request on March 11, 1985, and the preliminary permit for Project No. 8537 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7939 Filed 4-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7985-001]

Michael J. Skopos; Surrender of Preliminary Permit

March 29, 1985.

Take notice that Michael J. Skopos, Permittee for the Proposed Sierra Buttes Project No. 7985, has requested that its preliminary permit be terminated. The preliminary permit was issued on June 14, 1984, and would have expired on November 30, 1985. The project would have been located on Independence Ravine, tributary of the North Fork Yuba River, near Sierra City, in Sierra County, California.

The Permittee filed the request on February 25, 1985, and the preliminary permit for Project No. 7985 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following

that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7937 Filed 4-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS76-911-001 et al.]

Teton Energy Co., Inc. (Petrotech Inc. dba TXP, Inc.), et al.; Applications for "Small Producer" Certificates [1]

March 28, 1985.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make protest with reference to said applications should on or before April 15 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No.	Date filed	Applicant
CS76-911-001	[3] 3/18/85	Teton Energy Co., Inc. (Petrotech, Inc. d.b.a. TXP, Inc.), P.O. Box 13634, Denver, CO 80201-3634.
CS85-44-000	3/6/85	Kenneth W. Cory, 1990 Post Oak Boulevard, Suite 1400, Houston, TX 77056
CS85-45-000	3/7/85	McDaniel Oil Co., P.O. Box 12282, Odessa, TX 79768.
CS85-46-000	3/7/85	Washita Production Co., Inc. 7136 South Yale, Suite 330, Tulsa, OK 74136.
CS85-47-000	3/11/85	Richard Tully d.b.a. Tully Oil and Gas Co., P.O. Box 268, Farmington, NM 87499-0268.
CS85-48-000	3/11/85	Back Pump & Supply, Inc., P.O. Box 175, Hennessey, OK 73742.
CS85-51-000	[3] 3/15/85	Orion Resources Inc., 520 Madison Ave. 3902, New York, NY 10022.
CS85-53-000	3/19/85	Dean Operating Co., Inc., 1014 Union Center, Wichita, KS 67202.
CS85-55-000	3/19/85	La Barge Minerals, Inc., P.O. Box 127, La Barge, WY 83123.
CS85-49-000	3/22/85	DoMar Oil & Gas, Inc., P.O. Box 1805, 2140 N. Hiway 83, Liberal, KS 67901.
CS85-56-000	3/22/85	First National Bank of Shreveport, Dative Testamentary Executor of the Succession of E.D. Holcomb, Jr., P.O. Box 21116, Shreveport, LA 71154.
CS85-57-000	3/22/85	First National Bank of Shreveport, Dative Administrator of the Succession of Luna Thomason Holcomb, P.O. Box 21116, Shreveport, LA 71154.
CS77-669	[2] 3/19/85	Virgil Hess d.b.a. Tumbleweed Production Co. (tumbleweed Production Company) P.O. Box 3362, Borger, TX 79007.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[1] Letter received dated March 5, 1985 requesting that Petrotech, Inc. d.b.a. TXP, Inc. be added to Teton Energy Co's small producer certificate.

[2] Orion Resources Inc. is the General Partner for Orion Eta Drilling & Production Program; Orion Theta Drilling & Production Program and Orion 1984 Private Energy Program.

[3] Letter received dated February 11, 1985 requesting that the small producer certificate issued to Tumbleweed Production Company be redesignated as Virgil Hes d.b.a. Tumbleweed Production Company.

[FR Doc. 85-7938 Filed 4-2-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-50634; FRL 2806-7]

American Cyanamid Co. et al.; Issuance of Experimental Use Permits

AGENCY: Envirnomental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT:

By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS-767C), Office of Pesticide Programs, Envirnomental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

241-EUP-114. Issuance. American Cyanamid Company, P.O. Box 400, Princeton, NJ 98540. This experimental use permit allows the use of 24,000 pounds of the herbicide 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-3-pyridinecarboxylic acid with 2-propanamine salt in forests to evaluate the control of herbaceous and woody weeds. A total of 16,00 acres are involve; the program is authorized only in the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. The experimental use permit is effective from February 12, 1985 to February 12, 1987. (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-1800))

464-EUP-78. Extension. Dow Chemical U.S.A., P.O. Box 1706, Midland, MI 48640. This experimental use permit allows the use of 33 pounds of the herbicide methyl 2-(4)-[(3-chloro-5-(trifluoromethyl)-2-pyridinyl)oxy)phenoxy]propanoate on cotton and soybeans to evaluate the control of weeds. A total of 66 acres are involved; the program is authorized only in the States of Alabama, Arkansas, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi Missouri, Nebraska, North Carolina, Ohio, Tennessee, Texas, and Wisconsin. The experimental use permit is effective from April 17, 1985 to April 17, 1986. The permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Richard Mountfort, PM 23, Rm 237, CM#2, (703-557-1820))

1471-EUP-89. Issuance. Elanco Products Company, 740 South Alabama St., Indianapolis, IN 46285. This experimental use permit allows the use of 870 pounds of the herbicide ethalfluralin on potatoes to evaluate the control of carious weeds. A total of 580 acres are involved; the program is authorized only in States of Alabama, California, Colorado, Florida, Idaho, Minnesota, New York, North Carolina, North Dakota, Oregon, Texas, Virginia, Washington, and Wisconsin. The experimental use permit is effective from February 21, 1985 to February 21,

1986. A temporary tolerance for residues of the active ingredient in or on potatoes has been extablished. (Richard Mountfort, PM 23, Rm. 237, CM#2, (703–557–1830))

43808–EUP–1. Renewal. State of Florida, 1115 E. Memorial Boulevard, P.O. Box 148, Lakeland, FL 33802. This experimental use permit allows the use of 43.3 pounds of the plant regulator 5-chloro-3-methyl-4-nitro-1H-pyrazole on oranges to evaluate its use as an abscission agent. A total of 78.7 acres are involved; the program is authorized only in the State of Florida. The experimental use permit was previously effective from January 5, 1984 to January 5, 1985. The permit is now effective from February 12, 1985 to February 12, 1986. A temporary tolerance for residues of the active ingredient in or on oranges has been established. (Robert Taylor, PM 25, Rm. 245, CM#2, (703–557–1800))

45639–EUP–25. Issuance. Nor-Am Chemical Company, 3509 Silverside Road, P.O. Box 7495, Wilmington, DE 19803. This experimental use permit allows the use of 22,600 pounds of the herbicide diethatyl-ethyl on carrots, celery, and peppers to evaluate the control of weeds. A total of 4,250 acres are involved; the program is authorized only in the States of California, Delaware, Florida, Michigan, New Jersey, New York, North Carolina, and Wisconsin. The experimental use permit is effective from February 13, 1985 to February 13, 1986. A temporary tolerance for residues of the active ingredient in or on carrots, celery, and peppers has been established. (Richard Mountfort, PM 23, Rm. 237, CM#2, (703–557–1830))

201–EUP–76. Extension. Shell Oil Company, Suite 200, 1025 Connecticut Ave., NW., Washington, DC 20036. This experimental use permit allows the use of 285.0 pounds of the fungicide azetidine-3-carboxylic acid on barley and wheat to evaluate its use as an hybridizing agent. A total of 1,569 acres are involved; the program is authorized only in the States of Arizona, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Kansas, Minnesota, Missouri, Montana, Nebraska, North Carolina, Ohio, Oklahoma, Oregon, Texas, and Washington. The experimental use permit is effective from August 1, 1985 to August 1, 1986. (Richard Taylor, PM 25, Rm. 245, CM#2, (703–557–1800))

2724–EUP–44. Issuance. Zoecon Industries, 12200 Denton Drive, Dallas, TX 75234. This experimental use permit allows the use of 0.3125 pound of the insecticide permethrin and 0.375 pound of the insecticide hydroprene in homes and apartments to evaluate the control of cockroaches. (Timothy Gardner, PM 17, Rm. 207, CM#2, (703–557–2690))

2724–EUP–45. Issuance. Zoecon Industries, 12200 Denton Drive, Dallas, TX 75234. This experimental use permit allows the use of 0.30 pound of the insecticide permethrin and 0.36 pound of the insecticide hydroprene in homes and apartments to evaluate the control of cockroaches. (Timothy Gardner, PM 17, Rm. 207, CM#2, (703–557–2690))

2724–EUP–46. Issuance. Zoecon Industries, 12200 Denton Drive, Dallas, TX 75234. This experimental use permit allows the use of 0.375 pound of the insecticide permethrin and 0.156 pound of the insecticide hydroprene in homes and apartments to evaluate the control of cockroaches. (Timothy Gardner, PM 17, Rm. 207, CM#2, (703–557–2690))

2724–EUP–47. Issuance. Zoecon Industries, 12200 Denton Drive, Dallas, TX 75234. This experimental use permit allows the use of 0.15 pound of the insecticide permethrin and 0.36 pound of the insecticide hydroprene in homes and apartments to evaluate the control of cockroaches. This experimental use permit and the three above each involve a total of 200 living units. The programs are authorized only in the States of California and Texas. The experimental use permits are effective from February 1, 1985 to February 1, 1986. The permits will use the same active ingredients but different formulations. (Timothy Gardner, PM 17, Rm. 207, CM#2, (703–557–2690))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, Pub. L. 95–396; 92 Stat. 828 (7 U.S.C. 136c))

Dated: March 20, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85–7338 Filed 4–2–85; 8:45 am]

BILLING CODE 6560–50–M

[PP 1G2441/T485; FRL–2806–6]

American Hoechst Corp; Extension of Tempoary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for the combined residues of the insecticide tralomethrin and its metabolite in or on the raw agricultural commodity cottonseed.

DATE: This temporary tolerance expires April 27, 1986.

FOR FURTHER INFORMATION CONTRACT:

By mail: Timonthy Gardner, Product Manager (PM) 17, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 207, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–2690).

SUPPLEMENTARY INFORMATION: EPA issued a notice that was published in the **Federal Register** of August 1, 1984 (49 FR 30792), announcing the establishment of a temporary tolerance for the combined residues of the insecticide tralomethrin [1R[1(s*) 3 (RD*)]]-2,2-dimethyl-3(1,2,2,2-tetrabromoethyl)cyclopropanecarboxylic acid alpha-cyano-(3(3-phenoxyphenyl) methyl ester and its metabolite (1R, 3R)3-(2,2-dibromoviny1)-2,2-dimethylcyclopropanecarboxylic acid (S) alpha-cyano-3(3-phenoxyphenyl) methyl ester in or on the raw agricultural commodity cottonseed at 0.02 part per million (ppm). This tolerance was issued in response to pesticide petition PP 1G2441, submitted by American Hoechst Corp., Agricultural Division, Rt. 202–206 North, Somerville, NJ 08876.

This temporary tolerance has been extended to permit the continued marketing of the raw agricultural commodity named above when treated in accordance with the provisions of experimental use permit 8340–EUP–6, which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of this temporary tolerance will protect the public health. Therefore, the temporary tolerance has been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. American Hoechst Corp. must immediately notify the EPA of any findings from the experimental use that

have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires April 27, 1986. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on the pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entitites. A certification statement of this effect was published in the Federal Register of May 4, 1981. (46 FR 24950).

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 346a(j)))

Dated: March 15, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-7339 Filed 4-2-85; 8:45 am]

BILLING CODE 6560-50-M

[Region 6; A-6-FRL-2810-4]

Final Agency Action on a PSD Permit for Valley View Energy Corporation

Notice is hereby given that on June 25, 1984, pursuant to 40 CFR 52.21, Region 6 of the Environmental Protection Agency (EPA) issued a Prevention of Significant Deterioration (PSD) permit number PSD-TX-617, to Valley View Energy Corporation for approval to construct a manure-fueled electrical generating station to be located immediately south of State Highway 60, approximately 5 miles northeast of Hereford, Deaf Smith County, Texas. On August 7, 1984, Monty and Cheryl Adams petitioned the Administrator for review of the PSD permit.

Because a petition for review was filed with the Administrator, the issuance of the permit was no longer a final agency action, and the PSD permit for Valley View Energy was not effective. [*See* 40 CFR 124.15(b)(2)] The petition for review was withdrawn by Mr. and Mrs. Adams on February 7, 1985. Pursuant to CFR 124.19(f)(1), a final permit decision on PSD-TX-617 was issued by Region 6 on March 14, 1985.

Under section 307(b)(1) of the Clean Air Act, judicial review of PSD-TX-617 is available *only* by the filing of a petition for review in the United States Court of Appeals for the Fifth Circuit within 60 days of today. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Copies of all of the materials concerning PSD-TX-617 are available for public inspection upon request at the following locations:

Environmental Protection Agency, Region 6, Air and Waste Management Division, Air Branch, InterFirst Two Building, 1201 Elm Street; Dallas, Texas 75270

Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

Dated: March 22, 1985.

Dick Whittington,

Region Administrator, Region 6.

[FR Doc. 85-7915 Filed 4-2-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Establishment of a Federal Advisory Committee; 1987 ITU World Administrative Radio Conference; Mobile Services

March 27, 1985.

On March 18, 1985, the General Services Administration (GSA) approved the establishment of an FCC Advisory Committee for the 1987 ITU World Administrative Radio Conference on Mobile Communications.

The Advisory Committee will be chaired by Leonard R. Raish of the Washington, DC law firm of Fletcher, Heald & Hildreth. Martin W. Bercovici of the law firm of Keller and Hechman, Washington, DC, will serve as vice chairman. The FCC has appointed Gordon Hempton to be the designated Federal employee to the Advisory Committee.

A Charter for this Committee is appended to this Public Notice.

A tentative agenda for the first Committee meeting is as follows:

1. Approval of agenda
2. History leading up to establishment of Committee
3. Areas of Committee study
4. Establishment of working groups
5. Discussion of proposed agenda for the 1987 Mobile WARC
6. Distribution of documents from participants (if any)
7. Other business
8. Selection of next meeting date

The first meeting of this Advisory Committee will be held in the Commission Meeting Room 856 at 1919 M Street NW., Washington, DC, on Tuesday, May 7, 1985 at 9:30 a.m.

Anyone interested in joining this Committee should contact Gordon Hempton, FCC/OST at (202) 623-7073 no later than April 26, 1985. These meetings are open to the public.

Charter of the Advisory Committee for the World Administrative Radio Conference for the Mobile Services

A. *The Committee's Official Designation.* Advisory Committee for the World Administrative Radio Conference for the Mobile Services.

B. *Names of the Subcommittees.* None.

C. *Committee's Objectives and Scope of its Activity.* (1) *Objective:* To advise the staff of the Federal Communications Commission concerning preparations for the International Telecommunication Union World Administrative Radio Conference for the Mobile Services currently scheduled for 1987.

(2) a. Scope of activity on the agenda for the mobile conference: All steps necessary to assemble information and provide advice concerning the following matters:

- Development of a list of ITU Radio Regulation issues that should be addressed by the Mobile WARC, and the potential impact on interests of the United States if those issues either are considered or are not considered.

b. Scope of activity for the United States proposals: all steps necessary to assemble information and provide advice concerning the following matters:

- Development of technical, operational, regulatory and related radio frequency ideas and criteria to meet needs of the United States in a consolidated and cohesive manner, presenting such data in ITU Radio Regulation format.
- The gathering of data and the establishment of agreed parameters to define radio frequency spectrum use and requirements, compiling such material

into a cohesive recommendation, presenting rationale, alternatives, and ideas for its successful use at the conference.

c. Scope of activity concerning advice for possible use by the United States Delegation: All steps necessary to assemble information and provide advice concerning the following matters:

- An evaluation of the interests of other nations and international organizations that may be involved in preparing for the Mobile WARC.
- An assessment of the impact on mobile terrestrial and satellite radiocommunication services by the various envisioned conference outcomes, including, to the extent determinable, economic and regulatory effects.

D. *Period of Time Necessary for the Committee to Carry Out Its Purposes:* Final written reports for the activities associated with the development of the Agenda for the Mobile WARC must be completed by June 1, 1985. Final written reports for consideration in developing the United States proposals or use by the United States Delegation must be completed by June 1, 1986.

E. *Official to Whom the Committee Reports.* Chief Scientist and Chief, Private Radio Bureau, FCC.

F. *Agency Responsible for Providing Necessary Support.* The FCC will furnish necessary administrative support, including the facilities needed for conducting meetings of the Committee.

G. *Description of the Duties for Which the Committee is Responsible.* The duties of the Committee will be to assemble data and prepare analyses and recommendations concerning the points enumerated in Part C above and to furnish them to the FCC staff.

H. *Estimated Operating Costs in Dollars and Man-years.* The estimated annual operating costs are $20,000 for the FCC. Estimated man-years are 0.5 for the FCC and 10.0 for private and other government participants.

I. *Estimated Number and Frequency of Committee Meetings.* The Committee will meet at least 3 times per year.

J. *Committee's Termination Date.* The Committee will terminate six (6) months prior to the WARC convening date, or two years from its inception, whichever is later.

K. *Date the Charter is Filed.* March 18, 1985.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-7930 Filed 4-2-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

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 15 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 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. 202-009548-027.

Title: North Atlantic/Mediterranean Freight Conference.

Parties:

Constellation Lines, S.A.
Farrell Lines, Inc.
Prudential Lines, Inc.

Synopsis: The proposed amendment would expand the scope of the conference to include U.S. South Atlantic ports and add U.S. microbridge authority. To reflect this change the name of the conference would be changed to the "United States Atlantic Ports/Eastern Mediterranean and North Africa Freight Conference". It would also enlarge the notice period for independent action to ten days and provide for the filing of individual member's rates on certain U.S. Government impelled agricultural cargoes in a special tariff section.

Dated: March 29, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-7922 Filed 4-2-85; 8:45 am]

BILLING CODE 6730-01-M

Intent To Terminate Agreement Approval

Agreement No. T-4169.

Title: Alameda, California Terminal Agreement

Parties:

Encinal Terminals
Western Stevedore and Terminals Co., Inc.

Synopsis: The parties to the referenced agreement having provided notice of the termination of the agreement, the Commission hereby gives notice of its intent to terminate its previously granted approval of the agreement effective March 25, 1985, the date the Commission received the parties' termination notice.

Dated: March 29, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-7921 Filed 4-2-85; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 85-9]

Broes Trucking Company, Inc. v. Holt Cargo Systems, Inc.; filing of Complaint and Assignment

Notice is given that a complaint filed by Broes Trucking Company, Inc. against Holt Cargo Systems, Inc. was served March 28, 1985. Complainant alleges that respondent has violated sections 10(b)(11), 10(b)(12), and 10(d)(1) of the Shipping Act of 1984, by demanding that complainant pay certain wharf demurrage fees, refusing to deal with complainant, and diverting cargo to be transported by complainant to other trucking companies and refusing complainant access to its pier.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by March 31, 1986, and the final decision of the Commission shall be issued by July 31, 1986.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-7920 Filed 4-2-85; 8:45 am]

BILLING CODE 6730-01-M

Filing and Effective Date of Agreement

The Federal Maritime Commission hereby gives notice, that on March 25,

1985, the following agreement was filed with the Commission pursuant to section 5, Shipping Act of 1984, and was deemed effective that date, to the extent it constitutes an assessment agreement as described in paragraph (d) of section 5, Shipping Act of 1984.

Agreement No. 201–000090.

Title: Pacific Maritime Association Assessment Agreement.

Parties: Members of the Pacific Maritime Association.

Synopsis: This agreement provides that the ILWA-PMA Holiday Plan and ILWU-Walking Bosses' Holiday Plan will henceforth be funded through man-hour assessments. This agreement does not increase or decrease the man-hour or tonnage assessments being paid by anyone. This agreement will become effective for the payroll period ending March 30, 1985.

Dated: April 1, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–7963 Filed 4–2–85; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

First American Bank Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (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, or to engage in such an activity. Unless otherwise noted, these 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 April 24, 1985.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First American Bank Corporation,* Elk Grove Village, Illinois; to acquire 100 percent of the voting shares of Community Bank & Trust, Hanover Park, Illinois; and to acquire Old Orchard Bank & Trust Company, Skokie, Illinois.

First American Bank Corporation has also applied to acquire First American Data Services, Inc., Elk Grove Village, Illinois, thereby continuing to engage in data processing activities limited to the processing or furnishing of financial and banking data.

Board of Governors of the Federal Reserve System, March 29, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–7961 Filed 4–2–85; 8:45 am]

BILLING CODE 6210–01–M

First Atlanta Corporation et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (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 April 26, 1985.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President), 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *First Atlanta Corporation,* Atlanta, Georgia; to acquire 100 percent of the voting shares of First Gwinnett Bancshares, Inc., Lawrence, Georgia, thereby indirectly acquiring First National Bank of Gwinnett County, Lawrenceville, Georgia.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Pullman Bancshares, Inc.,* Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Heritage/Pullman Bank and Trust Company, Chicago, Illinois.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Shamrock Bancshares, Inc.,* Colgate, Oklahoma; to acquire 89 percent of the voting shares of Mountain View Bancorp, Mountain View, Oklahoma, thereby indirectly acquiring First National Bank, Mountain View, Oklahoma.

D. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *American Bank Holding Corporation,* Corpus Christi, Texas; to acquire 100 percent of the voting shares of American National Bank-Uptown, Corpus Christi, Texas, a *de novo* bank.

2. *Crosby Bancshares, Inc.,* Crosby Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Crosby State Bank, Crosby, Texas.

E. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *First Intermountain Holding Corp.*, Salt Lake City, Utah; to acquire 80 percent of the voting shares of Guardian Bancorp, Salt Lake City, Utah, thereby indirectly acquiring Guardian State Bank, Salt Lake City, Utah.

Board of Governors of the Federal Reserve System, March 29, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-7962 Filed 4-2-85; 8:45 am]

BILLING CODE 6210-01-M

Manufacturers National Corporation et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) 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 commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 24, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Manufacturers National Corporation*, Detroit, Michigan; to engage *de novo* through its subsidiary, Manufacturers Bank-Delaware, Wilmington, Delaware, in the business of providing consumer credit through credit cards, accessed lines of credit and through unsecured revolving credit plans of various kinds; and to borrow money and accept deposits of money providing such deposits bear a maturity date of no less than thirty days beyond the date of such deposit and are in an amount not less than $100,000. In addition, Applicant also applied to engage *de novo* through Manufacturers Service Corporation, Detroit, Michigan (a subsidiary of Company), in providing service functions for Company, such as customer services including collections, resolution of billing disputes and the expediting of lost cards or stolen card reports.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First State Bancshares, Inc.*, Somerville, Tennessee; to engage *de novo* in acting as agent or broker in the sale of insurance that is directly related to an extension of credit by a bank or is directly related to the provision of other financial services by a bank. These activities would be conducted in the State of Tennessee.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Security Corporation*, Salt Lake City, Utah; to expand the geographic scope of First Security Insurance, Inc., Salt Lake City, Utah, to include the entire United States; and to engage *de novo* in general insurance agency and brokerage activities, pursuant to the Board's Order of March 11, 1985, approving these activities.

Board of Governors of the Federal Reserve System, March 29, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-7960 Filed 4-2-85; 8:45 am]

BILLING CODE 6210-01-M

Great Falls Bancorp et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (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 April 25, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Great Falls Bancorp.*, Totowa, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Great Falls Bank, Totowa, New Jersey.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Peoples Bancorp of Washington*, Washington, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of The Peoples National Bank and Trust Company, Washington, Indiana.

C. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Clarks Fork Stock Co.*, Fromberg, Montana; to become a bank holding company by acquiring 100 percent of the voting shares of Clarks Fork National Bank, Fromberg, Montana.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Metroplex Bancshares, Inc.*, Dallas, Texas; to acquire 100 percent of the voting shares or assets of Gleneagles National Bank, Plano, Texas, a *de novo* bank.

Board of Governors of the Federal Reserve System, March 28, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-7881 Filed 4-2-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Medicaid Program; Notice of Hearing: Reconsideration of Disapproval of a California State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of Hearing.

SUMMARY: This notice announces an administrative hearing on May 7, 1985, in San Francisco, California, to reconsider our decision to disapprove California State Plan Amendment 84-20.

Closing Date : Requests to participate in the hearing as a party must be received by April 18, 1985.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearings Staff, Bureau of Eligibility, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594-8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove a California State Plan Amendment.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins, in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether California's proposal to revise the Medically Needy Income Level (MNIL) for determining Medicaid eligibility for a family of two adults violates sections 1903(f)(1)(B), 1902(a)(4) and 1902(a)(19) of the Social Security Act and Federal regulations at 42 CFR 435.1007.

Section 1903(f)(1)(B) of the Social Security Act and implementing Federal regulations at 42 CFR 435.1007 provide that Federal Financial Participation (FFP) in expenditures for services is only available where the income (after deduction of incurred medical expenses) for a two adult family does not exceed 133⅓ percent of the highest amount ordinarily paid to a two person family (without income or resources) under the State's Aid to Families with Dependent Children (AFDC) program. California State Plan Amendment No. 84-20 proposed to establish a MNIL for two adults at 133⅓ percent of the State's AFDC payment level for a family of three.

Although the 133⅓ percent limit section 1903(f)(1)(B) of the Act is not strictly speaking a State plan requirement, the statute provides that FFP is not available for medical assistance to persons whose income exceeds that limit.

By setting the MNIL for a family of two adults at 133⅓ percent of the AFDC level for a family of three, California could provide medical assistance to individuals with income in excess of the limitation. Therefore, HCFA determined that the proposed State plan amendment would not be consistent with the "proper and efficient operation of the plan" and would thus violate section 1902(a)(4) of the Act. In addition HCFA has determined California's proposed plan violates section 1902(a)(19) of the Act which requires a plan to be "consistent with simplicity of administration."

The notice to California announcing an administrative hearing to reconsider our disapproval of its State plan amendment reads as follows:

Mr. Stanley Cubanski,
Director, Department of Health Services, 714/744 P Street, Room 1601, Sacramento, CA

Dear Mr. Cubanski: This is to advise you that your request for reconsideration of the decision to disapprove California State Plan Amendment 84-20 was received on March 1, 1985. You have requested a reconsideration of whether this plan amendment, which would revise the Medically Needy Income Level for determining Medicaid eligibility for a family of two adults, conforms to the requirements for approval under the Social Security Act and pertinent Federal requirements.

I am scheduling a hearing on your request to be held on May 7, 1985, at 10 a.m., in the 20th Floor Conference Room, 100 Van Ness Avenue, San Francisco, California. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Lawrence Ageloff as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594-8261.

Sincerely yours,

Carolyne K. Davis, Ph.D.

(Sec. 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: March 28, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 85-7870 Filed 4-2-85; 8:45 am]

BILLING Code 4120-03-M

Public Health Service

Emergency Medical Services for Children; Health Resources and Services Administration; Delegation of Authority

Notice is hereby given that in furtherance of the November 23, 1981 delegation (46 FR 62184-62185) by the Secretary of Health and Human Services to the Assistant Secretary for Health of authority under Title XIX of the PHS Act, the Acting Assistant Secretary for Health has delegated to the Administrator, Health Resources and Services Administration the authority under section 1910 of the PHS Act (42 U.S.C. 300w-9), as amended, concerning emergency medical services for children.

In addition, the Acting Assistant Secretary for Health has modified the November 23, 1981 delegation to the Director, Centers for Disease Control, of authority under Part A, Title XIX of the PHS Act in that section 1910 is excluded from the Director, Centers for Disease Control's area of functional responsibility.

All other delegations made to PHS officials of authority under Title XIX of the PHS Act are unchanged.

The delegation to the Administrator, Health Resources and Services Administration, became effective on March 5, 1985.

Dated: March 5, 1985.

James O. Mason, M.D., Dr. P.H.,

Acting Assistant Secretary for Health.

[FR Doc. 85-7924 Filed 4-2-85; 8:45 am]

BILLING CODE 4160-15-M

Assessment of Medical Technology; Treatment of Systemic Lupus Erythematosus

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is coordinating an assessment of what is known of the safety, clinical effectiveness, appropriateness, and use of apheresis in the treatment of systemic lupus erythematosus. Specifically we are interested in the medical indications for the procedure and its clinical acceptability. Information that would define the population of patients with this disease that might benefit from the application of this technology is also being sought.

PHS assessment consist of a synthesis of information obtained from appropriate organizations in the private sector and from PHS agencies and others in the Federal Government, and are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on these assessments, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than June 30, 1985, or within 90 days from the date of publication of this notice.

The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published, controlled clinical trials and other well-designed clinical studies, and other information related to the characterization of the patient population most likely to benefit from, and the clinical acceptability and effectiveness of this technology. Proprietary information is not being sought.

Written material should be submitted to: National Center for Health Services Research, and Health Care Technology Assessment, Office of Health Technology Assessment, Park Building, Room 3-10, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: March 21, 1985.

Enrique D. Carter, M.D.,

Director, Office of Health Technology Assessment, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 85-7925 Filed 4-2-85; 8:45 am]

BILLING CODE 4160-01-M

Assessment of Medical Technology; Treatment of Landry-Guillain-Barrie Syndrome

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is coordinating an assessment of what is known of the safety, clinical effectiveness, appropriateness, and use of apheresis in the treatment of acute Landry-Guillain-Barre Syndrome. Specifically we are interested in the medical indications for the procedure and its clinical acceptability. Data that would help to define the population of patients with this disease that might benefit from the application of this technology is also being sought.

PHS assessment consist of a synthesis of information obtained from appropriate organizations in the private sector and from PHS agencies and others in the Federal Government, and are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than June 17, 1985, or within 90 days from the date of publication of this notice.

The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published, controlled clinical trials and other well-designed clinical studies, and other information related to the characterization of the patient population most likely to benefit from, and the clinical acceptability and effectiveness of this technology. Proprietary information is not being sought.

Written material should be submitted to: National Center for Health Services Research, and Health Care Technology Assessment, Office of Health Technology Assessment, Park Building, Room 3-10, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: March 2, 1985.

Enrique D. Carter,

Director, Office of Health Technology Assessment, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 85-7926 Filed 4-2-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Boise District, ID; Advisory Council Meeting

ACTION: Boise District, Idaho, Advisory Council Meeting.

SUMMARY: In accordance with Pub. L. 92-483, the Federal Advisory Committee Act, and Pub. L. 94-579, the Federal Land Policy and Management Act, notice is hereby given that the Boise District Multiple Use Advisory Council will meet April 16, 1985.

SUPPLEMENTARY INFORMATION: The meeting will take place April 16, from 9:00 a.m. to 12:00 p.m. It will be held in the main floor conference room at the BLM, Boise District Office. The council will discuss the Draft Grazing Fee Review and Evaluation Report.

The public is invited to attend. A public comment period has been scheduled from 10:00 a.m. to 11:00 a.m.

FOR FURTHER INFORMATION CONTACT: Further information is available at the Bureau of Land Management, Boise District Office, 3948 Development Avenue, Boise, Idaho 83705, phone (208) 334-1582. Minutes of the meeting will be available for public inspection at the District Office.

J. David Brunner,

Acting District Manager.

[FR Doc. 85-8014 Filed 4-3-85; 8:45 am]

BILLING CODE 4310-84-M

Boise District, ID; Grazing Board Meeting

ACTION: Boise District, Idaho, Grazing Board Meeting.

SUMMARY: In accordance with P.L. 92-483, the Federal Advisory Committee Act, and Pub. L. 94-579, the Federal Land Policy and Management Act, notice is hereby given that the Boise District Grazing Advisory Board will meet April 23, 1985.

SUPPLEMENTARY INFORMATION: The meeting will take place April 23, from 9:00 a.m. to 12:00 p.m. It will be held in the main floor conference room at the

BLM, Boise District Office. The Board will discuss the Draft Grazing Fee Review and Evaluation Report.

The public is invited to attend. A public comment period has been scheduled from 10:00 a.m. to 11:00 a.m.

FUR FURTHER INFORMATION CONTACT: Further information is available at the Bureau of Land Management, Boise District Office, 3948 Development Avenue, Boise, Idaho 83705, phone (208) 334–1582. Minutes of the meeting will be available for public inspection at the District Office.

J. David Brunner,

Acting District Manager.

[FR Doc. 85–8013 Filed 4–3–85; 8:45 am]

BILLING CODE 4310–84–M

Las Cruces District, NM; Proposed Designation of an Area of Critical Environmental Concern, Sacramento Escarpment Scenic Area, Otero County, NM

AGENCY: Bureau of Land Management (BLM), Las Cruces District, White Sands Resource Area, New Mexico.

ACTION: Initiation of a 60-day public comment period on the proposed designation of the Sacramento Escarpment Scenic Area of critical environmental concern (ACEC).

SUMMARY: Pursuant to the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 [section 202(c)(3)] and 43 CFR 1610.7–2(b), a 60-day public comment period is initiated on the proposed designation of the Sacramento Escarpment as an ACEC for visual resources.

DATE: Written comments on the proposed designation of the Sacramento Escarpment ACEC must be received no later than May 29, 1985.

ADDRESS: Comments should be sent to: Larry Nunez, Area Manager, Bureau of Land Management, White Sands Resource Area, 1800 Marquess Street, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Willis M. Bird, Jr., RMP/EIS Team Leader, Bureau of Land Management, White Sands Resource Area, 1800 Marquess Street, Las Cruces, New Mexico 88005. Telephone: (505) 525–8228 or FTS 571–8353.

SUPPLEMENTARY INFORMATION: The Sacramento Escarpment is located in Otero County, immediately southeast of Alamogordo, New Mexico. The Sacramento Escarpment meets the two criteria required for an area to be considered as an ACEC for visual resources: (1) The area rates high in scenic quality and (2) the area has a high rating for scarcity. The Sacramento Escarpment is proposed as an ACEC for visual resources in the Draft White Sands Recource Management Plan/Environmental Impact Statement (RMP/EIS). This document was made available to the public on March 1, 1985, and written comments are due May 29, 1985. The Draft RMP/EIS considers four alternative management plans for the Sacramento Escarpment. Under the Balanced Alternative, the ACEC would be 3,640 acres in size, would be managed under Visual Resource Management (VRM) Class I objectives, would be designated limited to existing roads and trails for off-road vehicle (ORV) use, and would be designated No Surface Occupancy (NSO) for oil and gas and geothermal leasing. Under the Protection Alternative, the ACEC would be 4,300 acres in size, would be managed under VRM Class I objectives, would be designated closed to ORV use, would be designated NSO for oil and gas and geothermal leasing, and would be withdrawn from locatable mineral entry. In addition, two privately-owned 40-acre land parcels are proposed for possible acquisition to improve the manageability of the ACEC under the Protection Alternative. Under the Production and No Action Alternatives, current management of the Sacramento Escarpment would essentially continue.

Copies of the Draft RMP/EIS and the Technical Report for the Sacramento Escarpment ACEC Management Plan are available at the White Sands Resource Area Office, 1800 Marquess Street, Las Cruces, New Mexico 88005.

Dated: March 27, 1985.

Monte G. Jordan,

Associate State Director.

[FR Doc. 85–7933 Filed 4–2–85; 8:45 am]

BILLING CODE 4310–FB–M

Minerals Management Service

Notification of Outer Continental Shelf (OCS) Programwide Policy on Water-Depth Criterion for Longer Primary Lease Terms for OCS Oil and Gas Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notification of OCS Programwide Policy.

SUMMARY: The Department of the Interior is adopting a programwide policy on a water-depth criterion for longer primary lease terms for OCS oil and gas leases. The policy will be implemented in two stages. Initially, because numerous leases would be affected in upcoming sales, leases on blocks in water depths of 400 to 900 meters will be issued on a sale-by-sale basis with a stipulation providing for an 8-year primary lease term and the requirement that an exploration will be commenced within the first 5 years. In the meantime, a rule is being prepared that proposes to amend 30 CFR 256.37, Lease terms, to reflect the above-mentioned policy. Because the policy is meant to be applicable to all new leases in 400 to 900 meters of water on the entire OCS, amending the regulations is preferable in the long run to making sale-by-sale decisions. Following final promulgation of the rule, a lease stipulation would no longer be necessary.

The requirement for commencement of an exploratory well within the first 5 years is intended to ensure diligence. Please note that commencement of a required exploratory well could be delayed beyond the fifth anniversary when a suspension of operations (SOO) is approved under 30 CFR 250.12. Otherwise, without an SOO, the lease would be cancelled after 5 years. Where an exploratory well is drilled under an exploration plan approved under an approved unit agreement, the drilling of that well could satisfy the drilling requirements on each of the unitized leases. Leases on blocks in water depths of 900 meters or more will continue to be issued with 10-year primary terms. Leases in the Arctic OCS will also continue to be issued with 10-year primary terms due to remoteness and hostile environmental conditions such as ice.

DATE: This programwide policy will be implemented beginning with the Central Gulf of Mexico Sale 98 (May 1985).

FOR FURTHER INFORMATION CONTACT: Dr. Marshall Rose or Ms. Carol Hartgen, Minerals Management Service, MS 643, 12203 Sunrise Valley Drive, Reston, Virginia 22091, telephone (703) 860–7558.

SUPPLEMENTARY INFORMATION: Section 8(b) of the OCS Lands Act provides the Secretary of the Interior with discretionary authority to issue leases for an initial period of longer than 5 years but not to exceed 10 years if it is found that a longer period is necessary to encourage exploration and development in areas because of unusually deep water.

During the past 4 years, decisions on the appropriate water-depth criterion for longer primary lease terms have been made on a sale-specific basis. Since 1982, sale-specific decisions have water depths of 900 meters or more. The question of what to do for leases in 400- to 900-meter depths has continued. In

April 1984 an Interim Final Rule was published (49 FR 17449) that provided for a mandatory SOO for Gulf of Mexico (GOM) leases in 400 to 900 meters of water. The SOO is granted for a period of time necessary to complete the activities scheduled in a development and production plan approved prior to the end of the 5-year primary term. The comments received in response to the Interim Final Rule indicated that a 5-year term was not adequate to explore and have a development and production plan approved. The commenters also stated that any policy should apply to the entire OCS and not only the GOM.

Exploration and development at any water depth depend on the state of technology, cost, and risk. Technologically, the petroleum industry has the capability to explore in deep waters beyond the 400- to 900-meter water-depth range. Actual production in deep water is occurring at approximately the 300-meter isobath. Cost-effective production systems in the form of guyed towers and tension-leg platforms become a necessity and replace conventional fixed-leg platform designs beyond the 400-meter water-depth range. If a sufficiently larger reserve is found in deep water, the costs associated with development are extremely high, warranting more detailed and timely engineering and cost studies than would be conducted in shallower waters.

Based on analysis of current deepwater technology, estimated timeframes and historical data of the time necessary to commence development in water depths of 200 to 900 meters and 400 to 900 meters, an 8-year primary term for leases in 400 to 900 meters was adopted based on the findings that in this water-depth range more than 5 years are generally necessary to initiate development. The historical data indicate no lessee has commenced development at these depths in fewer than 5 years, and most often it has taken 9 years. Estimated timeframes to complete delineation drilling at these depths range from 4 to 6 years or 9 to 12 years to complete development. The drilling requirement was considered necessary to ensure diligent exploration and development.

Dated: March 28, 1985.

William D. Bettenberg,

Director.

[FR Doc. 85-7879 Filed 4-2-85; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf Oil and Gas Lease Sales; List of Restricted Joint Bidders

Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period from May 1, 1985, through October 31, 1985. The List of Restricted Joint Bidders published in the **Federal Register** on October 2, 1984, at 49 FR 38993 covered the bidding period of November 1, 1984 through April 30, 1985.

Group I. Chevron U.S.A. Inc.; Chevron Corporation; Gulf Oil Corporation.

Group II. Exxon Corporation.

Group III. Mobil Oil Corporation; Mobil Oil Exploration and Producing Southeast Inc.; Mobil Producing Texas and New Mexico Inc.; Superior Oil Company.

Group IV. MTS Limited Partnership (Mesa Petroleum Co., Texaco Inc., Sequoia Petroleum Inc.); Texaco Inc.; Getty Oil Company; Texaco Oils Inc.; Texaco Producing Inc.

Group V. Shell Offshore Inc.; Shell Oil Company; Shell Western E&P Inc.

Dated: March 28, 1985.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 85-7948 Filed 4-2-85; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for review.

Purpose of information collection: The proposed information collection is for use by the Commission in connection with investigation No. 332-209, Competitive Conditions in the Steel Industry and Industry Efforts to Adjust and Modernize, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

SUMMARY OF PROPOSALS:

(1) Number of forms submitted: two.

(2) Title of form: Annual Surveys Concerning Competitive Conditions in the Steel Industry and Industry Efforts to Adjust and Modernize—Questionnaires for U.S. Producers and Importers.

(3) Type of request: new.

(4) Frequency of use: annual, through 1989.

(5) Description of respondents: firms which produce or import carbon and alloy steel products.

(6) Estimated annual number of respondents: 350.

(7) Estimated total number of hours to complete the forms: 7,250.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional information or comment: Copies of the proposed form and supporting documents may be obtained from Dennis Rapkins, (USITC, tel. no. 202-523-0438). Comments about the proposals should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503, Attention: Francine Picoult, Desk Officer for the U.S. International Trade Commission. If you anticipate commenting on a form but find that time to prepare comments will prevent you from submitting them promptly you should advise OMB of your intent as soon as possible. Ms. Picoult's telephone number is (202) 395-7231. Copies of any comments should be provided to William Fry (U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436)

Issued: March 29, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary

[FR Doc. 85-7965 Filed 4-2-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-205 (Final)]

Carbon Steel Wire Rod From East Germany

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-205 (Final) under section 735(b) of the

Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from East Germany of carbon steel wire rod, provided for in item 607.17 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before May 20, 1985, and the Commission will make its final injury determination by July 9, 1985 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, Aug. 15, 1984).

EFFECTIVE DATE: March 12, 1985.

FOR FURTHER INFORMATION CONTACT: Ann Reed (202-523-0255), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary dtermination by the Department of Commerce that imports of carbon steel wire rod from East Germany are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on September 26, 1984, by counsel on behalf of Atlantic Steel Co., Continental Steel Co., Georgetown Steel Corp., North Star Steel Texas, and Raritan River Steel Co. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (49 FR 45937, Nov. 21, 1984).

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rule (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c), as amended by 49 FR 32569, Aug. 15, 1984), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report.—A public version of the prehearing staff report in this investigation will be placed in the public record on May 22, 1985, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on June 5, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on May 23, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on May 30, 1985, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is May 30, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2), as amended by 49 FR 32569, Aug. 15, 1984)).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on June 12, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before June 12, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8, as amended by 49 FR 32569, Aug. 15, 1984). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, Aug. 15, 1984).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: March 25, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-7967 Filed 4-2-85; 8:45 am]

BILLING CODE 7020-02-M

[332-210]

Conditions Relating to the Importation of Softwood Lumber Into the United States

AGENCY: United States International Trade Commission.

ACTION: Institution of an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of gathering and presenting information on the competitive and economic factors affecting the importation of softwood lumber into the United States.

EFFECTIVE DATE: March 26, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Ruggles or Mr. Thomas Westcot, Agriculture, fisheries, and Forest Products Division, U.S. International Trade Commission, Washington, D.C. 20436, telephone 202–724–1766 or 202–724–0095, respectively.

Background

The U.S. Trade Representative (USTR) in a letter dated March 6, 1985, requested, at the direction of the President, that the Commission conduct an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of updating the Commission's April 1982 study entitled *Conditions Relating to the Importation of Softwood Lumber into the United States* (investigation No. 332–134), and reporting on all significant factors affecting the competitive status of the U.S. Canadian softwood lumber industries. The USTR requested that the investigation examine conditions in the softwood lumber industry over the past 3 years and report any significant developments since the Commission completed its earlier investigation.

To the extent possible, the study will provide information on the structure of the U.S. market; stumpage prices and appraisal methods; fixed and variable costs of production; transportation costs; marketing practices; Government policies and regulations and their influence on the softwood lumber industry; and a comparative analysis of United States and Canadian stumpage appraisal systems, industry wage rates, nature of forest resources, forest policy, employment policy as it relates to the softwood lumber industry, methods of taxation, and profit and risk allowances.

Written Submissions

Interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of §201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be ensured of consideration by the Commission, written statements should be submitted at the earliest practicable date, but not later than May 3, 1985. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

By order of the Commission.

Issued: March 28, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–7966 Filed 4–2–85; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30620]

Chicago, West Pullman & Southern Railroad Company; Modified Certificate of Public Convenience and Necessity

March 27, 1985.

By notice served February 14, 1985, the Chicago, West, Pullman & Southern Railroad Company (CWPS) was authorized, effective January 31, 1985, to operate for 120 days under a modified certificate over a 58.95-mile line acquired in portions by the State of Wisconsin Department of Transportation (WISDOT) and the South Central Wisconsin Rail Transit Commission (SCWR) and over a 79.6-mile line acquired by WISDOT. The two lines are controlled by SCWR and the Pecatonia Rail Transit Commission, public agencies of the State of Wisconsin. CWPS was to operate the lines pursuant to service agreements with the two transit commissions.

On March 1, 1985, the Wisconsin & Calument Railroad, Inc. (WCR), a new corporation affiliated with CWPS by common ownership, directors, and officers, filed a modified certificate notice seeking to be substituted for CWPS as a replacement operator of the two lines for the remainder of the 120-day period. This notice was docketed Finance Docket No. 30631. WISDOT opposed the substitution contending that WCR failed to comply with the information requirements of 49 C.F.R. 1150.23 and the 60-day notice requirement for cessation of service. WISDOT stated that further review of WCR's financial structure, operating capabilities, insurance, and implementation of service agreements would be necessary before the State of Wisconsin could approve the substitution.

By letter filed March 14, 1985, the Railway Labor Executives' Association (RLEA) protested and substitution, petitioned for oral argument, and alternatively requested imposition of the labor protective conditions in Finance Docket No. 29601, *Indian Hi Rail Corp.-Feeder Line Acq.*, 366 I.C.C. 42 (1981). The United Transportation Union (UTU), by protest filed March 20, 1985, expressed opposition to the substitution contending that WCR is an alter ego set up by CWPS to avoid its collective bargaining agreement with UTU, the exclusive representative of certain employees.

On March 22, 1985, CWPS and WCR (1) withdrew the notice of substitution pending in Finance Docket No. 30631 and stated that WCR would be dissolved as a separately incorporated entity and (2) gave notice that the modified certificate in Finance Docket No. 30620 should be amended to have the authority issued on behalf of "Chicago, West Pullman & Southern Railroad Company doing business as Wisconsin & Calument Railroad."

As of March 31, 1985, CWPS is authorized to operate under this modified certificate doing business as the Wisconsin & Calumet Railroad. Amending the modified certificate in this manner will eliminate the need for termination and will establish an identity for WCR without the separate corporate form that is objectionable to the State of Wisconsin. The amendment also is consistent with the service agreements between CWPS and the two transit commissions. As amended, the modified certificate should not have an adverse affect on any of the parties to Finance Docket No. 30631. WISDOT and RLEA do not oppose the amendment, and UTU has withdrawn its protest.

Finance Docket No. 30631 is dismissed.

This notice must be served upon the Association of American Railroads (Car Service Division) as agent of all-railroads subscribing to the car-service and car-hire agreement, and upon the American Short Line Railroad Association.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85–7911 Filed 4–2–85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Reimbursable Services—Excess Cost of Preclearance Operations

Notice is hereby given that pursuant to Immigration and Naturalization Service Regulations (8 CFR 235.5(c)), the biweekly reimbursable excess costs for

each preclearance installation are determined as set forth below and will be effective with the pay period beginning April 28, 1985.

Installation	Biweekly excess cost
Montreal, Canada	$9,774.04
Toronto, Canada	14,126.71
Kindley Field, Bermuda	1,895.95
Freeport, Bahama Islands	5,598.60
Nassau, Bahama Islands	7,297.05
Calgary, Canada	4,218.71
Edmonton, Canada	3,045.70
Vancouver, Canada	7,436.58
Victoria, Canada	1,967.26
Winnipeg, Canada	1,372.67

As stated in the final rule published 3/26/85 at 50 FR 11841, the biweekly reimbursable excess costs for the first billing period are based on excess preclearance costs for fiscal year 1984. These amounts will be in effect and billed biweekly until the first full pay period after the notice of the third quarter, fiscal year 1985, reimbursable biweekly excess costs are published in the **Federal Register** (i.e., a July 25, 1985, publication date would mean that billing for the revised reimbursable biweekly excess costs would be effective for the pay period commencing August 4, 1985).

Dated: March 28, 1985

Malcolm E. Arnold,

Controller.

[FR Doc. 85-7917 Filed 4-2-85; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 85-68; Application Foie No. D-5258]

Permanent Class Exemption To Permit Employee Benefit Plans to Invest in Customer Notes of Employers

AGENCY: Office of Pension and Welfare Benefit Programs, Department of Labor.

ACTION: Grant of Class Exemption.

SUMMARY: This document contains a class exemption to permit employee benefit plans to purchase and hold customer notes of employers. [Replaces Prohibited Transaction Exemption 79-9]. The exemption affects participants, beneficiaries and fiduciaries of plans investing in customer notes, and employers of the plan participants.

EFFECTIVE DATE: July 1, 1984. A condition requiring independent fiduciary oversight will be effective with respect to transactions entered into after 30 days after the date of this **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Office of Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor, (202) 523-7901. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On August 10, 1984, notice was published in the **Federal Register** (49 FR 32127) of the pendency before the Department of a proposed class exemption to allow an employee benefit plan to purchase and hold customer notes from an employer of employees covered by the plan. A temporary class exemption, Prohibited Transaction Exemption (PTE) 79-9 (44 FR 17819, March 23, 1979), permitting transactions of this kind expired on June 30, 1984. The exemption provided relief from the prohibited transaction restrictions of sections 406(a), 406(b) (1) and (2) and 407(a) of the Employee Retirement Income Security Act of 1974 (ERISA) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code.

In order to establish a record on which to base a determination as to whether permanent relief should be granted for plan investments in customer notes, the Department contacted a number of plans that had relied on PTE 79-9 seeking information concerning their experience with the temporary class exemption. The Department also solicited the views of the Associated Equipment Distributors (AED), an association of several hundred small businesses engaged primarily in the sale of construction equipment. Responses to the Department's inquiries and to a survey conducted by the AED among its member companies indicated that PTE 79-9 had provided good investment opportunities to the participating plans which afforded them relatively favorable yields with a high degree of safety. At the urging of plans that have relied on PTE 79-9 and the AED, the Department proposed the new permanent class exemption on its own motion under section 408(a) of ERISA and section 4975(c)(2) of the Code [1] and section 3.01 of ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

The notice gave interested persons an opportunity to comment and to request a hearing on the proposal. Public comments were received pursuant to the provisions of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1.

1. Description of the Exemption

The class exemption granted pursuant to this notice permits a plan to acquire customer notes accepted by an employer of employees covered by the plan in the ordinary course of the employer's primary business activity. The exemption covers sales as well as contributions of customer notes by an employer to its plan. The new exemption incorporates many of the same conditions or limitations imposed under PTE 79-9, which were intended as safeguards to ensure the protection of the plan assets involved in the transactions. These conditions include a written guarantee by the employer to immediately repurchase a note if it becomes more than 60 days delinquent. A plan may not invest more than 50 percent of its assets in customer notes and over 10 percent in the notes of a single customer. Each customer note sold to a plan must be secured by a perfected security interest in the property financed by the note and the collateral must be insured. Also, maximum terms ranging up to five years are imposed on the notes, depending on the type of property being financed.

A condition of PTE 79-9 that required a plan to notify the Department annually in writing if it relied on the exemption is not retained in the new exemption for reasons discussed in the preamble to the proposal.[2] On the other hand, a new requirement for independent fiduciary oversight in regard to plan investments in customer notes has been included in the exemption. Under this new condition, a plan fiduciary who is independent of the employer must approve in advance any acquisition of customer notes by a plan and must monitor the plan's ongoing rights with respect to the customer notes held in its portfolio.

2. Discussion of Comments Received

The Department received nine letters commenting on various aspects of the proposed class exemption. The comment letters in general urged that the class exemption be adopted and stated that an exemption of this kind is in the best interests of the participants and beneficiaries of plans.

Four comment letters objected to the requirement proposed in the exemption that a fiduciary, who is independent of the employer, approve in advance any sales of customer notes to a plan and

[1] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), transferred the authority of the Secretary of the Treasury to issue exemptions of this type to the Secretary of Labor.

[2] See 49 FR at 32129.

monitor the ongoing plan investments in these notes. The letters asserted that the available evidence indicates that the temporary exemption worked well without an independent fiduciary requirement and that sufficient safeguards already are present in the proposed new exemption. The commenters maintain that the requirement for an independent fiduciary would add an unnecessary expense to a plan's operation which would reduce the plan's net investment return. Some of the letters further indicated that certain financial institutions either would be reluctant to serve in the capacity defined in the exemption or would demand a broader fiduciary role. The commenters noted that many employers relying on the exemption are smaller companies that traditionally have not utilized independent fiduciaries.

As stated in the preamble to the proposed exemption, the Department believes, based on its experience with both class exemptions and individual exemptions, that independent fiduciary oversight is an important method of protecting the plan assets involved in an exempt transaction and avoiding a potential conflict of interest situation where, for example, the employer, who is typically a fiduciary, engages in transactions with the plan. The Department recognizes that PTE 79-9 appears to have operated well with the safeguards incorporated in the temporary exemption and that this new requirement may impose some added expense on the part of plans utilizing the exemption. The Department is not convinced, however, that the marginal savings to a plan in cost or effort from eliminating this condition outweigh the added protection of having any covered transaction subject to the prior approval and monitoring of a fiduciary independent of the employer. For this reason and the reasons previously outlined in the preamble to the proposed exemption, condition III(b) is being retained in the final exemption.

Two comment letters recommended, without further explanation, that the scope of the exemption be expanded to permit sales of customer notes to a plan by affiliates of the sponsoring employer as well as by the employer itself. Section II of the proposal states, in part, that the exemption provides relief for the "acquisition from an employer with respect to a plan * * * of customer notes." Under the definition of customer notes in Section I, such a note must be accepted in connection with the employer's primary business activity as a seller of the tangible personal property being financed by the note. The commenters point out that an individual exemption (PTE 82-48, 47 FR 10924) was granted on March 12, 1982 on a temporary basis to the retirement plans of the Bale Chevrolet affiliated group. The exemption covers transactions similar to those described in PTE 79-9 except that the customer notes are purchased from Bale Finance Company (Bale Finance) which finances automobile sales for customers of the Bale Chevrolet Company (Bale Chevrolet). Bale Chevrolet and Bale Finance are the sole members of a controlled group as defined in section 1563(a) of the Code. The Department stated in the preamble to the notice of pendency that the exemption was proposed to be in effect only through June 30, 1984 to coincide with the expiration date of PTE 79-9, so that the Department could make a determination at that time in regard to future relief for the applicant.

The Department does not believe that a sufficient showing has been made that the problems associated with the scope of the exemption are commonplace and, consequently, has determined not to modify the definition of customer notes in the exemption. However, the Department continues to be prepared to consider individual exemptive relief for transactions of the type described in PTE 82-48 if the requisite findings under section 408(a) of ERISA can be made.

The Associated Equipment Distributors submitted a letter of comment concerning condition III(d) of the proposed exemption. Under that condition, an employer is required to repurchase a customer note from a plan in the event the note becomes over 60 days in arrears. As noted in the preamble to the proposal, the AED had stated in a letter to the Department dated April 5, 1984 that business customers sometimes experience seasonal or temporary cash-flow problems not reflective of their basic financial condition. As a result, the 60-day default period has occasionally caused good notes with favorable yields to be removed from a plan. At that time the AED recommended that the default period be extended from 60 to 90 days. The Department tentatively rejected that earlier recommendation for reasons discussed in the preamble to the proposed exemption.

In its most recent comment letter, the AED urged the Department to reconsider this matter and reiterated its view that such an extension would be in the best interests of plan participants. According to the AED, an employer, such as an equipment dealer, knows its customers well and therefore usually knows whether a customer is in a sound financial position despite occasional seasonal difficulties.

The AED recommended that the proposed exemption be modified to state that, while a note would still be considered to be in default if it was 60 days in arrears, the employer would have another 30 days to repurchase the note or to see that payments on the note are made timely. Alternatively, the AED recommended that, in cases of a 60-day delinquency, the employer could petition the independent fiduciary referred to in section III(b) of the proposed exemption to grant a 30-day extension.

After consultation with the employer, the independent fiduciary would have the discretion to grant or deny the requested extension based on his or her judgment as to the soundness of the note and the likelihood of its becoming current.

Upon consideration of the arguments put forth by the AED, the Department has decided to accept the second alternative suggested in the comment letter and has modified section III(d) of the exemption accordingly. In all other respects, the proposed exemption is being adopted without change.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department makes the following determinations:

(i) The class exemption set forth herein is administratively feasible,

(ii) It is in the interests of plans and of their participants and beneficiaries, and

(iii) It is protective of the rights of the participants and beneficiaries of plans;

(3) The class exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(4) The class exemption is supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Exemption

Accordingly, the following class exemption is hereby granted under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

Section I. Definition of Customer Notes. For purposes of this exemption, a customer note is a two-party instrument, executed along with a security agreement for tangible personal property, which is accepted in connection with, and in the normal course of, an employer's primary business activity as a seller of such property. A two-party instrument is a promissory instrument used in connection with the extension of credit in which one party (the maker) promises to pay a second party (the payee) a sum of money.

Section II. Transactions Covered. Effective July 1, 1984, if the conditions of section III of this exemption are satisfied, the prohibitions of sections 406(a), 406(b) (1) and (2) and 407(a) of ERISA and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the acquisition from an employer with respect to a plan and holding by the plan of customer notes (which, pursuant to section III(d), are guaranteed by the employer), or the repurchase of those notes by the employer.

Section III. Conditions. The following conditions must be met in the case of each plan which engages in covered transactions in reliance on the exemption:

(a) The transaction is on terms at least as favorable to the plan as an arm's-length transaction with an unrelated party would be.

(b) Effective with respect to customer notes sold after May 3, 1985—

(1) Prior to the consummation of a transaction described in section II of this exemption, the transaction is approved on behalf of the plan by a fiduciary who is independent of the employer, upon a determination made by such fiduciary that the (other) conditions of this exemption will be satisfied. The independent fiduciary shall acknowledge his or her plan fiduciary status in writing with respect to the transaction. For purposes of this paragraph, a person is independent of an employer even though he or she was selected by the employer (or by a person with an interest in the employer) if he or she has no other interest in the transaction for which an exemption is sought that might affect his or her best judgment as a fiduciary;

(2) The plan's continuing rights under the terms and conditions of the acquired customer note(s) and under this exemption shall be monitored and enforced on behalf of the plan by the same or another plan fiduciary who is independent of the employer and who has acknowledged his or her fiduciary status and liability as described in paragraph (b)(1) of this section. The independent fiduciary shall be responsible for taking all appropriate actions necessary to protect the plan's rights with regard to the safety and collection of the notes purchased by the plan. These actions shall include, but not be limited to, ascertaining that payments are received timely, diligently pursuing the receipt of delinquent payments and enforcing the employer's guarantee to repurchase delinquent notes, with accrued interest, as described in paragraph (d) of this section.

(c) The acquisition of a customer note from the employer shall not cause a plan to hold immediately following the acquisition (i) more than 50 percent of the current value (as defined in section 3(26) of ERISA) of plan assets in customer notes of the employer or (ii) more than 10 percent of the current value of plan assets in the notes of any one customer.

(d) The employer guarantees in writing the immediate repayment of the outstanding balance of the notes and accrued interest in the event the note is more than 60 days in arrears or if other events occur that, in the opinion of the independent fiduciary referred to in paragraph (b) of this section, impair the safety of the note as a plan investment. The independent fiduciary may at his or her discretion grant an additional 30-day extension before repurchase of the note by the employer is necessary upon a petition by the employer, if the fiduciary determines, after consultation with the employer, that such an extension is in the best interests of the participants and beneficiaries of the plan. The other events (of impairment) referred to above include, but are not limited to, the following:

(1) The obligor on the note fails to comply with any terms or conditions of the note.

(2) The obligor becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of creditors or a liquidating agent, offers a composition or extension to creditors or make a bulk sale.

(3) Any proceeding, suit or action at law, in equity or under any of the provisions of the Bankruptcy Act or amendments thereto for reorganization, composition, extension, arrrangements, receivership, liquidation or dissolution is begun by or against the obligor.

(4) A receiver of any property of the obligor is appointed under any jurisdiction at law or in equity.

(5) The obligor fails to take proper care of or abandons the property being financed by the note.

(e) The plan receives adequate security for the note. For purposes of this exemption, the term adequate security means that the note is secured by a perfected security interest in the property purchased by the obligor on the note so that if the security is foreclosed upon, or otherwise disposed of, in default of repayment of the loan, the value and liquidity of the security is such that it may reasonably be anticipated that loss of principal or interest will not result. In no event shall adequate security mean an interest in intangible personal property, such as, but not limited to, accounts, contract rights, documents, instruments, chattel paper, and general intangibles.

(f) Insurance against loss or damage to the collateral from fire or other hazards will be procured and maintained by the obligor until the note is repaid or repurchased by the employer, and the proceeds from such insurance will be assigned to the plan.

(g) Repayment must be provided for in the following manner:

(1) Where the note is secured by heavy equipment, the term shall in no event exceed 60 months. For purposes of this exemption, heavy equipment shall include machinery sold by equipment distributors such as, but not limited to, earth moving, material handling, pipe laying, power generation, and construction machinery manufactured according to standard specifications, but shall not include such equipment which has been specifically designed and manufactured to a user's specifications and which cannot reasonably be expected to be resold in the ordinary course of the equipment distributor's business.

(2) Where the note is secured by passenger automobiles and light-duty highway motor vehicles, the term shall in no event exceed 48 months. For purposes of this exemption, passenger automobiles and light-duty highway motor vehicles are defined as vehicles which have a gross weight of 10,000 pounds or less, are propelled by means of their own motor and are a type used for highway transportation.

(3) Where the note is secured by tangible personal property other than heavy equipment or motor vehicles described in paragraph (g) (1) and (2) of this section, the term shall in no event exceed 36 months.

(h) All records, information and data required to be maintained which relates to plan investments in customer notes covered by this exemption shall be unconditionally available at their customary location for examination during normal business hours by:

(1) The Department of Labor,

(2) The Internal Revenue Service,

(3) Plan participants and beneficiaries, or

(4) Any duly authorized employee or representative of a person described in subparagraph (1) through (3) above.

Signed at Washington, D.C., this 28th day of March 1985.

Alan D. Lebowitz,

Acting Administrator, Office of Pension and Welfare Benefit Programs.

[FR Doc. 85-7901 Filed 4-2-85; 8:45 am]

BILLING CODE 4510-29-M

MERIT SYSTEMS PROTECTION BOARD

Review of the Significant Actions of the Office of Personnel Management During CY 1984; Call for Comments

Correction

In the issue of Tuesday, March 26, 1985, in the document appearing on page 11958 make the following corrections:

1. On page 11958, in the third column, in the file line at the end of the document, "FR Doc. 85-7191" should have read "85-7091".

2. In the second column, fourth line of paragraph (b)(1), "commission or" should have read "commission of".

3. In the third column, eighth line of paragraph (c)(3), "effects" should have read "affects".

BILLING CODE 1505-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted 30 days from date of notice.

ADDRESS: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, (202) 786-0233 or Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, N.W., Room 3208, Washington, D.C. 20503, (202) 395-6880.

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506, (202) 786-0233, from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries is subject to 44 U.S.C. 3504(h).

Category—New Form
Title: Travel to Collections Program, Supplemental Instructions for preparing Final Performance Reports
Form Number: N/A
Frequency of Collection: Occasional, at end of each grant
Respondents: All recipients of NEH Travel to Collections Program grants
Use: Program Evaluation and meeting requests for information from OMB and Congress
Estimated Number of Respondents: 500-600
Estimated Hours of Respondents to Provide Information: 1-3 hours

Bruce Carnes,

Acting Director of Administration.

[FR Doc. 85-7902 Filed 4-2-85; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

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 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: Extension.

2. Class exemption for reports concerning possible non-routine generic problems.

3. The form number if applicable: Not applicable.

4. How often the collection is required: On Occasion.

5. Who will be required or asked to report: NRC Licensees.

6. An estimate of the number of responses: Varies.

7. An estimate of the total number of hours needed annually to complete the requirement or request: 5,000.

8. An indication of whether Section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: NRC is requesting approval authority to collect information concerning emergency non-routine generic problems which would require prompt action to preclude potential threats to public health and safety.

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 28th day of March 1985.

For the Nuclear Regulatory Commission.
Patricia G. Norry,
Director, Office of Administration.
[FR Doc. 85-7952 Filed 4-2-85; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-13]

Babcock & Wilcox Co.; Finding of No Significant Environmental Impact Regarding Proposed Order Authorizing Dismantling of the Reactor and Disposition of Component Parts

The Nuclear Regulatory Commission is considering issuance of an Order authorizing the Babcock & Wilcox Company to dismantle their critical facility near Lynchburg, Virginia and to dispose of the reactor components in accordance with the application dated August 7, 1984, as supplemented.

The Order would authorize dismantling of the facility and disposal of the components in accordance with the licensee's application for decontamination and dismantling dated August 7, 1984, as supplemented. Opportunity for hearing was afforded by the Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Termination of Facility License published in the Federal Register September 18, 1984 at 49 FR 36579.

Finding of No Significant Impact

The Commission has determined not to prepare an Environmental Impact Statement for the proposed action. The Commission has prepared an Environmental Assessment of this action and has concluded that the proposed action will not have a significant effect on the quality of human environment.

Summary of Environmental Impacts

The environmental impacts associated with the dismantling and decontamination operations are discussed in an Environmental Assessment associated with this action, dated January 31, 1985. The operations are calculated to result in a total radiation exposure of less than 1 person-Rem to all operating personnel and less than 10 person millirem for the population within a 10-mile radius. The Environmental Assessment concluded that the operation will not result in any significant environmental impacts on air, water, land or biota in the area, and that an Environmental Impact Statement need not be prepared. These conclusions were based on the fact all operations are carefully planned and controlled, that all contaminated components and soil are removed, packaged, and shipped offsite, and that the radiological effluent control procedures and systems ensure that releases of radioactive wastes from the facility are within the limits of 10 CFR Part 20 and are as low as is reasonably achievable (ALARA).

For further details with respect to this proposed action, see the application for dismantling, decontamination and license termination dated, August 7, 1984, as supplemented, the Environmental Assessment, and the Safety Evaluation prepared by the staff. These documents and this Finding of No Significant Environmental Impact are available for public inspection at the Commission's Public Document Room, 1717 H Street NW, Washington, D.C. 20555. Copies may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Copies may be purchased by calling (301) 492-9530 or by writing to the Publication Services Section, Document Management Branch, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland this 38th day of March 1985.

For the Nuclear Regulatory Commission.
Dennis M. Crutchfield,
Assistant Director of Safety Assessment, Division of Licensing.
[FR Doc. 85-7953 Filed 4-2-85; 8:45 am]
BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-21900; SR-NYSE-85-2]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

March 28, 1985.

The New York Stock Exchange, Inc. ("NYSE") submitted on January 21, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to amend NYSE Rule 451 (Proxies), Supplementary Material .91, and NYSE Rule 465 (Company Reports to Stockholders), Supplementary Material .21, to establish a surcharge that may be charged by NYSE members and member organizations to issuers in connection with proxy solicitations. The purpose of the surcharge is to permit the recoupment of start-up costs incurred by NYSE members and member organizations in complying with Rules 14b-1(c) and 17a-3(a)(9)(ii) under the Act, which were designed to facilitate direct communications by issuers to non-objecting beneficial stockholders.[1]

I. Background

In July 1983, the Commission adopted new paragraph (c) of Rule 14b-1 under the Act to improve the process whereby issuers communicate with shareholders whose securities are held in street name.[2] New paragraph (c) requires brokers to provide issuers, upon request and assurance of reimbursement of reasonable expenses (direct and indirect), with the names, addresses and securities positions of customers who are beneficial owners of the issuers' securities and who have not objected to such disclosure. The Commission also adopted a corresponding amendment to Rule 17a-3(a)(9) under the Act to require that the customer records maintained by brokers for street name holders include whether the beneficial owner has objected to the disclosure to issuers of his or her identity, address, and securities positions. To provide time for the determination of reasonable costs by self-regulatory organizations ("SROs") and to minimize costs, the Commission established January 1, 1985, as the effective date for both provisions. Thereafter, associations representing the entities most directly affected by the rules jointly recommended that the effective date be deferred to January 1, 1986, and agreed to facilitate the determination and allocation of reasonable costs and the development of an efficient means of furnishing beneficial owner information to issuers.[3]

[1] Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by issuance of a Commission release (Securities Exchange Act Release No. 21702, February 1, 1985) and by publication in the Federal Register (50 FR 5461, February 8, 1985). All written statements filed with the Commission and all written communications between the Commission and any person relating to the proposed rule change were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's Public Reference Room.

[2] Securities Exchange Act Release No. 20021 (July 28, 1983), 48 FR 35082.

[3] The terms of the agreement are detailed in letters from the Securities Industry Association ("SIA") to the American Society of Corporate Secretaries ("ASCS") and the National Investor Relations Institute ("NIRI"), dated August 3, 1984, from the ASCS to SIA, dated August 10, 1984, and from NIRI to the SIA, dated August 20, 1984. The letters are part of File No. S7-954.

The Commission deferred the effective date, as requested, in the belief that a cooperative effort would result in the best system for communicating with shareholders while maintaining the system of nominee registration.[4]

In adopting the direct shareholder communications rules the Commission left the determination of reasonable costs to the SROs, because, as representatives of both issuers and brokers, they were deemed to be in the best position to make a fair allocation of the costs associated with the amendments, including start-up and overhead costs.[5] Accordingly, the NYSE formed an Ad Hoc Committee on Identification of Beneficial Owners ("Ad Hoc Committee"), composed of issuers, broker-dealers, banks, transfer agents, and proxy solicitors, to provide guidance on this issue.

Based on the recommendations of the Ad Hoc Committee, the NYSE's proposed rule change originally provided that the start-up costs associated with the implementation of the rules be funded by a surcharage of $.20 per proxy for each of an issuer's two annual meeting proxy solicitations subsequent to the approval of the surcharge.[6] At the request of the Commission staff, the NYSE has modified its original proposal to apply the surcharge for only one year and has agreed to submit more cost data when it proposes an additional surcharge for the next year's proxy dissemination.[7] Based on the number of proxies processed in the 1984 proxy season, the Ad Hoc Committee believes that the surcharge, if collected by all broker-dealers for one year will raise $12,500,000 for the securities industry as a whole. The proposed rule change is not designed to assure that, even with a second-year surcharge, each individual broker will exactly recover its start-up costs which are estimated to average $.70 per account.[8]

Both the SIA Operations Committee and the Securities Industry Committee of the ASCS have submitted letters to the NYSE endorsing the proposed rule change. One comment letter, relating to the proposed rule change, filed by Duquesne Light Company ("Duquesne"), was received during the Commission's comment period.[9] Duquesne claimed that the plain language of Rule 14b–1(c) "evidences an intent that those issuers who request this service bear the costs." Duquesne suggested that a surcharge be assessed only on those issuers who request or indicate they will request the information and that an "appropriate" fee be developed for issuers who request the information at some later date.

The NYSE asserts that insufficient information was available on which to base an allocation of the start-up costs of the number of issuers who would request the data. Furthermore, the AD Hoc Committee reasoned that an across-the-board surcharge would be the fairest way to recoup broker-dealer start-up costs. The NYSE stated in its filing that all issuers should share proportionately in the new system's start-up costs because all issuers "might reasonably be expected to benefit sooner or later."

II. Discussion

Under section 19(b) of the Act, the standard for approval of a proposed SRO rule change is that the proposal be consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 6(b) of the Act sets forth the general requirements for exchange rules. Section 6(b)(4) requires that exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using the facilities of an exchange. Section 6(b)(5) requires that exchange rules promote just and equitable principles of trade and that they are not designed to permit unfair discrimination between issuers, brokers, or dealers. Section 6(b)(8) prohibits any exchange rule from imposing any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this case, the Commission believes that, to the extent the surcharge is reasonable and fairly allocated, it will meet the standards of the Act.

In determining to have the SROs develop a reasonable allocation of costs, the Commission recognized the need to balance the interests of broker-dealers and issuers in an area requiring difficult estimates. With the exception of the number of account holders,[10] the estimates which form the basis for the NYSE proposal do not appear unreasonable. Moreover, the fees do not appear to unfairly discriminate among issuers because all issuers have the opportunity to request information regarding their beneficial owners, and more than a narrow class of issuers appears to be interested in receiving this information.[11] In response to the proposal of Rule 14b–1(c), 152 issuers supported the proposal.[12]

Furthermore, the Commission believes the proposal is the result of good faith negotiation between representatives of broker-dealers and issuers and is endorsed by associations representing both groups. Accordingly, the amount of the surcharge and first-year payments to

[4] Securities Exchange Act Release No. 21339 (September 21, 1984) 49 FR 38096.

[5] Securities Exchange Act Release No. 20021 (July 28, 1983), 48 FR 35082.

[6] The cost estimates which served as the basis for the proposal were based on the assumption that broker-dealers would be required to solicit "some 34 million shareowners" as to whether they would object to disclosure of their names and other information to issuers, at an estimated cost of $.70 per shareholder. The 34 million number was taken from a 1983 NYSE survey of all shareowners including those who hold in their own names and those who hold securities through banks. Because broker-dealers only will be required to solicit consent of those shareowners whose securities are held by their broker in street name, this number appears to be inflated. 1983 FOCUS data for all broker-dealers and 1984 FOCUS data for NYSE firms indicates that broker-dealer customer accounts totaled just under 20 million as of December 31, 1984. Therefore, the Commission believes that further cost data is necessary to approve a second year surcharge.

[7] *See* letter from James E. Buck, Secretary, NYSE to Michael Cavalier, Branch Chief, Division of Market Regulation, SEC, dated March 14, 1985.

[8] By far the greatest portion of these costs is attributable to the postage expenses of soliciting account holders as to whether the beneficial owners would object to having their name, address, and security position passed on to the issuer. The balance of the costs is related to systems modifications to collect and maintain this information as required by Rule 17a–3(a)(9)(ii). The SIA cost estimate is set forth in SIA's letter to John S.R. Shad, Chariman, SEC, dated June 25, 1984.

[9] *See* letter from Diane S. Eismont, Corporate Secretary, Duquesne Light Company, to Secretary, SEC, dated February 22, 1985.

[10] See note 6, *supra*. Even with a reduction of estimated account holders to 20 million, the estimated costs to broker-dealers would total approximately $16 million, substantially in excess of $12 million estimate of the revenue, which will be raised by the first year proxy surcharge.

[11] It is, of course, possible for a rule nominally to apply across-the-board but, by virtue of an uneven impact, to impose inappropriate competitive burdens. The Commission has been unable to identify, and commentators have not asserted, any such impacts from this proposed rule. The costs of this proposal for any given issuer will not be significant, and they will be borne proportionally by each issuer in accordance with the number of proxies it distributes. It could be argued, as alluded to in Duquesne's comment, that it is unfair to impose start-up costs on issuers who have no intention of requesting information on beneficial shareholders. It is unlikely, however, that any such costs will impose a material competitive burden on such issuers. In any event, the Commission believes any such burden is substantially outweighed by the administrative advantages of an across-the-board rule. Accordingly, the Commission finds the NYSE proposal to be consistent with section 6(b)(8) of the Act.

[12] In a joint ACIS/NYSE survey 643 representative NYSE-listed companies indicated that 55% of the companies wanted the data on non-objecting beneficial shareholders, 18% did not want the data, and 27% did not know whether they wanted the data. Of the 184 companies not NYSE listed who responded (for which there was insufficient data to determine whether they were representative) 62% indicated they wanted data, 18% indicated they did not want the data, and 20% did not know whether they wanted the data.

broker-dealers appears to be reasonable and thus consistent with the section 6(b)(4) of the Act.

With respect to the arguments raised by Duquesne, it may be correct that the Commission, in adopting Rule 14b–1(c), anticipated that the SROs would devise a system of fees applicable only to issuers who requested information on beneficial shareholders. Duquesne is incorrect, however, in its suggestion that the Commission mandated such a result or that the language of Rule 14b–1 requires such a result. Rather, in adopting the Rule, the Commission concluded that the SROs were in the best position to make a fair allocation of all the costs associated with the Rule, including start-up costs. Accordingly, the Commission did not limit the SROs' discretion to fashion a reasonable solution. Moreover, the text of Rule 14–1(c) compels no particular approach to recouping broker-dealer start-up costs.[13]

The statutory standards applicable to SRO rules are written in terms of purposes to be achieved. The purpose of the proposed surcharge is to establish a fair rate to recoup the costs of a communication system which the Commission determined should be developed. Furthermore, the Ad Hoc Committee determined that user-only funding was impractical because the assumptions required were arbitrary [14] and presented a substantial possibility that broker-dealers would not be compensated for their legitimate start-up costs, at least not on a timely basis. Accordingly, the Ad Hoc Committee determined that the initial costs of the system to be developed in 1985 should be borne by all issuers, who will then be free to assess whether the incremental cost of actually requesting data on non-objecting beneficial shareholders are off-set by benefits of direct communication with them.

[13] Rule 14b–1(c) states in relevant part—

A broker . . . shall . . . [p]rovide the issuer, upon its request and assurance that it will reimburse the broker's reasonable expenses [direct and indirect], with the names. . . . .

[14] In this regard, Duquesne apparently recognized, but did not address, the complex estimation and cost allocation questions raised by its suggestion that only those issuers who actually request, or indicate they will request, the information be assessed. Faced with the uncertainties and other difficulties posed by such an approach, including the question of how broker-dealers should finance any revenue shortfalls should the number of requesting issuers fall short of expectations, the Commission believes the NYSE, in consultation with groups representing issuers and broker-dealers, reasonably concluded that it was simpler and in the end probably fairer, for start-up costs to be assessed on all issuers who could take advantage of Rule 14b–1(c), not merely those electing to do so.

III. Conclusion

For the foregoing reasons, 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 sections 6(b)(4), 6(b)(5), and 6(b)(8) and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.[15]

By the Commission.

Shirley E. Sollis,

Assistant Secretary.

[FR Doc. 85–7955 Filed 4–2–85; 8:45 am]

BILLING CODE 8010–01–M

[15] The Commission approves the proposed rule change as amended by the NYSE to provide a surcharge only for one year. *See* text accompanying note 7, *supra*.

SMALL BUSINESS ADMINISTRATION

[Application No. 09/09 5351]

Application for License To Operate as a Small Business Investment Company; Hawaii Venture Capital, Inc.

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1984)) for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et. seq.*) and the Rules and Regulations promulgated thereunder.

Applicant: Hawaii Venture Capital Inc.

Address: 1111 Bishop Street, Suite 204, Honolulu, Hawaii 96813

The proposed officers, directors and shareholders of the Applicant are as follows:

Name	Position	Percent of ownership
Iris H. Toguchi, 1111 Bishop St., Honolulu, HI 96813.	President/Director	0
Kim Woolaway, 1111 Bishop St., Honolulu, HI 96813.	Vice President	0
Richard C. Lim, 1111 Bishop St., Honolulu, HI 96813.	Secretary	0
Lionel Y. Tokioka, 1111 Bishop St., Honolulu, HI 96813.	Director	0
ISL Services Corp., Inc.; 1111 Bishop St., Honolulu, HI 96813.	Shareholder	100

ISL Services Corporation, Inc. is the wholly owned subsidiary of International Savings and Loan Association, Ltd., a publicly held state chartered states savings and loan association with 13 offices in the Hawaiian Islands.

The Applicant, a Hawaii corporation, will begin operations with $1,000,000 in private capital and conduct its activities principally in the State of Hawaii.

As a small business investment company under section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities comtemplated under the Act and will provide assistance solely to small concerns which will contribute to a well balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the applicant under their management, including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of the Notice will be published in a newspaper of general circulation in the Honolulu, Hawaii area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 29, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85–7973 Filed 4–2–85; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 09/09 0350]

Application for License to Operate as a Small Business Investment Company; RCL, Inc.

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1984)) for the license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 et. seq.) and the Rules and Regulations promulgated thereunder.

Applicant: RCL, Inc.

Address: 1111 Bishop Street, Suite 204, Honolulu, Hawaii 96813

The proposed officers, directors and shareholders of the Applicant are as follows:

Name	Position	Percent of ownership
Iris H. Toguchi, 1111 Bishop St. Honolulu, HI 96813.	President/Director	0
Kim Woolaway, 1111 Bishp St., Honolulu, HI 96813.	Vice President	0
Richard C. Lim, 1111 Bishop St., Honolulu, HI 96813.	Secretary	0
Lionel Y. Tokioka, 1111 Bishop St., Honolulu, HI 96813.	Director	0
ISL, Services Corp., Inc., 1111 Bishop St., Honolulu, HI 96813.	Shareholder	100

ISL Services Corporation, Inc. is the wholly owned subsidiary of International Savings and Loan Association. Ltd., a publicly held state savings and loan association with 13 offices in the Hawaiian Islands.

The Applicant, a Hawaii corporation, will begin operations with $1,000,000 in private capital and conduct its activities principally in the State of Hawaii.

Matters involved in SBA's consideration of the application included the general business reputation and character of the proposed owners and management, and the probability of successful operations of the applicant under their management, including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of the Notice will be published in a newspaper of general circulation in the Honolulu, Hawaii area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small) Business Investment Companies)

Dated: March 29, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-7974 Filed 4-2-85; 8:45 am]

BILLING CODE 8025-01-M

[Designation of Disaster Loan Area No. 2186]

Declaration of Disaster Loan Areas; New York

The area affected is bordered on the north by Flushing Avenue, on the south by Park Avenue, on the west by Hall Street, and on the east by Ryerson Street in the City of New York, Brooklyn Borough, Kings County, New York. This constitutes a disaster area because of damage resulting from a fire which occurred on January 22, 1985. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on May 28, 1985, and for economic injury until the close of business on December 30, 1985, at the address listed below:

Disaster Area 1 Office, Small Business Administration, 15-01 Broadway, Fair Lawn, New Jersey 07410.

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)	11.125

The number assigned to this disaster is 218605 for physical damage and for economic injury the number is 629700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: March 28, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-7969 Filed 4-2-85; 8:45 am]

BILLING CODE 8025-01-M

Montana; Region VIII Advisory Council; Public Meeting

The Small Business Administration Region VIII Advisory Council, located in the geographical area of Helena, Montana, will hold a public meeting at 9:30 a.m. on Friday, April 26, 1985, at the Federal Office Building, 301 South Park, Room 389, Helena, Montana, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John R. Cronholm, District Director, U.S. Small Business Administration, Federal Office Building, 301 South Park, Drawer 10054, Helena, Montana 59626—(406) 449-5381.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 25, 1985.

[FR Doc. 85-7971 Filed 4-2-85; 8:45 am]

BILLING CODE 8025-01-M

Pennsylvania; Region III Advisory Council; Public Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Philadephia, Pennsylvania, will hold a public meeting at 8:00 A.M. on Friday, May 24, 1985, at the Philadelphia District Office, Suite 400-East Lobby, One Bala Plaza, 231 St. Asaphs Road, Bala Cynwyd, Pennsylvania, 19004 to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call William T. Gennetti, District Director, U.S. Small Business Administration, One Bala Plaza, Suite 400-East Lobby, 231 St. Asaphs Road, Bala Cynwyd, Pennsylvania 19004 (215) 596-5801.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 25, 1985.

[FR Doc. 7970 Filed 4-2-85; 8:45 am]

BILLING CODE 8025-01-M

West Virginia; Region III Advisory Council; Public Meeting

The Small Business Administration Region III Advisory Council, located in the geographical area of Clarksburg, West Virginia, will hold a public meeting to begin at 1:00 PM Tuesday, April 30 and end 12:00 Noon Wednesday, may 1, 1985, at the Holiday Inn (Charleston House), 600 Kanawha Blvd., East, Charleston, West Virginia, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration and others attending.

For further information, write or call Marvin P. Shelton, District Director, U.S. Small Business Administration, P.O. Box 1608, Clarksburg, West Virginia 26302-1608 or phone (304) 622-1601.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 25, 1985.

[FR Doc. 85-7972 Filed 4-2-85; 8:45 am]

BILLING CODE 8025-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Proposal for a Coordinated Framework for Regulation of Biotechnology

AGENCY: Executive Office of the President, Office of Science and Technology Policy.

ACTION: Notice of extension of public comment period.

SUMMARY: The purpose of this **Federal Register** notice is to provide an extension of the public comment period to April 15, 1985, for the Proposal for a Coordinated Framework for Regulation of Biotechnology published in the **Federal Register** on December 31, 1984 (49 FR 50856).

DATE: Comments must be received on or before April 15, 1985.

Public participation: The Cabinet Council Working Group on Biotechnology through the Office of Science and Technology Policy, is seeking the advice of individuals, public interest groups, industry and academia on all aspects of this publication. The Working Group welcomes candid assessments of the process and the policy as well as questions raised regarding the scope of the proposal.

The intention of the Working Group is to republish this material in final form as soon as possible following the close of the comment period. This will assure that well understood regulatory policy and process are established in timely manner to enable a beneficial industry to proceed safetly and efficiently.

Information submitted as comments to EPA on this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A sanitized copy of any material containing Confidential Business Information must be provided to EPA by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

ADDRESS: Comments specific to the EPA, USDA, or FDA policy statements should be addressed to:

EPA: Docket #OPTS 00049, Document Control Officer (TS-793), Office of Toxic Substances, Environmental Protection Agency, Room E-409, 401 M Street, S.W.; Washington, D.C. 20460.

USDA: Docket #APHIS 00049, Ms. Karen Darling, Deputy Assistant Secrtary, Marketing and Inspection Services, U.S. Department of Agriculture, Room 242-E, Administration Building, 12th and Independence Avenue, S.W., Washington, D.C. 20250.

FDA: Docket # 84N-0431, Dockets Management Branch, Food and Drug Administration (HFA-305), Room 4-62, 5600 Fishers Lane, Rockville, Maryland 20857.

Any other comments should be provided to the following address: Dr. Bernadine Healy, Deputy Director, Office of Science and Technology Policy, Executive Office of the President, NEOB Room 5005, Washington, D.C. 20506.

April 1, 1985.

Jerry D. Jennings,

Executive Director, Office of Science and Technology Policy.

[FR Doc. 85-8102 Filed 4-2-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular—Damage Tolerance and Fatigue Evaluation of Structure

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed revision to Advisory Circular 25.571-1 and request for comments.

SUMMARY: This Notice announces the availability of and requests comments on a proposed revision to an advisory circular concerning damage-tolerance and fatigue evaluation requirements of aircraft structure.

DATES: Comments must be received on or before July 3, 1985.

ADDRESS: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Regulations & Policy Office, ANM-110, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Patricia Siegrist, Regulations and Policy Office, at the above address, telephone (206) 431-2126.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the proposed AC may be obtained by contacting the person named above under **"FOR FURTHER INFORMATION CONTACT."** Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters must identify AC 25.571-1 and submit comments in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Regulations & Policy Office before issuing the final AC.

Discussion

During recent years, there have been significant state-of-the-art and industry-practice developments in the area of structural fatigue and fail-safe strength evaluation of transport category airplanes. Recognizing that these developments could warrant some revision of the existing fatigue requirements in §§ 25.571 and 25.573 of Part 25 of the FAR, the FAA, on November 18, 1976, gave notice of its Transport Category Airplane Fatigue Regulatory Review Program and invited interested persons to submit proposals to amend those requirements (41 FR 50956). The proposals and related discussions formed the basis for the revision of the structural fatigue evaluation standards of §§ 25.571 and 25.573 and the development of guidance material. To that end, § 25.571 was revised, § 25.573 was deleted (the scope of § 25.571 was expanded to cover the substance of the deleted section), and guidance material (AC 25.571-1) was provided containing compliance provisions related to the proposed change. Since issuance of AC 25.571-1 on 9/28/78, additional guidance material has been developed and is incorporated in the proposed revision.

Issued in Seattle, Washington, on March 19, 1985.

Donald Riggin,

Acting Manager, Aircraft Certification Division, Northwest Mountain Region.

[FR Doc. 85-7877 Filed 4-2-85; 8:45 am]

BILLING CODE 4910-13-M

Proposed Advisory Circular—Fuselage Doors

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed Advisory Circular 25.783–XX and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) which provides guidance information for showing compliance with structural and functional safety standards for doors and their operating systems. The intent of the requirements and some acceptable means of compliance are discussed.

DATES: Comments must be received on or before July 3, 1985.

ADDRESS: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Regulations and Policy Office, ANM–110, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. Comments may be inspected at the above address betwen 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Patricia Siegrist, Regulations & Policy Office, at the above address, telephone (206) 431–2126.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the proposed AC may be obtained by contacting the person named above under **"FOR FURTHER INFORMATION CONTACT."** Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters must identify AC 25.783–XX and submit comments in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Regulations & Policy Office before issuing the final AC.

Discussion

For several years, considerable attention has been given to developing design criteria for outward opening doors in pressurized cabins to prevent inadvertent opening in flight. A critical design review team was assigned the task of reviewing outward opening doors on wide body airplanes and of developing safety standards relative to design and operation of these doors. These criteria were made applicable to all external passenger, cargo, and service doors by Amendment 25–54 to Part 25 of the Federal Aviation Regulations (FAR). The proposed AC sets forth an acceptable means of compliance with those provisions.

Issued in Seattle, Washington, on March 19, 1985.

Donald L. Riggin,

Acting Manager, Aircraft Certification Division, Northwest Mountain Region.

[FR Doc. 85–7878 Filed 4–2–85; 8:45 am]

BILLING CODE 4910–13–M

RTCA Special Committee 156—Potential Interference to Aircraft Electronic Equipment From Devices Carried Aboard; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of Radio Technical Commission for Aeronautics, (RTCA) Special Committee 156 on Potential Interference to Aircraft Electronic Equipment from Devices Carried Aboard to be held on April 23–24, 1985, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Fifth Meeting Held on January 23–24, 1985; (3) Review Task Assignments from Previous Meeting; (4) Review of Manufacturer Reports; (5) Review Draft of Committee Report on Potential Interference to Aircraft Electronics Equipment; (6) Assignment of Tasks; and (7) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on March 26, 1985.

Karl F. Bierach,

Designated Officer.

[FR Doc. 85–7875 Filed 4–2–85; 8:45 am]

BILLING CODE 4910–13–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation and Authority of December 17, 1982 (47 FR 57600, December 27, 1982), I hereby determine that the objects to be included in the exhibit, "Leonardo to Van Gogh: Master Drawings from Budapest" (included in the list [1] filed as a part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to a loan agreement between the Szepmuveszeti Museum, Budapest, Hungary, the National Gallery of Art, The Art Institute of Chicago, and the Los Angeles County Museum of Art. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, D.C., beginning on or about May 12, 1985, to on or about July 14, 1985; The Art Institute of Chicago, Chicago, Illinois, beginning on or about July 24, 1985, to on or about September 22, 1985; and the Los Angeles County Museum of Art, Los Angeles, California, beginning on or about October 10, 1985, to on or about December 8, 1985, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: March 27, 1985.

Thomas E. Harvey,

General Counsel and Congressional Liaison.

[FR Doc. 85–7828 Filed 4–2–85; 8:45 am]

BILLING CODE 8230–01–M

[1] An itemized list of objects included in the exhibit is filed as part of the original document.

Sunshine Act Meetings

Federal Register
Vol. 50, No. 64
Wednesday, April 3, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, April 8, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Applications for Federal deposit insurance:

Tustin Thrift and Loan Association, an operating noninsured industrial bank located at 530 East Street, Tustin, California.

Lyndon Guaranty Bank of Ohio, a proposed new bank to be located at 2479 East Dublin-Granville Road, Columbia, Ohio.

Application for consent to relocate a branch:

Washington Mutual Savings Bank, Seattle, Washington, for consent ot relocate a branch from 425 North Market Boulevard to 65 South Market Boulevard, within Chehalis, Washington.

Application for consent to retire preferred stock:

Equibank, Latrobe, Pennsylvania.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,198-SR: Columbia Pacific Bank & Trust Company, Portland, Oregon

Memorandum and Resolution re: National Bank of Odessa, Odessa, Texas

Memorandum regarding furniture requirements for the Corporation's Dallas Regional Office.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Report of the Director, Division of Liquidation:

Memorandum re: Reports Under Delegated Authority, Status of Approved Committee Cases

Discussion Agenda:

Memorandum and resolution re: Proposed amendment to the Corporation's rules and regulations in the form of new Part 352, entitled "Nondiscrimination on the Basis of Handicap in the Federal Deposit Insurance Corporation," which amendment implements section 504 of the Rehabiliation Act of 1973, as amended, and ensures that, to the extent practicable, handicapped persons are provided with equal access to Corporation programs and activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: April 1, 1985.

Federal Deposit Insurance Corporation

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-8061 Filed 4-1-85; 4:01 pm]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:15 p.m. on Friday, March 29, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Fidelity Bank of Denver, Denver, Colorado, which was closed by the State Bank Commissioner for the State of Colorado on Friday, March 29, 1985; (2) accept the bid for the transaction submitted by American Bank of Commerce, Denver, Colorado, a newly-chartered State nonmember bank subsidiary of America Bankshares, Ltd.; (3) approve the applications of American Bank of Commerce, Denver, Colorado, for Federal deposit insurance, and for consent to purchase certain assets of and to assume the liability to pay deposits made in Fidelity Bank of Denver, Denver, Colorado; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. H. Joe Selby, acting in the place and stead of Director C.T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: April 1, 1985.

Federal Deposit Insurance Corportion.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-8062 Filed 4-1-85; 4:01 pm]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5

U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, April 8, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: April 1, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–8083 Filed 4–1–85; 4:00 pm]

BILLING CODE 6714–01–M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, April 8, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streeets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. 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: March 29, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–7959 Filed 4–1–85; 9:07 am]

BILLING CODE 6210–01–M

5

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50–10577.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 p.m. (eastern time) Tuesday, March 26, 1985.

CHANGE IN THE MEETING: The following item was moved to the closed portion of the meeting: "Proposed Contract for Expert Services in Connection With a Court Case"

A majority of the entire membership of the Commission determined by recorded vote that the business of the Commission required this change and that no earlier announcement was possible.

In favor of change:
Clarence Thomas, Chairman
Tony E. Gallegos, Commissioner
William A. Webb, Commissioner
Fred Alvarez, Commissioner
R. Gaull Silberman, Commissioner
Opposed: None

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, (202) 634–6748.

Dated: March 28, 1985.

Cynthia C. Matthews,

Executive Officer.

[FR Doc. 85–8057 Filed 4–1–85; 8:45 am]

BILLING CODE 6750–06–M

federal register

Wednesday
April 3, 1985

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 101

Food Labeling, Proposed Rule Concerning Sulfiting Agents; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 84N-0103]

Food Labeling; Proposed Rule Concerning Sulfiting Agents

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing a regulation that will clarify the circumstances in which the presence of sulfiting agents (also referred to as "sulfites") must be declared on the label of foods. Sulfiting agents (sulfur dioxide, sodium sulfite, and sodium or potassium bisulfite or metabisulfite) are usually added to foods for their preservative effect. The proposed regulation makes clear that when a sulfite that is added either to a food or to one of its ingredients is detectable in the finished food, it is present in that food at a significant level. In such circumstances, the sulfite is not an incidental additive and must be declared on the label. The proposed regulation also makes clear the level of sulfites that the agency considers to be detectable.

DATES: Comments by June 3, 1985. The agency proposes that any final rule based on this proposal become effective 6 months after the date of publication of the final rule.

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: Howard Pippin, Center for Food Safety and Applied Nutrition (HFF-312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0175.

SUPPLEMENTARY INFORMATION: Recent scientific developments have shown that sulfiting agents can cause reactions in a significant portion of the population. As a result of these developments, FDA has taken several actions with regard to the use of sulfites in food. On March 4, 1983, the agency issued an interpretation for the Retail Food Protection Program Information Manual concerning the use of sulfiting agents in restaurants. The interpretation stated that "fruits and vegetables or other foods for raw consumption to which the retail operator has added sulfiting agents without advising consumers are to be considered unsafe." FDA also is forming an Ad Hoc Advisory Committee on Hypersensitivity to Sulfiting Agents in Food to review and to evaluate available data on adverse reactions in humans associated with the use of sulfiting agents in food (49 FR 15021; April 16, 1984). In addition, FDA has reviewed its regulations to determine whether they are adequate to ensure that the labeling of a food will advise consumers that a sulfiting agent has been added to that food. This document announces the outcome of that review.

Finally, the agency has asked the Federation of American Societies for Experimental Biology to review currently available evidence that indicates that the use of sulfiting agents has increased (49 FR 27994; July 9, 1984).

Several statutory and regulatory provisions are relevant to this review. Section 403(i)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(i)(2)) requires the declaration of the ingredients of nonstandardized foods. Section 402(g)(2) of the act requires that the labeling of foods that are subject to a standard of identity list any optional ingredients that have been used. Section 101.100(a)(3) of FDA's regulations (21 CFR 101.100(a)(3)) creates an exception from these declaration requirements for incidental additives. Incidental additives are substances that are present in a food at insignificant levels and that do not have any functional or technical effect in that food.

The agency has concluded that it would be impractical to list all such substances (38 FR 20704, 20705; August 2, 1973) and thus does not require that they be declared on the label. Finally, section 403(k) of the act states that a food that bears or contains a chemical preservative will be deemed to be misbranded unless the presence of the preservative is declared on the label.

FDA's regulations thus require that sulfiting agents be declared on the label when:

1. They are used as chemical preservatives; or

2. They are used in food as other than incidental additives.

A problem has developed in recent years with regard to the use of sulfiting agents and to when they are exempt from label declaration under 21 CFR 101.100(a)(3). Some manufacturers have incorrectly interpreted what constitutes an insignificant level of a sulfiting agent. This development is of concern to the agency because sulfites have been shown to cause reactions in sensitive individuals, particularly asthmatics, even when ingested at very low levels.

The agency has conducted a computer update of the scientific literature on sulfiting agents from 1975 to the present. FDA has reviewed the abstracts and has evaluated those references that are particularly pertinent. These references, listed at the end of the preamble to this proposal, are available at the Dockets Management Branch (address above).

The agency concludes that the scientific data on human sensitivity to sulfiting agents establish that certain sensitive individuals, asthmatics in particular, can react to ingested sulfiting agents. Estimates of the number of asthmatic individuals at risk range from 450,000 to one million. The clinical studies conducted by Simon and Stevenson (Refs. 1 through 4) suggest that 5 percent of 9 million asthmatics, or some 450,000 individuals, may be sensitive to sulfiting agents. This approximates the 6 percent that Freedman suggested in his study of 272 asthmatics (Ref. 5). No estimate of the number of nonasthmatic, healthy individuals that may be at risk is available. The agency notes, however, that nonasthmatics were involved in several of the complaints of reactions to sulfiting agents that it has received and investigated, and four of the individuals described in the published medical case reports are nonasthmatic.

Thus, sulfiting agents have been shown to produce allergic-type responses in humans, and the presence of these ingredients in food may have serious health implications for those persons who are intolerant of sulfites. Including the sulfiting agents in the list of ingredients in the label of a food will alert susceptible persons to their presence in that food. Persons who know they are intolerant of sulfites are likely to be selective in the types of food that they use. Thus, an appropriate label declaration will enable those persons to avoid the potential hazard of an allergic-type reaction to a sulfiting agent by reading the label. Accordingly, a label declaration of sulfites in food will enable persons intolerant to sulfites to minimize their exposure to these ingredients.

To assure that manufacturers fully understand the circumstances in which sulfites must be declared, and to assure that sensitive individuals are protected by appropriate labeling, FDA has determined that it is necessary to clarify its labeling regulations. The proposed clarifying provision (§ 101.100(a)(4)) states that a sulfiting agent that has been added to any food or to any ingredient in any food will be considered to have been used as an incidental additive and, thus, exempt from labeling requirements under § 101.100(a)(3), only if no detectable amount of the sulfite remains in the

finished food. The agency is proposing to find that any detectable amount of a sulfiting agent is significant for labeling purposes because FDA is unaware of any evidence that establishes a level below which these substances will not cause a reaction in sensitive individuals. Thus, the agency has tentatively concluded that the only way it can assure that sensitive individuals are given adequate notice of the presence of a sulfiting agent is by requiring a label declaration when the sulfiting agent is present in a detectable amount.

The proposed provision defines "a detectable amount" as being 10 parts per million or more. This amount represents the lowest level at which sulfites can be detected using currently available methods.

FDA proposes that this regulation become effective 6 months after publication of the final rule rather than on the next uniform effective date for compliance with new food labeling requirements that is periodically announced. Thus, the agency proposes that by 6 months after the date of publication of any final regulation, all finished foods that are initially introduced or initially delivered for introduction into interstate commerce and that contain a detectable amount of a sulfiting agent must bear labeling that declares the presence of the sulfiting agent. The agency recognizes that, even though it is only a clarification, this regulation will require many manufacturers who currently do not declare sulfites on the labels of their products to revise their labels. Nonetheless, FDA is proposing the 6-month effective date because information about the presence of sulfiting agents is not merely informative but is necessary to protect the health of sensitive individuals. On the basis of its experience, the agency believes that 6 months is an adequate amount of time for manufacturers to change their labeling. The agency urges manufacturers and distributors, however, to declare sulfiting agents on their labels as soon as possible.

The agency has determined pursuant to 21 CFR 25.24(d)(6) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This proposed regulation clarifies an existing regulatory requirement. Therefore, the proposed regulation should have no economic effect. However, because FDA recognizes that there has not been universal compliance with this requirement, the agency has examined, in accordance with Executive Order 12291, the economic consequences of requiring that sulfiting agents be declared on the label when present in food in a detectable amount as though this requirement were new. On the basis of available information, the agency has determined that this proposed regulation may impose one-time costs of $1.3 million. It, therefore, is not a major rule as defined by the Order.

Furthermore, FDA in accordance with the Regulatory Flexibility Act, has considered the effect that this proposal would have on small entities, including small businesses, and has concluded that the proposed regulation would require a label change resulting only in a minimal impact on any individual firm. Approximately 450 small firms may incur costs totalling about $300,000. It is unlikely that any small firms will bear excessive or unreasonable burdens as a result of this regulation. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will be caused by this regulation.

Paperwork Reduction Act of 1980

Section 101.100(a)(4) of this proposed rule contains an information collection requirement. As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the information collection requirement. Other organizations and individuals desiring to submit comments on the information collection requirement should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., Rm. 3208, Washington, DC 20503, Attention: Bruce Artim.

References

A copy of the threshold assessment supporting these determinations and the following information have been placed on file in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Stevenson, D.D., and R.A. Simon, "Sensitivity to Ingested Metabisulfites in Asthmatic Subjects," *Journal of Allergy and Clinical Immunology*, 68:26–32, July 1981.

2. Simon, R.A., et al., "The Incidence of Ingested Metabisulfite Sensitivity in an Asthmatic Population," *Journal of Allergy and Clinical Immunology*, 69:118, January 1982.

3. Simon, R.A., written communication to FDA, February 8, 1983.

4. Stevenson, D.D., and R.A. Simon, Abstract No. 10, American Academy of Allergists Meeting, March 1981.

5. Freedman, B.J., "Asthma Induced by Sulfur Dioxide, Benzoate and Tartrazine Contained in Orange Drinks," *Clinical Allergy*, 7:407–415, 1977.

List of Subjects in 21 CFR Part 101

Food labeling, Misbranding, Nutrition labeling, Warning statements.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 403, 701(a), 52 Stat. 1047–1048 as amended, 1055 (21 U.S.C. 343, 371(a))) and under 21 CFR 5.11, it is proposed that § 101.100 be amended by adding new paragraph (a)(4) to read as follows:

PART 101—FOOD LABELING

§ 101.100 Food; exemptions from labeling.

(a) * * *

(4) Any sulfiting agent (sulfur dioxide, sodium sulfite, sodium bisulfite, potassium bisulfite, sodium metabisulfite, and potassium metabisulfite) that has been added to any food or to any ingredient in any food will be considered to be an incidental additive under paragraph (a)(3) of this section only if no detectable amount of the agent is present in the finished food. For the purpose of this paragraph (a)(4), a detectable amount of a sulfiting agent is 10 parts per million or more of the sulfite in the finished food when that food is analyzed using section 20.123–20.125, "Total Sulfurous Acid," in "Official Methods of Analysis of the Association of Official Analytical Chemists," 14th Ed. (1984), which is incorporated by reference. A copy is available from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

Interested persons may, on or before June 3, 1985, 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: March 2, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

Margaret M. Heckler,

Secretary of Health and Human Services

[FR Doc. 85-8138 Filed 4-2-85; 10:48 am]

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Reader Aids

Federal Register

Vol. 50, No. 64

Wednesday, April 3, 1985

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PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, APRIL

12761-12986.....1
12987-13160.....2
13161-13308.....3

CFR PARTS AFFECTED DURING APRIL

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.

3 CFR

Executive Orders:
April 17, 1926
(Revoked in part by PLO 6599).....12804

Proclamations:
5164 (Amended by Proc. 5313).....12987
5312.....12761
5313.....12987

4 CFR

83.....13161

5 CFR

307.....13172
316.....13172
1201.....13173

7 CFR

301.....12764, 13178
434.....12764
435.....12764
436.....12765
1126.....12765
1407.....12766
1872.....12989
1942.....12767, 12989, 13004
1944.....12989
1951.....12989
1955.....12989
1962.....12989

Proposed Rules:
52.....13042
929.....12812
1004.....12813
1007.....12817
1011.....12817
1046.....12817
1093.....12817
1097.....12817
1098.....12817
1102.....12817
1108.....12817

9 CFR

Proposed Rules:
92.....13042

10 CFR

2.....13006

Proposed Rules:
430.....12966, 13042

12 CFR

204.....13010
205.....13180
208.....13010
217.....13010
226.....13181
325.....13185

13 CFR

133.....12772

14 CFR

39.....12774, 12775, 13013-13015
71.....12776, 13186
95.....12777
1214.....13186

Proposed Rules:
25.....13226
71.....12818, 13227
1261.....13228

15 CFR

30.....13016
369.....13187
904.....12781
922.....12781
970.....12781

16 CFR

13.....13189
305.....12786

Proposed Rules:
13.....13240
306.....13048
460.....13246

18 CFR

Proposed Rules:
410.....13249

19 CFR

101.....13190

Proposed Rules:
6.....12819

21 CFR

81.....13017, 13018

Proposed Rules:
101.....13306
182.....12821
184.....12821
186.....12821

22 CFR

120.....12787
121.....12787
124.....12787
125.....12787
126.....12787
127.....12787
128.....12787

23 CFR

Proposed Rules:
658.....12825

24 CFR

232.....12788

235.....12788
570.....12789
595.....12789

26 CFR

1.....13019
5c.....13019
11.....13019
301.....13019
601.....13020
602.....13020

28 CFR

2.....12789

29 CFR

2644.....12790
2674.....12791
2677.....12796
Proposed Rules:
19.....13049
1910.....12827

30 CFR

Proposed Rules:
216.....12828
700.....13250
761.....13250
935.....12833
944.....12834

33 CFR

100.....12799
157.....12800
Proposed Rules:
110.....12835, 12837
165.....12838

38 CFR

36.....12800, 13020, 13191

39 CFR

Proposed Rules:
111.....12839, 13050

40 CFR

60.....12801–12803, 13021
61.....12802, 12803, 13021, 13022
180.....13194, 13195
Proposed Rules:
50.....13130
51.....13130
52.....13130, 13250
53.....13130
58.....13130
81.....12840, 13130
166.....13251
180.....13251
264.....13253

41 CFR

Ch. 201, Appendix A.....13023

42 CFR

435.....13196
436.....13196

43 CFR

Public Land Orders:
6599.....12804

45 CFR

1321.....12942
1328.....12942
Proposed Rules:
1301.....13253

46 CFR

Proposed Rules:
298.....13050

47 CFR

69.....13023
73.....13031–13038
Proposed Rules:
2.....13255
22.....13255
25.....13255
73.....13050

48 CFR

19.....13200
Proposed Rules:
52.....13256

49 CFR

25.....12804
27.....13039
192.....13224
Proposed Rules:
1132.....13051
1152.....13256
1207.....13053
1249.....13053

50 CFR

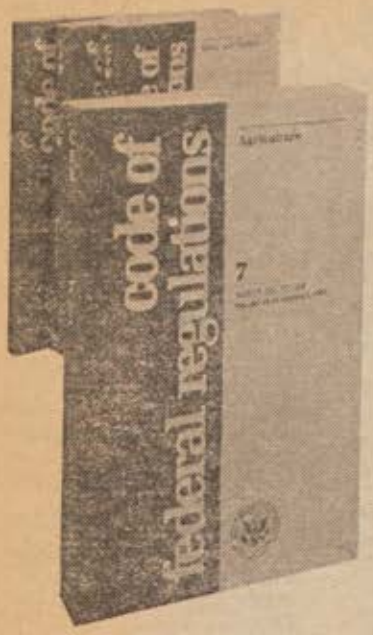
216.....12781
217.....12806
219.....12781
222.....12806
246.....12781
285.....12781
621.....12781
671.....13040
672.....12809
Proposed Rules:
17.....13054
285.....13256

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 List April 1, 1985

Code of Federal Regulations



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Code of Federal Regulations

Revised as of January 1, 1985

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	Title 7—Agriculture		
_____	Part 52 (Stock No. 822-004-00008-3)	$14.00	$_____
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		Total Order	$_____

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