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federal register

Thursday
April 4, 1985

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Air Pollution Control
Environmental Protection Agency

Aviation Safety
Federal Aviation Administration

Bridges
Coast Guard

Chemicals
Environmental Protection Agency

Civil Rights
National Aeronautics and Space Administration

Communications Common Carriers
Federal Communications Commission

Fisheries
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National Aeronautics and Space Administration

Imports
Animal and Plant Health Inspection Service

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Commerce Department

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How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

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Military Personnel
Coast Guard

Motor Vehicle Safety
National Highway Traffic Safety Administration

Radio
Federal Communications Commission

Railroad Safety
Federal Railroad Administration

Superfund
Environmental Protection Agency

Surface Mining
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

Valencia Oranges Grown in Arizona and Designated Part of California

Correction

In FR Doc. 85–7707 beginning on page 12515 in the issue of Friday, March 29, 1985, make the following correction: In the first column, in the **DATE** paragraph, in the fifth line, "May 15, 1985" should read "April 15, 1985".

BILLING CODE 1505-01-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 85–025]

Animal and Poultry Import Restrictions; St. Petersburg-Clearwater, FL; Designated Limited Port

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the regulations in 9 CFR Part 92 by adding St. Petersburg-Clearwater, Florida, to the list of limited ports of entry for animals and animal products (such as animal semen, animal test specimens, hatching eggs, and day old chicks) which do not appear to require restraint and holding inspection facilities. This rule is necessary to add St. Petersburg-Clearwater, Florida, to this list in order to reflect the availability of the Veterinary Services inspection facilities and personnel so that importers can make arrangements for the importation of such animals and animal products.

EFFECTIVE DATE: April 4, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. Allan A. Furr, VS, APHIS, USDA, Room 846, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in § 92.3 of 9 CFR Part 92 list a large number of ports with inspection stations or quarantine stations maintained by Veterinary Services for the importation of animals and animal products. In addition to air and ocean ports and several other types of ports, § 92.3 lists certain limited ports of entry for the importation of animals and animal products (such as animal semen, animal test specimens, hatching eggs, and day old chicks) which do not appear to require restraint and holding inspection facilities. On January 9, 1985, an interim rule was published in the **Federal Register** (50 FR 1040) which amended § 92.3(e) of the regulations by adding St. Petersburg-Clearwater, Florida, to the list of such limited ports of entry.

The interim rule was made effective on January 9, 1985. Comments were solicited for 60 days following publication. No comments were received. The factual situation which was set forth in the interim rule still provides a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in accordance with Executive Order 12291 and has been classified as not a major rule. The Department has determined that this action will not have a significant effect on the economy; will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or 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 export markets.

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

It is anticipated that the addition of St. Petersburg-Clearwater, Florida, to the list of limited ports for the importation of animals and animal products which do not appear to require restraint and holding inspection facilities will not cause a substantial change in the number of such animals and animal products entering the United States or in the number of persons importing such animals and animal products.

Therefore, 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.

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, the interim rule amending 9 CFR Part 92 published in the **Federal Register** on January 9, 1985, at 50 FR 1040–1041 is adopted as a final rule.

Authority: 21 U.S.C. 111, 134a, 134b, 134c, 134f; 7 CFR 2.17, 2.51, 371.2(d).

Done at Washington, D.C., this 1st day of April 1985.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85–8008 Filed 4–3–85; 8:45 am]

BILLING CODE 3410-34-M

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 120 and 122

[Rev. 7 for Part 120; Rev. 4 for Part 122]

Business Loans

Correction

In FR Doc. 85–6927 beginning on page 12472 in the issue of Thursday, March 28, 1985, make the following corrections:

§ 120.1-3 [Corrected]

1. On page 12479, second column, in § 120.1-3, second line, "March 26, 1985" should have read "March 28, 1985".

§ 122.3-1 [Corrected]

2. On page 12495, first column, in § 122.3-1, second line, "[the date of publication of this rule]" should read "March 28, 1985".

BILLING CODE 1505-01-M

13 CFR Part 121

Small Business Size Standards; Engineering Services

AGENCY: Small Business Administration.

ACTION: Notice of clarification.

SUMMARY: On March 13, 1985, at 50 FR 9995, SBA published a notification that its size standard for the engineering services industy (except for military and aerospace equipment and weapons) would remain at $7.5 million average annual receipts. This notice is intended to indicate that SBA will continue to review the appropriateness of this size standard and revise it if that review so warrants.

FOR FURTHER INFORMATION CONTACT: Andrew A. Canellas, Director, Size Standards Staff, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416, (202) 653-6373.

SUPPLEMENTARY INFORMATION: On March 13, 1985, SBA published a notice of its intent to retain its current size standard of $7.5 million in average annual receipts for the engineering services industry (except for military and aerospace equipment and weapons), together with information supporting that decision. Since that publication, many inquiries have been received regarding the finality of that notice. This notice is intended to advise the public that SBA is continuing to review all of its size standards, including specifically the engineering services size standard. SBA will make such appropriate regulatory changes as that review indicates are appropriate in a timely manner. While the size standard for the engineering services industry announced in the March 13 notice remains in effect until superseded by appropriate regulatory change, the public should be award that SBA's continuing review may result in such change at a later date.

Dated: March 29, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-8109 Filed 4-3-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-ANE-16, Amdt. 39-5013]

Airworthiness Directives; Rolls-Royce Limited Dart Engine Series 525, 526, 527, 528, 529, 530, 531, 532, 535, 551, and all Variants of These Series

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes two currently effective airworthiness directives (ADs) applicable to the flame tube suspension of Rolls-Royce Limited Dart engine series 525, 526, 527, 528, 529, 530, 531, 532, 535, 551, and all variants of these series, which do not feature Rolls-Royce Modifications 1425, 1618, 1719, or 1723. The amendment is needed to align the inspection requirements of the AD with those of the new Rolls-Royce service bulletin (SB), add a new modification, and provide a less restrictive inspection requirement for modified engines.

DATES: Effective—April 3, 1985.

Compliance schedule—As prescried in body of AD.

Incorporation by Reference—Approved by the Director of the Federal Register on April 3, 1985.

ADDRESSES: The applicable SBs may be obtained from Rolls-Royce Limited, Manager—Dart Service, East Kilbride, Glasgow G74 4PY, Scotland.

Copies of the SBs are contained in Rules Docket No. 84-ANE-16 in the Office of the Regional Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Steeves, General Aviation Engine Branch, ANE-142, Engine Certification Office, Aircraft Certification Division, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7097.

SUPPLEMENTARY INFORMATION: Amendment 39-3027, AD 77-18-02 and Amendment 39-3109, AD 78-01-07 are the currently effective ADs being superseded. The FAA has determined that the inspections required by the current ADs have not been totally effective in detecting excessive wear of the flame tube liners and suspension pins. Failures have occurred, after the ADs were issued, which resulted in flame breakout from the combustion chambers. Rolls-Royce has simplified and combined the inspection requirement into a single Rolls-Royce Dart SB (Da72-485) which replaces Dart SBs Da72-A413 and Da72-417 referenced in the current ADs. In addition, Rolls-Royce Modification 1736, Part 2, has been shown to be effective in preventing excessive wear of the flame tube suspension system and will preclude flame breakout. This AD incorporates the simplified inspection requirements of Rolls-Royce SB Da72-485 and Modification 1736, Part 2. Since a situation exists affecting continued airworthiness of these engines that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Conclusion: The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11035; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by superseding AD 77-18-02 and AD 78-01-07 with the following new AD:

§ 39.13 [Amended]

Rolls-Royce Limited: Applies to Rolls-Royce Limited Dart engine series 525, 526, 527 528, 529, 530, 531, 532, 535, 551, and all variants of these series which do not feature Rolls-Royce Modifications 1425, 1618, 1719, or 1723.

Compliance required as indicated unless already accomplished.

To prevent excessive wear in flame tube liners and suspension pins which may lead to flame breakout from the combustion chamber and to overheating and failure of the high pressure turbine disk rim, accomplish the following:

1. For engines which do not have Modification 1736, Part 2 incorporated accomplish the following:

(a) Inspect flame tube liners and suspension pins for wear at the primary and repetitive intervals in accordance with mandatory Rolls-Royce Dart SB No. Da72-485, dated July 2, 1984. Replace the affected parts, if wear is outside the "acceptable" limits given in paragraphs 4D(3) and 4D(4) of SB Da72-485, prior to further flight.

(b) Incorporate Modification 1736, Part 2, in accordance with Rolls-Royce SB No. Da72-423, Part 2, Revision 16, dated July 13, 1984, at the next flame tube overhaul.

2. For engines which have incorporated Modification 1736, Part 2, inspect flame tube liners and suspension pins for wear at the initial and standard intervals in accordance with Rolls-Royce Dart SB Da72-470, Revision 1, dated March 30, 1984. Replace the affected parts, if wear is outside the "acceptable" limits given in paragraphs 4D(3) and 4D(4) of SB 72-470, prior to further flight.

Aircraft may be ferried in accordance with the provisions of Federal Aviation Regulation (FARs) 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Manager, Dart Service, Rolls-Royce Limited, East Kilbride, Glasgow, G74 4PY Scotland. These documents also may be examined at the Office of the Regional Counsel, FAA, New England Region, Rules Docket No. 84-ANE-16, 12 New England Executive Park, Burlington, Massachusetts 01803, weekdays, except federal holidays, between the hours of 8:00 a.m. and 4:30 p.m.

This AD supersedes AD 77-18-02, Amendment 39-3027, and AD 78-01-07, Amendment 39-3109, which became effective on September 28, 1977, and January 12, 1978, respectively

This amendment becomes effective on April 3, 1985.

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

Issued in Burlington, Massachusetts, on March 11, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85-8041 Filed 4-1-85; 2:20 pm]

BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1252

Nondiscrimination on the Basis of Age in Programs and Activities Receiving Federal Financial Assistance

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: The National Aeronautics and Space Administration publishes its final rule on specific regulations to set out NASA's policies and to implement the Age Discrimination Act of 1975, according to the government-wide regulations published in the **Federal Register** on June 12, 1979, on page 33768. The Age Discrimination Act prohibits discrimination on the basis of age in programs and activities receiving Federal financial assistance; the Act contains exceptions which permit, under certain circumstances, continued use of age distinctions or factors other than age that may have a disproportionate effect on a particular age group; and excludes from its coverage most employment practices except for programs funded under the public services employment titles of the Comprehensive Employment and Training Act (CETA).

EFFECTIVE DATE: April 4, 1985.

ADDRESS: Richard N. Wolf, Office of General Counsel, Code GK, National Aeronautics and Space Administration, Washington, D.C. 20546. Telephone (202) 453-2445.

SUPPLEMENTARY INFORMATION: NASA published its proposed rulemaking in 45 FR 40994-40999, June 17, 1980. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments to NASA on the proposal by July 17, 1980. No comments were received. Therefore, the proposed rulemaking is hereby adopted as written.

This regulation does not constitute a major rule for the purposes of Executive Order 12291. This regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 1252

Civil rights, Age.

14 CFR Chapter V is amended by adding Part 1252 to read as follows:

PART 1252—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart 1252.1—General

Sec.

1252.100 What is the purpose of NASA's age discrimination regulations?
1252.102 To what programs do these regulations apply?
1252.103 Definitions.

Subpart 1252.2—Standards for Determining Age Discrimination

1252.200 Rules against age discrimination.
1252.201 Exceptions to the rules against age discrimination.
1252.202 Burden of proof.
1252.203 Special benefits for children and the elderly.

Subpart 1252.3—Responsibilities of Recipients

1252.300 General responsibilities of recipients.
1252.301 Notice to subrecipients.
1252.302 Assurance of compliance and recipient assessment of age distinctions.
1252.303 Information requirements.

Subpart 1252.4—Investigation, Conciliation, and Enforcement Procedures

1252.400 Compliance reviews.
1252.401 Complaints.
1252.402 Mediation.
1252.403 Investigation.
1252.404 Prohibition against intimidation or retaliation.
1252.405 Compliance procedure.
1252.406 Hearings.
1252.407 Notices, decisions, and post-termination proceedings.
1252.408 Remedial action by recipients.
1252.409 Alternate funds disbursal procedure.
1252.410 Exhaustion of administrative remedies.
1252.411 Age Distinctions.

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq. (45 CFR Part 90).

Subpart 1252.1—General

§ 1252.100 What is the purpose of NASA's age discrimination regulations?

The purpose of these regulations is to set out NASA's policies and to implement agencywide or agency procedures under the Age Discrimination Act of 1975 according to the government-wide age discrimination regulations at 45 CFR Part 90. (Published at 44 FR 33768, June 12, 1979.) The Act and the government-wide regulations prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act and the governmentwide regulations permit federally assisted programs and activities and recipients of Federal funds, to continue to use age distinctions

and factors other than age which meet the requirements of the Act and the governmentwide regulations.

§ 1252.102 To what programs do these regulations apply?

(a) These regulations apply to each NASA recipient and to each program or activity operated by the recipient which receives or benefits from Federal financial assistance provided by NASA.

(b) The Age Discrimination Act of 1975 does not apply to:

(1) An age distinction contained in that part of a Federal, State, or local statute or ordinance adopted by an elected body which:

(i) Provides any benefits or assistance to persons based on age; or

(ii) Establishes criteria for participation in age-related terms; or

(iii) Describes intended beneficiaries or target groups in age-related terms.

(2) Any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program, except for any program or activity receiving Federal financial assistance for public service employment under the Comprehensive Employment and Training Act of 1974 (CETA) (29 U.S.C. 801 et seq.).

§ 1252.103 Definitions.

As used in these regulations, the term:

(a) "Act" means the Age Discrimination Act of 1975, as amended. (Title III of Pub. L. 94–135.)

(b) "Action" means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard, or method of administration.

(c) "Age" means how old a person is, or the number of elapsed years from the date of a person's birth.

(d) "Age distinction" means any action using age or an age-related term.

(e) "Age-related term" means a word or words which necessarily imply a particular age or range of ages (for example, "children," "adult," "older persons," but not "student").

(f) "Discrimination" means unlawful treatment based on age.

(g) "NASA" means the National Aeronautics and Space Administration.

(h) "Federal financial assistance" means any grant, entitlement, loan, cooperative agreement contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or interest in or use of property, including:

(i) Transfer or lease of property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of property if the Federal share of its fair market value is not returned to the Federal Government.

(i) "FMCS" means the Federal Mediation and Conciliation Service.

(j) "Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, or transferee, but excludes the ultimate beneficiary of the assistance.

(k) "Administrator" means the Administrator of the National Aeronautics and Space Administration or designee.

(l) "Subrecipient" means any of the entities in the definition of "recipient" to which a recipient extents or passes on Federal Financial assistance. A subrecipient is generally regarded as a recipient of Federal financial assistance and has all the duties of a recipient in these regulations.

(m) "United States" means the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, the Trust Territory of the Pacific Islands, the Northern Marianas, and the territories and possessions of the United States.

Subpart 1252.2—Standards for Determining Age Discrimination

§ 1252.200 Rules against age discrimination.

The rules stated in this section are limited by the exceptions contained in § 1252.201.

(a) *General rule:* No person in the United States shall, on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(b) *Specific rules:* A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual, licensing, or other arrangements use age distinctions or take any other actions which have the effect, on the basis of age, of:

(1) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under a program or activity receiving Federal financial assistance; or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

(c) The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

§ 1252.201 Exceptions to the rules against age discrimination.

(a) Definitions. For purposes of this section, the terms "normal operation" and "statutory objective" shall have the following meaning:

(1) "Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(2) "Statutory objective" means any purpose of a program or activity expressly stated in any Federal statute, state statute or local statute or ordinance adopted by any elected, general purpose legislative body.

(b) Normal operation or statutory objective of any program or activity. A recipient is permitted to take an action otherwise prohibited by § 1252.200 if the action reasonably takes into account age as a factor necessary to the normal operation of the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

(1) Age is used as a measure of approximation of one or more other characteristics; and

(2) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(3) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(4) The other characteristic(s) are impractical to measure directly on an individual basis.

(c) Reasonable factors other than age. A recipient is permitted to take an action otherwise prohibited by § 1252.200 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 1252.202 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in § 1252.201 (b) and (c) is on the recipient of Federal financial assistance.

§ 1252.203 Special benefits for children and the elderly.

If a recipient operating a program provides special benefits to the elderly or to children, such use of age distinctions shall be presumed to be necessary to the normal operation of the program, notwithstanding the provision of § 1252.10.

Subpart 1252.3—Responsibilities of Recipients

§ 1252.300 General responsibilities of recipients.

Each NASA recipient must ensure that its programs and activities comply with these regulations.

§ 1252.301 Notice to subrecipients.

Where a recipient passes on Federal financial assistance from NASA to subrecipients, the recipient shall provide the subrecipient written notice of their obligations under these regulations.

§ 1252.302 Assurance of compliance and recipient assessment of age distinctions.

(a) Each recipient of Federal financial assistance from NASA shall sign a written assurance as specified by NASA that it will comply with the Act and these regulations.

(b) *Recipient assessment of age distinctions.* (1) As part of a compliance review under § 91.41, NASA may require a recipient employing the equivalent of 15 or more employees to complete a written self-evaluation, in a manner specified by the responsible Agency official, of any age distinction imposed in its program or activity receiving Federal financial assistance from NASA to assess the recipient's compliance with the Act.

(2) Whenever an assessment indicates a violation of the Act and the NASA regulations, the recipient shall take corrective action.

§ 1252.303 Information requirements.

(a) Keep records in a form that contains information which NASA determines may be necessary to ascertain whether the recipient is complying with the Act and these regulations.

(b) Provide to NASA, upon request, information and reports which NASA determines are necessary to ascertain whether the recipient is complying with the Act and these regulations.

(c) Permit reasonable access by NASA to the books, records, accounts, and other recipient facilities and sources of information to the extent NASA determines is necessary to ascertain whether the recipient is complying with the Act and these regulations.

Subpart 1252.4—Investigation, Conciliation, and Enforcement Procedures

§ 1252.400 Compliance reviews.

(a) NASA may conduct compliance reviews and pre-award reviews of recipients or use other similar procedures that will permit it to investigate and correct violations of the Act and these regulations. NASA may conduct these reviews even in the absence of a complaint against a recipient. The review may be as comprehensive as necessary to determine whether a violation of these regulations has occurred.

(b) If a compliance review or pre-award review indicates a violation of the Act or these regulations, NASA will attempt to secure the recipient's voluntary compliance with the Act. If voluntary compliance cannot be achieved, NASA will arrange for enforcement as described in § 1252.405.

§ 1252.401 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with NASA, alleging discrimination prohibited by the Act or these regulations based on an action occurring on or after July 1, 1979. A complaint must be filed within 180 days from the date the complainant first had knowledge of the alleged act of discrimination. However, for good cause shown, NASA may extend this time limit.

(b) NASA will attempt to facilitate the filing of complaints wherever possible, including taking the following measures:

(1) Accepting as a sufficient complaint, any written statement, which identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and assigned by the complainant.

(2) Freely permitting a complainant to add information to the complaint to meet the requirements of a sufficient complaint.

(3) Widely disseminating information regarding the obligations of recipients under the Act and these regulations.

(4) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure.

(5) Notifying the complainant and the recipient (or their representatives) of their right to contact NASA for information and assistance regarding the complaint resolution process.

(c) NASA will return to the complainant any complaint outside the jurisdiction of these regulations, and will state the reason(s) why it is outside the jurisdiction of these regulations.

§ 1252.402 Mediation.

(a) Referral of complaints for mediation. NASA will refer to the Federal Mediation and Conciliation Service all complaints that:

(1) Fall within the jurisdiction of the Act and these regulations; and

(2) Contain all information necessary for further processing.

(b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or make an informed judgment that an agreement is not possible. There must be at least one meeting with the mediator before NASA will accept a judgment that an agreement is not possible. However, the recipient and the complainant need not meet with the mediator at the same time.

(c) If the complainant and the recipient reach an agreement, the mediator shall prepare a written statement of the agreement and have the complainant and recipient sign it. The mediator shall send a copy of the agreement to NASA. NASA will take no further action on the complaint unless the complainant or the recipient fails to comply with the agreement. However, NASA retains the right to monitor the recipient's compliance with the agreement.

(d) The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the mediation agency.

(e) NASA will use the mediation process for a maxin um of 60 days after receiving a complaint.

(f) Mediation ends if:

(1) 60 days elapse from the time NASA receives the complaint; or

(2) Prior to the end of that 60-day period, an agreement is reached; or

(3) Prior to the end of that 60-day period, the mediator determines that an agreement cannot be reached.

(g) The mediator shall return unresolved complaints to NASA.

§ 1252.403 Investigation.

(a) *Informal inquiry.* (1) NASA will investigate complaints that are unresolved after mediation or are reopened because of a violation of a mediation agreement.

(2) As part of the initial inquiry, NASA will use informal fact finding methods, including joint or separate discussions with the complainant and recipient to establish the facts, and, if possible, settle the complaint on terms that are mutually agreeable to the parties. NASA may seek the assistance of any involved State program agency.

(3) NASA will put any agreement in writing and have it signed by the parties and an authorized official at NASA.

(4) The settlement shall not affect the operation of any other enforcement effort of NASA, including compliance reviews and investigation of other complaints which may involve the recipient.

(5) The settlement is not a finding of discrimination against a recipient.

(b) *Formal investigation.* If NASA cannot resolve the complaint through informal means it will develop formal findings through further investigations of the complaint. If the investigation indicates a violation of these regulations, NASA will attempt to obtain voluntary compliance. If NASA cannot obtain voluntary compliance, it will begin enforcement as described in § 1252.405.

§ 1252.404 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act or these regulations; or

(b) Cooperates in any mediation, inquiry, hearing, or other part of NASA's investigation, conciliation, and enforcement process.

§ 1252.405 Compliance procedure.

(a) NASA may enforce the Act and these regulations through:

(1) Termination of a recipient's Federal financial assistance from NASA under the program or activity involved where the recipient has violated the Act or these regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge. Therefore, cases which are settled in mediation, or prior to a hearing, will not involve termination of a recipient's Federal financial assistance from NASA.

(2) Any other means authorized by law including but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or these regulations.

(ii) Use of any requirement of or referral to any Federal, State, or local government agency that will have the effect of correcting a violation of the Act or these regulations.

(b) NASA will limit any termination under § 1252.405(a)(1) to the particular program activity NASA finds in violations of these regulations. NASA will not base any part of a termination on a finding with respect to any program or activity of the recipient which does not receive Federal financial assistance from NASA.

(c) NASA will take no action under paragraph (a) until:

(1) The Administrator has advised the recipient of its failure to comply with the Act and these regulations and has determined that voluntary compliance cannot be obtained.

(2) 30 days have elapsed after the Administrator has sent a written report of the circumstances and grounds of the action to the committees of Congress having legislative jurisdiction over the Federal program or activity involved. The Administrator will file a report whenever any action is taken under paragraph (a) of this section.

(d) NASA also may defer granting new Federal financial assistance from NASA to a recipient when a hearing under § 1252.405(a)(1) is initiated.

(1) New Federal financial assistance from NASA includes all assistance for which NASA requires an application or approval, including renewal or continuation of existing activities during the deferral period. New Federal financial assistance from NASA does not include assistance approved prior to the beginning of a hearing under § 1252.405(a)(1).

(2) NASA will not begin a deferral until the recipient has received a notice of an opportunity for a hearing under § 1252.405(a)(1). NASA will not continue a deferral for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the Administrator. NASA will not continue a deferral for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

§ 1252.406 Hearings.

The procedural provisions for those hearings required by § 1252.405 are contained in 14 CFR 1250.108.

§ 1252.407 Notices, decisions, and post-termination proceedings.

All notices, decisions, and post-termination proceedings, insofar as NASA is concerned, shall be made in accordance with 14 CFR 1250.109.

§ 1252.408 Remedial action by recipients.

(a) Where NASA finds a recipient has discriminated on the basis of age, the recipient shall take any remedial action that NASA may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, NASA may require both recipients to take remedial action.

(b) Even in the absence of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipients program or activity on the basis of age.

§ 1252.409 Alternate funds disbursal procedure.

(a) When NASA withholds funds from a recipient under these regulations, the Administrator may disburse the withheld funds directly to an alternate recipient.

(b) The Administrator will require any alternate recipient to demonstrate:

(1) The ability to comply with these regulations; and

(2) The ability to achieve the goals of the Federal statute authorizing the program or activity.

§ 1252.410 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and NASA has made no finding with regard to the complaint; or

(2) NASA issues any findings in favor of the recipient.

(b) If NASA fails to make a finding within 180 days or issues a finding in favor of the recipient, NASA will:

(1) Promptly advise the complainant of this fact; and

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant:

(i) That the complainant may bring a civil action only in a United States district court for the district in which the

recipient is located or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint.

(iii) That before commencing the action the complainant shall give 30 days notice by registered mail to the Administrator, the Attorney General of the United States, and

(iv) That the notice must state: the alleged violation of the act; the relief requested; the court in which the complainant is bringing the action; and, whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

§ 1252.411 Age distinctions.

There are no Federal statutes or regulations containing age distinctions which affect financial assistance administered by the agency.

James M. Beggs,

Administrator.

[FR Doc. 85-7977 Filed 4-3-85; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Approval of Permanent Program Amendment From the Commonwealth of Pennsylvania Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of a program amendment submitted by Pennsylvania as an amendment to the State's permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment establishes a program for blasting training, examination and certification.

Pennsylvania submitted the proposed program amendment by letter dated March 2, 1984 (Administrative Record No. PA 495). OSM published a notice in the **Federal Register** on April 11, 1984, announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (49 FR 14402). The public comment period ended May 11, 1984. On October 10, 1984, Pennsylvania submitted additional information (Administrative Record No. PA 537) addressing concerns raised by OSM in a letter dated September 12, 1984 (Administrative Record No. 531). OSM subsequently reopened the public comment period until December 3, 1984, in the November 1, 1984 **Federal Register** (49 FR 43974).

After providing opportunity for public comment and conducting a thorough review of the program amendment, the Director has determined that the amendment meets the requirements of SMCRA and the Federal regulations with one exception, and is approving it while requiring correction of the remaining deficiency. The Federal rules at 30 CFR Part 938 codifying decisions concerning the Pennsylvania program are being amended to implement this action. This final rule is being made effective immediately in order to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay; consistency of the State and Federal standards is required by the Act.

EFFECTIVE DATE: April 4, 1985.

FOR FURTHER INFORMATION CONTACT: Robert Biggi, Field Office Director, Harrisburg Field Office, Office of Surface Mining, 101 South Second St., Suite L-4, Harrisburg, Pennsylvania 17101; Telephone: (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Background

The Pennsylvania program was conditionally approved by the Secretary of the Interior on July 31, 1982. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982, **Federal Register** (47 FR 33050-33083).

II. Submission of Program Amendment

By letter dated March 2, 1984, Pennsylvania submitted regulations and other material governing the training, examination and certification of blasters working in surface coal mining operations, material which the Commonwealth supplemented on October 10, 1984. These materials include:

- Regulations:

—25 PA Code 210 Subchapter A (Blaster's License).

—25 PA Code 211 (Storage, Handling and Use of Explosives).

- Form ER-QE-16: Permit for the Purchase of Explosives.
- Form ER-QE-17: Permit for Sale of Explosives.
- Form ER-QE-18: License for the Storage of Explosives.
- Form ER-MR-41: Blasting Report with Instructions.
- Form ER-QE-20: Application for Examination and Blaster's License.
- Assorted Blaster Training Course instructional materials.
- Blaster Training Course Outline.
- List of Requirements for a Blaster's License.
- Notice of Blaster Training and License Examination.
- Notice of Blaster Refresher Course Offering.
- Notice of Licensed Blaster's Responsibilities.

At the time of the Secretary's approval of the Pennsylvania program, OSM had not yet promulgated Federal rules governing the training and certification of blasters. Therefore, the Commonwealth was not required to include such requirements in its program. However, in the notice announcing conditional approval of the Pennsylvania program, the Secretary specified that Pennsylvania would be required to adopt such provisions following promulgation of the Federal standards (Finding 24, 47 FR 33058, July 30, 1982).

On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Ch. M (48 FR 9486). The Federal rules require each State to design and implement its own blaster certification program. Under the Federal rules, each State must develop the method of training, examining and certifying blasters which best meets local needs within the Federal regulatory framework. The Federal rules require training, field experience and a written examination, and specify certain other requirements.

The Federal rules at 30 CFR 850.12 require the State regulatory authority to develop a program and submit it to OSM as a proposed program amendment within 12 months after the publication date of the Federal rules. The Federal rules at 30 CFR 816.61(c) further provide that no later than 12 months after the State's blaster certification program has

been approved by OSM, all blasting operations in the State shall be conducted under the direction of a certified blaster.

On April 11, 1984, OSM published a notice in the **Federal Register** announcing receipt of the amendment and inviting public comment on whether the proposed amendment was no less effective than the Federal regulations (49 FR 14402). The public comment period ended May 11, 1984. The public hearing scheduled for May 7, 1984, was not held because no one expressed a desire to present testimony.

In a letter dated September 12, 1984, OSM notified Pennsylvania of its concerns relative to the proposed amendment, and requested the Commonwealth to clarify six issues pertaining to training and examination subject areas, certificate suspension and revocation requirements and procedures, certificate protection procedures, certificate display requirements, and nondelegation of responsibility. OSM received the Commonwealth's response on October 15, 1984. The November 1, 1984, **Federal Register** reopened the public comment period until December 3, 1984. No comments were received during either comment period.

III. Director's Findings

In accordance with SMCRA and 30 CFR 732.15 and 732.17, the Director finds that the program amendment submitted by Pennsylvania on March 2, 1984, and as modified on October 10, 1984, meets the requirements of SMCRA and 30 CFR Ch. VII with one exception, as discussed below.

A. General

The Pennsylvania submission provides that the Explosives Safety Section of the Division of Mining and Reclamation of the Pennsylvania Department of Environmental Resources will be responsible for the training, examination and licensing (certification) of blasters within the Commonwealth. The Explosives Safety Section is the successor to the "Division of Explosives" and the "Division of Mines, Quarries and Explosives" to which Chapters 210 and 211 of Title 25 of the Pennsylvania Code (PA Code) refer.

Chapter 211 of Title 25 of the PA Code deals only with the storage, handling and use of explosives, and does not pertain to the amendment subject. Since its provisions do not govern the blaster training, examination and certification program required by 30 CFR Part 850, the Director has not evaluated Chapter 211 and is neither approving nor disapproving it.

B. Specific Findings

1. The blaster licensing procedures and requirements of Chapter 210, Subchapter A, of Title 25 of the Pennsylvania Code correspond to the blaster certification procedures and requirements of 30 CFR Part 850. These regulations require all blasters to be licensed through passage of a written examination. A license is then issued only if the applicant submits proof of at least one year of qualifying experience.

Pennsylvania has no regulations governing training. However, the March 2, 1984 submission includes a training course outline and associated materials. Since 1983 the Commonwealth has offered this training course on a regularly scheduled basis, and, in accordance with 30 CFR 850.13(a)(1), it has recently made successful completion of the course a prerequisite to the taking of the license examination. Pennsylvania also offers an optional refresher course for licensed blasters on a periodic basis.

Section 210.6 of Title 25 of the Pennsylvania Code provides that a maximum of six "blaster learners" may work on a blasting crew under the direct supervision and direction of a licensed blaster. This meets the requirement of 30 CFR 850.13(a)(2) that uncertified blasting crew members receive direction and on-the-job training from a certified blaster.

In response to the concern raised by OSM in its letter of September 12, 1984, and a subsequent technical review that the training and examination materials did not completely cover all the topics listed in 30 CFR 850.13(b), Pennsylvania submitted revised materials on October 10, 1984, which did meet all Federal requirements.

The Director finds that the regulations (25 PA Code 210 Subchapter A), training and examination materials and administrative requirements, as submitted on March 2, 1984, and revised on October 10, 1984, are no less effective than the Federal blaster training and examination requirements at 30 CFR 850.13 and 850.14.

2. Pennsylvania blaster licenses are valid for an intitial period not exceeding one year, and must be renewed annually thereafter. The Commonwealth has the discretionary authority to require applicants for license renewal to undergo re-examination for due cause. Blasters who permit their licenses to expire must be re-examined before a new license can be issued.

25 PA Code 210.2(f) grants the Chief of the Explosives Safety Section discretionary authority to suspend a blaster's license, and gives the Secretary of the Department of Environmental Resources discretionary authority to revoke such a license following written notice and a hearing before a panel of experts. Both actions may be appealed to the Environmental Hearing Board. In addiction, the Department customarily holds an informal conference prior to suspension or revocation. These procedures meet the notice and hearing requirements of 30 CFR 850.15(b). However, the Pennsylvania regulations contain no counterpart to the Federal requirement at 30 CFR 850.15(b)(1) for mandatory license suspension or revocation upon a finding of willful conduct resulting in (1) noncompliance with any order of the regulatory authority; (2) unlawful use in the work place of, or current addiction to, alcohol, narcotics or other dangerous drugs; (3) violation of any provision of State or Federal explosives laws or regulations; or (4) provision of false information or misrepresentation for the purpose of obtaining a blaster's license.

With the exception of the absence of mandatory license suspension or revocation provisions, the Director finds the blaster licensing provisions of 25 PA Code 210 Subchapter A in combination with the "Notice of Licensed Blaster's Responsibilities" as submitted on October 10, 1984, to be no less effective than the Federal regulations at 30 CFR 850.15. The Director is requiring a program amendment to provide for mandatory license suspension or revocation upon a finding of willful conduct with respect to one or more of the activities listed in 30 CFR 850.15(b)(1).

On October 10, 1984, Pennsylvania notified OSM that, effective immediately, all new licenses and renewals would be accompanied by a "Notice of Licensed Blaster's Responsibilities", providing that (1) the holder shall comply with all applicable statutes and regulations; (2) the license is not transferable; (3) the holder shall take reasonable precaution to protect the license from loss, theft, or unauthorized duplication, and shall immediately report any such occurrence to the Department; and (4) the holder shall surrender the license immediately upon notification of suspension or revocation. A blaster cannot delegate responsibility as 25 PA Code 210.4(a) prohibits license transfers, 25 PA Code 210.5(a) prohibits detonation by unlicensed blasters, and 25 PA Code 87.124(c) requires that all blasting be done by competent, licensed blasters. In accordance with 30 CFR 850.15(e)(1), 25 PA Code 210.2(e) requires the blaster to display his license upon the request of

any authorized representative of the Department.

IV. Public Comments

Of the Federal agencies invited to comment, only the U.S. Soil Conservation Service responded, and that agency provided no comments. No other public comments were received.

The disclosure of Federal agency comments is made pursuant to Section 503(b) (1) and (2) of SMCRA and 30 CFR 732.17(h)(10)(i).

V. Director's Decision

Based on the above findings, the Director is approving the amendment to the Pennsylvania program as submitted on March 2, 1984, and modified on October 10, 1984. As discussed above in Finding B.2., one deficiency does exist, which Pennsylvania must correct by submission of a program amendment by June 3, 1985. The Director is amending Part 938 of 30 CFR Chapter VII to implement this decision.

VI. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory Impact Analysis and Regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: March 29, 1985.

John D. Ward,

Director, Office of Surface Mining.

PART 938—PENNSYLVANIA

1. 30 CFR 938.15 is amended by adding a new paragraph (g) as follows:

§ 938.15 Approval of regulatory program amendments.

* * * * *

(g) The following amendment submitted to OSM on March 2, 1984, as modified on October 10, 1984, is approved effective April 4, 1985.

Pennsylvania's blaster training, examination and certification program, as contained in Chapter 210, Subchapter A, of Title 25 of the Pennsylvania Code, and all other items as submitted by Pennsylvania on March 2, 1984, and modified on October 10, 1984, with the exception of Chapter 211 of Title 25 of the Pennsylvania Code.

2. 30 CFR Part 938 is amended by adding a new § 938.16 as follows:

§ 938.16 Required program amendments.

Pursuant to 30 CFR 732.17, Pennsylvania is required to submit the following program amendment by June 3, 1985.

(a) As required by 30 CFR 850.15 (b)(1), Pennsylvania shall amend its program to require suspension or revocation of a blaster's license upon a finding of willful conduct on the part of the licenses with respect to any of the following actions:

(1) Noncompliance with any order of the regulatory authority.

(2) Unlawful use in the work place of, or current addiction, to alcohol, narcotics or other dangerous drugs.

(3) Violation of any provision of State or Federal explosives laws or regulations.

(4) Provision of false information or misrepresentation for purpose of obtaining a license.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

[FR Doc. 85–8056 Filed 4–3–85; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 45

[CGD 82-087]

Enlisted Personnel

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising Part 45 of Title 33 Code of Federal Regulations dealing with enlistment, reenlistment and discharges of Military members of the regular Coast Guard. This document removes outdated and non-regulatory provisions contained within this Part. This revision will provide general guidelines which are supplemented by agency directives.

EFFECTIVE DATE: This revision becomes effective on April 4, 1985.

FOR FURTHER INFORMATION CONTACT: LT James Brown, Office of Personnel, Room 4415 Coast Guard Headquarters, Washington, D.C. 20593, (202)–426–6540.

SUPPLEMENTARY INFORMATION: The need for flexibility in setting standards for enlistment, reenlistment and discharge of military members of the regular Coast Guard, makes it impracticable to publish all current material in the Code of Federal Regulations. In order that regulations may reflect the existence of these policies, this rulemaking will remove the existing detailed regulations and replace that material with a single general section that provides an address where information may be obtained. These subjects concern personnel administration within the Coast Guard and do not affect the public. They are addressed in internal Coast Guard directives and publications that are readily available to members of the Coast Guard. Since they are related solely to personnel rules and practices of the Coast Guard they are exempt from the requirements of 5 U.S.C. 552 and the provisions of 5 U.S.C. 553. Therefore, notice and comment are not required and the rule may be effective upon publication.

Regulatory Evaluation

This final rule is considered to be non-major under Executive Order 12291 and non-significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11045; February 26, 1979). The economic impact of the final rule has been found to be so minimal that further evaluation is unnecessary. The removal of this material from the Code of Federal Regulations will not change current personnel policies and practices and will not affect the public. Since the economic impact of the final rule is expected to be minimal, the agency certifies it will not have a significant economic impact on a substantial number of small entities. These revisions do not require the preparation of an Environmental Impact Statement under the National Environmental Policy Act.

Paperwork Reduction Act

This rulemaking contains information collection requirements. These items have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been approved by Office of Management and Budget. The section number and the corresponding Office of Management and Budget approval number are as follows: Section 45.1 of 33 CFR Part 45; OMB approval number 2115–0036.

Drafting Information

The principal persons involved in drafting this document are LT James Brown, Project Officer and LT S. R. Sylvester, Project Attorney, Office of Chief Counsel.

List of Subjects in 33 CFR Part 45

Military personnel.

Therefore, Title 33 of the Code of Federal Regulations is amended by revising Part 45 of Chapter 1 to read as set forth below:

PART 45—ENLISTMENT OF PERSONNEL

Sec.
45.1 Enlistment of personnel.
45.2 Records of enlistment of former service members.

Authority: 14 U.S.C. 351, 371; 49 CFR 1.46(b).

§ 45.1 Enlistment of personnel.

(a) The Coast Guard is a military service which operates within the Department of Transportation. All personnel enlisted in the Coast Guard are subject to the Uniform Code of Military Justice.

(b) Any person desiring to enlist in the Coast Guard should apply at a Coast Guard Recruiting Office, or direct inquiries to, Commandant (G–PMR), U.S. Coast Guard, Washington, DC 20593. Enlistments in the Coast Guard shall be for general service and enlisted persons may be transferred as necessary from one unit to another. Original enlistments will be made only at regular recruiting offices unless otherwise directed by the Commandant. An original enlistment is the enlistment of an individual who has not had previous service in the Regular Coast Guard. In processing an application for enlistment, the Coast Guard will determine the mental, moral and physical fitness of the applicant through reference to local police files, character references, employers, school authorities and physical and mental examinations. Concealment of any fact, circumstance or condition existing prior to enlistment which would render the applicant ineligible for enlistment may subject the applicant to criminal penalties under the Uniform Code of Military Justice and/or administrative separation from the Coast Guard.

§ 45.2 Records of enlistment of former service members.

Former members who have any questions about their service or who need information regarding their service should contact the nearest Coast Guard Recruiting Office or Commandant (G–PMR), U.S. Coast Guard, Washington, D.C. 20593.

Dated: March 20, 1985.

Henry H. Bell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Personnel.

[FR Doc. 85–8042 Filed 4–3–85; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD3 83–039]

Drawbridge Operation Regulations; Saugatuck River, CT

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of Metro-North Commuter Railroad and Connecticut Department of Transportation, the Coast Guard is changing the regulations governing the Metro-North "SAGA" railroad and the State Route 136 drawbridges, respectively. Both bridges cross the Saugatuck River at Saugatuck, CT. The SAGA railroad bridge will be permitted to remain closed during peak commuter rail periods. The Route 136 bridge will be permitted to remain closed during peak vehicular traffic periods and will require advance notice at all othe times. These changes are being made because of minimal requests to open the draws during affected periods, and to respond to the needs of commuter rail and vehicular traffic during traditionally heavy use periods. This action will accommodate the needs of rail and vehicular traffic, relieve the bridge owners of the burden of having a person constantly available to open the draws, and will still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on May 6, 1985.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District, (212) 668–7994.

SUPPLEMENTARY INFORMATION: On December 24, 1984, the Coast Guard published proposed rules (49 FR 49854) concerning this amendment. The Commander, Third Coast Guard District, also published the proposal as a Public Notice dated January 7, 1985. In each notice interested persons were given until February 7, 1985 to submit comments.

Reference was erroneously made in the proposed regulations to the "SAUG" railroad bridge. This should have read, "SAGA". In addition, requirement for eight hours notice at the SAGA bridge from 5:30 p.m. to 7:40 p.m. (on weekends and holidays from October 1 through May 31) was inadvertently omitted. Regulations providing for eight hours notice during this time frame have been in effect at the bridge since 1959. Both discrepancies are corrected in this final rule with no change in the substance.

Drafting Information

The drafters of these regulations are Ernest J. Feemster, project manager, and Mary Ann Arisman, project attorney.

Discussion of Comments

Seven responses were received on the proposed regulations for this action. Two responses were received from governmental agencies and had no objections. The remaining five respondents all objected to the proposed regulations; specifically regarding commuter closure hours at the SAGA railroad bridge. Three of the objections were related to a charter boat operation and potential interference of the proposed regulations with free access; one related to inability to obtain bait and bait fish (for a bait and tackle company) during morning commuter closure; and the other expressed concern because of potential safety hazards. The Coast Guard feels that the best way to respond to the objections would be to reduce the commuter closure hours to the minimal extent practicable. This would respond in part to all objections and concerns of mariners with minimal inconvenience to rail commuters. The only substantive change made in this final rule is reduction of the commuter closure hours at the SAGA railroad bridge. The closure hours will be from 7 a.m. to 8:10 a.m., and from 5:30 p.m. to 7 p.m.

Several of the persons objecting to the proposed regulations stated that a history of past delays in openings of the SAGA bridge would further add to inconveniences caused by commuter bridge closings. However, the Coast Guard Authorization Act of 1982 provides for a civil penalty of up to $1,000 as a remedy to unauthorized opening delays. This enforcement tool is now available and being used by the Coast Guard to address problems of this nature.

Various other minor objections were raised by respondents. Most of these objections only required clarification and were addressed through correspondence with the individual respondents.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The reduction in commuter closure periods made in this final rule should respond in part to objections received from mariners. Since the greatest interval between scheduled trains (during the commuter closures) is 16 minutes, it would be difficult to conveniently open for vessels. These regulations are felt to be a fair compromise between the needs of the mariner, and needs of rail and vehicular traffic and should not cause undue inconvenience to any mode of transportation. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended by revising the existing § 117.221 to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.221 Saugatuck River.

(a) The draw of each moveable bridge shall open at all times as soon as possible for passage of a public vessel of the United States, vessel in tow or for a vessel in distress.

(b) The draw of the Metro-North "SAGA" Bridge, mile 1.1 at Saugatuck shall operate as follows:

(1) Year-round need not open:

(i) Weekdays from 7 a.m. to 8:10 a.m. and 5:30 p.m. to 7 p.m. except on federal holidays;

(ii) From 9 p.m. to 5 a.m.

(2) From October 1–May 31, open on signal:

(i) Weekdays from 8:10 a.m.–4 p.m.;

(ii) Weekends and federal holidays 7 a.m.–4 p.m.;

(iii) If at least eight hours notice is given: daily, from 5 a.m.–7 a.m., 4 p.m.–5:30 p.m. and 7 p.m.–9 p.m., and weekends and federal holidays from 5:30 p.m.–7 p.m.

(3) From June 1–September 30, open on signal 5 a.m.–9 p.m., except as provided in paragraph (b)(1)(i) of this section.

(4) A delay in opening the draw not to exceed 10 minutes may occur when a train scheduled to cross the bridge without stopping has entered the drawbridge block.

(c) The draw of the Route 136 Bridge, mile 1.3 at Saugatuck shall operate as follows:

(1) Year-round, need not open weekdays, except federal holidays, from 7 a.m. to 8:30 a.m. and 5:30 p.m. to 7:30 p.m.

(2) From April 15–October 31, open on signal if at least two hours notice is given, except as provided in paragraph (c)(1) of this section.

(3) From November 1–April 14, open on signal:

(i) From 8:30 a.m. to 3 p.m. if at least eight hours notice is given;

(ii) From 3 p.m. to 8:30 a.m., if at least 24 hours notice is given, except as provided in paragraph (c)(1) of this section.

(33 U.S.C. 499; 49 CFR 1.46(c)(2); 33 CFR 1.05–1(g)(3))

Dated: March 26, 1985.

P.A. Yost,

Vice Admiral, U.S. Coast Guard Commander, Third Coast Guard District.

[FR Doc. 85-8043 Filed 4-3-85; 8:45 am]

BILLING CODE 4910-14-M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 201

[FIRMR Temp. Reg. 11]

Implementation of Public Laws 98-369 and 98-577 Regarding Competition in the Acquisition of Information Resources

AGENCY: Office of Information Resources Management, GSA.

ACTION: Temporary regulation.

SUMMARY: This regulation implements the Competition in Contracting Act of 1984 (Pub. L. 98-369) and the Small Business and Federal Procurement Competition Enhancement Act of 1984 (Pub. L. 98-577) regarding the special category procurement and contracting regulations for certain automatic data processing and telecommunication resources, as well as related management provisions, contained in the Federal Information Resources Management Regulation (FIRMR). Other changes are made in provisions that are affected by the statutory implementation actions. The intent is to appropriately amend the FIRMR to accomplish the new statutory objectives and requirements.

DATES: *Effective date:* April 1, 1985; *Expiration date:* December 31, 1986; *Comments are due:* April 30, 1985.

ADDRESS: Comments should be submitted to the General Services Administration, Office of Information Resources Management, Policy Branch (KMPP), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: William R. Loy, Policy Branch (KMPP), Office of Information Resources Management, telephone (202) 566-0194 or FTS, 566-0194.

SUPPLEMENTARY INFORMATION: (1) The changes being made by this issuance are explained in paragraph 5 of the temporary regulation.

(2) To the extent that provisions in FIRMR Temporary Regulations 1 (Supp. 1), 4, 5, 6, and 9 are changed by this temporary regulation, the existing provisions in the temporary regulation are superseded.

(3) Pursuant to section 6(h)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(h)(1)), and with reference to section 22(d) of that Act (Sec. 302(a) of Pub. L. 98-577), the publication of proposed rules has been waived because of the necessity for providing implementation of Pub. L. 98-369 and 98-577 for Federal agencies by the statutory effective dates.

(4) Notice of proposed rulemaking regarding this action was published in the **Federal Register** (50 FR 10252, March 14, 1985). The period for submission of comments is extended as indicated in this document.

(5) The General Services Administration has determined that this rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Government-wide management regulation that will have little or no net cost effect on society.

List of Subjects in 41 CFR Ch. 201

Government information resources activities, Government procurement.

In 41 CFR Chapter 201, the following temporary regulation is added to Appendix A at the end of the chapter.

FIRMR Temporary Regulation / /

March 11, 1985.

To: Heads of Federal agencies.

Subject: Implementation of Pub. L. 98–369 and 98–577.

1. *Purpose.* This regulation prescribes policies and procedures for Federal agencies implementing certain provisions of the Competition in Contracting Act of 1984 (Pub. L. 98–369) and the Small Business and Federal Procurement Competition Enhancement Act of 1984 (Pub. L. 98–577).

2. *Effective date:* This regulation is effective April 1, 1985.

3. *Expiration date.* This regulation expires December 31, 1986.

4. *Background.* While general contracting provisions in the Federal Acquisition Regulation (48 CFR Chapter 1) (FAR) are being changed to implement Pub. L. 98–369 and 98–577, the special category procurement and contracting regulations for certain automatic data processing and telecommunications resources, as well as related management provisions, contained in the Federal Information Resources Management Regulation (FIRMR) also require change. In addition, changes not required by the statutes are made in provisions that are affected by the statutory implementation action.

5. *Explanation of changes.* a. Paragraph 5B. sets froth, consecutively section by section, explanations of implementations of Pub. L. 98–369 and 98–577. Paragraph 5c. sets forth explanations of other changes being made in sections that are a effected by paragraph 5b. actions. Paragraph 5d. sets forth "pen and ink" changes, primarily in terminology, necessary for consistency in implementation of the above referenced statutes. Paragraph 6 sets forth the changes discussed in this paragraph 5.

b. The following sections are changed to implement Pub. L 98–369 and 98–577.

(1) Section 201–1.102, Authority, is amended to cite Pub. L. 98–369 and Pub. L. 98–577.

(2) Section 201–1.102–2, Other related autorities, is amended to cite pertinent sections of the Office of Federal Procurement Policy Act, as amended, appearing in Pub. L. 98–369 and Pub. L 98–577.

(3) Section 201–1.502, Solicitation of agency and public views, is amended to implement Pub. L. 98–577.

(4) Section 201–2.001, Definitions, is amended (i) to add definitions for "Compatibility limited requirement," "Full and open competition," and "Responsible source;" (ii) to modify the definition for "Selection plan;" and (iii) to remove definitions for "Competitive requirement," "Maximum practicable competition," and "Noncompetitive (sole source) requirement." (See also paragraph 5c(3).)

(5) Section 201–11.001, The full and open competition objective, is added.

(6) Section 201–11.001–1, Application of FAR provisions, is revised to specifically reference implementation of Pub. L. 98–369 in the Federal Acquisition Regulation (48 CFR Ch.1).

(7) Section 201–11.002, Other than full and open competition, is revised to change the caption and text to set forth the special agency activities required when a requirement is contemplated to be satisfied through other than full and open competition.

(8) Section 201–11.003, Agency responsibilities, is amended to change the caption and text to recognize the relationship between agency front-end ADP procurement activities and attainment of the full and open competition objective.

(9) Section 201–16.001, Planning, is added to recognize that attainment of the full and open competition objective is a necessary consideration in the planning process.

(10) Section 201–23.103, Procurement and contracting authority, is amended to specifically reference Part 201–11, Competition, provisions.

(11) Section 201–23.104, Blanket regulatory delegations of procurement authority, is amended where necessary (in the various subsections) to express the thresholds in terms of the type of specifications that are used in contracting, in order to place emphasis on agency requirement definition activities as a means of attaining the competition objective. (See also paragraph 5c(4).)

(12) Section 201–23.106, Specific acquisition delegation of procurement authority, is amended to adjust provisions (in the two subsections) regarding documentation and submission requirements, particularly where the type of specification selection and sole source requirements are discussed. Similar action is taken in § 201–39.006–4, Data, facsimile, and record telecommunication services submissions.

(13) Section 201–24.104, Small purchases, is revised to provide that FAR Part 13 procedures apply to requirements for information resources under $25,000, except when following the FIRMR procedures for use of GSA information resources schedule contracts.

(14) Section 201–24.207, Solicitations for compatibility limited requirements, is amended to change the caption and orientation to the contracting process. Conditions are established for solicitations using compatibility limited requirements when offers for non-compatible items for replacement systems or augmentation components are restricted. Management provisions involving the establishment of requirements formerly appearing in this section are revised and moved to new § 201–30.009–3, Establishing compatibility limited requirements.

(15) Sections 201–24.211, 201–24.212, and 201–24.304 are removed and reserved and the specification management provisions are now contained in §§ 201–30.013, Specifications; 201–30.013–1, Use of functional specifications; 201–30.013–2, Use and documentation of specific make and model specifications; and 201–38.012, Use of functional telecommunication system specifications, reflecting the pre-solicitation nature of the activity.

(16) Section 201–30.007, Determination of need and requirements analysis, is amended to place emphasis on the full and open competition objective during agency requirements analysis activities, including performance evaluation of currently installed systems.

(17) Section 201–30.008, Determination of system/item life, is amended to require consideration of subsequent procurement when establishment system/item lives when the requirement is available from only one responsible source.

(18) Section 201–32.102, Least cost acquisition, is amended to recognize the restriction in Pub. L. 98–369 on the use of concerns related to funding as a basis for agency actions.

(19) Section 201–32.206, Use of GSA ADP schedule contracts, and § 201–40.008, Use of GSA telecommunication schedule contracts, are amended to adjust the competitive procedures to precisely conform to the intent of Pub. L. 98–369. (See also paragraphs 5c (6), (7), and (8).)

(20) Section 201–32.303–3, Procedures for acquiring TSP services, is amended to state that the lowest overall cost alternative must be met when using abbreviated procedures.

c. The following sections are changed for reasons other than statutory implementations.

(1) Section 201–1.104–3, Copies, is amended to clarify ordering the looseleaf edition of the FIRMR.

(2) Section 201–1.402, Policy, is amended to reflect the Administrator of General Services' delegation of authority to GSA's Assistant Administrator for Information Resources

Management to approve requests by Federal agencies for individual deviations from the FIRMR.

(3) Section 201–2.001, Definitions, is also amended to add (i) the words "ADP system" to the title of the term "Functional ADP system specification" and (ii) a clarifying sentence to the definition of the term "Lowest overall cost". (See also paragraph 5d.)

(4) Section 201–23.104–7, ADP equipment systems, is also amended to explain how the DPA thresholds apply to combined procurements of equipment, software, and maintenance under a single procurement and where these items are combined with commercial ADP services under a single procurement. (See also paragraph 5b(11).)

(5) Section 201–24.210 is amended to require that an agency conduct a new market survey before exercising a renewal option in an ADP services contract based on a sole source system life selection, and if an alternate source exists, prepare an acquisition plan to initiate a subsequent competitive procurement.

(6) Sections 201–32.206 and 201–40.008 are also amended to reflect determinations made pursuant to Pub. L. 98–72 and Pub. L. 98–577. The Administrators of GSA and the Small Business Administration have agreed, in a findings and determination dated September 26, 1984, that it is not appropriate or reasonable to require a 30-day synopsis in the Commerce Business Daily (CBD) for all orders above $10,000 under GSA nonmandatory ADP and telecommunication schedule contracts. (The effect of this determination is explained in FIRMR Bulletin 13, November 15, 1984.) GSA consulted with the Office of Federal Procurement Policy and made a similar determination with respect to the $10,000/30-day synopsis required by Pub. L. 98–577. These sections continue the synopsis requirement at the $50,000/15 day level, but extend the policy uniformly to all orders in excess of $50,000 under GSA nonmandatory ADP and telecommunication schedule contracts. (See also paragraph 5b(19).)

(7) Sections 201–32.206 and 201–40.008 are also amended to expressly require that agencies wait at least 15 days from the date the synopsis appears in the CBD before placing an order under the GSA nonmandatory ADP and telecommunication schedule program, in response to complaints received by GSA regarding some agencies' practices. (See also paragraphs 5b(19) and 5c(6).)

(8) Section 201–32.206 is also amended to require that the synopsis notice indicate, when applicable, that the requirement was described by technical or requirements personnel using a specific make and model specification. (See also paragraph 5b(19), 5c(6), and 5c(7).)

(9) Section 201–32.206 is also amended to delete the references to CPUs in connection with the continued lease of ADPE, in recognition that CPUs are included in more and more devices, which makes this distinction less significant. (See also paragraphs 5b(19), 5c(6), 5c(7), and 5c(8).)

(10) Section 201–38.010, Analysis of data communication requirements, is revised to correct an editorial error by removing the word "[Reserved]" and inserting the words "See Temp. Reg. 9" and to make a terminology change in paragraph (b).

d. The following sections are changed to provide terminology changes required by statutory implementation.

(1) The following additional sections are amended to reflect "full and open" competition where the term "maximum practicable" was formerly used, to implement Pub. L. 98–369:

201–1.103 Applicability.
201–21.011 GSA policies and objectives.
201–24.202 Severable ADP requirements.
201–24.203 Furnishing ADP items and services to contractors.
201–30.012 Conversion planning and management responsibilities.
201–32.106 Publicizing contracting actions.
201–32.303–2 Scope of the TSP.

(2) The following additional sections are amended to use the terms "requirements" and "specifications" on a consistent basis (deleting "procurement," "acquisition," "negotiation" or "purchase descriptions," where necessary) when describing the documentation of requirements:

201–23.111–1 Requiring agency responsibilities.
201–23.111–2 GSA responsibilities.
201–30.012 Conversion planning and management responsibilities.
201–30.012–1 Software conversion studies.

(3) The following sections are amended to use the term "an unusual and compelling urgency" where "a public exigency" was used, to implement Pub. L. 98–369:

201–8.101–3 Exception to a Federal Telecommunication Standard (FED-STD).
201–24.106. Urgent requirements.

6. *Changes to provisions.* The following sections are changed from the integrated FIRMR text published as Part II of the **Federal Register** on January 30, 1985. All changes are to the Amendment 1 text except where appearance in a specific temporary regulation is noted.

PART 201–1—[AMENDED]

a. Section 201–1.102 is amended by adding paragraphs (c)(4) and (c)(5) to read as follows:

§ 201–1.102 Authority.

* * * * *

(c) * * *

(4) Pub. L. 98–369, The Competition in Contracting Act of 1984.

(5) Pub. L. 98–577, The Small Business and Federal Procurement Competition Enhancement Act of 1984.

b. Section 201–1.102–2 is amended by revising paragraph (b)(3) to read as follows:

§ 201–1.102–2 Other related authorities.

* * * * *

(b) * * *

(3) The Office of Federal Procurement Policy Act of 1974, Pub. L. 93–400 (41 U.S.C. 401 et seq.), as amended, including section 6(h) (41 U.S.C. 405(h)) regarding authority relationships, section 16(3) (41 U.S.C. 414) regarding agency responsibilities, section 18 (41 U.S.C. 416) regarding procurement notices, and section 22 (41 U.S.C. 418b) regarding publication of proposed regulations.

* * * * *

§ 201–1.103 [Amended]

c. Section 201–1.103 is amended by (i) removing from paragraph (b)(3) the words "maximum practicable" and inserting in their place the words "full and open" and (ii) removing the period and adding at the end of paragraph (g) the words "(see § 201–23.104–6).".

d. Section 201–1.104–3 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 201–1.104–3 Copies.

* * * * *

(b) * * *

(1) Federal agencies from the GPO, using SF–1 rider requisitions to GSA requisitions; and

(2) The public from the GPO, using direct subscription.

e. Section 201–1.402 is revised to read as follows:

§ 201–1.402 Policy.

Deviations from the FIRMR shall be kept to a minimum consistent with the specific needs and statutory authorities of each agency. Individual deviations may be authorized only by the GSA Assistant Administrator for Information Resources Management, or the officials designated by the Assistant Administrator for this purpose. Class

deviations may be authorized only by the Administrator of General Services.

f. Section 201–1.502 is amended by revising paragraphs (a), (b), (c), and (d); redesignating paragraph (e) as (f); and adding a new paragraph (e). As revised § 201–1.502 reads as follows:

§ 201–1.502 Solicitation of agency and public reviews.

(a) Views of interested parties will be considered in formulating policies and regulations under the FIRMR.

(b) The opportunity to submit written comments on proposed significant changes to the FIRMR will be provided by a notice in the **Federal Register**. Each of these notices will—

(1) Include the text of the proposal or a summary and a statement specifying where the full text may be obtained; and

(2) Request interested parties to submit comments on the proposed coverage, addressed to the General Services Administration, Chief, Policy Branch (KMPP), Washington, DC 20405, for consideration in the formulation of the final coverage that will be published in the **Federal Register**.

(c) The length of the comment period will not be less than 30 days. Normally, at least 60 days will be given for the receipt of comments.

(d) Comments need not be solicited if the proposed coverage does not constitute a signficant change to the FIRMR, except as required by statute.

(e) The Administrator of General Services may issue a temporary change to the FIRMR where solicitation of comments is impractical due to urgent and compelling circumstances (e.g., when a new statute must be implemented in a relatively short period of time). However, provision will be made for a public comment period of at least 30 days for consideration in the formulation of the final change to the FIRMR.

(f) Consideration will also be given to unsolicited recommendations for changes to the FIRMR that have been submitted in writing with sufficient data and rationale to permit evaluation.

PART 201–2—[AMENDED]

g. Section 201–2.001 is amended by adding (alphabetically) definitions, to read as follows:

§ 201–2.001 Definitions.

* * * * *

"Compatibility limited requirement" means a statement of ADP equipment or service requirements expressed in a form where the items are described in functionally equivalent terms that require the items to be compatible with the operating system and ADP equipment which the items are intended to replace or augment.

* * * * *

"Full and open competition" means that all responsible sources are permitted to submit sealed bids or competitive proposals on the procurement. (41 U.S.C. 403(7))

* * * * *

"Responsible source" means a prospective contractor who:

(a) Has adequate financial resources to perform the contract or the ability to obtain such resources;

(b) Is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and Government business commitments;

(c) Has a satisfactory performance record;

(d) Has a satisfactory record of integrity and business ethics;

(e) Has the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain such organization, experience, controls, and skills;

(f) Has the necessary production, construction, and technical equipment and facilities, or the ability to obtain such equipment and facilities; and

(g) Is otherwise qualified and eligible to receive an award under applicable laws and regulations. (41 U.S.C. 403(8))

* * * * *

"Specific make and model specification" means a description of a Government requirement that is expressed in a form so restrictive that only the specified make and model will satisfy the Government's needs, irrespective of the number of suppliers that may be able to furnish the specific make and model.

* * * * *

h. Section 201–2.001 is amended further (see paragraph 6g. above) (i) by removing from the FIRMR the following definitions—"Competitive requirement," "Maximum practicable competition," and "Noncompetitive (sole source) requirement" and (ii) by modifying existing definitions as follows—Change the term "Functional specification" by adding the words "ADP system" to read "Functional ADP system specification;" add after the second sentence of the definition "Lowest overall cost" (appearing in Temp. Reg. 6) the following sentence "The quantifiable cost of conducting the contracting action and other administrative costs directly related to the acquisition process are included."; and remove from the last sentence of the definition for "Selection plan" the words "make or model description" and insert in their place the words "make and model specification."

PART 201–8—[AMENDED]

§ 201–8.101–3 [Amended]

i. Section 201–8.101–3 is amended by removing from paragraph (a)(2) the words "a public exigency" and inserting in their place the words "an unusual and compelling urgency."

PART 201–11—[AMENDED]

j. The table of contents of Part 201–11 is amended as follows by (i) revising the entries for 201–11.001 to "The full and open competition objective.", for 201–11.002 to "Other than full and open competition.", for 201–11.003 to "Agency responsibilities.", (ii) removing the entries for 201–11.002–1, 201–11.002–2, 201–11.003–1, and 201–11.003–2; and (iii) removing the word "[Reserved]" from 201–11.001–1.

k. Section 201–11.001 is revised to read as follows:

§ 201–11.001 The full and open competition objective.

(a) The basic procurement objective in satisfying ADP and telecommunication requirements is to obtain full and open competition through the use of competitive procedures (including the GSA multiple award schedule program) which permit all responsible sources that can satisfy the needs of the Government to submit offers. The contract action shall be made at the lowest overall cost to the Government, price and other factors considered, over the system/item life with due regard to the nature of the supplies or services to be acquired.

(b) This requires an acquisition strategy, suitable to the circumstances, in which the statement of the user's requirement is set forth in the least restrictive terms possible without compromising economy or efficiency. It shall be designed to elicit favorable offers from all responsible sources capable to satisfying the Government's needs.

l. Section 201–11.001–1 is revised to read as follows:

§ 201–11.001–1 Application of FAR provisions.

FAR Part 6 prescribes policies and procedures to promote competition. They provide for full and open competition, full and open competition after exclusion of sources, and other than full and open competition. These provisions are applicable to the acquisition of ADP and telecommunications resources, in

addition to those set forth in this Part 201-11.

m. Section 201-11.002 is revised to read as follows:

§ 201-11.002 Other than full and open competition.

(a) *General.* When an agency determines that full and open competition cannot be obtained in satisfying an ADP or telecommunication requirement, the procurement action must be justified and approved in accordance with Part 201-23 and FAR Part 6. The agency is required to document its files with a justification for the contemplated procurement action (see FAR 6.303). Technical and requirements personnel must provide certified data supporting their recommendations for these procurement actions. Lack of advance planning or concerns related to the amount of funds available cannot be used for this justification.

(b) *Sole source certification requirements.* When an agency determines (1) that only one responsible source can meet its requirement after following the management, planning, and market research activities referred to in § 201-11.003 and (2) that no other type of supplies or services will satisfy the agency's needs, technical and requirements personnel are responsible for providing, and certifying as accurate and complete, the necessary data to support the recommendation for a sole source requirement (see FAR 6.303-1(b)).

§§ 201-11.002-1 and 201-11.002-2 [Removed]

n. Sections 201-11.002-1 and 201-11.002-2 are removed.

o. Section 201-11.003 is revised to read as follows:

§ 201-11.003 Agency responsibilities.

(a) Full and open competition is a basic procurement objective of the Government. Full and open competition among offerors who are capable of meeting the user's needs will ensure that the Government's needs are satisfied at the lowest overall cost, price and other factors considered, over the system/item life. It is essential that proper management actions, including planning and market research activities, be accomplished before the contract action becomes imminent (see Parts 201-16, 201-20, 201-21, 201-23, 201-24, 201-30, and 201-38).

(b) Agency information resources managers and contracting officers share the responsibility for ensuring that this basic procurement objective is met. This responsibility extends to fostering competitive conditions for subsequent procurements.

(c) Agencies must keep their systems life and contract expiration dates in mind when planning for future information resources requirements activities. Agency plans for follow-on procurements should allow sufficient time for the acquisition process; e.g., conversion of data files and programs. A competition for the follow-on period shall be started in sufficient time to ensure completion before the expiration of the existing contract.

§§ 201-11.003-1 and 201-11.003-2 [Removed]

p. Sections 201-11.003-1 and 201-11.003-2 (appearing in Temp. Reg. 4) are removed.

PART 201-16—[AMENDED]

q. The table of contents of Part 201-16 is amended by revising the entry for 201-16.001 to read as follows: "Planning to meet the full and open competition objective.".

r. Section 201-16.001 is revised to read as follows:

§ 201-16.001 Planning to meet the full and open competition objective.

(a) The head of the agency shall use advance procurement planning and market research directed to the achievement of the full and open competition objective. This planning is a joint responsibility of the agency's requirements and procuring activities. It is essential to the success of this objective that the manager who establishes the needs, the manager who prepares the requirement specifications, and the manager who contracts for satisfying the requirement all coordinate their efforts in establishing a realistic acquisition plan.

(b) Agency performance of this responsibility will serve as a factor in GSA's determinations for granting delegations of procurement authority to agencies.

PART 201-21—[AMENDED]

§ 201-21.011 [Amended]

s. Section 201-21.011 is amended by removing from paragraph (a)(4) the words "to the maximum practicable extent." and inserting in their place the words "on a full and open basis.".

PART 201-23—[AMENDED]

t. The table of contents of Part 201-23 is amended by adding "201-23.104-7 ADP equipment systems.".

u. Section 201-23.103 is amended by revising paragraph (b)(2) (appearing in Temp. Reg. 6) to read as follows:

§ 201-23.103 Procurement and contracting authority.

* * * * * *

(2) Agencies shall accomplish procurement actions in accordance with applicable provisions of the FIRMR, including the provisions of Parts 201-11, 201-24, and 201-32.

v. Section 201-23.104-1 (appearing in Temp. Reg. 6) is amended by revising paragraphs (c)(1) and (c)(2) to read as follows:

§ 201-23.104-1 Automatic data processing equipment (ADPE).

* * * * *

(c) * * *

(1) Except as provided in paragraph (c)(2) below, $2,500,000 purchase price or basic monthly rental charges (including attendant maintenance costs) that do not exceed an annual rate of $1,000,000; or

(2) $250,000 purchase price or basic monthly rental charges (including attendant maintenance costs) that do not exceed an annual rate of $100,000 for requirements available from only one responsible source or requirements using specific make and model specifications.

w. Section 201-23.104-2 (appearing in Temp. Reg. 6) is amended by revising paragraphs (c)(1) and (c)(2) to read as follows:

§ 201-23.104-2 Software.

* * * * *

(c) * * *

(1) Except as provided in paragraph (c)(2) below, $1,000,000; or

(2) $100,000 for requirements available from only one responsible source.

x. Section 201-23.104-3 (appearing in Temp. Reg. 6) is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 201-23.104-3 Maintenance services.

* * * * *

(b) * * *

(1) Except as provided in paragraph (b)(2) below, an annual rate of $1,000,000; or

(2) An annual rate of $100,000 for requirements available from only one responsible source.

y. Section 201-23.104-5 (pertinent portion appearing in Temp. Reg. 6) is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 201-23.104-5 Commercial ADP services.

(a) * * *

(1) Except as provided in paragraph (b)(2) below, an annual rate of $2,000,000; or

(2) An annual rate of $200,000 for requirements available from only one responsible source.

* * * * *

z. A new § 201-23.104-7 is added, as follows:

§ 201-23.104-7 ADP equipment systems.

(a) When ADPE, software, and maintenance services (or any combination thereof) are "combined" and procured as an equipment system under a single procurement action, GSA approval shall be required when the individual price of either the equipment, the software, or the maintenance services exceeds the applicable dollar threshold in §§ 201-23.104-1, 201-23.104-2, or 201-23.104-3.

(b) When commercial ADP services and any combination of ADPE, software, or maintenance services are procured under a single procurement action, GSA approval shall be required when the individual price of either the equipment, the software, the maintenance services, or the commercial ADP services exceeds the applicable dollar threshold in §§ 201-23.104-1, 201-23.104-2, 201-23.104-3, or 201-23.104-5.

aa. Section 201-23.106-1 is amended by (i) revising paragraphs (a)(11), (a)(17), (b)(3)(ii), and (b)(4) (ii), (iii), (iv), and (viii), and (ii) adding paragraph (a)(18) to read as follows:

§ 201-23.106-1 Agency procurement request (APR) submissions.

(a) * * *

(11) If applicable, a copy of documentation supporting any use of a specific make and model specification as required by § 201-30.013-2; and if applicable, the certified data supporting a contemplated sole source requirement (see § 201-11.002(b)).

* * * * *

(17) Findings to support the use of compatibility limited requirements as required by § 201-30.009-3, where applicable.

(18) A statement as to whether the acquisition plan contemplates contracting (see FAR 7.104(c)) under policies and procedures for:

(i) Full and open competition (see FAR Subpart 6.1);

(ii) Full and open competition after exclusion of sources (see FAR Subpart 6.2); or

(iii) Other than full and open competition (See FAR Subpart 6.3). In addition, provide the applicable statutory contracting authority cited in FAR 6.302-1 through 6.302-7 permitting the use of such procedures.

(b) * * *

(3) * * *

(ii) Summary description of the alternatives considered to meet the requirement, the related costs, and the basis for the alternative selected with reference to the agency's requirements analysis and analysis of alternatives (see §§ 202-30.007 and 201-30.009, respectively).

* * * * *

(4) * * *

(ii) Type of specification (see § 201-30.013).

(iii) The basis and documentation to support the use of compatibility limited requirements, when applicable (see § 201-30.009-3).

(iv) If applicable, a copy of the documentation supporting the use of a specific make and model specification as required by § 201-30.013-2; and, if applicable, the certified data supporting a contemplated sole source requirement (see § 201-11.002(b)).

* * * * *

(viii) A statement as to whether the acquisition plan contemplates contracting (see FAR 7.104(c)) under policies and procedures for:

(A) Full and open competition (see FAR Subpart 6.1);

(B) Full and open competition after exclusion of sources (see FAR Subpart 6.2); or

(C) Other than full and open competition (see FAR Subpart 6.3). In addition, provide the applicable statutory contracting authority cited in FAR 6.302-1 through 6.302-7 permitting the use of such procedures.

* * * * *

bb. Section 201-23.106-2 (appearing in Temp. Reg. 5) is amended by revising paragraphs (b)(3)(i) and (b)(5), and by adding paragraph (b)(3)(iv) to read as follows:

§ 201-23.106-2 Alternate APR submission requirements.

* * * * *

(b) * * *

(3) *Acquisition strategy:* (i) Indicate whether or not the proposed procurement approach is to satisfy a requirement using a specific make and model specification; whether compatibility limited requirements will be used on either a mandatory or nonmandatory basis; and specify the type of contract expected to be used.

* * * * *

(iv) Indicate whether the acquisition plan contemplates contracting (see FAR 7.104(c)) under policies and procedures for:

(A) Full and open competition (see FAR Subpart 6.1);

(B) Full and open competition after exclusion of sources (see FAR Subpart 6.2); or

(C) Other than full and open competition (see FAR Subpart 6.3). In addition, provide the applicable statutory contracting authority cited in FAR 6.302-1 through 6.302-7 permitting the use of such procedures.

* * * * *

(5) *Regulatory Compliance:* (i)(A) Provide a statement which indicates that the agency has reviewed and complied (or will comply) with all applicable regulations, or

(B) List those deviations to the regulations that apply to this request for which approval is sought and provide an explanation for each regulatory deviation request (see Subpart 201-1.4).

(ii) Provide the date of completion or most recent update of the following documentation, or indicate not applicable:

Documentation	Date
(A) Requirements analysis (see § 201-30.007)	
(B) Analysis of alternatives (see § 201-30.009)	
(C) Performance evaluation for the currently installed ADP system (see §§ 201-30.007(d)(9) and 201-34.002)	
(D) Findings to support the use of compatibility limited requirements (see § 201-30.009-3)	
(E) Software conversion study (see § 201-30.012-1)	
(F) Certified data to support a contemplated requirement available from only one responsible source (see § 201-11.002(b))	
(G) Justification to support a contemplated requirement using a specific make and model specification (see § 201-30.013-2)	
(H) Description of those planned actions necessary to foster competition for subsequent procurements (see § 201-30.012)	

* * * * *

cc. Section 201-23.111-1 is amended by revising paragraph (a) to read as follows:

§ 201-23.111-1 Requiring agency responsibilities.

* * * * *

(a) Submit to GSA the documentation required by § 201-23.106-1. The documentation shall include the agency's requirements, the system/item life, the technical specification, and, if applicable, the justification to support the contracting procedure;

* * * * *

dd. Section 201-23.111-2 is amended by revising paragraphs (b), (d), (f), (g), (j), and (k), and by redesignating (l) thru (q) as (k)(2), (k)(3), (k)(4), (l), (m), and (n), respectively. As revised, § 201-23.111-2 reads as follows:

§ 201-23.111-2 GSA responsibilities.

* * * * *

(b) Form the contracting team which will be headed by the GSA contracting officer;

* * * * *

(d) Prepare the contracting plan (which will be coordinated with the requiring agency), and any justifications or contractual material needed for the selection plan;

* * * * *

(f) Receive offers from the offerors;

(g) Provide copies of all offers received to the requiring agency;

* * * * *

(j) Notify the offeror concerned when an offer is determined to be unacceptable;

(k) If applicable, (1) Conduct negotiations with all offerors whose proposals are within the competitive range, price and other factors considered;

(2) Notify the offerors of the date and time that negotiations are to be terminated;

(3) Provide the requiring agency's designated point of contact with both a report which summarizes the results of negotiations and copies of proposed contracts negotiated with offerors for consideration in the requiring agency's evaluation and analysis; and

(4) Brief the appropriate requiring agency personnel on the results of contract negotiations when requested;

(l) Award the contract after receiving notification of the requiring agency's selection;

(m) Debrief offerors, with the assistance of requiring agency representatives, when debriefings are requested by offerors; and

(n) Distribute the contract and forward all pertinent documents to the successor contracting officer appointed by the requiring agency.

PART 201-24—[AMENDED]

ee. The table of contents of Part 201-24 is amended by revising the entries for 201-24.207 to "Solicitations for compatibility limited requirements." and for 201-24.211, 201-24.212 and 201-24.304 to "[Reserved]."

ff. Section 201-24.104 (appearing in Temp. Reg. 1, Supp. 1) is revised to read as follows:

§ 201-24.104 Small purchases.

(a) Except as provided in paragraph (b) of this § 201-24.104, the provisions of FAR Part 13 (Small purchases and other simplified purchase procedures) apply when the aggregate amount over the system/item life of a requirement for information resources does not exceed $25,000.

(b) Alternatively, if the contracting officer elects to satisfy such requirements through use of GSA information resources schedule contracts, applicable FIRMR schedule procedures shall be followed (see §§ 201-32.206, 201-32.303, and 201-40.008).

gg. Section 201-24.106 is revised to read as follows:

§ 201-24.106 Urgent requirements.

The existence of an unusual and compelling urgency (e.g., the Government will suffer serious injury, financial or otherwise, if the equipment or services are not available by a specific date) shall not relieve the agency from responsibility of requesting offers from as many potential sources as is practicable under the circumstances. The system/item life duration for an urgent requirement contracted for under other than full and open competition procedures shall be held to the minimum practicable life.

§ 201-24.202 [Amended]

hh. Section 201-24.202 is amended by removing from paragraph (a) the words "maximum practicable" and inserting in its place the words "full and open."

§ 201-24.203 [Amended]

ii. Section 201-24.203 is amended by removing from paragraph (b) the words "maximum practicable" and inserting in their place the words "full and open."

jj. Section 201-24.207 is revised to read as follows:

§ 201-24.207 Solicitations for compatibility limited requirements.

(a) Compatibility limited requirements shall not be made mandatory requirements solely for reasons of economy or efficiency. Solicitations for the replacement of a computer system(s) may exclude non-compatible offers only if the agency determines that the risk of a conversion failure will not allow pursuit of the lowest overall cost solution without this limitation (see § 201-30.009-3).

(b) Solicitations which include compatibility limited requirements for the augmentation of a computer system(s) may exclude non-compatible offers only if the agency determines that exclusion of non-compatible components and any other alternative is justified (see § 201-30.009-3). The justification for precluding the use of any alternative other than augmentation with compatible components must be based on the recent completion of both a requirements analysis (see § 201-30.007) and an analysis of alternatives (see § 201-30.009).

(c) If the conditions of paragraphs (a) or (b) of this § 201-24.007 are not met, solicitations which include compatibility limited requirements shall provide for the submission and evaluation of acceptable non-compatible offers from responsible offerors that will meet the user's requirement at the lowest overall cost, price and other factors considered, over the system/item life.

kk. Section 201-24.210 is revised to read as follows:

§ 201-24.210 Exercising renewal options in ADP services contracts.

(a) Before exercising and renewal options, including those on a TSP basic agreement (BA) or MAS system life selection, the agency shall conduct an analysis to determine whether exercising the renewal option is the most advantageous method of fulfilling the Government's need, price and other factors considered.

(b) Before exercising a renewal option on a system life selection awarded on a sole source basis, the agency shall conduct a new market survey to determine the availability of alternate sources of supply. If the survey indicated that an alternate source of supply exists, the agency shall prepare an acquisition plan showing the major milestones for conducting a competitive procurement.

(c) Agency acquisition files shall be documented with the results of the evaluation.

§ 201-24.211 and 201-24.212 [Removed and Reserved]

ll. Sections 201-24.211 and 201-24.212 are removed and reserved.

§ 201-24.216 [Amended]

mm. Section 201-24.216 is amended by removing from paragraph (e) the words

"comparative cost analysis" and inserting in their place the words "analysis of alternatives".

§ 201-24.304 [Removed and Reserved]

nn. Section 201-24.304 [appearing in Temp. Reg. 4] is removed and reserved.

PART 201-30—[AMENDED]

oo. The table of contents of Part 201-30 is amended by (i) adding the following entries "201-30.009-3 Establishing compatibility limited requirements.", "201-30.013-1 Use of functional specifications." and "201-30.013-2 Use and documentation of specific make and model specifications." and (ii) revising the entry for 201-30.013 to "Specifications.".

pp. Section 201-30.007 [appearing in Temp. Reg. 8] is amended by (i) adding a sentence to paragraph (a), (ii) redesignating paragraph (c) as paragraph (d), (iii) adding a new paragraph (c), and (iv) adding a subparagraph (9) to new paragraph (d). As revised, paragraphs (a), (c), and (d) read as follows:

§ 201-30.007 Determination of need and requirements analysis.

(a) The acquisition of new or additional information processing resources shall be based on mission needs. These needs shall be specified in a manner designed to achieve the full and open competition objective for the procurement, with due regard to the nature of the property and services to be acquired. These needs shall be expressed in the form of deficiencies in existing capabilities, new or changed program requirements, or opportunities for increased economy and efficiency. In any event, and as required by § 201-20.003, the needs shall be supported by a requirements analysis that is commensurate with the size and complexity of the need.

* * * * *

(c) The needs and specific circumstances of the acquiring agency will determine how the requirements are specified. The types of specifications shall depend on the nature of the mission need and the market available to satisfy such needs. The range of specifications is described in § 201-30.013. Subject to such needs, the specification may be functional, equipment performance oriented, a combination of functional and equipment performance, plug-to-plug compatible, brand name or equal, or specific make and model. If any specification is used to describe a requirement that is available from only one responsible source, the provisions of § 201-11.003 apply. If the specification is based on a compatibility limited requirement, it must be justified as required by § 201-30.009-3. The use of a specific make and model specification must be justified as required by § 201-30.013-2.

(d) As a minimum, the agency shall consider the following factors in the requirements analysis:

(1) The information processing functions that must be performed.

(2) The agency applications, information resource systems, and components involved, their physical locations, and operational constraints.

(3) The problem that will be solved by acquiring new or additional equipment, systems and/or software.

(4) The nature of the data or information to be generated, transmitted, or stored on the proposed equipment or system, who will maintain it, and who will require access to it.

(5) The feasibility of sharing, using reassigned or excess Government-owned or -leased equipment, the off-loading of lower priority applications, using Federal data processing centers and GSA sources of supply, using commercial ADP services, or if applicable, increasing the capability and productivity of the existing system.

(6) The probable improvement in operational effectiveness and the economies that will be realized from acquiring new or additional equipment, systems, and/or software.

(7) Space management considerations; e.g., heat dissipation, air flow, temperature range, relative humidity, energy conservation, power supply, cables, including coordination with building managers and GSA (see FPMR § 101-17.101-5).

(8) The present and projected workload in terms of:

(i) Systems life;

(ii) Data entry and associated telecommunication support;

(iii) Data base(s) and data base management;

(iv) Data handling or transaction processing by type and volume;

(v) Output needs and associated telecommunication support;

(vi) Expandability requirements; and

(vii) Privacy and security safeguards.

(9) A performance evaluation of the currently installed ADP system(s) to provide a baseline for evaluation of proposed alternatives for meeting the data processing needs.

qq. Section 201-30.008 is amended by adding paragraph (d) to read as follows:

§ 201-30.008 Determination of system/item life.

* * * * *

(d) *Agencies shall consider subsequent procurement when establishing system/item lives.* The system/item life duration for the requirements available from only one responsible source or for requirements with unusual and compelling urgency shall be held to the minimum practicable time. The sole source justification shall be used to manage and plan for any subsequent procurement. Agency information resources managers and contracting officers share responsibility for management and planning actions necessary to foster full and open competitive conditions for subsequent procurements. When applicable, an acquisition plan showing the major milestones for completing a follow-on full and open competitive procurement shall be prepared.

rr. Section 201-30.009-3 is added to read as follows:

§ 201-30.009-3 Establishing compatibility limited requirements.

(a) A compatibility limited requirement shall be expressed in a type of specification (see § 201-30.013) that will serve to accomplish the full and open competition objective. When it is necessary to express a requirement in a specific make and model specification, special justification is required (see § 201-30.013-2).

(b) A statement of requirements to augment or replace existing ADP equipment or services that is limited to ADP equipment or services compatible with the existing operating system and ADPE shall be—

(1) Supported by a software conversion study (see § 201-30.012-1);

(2) Justified on the basis of agency mission-essential data processing requirements and economy and efficiency; and

(3) Meet the requirements of this section.

(c) The following factors shall be considered in determining whether the incorporation of compatibility limited requirements is justified for the augmentation or replacement acquisition:

(1) The essentiality of existing software, without redesign, to meet agency critical mission needs; e.g., the continuity of operations may be so critical that conversion is not a viable alternative.

(2) The additional risk associated with conversion if compatibility limited requirements are not used and the extent to which the Government would

be injured, financially or otherwise, if the conversion to the new ADP system fails.

(3) The additional adverse impact of factors such as delay, lost economic opportunity, and less than optimum utilization of skilled professionals if compatibility limited requirements are not used.

(4) The steps being taken to foster competitive procedures in the augmentation or replacement acquisition (see § 201-30.012).

(5) The off-loading of selected applications programs to commercial data processing service facilities as an alternative to conversion.

(6) The continuation of ADP services for selected application programs with the present commercial ADP services contractor as an alternative to conversion of all programs in the present ADP resource system.

(7) The extent of essential parallel operations; i.e., the need to continue operation of the old system in parallel with the new system until the new system can fully support the mission needs.

(8) The feasibility of competing conversion requirements to be performed on a guaranteed basis under a separate solicitation that couples the conversion effort and ADP services in a single contract, including consideration of the basis for a calculation of liquidated-damages provisions for conversion performance failure.

(d) The findings that support the use of compatibility limited requirements shall be submitted with each agency procurement request (APR) (see §§ 201-23.106-1 and 201-23.106-2) for an augmentation or replacement acquisition when the use of specifications incorporating compatibility limited requirements is contemplated.

(e) Provisions regarding solicitation for compatibility limited requirements are contained in § 201-24.207.

§ 201-30.012 [Amended]

ss. Section 201-30.012 is amended by (i) removing from the opening paragraph the words "as to be a major impediment to effective competition by a noncompatible offeror" and inserting in their place the words "that it is not a viable alternative"; (ii) inserting in paragraph (a) the word "competitively" between the words "are met" and "at the lowest"; (iii) inserting in paragraphs (a) and (b)(8) the word "competitive" between the words "subsequent" and "acquisitions"; (iv) removing in paragraph (b)(8) the words "to the maximum practicable extent"; and (v) removing from paragraph (b)(10)) the words "purchase descriptions limit the competitiveness of the acquisition" and inserting in their place the words "specifications tend to limit the number of responsible sources that can satisfy the requirement."

§ 201-30.012-1 [Amended

tt. Section 201-30.012-1 is amended by (i) inserting in paragraph (a) the word "competitively" between the words "are met" and "at the lowest" and (ii) inserting in paragraph (c)(2)(v) the word "requirements" after the word "noncompatible" and the word "time" between the words "with" and "schedules."

uu. Section 201-30.013-1 is revised to read as follows:

§ 201-30.013 Specifications.

(a) Agencies shall design ADP specifications describing Government requirements to obtain full and open competition from all responsible sources (including manufacturers, leasing companies, third-party vendors, and ADP service contractors) with due regard to the nature of the property or services to be acquired. The type of specification included in a solicitation shall depend on the nature of the agency needs. Functional specifications maximize competition. If functional specifications cannot be used, other types of specifications shall be used in the following order of precedence:

(1) Equipment performance specifications.

(2) Software and equipment plug-to-plug compatible functionally equivalent specifications.

(3) Brand name or equal specifications.

(4) Specific make and model specifications.

(b) Specific make and model type specifications restrict competition. Use of this type of specification must be justified (see § 201-30.013-2).

vv. Section 201-30.013-1 is added to read as follows:

§ 201-30.013-1 Use of functional specifications.

Specifications shall be developed in such a manner as is necessary to maximize, and not limit, competition. Due regard to the nature of the property or services to be acquired may require the use of restrictive provisions or conditions, but only to the extent necessary to satisfy the needs of the agency. Functional specifications are the preferred method of expressing the user's requirements in solicitation documents. The functional specification may be augmented with equipment characteristics and element of performance when necessary to reflect the user's needs.

ww. Section 201-30.013-2 is added to read as follows:

201-30.013-2 Use and documentation of specific make and model specifications.

(a) A specific make and model specification shall be used only when no other type of specification set forth in § 201-30.013 can satisfy the needs of the Government.

(b) Agencies shall document their justifications supporting the use of a specific make and model specification. The justification shall address:

(1) The intended use or application of the equipment;

(2) The unique features and/or mandatory requirements, dictated by the intended use, that limit the acquisition to a specific make or model;

(3) The existence of a patent, copyright, or other limitation; and

(4) The practical factors which preclude the development of a less restrictive specification.

(c) If a specific make and model specification is used to describe a requirement that is available from only one responsible source, see also § 201-11.002(b).

PART 201-32—[AMENDED]

xx. The table of contents of Part 201-32 is amended by revising the entry for 201-32.206 to read "Use of GSA ADP schedule contracts."

§ 201-32.102 [Amended]

yy. Section 201-32.102 is amended by removing from paragraph (a) the words ", subject to the availability of funds."

§ 201-32.106 [Amended]

zz. Section 201-32.106 is amended by inserting in the opening paragraph the words "full and open" between the words "that" and "competition" and removing the words "to the maximum practicable extent."

aaa. Section 201-32.206 (appearing in Temp. Reg. 6, except for paragraph (h)) is revised to read as follows:

§ 201-32.206 Use of GSA ADP schedule contracts.

(a) *General.* (1) An order placed against a GSA nonmandatory ADP schedule contract under § 201-23.104 is subject to the provisions of this § 201-32.206 and other applicable FIRMR provisions, including Parts 201-24, 201-30, and 201-32.

(2) An order against a nonmandatory ADP schedule contract is placed under competitive procedures when (i) the ordering agency follows the procedures

of this § 201–32.206, regardless of the type of specification, and (ii) the order provides the lowest overall cost alternative to meet the needs of the Government. Accordingly, if responsible alternative sources are available, the availability of items under a nonmandatory ADP schedule contract shall not necessarily preclude or waive the requirement to seek (through alternative contracting procedures) the lowest overall cost alternative to meet the needs of the Government. In addition, the availability of those items under an ADP schedule contract shall not preclude or otherwise detract from procuring the items (including peripheral equipment or items for augmenting an existing system) from a number of different sources if this action will be in the best interest of the Government. Any restrictive requirement (e.g., an "all or none" requirement or a requirement for "only new" equipment) shall not be used unless specifically justified.

(3) Suitable equipment or services must be considered whether or not it is on an ADP schedule contract. When an agency is procuring under the blanket delegation of procurement authority provisions of § 201–23.104, the lowest overall cost alternative shall be sought. When using an ADP schedule, an agency shall consider the offerings of a sufficient number of schedule contractors to ensure that its requirements are satisfied at the lowest overall cost to the Government. Alternatively, the agency may choose to prepare a solicitation document in an effort to secure appropriate products and related services at lower overall costs to the Government. Even though the solicitation process consumes time and resources, it may be in the best interest of the Government when:

(i) The expected cost reduction will exceed the added costs of solicitation and contracting;

(ii) There is a reasonable expectation that better offers will be received from suppliers other than the schedule contractor (e.g., "third party" suppliers) for suitable items; or

(iii) The agency requirement cannot be satisfied reasonably by any ADP schedule contractor; e.g., the agency's requirement calls for a customized package of equipment, training services, or other features not offered under the schedule.

(4) An agency shall comply with the synopsis requirements of paragraphs (f) and (g) of this section before placing an order against a GSA nonmandatory ADP schedule contract.

(b) *Initial acquisition of ADPE.* An order for the initial acquisition of ADPE (whether for purchase or rental) may be placed against an ADP schedule contract provided that both of the following conditions are met.

(1) The order does not exceed any applicable contract maximum order limitation (MOL).

(2) When the purchase price of the items covered (even though rented or leased) exceeds $300,000, a specific delegation of procurement authority (DPA) is obtained. (See §§ 201–23.104–1(b) and 201–23.106.)

(c) *Continued rental or lease of installed ADPE and software.* An ADP schedule contract may be used for the continued lease or rental of installed equipment and software. However, before issuing a renewal order where the schedule purchase price exceeds $300,000, a specific DPA under § 201–23.104 shall be obtained if the results of the Commerce Business Daily (CBD) synopsis indicate that identical (specific make and model) or suitable substitute equipment is available from a source other than the schedule contract.

(d) *Conversion from lease to purchase of installed ADPE.* An ADP schedule contract may be used for the conversion from lease to purchase of installed ADPE. However, before issuing an order to purhase previously leased ADPE with a net order price exceeding $300,000, a specific DPA under § 201–23.104 shall be obtained if the results of the CBD synopsis indicates that identical (specific make and model) or suitable substitute equipment is available from a source other than the schedule contract.

(e) *Acquisition of software and maintenance services.* (1) An order may be placed against an ADP schedule contract for software and maintenance services provided that the order does not exceed any applicable contract MOL.

(2) An ADP schedule contract may contain ADP support services that are limited exclusively to direct support of operating/executive systems and other proprietary software under the contract.

(f) *Synopsis requirements.* (1) The intent to place an order against a nonmandatory ADP schedule contract shall be synopsized in the CBD at least 15 calendar days before placing the order when (i) the purchase price of the equipment (whether purchased or leased) exceeds $50,000, (ii) the software charges (whether annual rate or single charge) exceed $50,000, (iii) the maintenance charges exceed a $50,000 annual rate, or (iv) the value of any order exceeds $50,000. In calculating the 15 days for synopsizing, notwithstanding the presumption in FAR 5.203(f), the first day shall be the actual date the synopsis appears in the CBD. (In accordance with the Administrator of General Services' determination under Pub. L. 98–577, this synopsis requirement supersedes the requirement in FAR Subpart 5.2 to synopsize orders in excess of $10,000 for 30 days.)

(2) The synopsis should include sufficient information to permit the agency analysis required by paragraph (g) of this § 201–32.206. It shall be prepared and forwarded in accordance with FAR 5.207. The synopsis shall not be unnecessarily restrictive of competition, and as a minimum, and as applicable, it shall include:

(i) A statement that all responsible sources may respond to the synopsis and that all such responses shall be considered by the agency;

(ii) The name, business address, and telephone number of the contracting officer;

(iii) A request for pricing data;

(iv) A statement that no contract award will be made on the basis of any response to the notice, because the synopsis of intent to place an order against the schedule contract shall not be considered a solicitation document; and

(v) An accurate description of the equipment or services to be ordered, including:

(A) The specific make and model of any equipment to be ordered or maintained;

(B) The name, functional description, and operating environment of any software packages to be ordered;

(C) The quantities, dates required, period of performance, and system/item life;

(D) The support requirements (e.g., hours of maintenance coverage or response times) for the ordered items;

(E) Any restrictive (e.g., "bundled," "only new," or "all or none") requirements that have been justified; and

(F) When applicable, a statement that the item(s) to be ordered is intended to satisfy a requirement that was described by technical or requirements personnel using a specific make or model specification.

Note.—This statement is not applicable if the requirement was described by a higher order specification (see § 201–30.013).

(3) Publication of contract award information in the CBD is not required when an order is placed against an ADP schedule contract since the schedule contracts are publicized in accordance with FAR Subpart 5.3.

(g) *Actions after the CBD synopsis.* The schedule order synopsis technique provides agencies with both the GSA negotiated schedule prices (derived from

discounting prices in the competitive commercial marketplace) and such additional product and cost information as might be submitted by potential nonschedule suppliers in response to the CBD notification. After consideration of the responses received in response to the CBD notice, the contracting officer must decide whether ordering from a nonmandatory ADP schedule contract, or preparing a solicitation document, results in the lowest overall cost alternative to meet the needs of the Government. Accordingly, the contracting officer shall take one of the following actions:

(1) When no responses are received, the procurement file shall be documented with the results of the CBD synopsis and an analysis that indicates that an order placed against the applicable schedule contract provides the lowest overall cost alternative to the Government.

(2) When a response to the CBD notice is received from either a responsible nonschedule vendor or a schedule contractor (expressing an interest either on or off schedule) for an item(s) that meets the user's requirement, the contracting officer shall take one of the following actions:

(i) Document the procurement file with an analysis that indicates that the respondent's item(s) would not meet the requirement, or that the synopsized schedule item(s) provides the lowest overall cost alternative, and place an order against the synopsized schedule contract;

(ii) Document the procurement file with an analysis that indicates that a responding contractor's schedule offering is the lowest overall cost alternative and place an order against that ADP schedule contract; or

(iii) Document the procurement file with an analysis that indicates that ordering from a nonmandatory schedule may not result in the lowest overall cost alternative to the Government. When this is the case, the contracting officer normally should issue a solicitation document. In this event:

(A) The solicitation should contain terms and conditions substantially the same as those contained in the schedule contract against which the order was to be placed. The addresses of the solicitation shall include the schedule contractor to ascertain any interest in furnishing the item(s) off the schedule. This procedure will permit the schedule vendor to discount the schedule item(s) price under a separate proposal that would not be a "price reduction" in the schedule contract.

(B) The agency shall publicize the procurement in accordance with the provisions of FAR Subpart 5.2.

(C) The contracting officer shall evaluate the offers received. It should be noted that some offerors may not agree to the solicitation terms and conditions that schedule contractors have accepted. The contracting officer shall act in a manner most advantageous to the Government by either awarding a contract based on the offers received in response to the solicitation or placing an order with a schedule contractor if the order provides the lowest overall cost alternative. The procurement file shall be documented to justify the action taken.

(h) *Lowest overall cost alternative order not at lowest price.* If items are to be acquired under an ADP schedule contract at other than the lowest delivered price available for identical or similar items under any ADP schedule contract, an agency shall justify the action and shall retain the justification and supporting data or submit them to GSA if a specific DPA is required (see § 201–23.106). The following are examples of factors that may be used in support of a justification that an order at other than the lowest delivered price is the lowest overall cost alternative to meet the needs of the Government.

(1) Special features of one item, not provided by comparable items, are required in effective program performance.

(2) An actual need exists for special characteristics to accomplish identified tasks.

(3) It is essential that the item selected be compatible with items or systems already being used.

(4) Greater maintenance availability, lower overall maintenance costs, or the elimination of problems anticipated with respect to machines or systems, especially at isolated use points will produce savings over the system/items life which are greater than the difference in order prices.

§ 201–32.303–2 [Amended]

bbb. Section 201–32.303–2 (appearing in Temp. Reg. 1, Supp. 1) is amended by removing from paragraph (d) the words "maximum practicable" and inserting in their place the words "full and open."

ccc. Section 201–32.303–3 is amended by revising paragraph (d) (appearing in Temp. Reg. 1, Supp. 1) to read as follows:

§ 201–32.303–3 Procedures for acquiring TSP services.

* * * * *

(d) *Abbreviated procedures.* When the annual cost is not expected to exceed $50,000, an agency may elect to use a special abbreviated procedure under the MAS. This abbreviated procedure permits considering a sufficient number of MAS contractors that the selecting agency's contracting officer deems necessary to ensure that the requirement is met at the lowest overall cost alternative to meet the needs of the Government. This abbreviated procedure does not allow letters of interest, modifications of any type, or benchmarking. The technically acceptable MAS evaluated as the lowest overall cost alternative, price and other factors considered, shall be selected from the MAS contractors.

* * * * *

PART 201–38—[AMENDED]

ddd. The table of contents of Part 201–38 is amended by revising the entry for § 201–38.012 to read "Use of functional telecommunication system specifications." and removing the word "[Reserved]" from 201–38.010.

§ 201–38.010 [Amended]

eee. Section 201–38.010 is amended by removing the word "[Reserved]" and inserting in its place the words "See Temp. Reg. 9" and by removing the words *"Comparative cost analysis."* and inserting in their place the words *"Analysis of alternatives."* in paragraph (b) (appearing in Temp. Reg. 9).

fff. Section 201–38.012 is added to read as follows:

§ 201–38.012 Use of functional telecommunication system specifications.

(a) Functional telecommunication system specification shall be used where possible. Agency telecommunication specifications shall not be limited to tariff descriptions. Where applicable, requirements shall be set forth in a manner that will permit all responsible tariff and nontariff suppliers to submit offers.

(b) The fact that a tariffed carrier can provide the required service and/or equipment does not by itself constitute justification to order from the tariffed carrier.

(c) Section 201–40.007 sets forth requirements concerning telecommunication solicitations.

ggg. Section 201–39.006–4 (appearing in Temp. Reg. 9) is amended by revising paragraphs (c)(3)(i) and (c)(5) and by adding paragraph (c)(3)(iii) to read as follows:

§ 201–39.006–4 Data facsimile, and record telecommunication services submissions.

* * * * *

(c) * * *

(3) *Acquisition strategy:* (i) Indicate whether or not the proposed procurement approach is to satisfy a requirement using a specific make and model specification. Specify the type of contract expected to be used. Indicate whether GSA multiyear contracting authority is required.

* * * * *

(iii) Indicate whether the acquisition plan contemplates contracting (see FAR 7.104(c)) under policies and procedures for:

(A) Full and open competition (see FAR Subpart 6.1);

(B) Full and open competition after exclusion of sources (see FAR Subpart 6.2); or

(C) Other than full and open competition (See FAR Subpart 6.3). In addition, provide the applicable statutory contracting authority cited in FAR 6.302–1 through 6.302–7 permitting the use of such procedures.

* * * * *

(5) *Regulatory compliance:* (i)(A) Provide a statement which indicates that the agency has reviewed and complied (or will comply) with all applicable regulations, or

(B) List those deviations to the regulations that apply to this request for which approval is sought and provide an explanation for each regulatory deviation request (see Subpart 201–1.4).

(ii) Provide the date of completion or most recent update of the following documentation or indicate not applicable:

(A) Requirements analysis (see § 201–38.010(a));

(B) Analysis of alternatives (see § 201–38.010(b)); and

(C) Certified data to support a contemplated requirement available from only one responsible source (see § 201–11.002(b)).

* * * * *

PART 201–40—[AMENDED]

hhh. The table of contents of Part 201–40 is amended by revising the entry for § 201–40.008 to read "Use of GSA telecommunication schedule contracts.".

iii. Section 201–40.008 (appearing in Temp. Reg. 4) is revised to read as follows:

§ 201–40.008 Use of GSA telecommunication schedule contracts.

(a) *General.* (1) An order placed against a GSA nonmandatory telecommunication schedule contract is subject to the provisions of this § 201–40.008 and other applicable FIRMR provisions, including Parts 201–24, 201–38 and 201–40.

(2) An order against a nonmandatory telecommunication schedule contract is placed under competitive procedures when (i) the ordering agency follows the procedures of this § 201–40.008, regardless of the type of specification, and (ii) the order provides the lowest overall cost alternative to meet the needs of the Government. Accordingly, if responsible alternative sources are available, the availability of items under a nonmandatory telecommunication schedule contract shall not necessarily preclude or waive the requirement to seek (through alternative contracting procedures) the lowest overall cost alternative to meet the needs of the Government. Any restrictive requirement (e.g., a requirement for "only new" equipment or unique features) shall not be used unless specifically justified.

(3) Suitable equipment or services must be considered whether or not it is on a telecommunication schedule contract. The lowest overall cost alternative shall be sought. When using a telecommunication schedule, an agency shall consider the offerings of a sufficient number of schedule contractors to ensure that its requirements are satisfied at the lowest overall cost to the Government. Alternatively, the agency may choose to prepare a solicitation document (see § 201–40.007) in an effort to secure appropriate products and related services at lower overall costs to the Government. Even though the solicitation process "consumer" time and resources, it may be in the best interest of the Government when:

(i) The expected cost reduction will exceed the added costs of solicitation and contracting;

(ii) There is a reasonable expectation that better offers will be received from suppliers other than the schedule contractor for suitable items; or

(iii) The agency requirement cannot be satisfied reasonably by any telecommunication schedule contractor; e.g., the agency's requirement calls for a customized package of equipment, training services, or other features not offered under the schedule.

(4) An agency shall comply with the synopsis requirements of paragraphs (b) and (c) of this section before placing an order against a GSA nonmandatory telecommunication schedule contract.

(5) An order against a telecommunication schedule contract shall not exceed any applicable contract maximum order limitation (MOL).

(b) *Synopsis requirements.* (1) The intent to place an order against a nonmandatory telecommunication schedule contract shall be synopsized in the CBD at least 15 calendar days before placing the order when (i) the purchase price of the equipment (whether purchased or leased) exceeds $50,000, (ii) the maintenance charges exceed a $50,000 annual rate, or (iii) the value of any order exceeds $50,000. In calculating the 15 days for synopsizing, notwithstanding the presumption in FAR 5.203(f), the first day shall be the actual date the synopsis appears in the CBD. (In accordance with the Administrator of General Services' determination under Pub. L. 98–577, this synopsis requirement supersedes the requirement in FAR Subpart 5.2 to synopsize orders in excess of $10,000 for 30 days.)

(2) The synopsis should include sufficient information to permit the agency analysis required by paragraph (c) of this section. It shall be prepared and forwarded in accordance with FAR 5.207. The synopsis shall not be unnecessarily restrictive of competition, and as a minimum, and as applicable, it shall include:

(i) A statement that all responsible sources may respond to the synopsis and that all such responses shall be considered by the agency;

(ii) The name, business address, and telephone number of the contracting officer;

(iii) A request for pricing data;

(iv) A statement that no contract award will be made on the basis of any response to the notice, because the synopsis of intent to place an order against the schedule contract shall not be considered a solicitation document; and

(v) An accurate description of the equipment or services to be ordered, including:

(A) The specific equipment to be ordered or maintained;

(B) The quantities, dates required, period of performance, and system/item life;

(C) The support requirements (e.g., hours of maintenance coverage, response times) for the ordered items; and

(D) Any restrictive requirements that have been justified.

(3) Publication of contract award information in the CBD is not required when an order is placed against a telecommunication schedule contract since the schedule contracts are publicized in accordance with FAR Subpart 5.3.

(c) *Actions after the CBD synopsis.* The schedule order synopsis technique provides agencies with both the GSA negotiated schedule prices (derived from discounting prices in the competitive commercial marketplace) and such

additional product and cost information as might be submitted by potential nonschedule suppliers in response to the CBD notification. After consideration of the responses received in response to the CBD notice, the contracting officer must decide whether ordering from a nonmandatory telecommunication schedule contract, or preparing a solicitation document, results in the lowest overall cost alternative to meet the needs of the Government. Accordingly, the contracting officer shall take one of the following actions:

(1) When no responses are received, the procurement file shall be documented with the results of the CBD synopsis and an analysis that indicates that an order placed against the applicable schedule contract provides the lowest overall cost alternative to the Government.

(2) When a response to the CBD notice is received from either a responsible nonschedule vendor or a schedule contractor (expressing an interest either on or off schedule) for an item(s) that meets the user's requirement, the contracting officer shall take one of the following actions:

(i) Document the procurement file with an analysis that indicates that the respondent's item(s) would not meet the requirement, or that the synopsized schedule item(s) provides the lowest overall cost alternative, and place an order against the synopsized schedule contract;

(ii) Document the procurement file with an analysis that indicates that a responding contractor's schedule offering is the lowest overall cost alternative and place an order against that telecommunication schedule contract; or

(iii) Document the procurement file with an analysis that indicates that ordering from a nonmandatory schedule may not result in the lowest overall cost alternative to the Government. When this is the case, the contracting officer normally should issue a solicitation document. In this event:

(A) The solicitation should contain terms and conditions substantially the same as those contained in the schedule contract against which the order was to be placed. The addressees of the solicitation shall include the schedule contractor to ascertain any interest in furnishing the item(s) off the schedule. This procedure will permit the schedule vendor to discount the schedule item(s) price under a separate proposal that would not be a "price reduction" in the schedule contract.

(B) The agency shall publicize the procurement in accordance with the provisions of FAR Subpart 5.2.

(C) The contracting officer shall evaluate the offers received. It should be noted that some offerors may not agree to the solicitation terms and conditions that schedule contractors have accepted. The contracting officer shall act in a manner most advantageous to the Government by either awarding a contract based on the offers received in response to the solicitation or placing an order with a schedule contractor if the order provides the lowest overall cost alternative. The procurement file shall be documented to justify the action taken.

(d) *Lowest overall cost alternative order not at lowest price.* It items are to be acquired under a telecommunication schedule contract at other than the lowest delivered price available for identical or similar items under any telecommunication schedule contract, an agency shall justify the action and shall retain the justification and supporting data. The following are examples of factors that may be used in support of a justification that an order at other than the lowest delivered price is the lowest overall cost alternative to meet the need of the Government.

(1) Special features of one item, not provided by comparable items, are required in effective program performance.

(2) An actual need exists for special characteristics to accomplish identified tasks.

(3) It is essential that the item selected be compatible with items or systems already being used.

(4) Greater maintenance availability, lower maintenance costs, or the elimination of problems anticipated with respect to machines or systems, especially at isolated use points will produce savings over the system/item life which are greater than the difference in order prices.

7. *Agency actions.* Pending the issuance of a permanent amendment of the FIRMR, agencies shall follow the policies and procedures in this temporary regulation.

8. *Information and assistance.* Inquiries concerning this regulation should be directed to William R. Loy, Policy Branch (KMPP), Office of Information Resources Management, telephone (202) 566–0194 or FTS, 566–0194.

9. *Submission of comments.* The views of agencies and other interested parties are invited regarding the effect or impact of this regulation and the policies and procedures that should be adopted in the future. All comments received before April 30, 1985 will be considered, notwithstanding the due date appearing in the **Federal Register** notice of proposed rulemaking. Comments should be addressed to the General Services Administration, Office of Information Resources Management, Policy Branch (KMPP), Washington, DC 20405.

(Sec. 205(c), 64 Stat. 390; 40 U.S.C. 486(c))

Dwight Ink,

Acting Administrator of General Services.

[FR Doc. 85–7980 Filed 4–3–85; 8:45 am]

BILLING CODE 6820–25–M

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Eligibility; Income Levels for Individuals Eligible for Assistance

AGENCY: Legal Services Corporation.

ACTION: Final rule; revised Appendix.

SUMMARY: The Legal Services Corporation is required by law to establish maximum income levels for individuals eligible for legal assistance. This document updates the specified income levels to reflect the annual amendments to the Official Poverty Threshold as defined by the Department of Health and Human Services.

EFFECTIVE DATE: April 4, 1985.

FOR FURTHER INFORMATION CONTACT: Richard N. Bagenstos, Acting Deputy General Counsel, Legal Services Corporation, 733 Fifteenth Street, NW., Washington, D.C. 20005 (202) 272–4010.

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act, 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the Act provides that income shall be taken into account along with other specified factors. Section 1611.3(b) of the Corporation's Regulations establishes a maximum income level equivalent to one hundred and twenty-five percent (125%) of the Official Poverty Threshold as defined by the Office of Management and Budget. Responsibility for revision of the Official Poverty Threshold was shifted in 1982 from the Office of Management and Budget to the Department of Health and Human Services. The revised figures for 1985 equivalent to 125% of the current official Poverty Threshold are set forth below:

List of Subjects in 45 CFR Part 1611

Legal services, Eligibility.

PART 1611—ELIGIBILITY

Appendix A of Part 1611 is revised to read as follows:

Appendix A of Part 1611—Legal Services Corporation Poverty Guidelines

Size of family unit	All States but Hawaii [1] and Alaska	Alaska [2]	Hawaii [3]
1	$6,652	$8,225	$7,750
2	8,812	11,012	10,137
3	11,062	13,850	12,725
4	13,312	16,637	15,312
5	15,562	19,475	17,900
6	17,812	22,262	20,475
7	20,062	25,100	23,100
8	22,312	27,887	25,662

[1] For family units with more than eight members, add $2,250 for each additional member in a family.
[2] For family units with more than eight members, add $2,812 for each additional member in a family.
[3] For family units with more than eight members, add $2,587 for each additional member in a family.

(Sec. 1007(a)(2) of the Legal Services Corporation Act, (42 U.S.C. 2996f(a)(2)))

Dated: April 1, 1985.

Richard N. Bagenstos,

Acting Deputy General Counsel.

[FR Doc. 85-8010 Filed 4-3-85; 8:45 am]

BILLING CODE 6820-35-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 84-491; RM-4504; RM-4593; FCC 85-143]

Austin, TX; Table of Assignments for Air-Ground Stations in the Public Land Mobile Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends § 22.521(b) of the Commission's Rules, the allocation for air-ground frequencies, to add Austin, Texas on channel 11.

This action is taken because the Commission found that substantial need exists in the Austin area for an air-ground station.

This action is not expected to cause electrical interference for aircraft flying up to 20,000 feet MSL.

EFFECTIVE DATE: May 6, 1985.

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

FOR FURTHER INFORMATION CONTACT: Susan Magnotti, Common Carrier Bureau (202) 632-6450.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 22

Communications common carriers.

Report and Order (Proceeding Terminated)

[FCC 85-143]

In the matter of amendment of § 22.521(b) of the Commission's rules to include Austin, Texas, in the table of assignments for air-ground stations in the Public Land Mobile Service (CC Docket No. 84-491; RM-4504; RM-4593).

Adopted: March 25, 1985.
Released: March 27, 1985.

By the Commission

1. On May 22, 1984, the Commission adopted a Notice of Proposed Rulemaking (FCC 84-231) which proposed to add Austin, Texas to the table of assignments for air-ground stations in the Public Land Mobile Service. The Notice was issued in response to two petitions for rulemaking filed by Saleem Tawil (Tawil) (RM-4504) and Mobilfone Communications, Inc. (Mobilfone) (RM-4593). Tawil filed comments reaffirming his intention to apply for the channel, if assigned. Comments in support of assigning the channel were received from Mobilfone and from Hastings Telephone Answering Service, Inc. No other comments were filed.

2. Section 22.521(a) of the Commission's Rules allocates twelve frequency pairs for assignment to land mobile radio stations that are interconnected to the public switched telephone network for the purpose of providing communications service to airborne stations. Section 22.521(b) allocates from one to four of these frequency pairs, or working channels, to specific geographic locations. That subsection requires that base stations operating on these frequencies be within 25 miles of the location specified.

3. Austin, Texas is not among the locations listed in § 22.521(b), nor is it within 25 miles of any of the other specified locations. Tawil and Mobilfone requested that § 22.521(b) be amended by adding Austin to the list of assignments for air-ground stations. This amendment would allow an air-ground station to be operated on the working frequency 454.925 MHz (Channel 11) and on 454.675 MHz (the nationwide signaling channel) within 25 miles of Austin, Texas. Petitioners expect that no harmful electrical interference will be caused by this amendment.

4. The nearest air-ground station on Channel 11 is New Orleans, Louisiana, approximately 460 miles away. Tawil argues that a similar separation between co-channel stations has been authorized elsewhere by the Commission. He further states that there is a significant unsatisfied need for air-ground radiotelephone service in the Austin area. In response to a survey conducted by Tawil among the general aviation community in the Austin area, several firm applications for service were produced from aviation firms, oil companies, state government officials, and other business interests. As the capital city and major business center of Central Texas, Austin is the scene of significant general aviation activity. Mr. John Trevino, Jr., Mayor of Austin, Texas, supports Tawil's petition in an accompanying letter. Mobilfone makes similar observations regarding co-channel station distance, and demonstrates a significant need for air-ground service in the Austin area. Mobilfone states that it has 43 firm applications for service from such businesses as real estate, oil, charter services, and state government. It further points out that although local aircraft at sufficiently high altitudes can obtain service through a distant base station they must then pay toll charges to communicate with Austin telephones.

5. Based on the information in the record it is clear that there is substantial evidence of need for air-ground communications service in Austin, Texas. Furthermore, petitioners have shown that Austin is more than 400 miles from the nearest existing station on the proposed working channel, which will provide air-ground service with little probability of interference for aircraft flying up to 20,000 feet above mean sea level. In addition, we note that Austin is more than fifty miles from the nearest existing air-ground station. Accordingly, the probability of interference on the signalling channel will be acceptably low. For the foregoing reasons, we find that the public interest would be served by amendment of § 22.521(b) of the Commission's Rules, assigning air-ground channel 11 frequency 454.925 MHz and signaling channel 454.675 MHz, to Austin, Texas, pursuant to our authority set forth in 47 U.S.C. 4(i), 303 (g) and (r), and 307(b), as amended.

6. Accordingly, it is ordered, that effective May 6, 1985, § 22.521(b) of the Commission's Rules is amended as set forth in the attached appendix.

7. It is further ordered, that this proceeding is terminated.

8. The Secretary shall cause this *Report and Order* to be published in the **Federal Register.**

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 22—[AMENDED]

Part 22 of Title 47 of the CFR is amended as follows:

Section 22.521(b) is amended by adding an entry for Austin, Texas on channel 11.

§ 22.521 Air-ground radiotelephone service.

* * * * *

(b) * * *

Location	Channel
* * *	
Texas	
* * *	
Austin	11
* * * * *	

[FR Doc. 85-8077 Filed 4-3-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-803; RM-4822]

TV Broadcast Stations in Steamboat Springs, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF Television Channel 24 to Steamboat Springs, Colorado, as its first commercial television assignment, in response to a petition filed by Colorado Communications.

EFFECTIVE DATE: May 6, 1985.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Steamboat Springs, Colorado); MM Docket No. 84-803, RM-4822.

Adopted: March 11, 1985.
Released: March 28, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 34255, published August 29, 1984, in response to a petition filed by Colorado Communications ("petitioner"). The *Notice* proposed the assignment of UHF Television Channel 24 to Steamboat Springs, Colorado, as its first commercial television channel. Petitioner filed comments in support of the *Notice* and restated its intention to apply for the channel, if assigned.

2. Steamboat Springs (population 5,098),[1] seat of Routt County (population 13,404) is located in northwestern Colorado, approximately 180 kilometers (112 miles) northwest of Denver, Colorado.

3. In view of the fact that the assignment could provide a first local commercial channel to Steamboat Springs, we believe that the public interest would be served by assigning UHF Television Channel 24 to that community. Channel 24 can be assigned in conformance with the minimum distance separation requirements of Section 73.610 of the Commission's Rules.

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective May 6, 1985, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended for the community listed below:

City	Channel No.
Steamboat Springs, Colorado	24+

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

6. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-8078 Filed 4-3-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-802; RM-4800]

TV Broadcast Stations in Key West, FL

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: Action taken herein assigns VHF Television Channel 3 to Key West, Florida, as its third commercial television assignment, in response to a petition filed by Contemporary Communications.

EFFECTIVE DATE: May 6, 1985.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of Amendment of § 73.606(b), Table of Assignments, Television Broadcast Station (Key West, Florida); MM Docket 84-802, RM-4800.

Adopted: March 11, 1985.
Released: March 28, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 34256, published August 29, 1984, in response to a petition filed by Contemporary Communications ("petitioner"). The *Notice* proposed the assignment of VHF television channel 3 to Key West, Florida, as its third commercial television channel. Petitioner filed comments in support of the *Notice* and restated its intention to apply for the channel, if assigned. No other comments were received.

2. Key West (population 24,382) [1] seat of Monroe County (population 63,188), is located at the southern tip of Florida approximately 200 kilometers (125 miles) southwest of Miami, Florida.

3. In view of the fact that the assignment could provide a third local commercial channel to Key West, we believe that the public interest would be served by assigning VHF Television Channel 3 to that community. Channel 3 can be assigned in conformance with the minimum distance separation requirements of § 73.610 of the Commission's Rules.

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective May 6, 1985, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended for the community listed below:

City	Channel No.
Key West, Florida	3+, 16+, and 22+.

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

[1] Population figures were taken from the 1980 U.S. Census.

[1] Population figures are taken from the 1980 U.S. Census.

6. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–8079 Filed 4–3–85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84–893; RM–4793, RM–4873]

TV Broadcast Stations in Las Vegas and Paradise, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF TV Channel 33 to Las Vegas, Nevada, at the request of William A. DiMeolo, as that community's seventh local television allocation and UHF TV Channel 39 to Paradise, Nevada, as that community's first local television allocation, at the request of Silver State Communications, Inc.

EFFECTIVE DATE: May 6, 1985.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Las Vegas and Paradise[1], Nevada); MM Docket No. 84–893, RM–4793, RM–4873.

Adopted: March 11, 1985.

Released: March 28, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 38879, published October 1, 1984, seeking comments on the request of William A. DiMeolo ("DiMeolo") to assign UHF TV Channel 33 to Las Vegas, Nevada, as that community's sixth commercial broadcast service. Silver State Communications, Inc. ("SSCI") filed a counterproposal requesting the assignment of Channel 33 to Paradise, Nevada, as that community's first local television allocation.[2] Comments and reply comments were filed by DiMeolo and Las Vegas Electronics, Inc. ("Electronics"), an applicant for FM Channel 281 at North Las Vegas, Nevada.

2. Las Vegas (population 164,674,[3] the seat of Clark County (population 463,087), is located in southern Nevada, approximately 400 kilometers (250 miles) northeast of Los Angeles, California. Paradise is an unincorporated "Census Designated Place" adjacent to the southern boundary of Las Vegas, with a population of 84,818 persons.

3. SSCI states that Paradise, an "unincorporated town" with definite geographical boundaries, is located within the Las Vegas Standard Metropolitan Statistical Area ("SMSA"). With no television stations currently licensed to Paradise, SSCI contends that the assignment of Channel 33 could provide an opportunity for the provision of a first local TV transmission service for the community's residents. It states that it will apply for Channel 33, if it is not granted a construction permit for FM Channel 281 at North Las Vegas.[4]

4. DiMeolo filed comments reiterating his intent to apply for Channel 33 at Las Vegas and opposing SSCI's counterproposal. DiMeolo contends that Paradise is a largely residential and underdeveloped area on the southern boundary of Las Vegas. He claims that SSCI has made no showing that Paradise is a "principal community" for assignment purposes under § 73.1120 of the rules. DiMeolo states that television stations, unlike radio, provide regional rather than local service, and therefore any station, whether assigned to Las Vegas or Paradise, would, in effect, serve the same area. Therefore, he is concerned that should we determine that Paradise is a community for assignment purposes and allocate Channel 33 there, the new station would be forced to compete with stations identifying with the larger and well-known community of Las Vegas.

5. Regardless of the Commission's determination as to the status of Paradise as a community, DiMeolo and Electronics both argue that SSCI's counterproposal should be denied as it has failed to provide an unqualified statement of intent to apply for the channel, if assigned. They argue that SSCI's unwillingness to apply for the television channel until the North Las Vegas FM proceeding is concluded could delay initiation of the new service indefinitely. Electronics also questions the true intent behind SSCI's counterproposal, stating that SSCI is arguing in the North Las Vegas FM proceeding that Paradise is not the type of community which deserves a section 307(b) preference while urging the opposite result here.

6. We reject DiMeolo's contention that Paradise does not qualify as a "community" for assignment purposes. Although unincorporated, it is listed in the 1980 U.S. Census and credited with an increase in population of 246.5% since the 1970 Census. Although this in itself is not always dispositive, the fact that the Commission has already licensed an AM station to serve Paradise and recommended that an FM station also be similarly licensed, clearly indicates that Paradise does meet the Commission's definition of a "community" for assignment purposes.

7. DiMeolo and Electronics are correct in their assertion that the Commission will not assign a broadcast channel without a statement of intent to apply on the part of the petitioner. While it is true that SSCI has conditioned its intent upon a final FCC ruling in the North Las Vegas FM proceeding, we do not believe that awaiting such a decision will entail the lengthy delay envisioned by DiMeolo and Electronics. Exceptions to the Initial Decision have been filed, oral argument has been held before the Review Board, and their ruling should be issued in the near future. We have not been presented with any facts which would lead us to believe that SSCI will pursue its FM application beyond this point, as propounded by DiMeolo and Electronics. Therefore, we feel that SSCI's statement of intent can now be considered as meeting our requirements. We believe that SSCI will proceed promptly should Paradise receive its first local television allocation.[5]

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[1] This community has been added to the caption.

[2] Public Notice of the filing of the counterproposal was given on November 23, 1984, Report No. 1486.

[3] Population figures are derived from the 1980 U.S. Census.

[4] SSCI is one of six mutually exclusive applicants for use of Channel 281 at North Las Vegas [MM Docket Nos. 83–858, *et al.*]. All but one of the parties specify North Las Vegas as their proposed community of license, with Las Vegas Electronics, Inc. specifying Paradise instead. On August 29, 1984, an Initial Decision was issued recommending that Las Vegas Electronics be awarded the construction permit.

[5] Electronics contends that should SSCI ultimately prevail in the FM proceeding, it would not be permitted to apply for the television allocation under the Commission's rules. SSCI may also be operating under this belief. The Commission's cross-ownership rules generally prohibit the common ownership of FM and TV stations in the same community. However, an exception to this rule is made where the TV station is in the UHF band. In such cases, the Commission will determine if the application should be granted on a case-by-case basis. See § 73.3555, Note 4.

8. With the above issues now resolved, we believe that both communities could benefit from the assignment of a television channel. An engineering study has been performed and we have found that Channel 33 can be assigned to Las Vegas, as proposed, and Channel 39 can be assigned to Paradise. Both channels can be assigned in compliance with the Commission's minimum mileage separation and other technical requirements. Accordingly, it is ordered, that effective May 6, 1985, the Television Table of Assignments, Section 73.606(b) of the Rules, is amended with respect to the communities listed below, to read as follows:

City	Channel No.
Las Vegas, Nevada	3, 8–, *10+, 13–, 15+, 21+, and 33+.
Paradise, Nevada	39+.

9. It is further ordered, that this proceeding is terminated.

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

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–8080 Filed 4–3–85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 48–789; RM–4810]

TV Broadcast Stations in Anchorage, AK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF Television Channel 33 to Anchorage, Alaska, as that community's seventh local television broadcast service, at the request of Brown Resources, Inc.

EFFECTIVE DATE: May 6, 1985.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), table of assignments, TV broadcast stations (Anchorage, AK): MM Docket No. 84–789, RM–4810.

Adopted: March 11, 1985.

Released: March 27, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 33464, published August 23, 1984, proposing the assignment of UHF Television Channel 33 to Anchorage, Alaska, as that community's seventh local television broadcast service, at the request of Brown Resources, Inc. ("petitioner"). Petitioner filed supporting comments affirming its intention to apply for the channel, if assigned.

2. Anchorage (population 174,431) [1] in Anchorage Borough (population 174,431), is located on the coast of south central Alaska. Currently, it is served by six VHF television stations, KTUU (Channel 2); KTBY (Channel 4); Channel 5 (vacant and unapplied for); KAKM (Channel *7); KTVA (Channel 11); and KIMO (Channel 13).

3. The Commission believes that the public interest would be served by the assignment of UHF TV Channel 33 to Anchorage, Alaska, as that community's seventh local television broadcast service. The channel can be assigned in compliance with the Commission's minimum mileage separation and other technical requirements.

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective May 6, 1985, the TV Table of Assignments, § 73.606(b) of the Commission's Rules, is amended for the following community:

City	Channel No.
Anchorage, AK	2–, 4–, 5, *7–, 11, 13–, and 33.

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

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

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

[1] Population figures were extracted from the 1980 U.S. Census.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–8093 Filed 4–3–85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84–891; RM–4794]

TV Broadcast Stations in Fort Bragg, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns VHF Television Channel 8 to Fort Bragg, California, and deletes UHF Television Channel 17 from that community, in response to a petition filed by California Communications Group. The assignment could provide a first local television service for Fort Bragg.

EFFECTIVE DATE: May 6, 1985.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Fort Bragg, California); MM Docket No. 84–891, RM–4794.

Adopted: March 13, 1985.

Released: March 27, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 38678, published October 1, 1984, in response to a petition filed by California Communications Group ("petitioner"). The *Notice* proposed the assignment of VHF Television Channel 8 to Fort Bragg, California, as that community's first television broadcast service. Petitioner filed comments in support of the *Notice* and restated its intention to apply for the channel, if assigned.

2. Fort Bragg (population 5,019),[1] in Mendocino County (population 66,738), is located on the California Coast, approximately 230 kilometers (142 miles) northwest of San Francisco. The requested channel could provide the first television broadcast service for the

[1] Population figures are from the 1980 U.S. Census.

community. The channel can be assigned consistent with the minimum distance separation requirements of § 73.610 of the Commission's Rules.

3. The *Notice* also proposed the deletion of UHF Television Channel 17 from Fort Bragg. Although Channel 17 is assigned to Fort Bragg, it has been unavailable for television use since 1970 when the Commission designated UHF Channels 14–20 for shared use in land mobile communications service.[2] Accordingly, since Channel 17 is unavailable to Fort Bragg and there appears no useful purpose in retaining it in the Table, we shall delete the channel herein.

4. In view of the above considerations, we believe the public interest would be served by a grant of the petitioner's request, since it could provide for first local service in that community. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective May 6, 1985, the Television Table of Assignments, § 73.606(b) of the Rules, is amended with respect to the community listed below:

City	Channel No.
Fort Bragg, CA	8–

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

6. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–8094 Filed 4–3–85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84–715; RM–4787]

TV Broadcast Stations in Wiggins, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF Television Channel 43 to Wiggins, Mississippi, as its first TV assignment, in response to a petition filed by South Mississippi Broadcasting Company, Inc.

EFFECTIVE DATE: May 6, 1985.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), table of assignments, television broadcast stations (Wiggins, Mississippi); MM Docket No. 84–715, RM–4787.

Adopted: March 13, 1985.
Released: March 27, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 30548, published July 31, 1984, issued in response to a petition filed by Community Broadcasting Company, Inc.[1] ("petitioner"), proposing the assignment of UHF Television Channel 43 to Wiggins, Mississippi, as its first TV service. In response to the *Notice*, petitioner filed comments and restated its intention to apply for Channel 43 at Wiggins, if assigned.

2. Wiggins (population 3,205),[2] seat of Stone County (population 9,176), is located in southern Mississippi, approximately 150 kilometers (90 miles) northeast of New Orleans, Louisiana.

3. In view of the fact that the assignment could provide a first television service to Wiggins, we believe that the public interest would be served by assigning UHF Television Channel 43 to that community. The assignment conforms to the minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules.

PART 73—[AMENDED]

§ 73.606 [Amended]

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 0.204(b) of the Communications Act of 1934, as amended, and sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective 1985, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended for the community listed below:

City	Channel No.
Wiggins, MS	43–

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

6. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–8096 Filed 4–3–85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84–722; RM–4769, RM–4842]

TV Broadcast Stations in Manteo, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns VHF TV Channel 4 to Manteo, North Carolina, as that community's first local television assignment, at the request of Virginia B. Whichard.

EFFECTIVE DATE: May 6, 1985.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), table of assignments, television broadcast stations (Manteo, North Carolina); MM Docket No. 84–722, RM–4769, RM–4842.

Adopted: March 11, 1985.
Released: March 27, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 30755, published August 1, 1984, proposing the assignment of VHF TV Channel 4 to Manteo, North Carolina, as that community's first local television assignment. The *Notice* was issued in response to a petition filed by Virginia

[2] See, *First Report and Order*, Docket 18261, 23 R.R. 2d 325, 343–344, 359 (1970).

[1] The petitioner is now known as South Mississippi Broadcasting Company, Inc.

[2] Population figures are extracted from the 1980 U.S. Census.

B. Whichard ("petitioner"). A separate petition was filed, on August 6, 1984, by Metro Telecasting ("Metro") requesting the assignment of Channel 4 to Nags Head, North Carolina.[1] Metro subsequently requested its petition be withdrawn, upon learning it conflicted with the Manteo proposal and expressed an interest in the Manteo proposal. Petitioner filed supporting comments reaffirming her intention to apply for the channel, if assigned. Supporting comments were also filed by Capitol Broadcasting Company, licensee of Station WRAL-TV, Raleigh, North Carolina and jointly by Tommy J. Payne and Jesse Cowan ("Payne and Cowan").[2]

2. Manteo (population 901),[3] the seat of Dare County (population 13,377), is located on the Outer Banks of North Carolina, approximately 108 kilometers (68 miles) southeast of Virginia Beach, Virginia.

3. In view of the above, we believe the public interest would be served by the assignment of VHF TV Channel 4 to Manteo, in order to provide that community with its first local television service. The channel can be assigned in compliance with the minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules.

PART 73—[AMENDED]

§ 73.606 [Amended]

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective May 6, 1985, the TV Table of Assignments, § 73.606(b) of the Commission's Rules, is amended as follows:

City	Channel No.
Manteo, NC	4

5. It is further ordered, that the petition of Metro Telecasting requesting the assignment of Channel 4 to Nags Head, North Carolina is dismissed and this proceeding is terminated.

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

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-8097 Filed 4-3-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Public Notice (Report No. 1475) of the counterproposal was given on August 17, 1984.

[2] Payne and Cowan originally expressed their interest in the channel at Nags Head, North Carolina, and subsequently withdrew their comments.

[3] Population figures were taken from the 1980 U.S. Census.

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47 CFR Part 73

[MM Docket No. 84-716; RM-4761]

TV Broadcast Stations in Eugene, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF Television Channel 34 to Eugene, Oregon, as its fourth commercial TV assignment, in response to a comment filed by Telecasters of Eugene.

EFFECTIVE DATE: May 6, 1985.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), table of assignments, television broadcast stations. (Eugene, Oregon); MM Docket 84-716, RM-4761.

Adopted: March 13, 1985.
Released: March 27, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 31719, published August 8, 1984, issued in response to a petition filed by Sainte Broadcasting Corporation ("petitioner"), proposing the assignment of UHF Television Channel 34 to Eugene, Oregon, as its fourth commercial TV service. Petitioner filed comments reaffirming its intention to apply for the channel. However, Telecasters of Eugene did file supporting comments and indicated it would apply for the channel, if assigned.

2. Eugene (population 105,624) [1], seat of Lane County (population 275,226), is located in west central Oregon, approximately 160 kilometers (100 miles) south of Portland, Oregon.

3. In view of the fact that the assignment could provide a fourth commercial television service to Eugene, we believe that the public interest would be served by assigning UHF Television Channel 34 to that community. The channel can be assigned to Eugene, Oregon in compliance with the minimum distance separation requirements of § 73.610 of the Commission's Rules.

PART 73—[AMENDED]

§ 73.606 [Amended]

4. Accordingly, pursuant to the authority contained in sections (i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective May 6, 1985, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended for the community listed below:

City	Channel No.
Eugene, OR	9+, 13, 16+, *28-, and 34.

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

6. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-8099 Filed 4-3-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Population figures are taken from the 1980 U.S. Census.

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47 CFR Part 73

[MM Docket No. 84-714; RM-4760]

TV Broadcast Stations in Medford, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF TV Channel 27 to Medford, Oregon, as that community's fourth commercial television channel, at the request of Sainte Broadcasting Corporation.

EFFECTIVE DATE: May 6, 1985.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), table of assignments, TV broadcast stations (Medford, Oregon): MM Docket No. 84–714, RM–4760.

Adopted: March 13, 1985.
Released: March 27, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, (49 FR 30543, published July 31, 1984) adopted in response to a petition filed by Sainte Broadcasting Corporation ("petitioner"), proposing the assignment of UHF TV Channel 27 to Medford, Oregon, as that community's fourth commercial television channel. Petitioner submitted supporting comments reiterating its intention to apply for the channel, if assigned. Sunshine Television, Inc. ("Sunshine"), licensee of Station KDRV (TV), Medford, Oregon, submitted a counterproposal to assign Channel 22 in lieu of Channel 27 to Medford, and to assign Channels 19 and *25 to Klamath Falls, Oregon, the latter as a substitute for Channel *22. No oppositions to the proposal were received.

2. Sunshine proposes the substitution of Channel *25 for Channel *22 at Klamath Falls, Oregon and its reassignment to Medford, in order to operate a satellite station for Station KDRV in Medford. A staff engineering study indicates an alternate channel (Channel 31) can be assigned to Klamath Falls for use as a satellite station for Station KDRV. Therefore, the counter-proposal is being treated as a separate docket, with Channel 31 being proposed for Klamath Falls (RM–4874).

3. Medford (population 39,603) [1] county seat of Jackson County (population 132,456) is located in southern Oregon, approximately 370 kilometers (225 miles) south of Portland, Oregon. Medford currently has three commercial and one noncommercial education television stations.

4. We believe the public interest would be served by the assignment of Channel 27 to Medford, Oregon, as that community's fourth commercial television channel. The channel can be assigned in compliance with the minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules, with a site restriction of 17.4 miles north of Medford. The site restriction is required to avoid short-spacing to noncommercial educational Channel *20 in Yreka City, California.

PART 73—[AMENDED]

§ 73.606 [Amended]

5. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective May 6, 1985, the TV Table of Assignments, § 73.606(b) of the Commission's Rules, is amended for the following community:

City	Channel No.
Medford, OR	5, *8+, 10+, 12+, and 27.

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

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

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–8098 Filed 4–3–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 94

[PR Docket No. 83–426; FCC 85–53]

Authorizing Private Carrier Systems in the Private Operational-Fixed Microwave Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a *Report and Order* which expands the options available for sharing Private Operational-Fixed Microwave Radio Service (OFS) systems to include: the authorization of private carrier microwave systems to provide communication service to other Part 94 eligibles on a for-profit basis; and the lease of excess capacity on private OFS systems to Part 94 eligibles on a for-profit basis. This action is taken to enhance the availability of data communications for business, state and local governmental entities and assure more efficient use of available private microwave spectrum.

EFFECTIVE DATE: May 8, 1985.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554..

FOR FURTHER INFORMATION CONTACT: Frederick J. Day or Joseph A. Levin, Private Radio Bureau, Land Mobile and Microwave Division, Rules Branch (202) 634–2443.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 94

Private operational-fixed microwave radio service, Radio.

First Report and Order

In the matter of amendment of part 94 of the Commission's rules and regulations to authorize private carrier systems in the private operational-fixed microwave radio service; PR Docket No. 83–426.

Adopted: January 31, 1985.
Released: April 1, 1985.

By the Commission: Commissioner Dawson concurring and issuing a statement; Commissioner Rivera issuing a separate statement at a later date.

Summary

1. On May 17, 1983 the Commission released a *Notice of Proposed Rule Making* in the above-captioned matter to permit the offering of a communications service on a commercial basis by eligibles in the Private Operational-Fixed Microwave Radio Service (OFS). In the *Notice* [1] the Commission proposed both (1) to permit licensees in the Operational-Fixed Microwave Service who had built microwave systems in order to meet internal telecommunications requirements to make excess capacity on their systems available to other entities on a for-profit basis; and (2) to establish a category of eligibility specifically for entrepreneurs who wished only to provide communications service to others on a private carrier basis. With respect to both the sale of excess capacity and the licensing of entrepreneurs to provide a communications service to others on a private carrier basis, the *Notice* stated that the service could be provided only to entities eligible under Part 94 of the Commission's Rules.[2]

[1] Population figures were extracted from the 1980 U.S. Census.

[1] *Notice of Proposed Rule Making* in Docket No. 83–426 (FCC 83–172), adopted April 27, 1983, 48 FR 24,950 (June 3, 1983).

[2] 47 CFR Part 94. Part 94 of the Commission's Rules governs the licensing and operation of private operational-fixed microwave systems in frequency bands at 928–929 MHz and above 952 MHz.

Continued

2. Additionally, the *Notice* proposed to relax existing rules governing recordkeeping requirements for OFS systems used by two or more eligibles on a cooperative, non-profit basis, and to adopt specific rules to govern the multiple licensing of facilities in the Private Microwave Service.[3] Based on the record of this proceeding, and for the reasons discussed below, the Commission is adopting rules to establish private carrier service essentially as proposed.

Background

3. To place the issue of shared use of private microwave systems in its historical context, since the 1950's the Commission has allowed eligibles in the OFS to build private microwave systems for their own use, rather than employing common carrier service, and to share these systems on a non-profit, cooperative basis. In reviewing this matter in 1966, in Docket No. 16218, the Commission affirmed its conclusion that the building of these facilities and the sharing of them by those who were eligible served the public interest by enabling a greater number of entities to obtain the benefits of microwave communications without the expense of constructing their own independent systems. This served the public interest by encouraging the larger and more effective use of radio because it allowed persons to fashion the kinds of particularized communications networks they required to meet their specific needs.[4] The Commission also affirmed that joint use of private facilities resulted in more efficient utilization of microwave systems and conserved frequency spectrum and antenna sites.[5] In 1971 the Commission again looked at the sharing of private facilities and commenced a new proceeding (Docket No. 19309) to consider methods of further facilitating these types of joint-use approaches.[6]

4. During the same period, in the context of mobile services, the Commission concluded that the public interest was served by the establishment of a private carrier category of eligibility to enhance the options available to private service eligibles for satisfying their communications needs. Thus, in 1974, the Commission authorized private carrier SMR (Specialized Mobile Radio) systems in Docket No. 18262 for the 800 MHz private land mobile spectrum, [7] and in 1982, the Commission authorized private carrier paging systems at 900 MHz.[8] These public interest findings of the Commission were ratified in the Communications Amendments Act of 1982, when the Congress affirmed the desirability of private carrier offerings in the private land mobile radio services in furtherance of the public interest objectives they served.[9] In view of these developments and motivated by a public interest policy of providing a maximum number of ways under which eligible entities may avail themselves of efficient and effective radio communications, the Commission initiated this proceeding in May 1983 to explore the public interest in extending this private carrier approach to the private microwave bands.

5. Comments and reply comments in response to the issues raised in the *Notice of Proposed Rule Making* in this proceeding were submitted by the following parties:

Comments

Central Committee on Telecommunications of the American Petroleum Institute (API)
American Telephone and Telegraph Company (AT&T)
Association of American Railroads (AAR)
Autophone Communications and Electronics, Inc.
Bell Operating Companies (BOCs)
California Public Utilities Commission
Clark Equipment Company
County of Los Angeles
Crocker National Bank
Direct Broadcast Satellite Corporation
Harris Corporation (Farinon Division)
Hughes Aircraft Company (MCP)
Manufacturers Radio Frequency Advisory Committee (MRFAC)
May Department Stores Company
Kansas City Southern Industries, Inc. (KCSI)
MCI Communications Corporation
Municipality of Anchorage (d/b/a Anchorage Telephone Utility)
Northwest Energy Company
Special Industrial Radio Service Association, Inc. (SIRSA)
Strasburg Telephone Company (Strasburg, CO)
United States Independent Telephone Association (USITA)
Utilities Telecommunications Council (UTC)

Reply Comments

American Petroleum Institute
American Telephone and Telegraph Company
Bell Operating Companies
Combined Network, Inc. (Allnet)
Discount Long Distance, Inc., Interstate Communications, Inc., CommuniGroup, Inc., Long Distance Savers, Inc. (joint filing)
Kansas City Southern Industries, Inc.
Motorola, Inc.
Municipality of Anchorage
Public Service Company of Oklahoma
Utilities Telecommunications Council

Discussion

A. Spectrum Allocated for OFS Use

6. The *Notice of Proposed Rule Making* in this proceeding anticipated that all of the frequencies allocated to the Operational-Fixed Service would be made available for operation of the proposed private carrier communications services. The frequency bands allocated for OFS use are set forth below.[10]

Eligibility in Part 94 is limited to persons qualified for licensing in a radio service under either Part 81 (Stations on Land in the Maritime Service and Alaska-Public Fixed Stations); Part 87 (Aviation Services); or Part 90 (Private Land Mobile Radio Services). See § 94.5 of the Commission's Rules (47 CFR 94.5).

[3] Multiple licensing is a well-established practice in the private land mobile services. Under multiple licensing, eligibles using a particular transmitting facility do not own the equipment, but rather lease capacity on stations established by third-party equipment companies. All participants in a multiple licensing arrangement are licensed to use the stations in common, i.e., each user is allowed to operate the transmitters directly. The licensees pay the third-party equipment companies for the goods and services provided.

[4] *Report and Order in the Matter of Cooperative Sharing of Operational-Fixed Stations*, Docket No. 16218, 4 FCC 2d 406, 416–17 (1966).

[5] *Id.* at 417.

[6] *Memorandum Opinion and Order, Notice of Inquiry, and Notice of Proposed Rule Making*, Docket No. 19309, 31 FCC 2d 766 (1971). This proceeding was terminated without action in 1983. *See Order* (FCC 83–173), adopted April 27, 1983, 48 FR 27113 (June 13, 1983).

[7] *Land Mobile Radio Services, Second Report and Order*, Docket No. 18262, 46 FCC 2d 752 (1974); *reconsidered, Memorandum Opinion and Order*, Docket No. 18262, 51 FCC 2d 945 (1975); affirmed on appeal *sub nom. NARUC v. FCC*, 525 F.2d 630 (D.C. Cir. 1976); *cert. denied*, 425 U.S. 992 (1976).

[8] *Second Report and Order*, Gen. Docket No. 80–183, 91 FCC 2d 1214 (1982).

[9] Communications Amendments Act of 1982, Pub. L. 97–259, 96 Stat. 1087 (September 13, 1982). The legislative history of this Act provides a discussion of the distinction between private and common carrier land mobile services. Conference Report No. 97–765, 97th Cong., 2nd Sess., August 19, 1982, at 54–56, *reprinted* in 1982 U.S. Code Cong. & Ad. News 2237, 2298–2300.

[10] The Operational-Fixed Service frequency bands, and limitations applicable to each band, are listed in § 94.61(b) of the Commission's Rules. The *Notice of Proposed Rule Making* in this proceeding did not propose to alter any of the restrictions contained in § 94.61(b). For example, note (25) to § 94.61, in conjunction with § 94.93, provides that OFS stations authorized in the 12,200–12,700 MHz band after September 9, 1983 are secondary to Direct Broadcast Satellite systems. Under the proposal, any new system which might be established in the 12,200–12,700 MHz band for the rendition of a private carrier communications

Continued

Frequency Band (MHz)	
928–929	12,700–13,200
952–960	13,200–13,250
1850–1990	17,700–18,820
2130–2150	18,820–18,870
2150–2160	18,920–19,160
2180–2200	19,160–19,210
2450–2500	19,260–19,700
2500–2690	21,200–23,600
6525–6875	31,000–31,200
10,550–10,680	38,600–40,000
12,200–12,700	Above 40,000

B. Leasing of Excess Capacity

7. The comments in this proceeding indicated substantial support for the proposal to permit Part 94 licensees to lease their excess capacity on a for-profit basis to other entities eligible in the Private Operational-Fixed Microwave Service.[11] Typical of the comments urging adoption of the proposal were those of the May Department Stores. Company, which stated that permtting the sale of excess capacity would obviate the need for others to build redundant parallel microwave systems and would enable smaller business entities to take advantage of the efficiencies inherent in use of private microwave communications without the capital expenditures associated with constructing such a system. Supporting commenters also noted that the proposal would promote spectrum efficiency by allowing existing facilities to be used to maximum capacity, thereby avoiding the construction of unnecessary new microwave facilities or the assignment of additional spectrum to meet marginal communications requirements.

8. Of all the private microwave associations and users participating in this proceeding, only two entities expressed disapproval of the proposal. The Central Committee on Telecommunications of the American Petroleum Institute (API) and the Special Industrial Radio Service Association, Inc. (SIRA) both expressed concern that the potential for economic gain would cause a dramatic upsurge in the growth of new OFS systems in congested areas and thereby aggravate the spectrum scarcity problem for larger traditional users of this spectrum. API and SIRSA both suggested that those who were unable or unwillng to build their own systems should in most instances be required to satisfy their communications needs through common carrier service offerings. They argued that commercial communications offerings should be confined to common carriers and we should not authorize private carriage in the Private Operational-Fixed Service.

9. Two parties with common carrier interests, the Strasburg Telephone Company of Strasburg, Colorado and the United States Independent Telephone Association (USITA), also opposed the proposal. They argued that adoption of rules permitting leasing of excess capacity would encourage bypass of the local telephone exchange network, thereby placing undesirable pressures on local phone rates as private users migrate from the network. Strasburg feared that the effect of this migration of users from the carriers' revenue bases could be so severe that it would cause a reducton in the level of phone service provided to individual customers.

10. The comments of the Municipality of Anchorage (doing business as Anchorage Telephone Utility) and the State of California Public Utilities Commission disputed the conclusion reached in the *Notice* that Part 94 licensees engaging in the sale of excess capacity would be bona fide private licensees not subject to regulation as common carriers. Both parties contended that in many cases the carriers so authorized would be involved in purely intrastate communications. Since the proposal anticipates that private carriers would not be subject to common carrier regulations and since the private carriers are likely to provide intrastate service, both Anchorage and the California PUC contended that adoption of the proposal would violate section 2(b) of the Communications Act of 1934, as amended (47 U.S.C. 152(b)), by depriving states of their authority over intrastate communications.

11. The American Telephone and Telegraph Company (AT&T) did not comment on the merits of the proposal but noted that the proposal contemplates permitting private carriers to offer local distribution and intercity communications services to other entities. Such private carriers would, in AT&T's view, be in direct competition with the regulated services offered by AT&T and other common carriers. AT&T concluded that there would be little practical difference between private carriers and common carriers, except that private carriers could respond more quickly to market conditions than regulated common carriers. In the interest of fostering a truly competitive environment, AT&T therefore urged the Commission to act promptly on measures to decrease the regulatory burdens and restraints on common carriers, if it decides to implement the private carrier proposals. Similarly, the Bell Operating Companies (BOCs), though endorsing the proposals insofar as they would promote more efficient utilization of the spectrum, expressed concern that adoption of the proposals would be contrary to established Commission policy favoring market-specific regulation rather than carrier-specific or firm-specific regulation. The BOCs argued that adoption of the proposals without concomitant action to lift the regulatory burdens on exchange carriers would be tantamount to carrier-specific regulation since regulated exchange carriers would have to compete against unregulated private carriers in the same exchange access markets. To remedy the situation, the BOCs suggested that the Commission should either impose the current exchange carrier regulatory structure on private carriers or deregulate the exchange carrier services. The BOCs were skeptical that the exchange carriers would be deregulated in the short term, however, and therefore argued that the Commission should subject private carriers to the same regulatory structure as the exchange carriers.

C. Licensing of Entrepreneurs Under Part 94 to Provide a Commercial Private Communications Service

12. Seven commenters filed comments supporting the proposal to license entrepreneurs to use the OFS spectrum for providing private carrier service to Part 94 eligibles. Nine commenters opposed this proposal.[12] Commenters

service under Part 94 would be on a secondary basis to DBS and would be required to make any adjustments necessary to prevent interference to DBS systems.

[11] Parties filing comments in favor of this proposal include the Utilities Telecommunications Council, Association of American Railroads, Manufacturers Radio Frequency Advisory Committee, Northwest Energy Company, Hughes Aircraft Company, County of Los Angeles, Harris Corporation (Farinon Division), Direct Broadcast Satellite Corporation, MCI Telecommunications Corporation, May Department Stores Company, Clark Equipment Company, Kansas City Southern Industries, Inc., Autophone Communications and Electronics, Inc., and Crocker National Bank. The proposal was opposed by six commenters: American Petroleum Institute, Special Industrial Radio Service Association, Inc., Strasburg Telephone Company, United States Independent Telephone Association, California Public Utilities Commission, and Anchorage Telephone Utility.

[12] Supporting the proposal were the County of Los Angeles, Hughes Aircraft Company, Clark Equipment Company, Crocker National Bank, Autophone Communications and Electronics, Inc., MCI, and Direct broadcast Satellite Corp. Opposing the proposal were UTC, AAR, Northwest Energy Company, API, SIRSA, Anchorage Telephone Utility, California Public Utilities Commission, USITA, and Strasburg Telephone Company. The comments of API, SIRSA, Strasburg, USITA, Anchorage Telephone Utility, California PUC, AT&T, and the BOCs summarized in paragraphs 7 to 11 above equally to the proposal to permit Part 94

Continued

who favored adoption of the proposal identified several benefits which would result from the licensing of private carrier offerings under Part 94: first, the private carrier concept would permit small business and local governmental entities to satisfy their particularized communications requirements, where possible, by sharing systems, thereby reducing everybody's costs while also assuring communications links in situations where common carriers would not provide service; second, the creation of private microwave carriers would eliminate the need to build redundant microwave facilities by eligibles who could afford to build their own systems and would if the private carrier approach were not permitted, thereby conserving spectrum; third, the efficiencies of data transmission technology, which is an increasingly essential component of our society in all of its aspects, would be available on a more widespread basis. Each of the commenters opposed to the proposal to permit licensees to lease their excess capacity also opposed the proposal to license entrepreneurs who would establish commercial communications systems for use by other eligibles. Additionally, the Utilities Telecommunications Council (UTC), the Association of American Railroads (AAR), and Northwest Energy Company, although supporting the concept of leasing excess capacity, opposed the proposal to permit the licensing of entrepreneurs. UTC noted that the OFS spectrum would be especially attractive to entrepreneurs because of its relative availability and the ease of entry into the OFS service. With the heightened level of competition in the common carrier market, UTC was concerned that the private radio spectrum not yet assigned to licensees will be completely consumed by entrepreneurs offering this alternative to common carrier service. To avoid depletion of the OFS spectrum and ensure spectrum availability in the future for essential entities such as power companies, UTC suggested that the Commission require that OFS licensees seeking to provide private carrier service first utilize some minimum percentage of their available microwave capacity for their own communications needs before being permitted to offer commercial service to other entities.

13. AAR commended the Commission for seeking to promote greater utilization of the OFS spectrum. However, it suggested that the inevitable competition for spectrum which would occur among Part 94 licensees if an economic motivation were injected into seeking private spectrum would result in squandering, not conservation, of spectrum. Likewise, Northwest Energy expressed concern that the proposal to establish entrepreneurs under Part 94 would generate widespread speculation in frequencies, resulting in the construction of OFS systems with little or no attempt to appraise the actual need for the frequencies. For this reason, Northwest Energy believed that adoption of the proposal would be detrimental to Part 94 eligibles having a need for spectrum to serve their own communications requirements.

licensees to sell excess capacity. The discussion of the views of these latter eight commenters will not be repeated here.

D. Legal Authority for Permitting the Sale of Excess Capacity and Authorizing Private Carrier Entrepreneurs

14. Relying on *National Association of Regulatory Utility Commissioners* v. *FCC* (NARUC I),[13] the *Notice of Proposed Rule Making* concluded that the Commission's legal authority to permit private carrier operation had been clearly established. Referring to the indicia of private carriage set forth in *NARUC I*, the *Notice* stated that like SMRS systems, private carrier microwave licensees would be likely to establish medium-to-long-term contractual relations with relatively stable clientele and that the private operators would likely tailor their offerings based on the personal and operational compatibility of potential users vis-a-vis the users already on the system.[14]

15. Some commenters disputed the conclusion that there was adequate legal authority for authorizing private carriers under Part 94. For instance, the Anchorage Telephone Utility noted that the Communications Amendments Act of 1982, which gave statutory recognition to SMRS, a type of private carrier authorized at 800 MHz, is limited by its explicit terms to the private land mobile services. Anchorage could find no other provisions in the Communications Act which would give the Commission statutory authority to implement private microwave carriers. Anchorage contended that the *NARUC I* analysis contained in the *Notice* misinterprets the Court's holding in that case. Anchorage noted that the *Notice* anticipates that private microwave carriers, if authorized, could permit bypass of the local telephone exchange and that this by definition would be tantamount to common carrier activity. In this way, Anchorage construed the Commission's recognition that private carriers would provide bypass service to Part 94 eligibles as an admission that the private carriers would actually be engaging in common carriage. Accordingly, Anchorage argued, the Commission's own conclusion that private microwave carriers would engage in telephone bypass renders *NARUC I* inappropriate, since the Court's decision was directed to a factual setting in which the issue of common carriage was then still unsettled.

16. Further, Anchorage finds a similarity between the type of service at issue in *Graphnet Systems*[15] and the service which would be offered by private carriers. In *Graphnet Systems*, the Commission considered whether Electronic Computer Originated Mail (ECOM), a service of the United States Postal Office which transmits communications electronically on a point-to-point basis using Western Union switching and communications facilities, was a common carrier activity. Anchorage noted that the Commission concluded that "ECOM is a quasi-public offering of a for-profit service which affords the public an opportunity to transmit messages of its own design and choosing" and determined that ECOM was a common carrier service. Anchorage argued that the proposed private microwave carrier service would constitute a common carrier activity under the Commission's rationale in *Graphnet Systems*, since OFS licensees would be transmitting information of the customers' own choosing for a fee.

17. The California PUC was doubtful that entrepreneurs licensed under Part 94 would, in practice, be able to satisfy the *NARUC I* test for private carriage. The PUC noted that in *NARUC II (National Association of Regulatory Utility Commissioners* v. *FCC*[16] the Court rejected the FCC's contention that interactive cable communications systems are not common carriers, holding that the "actual activities he carries on" are the decisive factors for purposes of establishing the operator's regulatory status. The PUC thought it likely that market conditions and competitive forces would encourage private carriers to offer their services indiscriminately to all eligible users. The

[13] 525 F.2d 630 (D.C. Cir. 1976), *cert. denied*, 425 U.S. 992 (1976).

[14] *Notice*, 48 FR at 24951.

[15] *Memorandum Opinion and Order in the Matter of Request for Declaratory Ruling and Investigation by Graphnet Systems, Incorporated Concerning a Proposed Offering of Electronic Computer Originated Mail*, Docket No. 79-6, 73 FCC 2d 283 (1979).

[16] 533 F.2d 601 (D.C. Cir. 1976)

PUC stated that there is every reason to believe that private carriers will offer their services on a common carrier basis in competition with such traditional carriers as The Pacific Telephone and Telegraph Company, whose common carrier voice and data services are subject to state regulation. Further, the PUC argued that although private carriers may create different services for different types of users, their marketing practices would not be equivalent to the individualized private contracts with distinct classes of users found to be characteristic of private carriage in *NARUC I*.

18. Combined Network, Inc. (Allnet), Utilities Telecommunications Council, Kansas City Southern Industries, Inc. (KCSI), and other commenters argued that there is ample legal authority to support the Commission's proposals. Allnet pointed out that the Commission's proposals did not envision allowing private microwave licensees to make capacity available to the general public but rather restricted access to entities eligible under Part 94. Moreover, they would be limited to persons who, practically, could share the system. Allnet's reply comments also contended that both the California PUC and Municipality of Anchorage misinterpret *NARUC I* when they suggest that the principles fashioned by the Court are limited to the land mobile services. Allnet argued that the decision reached in *NARUC I* specifically addressed the distinction between common carriers and private carriers generally and developed a universal definition that can be applied as legal authority for all types of radio services.

19. The reply comments of KCSI observed that the holding in *NARUC I* specifically pointed out that the Commission could, within its discretion, impose on any particular carrier the obligations inherent in common carrier status or decline to do so where it reasonably concludes that the carrier will not offer service in an indiscriminate manner. KCSI stated that it would be entirely appropriate for the Commission to conclude that an OFS licensee selling excess capacity is performing a private carrier function since it would not be holding itself out to serve one and all, would not be a dominant carrier, and would not be tariffing its services. Further, KCSI contended that the *NARUC II* decision, when applied to the question of private microwave carriers, does not alter the outcome which would be reached through the *NARUC I* analysis. In *NARUC II*, KCSI noted, the Court expanded the *NARUC I* test to include consideration of whether the customer transmits intelligence of his own design and choosing. KCSI cautioned, however, that *NARUC II* does not suggest that carriers which do not control the message are necessarily common carriers. KCSI disputed Anchorage's assertion that carriers providing alternative local telephone exchange service are de facto common carriers. KCSI also observed that *Graphnet Systems* involved an offering of Electronic Computer Originated Mail that was clearly indiscriminate in nature, whereas the Commission determined that Part 94 private carriers would not engage in indiscriminate service offerings.

20. In a similar vein, UTC noted that the intent underlying the Commission's proposals is clearly that the acceptance and terms of any for-profit-sharing arrangement will be a matter of negotiation between concerned parties, and that at the outset, the licensee will have complete discretion whether to enter into such an arrangement. UTC urged the Commission to include in the regulations to be adopted an affirmative statement that the licensees retain complete authority to accept or terminate the leasing agreements. In UTC's view, such a statement would establish beyond doubt that private carriers would be under no legal compulsion to serve customers indifferently. UTC also stated that if the Commission were to insist that licensees use some minimum threshold level of their systems' capacity for their own communications before being able to offer service to others, there would be clearly no expectation of an indifferent holding out to the eligible user public. UTC believed that private carrier microwave licensees who must use their systems to carry significant level of their own communications would necessarily be precluded from making an indiscriminate offering to the public at large and therefore would be indisputably in compliance with the requirements of *NARUC I*. Moreover, UTC observed, shared for-profit use of OFS systems is feasible only in particularized situations where persons have communications needs along substantially the same routes. Since existing systems have physical and engineering constraints that limit the scope of any excess capacity offering, UTC concluded, the sale of excess capacity by its nature would be available only to a confined category of customers. Therefore, UTC observed, private carrier microwave licensees would be likely to establish medium-to-long-term contractual relations with a relatively stable clientele, similar to the private carrier SMRS services addressed in *NARUC I*.

E. Potential for OFS Systems to be Used for Bypass of the Exchange Network

21. The *Notice of Proposed Rule Making* noted that OFS facilities are potentially useful for exchange bypass and specifically asked for comments on this point. The *Notice* stated that existing OFS facilities would appear to represent the type of facilities which would be economical as compared with alternative local telephone facilities, wholly apart from the effects of access charges under the *Access Charge Order*.[17] The *Notice* indicated, however, that the Commission did not have specific information on this point or on the effects of the construction of private carrier facilities.[18]

22. The Bell Operating Companies (BOCs) expressed concern with the potential for use of private radio facilities primarily as an alternative to local carrier access facilities. The BOCs stated that offerings of private carrier access facilities could find a ready market among large users who are relatively small in number but who generate a disproportionately large percentage of telephone company revenues. The BOCs noted that the tariff structure set forth in the *Access Charge Order* shifts the cost of non-traffic sensitive plant recovery to end users over a five-year transition period. They further noted that it is important for the Commission to continue on this path to assure that the policies proposed for private carriers do not exacerbate the problem of uneconomic bypass.

23. The BOCs observed that the determination of an exchange carrier's exchange plant cost that is covered by interstate access charges must be in accordance with existing separations methodology. When the results of using existing separations methodology are coupled with the tariff requirements placed upon exchange carriers, the BOCs argued, the combined effect is likely to increase the "cost" for rate-making purposes of tariffed access service in comparison with the cost which private carriers might charge for comparable access service. This cost differential between exchange carrier service and private carrier service would occur, the BOCs maintained, even if the private carrier and the exchange carrier use the same technology. In the view of th BOCs, therefore, many

[17] *Third Report and Order* in CC Docket No. 78-72, Phase I, 93 FCC 2d 241 (1983).

[18] *Notice*, 48 FR at 24952.

customers would choose the less expensive private carrier to provide access service, thereby bypassing the exchange carrier. This result, according to the BOCs, would be a classic example of "uneconomic bypass."

24. In their reply comments, the BOCs expressed great concern with suggestions raised in the comments that private carriers should be permitted to act as the collectors of telecommunications traffic for delivery to a bypassing carrier on an intraLATA basis. [19] The BOCs said that the fundamental issue raised in this proceeding is whether the public interest would be served by the development of an "artificially induced uneconomic bypass."

25. The comments of the California PUC regarding bypass closely paralleled those of the BOCs. California noted that, as a result of the "bypass" which the proposals would engender and the "inevitable migration" of institutional telecommunications users to private carriers, the great proportion of users continuing to receive service from exchange carriers would be the smaller, less affluent customers. These remaining users would then have to cover the fixed costs of the telephone network through higher rates.

26. The Hughes Aircraft Company maintained that concerns about bypass of the local telephone carriers are misplaced. For over thirty years, private individuals have been permitted to build their own communications systems, rather than use common carriers, in recognition of the fact that the public interest is served by allowing business and state and local governments to tailor communications systems to meet their specific needs. Hughes stated that the proposals would not result in large-scale additional bypass, but that users would continue to build or use alternative systems in situations where it is economically or technically advantageous to do so. Hughes argued that the real solution to the bypass problem rests with the measures now being implemented by the Commission to reduce and ultimately eliminate the pricing distortions which create the incentive for uneconomic bypass.

27. Similarly, MCI was unsympathetic to the concerns about bypass raised by some commenters. MCI argued that the public interest is best served by promoting the development of efficient technological competition to the existing local distribution network. MCI maintained that the erection of regulatory barriers to the development and use of existing and new technologies, in the interest of precluding by pass, is contrary to sound national policy. In MCI's view, the increased competition for local distribution ultimately would do far more to protect local rates than restriction of such competition. Competition, MCI maintained, would provide incentives for the local telephone companies to offer innovative, efficient access service based on cost and will force the exchange carriers to modernize their facilities in order to compete effectively for their share of the market, thus improving the over-all national well-being in this new information age.

28. KCSI argued in its comments that the Commission was considering the bypass problem in the Access Charge proceeding and that it would be inappropriate to consider the bypass issue at length in the instant proceeding. Further, KCSI stated that, at this point, the Commission could only hypothesize about the possible impact of the proposals on bypass issues because the actual effect of bypass, if any, will be realized only at some distant point in the future. UTC argued that it would be inconsistent for the Commission to delay action on the proposals merely because some bypass of local exchange facilities could ensue. Economic bypass, UTC stated, is consistent with the Commission's pro-competitive policies articulated in the *Computer II* proceeding. [20]

F. Preemption of State Regulation

29. The Municipality of Anchorage argued in its comments that the proposed rules attempt to provide the Commission with jurisdiction over matters which the Communications Act has specifically reserved for the states. Anchorage cited section 2(b) of the Act [21] and relevant case law for the proposition that the nature of the communications rather than the location of the facilities through which they pass is determinative of the ultimate regulatory jurisdiction. Anchorage maintained that by adopting the proposed rule the Commission would be attempting to exercise jurisdiction over communications which are completely intrastate in nature and which are therefore beyond the Commission's jurisdiction. In Anchorage's view, private carriers must necessarily be categorized as common carriers under the *NARUC I* and *NARUC II* court decisions. According to Anchorage, the Commission clearly has statutory authority to allow the use of private radio facilities for common carrier operations on an interstate basis, but is precluded by section 2(b) from preempting the jurisdiction of the states concerning entry and rate regulation of Part 94 carriers operating intrastate. Anchorage therefore argued that the decision of whether to authorize any new carriers to provide microwave communications on an intrastate basis rests exclusively with the state public utilities commissions.

30. The California PUC expressed concerns similar to those of the Municipality of Anchorage, maintaining that the states must not be prevented from promoting the creation of innovative communications services and from protecting the maintenance of universal service. California asserted that states, being sensitive to local needs and local concerns, must retain the authority they now possess to assert regulatory control over carriers operating within their boundaries.

31. KCSI, in its reply comments, disputed Anchorage's assertion that communications which are totally intrastate in nature are beyond the Commission's jurisdiction. If this were true, KCSI stated, every low power radio device, every private digital termination system offering purely local service, all local cellular-subscriber to local cellular-subscriber calls, and many other purely intrastate activities would be beyond the Commission's jurisdiction. To the contrary, KCSI contended, state jurisdiction is carefully circumscribed by the Communications Act to embrace only certain narrow and specific circumstances set out in sections 2(b) and 221(b). [22]

32. UTC's comments urged the Commission, if it proceeds with the proposals, to adopt specific language clarifying that the states are preempted

[19] Under the Modified Final Judgment in *United States* v. *AT&T*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 103 S.Ct. 1240 (1983), the Bell Operating Company territory has been divided into 162 regions known as local access and transport areas, or LATAs. The Bell Operating Companies provide service within the LATAs, and interexchange carriers, including AT&T, provide service between the LATAs.

[20] *Final Decision* in Docket No. 20828, 77 FCC 2d 384, *recon.*, 84 FCC 2d 50 (1980), *further recon.*, 88 FCC 2d 512 (1981), *aff'd sub nom. Computer & Communications Industry Ass'n* v. *FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 103 S.Ct. 2107 (1983).

[21] Section 2(b) states "nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier. . . ." 47 U.S.C. 152(b). " 'Common carrier' or 'carrier' means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio. . . ." 47 U.S.C. 153(h).

[22] 47 U.S.C. 152(b) and 221(b).

from imposing local regulations on for-profit private microwave arrangements. UTC recognized that the Communications Act does reserve some regulatory responsibility to the states for common carriage and specifically preempts the Commission from promulgating regulations concerning "charges, classifications, practices, services, facilities, regulations for or in connection with wire, mobile, or point-to-point radio telephone exchange service . . . ." [23] However, UTC argued that it is well settled that the Commission exercises sole and exclusive jurisdiction in the area of private carriage. UTC urged the Commission to adopt language which states explicitly the Commission's intention to preempt state regulation of private microwave carriers. Motorola concurred with UTC's suggestion that the Commission declare its intention to preempt state regulation of for-profit microwave sharing arrangements. Motorola believed that such clarifying language will prevent conflicts at the state level which might otherwise delay realization of the benefits inherent in the proposals.

G. "Market-Specific" Versus "Carrier-Specific" Regulation

33. The comments of AT&T and the Bell Operating Companies argued that the private radio regulatory status proposed for carriers authorized under Part 94 would violate the principles established in the competitive carrier rule making proceeding. [24] In that proceeding, AT&T observed, the Commission recognized the inequity of giving one group of competitors an advantage over other providers of a similar service. In this regard, AT&T suggested that private carriers will be able to respond to market conditions more quickly than regulated common carriers and, as a result, private carriers will enjoy a competitive advantage that is due solely to regulation. This theme was echoed by the Bell Operating Companies, which maintained that authorizing private carriers to provide essentially the same service as common carriers is an example of the type of firm-specific or carrier-specific regulation which has been rejected consistently by the Commission in the past.

34. To remedy the situation, the BOCs urged the Commission to place the private carriers and the exchange carriers on an equal footing with respect to regulatory constraints. One alternative, the BOCs stated, would be to subject private carriers to the current common carrier regulatory structure, thereby requiring private carriers to tariff any service which they offer. A second approach would be to lift promptly the existing regulatory burdens and restrictions placed on the exchange carriers. The BOCs cited the Commission's recent action in BC Docket No. 82-536 [25] as a model for equal treatment of entities providing comparable services. In that proceeding, the BOCs stated, the Commission recognized that it was not in the public interest to give FM broadcasters a competitive advantage based entirely on regulatory action over common carriers offering a similar service. Accordingly, the Commission held that FM broadcasters offering non-broadcast services would be treated in the same manner and with all of the same benefits, obligations and responsibilities as the providers of similar services. [26]

35. The BOCs stated that severe restrictions in terms of pricing, marketing, and entry and exit are characteristic of the existing common carrier regulatory structure. These restrictions may work to deprive regulated entities of the flexibility to respond to market forces in a timely fashion. The BOCs argued that when regulation is imposed in a competitive market, the regulated entity is in effect regulated twice, once by competitive elements and once by the regulating authority. On the other hand, private carriers, a service which the BOCs view as the functional equivalent of the local exchange, would be subject only to the natural regulatory forces of the marketplace.

H. Depletion of OFS Spectrum

36. Several commenters suggested that the Commission's proposals, rather than achieving the stated purpose of conserving microwave spectrum and promoting more efficient utilization of OFS facilities, actually will deplete the remaining available spectrum. This is so, argued the Municipality of Anchorage, because the proposals offer greatly increased incentives for establishing new microwave systems. Under the proposed rules, Anchorage claimed, the Commission will not be able to examine the actual need for the spectrum which applicants for private carrier systems will seek to use. In Anchorage's view, the Commission will be obliged to grant almost any application for OFS frequencies, since an applicant will always be able to justify its requests for spectrum simply by claiming that there is a market for additional microwave capacity.

37. The American Petroleum Institute agreed with these concerns, maintaining that public interest considerations require the Commission to ensure that suitable microwave spectrum remains available to satisfy the traditional private telecommunications requirements. API feared that entrepreneurs will apply for licenses on a speculative basis in the hope of later developing a market for their service. This diversion of frequencies for commercial purposes, API stated, is incompatible with the Commission's obligation to make sure that frequency assignments will be available for the critical public safety, transportation and energy industry requirements. API contended that the record already developed in Docket No. 82-334 [27] has shown conclusively that sufficient microwave spectrum is not now available to accommodate known needs in critical areas. Likewise, SIRSA, UTC and Northwest Energy Company urged the Commission not to authorize private microwave carriers on a purely entrepreneurial basis in light of the existing congestion in the OFS spectrum in many parts of the country.

38. On the other hand, many commenters minimized the potential impact which private carriers would have on spectrum availability. Certain commenters lauded the proposals as an important element in efficient future use of the spectrum. MCI, for example, stated that it believed the proposals are likely to reduce the waste represented by unused system capacity. The Manufacturers Radio Frequency Advisory Committee contended that for-profit sharing of the OFS spectrum would assist in meeting the increased demand for service without creating further frequency congestion. By allowing existing facilities to be used to

[23] 47 U.S.C. 221(b).

[24] *Further Notice of Proposed Rule Marking In the Matter of Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefore* (Docket No. 79-252), 1981, 84 FCC 2d 445 (1981).

[25] *First Report and Order* (FCC 83-154), released May 19, 1983, 48 Fed. Reg. 28,445 (June 22, 1983).

[26] On reconsideration in Docket No. 82-536, however, the Commission preempted state entry regulation of common carrier FM subcarrier services. The Commission found that overriding public policy concerns necessitated federal preemption of state regulation over common carrier FM subcarrier services, even though the states would continue to regulate conventional radio common carrier paging services. *Memorandum Opinion and Order* (FCC 84-187), released May 2, 1984, 49 FR 19659 (May 9, 1984).

[27] *In the Matter of Establishment of a Spectrum Utilization Policy for the fixed and Mobile Services' Use of Certain Bands Between 947 MHz and 40 GHz.* See *First Report and Order* (FCC 83-393), released September 30, 1983, 48 FR 50722 (November 3, 1983).

maximum capacity, rather than requiring new facilities to be constructed to serve marginal requirements, spectrum efficiency would be increased measurably. MRFAC stated. Similar views were expressed by the May Department Stores Company, the BOCs, Combined Network, Inc., Harris (Farinon), KCSI, Crocker National Bank and others.

I. Leasing of OFS Capacity to Part 94 Eligibles

39. Kansas City Southern Industries, Inc. enthusiastically endorsed the private carrier proposals but urged that the rules ultimately adopted also permit KCSI to make its excess capacity available to an affiliated telephone reseller of MTS/WATS service. KCSI maintained that modification of the proposed rules to permit leasing to resale common carriers would substantially improve the spectral efficiency of its system by putting idle channel capacity to economic and productive use. KCSI stated that the spectral efficiencies which could be achieved are clearly in the public interest and will not cause technical, operating or economic harm to other OFS licensees or uses. To implement its proposal, KCSI proposed changes to Part 94 which would permit the leasing of excess capacity to entities affiliated with a Part 94 licensee, even if the affiliated entity did not itself qualify as an eligible user under the Private Operational-Fixed Service rules. KCSI also suggested that the Commission could, if it deemed it necessary, require that the leasing of OFS capacity to entities not eligible under Part 94 be on a secondary basis, subject to future withdrawal or other limitations necessary to meet the legitimate needs of OFS eligibles.

40. Similarly, Clark Equipment Company and Combined Network, Inc. urged the Commission not to restrict the leasing of OFS capacity to entities eligible under Part 94. Clark noted that great interest has been shown by competitive interexchange common carriers in leasing excess private capacity for the carriage of voice and data traffic between exchange networks. Clark argued that permitting the leasing of excess capacity to non-eligibles would promote efficient use of the spectrum and would help to promote competition in the common carrier industry.

41. UTC supported the proposal to limit the sale of excess OFS spectrum to Part 94 eligibles. UTC believed this limitation necessary to avoid depletion of the spectrum by entrepreneurs who could otherwise make a wholesale offering of service to any interested party. Accordingly, UTC opposed the changes suggested by KCSI. UTC argued that Part 94 spectrum must be preserved for use by Part 94 eligibles and that the changes recommended by KCSI would violate this fundamental purpose of discrete allocations of spectrum for private and common carrier use. Further, UTC stated, expansion of the class of permitted recipients of OFS service to include common carriers would deplete scarce private microwave spectrum and blur the important legal distinction between private and common carriage. API also opposed the suggestion that the Commission permit the leasing of excess OFS capacity to entities not eligible under Part 94.

J. Leasing of Excess Capacity in the 928/952 MHz, 1850–1990 MHz and 6525–6875 MHz Bands

42. In an *ex parte* presentation in this docket, UTC urged the Commission to permit Power Radio Service eligibles to lease their excess capacity on the 928 MHz and 952 MHz multiple address frequencies to all Part 94 eligibles. Under current rules, twenty sets of 25 kHz-wide frequency pairs at 928 MHz and 952 MHz are allocated exclusively to the Power Radio Service for use in multiple address electric, gas, water, or steam utility system operation.[28] UTC stated that while it continues to support the restriction in the proposed § 94.17(a) which limits sharing to those entities eligible in their own right to use the channels, this limitation would not be desirable with respect to the 928/952 MHz multiple address channels. UTC argued that these multiple address channels, under the proposed rules, could be shared only with other Power Radio Service eligibles. In this respect, UTC claimed, the 928/952 MHz frequencies are unique, unlike other OFS frequency bands which could be used by all other Part 94 eligibles, or in the case of the 1850–1990 MHz and 6525–6875 MHz bands, by at least a substantial portion of the Part 94 eligibles.[29]

43. Moreover, UTC stated that these multiple address channels, unlike regular point-to-point frequencies, have the capability of addressing most of the residences in a utility's operating area. Accordingly, UTC believes that non-Power Radio Service entities eligible under Part 94 generally, such as burglar alarm companies, might find it beneficial to use reserve capacity on multiple address systems licensed to Power Radio eligibles. UTC therefore suggested that the Commission adopt a footnote specifically addressed to these 928 MHz and 952 MHz frequencies to permit a utility having its own requirements for the frequencies to share excess capacity with other Part 94 eligibles.

44. In contrast to UTC's proposal that Power Radio Service licensees be permitted to lease excess miltiple address capacity to non-power radio eligibles, UTC urged the Commission not to adopt a similar approach with respect to the leasing of excess capacity on the 1850–1990 MHz and 6525–6875 MHz bands to Business Radio Service eligibles. As noted above, under current rules these two bands are not available to entities whose basis for eligibility in the Private Microwave Service stems solely from their operation of a commercial activity. UTC contended that it would not be appropriate for the Commission to relax this restriction pertaining to Business Radio Service eligibles. Accordingly, in UTC's view, licensees of systems at 1850–1990 MHz and 6525–6875 MHz should not be permitted to lease excess capacity to entities whose only basis for eligibility is the Business Radio Service. The Association of American Railroads and the American Petroleum Institute supported UTC on this point, arguing that permitting the leasing of excess capacity at 1850–1990 MHz and 6525–6875 MHz to Business Radio Service eligibles would place intolerable demands for spectrum on bands that are already heavily congested in many areas.

K. Leasing of Excess Capacity by Common Carriers Licensed for Systems in the Private Microwave Service

45. The Association of American Railroads urged the Commission to modify the proposed rules to prohibit common carriers who operate private microwave facilities for the conduct of their own business from leasing excess capacity on a commercial basis. AAR noted that common carriers are eligible under Part 94 to establish OFS systems for their own internal communications. AAR expressed concern that if common carriers were permitted to lease excess capacity on these systems to other entities, the carriers might use the OFS system for routing what would otherwise be common carrier message traffic subject to regulation under Part 21 of the Commission's rules.

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[28] *See* §§ 94.65(a)(1) and 90.63 of the Rules. 47 CFR 94.65(a)(1) and 47 CFR 90.63.

[29] Under the provisions of § 94.61(b), note 15, the 1850–1990 MHz and 6525–6875 MHz frequency bands are not available to entities whose sole basis for eligibility in the Private Operational-Fixed Microwave Service is under § 90.75(a)(1) of the Rules relating to the Business Radio Service.

46. Both AT&T and the Bell Operating Companies vigorously opposed AAR's proposal. AT&T stated that there is no reason to prevent common carriers from enjoying a business opportunity that would be available to other Part 94 eligibles. Further, AT&T declared that allowing common carrier entities to provide private carrier service would have the distinct benefit of offsetting, to some extent, the competitive advantage private carriers would have over common carriers and would mitigate in part the effects of both the local and intercity bypass opportunities which would result from the adoption of the proposals.

47. Similarly, the BOCs argued that if the Commission adopts the proposals, all Part 94 eligibles, including common carriers, should be able to resell capacity on systems licensed under Part 94. The BOCs urged that if a common carrier entered the private carrier market, such entry should be viewed as outside common carrier regulatory review. In particular, stated the BOCs, there should be no artificial constraints on rate of return regarding the provision of such services. Additionally, the BOCs argued that depreciation on equipment used to provide the private carrier services should be at the same rate as that accorded other private carriers and not calculated on a regulated basis.

L. Cooperative Sharing Agreements and Annual Cooperative Use Reports

48. Under current Rule § 94.17, licensees entering into non-profit cooperative sharing of their OFS facilities with other Part 94 eligibles must file with the Commission copies of the written contracts implementing such sharing arrangements. Also, the licensees are required to file annual financial reports with the Commission to verify that the sharing was on a non-profit basis. The *Notice of Proposed Rule Making* in this proceeding recognized that if the Commission adopted the proposals for private carriage, the recordkeeping requirements relating to cooperative sharing arrangements would appear to be unnecessary. The *Notice* stated that since a licensee could elect to operate either as a cooperative or as a private carrier, it would appear inappropriate to impose rigorous recordkeeping burdens on cooperatives or to constrain the ways in which private service eligibles could share their costs.[30]

49. No commenters responding to the *Notice of Proposed Rule Making* voiced any objection to the proposal to delete the requirement for filing cooperative sharing agreements and annual reports. Though not all commenters specifically addressed this aspect of the *Notice*, those who did consider it unanimously supported deletion of the filing requirements.

Decision

50. In the traditional telecommunications environment, private microwave radio systems have played a role that is beneficial to society. Private microwave systems have served as useful alternatives to common carriers, where common carriers could not or would not provide the necessary service, by making available an effective communications capability designed to meet the unique needs of the user. At the same time, however, the typical private microwave system is constructed with sufficient capacity to meet the future needs of the licensees as they are expected to develop over a period of years. This process of planning OFS systems to ensure that they will be capable of meeting the long-term growth in a user's communications requirements means that, initially, the system capacity exceeds existing needs. In an economic sense, the communications capacity not exploited during the early years in the operation of a system represents a resource that has been wasted.

51. The Commission has long been concerned with regulations which impede rather than promote development of the full potential for the efficient and effective use of the radio spectrum because the Congress itself recognized in the Communications Act that through the greater use of radio, the public well-being of the nation as a whole is served. Economic waste results when the rigidity of the regulatory structure discourages technological innovation or maintains the price of services at an artifically high level. In proposing to permit private carriers to operate on frequencies allocated for the Private Operational-Fixed Microwave Service, the Commission was motivated by a desire to promote more efficient use of the OFS Spectrum. After careful consideration of the comments in this proceeding, we have determined that the establishment of private carriers under Part 94 of the Commission's Rules would serve the public interest. We see a clear public benefit in authorizing Part 94 licensees to lease their excess capacity to other entities eligible under Part 94.[31] Further, for the reasons enunciated below, we conclude that it is in the public interest to license entrepreneurs to establish private operational-fixed stations for the sole purpose of leasing communications capacity to others on a private carrier basis.

A. Legal Authority for Authorizing Private Microwave Carriers

52. Contrary to the contention of some commenters, we do not view the scope of *NARUC I* to be limited to the specific case of Specialized Mobile Radio Systems. Rather, the Court's decision reveals a deliberate attempt to fashion a generic definition of common carriage. The Court considered at length the statutory definition of "common carrier" and concluded:

> (w)hether the common carrier concept is invoked to support strict tort liability or as a justifying basis for regulation, it appears that the critical point is the quasi-public character of the activity involved. To create this quasi-public character, it is not enough that a carrier offer his services for a profit, since this would bring within the definition private contract carriers which the courts have emphatically excluded from it. What appears to be essential to the quasi-public character implicit in the common carrier concept is that the carrier "undertakes to carry for all people indifferently. . . ."[32]

Further, the Court concluded that "a carrier will not be a common carrier where its practice is to make individualized decisions, in particular cases, whether and on what terms to deal."[33] Applying these principles to the concept of the SMRS, the Court noted that the nature of the dispatch services which an SMRS offers appeared necessarily to involve the establishment of "medium-to-long-term contractual relations" and a relatively stable clientele. The Court determined, therefore, that there would be little reason to expect any sort of indifferent holding out of services to the public, the prime characteristic of common carriage.[34]

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[30] *Notice*, 48 FR at 24951–952.

[31] Furthermore, we would not preclude any subsequent subleasing of excess capacity to Part 94 eligibles.

[32] 525 F.2d at 641 (footnotes omitted).

[33] *Id.*

[34] *Id.* at 643–44. The Communications Amendments Act of 1982, note 9 *supra*, implemented a new test for distinguishing private carriers from common carriers in the land mobile services. The new statutory test is based on the manner in which a multiple licensed or shared private land station is interconnected with a telephone exchange or interexchange service or facility. 47 U.S.C. 331(c)(1). The Congress intended this test to supersede the common law test of *NARUC I* for the land mobile services. The *NARUC I* standard continues as the prevailing test for all other radio communication services.

53. *NARUC I* establishes general principles which can be applied to distinguish private carriers from common carriers. We conclude that *NARUC I* is the appropriate mechanism for distinguishing fixed services offered by common carriers from fixed services provided by private carriers. The comments filed in this proceeding, together with our analysis of long-established operating practices among OFS users, convince us that private carrier microwave licensees will be likely to establish medium-to-long-term contractual relations with a relatively stable clientele. Indeed, we expect that the tendency for private microwave carriers to tailor their offerings based on the "personal and operational compatibility of a given applicant" vis-a-vis other users on the system will be even more pronounced than with regard to SMRS operations. We reach this conclusion in part because of the importance of reliable communications links to many private microwave system operators. Power companies, for example, tend to demand a reliability factor of 99.995 percent.[35] We feel that power companies will negotiate carefully when considering the leasing of excess capacity on their systems in light of the need to preserve high system reliability. The same is generally true of petroleum companies and other large system operators. Moreover, many OFS licensees are so heavily dependent upon reliable and secure microwave communications for reasons of safety and effective business operations that they install redundant microwave links along each transmission path to ensure continuity of operations in the event the primary system malfunctions. These system operators are likely to be most careful about allowing others to use their systems, given their concern, first and foremost, that they preserve the integrity of the system and the availability of the system for meeting their own communications needs. Therefore, consistent with NARUC I, the private microwave carriers will have a very strong incentive to select customers whose operations will be compatible with the communications of other users on the systems.

54. It seems clear, then, that the personal and operational compatibility of a given applicant with respect to the OFS system as a whole and other users will be one of the foremost considerations when a private carrier determines to make its system available to additional users. A private carrier would not be able, as a matter of practice, to hold itself out indiscriminately to serve the public without jeopardizing the system reliability and operational security essential to effective microwave communications.

55. Further, though Anchorage and the California PUC assume that private carriers will be the functional equivalent of common carriers, this is clearly not the case. Some OFS systems are used to serve remote areas which do not have the benefit of common carrier service. Additionally, common carriers by their very nature are entitled to provide service to any person or entity, whereas private carriers will be restricted to providing service to Part 94 eligibles within the confines of *NARUC I, supra.*[36] Therefore, we conclude that for-profit carriers in the Operational-Fixed Service will be private rather than common carriers under the principles established in *NARUC I.*

56. Moreover, we are not persuaded by arguments that the rationale applied in *Graphnet Systems, Inc.* governs the issue of the appropriate regulatory classification for carriers in the Operational-Fixed Service. In *Graphnet Systems,* it was clearly established that "(i)n offering ECOM, the Postal Service would thus be holding out to the *public* a single, integrated communications service, consisting of both transmission and delivery." (Emphasis added.)[37] The Commission's determination that Electronic Computer Originated Mail service constituted a common carrier activity was based on the fact that "ECOM is a quasi-public offering of a for-profit service which affords the public any opportunity to transmit messages of its own design and choosing."[38] Viewed from the perspective of *NARUC I,* there was no likelihood of medium-to-long-term contractual relations associated with the ECOM offering and no attempt to tailor the offering to individual customers to ensure personal and operational compatibility with other users. In short, the characteristics of the ECOM offering were quite different from the services involved here and did represent the offering of a common carrier service to the public. This will not be the case with private microwave carriers.

57. Similarly, we reject the California PUC's contention that the holding in *NARUC II* compels the conclusion that OFS carriers will operate as common carriers. We agree with KCSI that *NARUC II,* when applied to the question of private microwave carriers, does not alter the outcome reached through application of the *NARUC I* analysis. In *NARUC II,* the Court clearly spoke of two prerequisites of common carrier service: first, the expectation that the carrier will hold out its services to the public in an indifferent, nondiscriminatory manner; and second, that customers of the service transmit intelligence of their own design and choosing.[39] With respect to the first prerequisite, the Court explicitly stated:

> . . . it is the practice of such indifferent service that confers common carrier status. That is to say, a carrier will not be a common carrier where its practice is to make individualized decisions in particular cases whether and on what terms to serve.[40]

As stated earlier, a private microwave carrier's concern about protecting the security, reliability, economic viability and operational effectiveness of its system undoubtedly will preclude the carrier from indifferently holding out its service to the public. Therefore, the second part of the *NARUC II* test, standing alone, is is not determinative of common carrier status.

B. Leasing to Part 94 Eligibles

58. As noted in the discussion of issues, the comments of KCSI, Clark Equipment Company, and Combined Network, Inc. suggested that private carriers should not be limited to

[35] This is higher than the level of reliability for most common carrier services.

[36] The similarities between the private carrier proposals and other recent Commission actions permitting the leasing of excess capacity on a private carrier basis were noted in the *Notice of Proposed Rule Making. See,* for example, *Report and Order* in BC Docket No. 81-741 (authorizing TV broadcast licensees to sell teletext capacity), FCC 83-120, released May 20, 1983, 48 FR 27054 (June 13, 1983); *Report and Order* in BC Docket No. 81-794 (permitting broadcast auxiliary microwave station licensees to lease capacity on a private carrier basis), FCC 83-153, released April 15, 1983, 48 FR 17081 (April 21, 1983); *Report and Order* in Gen. Docket No. 80-112 (permitting ITFS licensees to lease excess capacity on a private carrier basis), FCC 83-243, released July 15, 1983, 48 FR 33873 (July 26, 1983); *First Report and Order* in BC Docket No. 82-536 (permitting FM radio station licensees to lease subchannels on a private carrier basis), FCC 83-154, released May 19, 1983, 48 FR 28445 (June 22, 1983).

[37] 73 FCC 2d at 290. Under the ECOM (Electronic Computer Originated Mail) proposal, a customer would "prepare its messages in electronic form and transmit them over communications channels to Western Union's facilities. . . . Western Union, employing its switching and communications facilities, will then transmit the messages to appropriate destination post offices as indicated by the zip coding. There, Western Union provided printers will convert the messages to hard copy form for physical delivery by postal employees." *Id.* at 284.

[38] *Id.* at 289.

[39] 533 F.2d at 608-09.

[40] Id.

providing service to Part 94 eligibles. KCSI seeks authority to lease excess capacity to resale common carriers, while Clark stated that competitive interexchange common carriers are interested in leasing excess private capacity. We are unable at this time to conclude that allowing OFS licensees to sell excess capacity to common carriers and other non-Part 94 eligibles would serve the public interest. While it may be appropriate to consider across-the-board sharing of all microwave spectrum by common carrier, mass media and private service systems without any specific allocations, we do not believe that we have an adequate record before us on this issue to justify authorizing leasing of excess private microwave capacity for common carriage. Accordingly, at this time we will restrict private carriers to providing service to Part 94 eligibles. However, in a Further Notice of Proposed Rule Making in this proceeding, the Commission will seek comments to develop a full record on the question of expanding the use of excess private microwave capacity for non-private uses.

C. Bypass of Common Carrier Facilities

59. We are concerned about the potential impact of the increased use of private microwave facilities on the cost and availability of local telephone service. However, the sale of excess capacity on existing private microwave systems and the construction of private carrier microwave systems to provide a commercial communications service also have clear public benefits. The public interest in allowing the construction as well as sharing of such systems by other eligibles has been a settled principle for over thirty years. Authorization of the sale of excess capacity merely creates an economic incentive for more intensive use of scarce spectrum, particularly when the system is already built. We anticipate that adoption of our proposal will result in increased spectrum efficiency, as well as increased use of the microwave equipment itself. Furthermore, economic incentives to purchase more efficient equipment are created for those who are constructing new private microwave systems. For example, under the current restrictions on shared use of private systems, a licensee is likely to buy the least expensive, least sophisticated equipment that will carry the projected communications flow with the required level of reliability. However, if the same licensee had the option of sharing the microwave system on a for-profit basis, a clear economic incentive would exist to obtain a more sophisticated system with greater communications capacity. We are confident that such incentives will serve to spur the development of more efficient microwave equipment.

60. Our determination to proceed expeditiously is based on the importance of information and information distribution in our society. Information distribution is no longer the exclusive domain of Fortune 500 firms; it is important to virtually every business, small or large. The demand for communications capacity to facilitate information distribution will continue to grow and place a strain on existing systems. This has important ramifications, especially for small entities who may have a vital data communication requirement but lack the capital or spectrum resources to implement their own system. We believe it is important from the standpoint of economic efficiency to provide additional user options which will enable small entities to contract to obtain microwave communications service from other Part 94 eligibles.

61. Authorization of private carrier systems solely to provide communications for other eligibles present somewhat different issues than the sale of excess capacity, including bypass of the local telephone network. In our recently released study of *Bypass of the Public Switched Network*,[41] we recognized that subscribers with high calling volumes and large telephone bills have strong incentives to seek alternatives that reduce their telecommunications expenditures. Private carrier microwave systems represent one such alternative. These systems are likely to be advantageous to those private service eligibles who seek (1) to obtain cost savings, (2) to achieve special service characteristics such as high reliability, (3) to meet specialized data transmission requirements, or (4) to satisfy a combination of these or other requirements.[42] However, our study of the bypass issue also demonstrated that during the next few years, the most prevalent form of bypass will be service bypass (i.e., the use of special access lines) rather than use of private radio systems. After reviewing all the comments filed in response to the private carrier proposals, we conclude that it would not be in the public interest to restrict the use of scarce microwave spectrum because of concern about possible adverse effects on local telephone service. It is more appropriate to deal with the cost of local telephone service separately, as we are doing in CC Docket No. 78-72 *(Access Charge Order)*, rather than retaining inefficient regulatory restrictions on private microwave licensees. The current restrictions clearly limit the availability of fixed communications services, and thus force the prices of these services to be higher than they would be in the absence of such restrictions. Furthermore, there is no record to support the proposition that private carriers would have an immediate negative impact on common carriers providing telephone service. In many cases there may be no substitute common carrier service readily available, either because of the locale in which the service is required or because of the high speed data rates required. The private carrier option has been particularly popular in the private land mobile services, as evidenced by the large number of private carrier systems authorized since 1974. We conclude that the public interest is served by extending this private carrier option to the Private Microwave Service.

62. Similarly, we do not feel constrained to defer action in this docket until we complete action in other proceedings dealing with initiatives for further deregulation of common carriers. While private carriers may compete with common carriers in certain instances, the main thrust of our action in the current proceeding is to make it easier for Part 94 eligibles, not the universe of common carrier customers, to have access to private microwave communications systems,[43] and to promote spectrum efficiency by authorizing OFS licensees to aggregate on their systems the private radio communications of entities already entitled to establish their own individual OFS systems. There is no reason to assume that, as a general matter, entities choosing to use the services of a private carrier would have subscribed to

[41] Report on *Bypass of the Public Switched Network*, FCC 84-635, adopted December 19, 1984, released January 18, 1985.

[42] The comments in our bypass study, for instance, reflect the view of user groups that service characteristics, rather than cost savings, are the most important reasons for undertaking bypass of the public switched network. *Id.* at 9, n. 13.

[43] The Bell Operating Companies and AT&T cite the competitive carrier and FM subcarrier rulemaking proceedings in support of their contention that the Commission should impose the same obligations and responsibilities on private carriers as are imposed on the providers of similar services regulated as common carriers. In both the competitive carrier and FM subcarrier proceedings, however, the Commission was addressing the issue of competition among similar radio services in the same regulatory classification, i.e., the common carrier radio services. Neither of these proceedings considered the question of the appropriate degree of regulation for different, overlapping services regulated under two different communication classifications, such as common carrier services and the private services.

common carrier service if they were precluded by regulation from leasing excess OFS capacity. Indeed, it is likely that many potential private carrier customers would otherwise elect to construct their own OFS systems in lieu of obtaining service from a common carrier.[44] For all of these reasons, we do not believe it is necessary or desirable to defer action on private carriers until after completion of the Competitive Carrier proceeding.

D. Preemption of State Regulation

63. When establishing the concept of Specialized Mobile Radio Systems in Docket No. 18262, the Commission concluded that these systems would not necessarily be confined to serving the needs of "local" users. There clearly would be many SMR stations, the Commission stated, "that will extend for many miles, traverse one political subdivision of a state and then another, and go from state to state."[45] Further, the Commission noted:

> . . . the plan does not contemplate *per se* intrastate operations. It is a national plan, with national ramifications; and in no instance will we be able to forecast what dimensions a particular system may take on. . . . It has been perfected by us to meet the specific and particular requirements of these defined classes of eligible users, not on a local, but on a national basis, wherever the eligible may be, without regard to state or local jurisdictional boundaries and limitations. In these circumstances, we think it is obvious that implementation of the plan must be under one direct authority.[46]

64. In its review of this decision to preempt state regulation over SMRS's the U.S. Court of Appeals for the District of Columbia Circuit found that "this action appears reasonably necessary in order to create the atmosphere of free entry and competition which the Commission has determined is desirable as a means of maximizing the development of mobile radio technology."[47] The Court held that section 221(b) of the Act, which bars the Commission from promulgating regulations "for or in connection with wire, mobile, or point-to-point radio telephone exchange service" was not applicable to regulation of SMR systems. The Court pointed out that section 221(b) explicitly referred only to "telephone companies" and "telephone exchange service" and hence was applicable solely to common carrier service.[48] Likewise, the Court found that section 2(b) of the Act "only has application to common carriers, and our affirmance of the Commission's non-common carrier classification of SMRS vitiates any objection which might rest upon it."[49]

65. As was the case with SMR systems, those who oppose our private carrier proposals in the microwave service rely on sections 2(b) and 221(b) of the Act to support their contention that the Commission is precluded from preempting state regulation. We think, however, that these two statutory sections are equally inapplicable to private microwave carriers. We expect private microwave carriers to function in a manner vastly different from common carriers. They will not hold themselves out indifferently to the public. They will of necessity be very selective when offering their services to others. The service will be made available only to entities eligible under Part 94 and will be offered on the basis of medium to long term contractual arrangements. In short, we conclude that private microwave carriers will be functionally and legally distinguishable from common carriers. This being the case, sections 221(b) and 2(b) are not applicable.

66. Further, we think the same considerations which warranted federal preemption of state regulation of SMR systems are relevant, in large part, to the regulation of private carrier microwave systems. Like SMR systems, the operation of private carriers in the Operational-Fixed Service will not be confined to intrastate communications. Indeed, many microwave stations now licensed under Part 94 to railroads, motor carriers, power and petroleum companies span the borders of two or more states. Experience has shown that the existence of a single licensing and regulatory authority for Part 94 systems has served the Operational-Fixed Service well. The Service has provided a means whereby Part 94 eligibles can construct, with a minimum of regulation, efficient and reliable communications systems at a relatively low cost. We conclude that our federal objectives would be frustrated by permitting multifarious state regulations regarding private microwave carriers. These state regulations could have the effect of prohibiting or impeding the implementation of private carrier microwave systems, thereby frustrating the Commission's mandate to promote spectrum efficiency and to facilitate the introduction of new communications services. *See* 47 U.S.C. 303(g). We find, therefore, that allowing state regulation of private microwave carriers would conflict with the Commission's duty under Title III of the Act to license and regulate radio communication facilities.[50] Accordingly, we are preempting entry and rate regulation by the states of private carriers licensed in the Operational-Fixed Service.

67. Federal preemption of state regulation over private carriers was the subject of two *ex parte* statements submitted by the Utilities Telecommunications Council. In a statement submitted July 13, 1984, UTC expressed concern that the authorization of entrepreneurs in the private microwave bands could result in rapid depletion of useful spectrum in the 1850–1990 MHz and 6525–6875 MHz bands. In anticipation of greatly increased congestion in these bands, UTC stated that its members are developing fiber optic systems to meet their wide band communications needs. UTC noted, however, that fiber optics, while offering extremely high communications capacity, is also extremely expensive. Given the high cost associated with fiber systems, UTC contends that resale of excess capacity on such systems will be essential to the economic viability of fiber optics. UTC also suggests that if fiber optics is to develop as a useful alternative to private microwave communications, it will be necessary to preempt state regulation of fiber optic systems. Burdensome state regulation, UTC argues, poses a serious threat to private carrier operations on fiber optic systems. Further, such state regulation would undermine the potential usefulness of fiber optics as a remedy for the congestion which is likely to occur in the microwave spectrum if the Commission adopts the private carrier proposals. Accordingly, UTC urged the Commission to provide for federal preemption of state regulation over private fiber optic systems as part of the

[44] We base this conclusion, in part, on the evidence obtained from numerous petitions for waiver filed by Business Radio Service eligibles who have applied during the past year to use the OFS bands at 6525–6875 MHz and 1850–1990 MHz, both of which are not routinely available to Business Radio Service applicants. Some of these applicants cite, as justification for the waivers, the fact that common carrier facilities either are not available to serve their needs or, if available, lack the capacity to carry the high-speed data which the applicants seek to transmit.

[45] 51 FCC 2d at 973.

[46] *Id.*

[47] 525 F.2d at 646.

[48] *Id.*

[49] *Id.* at 647.

[50] 47 U.S.C. 301. It should also be noted that the Communications Amendments Act of 1982, note 9 *supra*, amended Section 301 to make explicit that our authority extends to "intrastate as well as interstate communications" by radio and to conform to "judicial decisions holding that all radio signals are interstate by their very nature." *Conference Report*, H.R. Rep. No. 765, 97th Cong., 2d Sess. at 31–32 (1982).

private microwave carrier proceeding. We have considered these comments carefully and have reached the following conclusions. The Commission clearly has broad authority over interstate and foreign commerce in communication by wire and radio to facilitate a rapid and efficient, nation-wide communication service pursuant to Sections 1 and 2 of the Communications Act of 1934, as amended. 47 U.S.C. 151 and 152. Thus, where a communications system incorporates both radio and fiber optic links, we believe our jurisdictional mandate would permit any preemptive measures that are necessary to ensure effective performance of these comprehensive statutory responsibilities. *Cf. United States* v. *Southwestern Cable Co.*, 392 U.S. 157 (1968) (upholding Commission's "ancillary" jurisdiction over non-common carrier cable systems in order to effectuate Commission's jurisdiction over radio broadcasting). And, while we think our plenary jurisdiction over radio is sufficient by itself to support the necessary preemptive action, *see* 47 U.S.C. 301, our jurisdictional concern may be heightened when the services in question are interstate. Our policy goals in authorizing these radio services are to allow maximum flexibility in the provision of private microwave systems and new communications services. These policy goals could be frustrated by restrictive state regulation. Such regulation could also delay the implementation of service, prevent effective use of the spectrum, and add to the expense of providing the service. Accordingly, we are preempting state regulation of communications systems which use a combination of private microwave and private fiber optic links.

E. Impact on Spectrum Utilization

68. We recognize the concerns raised by the Association of American Railroads, American Petroleum Institute, Utilities Telecommunications Council, Special Industrial Radio Service Association, and other commenters that the licensing of entrepreneurs solely to provide a communications service to Part 94 eligibles will exacerbate existing spectrum congestion problems.[51] Nonetheless, we have a statutory mandate to attempt to maximize efficient and effective use of the radio spectrum by the public.[52] The concept of private microwave carriers is not a device for enlarging the number of users eligible to access the OFS spectrum. Rather, it is a means of bringing the cost of access to OFS facilities, and the resulting efficiencies of private microwave communications, within the reach of Part 94 eligibles who heretofore have been precluded from using the spectrum because of the cost of constructing a microwave system for their own individual use. In essence, the high cost of constructing a microwave system has served as a rather arbitrary device for apportioning access to the OFS spectrum. To the extent that eligible users, because of the high cost of construction, are prevented from gaining access to spectrum allocated for their use, we believe we have a duty to attempt to eliminate the economic barrier. We therefore believe it is appropriate to adopt mechanisms for enhancing use of the private spectrum by all eligible entities.[53]

69. Permitting the sale of excess capacity will permit entities interested in taking advantage of the efficiencies of microwave communications to determine, prior to applying for their own systems, whether their communications needs can be satisfied more economically by arranging to lease capacity from an existing system serving the same route. As noted by some commenters, the private carrier concept may result in the conservation rather than depletion of spectrum, as potential users are presented with the alternative of leasing capacity on an existing system instead of building an entirely new system. Also, in areas where there is a shortage of either spectrum or desirable antenna sites, the ability of a prospective user to purchase microwave capacity from an existing licensee may represent the only alternative for obtaining access to necessary communications links.

F. Leasing of Capacity in the 928/952 MHz, 1850–1990 MHz, and 6525–6875 MHz Bands

70. We are persuaded by the arguments of UTC in favor of permitting licensees operating in the Power Radio Service pool of multiple address frequencies to make their excess capacity available to non-Power Radio Service eligibles. We think that permitting non-power Radio Service eligibles to have access to the excess capacity of Power Radio Service systems at 928/952 MHz will permit more efficient utilization of this particularly useful portion of the OFS spectrum. Additionally, as a general matter, we do not think there is any particular benefit to be gained by precluding licensees in the 1850–1990 MHz and 6525–6875 MHz bands from selling excess capacity to Business Radio Service eligibles. Business Radio Service eligibles have been particularly disadvantaged by the reallocation of the 12,200–12,700 MHz OFS band to the Direct Broadcast Satellite (DBS) Service,[54] and permitting Business Radio Service eligibles to lease excess capacity from licensees at 1850–1990 MHz and 6525–6875 will help offset this disadvantage.[55] We will not, however, license entrepreneurs to establish private carrier systems solely to serve the communications needs of others in the Power Radio Service frequencies at 928/952 MHz or in the 1850–1990 MHz and 6525–6875 MHz bands. As is currently the case, applicants seeking to construct OFS facilities which will use frequencies in these two bands will have to demonstrate an underlying basis for eligibility under Part 94 other than

[51] The comments of API suggest that the record previously developed in Gen. Docket No. 82–334 demonstrated that there is not sufficient microwave spectrum available to accommodate private radio needs in critical areas. We recognize that insufficient spectrum may exist in some of the private bands in specific areas of the country. However, we did not reach any general conclusions in the *First Report and Order* in Docket No. 82–334, note 27 *supra*, regarding the overall availability of OFS spectrum. The *First Report and Order* was chiefly concerned with allocating replacement spectrum to be used for reaccommodating OFS stations which would be displaced from the 12.2–12.7 GHz band by Direct Broadcast Satellite systems, not with assessing the degree of congestion in the private spectrum. Nonetheless, in the discussion related to use of the 6 GHz private band (6525–6875 MHz) for reaccommodating displaced 12 GHz users, the *First Report and Order* stated that "(o)ur review of the loading in the 6 GHz private microwave band indicates that, while this band is used extensively, additional assignments could be made without degrading existing uses." 48 FR at 50727–28.

[52] Sections 1 and and 303(g) of the Communications Act of 1934, as amended, 47 U.S.C. 151 and 303(g).

[53] We expect that entities eligible for licensing under Part 94 will apply for frequencies only when the applicants themselves fully intend to construct and operate the stations for which they have applied. We recognize, however, that our decision to authorize private microwave carriers could enable some entities to apply for spectrum solely to be able to sell to other parties the right to establish the station. This could delay the implementation of OFS systems and would not serve the public interest. Therefore, we are adopting rules requiring completion of station construction prior to the assignment or transfer of OFS licenses.

[54] *Report and Order* in Gen. Docket 80–603, 90 FCC 2d 676 (1982).

[55] The 1850–1990 MHz and 6525–6875 MHz bands are the only OFS bands below 12 GHz which are channelized for 10 MHz bandwidth. However, these bands are not available to Business Radio Service eligibles, except under waiver. Therefore, while many OFS eligibles who would have applied for 12 GHz systems with a 10 MHz bandwidth prior to the DBS decision now look to the 1850–1990 MHz and 6525–6875 MHz bands as alternatives, the only alternatives routinely available to Business Radio Service eligibles under existing rules are the frequencies at 13,200–13,250 MHz, 17,700–19,700 MHz or frequencies higher in the spectrum. The propagation characteristics of these higher frequencies are generally less advantageous than those of frequencies below 12 GHz.

§ 90.75(a)(1) of the Rules. In our view, licensing entrepreneurs to use the frequencies at 1850–1990 MHz and 6525–6875 MHz to offer service to Part 94 eligibles generally would effectively negate the prohibition against use of these bands by Business Radio Service eligibles. We do not think that such an action is within the scope of the proposals in this proceeding. Further, since the proposals advanced in Gen. Docket No. 82–334[56] include consideration of the issue of whether to delete the Business prohibition for 1850–1990 MHz and 6525–6875 MHz, we think the matter of Business use of these two bands properly should be considered in that proceeding.

G. Privacy and National Security Concerns

71. The authorization of private carriers is likely to broaden the types of and numbers of businesses using fixed radio facilities as an alternative to the traditional common carrier plant. Diversion of traffic to these OFS systems will expose an increasing volume of communications to possible interception by undesired third parties. Large scale interception of commercial information can also pose a national security concern with respect to interception by foreign entities. The wire plant of traditional carriers is intrinsically difficult to tap on a large scale. While intercity common carrier radio systems are technically vulnerable to interception, government initiatives have resulted in some protection of such systems at no direct cost to the user in areas of high threat. If private carrier systems are not designed with privacy concerns in mind, they would be much more vulnerable to interception and their widespread use would partially defeat a considerable Executive Branch investment in protection. While we do not have a record at this point to propose specific action, we would like to point out to communication users and private carriers our concern in this area[57] and encourage them to consider their privacy requirements and possible protection equipment.

H. Other Matters

72. We are not persuaded that it is either necessary or appropriate to preclude common carriers from offering private carrier service under Part 94. There are adequate restrictions in Part 94 to prevent such common carrier licensees from using their OFS systems to route common carrier traffic. Common carriers operating systems licensed under Part 94, like other Part 94 licensees, will be permitted to lease capacity for private carriage, but will be prohibited from carrying common carrier communications by Section 94.9 of the Rules. If it becomes apparent that common carrier licensees are routing common carrier message traffic over a private carrier system in violation of the Rules, we will invoke our enforcement authority to remedy the situation.

73. We will not impose any minimum threshold levels regarding the amount of system capacity which must be dedicated to a licensee's own internal communications before the licensee will be permitted to lease excess capacity to others. In view of our decision to permit entrepreneurs to obtain licenses under Part 94 solely to serve the communications needs of other eligibles, there is no public interest reason for requiring other licensees to devote some minimum level of capacity to their own communications before making their facilities available for use by others.

74. We received no comments regarding the rules proposed for multiple licensing of transmitting equipment in the Operational-Fixed Service. However, since the purpose of the proposed multiple licensing rules, i.e., to permit more efficient utilization of private microwave systems, is compatible with the underlying purpose of our private carrier proposals, we see no reason not to adopt the rules as proposed. Multiple licensing will present another option for OFS eligibles to consider when planning systems to satisfy their communications needs and will permit greater utilization of systems established under Part 94.

75. Also, we received no comments in opposition to the proposal to amend § 94.17 of the Rules to delete the rules requiring licensees who cooperatively share their systems with other eligibles to file a copy of the sharing agreements and an annual financial report. In light of our decision to authorize private carriers in this service, we are adopting the proposed amendments to § 94.17 because there is no further regulatory purpose to be served by continuing to require the submission of cost-sharing agreements and annual reports.

76. We do not expect any significant changes in our licensing procedures as a result of the decision to authorize private carriers in the Operational-Fixed Service. Under current procedures, Part 94 eligibles who share a licensee's system on a cooperative non-profit or non-cost basis are not individually licensed to use the system which they are sharing. Rather, they derive their authority to use the system from the license held by the entity who is primarily responsible for operation of the system. Similarly, we will not issue individual licenses to eligible entities who share a licensee's system on a private carrier basis. All sharers of OFS systems, whether sharing on a non-profit, or for-profit basis, will continue to derive their authority to use the systems from the license held by the entity who is responsible for operation of the system.

77. Finally, we agree with the comments filed by UTC that any leasing of excess capacity by OFS licensees to other eligibles should be on a voluntary basis. OFS licensees are under no legal compulsion to serve other entities. Rather, the decisions of whether to share existing capacity and with whom to share are completely within the discretion of the licensees themselves. To impose rules mandating that licensees lease their excess capacity to others would deprive licensees of operational control over their systems and would be contrary to the basic tenets of the Private Microwave Service.

I. Final Regulatory Flexibility Analysis

78. This proceeding increases the options available for the sharing of stations in the Private Operational-Fixed Microwave Service. No comments were received which addressed issues specifically related to the Initial Regulatory Flexibility Analysis. The proposed rules were developed to minimize the regulatory burden on all users of private operational fixed microwave systems, including small businesses. Since no alternative regulatory approaches were suggested in the comments to further reduce the anticipated burden on small businesses and we are not aware of any such alternatives, we see no need to modify the regulatory structure proposed in the *Notice*.

J. Paperwork Reduction Act Statement

79. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase or decrease burden hours imposed on the public.

K. Ordering Clauses

80. Accordingly, it is ordered, effective May 8, 1985, that Part 94 of the Commission's Rules (47 CFR Part 94) is amended as set forth in the Appendix

[56] Footnote 27, *supra*.

[57] *See Third Report and Order* in Docket No. 80–183 (FCC 84–148), adopted April 11, 1984, 49 FR 22318 (May 29, 1984).

attached hereto. The authority for this action is found in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

81. For further information concerning this proceeding contact Frederick J. Day or Joseph A. Levin, Land Mobile and Microwave Division, Private Radio Bureau, Federal Communications Commission, Washington, D.C. 20554, (202) 634–2443.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 94—[AMENDED]

Part 94 of the Commission's Rules and Regulations is hereby amended as follows:

1. Section 94.3 is amended by the addition of the term "private carrier" and the revision of the terms "person" and "rated power output" in the list of definitions to read as follows:

§ 94.3 Definitions.

* * * * *

Person. An individual, partnership, association, joint stock company, trust, or corporation.

Private Carrier. An entity licensed in the private services and authorized to provide communications service to other private service eligibles on a commercial basis.

Rated Power Output. The maximum radio frequency power output capability (peak or average power) of a transmitter, under optimum conditions of adjustment and operation, specified by its manufacturer.

* * * * *

2. Section 94.5 is revised to read as follows:

§ 94.5 Eligibility.

Any person, or any governmental entity or agency eligible for licensing in a radio service under Part 81, 87, or 90 for private operational-fixed communications related to activities for which licensing is available in such service or any person proposing to provide communications service to such persons, governmental entities or agencies is eligible to hold a license under this part.

3. Section 94.9 is amended by revising paragraph (a)(2) to read as follows:

§ 94.9 Permissibility of communications

(a) * * *

(2) The communications of the licensee's parent corporation, or of another subsidiary of the same parent, or its own subsidiary where the party to be served is regularly engaged in any of the activities which constitute the basis for eligibility to use the frequencies assigned.

* * * * *

4. Section 94.17 is revised to read as follows:

§ 94.17 Shared use of radio stations and the offering of private carrier communications service.

Licensees of radio stations authorized under this Part may share the use of their facilities on a non-profit basis or may offer service on a for-profit private carrier basis, subject to the following conditions and limitations:

(a) Persons or governmental entities licensed to operate radio systems on any of the frequencies set out in § 94.61(b) may share such systems with, or provide private carrier service to, any entity eligible for licensing under this Part, regardless of individual eligibility restrictions enumerated in § 94.61(b), provided that the communications being carried are permissible under § 94.9.

(b) The licensee must maintain access to and control over all facilities authorized under its license.

(c) All sharing and private carrier arrangements must be conducted pursuant to a written agreement to be kept as part of the station records.

(d) The licensee must keep an up-to-date list of system sharers and private carrier subscribers and the basis of their eligibility under Part 94. Such records must be kept current and must be made available upon request for inspection by the Commission.

5. A new § 94.19 is added to read as follows:

§ 94.19 Multiple licensing of radio transmitting equipment in the Private Operational-Fixed Microwave Radio Service.

Two or more persons or governmental entities eligible for licensing under this Part may use the same transmitting equipment under the following terms and conditions:

(a) Each licensee complies with the general operating requirements set out in Subpart D of this part.

(b) Each licensee is eligible for the frequency(ies) on which the facility operates.

(c) Each licensee must have the ability to access the transmitter(s) which it is authorized to operate under the multiple licensing arrangement.

6. Section 94.47 is amended by designating the present paragraph as (a) and adding a new paragraph (b) to read as follows:

§ 94.47 Transfer and assignment of station authorization.

(a) A station authorization, and the rights therein granted by such authorization, shall not be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of, or indirectly disposed of by transfer of control of any corporation holding such authorization, to any person, unless the Commission shall, after securing full information, advise that said transfer is in the public interest. (See § 94.27(b) for standard forms and procedures required for assignment of station licenses.)

(b) A license to operate a station authorized under this Part may not be assigned or transferred prior to the completion of construction of the facility. However, the Commission may give its consent to the assignment or transfer of control of such a license prior to the completion of construction where:

(1) The assignment or transfer does not involve a substantial change in ownership or control of the authorized radio facilities; or,

(2) The assignment or transfer is involuntary due to the licensee's bankruptcy or death.

7. Section 94.61(b) is amended by revising footnote (15) to read as follows:

§ 94.61 Applicability.

* * * * *

(b) * * *

(15) This band is not available to: (i) Persons whose sole basis for eligibility in the Private Operational-Fixed Microwave Service is established under § 90.75(a)(1) relating to the Business Radio Service (Part 90), except when they are sharing a system authorized to an eligible entity, and (ii) persons seeking to establish systems solely to provide private carrier communications service to other entities eligible under Part 94. Persons and entities eligible for this band may use these frequencies for the point-to-point transmission of their products and information service, excluding video entertainment material, to their customers.

* * * * *

8. Section 94.103(b) is revised to read as follows:

§ 94.103 Operator requirements.

* * * * *

(b) An unlicensed person, with the consent or authorization of the licensee, may employ stations in this service for the purpose of telecommunications in accordance with the conditions and limitations set forth in § 94.17 of this part.

* * * * *

Concurring Statement of Commissioner Mimi Weyforth Dawson

March 22, 1985.

This Report and Order is a logical step in the evolution of private microwave radio. It continues a long line of pro-competitive decisions in the Private Operational Fixed Microwave Service (OFS). Since the 1950's, the Commission has authorized licensees to construct their own private microwave systems. Our Report and Order today allows private microwave carriers—both existing licensees and new third party entrepreneurs—to make their facilities available to eligible users for a profit so the users may satisfy their communications needs without the necessity of building their our systems.

I support this decision and the policy goals behind it. It goes a long way toward creating a competitive and spectrum efficient OFS marketplace. However, several aspects of it cause me some concern.

Restricted Bands. Although the Report and Order makes almost all of the OFS spectrum available for use by entrepreneurs, it prohibits their operations on certain frequencies. On the Power Radio Service frequencies at 928/952 MHz, and on specific frequencies at 2 and 6 GHz, only the existing licensees may sell their excess capacity. New entrepreneurs are not allowed to enter these bands and offer competitive services.

In my opinion, entrepreneurs should be free to compete in the marketplace with the existing licensees on *all* the OFS spectrum. I see no public interest reason to preclude their operations at 928/952 MHz or at 2 and 6 GHz.

Common Carriage. Under our current Part 94 rules, OFS facilities may not be used to transmit common carrier message traffic. Accordingly, the Report and Order today prohibits OFS licensees and entrepreneurs from leasing excess capacity to common carriers for common carriage purposes. But in view of the potential benefits that a relaxation of this prohibition could bring, we have decided to reconsider it as part of a Further Notice in this proceeding.

A relaxation of the rules may be appropriate. Private radio facilities may be available in areas where common carrier facilities are not yet constructed. Requiring common carriers to build their own systems even though OFS facilities are already built and could satisfy their requirements is spectrally and economically wasteful. Common carrier use of private OFS facilities would generate additional revenues for OFS licensees and entrepreneurs and, at the same time, would help to offset the interexchange carriers' high costs. It would create additional options and more flexibility for common carriers in designing their systems to meet the public's needs. At a minimum it would stimulate competition in the interexchange market.

Bypass. Our recent study on bypass concluded that the use of private lines will be the most prevalent form of bypass during the next few years (*Order*, CC Docket 78-72, FCC 84-635, January 18, 1985). However, the new OFS options we have created today may well lead to an unexpected and significant increase in the use of private radio systems for bypass purposes. I am particularly concerned that we monitor these developments in our Access Charge docket in order to determine the long-term effect of today's decision on the costs of the nation's telephone service.

Fiber Optics. Increased use of OFS as a result of these new sharing opportunities may cause frequency congestion in some areas of the country. In response, some private microwave radio users may need to develop high capacity fiber optic systems as an adjunct to their OFS systems or as an alternative method of handling their communications needs.

In light of our policy goals of encouraging new communications services and allowing maximum flexibility in the provision of private microwave systems, the Report and Order preempts restrictive state regulation of private communications systems utilizing both radio and fiber optic links. The issue of preempting state regulation of private systems using only fiber optic technology will be addressed in the Further Notice in this proceeding. I will state my concern now, however, that a piecemeal state-by-state approach to fiber optics regulation may inhibit the development of what otherwise could be a fundamental backbone of the nation's communications system.

Our action today makes truly competitive service offerings available in the Private Operational Fixed Microwave Service for the first time. I am enthusiastic about the new opportunities and public interest benefits this will create and look forward to resolving the remaining issues as part of the Further Notice in this proceeding.

[FR Doc. 85-8074 Filed 4-3-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 201, 205, 206, 207, 208, 210, 213, 214, 215, 216, 217, 219, 220, 225, 235, 236, 237, 245, 247, 250, 252 and 270

[Defense Acquisition Cir. 84-10]

DoD FAR Supplement

AGENCY: Department of Defense.

ACTION: Temporary rule and request for comment.

SUMMARY: Defense Acquisition Circular (DAC) 84-10 revises various sections of the DoD FAR Supplement (DFARS) to incorporate changes required by the Competition in Contracting Act of 1984 (CICA).

EFFECTIVE DATE: April 1, 1985.

Comments must be received before June 3, 1985. Please cite DAR Case 84-128 in all correspondence to this issue.

ADDRESS: Interested parties should submit comments to: Defense Acquisition Regulatory Council, Room 3D139, Pentagon, Washington, D.C. 20301-3062.

FOR FURTHER INFORMATION CONTACT: Charles W. Lloyd, telephone (202) 697-7268.

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 84-5 contains substantial revisions to conform the FAR to the requirements of the new Competition in Contracting Act of 1984 (CICA). All solicitations for bids or proposals issued after March 31, 1985 must comply with CICA. For this reason, revisions to the FAR have been distributed for use in acquisition planning and preparation, and revisions to the DoD FAR Supplement are distributed to assist in preparing for the effectivity date.

List of Subjects in 48 CFR Ch. 2

Government procurement.

James T. Brannan,

Director, Defense Acquisition, Regulatory Council.

Defense Acquisition Circular

[Number 84-10]

January 10, 1985.

All DoD FAR Supplement and other directive material contained in this Defense Acquisition Circular is effective April 1, 1985.

Defense Acquisition Circular (DAC) 84-10 amends the DoD FAR Supplement and prescribes procedures to be followed. The following is a summary of the amendments and procedures:

ITEM I—Competition in Contracting Act of 1984

Federal Acquisition Circular 84–5 contains substantial revisions to conform the FAR to the requirements of the new Competition in Contracting Act of 1984 (CICA). Inasmuch as all solicitations for bids or proposals issued after March 31, 1985 must comply with CICA, these FAR revisions have already been distributed for use in acquisition planning and preparation. For the same reason, this Defense Acquisition Circular (DAC), which implements and supplements the revised FAR in the DoD FAR Supplement, is being distributed to assist in preparing for the effectivity date. These revisions will be published in the **Federal Register** prior to that date (March 31, 1985) as temporary regulations. A 60-day period for public comment will be allowed. The replacement pages in this DAC become effective after March 31, 1985 and should be inserted in the loose-leaf versions of the DoD FAR Supplement at that time.

To implement CICA fully for DoD acquisitions, this DAC contains new definitions of "Head of the Agency" and "Senior Procurement Executive"; formats for determinations and findings; revised guidance on acquisition planning, publicizing proposed acquisitions, and acceptance of unsolicited proposals; as well as supplemental policies and procedures for excluding a source from a particular procurement and for using other than full and open competition under appropriate circumstances.

Adoption of Amendments

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

1. The authority for 48 Chapter 2 reads as follows:

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

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

201.601 [Amended]

2. Section 201.601 is amended by changing the penultimate word "his" to read "that".

3. Section 201.602 is revised to read as follows:

201.602 Authority of Contracting Officers.

201.602-1 Authority.

(a) Contracting officers at contracting offices are authorized to enter into contracts for supplies or services on behalf of the Government, and in the name of The United States of America, by sealed bidding, by negotiation, or by coordinated or interdepartmental acquisition; and, when authorized under FAR Part 42, to administer such contracts. This authority is subject to the requirements, consistent with this supplement and the FAR, imposed by the appointing authority. Contracting officers at contract administration offices are, except as provided in FAR Part 42, authorized to perform the applicable contract administration functions and to perform additional acquisition functions when delegated by the contracting office.

(b) Business clearances or approvals shall be obtained as prescribed by applicable departmental procedures.

4. A new Subpart 201.7, consisting of sections 201.702, 201.704 and 201.707, is added to read as follows:

Subpart 201.7—Determinations and Findings

201.702 General.

(a) As an example of reasonable variations in estimated quantities, if at the time a D&F is submitted for approval, historical evidence indicates the possibility of increased quantities, e.g., requirements of other Departments, and Military Assistance Program requirements, the supporting data and the D&F may provide for limited additional quantities. Similarly, a provision may be included authorizing increased quantities if the acquisition process reveals that additional quantities can be acquired under the approved program and within available funds.

201.704 Content.

Additional guidance to that contained in FAR 1.704 for the preparation of a D&F is set forth with the appropriate subject matter. Where a format for a D&F is set forth with the appropriate subject matter, the D&F should conform generally to that format.

201.707 Signatory authority.

The Agency Head may make any of the determinations, and written findings in support thereof, that may be made by the head of any contracting activity signing as a chief officer responsible for contracting or by a contracting officer. Determinations, and findings in support thereof, not required to be made by higher authority may be made by the head of a contracting activity signing as chief officer responsible for contracting.

PART 202—DEFINITIONS OF WORDS AND TERMS

5. Section 202.1 is amended by adding or revising the following paragraphs to read as follows:

202.1 Definitions.

"Department of Defense" means the Office of the Secretary of Defense and the Military Departments.

"Department" or "Military Department" includes the Department of the Army, the Department of the Navy, the Department of the Air Force, the Defense Logistics Agency, the Defense Audiovisual Agency, the Defense Communications Agency, the Defense Mapping Agency, the Defense Nuclear Agency, and the National Security Agency.

"Head of the Agency" means the Secretary of Defense, the Under Secretary of Defense (Research and Engineering), the Secretary, Under Secretary or any Assistant Secretary of the Army, Navy and Air Force, and the Director and Deputy Director of Defense agencies, except to the extent that any law or executive order limits the exercise of authority to specific individuals at the Secretarial level. In the latter situation, the Under Secretary of Defense (Research and Engineering), unless specifically restricted to the Secretary of Defense, shall exercise the authority for Defense agencies.

"Senior Procurement Executive" means for the:

Department of Defense, Under Secretary of Defense for Research and Engineering;

Army, The Assistant Secretary of the Army (Research, Development and Acquisition);

Navy, The Assistant Secretary of the Navy (Shipbuilding and Logistics);

Air Force, The Assistant Secretary of the Air Force (Research, Development and Logistics);

Defense Logistics Agency, the Deputy Director (Acquisition Management);

Defense Audiovisual Agency, The Assistant Director for Acquisition and logistics;

Defense Communications Agency, The Director, Defense Communications Agency;

Defense Mapping Agency, The Deputy Director, Management and Technology;

Defense Nuclear Agency, The Deputy Director (Operations and Administration); and

National Security Agency, The Director, National Security Agency, Chief/CSS.

(a) * * *

For the Army:

Office of the Deputy Assistant Secretary (Acquisition), Assistant Secretary of the Army (Research, Development and Acquisition);

Directorate of Procurement & Production, Headquarters, U.S. Army Materiel Command;

* * * * *

U.S. Army Troop Support Agency;

U.S. Army Troop Support Command;

U.S. Army Tank-Automotive Command;

U.S. Army Aviation Systems Command;

* * * * *

Office of the Chief of Engineers;

U.S. Army Information Systems Command;

* * * * *

U.S. Army Ballistic Missile Defense Organization;

Eighth U.S. Army; and

U.S. Army Depot Systems Command.

* * * * *

PART 205—PUBLICIZING CONTRACT ACTIONS

205.001 [Redesignated/Amended]

6. Section 205.001 is redesignated as section 205.002 and the new section 205.002 is amended by removing in the first sentence of paragraph (c) between the word "proposed" and the word "and" the word "procurements" and inserting in its place the words "contract actions"; and by removing in the first sentence of paragraph (c) between the word "publicizing" and the word "actions" the word "procurements" and inserting in its place the word "such".

205.101 [Amended]

7. Section 205.101 is amended by removing in paragraph (a)(2) the word "procurement" and inserting in its place the words "contract action".

205.102 [Amended]

8. Section 205.102 is amended by removing in paragraph (a)(4)(i) the words "procurements of" and inserting in their place the words "acquisitions for".

Subpart 205.2—[Amended]

9. Subpart 205.2 is amended by removing in the title the word "CONTRACTS" and inserting in its place the words "CONTRACT ACTIONS".

§ 205.201 [Amended]

10. Section 205.201 is amended by removing in paragraph (b) the word "procurement" and inserting in its place the word "acquisition"; by removing in the title of paragraph (S–70) the word "Procurements" and inserting in its place the words "Contract Actions"; by removing in paragraph (S–70) between the word "by" and the word "personnel" the word "procurement" and inserting in its place the word "contracting"; and by removing in paragraph (S–70) between the word "proposed" and the word "less" the word "procurements" and inserting in its place the words "contract actions".

205.202 [Removed]

11. Section 205.202 is removed.

205.203 [Removed]

12. Section 205.203 is removed.

205.205 [Amended]

13. Section 205.205 is amended by removing in paragraph (c)(1) the word "procurement" and inserting in its place the words "contract action"; and by removing in paragraphs (c)(2) and (c)(S–70) the word "procurement" and inserting in its place the words "contract actions".

205.207 [Amended]

14. Section 205.207 is amended by removing in paragraph (d)(2), Note 12, between the word "this" and the word "may" the word "procurement" and inserting in its place the word "acquisition" and revising paragraphs (d)(S–70) and (d)(S–71) to read as follows:

205.207 Preparation and transmittal of synopses.

* * * * *

(d)(S–70) If the synopsis is for a sole source contract action, as authorized by one of the exceptions in FAR 6.302, the synopsis shall include reference to Numbered Note 22. The Numbered Note will appear in the *Commerce Business Daily* as follows:

Note 22: This contract action is for supplies or services for which the Government intends to solicit and negotiate with only one source under authority of FAR 6.302. Interested persons may identify their interest and capability to respond to the requirement or submit proposals. This notice of intent is not a request for competitive proposals. However, all proposals received within forty-five days after the date of publication of this synopsis will be considered by the Government. A determination by the Government not to open the requirement to competition based upon responses to this notice is solely within the discretion of the Government. Information received as a result of the notice of intent will normally be considered solely for the purpose of determining whether to conduct a competitive procurement.

(End of Note)

(d)(S–71) Each notice publicizing a contract action for architect-engineer services shall be headed "R. Architect-Engineer Services." The project shall be listed with a brief statement concerning the location, scope of service required, the significant evaluation criteria and their relative order of importance to the Government, the estimated construction cost range (see FAR 36.204), the construction cost limitation (see FAR 36.205), the type of contract proposed, the estimated start and completion dates, and the date by which responses to the notice must be received, including submission of Standard Form 255, if required. Appropriate statements shall be made concerning any specialized qualifications, security classifications, and limitations on eligibility for consideration. Qualifications or performance data required from architect-engineer firms shall be described. The foregoing data shall be followed by the statement *"Firms desiring consideration shall submit appropriate data as described in Numbered Note 62."* The name of the responsible procurement office should follow together with the complete address and telephone number. The numbered note will appear in one issue each week of the *Commerce Business Daily* as follows:

Note 62: Architect-engineer firms which meet the requirements described in this announcement are invited to submit: (1) A Standard Form 254, Architect-Engineer and Related Services Questionnaire; (2) a Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project, when requested; and (3) any requested supplemental data to the procurement office shown. Firms having a current Standard Form 254 on file with the procurement office are not required to resubmit this form. Firms responding to this announcement before the closing date will be considered for selection, subject to any limitations indicated with respect to size and geographic location of firm, specialized technical expertise or other requirements as listed. Following an initial evaluation of the qualification and performance data submitted, three or more firms considered to be the most highly qualified to provide the services required will be chosen for interview. The Department of Defense procedure for selection of architect-engineer firms is a competitive procedure which includes consideration of the professional qualifications necessary for the satisfactory performance of the professional services required, subject to the following additional considerations: (1) Specialized experience of the firm in the type of work required; (2) capacity of the firm to accomplish the work in the required time; (3) past experience, if any, of the firm with respect to performance on Department of Defense contracts; (4) location of the firm in the general geographic area of the project, *Provided*, that there is an appropriate number of qualified firms therein

for consideration; and (5) volume of work previously awarded to the firm by the Department of Defense, with the object of effecting an equitable distribution of contracts among qualified architect-engineer firms including minority-owned firms and firms that have not had prior consideration for future projects administered by the procurement office (subject to specific requirements for individual projects) are encouraged to submit annually a statement of qualifications and performance data, utilizing Standard Form 254, Architect-Engineer and Related Services Questionnaire.

(End of Note)

Note 62 is a *Commerce Business Daily* standard Numbered Note which applies to all DoD notices publicizing contract actions for architect-engineer services. When the notice is used in accordance with FAR 5.205(c), the substance of the numbered note shall be included.

205.301 [Removed]

15. Sectdion 205.301 is removed.

16. Section 205.302 is amended by removing paragraphs (b)(S–70), (S–71), (S–72) and (S–73), and by adding paragraph (b)(2) to read as follows:

205.302 Preparation and transmittal of synopses of awards.

(b) * * *

(2) Size status ((S) for small business and (L) for large business) of the contractor.

17. A new Part 206 is added to read as follows:

PART 206—COMPETITION REQUIREMENTS

Subpart 206.2—Full and Open Competition After Exclusion of Sources

Sec.

206.202 Establishing or maintaining alternative sources.

Subpart 206.3—Other Than Full and Open Competition

206.302 Circumstances permitting other than full and open competition.

206.302–1 Only one responsible source.

206.302–2 Unusual and compelling urgency.

206.303 Justification.

206.303–1 Requirements.

Subpart 206.2—Full and Open Competition After Exclusion of Sources

206.202 Establishing or maintaining alternative sources.

(a) This authority may be used, as appropriate, to totally or partially exclude a particular source from a contract action.

(b) (S–70) Additional instructions and formats for agency head determination and findings for exclusion of a particular source.

(i) When the authority of FAR 6.202(a) is proposed for use, it must be shown clearly that the necessity for excluding a particular source arises from genuine considerations pertinent to the authority of FAR 6.202(a) (1), (2), or (3). The supporting data, as well as the determination and findings, must name the source to be excluded from the contract action. Additionally, the supporting documents shall include the following information as applicable, and such other information as may be pertinent:

(A) The specific purpose to be served (i.e., to increase or maintain competition, the interest of national defense in case of a national emergency or industrial mobilization, or the interest of national defense in establishing or maintaining an essential engineering, research or development capability) by excluding a particular source from the contract action;

(B) The acquisition history of the supplies or services, including sources, prices, quantities, and dates of award;

(C) The circumstances which make it necessary to exclude a particular source from the contract action:

a. The reasons for lack of, or potential loss of, alternative sources; e.g., the technical complexity and criticality of the item;

b. The current annual requirement and prospective needs for the supplies or services;

c. Address projected future requirements as justification for the exclusion of a particular source from the contract action;

(D) Explain whether the existing source must be totally excluded from a contract action or whether a partical exclusion of the existing source from a contract action is sufficient;

(E) Describe the potential effect of exclusion on the excluded source in terms of any loss of capability to furnish the supplies or services in subsequent contract actions;

(F) When the authority of FAR 6.202(a)(1) is cited:

a. Provide basis for assumption of future competition;

b. Provide the basis for the determination that exclusion of a particular source will likely result in reduced overall costs either for the current acquisition, or for anticipated future acquisitions, including (as a minimum) discussion of start-up costs, facilitization costs, duplicative administration costs (additional inspection, testing, etc.), economic order quantities, and life cycle cost considerations;

(G) When the establishment of an additional source(s) is necessary to provide production capacity to meet current and mobilization requirements, the following:

a. The current annual and the mobilization requirements for the item, citing the source of, or the basis for, such planning data;

b. The comparison of current production capacity necessary to meet mobilization requirements; and

c. The hazards of relying on the present source and the time required for a new source(s) to acquire the necessary facilities and skills and achieve the production capacity necessary to meet mobilization requirements.

(ii) Set forth below is the sample format for D&Fs citing the authority of FAR 6.202(a)(1).

(Military Department or Agency)

Determination and Findings

Authority to Exclude a Source

Upon the basis of the following and determination which I hereby make as agency head pursuant to 10 U.S.C. 2304(b)(1), the proposed contract action described below may be awarded using full and open competition after exclusion of (1).

1. It is proposed that the following requirement be acquired using full and open competition after exclusion of the aforementioned source.

2. The aforementioned source is the source which can be expected to receive an award for the above requirement.

3. It is necessary to establish or maintain an alternative source or sources through the use of full and open competition after exclusion of the aforementioned source.

4. The exclusion of the aforementioned source will increase or maintain competition and is likely to result in reduction of (2) in overall costs for the acquisition, or for any anticipated acquisition, of such supplies or services. This estimate is based on (3).

Alternate: The exclusion of the aforementioned source will be in the interest of national defense to have a supplier available for furnishing the above supplies or services in case of a national emergency or industrial mobilization, because (4).

Alternate: The exclusion of the aforementioned source will be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center, because (5).

Determination

The exclusion of a source from the proposed contract action will increase or maintain competition and is likely to result in reduced overall costs for the acquisition or any anticipated acquisition of such supplies or services.

Alternate: It is in the interest of national defense to exclude a source from the proposed contract action in order to have a supplier available for furnishing the above

supplies or services in case of a national emergency or industrial mobilization.

Alternate: It is in the interest of national defense to exclude a source from the proposed contract action in order to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

Date _____

(1) Name of source to be excluded.

(2) Description of estimated reduction in overall costs.

(3) Description of how estimate was derived.

(4, 5) Description of circumstances necessitating the exclusion of source.

Subpart 206.3—Other Than Full and Open Competition

206.302 Circumstances permitting other than full and open competition.

206.302-1 Only one responsible source.

(c)(S-70) The authority of FAR 6.302-1(a) shall not be used in the case of acquisitions described in FAR 6.302-1(b)(6) unless the equipment or parts have been adopted as standard items of supply in accordance with DoD Standardization Program (see DoD 4120.3 and Departmental procedures). This authority shall not be used for initial acquisitions of equipment or spare parts, or to select arbitrarily the equipment or parts of certain suppliers. (If supplies might subsequently be standardized, see FAR 15.407(b).)

206.302-2 Unusual and compelling urgency.

(b) *Application.* The following are illustrative of circumstances with respect to which the authority of 10 U.S.C. 2304(c)(2) may be used and are not intended to be all inclusive:

(1) Supplies, services, or construction needed at once because of fire, flood, explosion, or other disaster;

(2) Essential equipment for, or repair to, a ship when such equipment or repair is needed at once for compliance with the orders of the ship;

(3) Essential equipment for, or repair to, aircraft grounded or about to be grounded, when such equipment or repair is needed at once for the performance of the operational mission of such aircraft;

(4) Construction needed at once to preserve a structure or its contents from damage;

(5) Essential equipment for, or repair to, missiles or missile support equipment, when such equipment or repair is needed at once to preclude impairment of launch capabilities or mission performance; or

(6) Purchase requests citing an issue priority designator under the Uniform Material Movement and Issue Priority System (UMMIPS) of 4 or higher, or citing "Electronic Warfare QRC Priority" may justify other than full and open competition, but in such cases the specific circumstances must be set forth in the justification required by FAR 6.303.

206.303 Justifications.

206.303-1 Requirements.

(b)(S-70) Any recommendation by technical and requirements personnel for other than full and open competition must have been reviewed and approved at an appropriate management level in accordance with agency procedures prior to submittal to the contracting officer.

PART 207—ACQUISITION PLANNING

207.102 [Removed]

18. Section 207.102 is removed.

207.103 [Amended]

19. Section 207.103 is amended by redesignating the existing paragraphs (a) through (g) and (c) through (i); by inserting in the first sentence of the redesignated paragraph (c)(1) between the word "The" and the word "acquisition" the word "formal"; by inserting in the introductory text of the redesignated paragraph (c)(2) before the word "acquisition" the word "Written"; by removing in the redesignated paragraphs (c)(3), (c)(4), and (c)(5) the references (a)(2)(i), (a)(2), and (a)(2) and inserting in their place the references (c)(2)(i), (c)(2), and (c)(2) respectively; by inserting in the redesignated paragraph (c)(4) between the word "of" and the word "acquisition" the word "written"; by inserting in the redesignated paragraph (c)(5) between the word "buyout" and the word "a" the word "or"; by removing in the redesignated paragraph (c)(5) the words "or small, repetitive buys (see FAR 7.102)"; and by inserting in the first sentence of the redesignated paragraph (d) before the word "acquisition" the word "Written".

207.104 [Removed]

20. Section 207.104 is removed.

21. Section 207.105 is amended by removing in the title of paragraph (b)(5) the words "contracting by negotiation" and inserting in their place the words "other than full and open competition"; by adding paragraph (b)(13)(iv); by removing in the first sentence of paragraph (b)(70)(vi) the word "Negotiation" and inserting in its place the words "Other than full and open competition"; by redesignating paragraph (b)(S-70)(viii) as (b)(S-70)(xi); by adding new paragraph (b)(S-70)(viii); and by removing in paragraph (b)(S-70)(x) the reference "FAR 7.105(b)(19)" and inserting in its place the reference "FAR 7.105(b)(18)"; to read as follows:

207.105 Contents of written acquisition plans.

* * * * *

(b)(13) * * *

(iv) See DoDD 4120.3 for procedures relative to standardization.

(b)(S-70) * * *

(viii) *Incentives.* When appropriate, discuss plans for providing for incentives to contractors to improve productivity through investment in capital facilities, equipment, and advanced technology.

* * * * *

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

208.070 [Amended]

22. Section 208.070 is amended by removing in paragraph (f)(2) the first word "Purchases" and inserting in its place the word "Acquisitions"; by removing in paragraph (f)(2) the remainder of the sentence beginning with the word "or" and inserting in its place the words "under FAR 6.202(a)(2), or in case of a national emergency or to achieve industrial mobilization under FAR 6.302-3;" by inserting in paragraph (f)(3) a comma following the word "Devices," removing between the word "Devices" and the word "High" the word "and", inserting between the word "Silicon" and the parenthesis the words "and High Carbon Ferrochrome (HCF)", adding a comma following the reference "208.74", removing between the reference "208.74" and the reference "208.75" the word "and", inserting between the reference "208.75" and the word "of" the words "and 208.76"; by removing in paragraph (f)(4) the reference "215.217" and inserting in its place the references "206.202(a)(2) and 206.302-3"; by removing in the last sentence of the introductory text of paragraph (g) the word "procurement" and inserting in its place the word "contract"; by removing in paragraph (g)(1) the word "procurements" and inserting in its place the word "acquisitions", and inserting at the end of the paragraph between the word "surplus" and the parenthesis the words "area concerns"; by removing in paragraph (g)(2) the first two words "Use negotiation", capitalizing the word "Procedures", removing the reference "FAR 15.217" and inserting in its place

the references "FAR 6.202(a)(2) or 206.302-3"; by removing in the first sentence of paragraph (g)(3) between the word "component," and the word "individual" the words "award of"; and by removing in the first sentence of paragraph (g)(4) the word "procured" and inserting in its place the word "acquired".

208.402 [Removed]

23. Section 208.402 is removed.

208.404-3 [Amended]

24. Section 208.404-3 is amended by removing in the first sentence of paragraph (b) the word "procured" and in the penultimate sentence the word "purchased" and inserting in their place the word "acquired".

208.7006-1 [Amended]

25. Section 208.7006-1 is amended by removing in paragraph (b) the word "procurement" and inserting in its place the word "acquisition".

208.7006-2 [Amended]

26. Section 208.7006-2 is amended by removing in paragraph (a) the word "procurement" and inserting in its place the word "contract"; by removing in paragraph (b) the word "procurement" and inserting in its place the word "acquisition"; by removing in the first sentence of paragraph (f) the words "preparing a procurement plan, and making a Determinations and Findings." and inserting in their place the words "and preparing an acquisition plan."

27. Section 208.7006-3 is amended by inserting in the title before the word "Determinations" the words "Justifications and approvals and"; by removing paragraphs (a)(1) and (a)(2); and by revising paragraph (a) to read as follows:

208.7006-3 Justifications and approvals and determinations and findings.

(a) Coordinated procurement shall not be used by Departments to avoid FAR Part 6 requirements concerning full and open competition (see FAR 6.002). When a Requiring Department requests that a Procuring Department obtain supplies or services by contract using other than full and open competition, the Requiring Department shall prepare the justification required by FAR 6.303 and obtain the approval specified in FAR 6.304. The Requiring Department shall also make the Determinations and Findings specified in FAR 6.302-7(c)(1) and FAR 6.202(b)(1), where applicable. The Requiring Department shall preserve the original justification and approval and determination and findings with supporting data as required by 215.3. Two copies shall be attached to the MIPR or purchase request in the Procuring Department's contract file.

* * * * *

208.7006-4 [Amended]

28. Section 208.7006-4 is amended by removing in the third sentence the word "procurement" and inserting in its place the word "acquisition".

208.7006-5 [Amended]

29. Section 208.7006-5 is amended by removing in the first sentence the word "procurement" and inserting in its place the word "acquisition".

208.7006-6 [Amended]

30. Section 208.7006-6 is amended by removing the word "procurement" and inserting in its place the word "acquisition".

31. Section 208.7100-2 is amended by revising paragraphs (a)(3) and (a)(4); by removing in the introductory text of paragraph (a)(5) and in the last sentence of paragraph (a)(5)(i) the word "procured" and inserting in its place the word "acquired"; by removing in both sentences of paragraph (a)(5)(ii) the word "procures" and inserting in its place the word "acquires"; by removing in paragraphs (a)(5)(iii) and (a)(6) the word "procured" and inserting in its place the word "acquired"; by removing in the second and third sentences of paragraph (a)(6)(i) the words "the procurement" and inserting in their place the words "the acquisition"; by removing in the fourth and fifth sentences of paragraph (a)(6)(i) the words "a procurement" and inserting in their place the words "an acquisition"; by removing in the last sentence of paragraph (a)(6)(i) the words "formal advertising" and inserting in their place the words "sealed bid"; by removing in paragraph (a)(7) the word "procured" and inserting in its place the word "acquired"; and by removing in paragraphs (a)(8), (a)(8)(i), (a)(8)(iii), (a)(8)(iii)(C) and (a)(9) the words "procurements" and "procurement" wherever they appear and insert in their place the words "acquisitions" and "acquisition" respectively; as follows:

208.7100-2 Exclusions—DLA and GSA Assignments.

(a) * * *

(3) Items to be acquired under the authority of 10 U.S.C. 2304(c)(6) and FAR 6.302-6, acquisitions when disclosure of the agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals;

(4) Items to be acquired under the authority of 10 U.S.C. 2304(c)(1) and FAR 6.302-1 (a)(1) and (b)(2), follow-on contracts for the continued development or production of a major system or highly specialized equipment including major components thereof;

* * * * *

PART 210—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

210.004 [Amended]

32. Section 210.004 is amended by removing the last sentence in paragraph (b)(3)(i)(A); by removing in paragraph (b)(3)(i)(C) the words "invitation for bids or requests for proposals" and inserting in their place the word "solicitation"; by removing in the title of paragraph (b)(3)(iv) the word "procurements" and inserting in its place the word "acquisitions"; by removing in paragraph (b)(3)(iv)(A) the words "formally advertised procurements" and inserting in their place the words "acquisitions by sealed bidding"; by removing in paragraph (b)(3)(iv)(A) the last word "procurements" and inserting in its place the word "acquisitions"; by removing in the first sentence of paragraph (b)(3)(iv)(B) the last word "procurements" and inserting in its place the word "acquisitions"; and by removing in the second sentence of paragraph (b)(3)(iv)(B) the words "exigency purchases" and inserting in their place the words "an unusual and compelling urgency".

PART 213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

213.203-2 [Amended]

33. Section 213.203-2 is amended by removing paragraph (c) in its entirety.

213.204 [Amended]

34. Section 213.204 is amended by placing a period in the first sentence in paragraph (b) after the word "Points"; by removing the word "and" between the word "Points" and the word "calls" and inserting in its place the word "BPA" to begin a new sentence; by removing the period in the redesignated second sentence after the word "value" and inserting in its place a "semi-colon"; and by removing the existing last sentence and inserting, in its place the words "however, such actions over $25,000 must satisfy the requirements of Part 206."

213.505-2• [Amended]

35. Section 213.505–2 is amended by removing and reserving paragraph (S–73)(1)(xxvi).

PART 214—SEALED BIDDING

36. Part 214 is amended by removing in the title the words "FORMAL ADVERTISING" and inserting in their place the words "SEALED BIDDING".

37. Sections 214.404 and 214.404–1 are added to read as follows:

214.404 Rejection of bids.

214.404–1 Cancellation of invitation after opening.

(c) Unless otherwise specified in agency procedures, the contracting officer shall make the written determination.

(e) Unless otherwise specified in agency procedures, the contracting officer shall make the written determination.

214.406–3 [Amended]

38. Section 214.406–3 is amended by removing in the first sentence of paragraph (e)(2) the words "procuring activity" and inserting in their place the words "contracting activity or officer".

Subpart 214.5—[Amended]

39. Subpart 214.5 is amended by removing in the title the words "FORMAL ADVERTISING" and inserting in their place the words "SEALED BIDDING".

214.503–1 [Amended]

40. Section 214.503–1 is amended by removing in paragraph (a)(i) the words "formal advertising" and inserting in their place the words "sealed bidding".

PART 215—CONTRACTING BY NEGOTIATION

41. Section 215.103 is added to read as follows:

215.103 Converting from sealed bidding to negotiation procedures.

Unless otherwise specified in agency procedures, the contracting officer shall make the written determination.

215.170, 215.171, 215.172 [Removed]

42. Sections 215.170, 215.171, and 215.172 are removed.

215.173 and 215.174 [Redesignated]

43. Sections 215.173 and 215.174 are redesignated as sections 215.170 and 215.171 respectively.

Subparts 215.2 and 215.3—[Removed]

44. Subparts 215.2 and 215.3 are removed.

215.402 [Amended]

45. Section 215.402 is amended by removing in the first sentence of paragraph (f) the reference "215.202(b)" and inserting in its place the reference "206.302–1".

46. Section 215.507 is amended by revising the introductory text in paragraph (b)(S–70) to read as follows:

215.507 Contracting methods.

(b)(S–70) When the requirements of FAR Part 6 and FAR Subpart 15.5 have been met, contracts for studies, analyses, or consulting services (see FAR 37.2) may be entered into on the basis of an unsolicited proposal. However, when so limited by an applicable DoD Appropriation Act, such contracts may be entered into only when the head of the contracting activity or his designee (no lower than the chief of the contracting office) determines that:

* * * * *

47. Section 215.608 is added to read as follows:

215.608 Proposed evaluation.

(b) Unless otherwise specified in agency procedures, the contracting officer shall make the written determination.

215.613 [Amended]

48. Section 215.613 is amended by removing in paragraph (c)(1) the word "negotiated" and the reference "15.202" and inserting in their place the word "acquired" and the reference "6.302–2" respectively.

215.804–2 [Amended]

49. Section 215.804–2 is amended by removing in the first sentence of paragraph (a)(2) the figure "$500,000" and inserting in its place the figure "$100,000"; and by removing in the last sentence of paragraph (a)(2) between the word "which" the word "considers" the word "he" and inserting in its place the words "the contracting officer."

50. Section 215.804–3 is amended by adding paragraph (e)(3)(i) to read as follows:

215.804–2 Exemption from or waiver of submission of certified cost or pricing data.

* * * * *

(e)(3) * * *

(i) Set forth below is a format for the D&Fs to be made by the agency head with respect to waiving the requirement for submission of cost or pricing data and certification thereof, as required by 10 U.S.C. 2306(f), and for waiving the inclusion of the clauses required by FAR 52.214–27 and 252.215–25. The format may be used also for the D&Fs for such waiver made by the Head of the Procuring Activity for contracts with foreign governments or agencies thereof.

(Military Department or Agency)

Determination and Findings

Authority to Waive Submission of Cost or Pricing Data and Certificate

Upon the basis of the following findings and determination which I hereby make as agency head, the requirement for submission of cost and pricing data and certificate described below may be waived pursuant to the authority of 10 U.S.C. 2306(f), as implemented by FAR 15.804–3(i).

Findings

1. The (2) proposes to enter into a contract with (3) for the acquisition of (4).

2. Pursuant to FAR 15.804–2, the proposed contractor is required to submit certified cost or pricing data. However, waiver of submission of the certified cost or pricing data described below is justified for the reasons indicated: (5).

Determinaton

1. The requirement for submission of cost or pricing data for the proposed contract action may be waived.

Date _____

Notes.

(1) In the case of a contract with a foreign government or agency thereof, delete the words "agency head" and substitute therefor "head of a procuring activity."

(2) Procuring or contracting activity.

(3) Name of supplier.

(4) Brief description of supplies or services.

(5) Describe the cost or pricing data requirements to be waived. (The waiver may be partial, i.e., limited to particular cost or pricing data.) Set forth the circumstances and conditions which make the proposed contract action an exceptional case and state the reasons which justify the proposed waiver.

Subpart 215.10—[Amended]

51. Subpart 215.10 is amended by inserting in the title after the word "PREAWARD" a comma and the word "AWARD,".

215.1001 [Amended]

52. Section 215.1001 is amended by adding in the title an "s" to the first word "Notification" and by adding between the word "to" and the word "Offerors" the word "Unsuccessful"; and by removing in paragraph (b)(2) the word "Procurements" and inserting in its place the word "Acquistions".

215.1002 [Redesignated]

53. Section 215.1002 is redesignated as section 215.1003.

PART 216—TYPES OF CONTRACTS

54. Section 216.102 is added to read as follows:

216.102 Policies.

(d) Set forth below is a format for the D&Fs to be made by the contracting officer with respect to the use of a cost, cost-plus-fixed-fee, or incentive type contract, as required by 10 U.S.C. 2306(c) (see FAR 16.301-3(c) and FAR 16.403(c)). The format may be modified as appropriate.

(Military Department or Agency)

Determination and Findings

Authority To Use a (1) Contract

Upon the basis of the following findings and determination which I hereby make pursuant to the authority of 10 U.S.C. 2306(c), the proposed contract described below may be entered into on a (1) basis.

Findings

1. The (2) proposes to enter into a (1) contract for the acquisition of (3) at an estimated cost of $ (4).

2. The work to be performed is (5).

Determination

1. It is impracticable to secure services of the kind or quality required without the use of the proposed type of contract. (6)

(Alt: The use of the proposed type of contract is likely to be less costly than other methods.) (6)

(Alt: It is impracticable to secure services of the kind or quality required without the use of the proposed type of contract and the use of such type of contract is likely to be less costly than any other method. (6)

2. The estimated cost of the proposed contract is $ (4). (7)

Date _____

Notes

(1) Enter type of contract to be used, i.e., fixed-type incentive, cost-plus-incentive-fee, cost, or cost-plus-fixed-fee.

(2) Contracting activity.

(3) Brief description of supplies or services.

(4) Enter amount to nearest thousand.

(5) Describe the nature of the work to be performed and set forth the facts (for type of contract proposed, see FAR Part 16) that show why it is impracticable to secure supplies or services of the kind or quality required without the use of such type of contract, or that such method of contracting is likely to be less costly than other methods. The supporting facts should be confined to those pertinent to the specific determination being made. However, where the facts adequately support alternative determinations, they should be set forth conjunctively when conjunctive determinations are to be used.

(6) Use the determination responsive to the findings. See Note (5) above.

(7) Determination to be made when a cost-plus-fixed-fee contract is proposed.

* * * * *

PART 217—SPECIAL CONTRACTING METHODS

217.7004-1 [Amended]

55. Section 217.7004-1 is amended by removing in the third sentence of paragraph (a) the words "formal advertising" and inserting in their place the words "either sealed bidding or negotiation"; by inserting in the same sentence between the word "used" and the word "except" the words "as appropriate (see FAR Part 6)"; by removing in the same sentence after the word "that" the dash; by removing paragraph (a)(1); by removing the designation "(2)" of the existing paragraph (a)(2); by removing in the first word of the existing paragraph (a)(2) the capital "W" and inserting in its place lower case "w"; and by inserting in the third sentence of paragraph (a) after the word "that" the text of the paragraph (a)(2).

217.7005 [Amended]

56. Section 217.7005 is amended by removing in the fourth sentence the word "procured" and inserting in its place the word "acquired".

217.7103-5 [Amended]

57. Section 217.7103-5 is amended by removing in the third sentence the words "formally advertised" and inserting in their place the words "has been made under sealed bid procedures".

217.7103-7 [Amended]

58. Section 217.7103-7 is amended by removing in the first sentence the words "formally advertised basis, to determine" and inserting in their place the words "sealed bid basis, to determine".

217.7201 [Amended]

59. Section 217.7201-1 is amended by removing in the introductory text the colon; by removing paragraph (a); by removing in the existing paragraph (b) the designation "(b)" and inserting the text of the existing paragraph (b) after the word "policy" in the existing introductory text and changing "To" to read "to"; by removing in the penultimate sentence the word "increasing" and inserting in its place the words "permitting full and open"; by removing in the last sentence the words "two policies" and inserting in their place the word "policy"; by adding in the same sentence an "s" to the word "produce"; and by removing in the same sentence the word "procurement" and inserting in its place the word "acquisition".

217.7201-2 [Amended]

60. Section 217.7201-2 is amended by removing in the title the word "procurement" and inserting in its place the word "acquisition"; by adding in paragraph (a) between the word "independent" and the comma the word "development"; by removing in paragraph (a) the word "seek" and inserting in its place the words "provide for"; by removing in paragraph (b) the word "procurement" and inserting in its place the word "acquisition"; by removing in paragraph (b) the words "with reference in the order of this listing" and inserting in their place the words "in order of preference"; by removing in the first sentence of paragraph (b)(1) the words "practical, procurement shall be competitive" and inserting in their place the words "items of identical design are not required, the contracting officer shall provide for full and open competition"; by inserting in the same sentence between the word "other" and the word "specifications" the word "similar"; by removing the second and third sentences of paragraph (b)(1); by removing in the fifth sentence of paragraph (b)(1) the words "formal advertising" and inserting in their place the words "sealed bidding"; by removing in the last sentence of paragraph (b)(1) the word "participating" and the word "procuring" and inserting in their place the word "participation" and the word "contracting" respectively; by removing in paragraph (b)(2) the words "it is determined that competitive procurement is not practicable" and inserting in their place the words "other than full and open competition is authorized under Part 206"; by removing from paragraph (b)(2) the words "on a competitive basis"; by removing in the last sentence of paragraph (b)(3) the word "procurement"and inserting in its place the word "acquisition"; and by removing in the first sentence of paragraph (b)(4) the word "procurement" and inserting in its place the word "acquisition."

217.7201-3 [Amended]

61. Section 217.7201-3 is amended by removing in the title the word "purchase" and inserting in its place the word "acquisition"; by removing in the first sentence the word "he" and the word "procurement" and inserting in their place the word "it" and the word "acquisition" respectively; and by removing in the last sentence the word "his" and the word "he" and inserting in their place the word "the" and the words "the bidder/offeror" respectively.

217.7202-1 [Amended]

62. Section 217.7202-1 is amended by removing in the first sentence of paragraph (a) the word "of" and the word "purchased" and inserting in their place the word "for" and the word "acquired" respectively.

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

219.502-4 [Removed]

63. Section 219.502-4 is removed.

219.502-70 [Amended]

64. Section 219.502-70 is amended by removing in the first sentence of paragraph (c) the words " 'Small Business Restricted Advertising,' the preferred method, (FAR 15.201) or by conventional negotiation" and inserting in their place the words "sealed bidding or negotiation (see FAR 6.102, FAR Parts 14 and 15)".

219.809 and 219.809-1 [Removed]

65. Sections 219.809 and 219.809-1 are removed.

PART 220—LABOR SURPLUS AREA CONCERNS

220.7003 [Amended]

66. Section 220.7003 is amended by removing in the sixth sentence of paragraph (b)(3)(i) the word "procurement" and inserting in its place the word "acquisition"; by removing in the eighth sentence of paragraph (b)(3)(i) the words "procuring by advertising" and inserting in their place the words "acquired by sealed bidding"; by placing a period in the eighth sentence of paragraph (b)(3)(i) after the word "regulations" and removing the remainder of the sentence; by placing a period in the last sentence of paragraph (b)(3)(iii) after the word "contractor"; by removing in the existing last sentence of paragraph (b)(3)(iii) the words "since his" and inserting in their place the words "The contractor's"; by removing in paragraph (c) the words "procurement by advertising" and inserting in their place the words "acquisition by sealed bidding"; and by removing paragraph (d).

PART 225—FOREIGN ACQUISITION

225.302 [Amended]

67. Section 225.302 is amended by removing in paragraph (a)(S-72)(1)(vii)(C) the word "his" and inserting in its place the word "its" and by removing in the same paragraph the reference "FAR 15.213" and inserting in its place the reference "DoD Standardization policy (see DoD 4120.3)".

225.7104 [Amended]

68. Section 225.7104 is amended by removing in paragraph (a)(2)(iii) the words "formally advertised" and the words "formal competitive" and inserting in both places the word "sealed"; by reversing in paragraph (b)(2) the words "purchases negotiated" to read "negotiated purchases"; by removing in paragraph (b)(2) the words "under FAR 15.205 or FAR 15.211"; by removing inparagraph (b)(2) the words "negotiated under FAR 15.202 for public exigency; purchases negotiated under FAR 15.203 for" and inserting in their place the words "of unusual or compelling urgency".

225.7202 [Amended]

69. Section 225.7202 is amended by removing in paragraph (a) the second and third sentences; by removing in the last sentence of paragraph (a) the word "negotiate" and inserting in its place the words "contract without full and open competition"; and by removing in the last sentence of paragraph (a) the reference "10 U.S.C. 2304(a)(17)" and inserting in its place the reference "10 U.S.C. 2304(c)(5)".

225.7204 [Amended]

70. Section 225.7204 is amended by removing the words "Formal Advertising" and inserting in their place the words "Sealed Bidding".

225.7307 [Amended]

71. Section 225.7307 is amended by removing in the third sentence of paragraph (a) the reference "15.210" and inserting in its place the reference "6.302-4"; by removing in the third sentence of paragraph (a) the words "negotiate on a sole source basis" and inserting in their place the words "contract without full and open competition"; by removing in the fourth sentence of paragraph (a) the words "sole source"; by inserting in the last sentence of paragraph (a) between the word "honor" and the word "requests" the word "such"; by removing in the last sentence of paragraph (a) the words "for sole source prime and subcontracts"; and by inserting in the same sentence between the word "customer" and the word "as" the word "only".

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

235.001 [Amended]

72. Section 235.001 is amended by inserting in the definition "Unsolicited proposal" between the word "a" and the word "research" the word "written"; by removing in the same paragraph between the word "research" and the word "development" the word "or" and inserting in its place the word "and"; and by removing the remainder of the paragraph following the word "proposal" and inserting in its place the words "submitted to an agency on the initiative of the submitter for the purpose of obtaining a contract with the Government and which is not in response to a formal or informal request (other than an agency request constituting a publicized general statement of needs)".

235.006 [Amended]

73. Section 235.006 is amended by removing in the last sentence of paragraph (a) the words "formal advertising" and inserting in their place the words "sealed bidding".

235.007 [Amended]

74. Section 235.007 is amended by removing in the second sentence of the introductory text in paragraph (b) the word "he" and inserting in its place the words "the source"; by removing in the same sentence the words "his request denied" and inserting in their place the words "provided a copy of the solicitation in accordance with FAR 5.102 if still requested"; by inserting in the third sentence of the introductory text in paragraph (b) between the word "furnished" and the word "but" the words "in accordance with FAR 5.102"; by inserting at the end of the last sentence in the introductory text in paragraph (b) between the word "source" and the colon, the words "in accordance with Part 206"; by inserting at the end of paragraph (b)(1) the parenthetical reference "(See 206.302-1(b)(1).)"; by inserting at the end of paragraph (b)(2) the parenthetical reference "(See 206.302-1(b)(3).)"; by inserting at the end of paragraph (b)(3) the parenthetical reference "(See 206.302-1(b)(7) or 206.302-3(b)(2).)"; and by removing in paragraph (i) the references "215.2 and 215.5" and inserting in their place references "FAR Part 6 and Subpart 215.5".

235.008 [Amended]

75. Section 235.008 is amended by removing in three places in paragraph (e)(S-70)(iii) the word "his" and inserting in all three places the words "the offeror's".

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

236.103 [Amended]

76. Section 236.103 is amended by removing in paragraph (a) the word

"procured" and inserting in its place the word "acquired"; and by removing in two places in paragraph (a) the words "formal advertising" and inserting in both places the words "sealed bidding".

236.203 [Amended]

77. Section 236.203 is amended by removing in the third sentence of paragraph (c) the word "procurement" and inserting in its place the word "acquisition"; and by removing in two places in the third sentence of paragraph (c) the words "formal advertising" and inserting in their place the words "sealed bidding".

Subpart 236.3—[Amended]

78. Subpart 236.3 is amended by removing in the title the words "FORMAL ADVERTISING" and inserting in their place the words "SEALED BIDDING".

236.303 [Amended]

79. Section 236.303 is amended by removing in the first and second sentences of paragraph (S–70) the word "invitation" and inserting in its place the word "solicitation"; and by removing in the last sentence of paragraph (S–70) the word "him" and inserting in its place the words "the low bidder".

236.401 [Removed]

80. Section 236.401 is removed.

PART 237—SERVICE CONTRACTING

237.104 [Amended]

81. Section 237.104 is amended by removing in paragraph (b)(S–70)(b)(2) the word "normally" and inserting in its place the words "on a sole source basis"; by removing in paragraph (b)(S–70)(b)(2) the reference "10 U.S.C. 2304(a)(4)" and the reference "FAR 15.204" and inserting in their place the reference "10 U.S.C. 2304(c)(1)" and "FAR 6.302–1" respectively.

237.205–71 [Amended]

82. Section 237.205–71 is amended by removing in paragraph (a)(6)(iv) the words "or non-competitively" and inserting after the word "awarded" the words "or not".

237.7100 [Amended]

83. Section 237.7100 is amended by removing in the last sentence the word "procuring" and inserting in its place the word "acquiring".

237.7101 [Amended]

84. Section 237.7101 is amended by removing in paragraph (a) the last sentence and inserting in its place the sentence "Such acquisitions shall be made using the sealed bid method when the criteria of FAR 6.103(a) are met."; and by removing in paragraph (c) the words "Bids or offers" and inserting in their place the word "Offer".

237.7103 [Amended]

85. Section 237.7103 is amended by removing in paragraph (a) the words "formally advertised" and inserting in their place the words "sealed bid".

237.7301 [Amended]

86. Section 237.7301 is amended by redesignating the introductory text as paragraph (a); by redesignating the existing paragraphs (a) and (b) as paragraphs (1) and (2) respectively; by redesignating paragraph (a) of the existing section 237.7302 as paragraph (b) of section 237.7301.

237.7302 [Amended]

87. Paragraph (b) of section 237.7302 is removed and the section is marked "Reserved."

237.7304 [Amended]

88. Section 237.7304 is amended by removing in paragraph (a) paragraph 6 of the Educational Service Agreement and redesignating the existing paragraphs 7, 8, and 9 as paragraphs 6, 7, and 8 respectively.

237.7405–1 [Amended]

89. Section 237.7405–1 is amended by removing in paragraph (a) the words "Generally, communication" and inserting in their place the word "Communication"; by removing in paragraph (a) the word "procured" and inserting in its place the word "acquired"; by removing in the second sentence of paragraph (b) the word "procurement" and inserting in its place the word "acquisition"; and by removing in the last sentence of paragraph (b) the words "on a competitive basis to the maximum extent practicable" and inserting in their place the words "using full and open competition unless otherwise authorized by FAR Subpart 6.3".

237.7503 [Amended]

90. Section 237.7503 is amended by removing in paragraph (b) the words "are negotiated acquisitions and"; by removing in paragraph (b) the reference "10 U.S.C. 2304(a)(17)" and inserting in its place the reference "10 U.S.C. 2304(a)(1)"; and by inserting between the word "authority" and the period the words "for award".

PART 245—GOVERNMENT PROPERTY

245.610–1 [Amended]

91. Section 245.610–1 is amended by removing in paragraph (a)(2)(iii) the word "his"; by removing in paragraph (a)(3)(i) the word "procuring" and inserting in its place the word "contracting"; by removing in paragraph (a)(3)(i) the words "FAR 15.304 and"; and by inserting after the reference "245.613(d)" the words "and FAR Subpart 1.7".

PART 247—TRANSPORTATION

247.270–3 [Removed]

92. Section 247.270–3 is removed and reserved.

247.270–6 [Amended]

93. Section 247.270–6 is amended by removing in paragraph (a) the word "Contractors" and inserting in its place the word "Offerors"; by removing in paragraph (a) the word "man-hour" and inserting in its place the word "labor-hour"; and by removing in paragraph (b)(1)(i) the word "men" and inserting in its place the word "workers".

247.270–7 [Amended]

94. Section 247.270–7 is amended by removing wherever it appears the word "man-hour" and inserting in its place the word "labor-hour"; and by removing in the third sentence the word "man" and inserting in its place the word "worker".

247.270–8 [Amended]

95. Section 247.270–8 is amended by removing the word "man-hour" and inserting in its place the word "labor-hour".

247.270–9 [Amended]

96. Section 247.270–9 is amended by removing in paragraph (b) the words "formally advertised" and inserting in their place the words "sealed bid".

247.271–2 [Amended]

97. Section 247.271–2 is amended by removing in the first sentence of paragraph (a) the words "formal advertising" and inserting in their place the words "sealed bidding".

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS

98. Section 250.105 is amended by removing in paragraph (S–70)(2)(vii) the reference "(6)" and inserting in its place the reference "(vi)"; by revising the title and text of paragraph (S–70)(2)(xi); and by removing in the second sentence of paragraph (S–70)(2)(xiv) the word "some" and inserting in its place the word "a"; to read as follows:

250.105 [Amended]

(S–70) * * *

(2) * * *

(xi) *Award procedure.* The procedure under which the contract was awarded, e.g., formal advertising, negotiation, or

sealed bidding, should be indicated. The specific authority, if applicable, should be indicated; for example: "Neg. 10 U.S.C. 2304(a)(14)."

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.215-7000 [Amended]

99. Section 252.215-7000 is amended by removing in the title of the clause the date "1984" and inserting in its place "1985"; and by removing in the text of the clause the figure "$500,000" and inserting in its place the figure "$100,000".

252.217-7103 [Amended]

100. Section 252.217-7103 is amended by removing in the title of the clause the date "1982" and inserting in its place "1985"; and by removing in the first sentence of paragraph (c) of the clause the words "formally advertised" and inserting in their place the words "sealed bidding".

252.219-7001 [Amended]

101. Section 252.219-7001 is amended by removing in the title of the clause the date "JUN 1978" and inserting in its place "APR 1985"; and by removing in the first sentence of paragraph (a)(1) of the clause the word "procurement" in two places and inserting in both places the word "acquisition"; by removing in the second sentence of paragraph (a)(1) of the clause the words "the Government procurement" and inserting in their place the words "Government acquisition"; by removing in paragraph (a)(2) of the clause the word "procurement" and inserting in its place the word "acquisition"; by removing in the last sentence of paragraph (b)(1) of the clause the word "his" and inserting in its place the word "its"; by removing in paragraph (c)(1)(i) of the clause the word "procurement" and inserting in its place the word "acquisition"; by removing in the last sentence of paragraph (c)(3)(iii)(A) of the clause the words "procured by advertising" and inserting in their place the words "acquired by sealed bidding"; by removing in Step Six of paragraph (c)(3)(iii)(B) of the clause the words "procured by advertising" and inserting in their place the words "acquired by sealed bidding"; by removing in paragraph (d) of the clause the word "procurement" and inserting in its place the word "acquisition"; and by removing in the first sentence of paragraph (e) of the clause the word "procurement" and inserting in its place the word "acquisition".

252.219-7002 [Amended]

102. Section 252.219-7002 is amended by removing in the title of the clause the date "JUN 1978" and inserting in its place "APR 1985"; and by removing in the first sentence of paragraph (a)(1) of the clause the word "procurement" in two places and inserting in its place the word "acquisition"; by removing in the second sentence of paragraph (a)(1) of the clause the words "the Government procurement" and inserting in their place the words "Government acquisition"; by removing in paragraph (a)(2) of the clause the word "procurement" and inserting in its place the word "acquisition"; by removing in the last sentence of paragraph (b)(1) of the clause the word "his" and inserting in its place the word "its"; by removing in paragraph (c)(1)(i) of the clause the word "procurement" and inserting in its place the word "acquisition"; by removing in the last sentence of paragraph (c)(3)(iii)(A) of the clause the words "procured by advertising" and inserting in their place the words "acquired by sealed bidding"; by removing in paragraph (d) of the clause the word "procurement" and inserting in its place the word "acquisition"; and by removing in the first sentence of paragraph (e) of the clause the word "procurement" and inserting in its place the word "acquisition".

252.219-7003 [Amended]

103. Section 252.219-7003 is amended by removing in the title of the clause the date "1984" and inserting in its place "1985"; by removing in the last sentence of paragraph (c)(1) of the clause the words "procured by advertising" and inserting in their place the words "acquired by sealed bidding"; and by removing in the last sentence of Step Six of paragraph (c)(2) of the clause the words "procured by advertising" and inserting in their place the words "acquired by sealed bidding".

252.219-7004 [Amended]

104. Section 252.219-7004 is amended by removing in the title of the clause the date "JUNE 1978" and inserting in its place the date "APR 1985"; and by removing in the first sentence of the clause the word "procurement" and inserting in its place the word "acquisition".

252.220-7000 [Amended]

105. Section 252.220-7000 is amended by removing in the title of the clause the "JUN 1978" and inserting in its place "APR 1985"; by removing in the first sentence of paragraph (a) of the clause the word "procurement" and inserting in its place the word "acquisition"; by removing in paragraph (b)(1)(i) of the clause the word "procurement" and inserting in its place the word "acquisition"; by adding in paragraph (b)(3)(iii)(A) of the clause between the word "non-set-aside" and the word "portion" the words "portion. Concerns may offer less than the total non-set-aside"; by removing in Step Five of paragraph (b)(3)(iii)(B) of the clause between the word "portion" and the word "quantity" the word "of" and inserting in its place the word "on"; by removing in Step Six of paragraph (b)(3)(iii)(B) of the clause the words "procured by advertising" and inserting in their place the words "acquired by, sealed bidding"; by adding in the first sentence of paragraph (c)(2) of the clause an "s" to the word "area"; by removing in the last sentence of paragraph (c)(3) of the clause the word "his" and inserting in its place the word "its"; by removing in paragraph (d) of the clause the word "procurement" and inserting in its place the word "acquisition"; by removing in the first sentence of paragraph (e) of the clause the word "procurement" and inserting in its place the word "acquisition"; and by inserting in paragraph (e) of the clause between the word "Department" and the word "Labor" the word "of".

252.220-7001 [Amended]

106. Section 252.220-7001 is amended by removing in the title of the clause the "1984" and inserting in its placed the date "1985"; by removing in paragraph (a) of the clause the word "procurement" and inserting in its place the word "acquisition"; by removing in paragraph (b)(1)(i) of the clause the word "procurement" and inserting in its place the word "acquisition"; by adding in the title of paragraph (b)(3) of the clause between the word "Set-Aside" and the word "Price" the word "Award"; by adding in the penultimate sentence of paragraph (b)(3) of the clause between the word "and" and the word "price" the word "the"; by removing in Step One of paragraph (b)(3)(iii)(B) of the clause the word "excluded" and inserting in its place the word "excluding"; by removing in Step Five of paragraph (b)(3)(iii)(B) of the clause the word "of" and inserting in its place the word "on"; by removing in Step Six of paragraph (b)(3)(iii)(B) of the clause the words "procured by advertising" and inserting in their place the words "acquired by sealed bidding"; by removing in the last sentence of paragraph (c)(3) of the clause the word "his" and inserting in its place the word "its"; by removing in paragraph (d) of the clause the word "procurement" and

inserting in its place the word "acquisition"; and by removing in the first sentence of paragraph (e) of the clause the word "procurement" and inserting in its place the word "acquisition".

107. Section 252.225-7001 is amended by removing in the title of the clause the date "OCT 1980" and inserting in its place the date "APR 1985"; and by adding new paragraphs (d) and (e) before "End of clause", to read as follows:

252.225-7001 Buy American Act and the Balance of Payments Program.

* * * * *

(d) Generally, when the Buy American Act is applicable, each nonqualifying country offer of defense equipment shall be adjusted for the purpose of evaluation by: (i) Adding 50% of the offer, exclusive of duty; (ii) adding 6% of the offer, inclusive of duty, if a domestic offer is from a large business that is not a labor surplus area concern; or (iii) adding 12% of the offer, inclusive of duty, if the domestic offer is from a small business concern or any labor surplus area concern. Evaluation will be inclusive or exclusive of duty whichever results in the greater evaluated price. See DoD FAR Supplement 225.1 for procedures and exceptions.

(e) Generally, when the Balance of Payments Program applies, each nonqualifying country offer of defense equipment shall be adjusted for the purpose of evaluation by increasing the offer by 50%. See DoD FAR Supplement 225.3 for procedures and exceptions.

* * * * *

108. Section 252.225-7006 is amended by removing in the title of the clause the date "1984" and inserting in its place "1985"; and by adding new paragraphs (d) and (e) before "End of clause", to read as follows:

252.225-7006 Buy American Act, Trade Agreements Act, and the Balance of Payments Program.

* * * * *

(d) Generally, when the Buy American Act is applicable, each nonqualifying country offer of defense equipment shall be adjusted for the purpose of evaluation by: (i) Adding 50% of the offer, exclusive of duty; (ii) adding 6% of the offer, inclusive of duty, if a domestic offer is from a large business that is not a labor surplus area concern; or (iii) adding 12% of the offer, inclusive of duty, if the domestic offer is from a small business concern or any labor surplus area concern. Evaluation will be inclusive or exclusive of duty whichever results in the greater evaluated price. See DoD FAR Supplement 225.1 for procedures and exceptions.

(e) Generally, when the Balance of Payments Program applies, each nonqualifying country offer of defense equipment shall be adjusted for the purpose of evaluation by increasing the offer by 50%. See DoD FAR Supplment 225.3 for procedures and exceptions.

* * * * *

252.243-7000 [Amended]

109 Section 252.243-7000 is amended by removing in the title of the clause the date "1984" and inserting in its place the date "1985"; and by removing in the penultimate sentence of paragraph (b) of the clause the figure "$500,000" and inserting in its place the figure "$100,000".

PART 270—ACQUISITION OF COMPUTER RESOURCES

270.000 [Amended]

110. Section 270.000 is amended by adding at the end of the section after the word "authority" a new sentence reading: "ADP protests to GSBCA are covered in FAR Part 33."

270.303-3 [Amended]

111. Section 270.303-3 is amended by removing in paragraph (a) the word "negotiated" and inserting after the word "contracting" the words "on an other-than-full and open competition basis, if applicable".

270.307 [Amended]

112. Section 270.307 is amended by removing in the undesignated paragraph following paragraph (b)(7) the word "expressly" and inserting in its place the word "clearly"; and by removing at the end of the last sentence of paragraph (b) the period and inserting after the word "solicitation" the words "along with their relative importance".

113. Section 270.314 is amended by designating in paragraph (b) the introductory text as paragraph (1); by redesignating the existing paragraphs (1) and (2) as paragraphs (i) and (ii) respectively; by revising the redesignated paragraph (ii); by adding a new paragraph (b)(2); by removing in paragraph (c) the designation of paragraph (1) and inserting in the introductory text of paragraph (c) after the word "that:" the text of the existing paragraph (c)(1); by removing in the last sentence of paragraph (d) the words "For a least 15 calendar days" and inserting in their place the words "in accordance with FAR Subpart 5.2"; by removing in paragraph (d) the figure "$50,000" and inserting in its place the figure "$10,000"; by adding at the end of paragraph (d) the sentence "The contract file shall be documented with the results of the synopsis."; by inserting in the second sentence of paragraph (e) between the word "synopsized" and the word "when" the words "in accordance with FAR Subpart 5.2"; by removing in paragraph (e) the figure "$50,000" and inserting in its place the figure "$10,000"; and by adding at the end of paragraph (e) the sentence "The contract file shall be documented with the results of the synopsis."; to read as follows:

270.314 GSA Nonmandatory Schedule Contracts.

* * * * *

(b) * * *

(ii) The intent to place an order with a purchase value of $25,000 or above, including maintenance, is synopsized in the CBD in accordance with FAR Subpart 5.2, and either:

(A) No response is received to such notice. The contract file shall be documented accordingly; or

(B) The only interest expressed in response to the synopsis is to satisfy the requirement under the terms of an existing ADP schedule contract. The file shall be documented with evidence that use of the selected ADP schedule contract, including the method of financing (e.g., purchase, lease) is the lowest overall cost alternative, price and other factors considered.

(2) Whether for purchase, lease or rental, if a response(s) to the synopsis issued in accordance with (1)(ii) above indicates an intention to offer terms, conditions, or prices not contained in ADP schedule contracts, the requirement shall be met using the policy and procedures of FAR Part 6.

* * * * *

270.802-1 [Amended]

114. Section 270.802-1 is amended by removing in the penultimate sentence the words "for justified noncompetitive requirements" and inserting in their place the words "when other-than-full and open competition is justified".

270.802-2 [Amended]

115. Section 270.802-2 is amended by removing in paragraph (a) the capital letter "P" in the "Properly" at the beginning of the third sentence and inserting in its place a lower case letter "p"; by inserting in paragraph (a) at the beginning of the third sentence the words "Contracting actions using other-than-full and open competitive procedures, if"; by adding in the same sentence a comma after the word "justified" the first time it appears in the sentence; by removing in the same sentence the words "noncompetitive contracting actions"; and by removing in the same sentence the word "conducted" and inserting in its place the word "placed".

270.1404 [Amended]

116. Section 270.1404 is amended by removing in paragraph (b)(1) the words "that a sole source justification be prepared" and inserting in their place the words "justification for use of other-than-full and open competition (see FAR 6.303)"; and by inserting in paragraph (b)(1) between the word "a" and the word "competitive" the words "full and open".

[FR Doc. 85-8040 Filed 4-3-85; 8:45 am]
BILLING CODE 3810-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1803, 1804, 1808, 1812, 1815, 1819, 1822, 1827, 1832, 1844, 1845, 1847, 1851, and 1852

[NASA FAR Supplement Directive 85-3]

NASA FAR Supplement Partial Implementation of the Small Business and Federal Procurement Competition Enhancement Act

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect selected provisions of Pub. L. 98-577, Small Business and Federal Procurement Competition Enhancement Act of 1984, particularly those provisions relative to rights to and acquisition of data that are applicable to NASA. Other miscellaneous internal and administrative matters are also addressed.

EFFECTIVE DATE: April 15, 1985.

FOR FURTHER INFORMATION CONTACT: W.A. Greene, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453-2119.

SUPPLEMENTARY INFORMATION: Proposed rule making was published on page 49875 of the **Federal Register** of December 24, 1984, which made available to the public a copy of NASA FAR Supplement Directive 85-3 for review and possible comment for a 30-day period, ending January 23, 1985

The primary changes arising from Pub. L. 98-577 occur in sections 1827.4 and 1852.227 relative to rights to and acquisition of data. The more significant ones are: Section 1827.273-2(c) clarifies the policy that if data first produced under contract represents only minor modifications to items, components, processes, or computer software developed at private expense, the limited rights data relating thereto (including such minor modifications) may be protected; section 1827.473-2(f) provides for negotiation of less than unlimited rights in the Government in contracts involving co-sponsored research and development if the contractor is required to make substantial contributions of funds or resources (such as cost sharing or repayment of nonrecurring costs); and a new clause at 1852.277-83, Technical Data Certification, Revision and Withholding of Payment has been added for use in major systems acquisitions. All received comments related to these changes proposed by NFSD 85-3 have been considered and the Directive has been revised where appropriate; however, none of these comments were of particular significance.

Several comments were also received regarding existing NASA policies which were neither established by nor changed by the proposed Directive. Some changes were made in response to these comments in keeping with NASA's continuing interest in refining and improving its regulations where possible. These changes are:

1. The procedure is revised for obtaining rights to technical data in winning proposals to assure that contractors have a clear opportunity to limit the Government's rights (1827.473-2(k)).

2. A new clause and guidance is added to make clear that, in acquisitions of commercial computer software, the contract terms are not superseded by delivery documents containing inconsistent data rights provisions (1827.463-4(b) and 1852.227-79).

3. The data rights clause for use in SBIR Program contracts has been standardized (1852.227-80).

4. NADA policy no longer places a time limit (7 years) on limited rights data (1827.473-2(d)(1) and 1852.227-74 Alt. II).

5. Sections 1827.471 and 1852.227-74 clarify that the form, fit and function data acquired with unlimited rights, if it relates to restricted computer software, does not include any algorithm, process, formulas or flow chart of the software.

A few comments were directed to provisions of Pub. L. 98-577 that are not applicable to NASA; therefore, no changes could be made in response.

NASA FAR Supplement (NFS) material published in the Directive is effective, at the procurement officer's option, on April 15, 1985. It is mandatory beginning July 1, 1985; and shall remain in effect until: (1) Changed by a subsequent NFSD or Procurement Notice (PN); (2) incorporated in any new Edition of the NFS; or (3) specifically cancelled.

List of Subjects in 48 CFR Ch. 18

Government procurement.

Dated: March 28, 1985.

L.E. Hopkins,

Deputy Assistant Administrator for Procurement.

1. The authority citation for 48 CFR Ch.18 reads as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1803—[AMENDED]

Subpart 1803.3—Reports of Identical Bids and Suspected Antitrust Violations

Section 1803.303, paragraph (c), is revised to read as follows:

1803.303 Reporting suspected antitrust violations.

* * * * *

(c) The contracting officer shall submit the identical bid report required by FAR 3.303(d) to NASA Headquarters, Code HP. The report shall include the reasons for suspecting collusion. Code HP will forward a copy of the report to the NASA Office of the Inspector General.

PART 1804—[AMENDED]

Subpart 1804.70—Transfer of Contracting Office Responsibility

1804.7004 [Amended]

3. Section 1804.7004, the introductory text is amended by changing "his" to read "the transferring".

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

1808.002-74 [Amended]

4. Sections 1808.002-74, paragraphs (a) and (b) are amended by changing "1808.002-74(l)" to read "1808.002-74(j)."

Subpart 1808.3—Acquisition of Utility Services

1808.307-71 [Amended]

5. Section 1808.307-71 is amended by changing "by 1804.71." to read "by 1804.7205 and 1804.71."

PART 1812—[AMENDED]

Subpart 1812.1—Delivery or Performance Schedules

6. Section 1812.102-70, paragraph (b), is revised to read as follows:

1812.104-70 Additional clauses.

* * * * *

(b) See 1827.475–10 regarding reports of work.

PART 1815—[AMENDED]

Subpart 1815.1—General Requirements for Negotiation

7. Section 1815.102 is added to read as follows:

1815.102 General.

Procurement personnel, as well as other personnel concerned with the procurement, shall ensure that contract negotiations are completed expeditiously. However, all details of the negotiation must be completed before the contract is actually placed. This includes, to the extent applicable—

(a) Arrangements regarding Government-furnished property, including the contractor's responsibility for controlling, maintaining, and accounting for such property;

(b) Determination that the prospective contractor is responsible, including completion of preaward surveys where required;

(c) Arrangements with other Government agencies for the use of facilities under their control;

(d) Where the contract will be administered by another Government agency, any necessary arrangements with the responsible activity of that agency;

(e) Where the contract will involve access to classified information, verification that required security clearance has been obtained;

(f) The requirement for the furnishing of data by the contractor in the performance of the contract, both for technical evaluation and for competitive reprocurement where follow-on procurement is probable, in those situations where the appropriate technical office has requested that the contracting officer obtain such data; and

(g) Consideration of whether technical data contained in the proposal is to be obtained as an item of deliverable data, as well as what rights should be obtained in such data under 1827.473–2(k).

Subpart 1815.4—Solicitation and Receipt of Proposals and Quotations

8. Subpart 1815.413–2 is amended by adding paragraph (e) to read as follows:

1815.413–2 Alternate II.

* * * * *

(e) *Rights in proposal data.* NASA may obtain rights in technical data (but not commercial and financial information) contained in a solicited or unsolicited proposal upon which a contract award is based, by specific agreement with the prospective contractor in accordance with the procedures of 1827.473–2(k) and the clause at 1852.227–81, Rights to Proposal Data (Technical).

Subpart 1815.5—Unsolicited Proposals

9. Section 1815.507, paragraph (a), is revised to read:

1815.507 Contracting methods.

(a) The technical office sponsoring the contract shall support its recommendation with a Justification for Acceptance of Unsolicited Proposal (JAUP) which includes facts and circumstances that preclude competition, along with consideration of the evaluation factors listed in FAR 15.506–2(a). A "Justification for Other Than Full and Open Competition" may be used in lieu of a JAUP when required by FAR 6.302. The law (10 U.S.C. 2304(f)(4)) requires that this justification and any related information shall be made available for inspection by the public consistent with the provisions of the Freedom of Information Act. (See FAR 6.305 and 1806.305.) Accordingly, care should be taken not to include information which need not be released under the Freedom of Information Act, unless that information is essential to the justification. The JAUP shall be in writing and shall be submitted for the approval of the Procurement Officer or a designee after prior review and written concurrence by the head of the cognizant technical division or laboratory, as applicable.

* * * * *

Subpart 1815.6—Source Selection

10. Section 1815.610 is revised to read as follows:

1815.610 Written or oral discussion.

FAR 15.610(c)(2) shall not be applied in negotiation of NASA procurements. It is contrary to NASA procedures (see FAR 15.613 and 1815.613).

1815.613–71 [Amended]

11. Section 1815.613–71, paragraph (b)(3)(ii), is revised to read as follows:

* * * * *

(b) * * *

(3) * * *

(ii) Simple technical nonresponsiveness in the sense in which the term is used in formal advertising is not alone sufficient to constitute unacceptability if the proposal is otherwise competitive and written and oral discussions or negotiations after selection reasonably offer the likelihood of resolution. When there is doubt as to whether a proposal should be rejected initially as unacceptable, that doubt shall be resolved by including it for further consideration.

PART 1819—[AMENDED]

Subpart 1819.2—Policies

12. Section 1819.201, paragraph (a), is revised to read as follows:

1819.201 General policy.

(a) *NASA Headquarters.* The Director of the Office of Small and Disadvantaged Business Utilization is responsible for the general supervision and coordination of the NASA Small Business Program. The Director is also responsible for developing the policy and procedures for implementing the NASA Small Business Program, Minority Business Program, Women Owned Business Program and Labor Surplus Area Program, advising the Administrator and other NASA officials on these matters, and representing NASA before other Government agencies and industry on matters related to the small business program.

* * * * *

PART 1822—[AMENDED]

Subpart 1822.8—Equal Employment Opportunity

1822.805–70 [Amended]

13. Section 1822.805–70 is amended by changing "his" to read "its".

PART 1827—[AMENDED]

14. Subpart 1827.4 is revised to read as follows:

Subpart 1827.4—Data and Copyrights

Sec.

1827.470 Scope of subpart.
1827.471 Definitions.
1827.472 Policy.
1827.473 Procedures—data rights.
1827.473–1 General.
1827.473–2 Basic rights in data clause.
1827.473–3 Production of special works.
1827.473–4 Rights relating to the acquisition of existing data other than limited-rights data.
1827.473–5 Contracts awarded under Small Business Innovative Research (SBIR) Program.
1827.474 Procedures—acquisition of data.
1827.475 Solicitation provisions and contract clauses.
1827.475–1 Rights in data—general.
1827.475–2 Representation of limited-rights data and restricted computer software.
1827.475–3 Additional data requirements.
1827.475–4 Rights in data—special works.
1827.475–5 Rights in data—existing works.
1827.475–6 Commercial computer software—restricted rights.

1827.475–7 Rights in data—SBIR Program.
1827.475–8 Additional clauses.
1827.475–9 Rights to proposal data (technical).
1827.475–10 Reports of work.
1827.475–11 Acquisitions of major systems or parts therefor.

Subpart 1827.4—Data and Copyrights

1827.470 Scope of subpart.

This subpart sets forth NASA policy, procedures, and solicitation provisions and contract clauses with respect to (a) rights in data and copyrights and (b) the acquisition of data, including the requirements of section 21 of the Office of Federal Procurement Policy Act (as amended by section 301 of Pub. L. 98–577) relating to the rights in data and to the acquisition of data that are applicable to NASA.

1827.471 Definitions.

"Data," as used in this subpart, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as contract cost analyses or any financial, business, and management information required for contract administration purposes.

"Technical data", as used in this subpart, means that data (other than computer software) which is of a scientific or technical nature.

"Computer software," as used in this subpart, means computer programs, computer data bases, and documentation thereof.

"Form, fit, and function data," as used in this subpart, means data relating to items, components or processes that is sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it specifically excludes the algorithm, process, formulas, and flow charts of the software.

"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. (NASA may, however, adopt when appropriate (see 1827.473–2(b)) 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.)

"Limited rights," as used in this subpart, means the rights of the Government in limited-rights data, as set forth in a Limited Rights Notice if included in a data rights clause of the contract.

"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, including minor modifications of such 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.

"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 whatsoever, and to have or permit others to do so.

1827.472 Policy.

(a) It is necessary for NASA, 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 NASA activities; insure appropriate utilization of the results of NASA supported research, development, and demonstration activities; and meet other programmatic and statutory requirements. At the same time, NASA recognizes that its contractors may have a legitimate proprietary interest (e.g., a property right or other valid economic interest) in certain data resulting exclusively or partially 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 commerical position, and maintain NASA's ability to obtain access to or use of such data. The protection of this data by NASA is also necessary to encourage qualified contractors to participate in NASA programs and apply innovative concepts to such programs.

(b) The specific procedures and prescriptions for use of solicitation provisions and contract clauses set forth below are framed in light of the considerations in paragraph (a) above to strike a balance between NASA's needs and the contractor's property rights and economic interests, and to implement those provisions of section 21 of the Office of Federal Procurement Policy Act, consistent with the foregoing, that are applicable to NASA. In applying these procedures and prescriptions it is important to recognize and maintain the conceptual distinction between those contract terms whose purpose is to define the respective rights and obligations of the Government and the contractor regarding the use, duplication and disclosure of that data which is developed, used, or delivered in the performance of a contract (i.e. data rights); and those contract terms whose purpose is to specify the data (in terms of both quantity and quality) that is to be delivered in the performance of a contract (i.e. data acquisition). Section 1827.473 below relates to data rights; section 1827.474 below relates to data acquisition. Section 1827.475 sets forth the solicitation provisions and contract clauses relating to both data rights and data acquisition in accordance with the procedures of 1827.473 and 1827.474.

1827.473 Procedures—data rights.

1827.473–1 General.

All contracts that require data be produced, furnished, or acquired in meeting contract performance requirements must contain terms that delineate the respective rights and obligations of NASA and the contractor regarding the use, duplication, and disclosure of such data, except certain contracts resulting from sealed bidding that require only existing or off-the-shelf 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 1852.227–74, Rights in Data—General, including Alternates I, II, and/or III where determined appropriate as discussed in 1827.473–2, 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 prescribed clauses or do not need a prescribed clause, as discussed in 1827.473–3 or 1827.473–4 (see also 1827.474 for procedures relating to data acquisition.)

§ 1827.473-2 Basic rights in data clause.

(a) *Summary.* The clause at 1852.227-74, Rights in Data—General, is structured to strike a balance between NASA's needs for using, duplicating, and disclosing data involved in or resulting from contract performance in order to carry 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) below for an alternate definition of limited-rights data.) This clause also specifically delineates the categories or types of data that NASA is to acquire with unlimited rights. (See paragraph (c) below.) The contractor may protect qualifying limited-rights data and restricted computer software under this clause by either withholding such data from delivery to NASA; or when NASA 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 (d) and (e) 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 copyright license rights. (See paragraph (g) below.) This clause also includes procedures that apply when NASA questions whether notices on data are authorized (see paragraph (h) below) or when a contractor wishes to add or correct omitted or incorrect notices on data (see paragraph (i) below); and addresses the contractor's right to release, publish or use certain data involved in contract performance (see paragraph (j) below).

(b) *Alternate definition of limited-rights data.* In the clause at 1852.227-74, 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, NASA 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 that is commercial or financial and confidential or privileged be produced at private expense in order to qualify as limited-rights data. As an example, this 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, socio-economic reports, educational material, health and safety information, management analysis, and related matters. This alternate definition of limited-rights data may be adopted, where appropriate, by using the clause with its Alternate I. This Alternate I is to be used only with approval of the Procurement Officer and concurrence of installation Intellectual Property or Patent Counsel.

(c) *Unlimited-rights data.* Under the clause at 1852.227-74, Rights in Data—General, the following data is acquired with unlimited rights except as provided in paragraph (g) below for copyrighted data: (1) Data first produced in the performance of contract, except to the extent such data constitutes minor modifications to data that is limited-rights data or restricted computer software; (2) form, fit, and function data delivered under a contract; (3) 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 of items, components or processes delivered or furnished for use under a contract; and (4) all other data delivered under a contract unless such data qualifies as limited-rights data or restricted computer software. If any of the foregoing data is published copyrighted data with the notice of 17 U.S.C. 401 or 402, it is acquired under a copyright license as set forth in paragraph (g) below rather than with unlimited rights.

(d) *Protection of limited-rights data.* (1) The contractor may protect data (other than unlimited-rights data or published copyrighted data) that qualifies as limited-rights data under the clause at 1852.227-74, Rights in Data—General, by withholding such data from delivery and providing form, fit, and function data in lieu thereof; or, if the clause is used with its Alternate II and delivery of the data is required, by delivering such data with limitations on its use and disclosure. The mode of protection afforded the contractor (i.e. withhold or deliver with limited rights) is provided for in paragraph (g) of the clause at 1852.227-74, Rights in Data—General. Subparagraph (g)(1) of this clause allows the contractor to withheld limited-rights data and provide form, fit, and function data in lieu thereof. Alternate II adds subparagraph (g)(2) to this clause to enable NASA selectively to request the delivered of withhold or withholdable data with limited rights. The limitations on the Government's right to use and disclose limited-rights data when the clause is used with its Alternate II 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 in paragraph (d)(2) below.

(2) Limited-rights data delivery with the Limited Rights Notice contained in subparagraph (g)(2) (Alternate II) 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 included in the Notice, and then only if the Government makes the disclosure subject to prohibition against further use and disclosure by the recipient. Specific purposes which may be included in the Limited Rights Notice of subparagraph (g)(2) of the clause are set forth below. The purpose set forth in paragraph (d)(2)(i) below is to be included unless the contracting officer determines it is not necessary. The purposes set forth in paragraph (d)(2) (ii) through (v) below may be included if determined necessary by the contracting officer. No other purposes are to be included without approval of the Procurement Officer and concurrence of installation Intellectual Property or Patent Counsel.

(i) Use by support service contractors.

(ii) Evaluation by nongovernment evaluators.

(iii) Use by other contractors participating in the Government's program of which this contract is a part, for information and use in connection with the work performed under their contracts.

(iv) Emergency repair or overhaul work.

(v) Release to a foreign government, as the interests of the United States may require, for information or evaluation, or for emergency repair or overhaul work by or on behalf of such government.

(3) As an aid in determining whether the clause should be used with its Alternate II, the provision at 1852.227-75, Representation of Limited-Rights Data and Restricted Computer Software,

may be included in any solicitation containing the clause at 1852.227–74, Rights in Data—General. This provision requests an offeror to state in a 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. 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 1852.227–74, 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. Installation Intellectual Property or Patent Counsel should be consulted on questions regarding the use of Alternate II.

(e) *Protection of restricted computer software.*

(1) The contractor may protect computer software that qualifies as restricted computer software under the clause at 1852.227–74, Rights in Data—General, by withholding such data from delivery and providing form, fit, and function data in lieu thereof; or if the clause is used with its Alternate III and delivery of the software is required, by delivering the software with restricted rights regarding its use, disclosure, and reproduction. The mode of protection afforded the contractor (i.e. withhold or deliver with restricted rights) is provided for in paragraph (g) of the clause at 1852.227–74, 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 NASA selectively to obtain delivery of the withheld or withholdable computer software with restricted rights. It should be particularly noted that unlike other data, computer software is also an end item in itself, such that if it is withheld and form, fit, and function data is provided in lieu thereof an operational program will not be acquired. Thus, if delivery of restricted computer software is anticipated to be needed to meet contract performance requirements (see paragraph (e)(4) below), the contracting officer should assure that the clause is used with its Alternate III. 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" which 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.

(2) Restricted computer software delivered with the Restricted Rights Notice of subparagraph (g)(3) (Alternate III) will not be used or reproduced by the Government, or disclosed outside the Government, except that the computer software may be—

(i) 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;

(ii) Used or copied for use in or with a backup computer if the computer for which it is acquired is inoperative;

(iii) Reproduced for safekeeping (archives) or backup purposes;

(iv) 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

(v) Disclosed and reproduced by support contractors or their subcontractors, subject to the same restrictions under which the Government acquired the software.

(3) The restricted rights set forth in paragraph (e)(2) 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) (Alternate III) 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 either included in the Notice or specified in the contract. This should include obtaining appropriate rights for networking (i.e., loading the program into the memory of a host computer for use in or with multiple processors, computers, workstations, and terminals which may form a network or system located at a single site or be connected by communications to other networks or systems located at different sites), if such need exists. 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 1827.473–4(b).)

(4) As an aid in determining whether the clause should be used with its Alternate III, the provision at 1852.227–75, Representation of Limited-Rights Data and Restricted Computer Software, may be included in any solicitation containing the clause at 1852.227–74, Rights in Data—General. This provision requests an offeror to state in a 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. In addition, the need for Alternate III should be considered during negotiations of a contract, particularly if negotiations are based on an unsolicited proposal. However, use of the clause at 1852.227–74, 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. Installation Intellectual Property or Patent Counsel should be consulted on questions regarding the use of Alternate III.

(5) Whenever data that would qualify as limited-rights data if delivered in human-readable form is formatted as a computer data base for the purposes of delivery under a contract containing the clause at 1852.227–74, Rights in Data-General, such data is to be treated as limited-rights data subject to the Limited Rights Notice of subparagraph (g)(2) (Alternate II) of that clause, and not as restricted computer software subject to the Restricted Rights Notice of subparagraph (g)(3) (Alternate III) of that clause.

(f) *License rights in data.* In certain contracts involving co-sponsored research and development wherein the contractor is required to make substantial contributions of funds or resources (i.e., by cost-sharing or by repayment of nonrecurring costs), and the contractor's and the Government's respective contributions to any item, component, process, or computer software developed or produced under the contract are not readily segregable, NASA may acquire license rights rather than unlimited rights to any data developed and delivered under such contract. Basically such license rights will, at a minimum, assure use of the data for agreed-to Governmental purposes (including reprocurement rights as appropriate), and will address any disclosure limitations or restrictions

to be imposed on the data. Since the purpose of the co-sponsored research, the legitimate proprietary interests of the contractor, the needs of NASA, and the respective contributions of both parties may vary, no specific clauses are prescribed but a License Rights in Data clause may be taylored to the circumstances consistent with the foregoing and the policy set forth in section 1827.472. Use of a License Rights in Data clause must be authorized by the Procurement Officer and developed in consultation with installation Intellectual Property or Patent Counsel. As a guide, use is to be authorized only when the contribution of funds or potential repayment of non-recurring costs by the contractor is approximately 50% of the cost to the Government absent such cost sharing, and the respective contributions are not readily segregable for any work elements to be performed under the contract. Such clause may be used for all or for only specifically identified tasks or work elements under the contract. In the latter instance its use will be in addition to whatever other data rights clause is prescribed under this Subpart, with the contract specifically identifying which clause is to apply to which tasks or work elements.

(g) *Copyrighted data.*—(1) *Data first produced in the performance of a contract.* (i) In order to enhance the transfer or dissemination of information produced at Government expense, contractors may be granted permission to establish claim to copyright subsisting in data first produced in the performance of work under a contract containing the clause at 1852.227–74, Rights in Data—General. This permission is normally granted in paragraph (c)(1) of the clause for scientific and technical articles based on the work performed under the contract and published or presented in academic, professional and technical journals or conference papers. For all other data, such permission may be granted by the contracting officer, in consultation with installation Intellectual Property or Patent Counsel, in accordance with the procedures in paragraph (g)(1)(ii) below.

(ii) Usually, permission for a contractor to establish claim to copyright for data first produced under the contract will be granted under subparagraph (c)(1) of the clause at 1852.227–74, Rights in Data—General, 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: (A) The data consists of a report that represents the official views of the agency or that the agency is required by statute to prepare, (B) the data is intended primarily for internal use by the Government, (C) the data is of the type that the agency itself distributes to the public under an established program, or (D) the data is of a type that is subject to limited distribution due to Government Policy.

(iii) 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 copies 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 1852.227–74, Rights in Data—General. However, NASA may on a case-by-case basis obtain on equitable terms a license of lesser scope than set forth in subparagraph (c)(1) of the clause if the contracting officer determines, with concurrence of installation Intellectual Property or Patent Counsel, that such lesser license will substantially enhance the transfer or dissemination of any data first produced under the contract.

(2) *Data not first produced in the performance of a contract.* (i) Contractors are not to incorporate in data delivered under a contract any data that is not first produced under the contract and that is marked with the copyright notice of 17 U.S.C. 401 or 402, without either (A) acquiring for or granting to the Government 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 (B) 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) (Alternate III) if included in the clause at 1852.227–74, Rights in Data—General, or as otherwise may be provided in a collateral agreement incorporated in or made part of the contract.

(ii) Contractors delivering data with both an authorized limited-rights or restricted-rights notice and the 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 an opportunity to correct it in accordance with 1827.473–2(h). Otherwise, data delivered with a copyright notice of 17 U.S.C. 401 or 402 may be presumed to be published copyrighted data subject to the applicable license rights set forth in paragraph (g)(2)(i) above, without disclosure limitations or restrictions.

(iii) If contractor action causes limited-rights or restricted-rights data to be published with the copyright notice of 17 U.S.C. 401 or 402 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, request that a copyright notice be placed on the copies of the data delivered to the Government, and acknowledge that the applicable copyright license set forth in paragraph (g)(2) above applies.

(h) *Unauthorized marking of data.* The Government has, in accordance with paragraph (e) of the clause at 1852.227–74, Rights in Data—General, the right to either return to the contractor data containing markings not authorized by subparagraphs (g)(2) or (g)(3) of 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 normally affording the contractor at least 30 days to substantiate the propriety of the markings. This 30-day period may be shortened to a period of not less than 5 days from the date of receipt of such inquiry by the contractor if the contracting officer determines, with approval of the Procurement Officer and concurrence of installation Intellectual Property or Patent Counsel, that there are exigencies justifying a shorter period for the contractor to respond. 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 regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request for data thereunder.

(i) *Omitted or incorrect notices.* (1) Data delivered under a contract containing the clause at 1852.227–74, Rights in Data—General, without a limited rights notice or restricted rights notice, and 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 6 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 (i) identifies the data for which a notice is to be added or corrected, (ii) demonstrates that the omission of the proposed notice was inadvertent, (iii) establishes that use of the proposed notice is authorized, and (iv) 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 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.

(j) *Release, publication and use of data.* (1) In paragraph (d) of the clause at 1852.227–74, Rights in Data—General, subparagraph (d)(1) provides that contractors normally have the right to use, release to others, reproduce, distribute, or publish data first produced in the performance of a contract except to the extent such data may be subject to the Federal export control laws and regulations or unless otherwise set forth in either paragraph (d) of the clause or as expressly set forth in the contract (see the procedures of paragraphs (j) (2) and (3) below). In addition, to the extent the contractor receives or is given access to data that is necessary for the performance of the contract from the Government or others acting on behalf of the Government, and the data contains restrictive markings, subparagraph (d)(2) provides an agreement with the contractor to treat the data in accordance with such markings unless otherwise specifically authorized in writing by the contracting officer.

(2) In accordance with NASA policy and procedures for the distribution of computer software developed by NASA and NASA contractors (NASA Management Instruction 2210.2A, April 24, 1978), a contractor is not to establish claim to copyright, publish, or release to others computer software first produced in the performance of contract without prior written permission of the contracting officer. This limitation is therefore included in subparagraph (d)(3) of the clause at 1852.227–74, Rights in Data—General. Such permission may be granted only with concurrence of the cognizant official named in the NMI. The contracting officer may also, at the request of the contractor prior to contract award, delete said subparagraph (d)(3) from the clause or modify or override it with express contract provisions, if the contracting officer, with the concurrence of the cognizant official named in the NMI, determines either that the contract will not require a significant development effort for computer software as defined in NASA Management Instruction 2210.2A, or that such deletion, modification or overriding is otherwise consistent with the NMI.

(3) Any other provisions imposing limitations or restrictions on the contractor's right to use, release to others, reproduce, distribute, or publish data first produced in the performance of a contract must be expressly stated in the contract, and contain specific reference to paragraph (d) of the clause at 1852.227–74, Rights in Data—General. Use of such provisions requires approval of the Procurement Officer and concurrence of installation Intellectual Property or Patent Counsel. Additional contractual limitations or restrictions (other than as may be required for national security reasons) are not to be imposed on data specifically used, but not first produced, in the performance of a contract without the approval of the Assistant Administrator for Procurement.

(k) *Rights to technical data in successful proposals.* (1) NASA may, as consideration of contract award, desire to acquire unlimited rights in technical data (but not commercial or financial information) contained in a successful proposal upon which a contract award is based. However, the prospective contractor may (i) advise the contracting officer that the technical data, or portions thereof, (to be identified by the prospective contractor) are covered by the prescribed "Restriction on Use and Disclosure of Proposal and Quotation Information (Data)" notice (as set forth in 1852.215–72 for solicited proposals and in 1815.509–70 for unsolicited proposals) and request that such protection continue, or (ii) establish to the contracting officer's satisfaction that identified portions of the technical data do not relate directly to or will not be utilized in the work to be performed under the contract and request that such portions be excluded from the Government's rights.

(2) If unlimited rights to technical data in successful proposals, as set forth in paragraph (k)(1) above, are to be acquired, it shall be by use of the clause at 1852.227–81, Rights to Proposal Data (Technical). Any excluded technical data will be identified by inserting appropriate proposal page numbers in the clause. Such exclusion is not dispositive of the protective status of the data, but any excluded technical data, as well as any commercial and financial information contained in the proposal, will remain subject to the policies in Part 1815 relating to proposal information (i.e., will be used for evaluation purposes only). If the clause at 1852.227–81 is included in a contract, the prospective contractor must be specifically afforded the opportunity to exclude technical data as set forth in paragraph (k)(1) above, and the contract file must reflect that fact. If there is a need to have access to any of the excluded technical data during contract performance, consideration should be given to its acquisition as limited-rights data, if it so qualifies, in accordance with paragraph (d) above.

1827.473–3 Production of special works.

(a) The clause at 1852.227–77, Rights in Data—Special Works, applies to contracts (or may be made applicable to portions thereof) that are primarily for the production or compilation of data (other than limited-rights data or restricted computer software) for the Government's internal use, or when there is a specific need to limit distribution and use of the data and/or obtain indemnity for liabilities that may arise out of the content, performance or disclosure of the data. Examples are contracts for—

(1) The production of audiovisual works including motion pictures or television recordings with or without accompanying sound, or for the preparation of motion picture scripts, musical compositions, sound tracks, translations, adaptations, and the like;

(2) Histories of the respective agencies, departments, services, or units thereof;

(3) Works pertaining to recruiting, morale, training, or career guidance;

(4) Surveys of Government establishments;

(5) Works pertaining to the instruction or guidance of Government officers and employees in the discharge of their official duties;

(6) The compilation of reports, studies, surveys, or similar documents that do not involve research, development, or experimental work performed by the contractor;

(7) The collection of data containing personally identifiable information such that the disclosure thereof would violate the right of privacy or publicity of the individual to whom the information relates;

(8) Investigation reports; or

(9) The development, accumulation, or compilation of data (other than that resulting from research, development, or experimental work performed by the contractor), the early release of which could prejudice follow-on acquisition activities.

(b) The contract may specify the purposes and conditions (including time limitations) under which the data may be used, released, or reproduced other than for contract performance. Contracts for the production of audiovisual works, sound recordings, etc. may include limitations in connection with talent releases, music licenses, and the like that are consistent with the purposes for which the works are acquired.

(c) Paragraph (e) of the clause, which requires the contractor to indemnify the Government against any liability incurred as the result of any violation of trade secrets, copyrights, right of privacy or publicity, or any libelous or other unlawful matter arising out of or contained in any production or compilation of data that is subject to the clause, may be deleted or limited in scope where the contracting officer determines, in consultation with installation Intellectual Property or Patent Counsel, that because of the nature of the particular data involved such liability will not arise.

1827.473-4 Rights relating to the acquisition of existing data other than limited-rights data.

(a) *Existing audiovisual and similar works.* The clause at 1852.227-78, Rights in Data—Existing Works, is for use in contracts exclusively for the acquisition (without modification) of existing motion pictures, television recordings, and other audiovisual works; sound recordings; musical, dramatic, and literary works, pantomimes and choreographic works; pictorial, graphic, and sculptural works; and works of a similar nature. The contract may set forth limitations consistent with the purposes for which the works covered by the contract are being acquired. Examples of these limitations are: (1) Means of exhibition or transmission, (2) time, (3) type of audience, and (4) geographical locations. If the contract requires that works of the type indicated above are to be modified through editing, translation, or addition of subject matter, etc. (rather than purchased in existing form) the clause at 1852.227-77, Rights in Data—Special Works, is to be used. (See 1827.473-3.)

(b) *Separate acquisition of existing computer software.* (1) If the contract is for the separate acquisition of existing computer software, no specific contract clause contained in this subpart need be used. However, the contract must specifically address the Government's rights to use, disclose, and reproduce the software and must contain terms obtaining sufficient rights for the Government to fulfill the need for which the software is being acquired. The restricted rights set forth in 1827.473-2(e) should be used as a guide and are usually the minimum the Government should accept. If the computer software is to be used for networking purposes (i.e., loading a program into the memory of a host computer for use in or with multiple processors, computers, workstations, and terminals which may form a network or system located at a single site or be connected by communications to other networks or systems located at different sites), adequate rights for such purposes must also be obtained. If the computer software is "commercial" computer software (i.e., privately developed software normally vended commercially under a license or lease agreement restricting its use, disclosure, or reproduction) the clause at 1852.227-79, Commercial Computer Software—Restricted Rights, may be used in the contract or purchase order (see also subparagraph (2) below). When using such clause the contract or purchase order may expressly state any additions to, or limitations on, the restricted rights set forth in subparagraph (d)(2) of the clause. If the computer software is to be acquired with unlimited rights, the contract or purchase order must also so state. In addition, the contract must adequately describe the computer programs and/or data bases, the form (tapes, punch cards, disc pack, and the like) and all the necessary documentation pertaining thereto. If the acquisition is by lease or license, the disposition of the computer software (by returning to the vendor or destroying) at the end of the term of the lease or license must be addressed.

(2) If the contract incorporates, makes reference to, or uses a vendor's standard commercial lease, license, or purchase agreement, such agreement shall be reviewed to assure that it is consistent with paragraph (6)(1) above. Caution should be exercised in accepting a vendor's terms and conditions since they may be directed to commercial sales and may not be appropriate for Government contracts. Any inconsistencies in a vendor's standard commercial agreement shall be addressed in the contract and the contract terms shall take precedence over the vendor's standard commercial agreement. If the clause 1852.227-79, Commercial Computer Software—Restricted Rights, is used, inconsistencies in the vendor's standard commercial agreement are reconciled by the clause.

(3) If a prime contractor under a contract containing the clause at 1852.227-74, Rights in Data—General, with its Alternate III, acquires restricted computer software from a subcontractor (at any tier) as a separate acquisition for delivery to the Government, the contracting officer may approve any additions to or limitations on the restricted rights in the Restricted Rights Notice of subparagraph (g)(3) in a collateral agreement incorporated in and made part of the prime contract. (See also 1827.473-2(e).)

(c) *Other existing works.* Except for existing audiovisual and similar works as discussed in paragraph (a) above, and existing computer software as discussed in paragraph (b) above, no clause contained in this subpart need be included in (i) contracts where the only data to be acquired consists solely 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) unless reproduction rights of such items are to be obtained or (ii) contracts resulting from sealed bidding that require only existing data (other than limited-rights data) to be delivered unless reproduction rights for such data are to be obtained. If reproduction rights are to be obtained, such rights must be specifically set forth in the contract.

1827.473-5 Contracts awarded under Small Business Innovative Research (SBIR) Program.

The clause at 1852.227-80, "Rights in Data—SBIR Program, is for use in all

Phase I or Phase II contracts awarded under the Small Business Innovative Research (SBIR) Program established pursuant to Pub. L. 97-219 (the Small Business Innovation Development Act of 1982). The clause is limited to use solely in contracts awarded under the SBIR Program, and is the only data rights clause to be used in such contracts.

1827.474 Procedures—acquisition of data

(a) *General.* (1) The requirements for data to be delivered under a contract should strike a balance between NASA's policies of providing for the widest practical and appropriate dissemination of the results of NASA's research and development activities, protecting a contractor's legitimate proprietary interest, providing for full and open competition, and obtaining adequate documentation to operate and maintain items and components or use processes necessary for NASA to carry out its missions and objectives.

(2) It is NASA'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, cataloguing, 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 consistent with paragraph (a)(1) above.

(3) To the extent feasible, all known data requirements, including the time and place for delivery and any limitations and restrictions to be imposed on the contractor in the handling of the data, shall be specified in the contract. In establishing the contract data requirements and in specifying data items to be delivered by a contractor, NASA installations may, in accordance with paragraph (b) below, develop their own contract schedule provisions (including data requirements lists and data description documents) for listing, specifying, describing, identifying source of, assuring delivery of, and handling any data required to be delivered, first produced, or specifically used in the performance of the contract.

(b) *Specifying data delivery requirements.* (1) The requirements for technical and other data (including computer software and documentation thereof) to be delivered as an element of performance under any contract, as well as the delivery schedule therefor, should, to the maximum extent practicable, be either specified or referenced in a single section of the contract addressing data delivery requirements. Such requirements shall take into consideration the factors set forth in paragraphs (b)(2)-(5) below. Any specifications used to describe the data, in terms of type, purpose, and format, should also be referenced in that single section of the contract and made applicable to the data required to be delivered.

(2) The contractor normally should be required to furnish reports of work performed under all research and development contracts (fixed price and cost reimbursable), and also may be required to furnish such reports in cost-reimbursable supply contracts if considered desirable for monitoring contract performance. This may be achieved by including the clause substantially as provided at 1852.227-82, Reports of Work, in contracts with other than nonprofit organizations or by including substantially the same requirements, modified as needed to meet the particular requirements of the contract, in the section of the contract specifying data delivery requirements. Normally in contracts with nonprofit organizations, the clause should be modified to eliminate the requirement for monthly process reports. Consideration should be given to the desirability of providing reports on the completion of significant units or phases of work, in addition to periodic reports and reports on the completion of the entire contract. If the clause at 1852.227-82 is used, it should be referenced in the section of the contract specifying data delivery reguirements. Use of such clause, however, does preclude the listing of other data in such section to be delivered under the contract. The clause may also be modified to enable the contracting officer to provide specific instructions regarding delivery, report numbering, distribution lists, and other information to assure appropriate distribution of the required reports of work, or such instructions may be included in the section of the contract specifying data delivery requirements. In addition, if in accordance with NASA Management Instruction (NMI) 2230.1, "NASA Scientific and Technical Document Availability Authorization," an initial determination is made that any of the foregoing reports of work required to be furnished under a research and development contract may receive unrestricted release (a publicly available document) pursuant to a blanket release as authorized in the NMI, the contractor may be requested to send a reproducible copy and a printed copy of such reports to—

NASA Scientific & Technical Information Facility, Attn: Accessioning Department, P.O. Box 8785, Baltimore/Washington International Airport, MD 21240

This may be achieved by either using the clause at 1852.227-82 with its Alternate I, or by stating such requirement in the section of the contract specifying data delivery requirements.

(3) Requirements for delivery of technical data relating to standard commercial items, components, or processes should be kept to the absolute minimum consistent with the purpose for which such items, component, or process is being procured. Normally a vendor's manuals for installation, operation or routine maintenance and repair, and/or form, fit, and function data, is adequate for most needs.

(4) Any detailed design, development, or production contract with an estimated cost (in current year dollars) of $1,000,000 or more at the time of procurement plan approval should have the delivery requirements for technical data set forth in separate contract line items. Such data line items should normally be broken down in terms of the subassembly, assembly, or subsystem to which the data relates. If practicable under the circumstances, such line items may be further broken down to the part or component level if the design or development of the part or component is required as a work element under the contract and there are anticipated reprocurement needs for such part or component. Separate data line items may also be used in contracts not meeting the above thresholds. Pursuant to Pub. L. 98-577, separate data line items are required in contracts for a major system acquisition (and to which the clause at 1852.227-83 is applicable, see paragraph (d) below).

(5) In no event should any data delivery requirements be construed to require that a contractor provide the Government, as a condition of the procurement, unlimited rights in, or reprocurement rights to, any data that qualifies as limited-rights data or restricted computer software. Rather, form, fit, and function data is to be furnished with unlimited rights in lieu of the qualifying data, or the qualifying data is to be furnished with limited rights or restricted rights if needed (see 1827.473-2 (d) and (e)). The provision at 1852.227-75, Representation of Limited-Rights Data and Restricted Computer Software, should be used as an aid in determining whether any limited-rights data or restricted computer software is likely to be used in meeting contract data requirements. The matter should also be addressed during contract negotiations.

(c) *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 1852.227–73, 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 this clause at any time during contract performance or within a period of 3 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 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 the Additional Data Requirements clause.

(d) *Major system acquisitions.* (1) In order to assure that technical data needed to support a major system acquisition is timely delivered and is complete, accurate, and satisfies the requirements of the contract concerning the data, the clause at 1852.227–83, Technical Data Certification, Revision and Withholding of Payment, is to be included in every detailed design, development, or production contract for a major system acquisition (as the term "major system" is defined in section 4 of the Office of Federal Procurement Policy Act, as amended by Pub. L. 98–577), and in contracts for any individual part, component, subassembly, assembly, or subsystem integral to the major system, and other property which may be replaced during the service life of the system, and including spare parts and replenishment spare parts unless it is determined prior to the time of contract execution, with approval of the Assistant Administrator for Procurement, that it is not needed for either a given contract or for identified work elements (including the data delivery requirements therefor) of a given contract. It is to be used in other contracts only with approval of the Assistant Administrator for Procurement.

(2) The clause at 1852.227–83 requires the contractor, upon delivery of any technical data made subject to the clause in the contract, to certify that such data is complete, accurate, and complies with contract requirements. It also provides for corrections of any deficiencies in the data, as well as for the ability of the Government to request revisions of the data to reflect engineering design changes made during performance of the contract and affecting form, fit, and function of the items the data depicts. Further included is the authority to withhold payment under the contract to assure timely delivery of the technical data and/or assure correction if the technical data is not complete, accurate, and in compliance with contract requirements.

(3) When the clause at 1852.227–83 is used, the section of the contract specifying data delivery requirements (see paragraph (b)(4) above) shall expressly identify those line items of technical data to which the clause applies. Upon delivery of such technical data, the technical officer, or such other designated official responsible for data management under the contract, shall review the technical data and the contractor's certification relating thereto to assure that the data is complete, accurate, and complies with contract requirements. If not, the contractor is to be requested to correct the deficiencies, and payment may be withheld until such is done. Final payment should not be made under the contract until the technical officer, or other designated official, provides a written statement to the contracting officer that the delivery requirements of those line items of data to which the clause applies have been satisfactorily met.

1827.475 Solicitation provisions and contract clauses.

1827.475–1 Rights in data—general.

(a)(1) The contracting officer shall insert the clause at 1852.227–74, Rights in Data—General, in solicitations and contracts if it is contemplated that data will be produced, furnished, or acquired under the contract, unless the contract is—

(i) For the production of special works of the type set forth in 1827.473–3, but the clause at 1852.227–74, Rights in Data—General, shall be included in the contract and made applicable to data other than special works, as appropriate;

(ii) For the separate acquisition of exisiting works, as described in 1827.473–4;

(iii) To be performed outside the United States, its possessions, and Puerto Rico, in which case the contracting officer may prescribe different clauses (see also 1827.475–8(a) below);

(iv) For architect-engineer services or construction work, in which case the contracting officer may prescribe different clauses (see 1827.475–8(b) below), but the clause at 1852.227–74, Rights in Data—General, may be included in the contract and made applicable to data pertaining to other than architect-engineer services and construction work;

(v) A Small Business Innovative Research (SBIR) contract (Phase I or Phase II) (see 1827.475–7); or

(iv) A contract involving co-sponsored research and development in which a License Rights in Data Clause has been authorized pursuant to 1827.473–2(f) (see also 1827.475–8(c) below).

(2) If the contracting officer determines, in accordance with 1827.475–2(b), to adopt the alternate definition of limited-rights data for use in the clause, the clause shall be used with its Alternate I.

(3) If the contracting officer determines it is necessary to obtain the delivery of limited-rights data, the clause shall be used with its Alternate II (see 1827.437–2(d)). The contracting officer shall, when Alternate II is used, 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 1827.473–2(d)(2). The contract may exlcude 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 the contracting officer determines it is necessary to obtain the delivery of restricted computer software, the clause shall be used with its Alternate III (see 1827.473–2(e)). 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. The contract may exclude identified items of computer software from delivery under subparagraph (g)(3) of the clause. 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.

(b) The contracting officer may modify paragraph (d) of the clause as

authorized in 1827.473-2(j)(2) or 1827.473-2(j)(3).

1827.475-2 Representation of limited-rights data and restricted computer software.

If the contracting officer 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 1852.227-75, Representation of Limited-Rights Data and Restricted Computer Software, in the Representations section of any solicitation containing the clause at 1852.227-74, Rights in Data—General. The contractor's response will provide an aid in detemining whether the clause should be used with Alternate II and/or Alternate III. (See 1827.473-2 (d) and (e)).

1827.475-3 Additional data requirements.

(a) The contracting officer shall insert the clause at 1852.227-76, Additional Data Requirements, in solicitations and contracts involving experimental, developmental, research, or demonstration work, except those awarded using small purchase procedures, unless all the requirements for data are believed to be known at the time of contracting and are specified in the contract. (See 1827.474) This clause may also be used in other contracts when considered appropriate, after consultation with installation Intellectual Property or Patent Counsel. If the clause at 1852.227-74, 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.

(b) The contracting officer may alter the Additional Data Requirements clause by deleting the term "or specifically used" in paragraph (a) thereof if delivery of such data is not necessary to meet the Government's requirements for data.

1827.475-4 Rights in data—special works.

The contracting officer shall insert the clause at 1852.227-77, Rights in Data—Special Works, in solicitations and contracts primarily for the production or compilation of data (other than limited-rights data or restricted computer software) for the Government's internal use, or when there is a specific need to limit distribution and use of the data and/or to obtain indemnity for liabilities that may arise out of the content, performance, or disclosure of the data. Examples of such contracts are set forth in 1827.473-3. The contract may specify the purpose and conditions (including time limitations) under which the data may be used, released, or reproduced by the contractor for other than contract performance. Contracts for the production of audiovisual works, sound recordings, etc. may include limitations in connection with talent releases, music licenses, and the like that are consistent with the purposes for which the data is acquired. The contracting officer, in consultation with installation Intellectual Property or Patent Counsel, may delete or limit the scope of paragraph (e) of the clause where there is no specific need to obtain indemnity for the liabilities specified therein (see 1827.473-3(c)).

1827.475-5 Rights in data—existing works.

(a) The contracting officer shall insert the clause at 1852.227-78, Rights in Data—Existing Works, in solicitations and contracts exclusively for the acquisition, without modification, of existing audiovisual and similar works of the type set forth in 1827.473-4(a). The contract may set forth limitations consistent with the purposes for which the work is begin acquired. The clause at 1852.227-75, Rights in Data—Special Works, shall be used if existing works are to be modified, as by editing, translation, addition of subject matter, etc.

(b) 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 1827.473-4(b). In addition, the clause at 1852.227-79, Commercial Computer Software—Restricted Rights, may be used as prescribed in 1827.475-6.

(c) 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 1827.473-4(c)), if reproduction rights are to be acquired the contract shall include terms addressing such rights. (See 1827.473-4(c).)

1827.475-6 Commercial computer software—restricted rights.

The contracting officer may insert the clause at 1852.227-79, Commercial Computer Software—Restricted Rights, in solicitations and contracts for the separate acquisition of existing privately-developed computer software normally vended commercially under a license or lease agreement restricting its use, disclosure, or reproduction, if it is desired to assure consistency with the restricted rights set forth in 1827.473-2(e). (See also 1827.473-4(b)).

1827.475-7 Rights in data—SBIR Program.

The contracting officer shall insert the clause at 1852.227-80, Rights in Data—SBIR Program, in solicitations and contracts for Phase I and Phase II under the Small Business Innovative Research (SBIR) Program.

1827.475-8 Additional clauses.

(a) The contracting officer may develop and include as appropriate and in consultation with installation Intellectual Property or Patent Counsel, clauses consistent with the policy of 1827.472 in contracts to be performed outside the United States, its possessions, and Puerto Rico.

(b) The contracting officer may develop and include as appropriate and in consultation with installation Intellectual Property or Patent Counsel, clauses consistent with the policy in 1827.472 in contracts for architect-engineer services and construction work.

(c) The contracting officer may develop and include, with approval of the Procurement Officer and in consultation with installation Intellectual Property or Patent Counsel, a License Rights in Data clause in solicitations and contracts under the circumstances discussed in 1827.473-2(f). Such clause may be used for all or for specifically-identified tasks or work elements under the contract. In the latter instance its use may be in addition to the clause at 1852.277-74, Rights in Data—General, with the contract specifically identifying which clause is to apply to which tasks or work elements to be performed under the contract.

1827.475-9 Rights to proposal data (technical).

The contracting officer shall insert the clause at 1852.227-81, Rights to Proposal Data (Technical), in solicitations and contracts it if is desired to obtain (with contractor agreement) unlimited rights to technical data contained in the proposal upon which contract award is

based. When this clause is used, the prospective contractor must be afforded an opportunity to exlcude technical data from the clause (i.e., unlimited rights are not acquired for the excluded data) and the contract file must reflect that fact. This clause is not to be used to obtain rights to any commercial or financial information in the proposal. If there is a need to have access to any of the excluded technical data during contract performance, consideration should be given to its acquisition with limited rights in accordance with 1827.473–2(d).

1827.475–10 Reports of work.

(a) The contracting officer shall prescribe the clause at 1852.227–82, Reports of Work, in all research and development contracts unless it is determined, consistent with the procedures of 1827.474(b)(2), that it is not needed because the reporting requirements thereof are adequately addressed in a section of the contract schedule relating to data delivery requirements. The clause may also be used in cost-reimbursement supply contracts if considered desirable for monitoring contract performance. When the clause is used, it should be cross-referenced in the section of the contract schedule specifying data delivery requirements. The clause may be modified, as appropriate, in accordance with 1827.474(b)(2).

(b) The clause may be used with its Alternate I if there is a blanket authorization, in accordance with NMI 2230.1, to have reports funished under the clause disseminated by the NASA Scientific and Technical Information Facility without restriction.

1827.475–11 Acquisitions of major systems or parts therefor.

The contracting officer shall insert the clause at 1852.227–83, Technical Data Certification, Revision and Withholding of Payment, in contracts in support of a major system of the type, and to the extent, set forth in 1827.474(d). When used, this clause requires that the technical data to which it applies be specified in the contract (see 1827.474(d)(3)).

PART 1832—[AMENDED]

Subpart 1832.1—General.

15. Section 1832.111–70 is revised to read as follows:

1832.111–70 NASA contract clauses.

(a) The contracting officer shall insert the clause at 1852.232–71, Invoices, in all fixed-price contracts (including letter contracts) and solicitations therefore, except those for construction work, architect-engineer services, or utility service.

(b) The contracting officer shall insert the clause at 1852.232–73, Payments (Utility Services), in negotiated utility service contracts and solicitations therefor.

(c) The contracting officer shall insert the clause at 1852.232–74, Payments (Facilities), in consolidated facilities contracts and solicitations therefor.

(d) The contracting officer shall insert the clause at 1852.232–78, Payment Information, in contracts and substitutions therefor that will result in one or more payments in excess of $25,000.

1832.172 [Amended]

16. Section 1832.172 is amended by changing "charges" to read "changes."

PART 1844—[AMENDED]

Subpart 1844.3—Contractors' Purchasing Systems Reviews.

1844.302–71 NASA—Conducted contractor purchasing systems reviews.

17. The heading for section 1844.302–71 is revised to read as set forth above.

PART 1845—[AMENDED]

Subpart 1845.3—Providing Government Property to Contractors

18. Section 1845.302–71 is added to read as follows:

1845.302–71 Acquisition of ADPE.

The proposed acquisition of automatic data processing equipment as defined in the FIRMR (41 CFR Ch. 201) shall be—

(a) Submitted on DD Form 1419 through the contracting officer to the installation's ADPE staff, for screening availability; and

(b) Approved in accordance with the provisions of NASA Handbook 2410.1, "Computer Resources Management."

PART 1847—[AMENDED]

Subpart 1847.3—Transportation in Supply Contracts

1847.305–70 [Amended]

19. Section 1847.305–70 is amended by changing "contract-furnished" to read "contractor-furnished".

PART 1851—[AMENDED]

Subpart 1851.1—Contractor Use of Government Supply Sources

1851.102 [Amended]

20. Section 1851.102 paragraph (c), the introductory text, is amended by changing "determinations and findings" to read "letter".

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.212–71 [Redesignated as 1852.227–82]

21. Section 1852.212–71 is redesignated 1852.227–82 and revised to read as follows:

1852.227–82 Reports of Work.

As prescribed at 1827.475–10, insert the following clause:

Reports of Work (April 1985)

(a) *Monthly progress reports.* The Contractor shall submit separate monthly progress reports of all work accomplished during each month of contract performance. Reports shall be in narrative form and brief and informal in content. Monthly reports shall be submitted in——copies. Monthly reports shall include—

(1) A quantitative description of overall progress.

(2) An indication of any current problems which may impede performance and proposed corrective action.

(3) A discussion of the work to be performed during the next monthly reporting period.

(b) *Quarterly progress reports.* The Contractor shall submit separate quarterly reports of all work accomplished during each three-month period of contract performance. In addition to factual data, these reports shall include a separate analysis section which interprets the results obtained, recommends further action, and relates occurrences to the ultimate objectives of the contract work. Sufficient diagrams, sketches, curves, photographs, and drawings shall be included to convey the intended meaning. Quarterly reports shall be submitted in——copies.

(c) *Final report.* The Contractor shall submit a final report which documents and summarizes the results of the entire contract work, including recommendations and conclusions based on the experience and results obtained. The final report shall include tables, graphs, diagrams, curves, sketches, photographs, and drawings in sufficient detail to comprehensively explain the results achieved under the contract. The final report shall be submitted in——copies.

(d) *Submission.* The quantities of reports specified in paragraphs (a) theough (c) shall be submitted to the technical monitor of the contract.

(End of clause)

Alternate I (APRIL 1985). If authorized under 1827.475–10(b), the following may be added to paragraph (d) of the clause:

In addition, a reproducible copy and a printed or reproduced copy shall be sent to—NASA Scientific and Technical Information Facility, Attn: Accessioning Department, P.O. Box 8757, Baltimore/Washington International Airport, MD 21240.

22. Section 1852.227–74 is revised to read as follows:

1852.227-74 Rights in Data—General.

As prescribed in 1827.475-1(a)(1) and (1827.275-1(b), insert the following clause:

Rights in Data—General (April 1985)

(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 includes technical data and computer software. The term does not include information incidental to contract administration, such as contract cost analyses or financial, business, and management information required for contract administration purposes.

"Technical data," as used in this clause, means that data (other than computer software) which is of a scientific or technical nature.

"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 relating to items, components, or processes that is sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it specifically excludes the algorithm, process, formulas, and flow charts of the software.

"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.

"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 computer software," as used in this clause, 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, including minor modifications of such computer software.

"Restricted rights," as used in this clause, means the rights of the Government in restricted computer software, as set forth in the Restricted Rights Notice of subparagraph (g)(3) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract.

"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 whatsoever, and to have or permit others to do so.

(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 provided otherwise for limited-rights data or restricted computer software in accordance with pargraph (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 from 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.* Unless provided otherwise in subparagraph (d) below, the Contractor may establish claim to copyright subsisting in scientific and technical articles based on or derived from data first produced in the performance of this contract and published or presented in academic, technical and professional journals or conference papers. 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 1827.473-2(f) of the NASA FAR Supplement. If 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 acknowledgment of Government sponsorship on the data when deposited in the U.S. Copyright Office or published. 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.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data that is not first produced in the performance of this contract and that 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) *Removal of notices.* 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 to the extent such data may be subject to the Federal export control laws and regulations, or unless either provided otherwise below in this paragraph or expressly set forth in this contract.

(2) The Contractor agrees that to the extent it receives or is given access to data that is necessary for the performance of this contract and that contains restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

(3) The Contractor agrees not to establish claim to copyright, publish, or release to others computer software first produced in the performance of this contract without prior written permission of 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, or if such data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, markings will not be canceled or ignored unless—

(i) The Contracting Officer makes written inquiry to the Contractor concerning the propriety of the markings, providing the Contractor 30 days (or a shorter period of not less than 5 days from the date or receipt of such inquiry by the Contractor if the Contracting Officer determines, in accordance with 1827.473-2(g) of the NASA-FAR Supplement, that there are exigencies justifying such shorter period) to respond; and

(ii) The Contractor fails to respond within the set period (or a 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 canceled 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 agency 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, and 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 6 months (or a 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)(1) (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.

(2)–(3) [Reserved]

(h) *Subcontracting.* The Contractor has the responsibility to obtain from its subcontractors all data and rights 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 of 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.

(End of clause)

Alternate I (April 1984). If a determination is made pursuant to 1827.475–1(a)(2), substitute the following definition for the definition of "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.

Alternate II (April 1985). As prescribed in 1827.475–1(a)(3), insert the following subparagraph (2) in paragraph (g) of the clause:

(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 be withholdable. Limited-rights data formatted as a computer data base is to be treated as limited-rights data under this subparagraph. 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 (April 1985)

(a) This data is submitted with limited rights under Government contract No. —— (and 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 nor disclosed outside the Government; except that the Government may disclose 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:

(1) Use by support service contractors.

(2) [The Contracting Officer may list additional purposes in accordance with 1827.473–2(d) or shall insert "Reserved"].

(b) This Notice shall be marked on any reproduction of this data, in whole or in part.

(End of notice)

Alternate III (APRIL 1984). As prescribed in 1827.475–1(a)(4), insert the following subparagraph (3) in paragraph (g) of the clause:

(3)(i) 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 or would otherwise be withholdable. Computer data bases comprising limited-rights data are to be treated as limited-rights data. 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 (April 1984)

(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.

(c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) above.

(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) (April 1984)

Use, reproduction, or disclosure in subject to restrictions set forth in contract No. —— (and subcontract ——, if appropriate).

(End of notice)

23. Section 1852.227–75 is revised to read as follows:

1852.227–75 Representation of Limited-Rights Data and Restricted Computer Software.

As prescribed in 1827.475–2, insert the following provision in solicitations that include the clause at 1852.227–74, Rights in Data—General:

Representation of Limited-Rights Data and Restricted Computer Software (April 1985)

(a) This solicitation sets forth the work to be performed if a contract award results, and the Government's known requirements for data (as defined in 1827.471 of the NASA FAR Supplement (NFS)). Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements clause at 1852.227–76 of the NFS, if included in the contract. Any data delivered under the resulting contract will be subject to the Rights in Data—General clause at 1852.227–74 of the

NFS that is to be included in this contract. Under the latter clause a contractor may withhold from delivery data that qualifies as limited-rights data or restricted computer software, and deliver form, fit, and function data in lieu thereof. The latter clause also may be used with its Alternates II and/or III to obtain delivery of limited-rights data or restricted computer software, marked with limited rights or restricted rights notices, as appropriate.

(b) As an aid in determining the Government's need to include any of the aforementioned Alternates in the clause at 1852.227-74, Rights in Data—General, of the NFS, the offeror's response to this solicitation shall, to the extent feasible, complete the representation below to 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.

Representation Concerning Data Rights

Offeror has reviewed the requirements for the delivery of data or software and states (offeror check appropriate block)—

None of the data or software proposed for fulfilling such requirements qualifies as limited-rights data or restricted computer software.

Data or software proposed for fulfilling such requirements qualifies as limited-rights data or restricted computer software and is identified as follows:

Note.—"Limited-rights data" and "Restricted computer software" are defined in the contract clause entitled "Rights In Data—General."

(End of provision)

24. Section 1852.227-79 is added to read as follows:

1852.227-79 Commercial Computer Software-Restricted Rights.

As prescribed in 1827.475-6, insert the following clause:

Commercial Computer Software—Restricted Rights (April 1985)

(a) Any restricted computer software (including documentation thereof) delivered under this purchase order/contract shall be subject to the "Restricted Rights" required by the NASA FAR Supplement (NFS 1827.473-2(e) and 1827.473-4(b)), as set forth in paragraph (d), below. Where the vendor proposes its standard commercial software license, or lease agreement, those applicable portions thereof consistent with Federal laws, standard industry practices, the Federal Acquisition Regulations (FAR) and the NASA FAR Supplement, including the "Restricted Rights" set forth in paragraph (d) below, shall be incorporated into and made a part of this purchase order/contract.

(b) If the vendor proposes its standard commercial software license or lease agreement after this purchase order/contract has been issued, or at or after the time the computer software is delivered, such license or lease agreement shall be deemed incorporated into and made a part of the resulting contract under the same terms and conditions as in paragraph (a) above. For purposes of receiving updates, correction notices, consultation, etc. on the computer software, the NASA Contracting Officer or the NASA Contractor Technical Representative/User may sign any license or lease registration form or card and return it directly to the vendor; however, such signing shall not alter any of the terms and conditions set forth in this clause.

(c) Vendor's acceptance is expressly limited to the terms and conditions of this purchase order/contract. If the specified computer software is shipped or delivered to NASA, it shall be understood that the vendor has unconditionally accepted the terms and conditions set forth in paragraphs (a) and (b) above, and that such terms and conditions constitute the entire agreement between the parties concerning rights in the computer software.

(d) The following "Restricted Rights" of NFS 1827.473-2(e) shall apply:

(1) The restricted computer software delivered under this purchase order/contract may not be used, reproduced or disclosed by the Government except as provided below or otherwise expressly stated in the purchase order/contract.

(2) The restricted computer software may be—

(i) Used or copied for us in or with the computer for which it was acquired, including use at any Government installation to which such computer may be transferred;

(ii) Used with a backup computer if the computer for which it was acquired is inoperative;

(iii) Reproduced for safekeeping (archives) or backup purposes;

(iv) 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

(v) Disclosed and reproduced for use by support contractors or their subcontractors, subject to the same restrictions under which the Government acquired the software.

(3) If the restricted computer software is published, copyrighted computer software it is licensed to the Government, without disclosure prohibitions, with the rights set forth in subparagraph (2) above.

(End of Clause)

25. Section 1852.227-80 is added to read as follows:

1852.227-80 Rights in Data—SBRI Program.

As prescribed in 1827.475-7, insert the following clause:

Rights in Data—SBIR Program (April 1985)

(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 includes technical data and computer software. The term does not include information incidental to contract administration, such as contract cost analyses or financial, business, and management information required for contract administration purposes.

"Technical data," as used in this clause, means that data which is of a scientific or technical nature.

"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 developed at private expense that embodies trade secrets or is commercial or financial and confidential or privileged.

"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 and confidential or priviledged, or is published copyrighted computer software, including minor modifications of such computer software.

"SBIR data," as used in this clause, means data first produced by a contractor that is a small business firm in the performance of a small business innovation research contract issued under the authority of 15 U.S.C. 638 (Pub. L. 97-219, "Small Business Innovation Development Act of 1982"), and which, without obligation as to its confidentiality, has not been made available to others by the Contractor, or is not already available to the Government.

"SBIR rights," as used in this clause, mean the rights in SBIR data as set forth in the SBIR Rights Notice of paragraph (d) of this clause.

"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 whatsoever, and to have or permit others to do so.

(b) *Allocation of rights.* (1) Except as provided in paragraph (c) below regarding copyright, the Government shall have unlimited rights in—

(i) Data specifically identified in this contract as data to be delivered without restriction;

(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 provided otherwise for SBIR data in accordance with paragraph (d) below or for limited-rights data or restricted

computer software in accordance with paragraph (g) below.

(2) The Contractor shall have the right to—

(i) Protect SBIR rights in SBIR data delivered under this contract in the manner and to the extent provided in paragraph (d) below;

(ii) Withhold from delivery 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 paragraph (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. If claim to copyright is made, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 and 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.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data that is not first produced in the performance of this contract and that contains the copyright notice of 17 U.S.C. 401 and 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.

(3) *Removal of notices.* 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) *Rights to SBIR data.* The Contractor is authorized to affix the following "SBIR Rights Notice" to SBIR data delivered under this contract and the Government will thereafter treat the data, subject to the provisions of paragraphs (e) and (f) below, in accordance with such Notice:

SBIR Rights Notice (April 1985)

This SBIR data is furnished with SBIR rights under NASA Contract No. —— (and subcontract —— if appropriate). For a period of 2 years after acceptance of all items to be delivered under this contract the Government agrees to use this data for Government purposes only, and it shall not be disclosed outside the Government (including disclosure for procurement purposes) during such period without permission of the Contractor, except that, subject to the foregoing use and disclosure prohibitions, such data may be disclosed for use by support contractors. After the aforesaid 2-year period the Government has a royalty-free license to use, and to authorize others to use on its behalf, this data for Government purposes, but is relieved of all disclosure prohibitions and assumes no liability for unauthorized use of this data by third parties. This Notice shall be affixed to any reproductions of this data, in whole or in part.

(End of notice)

(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 paragraph (d) above and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by the contract, the Contracting Officer may at any time 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 (or a shorter period of not less than 5 days from the date of receipt of such inquiry by the Contractor if the Contracting Officer determines, with approval of the Head of the Contracting Activity, that there are exigencies justifying such shorter period) to respond; and

(ii) The Contractor fails to respond within the set period (or a 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 agency 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 (d) above, and 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 6 months (or a 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)(1) (i) and (iii) above is specified to be delivered under this contract and such data 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.

(h) *Subcontracting.* The Contractor has the responsibility to obtain from its subcontractors all data and rights 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 of 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.

(End of clause)

26. Section 1852.227–81 is added to read as follows:

1852.227–81 Rights to Proposal Data (Technical).

As prescribed in 1827.475–9, insert the following clause:

Rights to Proposal Data (Technical) (April 1985)

Except for data contained on pages——, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data" clause contained in this contract) in and to the technical data contained in the proposal upon which this contract is based.

(End of clause)

27. Section 1852.227–83 is added to read as follows:

1852.227–83 Technical Data Certification, Revision, and Withholding of Payment.

As prescribed in 1827.475–11, insert the following clause:

Technical Data Certification, Revision, and Withholding of Payment (April 1985)

(a) *Scope of clause.* This clause shall apply to all technical data (as defined in the Rights in Data—General clause included in this contract) that has been specified in this contract as being subject to this clause. It shall apply to all such data delivered, or required to be delivered, at any time during contract performance or within 3 years after acceptance of all items (other than technical data) delivered under this contract unless a different period is set forth herein. The Contracting Officer may release the Contractor from all or part of the requirements of this clause for specifically identified technical data items at any time during the period covered by this clause.

(b) *Technical data certification.* (1) All technical data that is subject to this clause shall be accompanied by the following certification upon delivery:

Technical Data Certification (April 1985)

The Contractor, ———, hereby certifies that the technical data delivered herewith under Government contract No. —— (and subcontract ——, if appropriate) is complete, accurate, and complies with the requirements of the contract concerning such technical data.

(End of certification)

(2) The Government shall rely on the above certification in accepting delivery of the technical data, and in consideration thereof may, at any time during the period covered by this clause, request correction of any deficiencies which, in its opinion, are not in compliance with contract requirements. Unauthorized markings on data shall not be considered a deficiency for the purpose of this clause, but will be treated in accordance with paragraph (e) of the Rights in Data—General clause included in this contract.

(c) *Technical data revision.* The Contractor also agrees, at the request of the Contracting Officer, to revise technical data that is subject to this clause to reflect engineering design changes made during the performance of this contract and affecting the form, fit, and function of any item (other than technical data) delivered under this contract. The Contractor will be compensated for any such revisions to the technical data made pursuant to this paragraph.

(d) *Withholding of payment.* (1) At any time before final payment under this contract the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding $50,000 or 5% of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion respecting any technical data that is subject to this clause, the Contractor fails to—

(i) Make timely delivery of such technical data as required by this contract;

(ii) Provide the certification required by subparagraph (b)(1) above;

(iii) Make the corrections required by subparagraph (b)(2) above; or

(iv) Make revisions requested under paragraph (c) above.

(2) Such reserve or balance shall be whthheld until the Contracting Officer has determined that the Contractor has delivered the data and/or has made the required corrections or revisions. Withholding shall not be made if the failure to make timely delivery, and/or the deficiencies relating to delivered data, arose out of causes beyond the control of the Contractor and without the fault or negligence of the Contractor.

(3) The Contracting Officer may decrease or increase the sums withheld up to the sums authorized above. The amount withheld under this paragraph shall be in addition to any withholding under any other terms of this contract. The withholding of any amount under this paragraph, or the subsequent payment thereof, shall not be construed as a waiver of any Government rights.

(End of clause)

1852.232-77 [Amended]

28. Section 1852.232-77, the introductory text, is revised by changing "1832.705-270(b) to "1832.705-270".

[FR Doc. 85-8047 Filed 4-3-85; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

[Docket HM-139G; Amdt. Nos. 172-97, 173-187, 178-84, and 179-38]

Conversion of Individual Exemptions Into Regulations of General Applicability

Correction

In FR Doc. 85-6846 beginning on page 11700 in the issue of Monday, March 25, 1985, make the following correction:

§ 173.100 [Corrected]

On page 11702, third column, in § 178.100(ii), which was corrected to read § 173.100(ii) at 50 FR 12544, in the second line from the bottom, "of" should read "or".

BILLING CODE 1505-01-M

Federal Railroad Administration

49 CFR Part 215

[FRA Docket No. RSFC-6, Notice 11]

Railroad Freight Car Safety Standards

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Amendment of final rule.

SUMMARY: This document amends the final rule published on December 31, 1979 (44 FR 77328), which revised the Freight Car Safety Standards (49 CFR Part 215). It makes a technical correction to one section to eliminate confusion over the proper measurement of the extensiveness of discoloration found on freight car wheels due to an oxidation process that occurs after a wheel has been subjected to thermal abuse.

EFFECTIVE DATE: May 6, 1985.

FOR FURTHER INFORMATION CONTACT: Philip Olekszyk, Office of Safety, Federal Railroad Administration, Washington, D.C. 20590, telephone (202) 426-0897.

SUPPLEMENTARY INFORMATION: On June 22, 1984, FRA published in the **Federal Register** (49 FR 25645) a notice of proposed rulemaking (NPRM) to respond to a number of communications that it had received concerning the intent and appropriate interpretation of the language contained in § 215.103(h) of its Freight Car Safety Standards (49 CFR Part 215). This section prohibits a railroad from keeping a freight car in service if it has a defective wheel. Since a wheel that has been thermally abused presents a significant risk of sudden failure and consequent derailment, subsection (h) defines such wheels as defective when they show symptoms that have been associated with thermal abuse.

For the reasons detailed in the preamble to the NPRM, the existing language of this section, read literally, has a more restrictive effect than FRA intended. To eliminate the resulting confusion over this provision and to state the agency's intent more clearly, FRA proposed to amend § 215.103(h) to specify that: (i) Discoloration must be present on both faces of a freight car wheel, (ii) measurement can be made on either face, and (iii) measurements are to be made from the inner edge of the wheel rim.

Two commenters responded to the NPRM by urging that FRA correct the deficiencies in the existing rule and agreeing that FRA's proposed rule would improve the section. However, one commenter cautioned that if one face of the wheel is obscured by grime, grease, or environmental conditions present in some loading and unloading facilities, it may be difficult to observe both faces of the wheel. In supporting the change, both commenters agreed with FRA's technical analysis that oxidation discoloration from a sufficient heat input will occur on both sides of the wheel and supported FRA's proposal that its rule reflect this fact.

One commenter urged FRA to go well beyond the very limited scope of the present proposal. This commenter urged that FRA alter the criteria for suspected thermal abuse in several particulars and

strongly advocated rejection of the use of any discoloration criteria. Since both of these concerns exceed the scope of the notice of the proposed rule, FRA has not adopted any change other than those proposed in the NPRM. The other topics will be addressed in future FRA actions concerning the problem of thermally abused freight car wheels including the public hearing scheduled for April 25, 1985 (50 FR 9977). Consequently, FRA has decided to adopt the proposed changes to § 215.103(h) as an interim step in the process of reevaluating and studying this issue. This change will eliminate the current confusion and state more clearly the agency's intent.

List of Subjects in 49 CFR Part 215

Railroad safety.

Regulatory Impact

This amendment is simply a technical language change to eliminate confusion and its adoption will have no substantive impact. FRA has interpreted and enforced section 215.103(h) in accordance with the intent stated explicitly in this notice and implicitly in the current rule. Consequently, this technical amendment will impose no new or additional burdens; indeed, it may have the effect of reducing burdens for those who have read the section literally.

FRA has evaluated this amendment in accordance with existing regulatory policies. It is considered to be nonmajor under Executive Order 12291 and nonsignificant under DOT policies and procedures (44 FR 11034; February 26, 1979). It will have no economic impact. Based on these facts, FRA certifies that the amendment will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The amendment will not have any environmental impact and does not involve, directly or indirectly, any information collection requirements.

The Rule

PART 215—[AMENDED]

In consideration of the foregoing, § 215.103 of Part 215 of Title 49, Code of Federal Regulations, is amended by revising paragraph (h) to read as follows:

§ 215.103 Defective wheel.

* * * * *

(h) A wheel on the car shows signs of having been overheated as evidenced by a reddish brown discoloration, to a substantially equal extent on both the front and the back face of the rim, that extends on either face more than four inches into the plate area measured from the inner edge of the front or back face of the rim; or,

* * * * *

(Secs. 202 and 208, Federal Railroad Safety Act of 1970 (45 U.S.C. 431, 437); Sec. 1.49(n) of the regulations of the Office of the Secretary, 49 CFR 1.49(n))

Issued in Washington, D.C. on March 28, 1985.

John H. Riley,

Administrator.

[FR Doc. 85-7830 Filed 4-3-85; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 50342-5042]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of final rule.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission, publishes notice of regulations promulgated by that Commission and approved by the United States Government to govern the Pacific halibut fishery. These regulations are intended to enhance the conservation of Pacific halibut stocks in order to help rebuild and sustain them at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: April 3, 1985.

FOR FURTHER INFORMATION CONTACT: J. Craig Hammond, Special Agent in Charge, Law Enforcement Division, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802, telephone 907-586-7225; or Executive Director, International Pacific Halibut Commission, P.O. Box 5009, University Station, Seattle, Washington 98105, telephone 206-624-1838.

SUPPLEMENTARY INFORMATION: The International Pacific Halibut Commission (IPHC), under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, D.C., on March 29, 1979), has promulgated new regulations governing the Pacific halibut fishery. The regulations have been approved by the Secretary of State of the United States of America and by the Governor-General of Canada by Order-in-Council. On behalf of the IPHC, these regulations are published in the **Federal Register** to provide notice of their effectiveness, and to inform persons subject to the regulations of the restrictions and requirements established therein.

The substantive changes from the previous regulations, published at 49 FR 21738 (May 23, 1984), are as follows: (1) New halibut fishing seasons and area catch limits are established; (2) a new subarea of Area 2A is established, to be governed by its own season and gear restrictions in order to accommodate Indian treaty fishing rights; (3) new procedures for retrieval of halibut fishing gear from closed areas are prescribed; (4) vessel clearance requirements for various parts of Area 4 are changed; (5) greater flexibility in the opening and closing of seasons is provided for; (6) changes are made in log retention and landing record maintenance requirements; (7) the period before a halibut fishing season during which a vessel used to catch or possess halibut may not use setline gear is reduced from 120 hours to 72 hours; (8) changes are made in the sport fishing seasons for 1985 and 1986.

Because approval by the Secretary of State of the IPHC regulations is a foreign affairs function, *Jensen* v. *National Marine Fisheries Service*, 512 F.2d 1189 (9th Cir. 1975), 5 U.S.C. 553 of the Administrative Procedure Act, Executive Order 12291, and the Regulatory Flexibility Act do not apply to this notice of the effectiveness and content of the regulations.

List of Subjects in 50 CFR Part 301

Fish, fisheries.

Dated: March 29, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource, Management, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Chapter III is amended by revising Part 301 to read as follows:

PART 301—PACIFIC HALIBUT FISHERIES

Sec.

301.1 Short title.
301.2 Interpretation.
301.3 Application.
301.4 Regulatory areas.
301.5 Fishing periods.

301.6 Closed periods.
301.7 Closed area.
301.8 Catch limits.
301.9 Size limits.
301.10 Licensing of vessels.
301.11 Vessel clearance and hold inspection.
301.12 Logs.
301.13 Receipt and possession of halibut.
301.14 Fishing gear.
301.15 Retention of tagged halibut.
301.16 Supervision of unloading and weighing.
301.17 Sport fishing for halibut.
301.18 Previous regulations superseded.

Authority: 5 UST 5; TIAS 2900; 16 U.S.C. 773–773k.

§ 301.1 Short title.

This part may be cited as the *Pacific Halibut Fishery Regulations.*

§ 301.2 Interpretation.

(a) In this part,

Charter vessel means a vessel used for hire in sport fishing for halibut.

Commercial fishing means fishing the resulting catch of which either is or is intended to be sold or bartered.

Commission means the International Pacific Halibut Commission.

Fishing means the taking, harvesting, or catching of fish; or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including specifically the deployment of any amount or component of setline gear anywhere in the maritime area.

Land with respect to halibut means to bring to shore and to offload.

License means a halibut fishing license issued by the Commission pursuant to §§ 301.10 and 301.17.

Maritime area, in respect of the fisheries jurisdiction of a Contracting Party, includes without distinction areas within and seaward of the territorial sea or internal waters of that Party.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Person includes an individual, corporation, firm, or association.

Regulatory area means an area referred to in § 301.4.

Setline gear means one or more stationary, buoyed, and anchored lines with hooks attached.

Sport fishing means all fishing other than commercial fishing.

(b) In this part, all bearings are magnetic, unless otherwise stated, and all positions are determined by the most recent charts issues by the United States National Ocean Survey or the Canadian Hydrographic Service.

§ 301.3 Application.

(a) This part applies to persons and vessels fishing for halibut in waters off the west coast of Canada and the United States, inlcuding the southern as well as the western coasts of Alaska, within the respective maritime areas in which each of those countries exercises exclusive fisheries jurisdiction as of March 29, 1979.

(b) Sections 301.4 to 301.16 apply only to commercial fishing for halibut.

(c) Section 301.17 applies only to sport fishing for halibut.

(d) This part does not apply to fishing operations authorized or conducted by the Commission for research purposes.

§ 301.4 Regulatory areas.

The following areas shall be regulatory areas for the purposes of the Convention:

(a) Area 2A includes all waters off the coasts of the states of California, Oregon, and Washington. Subarea 2A–1 includes all waters off the coast of Washington that are north of latitude 48°02'15" N., east of longitude 125°44'00" W., and west of longitude 123°42'30" W.

(b) Area 2B includes all waters off the coast of British Columbia.

(c) Area 2C includes all waters off the coast of Alaska that are east of a line running northwest one-quarter west (312°) from Cape Spencer Light (latitude 58°11'57" N., longitude 136°38'18" W.), and south and east of a line running south one-quarter east (177°) from said light.

(d) Area 3A includes all waters between Area 2C and a line extending from the most northerly point on Cape Aklek (latitude 57°41'15" N., longitude 155°35'00" W.) to Cape Ikolik (latitude 57°17'17" N., longitude 154°47'18" W.), then along the Kodiak Island coastline to Cape Trinity (latitude 56°44'50" N., longitude 154°08'44" W.), then southeast by east one-quarter east (121°).

(e) Area 3B includes all waters between Area 3A and a line extending southeast (135°) from Cape Lutke (latitude 54°29'00" N., longitude 164°20'00" W.).

(f) Area 4A includes all waters in the Gulf of Alaska west of Area 3B and in the Bering Sea west of the closed area defined in § 301.7 that are east of longitude 172°00'00" W. and south of latitude 56°20'00" N.

(g) Area 4B includes all waters in the Bering Sea and the Gulf of Alaska west of Area 4A and south of latitude 56°20'00" N.

(h) Area 4C includes all waters in the Bering Sea north of Area 4A and north of the closed area defined in § 301.7 which are east of a line extending true northwest (315°) from a point at latitude 56°20'00" N., longitude 170°00'00" W. and west of longitude 168°00'00" W.

(i) Area 4D includes all waters in the Bering Sea north of Areas 4A and 4B, and west of Area 4C.

(j) Area 4E includes all waters in the Bering Sea north of the closed area defined in § 301.7, east of longitude 168°00'00" W., and south of latitudes 65°34'00" N.

§ 301.5 Fishing periods.

(a) The fishing periods for each regulatory area are set out in the following table and in subsection (b) and apply where the catch limits specified in § 301.8 have not been taken, except that the June 24–26 fishing period in Areas 2C, 3A, 3B, 4A, 4B, and 4D may be modified by the Commission to insure fishing in later months.

2A	
05/09–05/21	08/23–09/04
06/08–06/20	09/19–10/01
07/24–08/05	
2B	
4/20–04/29	09/20–09/29
06/07–06/18	10/11–10/20
08/09–08/18	
2C	
04/27–04/29	09/09–09/11
05/27–05/29	09/20–*
06/24–06/26	
3A–3B	
04/27–04/29	09/09–09/11
05/27–05/29	09/20–*
06/24–06/26	
4A–4B	
04/27–04/29	07/09–07/13
05/27–05/29	08/07–08/14
06/24–06/26	09/20–*
4D	
04/27–04/29	07/09–07/19
05/27–05/29	08/07–08/14
06/24–06/26	09/20–*
4C	
06/01–06/02	07/05–07/06
06/03–06/04	07/07–07/08
06/05–06/06	07/09–07/10
06/07–06/08	07/11–07/12
06/09–06/10	07/13–07/14
06/11–06/12	07/15–07/16
06/13–06/14	07/17–07/18
06/15–06/16	07/19–07/20
06/17–06/18	07/21–07/22
06/19–06/20	07/23–07/24
06/21–06/22	07/25–07/26
06/23–06/24	07/27–07/28
06/25–06/26	07/29–07/30
06/27–06/28	07/31–08/01
06/29–06/30	08/02–08/03
07/01–07/02	08/04–08/05
07/03–07/04	08/07–*
4E	
05/21–05/23	06/14–06/16
05/24–05/26	06/17–06/19
05/27–05/29	06/20–06/22
05/30–06/01	06/23–06/25
06/02–06/04	06/26–06/28
06/05–06/07	06/29–07/01
06/08–06/10	07/02–07/04
06/11–06/13	07/05–07/07

07/08-07/10	09/03-09/05
07/11-07/13	09/06-09/08
07/14-07/16	09/09-09/11
07/17-07/19	09/12-09/14
07/20-07/22	09/15-09/17
07/23-07/25	09/18-09/20
07/26-07/28	09/21-09/23
07/29-07/31	09/24-09/26
08/01-08/03	09/27-09/29
08/04-08/06	09/30-10/02
08/07-08/09	10/03-10/05
08/10-08/12	10/06-10/08
08/13-08/15	10/09-10/11
08/16-08/18	10/12-10/14
08/19-08/21	10/15-10/17
08/22-08/24	10/18-10/20
08/25-08/27	10/21-10/23
08/28-09/30	10/24-10/26
08/31-09/02	10/27-10/29

*Date to be announced by the Commission.

(b) In Subarea 2A–1:

(1) The fishing season shall commence on April 20 and terminate when the catch limit specified in § 301.8 for Area 2A is reached, or on October 1, whichever is earlier;

(2) Fishing in Subarea 2A–1 at times when fishing in Area 2A is closed is authorized only for persons holding valid identification cards issued pursuant to 25 CFR 249.3 and whose historic halibut fishing is documented and has been acknowledged by an executive agency of the United States.

(c) Notwithstanding paragraph (a) of this section, where Area 3A is closed under § 301.8 on a date before the attainment of the catch limit in Area 3B, Area 3B will close on the same date.

(d) Where Area 3B is closed under paragraph (c) of this section, it shall reopen on the next scheduled opening date on the schedule of fishing periods referred to in paragraph (a) of this section and continue on that schedule until the catch limit specified in § 301.8 is attained.

(e) Each fishing period shall begin and terminate at 1200 hours Pacific Standard Time on the date set out in the table to this section, unless the Commission specifies otherwise.

(f) All commercial fishing for halibut shall cease at 1200 hours Pacific Standard Time on October 31.

§ 301.6 Closed periods.

(a) No person shall engage in fishing for halibut in any regulatory area other than during the fishing periods set out in § 301.5 in respect of that area.

(b) No person shall land or otherwise retain halibut caught outside a fishing period applicable to the regulatory area where the halibut was taken.

(c) Subject to § 301.14 (h) and (i), this part does not prohibit fishing for any species of fish other than halibut during the closed periods.

(d) Notwithstanding paragraph (c) of this section, no person shall have halibut in his possession while fishing for any other species of fish during the closed periods.

(e) No person shall retrieve any halibut fishing gear from a closed area until the vessel first offloads any halibut on board and then obtains a hold inspection from a fishery officer or a representative of the Commission, except as provided in paragraph (f) of this section.

(f) A vessel that has no halibut on board may retrieve any halibut fishing gear in a closed area after notifying a fishery officer or representative of the Commission prior to that retrieval.

(g) After retrieval of halibut gear in accordance with paragraphs (e) and (f) of this section the vessel shall submit to a hold inspection at the discretion of the fishery officer or representative of the Commission.

(h) No person shall retain any halibut caught on gear retrieved under paragraphs (e) or (f) of this section.

§ 301.7 Closed area.

All waters in the Bering Sea that are east of a line from Cape Sarichef Light (latitude 54°36'00" N., longitude 164°55'42" W.) to a point at latitude 56°20'00" N., longitude 168°30'00" W. and south of a line from the latter point to Cape Newenham (latitude 58°39'00" N., longitude 162°10'25" W.) are closed to halibut fishing and no person shall fish for halibut therein or have halibut in his possession while in those waters except in the course of a continuous transit across those waters.

§ 301.8 Catch limits.

(a) The total allowable catch of halibut to be taken during the halibut fishing periods specified in § 301.5 shall be limited to the weight expressed in pounds or metric tons shown the following table:

Regulatory area	Catch limits	
	Pounds	Metric tons
2A	500,000	227
2B	10,000,000	4,536
2C	9,000,000	4,082
3A	23,000,000	10,433
3B	9,000,000	4,082
4A	1,700,000	771
4B	1,300,000	590
4C	600,000	272
4D	600,000	272
4E	50,000	23

(b) Catches taken in Subarea 2A–1 shall be a part of the total allowable catch specified in paragraph (a) of this section for Regulatory Area 2A.

(c) The weights in each catch limits shall be computed on the basis that the heads of the fish are off and their entrails, removed.

(d) The Commission shall determine and announce to the public the data on which the catch limit for each regulatory area will be taken and the specific dates during which fishing will be allowed in each regulatory area.

(e) If the Commission determines that the catch limit specified in paragraph (a) of this section would be exceeded in a 24-hour fishing period in any regulatory area, the catch limit for that area shall be considered to have been taken.

(f) Notwithstanding paragraph (a) of this section, Areas 3A and 3B shall both be closed if the catch limit of 32,000,000 pounds (14,515 metric tons) for the combined areas is taken.

(g) When under paragraphs (d), (e), or (f) of this section the Commission has announced a date on which the catch limit for a regulatory area will be taken, no person shall fish for halibut in the area after the date for the rest of the year, unless the Commission has announced the reopening of that area for halibut fishing.

§ 301.9 Size limits.

(a) No person shall take or possess any halibut that:

(1) With the head on, is less than 32 inches (81.3 cm) as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail, as illustrated in the schedule, or

(2) With the head removed, is less than 24 inches (61.0 cm) as measured from the base of the pectoral fin at its most anterior point to the extreme end of the middle of the tail, as illustrated in the schedule.

(b) No person shall mutilate or other wise disfigure a halibut in any manner that prevents the determination of the minimum size of the halibut for the purpose of paragraph (a) of this section.

§ 301.10 Licensing of vessels.

(a) The Commission may issue a license in respect of a vessel used for halibut fishing.

(b) No person shall fish for halibut from a vessel, nor possess halibut caught from a vessel, unless the Commission has issued a license in respect of that vessel.

(c) A license issued in respect of a vessel referred to in paragraph (b) of this section must be carried on that vessel at all times and the holder of it shall permit its inspection by customs and fishery officers of the Contracting Parties.

(d) A license shall be issued without fee by the Commission from its office in Seattle, Washington, upon receipt of a

completed "Application for Vessel License for the Halibut Fishery" form.

(e) Application forms may be obtained from customs or fishery officers of either Contracting Party, or from the Commission.

(f) Licenses issued under this section shall be valid only during the year in which they are issued.

(g) A new license is required for a vessel that is sold, transferred, renamed, or redocumented.

(h) No person shall:

(1) Fish for halibut while on board a vessel in respect of which the Commission has issued a license while that vessel is in an area where commercial fishing for halibut is not permitted under this part; or

(2) Possess halibut while on board a vessel referred to in paragraph (h)(1) of this section in an area referred to in that paragraph unless that vessel is in transit to or within a port in which that halibut may be lawfully sold.

(i) The license required under this section is in addition to any license, however designated, that is required under the laws of Canada or any of its Provinces or the United States or any of its States.

§ 301.11 Vessel clearance and hold inspection.

(a) No person other than a person who lands all of his halibut catch at a port within Area 4A, 4B, 4C, 4D, 4E, or the closed area defined in § 301.7 shall fish for halibut in Area 4A, 4B, or 4D from a vessel for which a license is required under this part, unless the operator of that vessel obtains a vessel clearance and hold inspection both before such fishing and before the unloading of any halibut caught in Area 4A, 4B, or 4D.

(b) No person other than a person who lands all of his halibut catch at a port within Area 4C may fish for halibut in Area 4C from any vessel, unless the operator of that vessel obtains a vessel clearance and hold inspection both before and after such fishing in each fishing period that applies to Area 4C and before the unloading of any halibut caught in that Area.

(c) No person other than a person who lands all of his halibut catch at a port within Area 4E, or the closed area defined in § 301.7 may fish for halibut in Area 4E from any vessel, unless the operator of that vessel obtains a vessel clearance and hold inspection both before such fishing in each fishing period that applies to Area 4E and before the unloading of any halibut caught in that Area.

(d) The vessel clearance and hold inspection required under paragraphs (a), (b), and (c) of this section may be obtained only at Dutch Harbor, Alaska, from a customs or fishery officer of the United States or a representative of the Commission.

(e) Vessel clearances and hold inspections required under paragraphs (a), (b), and (c) of this section prior to fishing in Area 4 shall be obtained within the 120-hour period before each of the openings in that Area, between 0600 and 1800 hours, local time.

(f) No halibut shall be on board at the time of inspection required by paragraph (e) of this section.

(g) Vessel clearances and hold inspections required under paragraphs (a), (b), and (c) of this section after fishing in Area 4 shall be obtained within the 120-hour period after each of the openings in that Area, between 0600 and 1800 hours, local time.

(h) The vessel clearance and hold inspection required under paragraphs (b) and (c) of this section is not valid if the vessel has fished for halibut in Area 4A, 4B, or 4D after obtaining the clearance and inspection required for such fishing.

§ 301.12 Logs.

(a) The operator of any vessel five (5) net tons or greater holding a license shall keep an accurate log of all fishing operations undertaken under the license including the date, locality, amount of gear used, and total weight of halibut taken daily in each locality.

(b) The log referred to in paragraph (a) of this section shall be:

(1) Updated not later than 24 hours after midnight local time for each day fished and within 24 hours following the closure of the area in which the vessel is fishing;

(2) Retained for a period of two years by the owner or operator of the vessel;

(3) Open to inspection by a fishery officer or any authorized representative of the Commission upon demand; and

(4) Kept on board vessel when engaged in halibut fishing, during transits to port of landing, and for 5 days following off-loading halibut.

(c) No person shall make a false entry in a log referred to in paragraph (a) of this section.

§ 301.13 Receipt and possession of halibut.

(a) A person who purchases or otherwise receives halibut from the owner or operator of the vessel from which that halibut was caught, either directly from that vessel or through another carrier, shall keep an accurate record of each such purchase or receipt, showing the date, locality, name of vessel, Halibut Commission license number, and the name of the person from whom the halibut was purchased or received and the amount in pounds according to trade categories of the halibut.

(b) The record referred to in paragraph (a) of this section shall be:

(1) Retained by the person keeping it for a period of two years from the date the record is made; and

(2) Open to inspection by a fishery officer or any authorized representative of the Commission.

(c) No person shall possess any halibut that he knows to have been taken in contravention of this part.

(d) When halibut are delivered to other than a commercial fish processor or primary fish buyer, the records required by paragraph (a) of this section shall be maintained by the operator of the vessel from which halibut was caught, in compliance with paragraph (b) of this section.

§ 301.14 Fishing gear.

(a) No person shall fish for halibut using any gear other than hook and line gear.

(b) No person shall possess halibut taken with any gear other than hook and line gear except as provided in § 301.15.

(c) No person shall possess halibut while on board a vessel containing any fishing gear other than hook and line gear or nets that are used solely for the capture of bait.

(d) At times when Area 2A is closed no person authorized to fish in Subarea 2A–1 shall fish for halibut in that subarea using gear other than a handline or nonpowered rod and reel with no more than two hooks attached.

(e) At times when Area 2A is closed no person authorized to fish in Subarea 2A–1 shall possess halibut taken in that subarea with gear other than a handline or nonpowered rod and reel with no more than two hooks attached.

(f) All setline or skate marker buoys carried aboard or used by any United States vessel used for halibut fishing in a regulatory area shall be marked with one of the following:

(1) The vessel's name,

(2) The vessel's state license number, or

(3) The vessel's registration number,

which markings shall be in characters at least four inches in height and one-half inch in width in a contrasting color visible above the water and shall be maintained in legible condition.

(g) All longline or skate marker buoys carried aboard or used by a Canadian vessel used for halibut fishing in a regulatory area shall be marked as required by the *British Columbia Fishery (General) Regulations.*

(h) No person on board a vessel from which setline gear was used to fish for any species of fish anywhere in waters described in § 301.3(a) during the 72-hour period immediately before the opening of a halibut fishing period shall catch or possess halibut anywhere in those waters during that halibut fishing period.

(i) No vessel from which setline gear was used to fish for any species of fish anywhere in waters described in § 301.3(a) during the 72-hour period immediately before the opening of a halibut fishing period may be used to catch or possess halibut anywhere in those waters during that halibut fishing period.

§ 301.15 Retention of tagged halibut.

Nothing contained in this Part prohibits any vessel at any time from retaining and landing a halibut that bears a Commission tag at the time of capture, if the halibut with the tag still attached is reported at the time of landing and made available for examination by a representative of the Commission or by an officer of the Contracting Parties or a state or provincial government.

§ 301.16 Supervision of unloading and weighing.

The unloading and weighing of halibut may be subject to the supervision of a customs officer or other authorized officers to assure the fulfillment of the provisions of this part.

§ 301.17 Sport fishing for halibut.

(a) Sport fishing for halibut is only permitted from March 1 to December 31, 1985, and from February 1 to October 31, 1986.

(b) No person shall engage in sport fishing for halibut using gear other than a handline or rod with no more than two hooks attached, or a spear.

(c) No person shall catch, possess, or land more than two halibut of any size per day from a vessel that is engaged in sport fishing.

(d) After two halibut have been taken by any person engaged in sport fishing, those halibut shall be landed before that person takes more halibut on any succeeding day.

(e) No halibut caught in sport fishing shall be possessed aboard a vessel when other fish or shellfish aboard the said vessel are destined for commercial use, sale, trade, or barter.

(f) No person shall operate a charter vessel engaged in fishing for halibut unless the Commission has issued a license in respect of that vessel.

(g) A license issued in respect of a vessel referred to in paragraph (f) of this section must be carried on that charter vessel at all times and the holder of it shall permit its inspection by custom and fishery officers of the Contracting Parties.

(h) A license shall be issued without fee by the Commission from its office in Seattle, Washington, upon receipt of a completed "Application for Vessel License for the Halibut Fishery" form.

(i) Licenses issued under this section shall be valid only during the year in which they are issued.

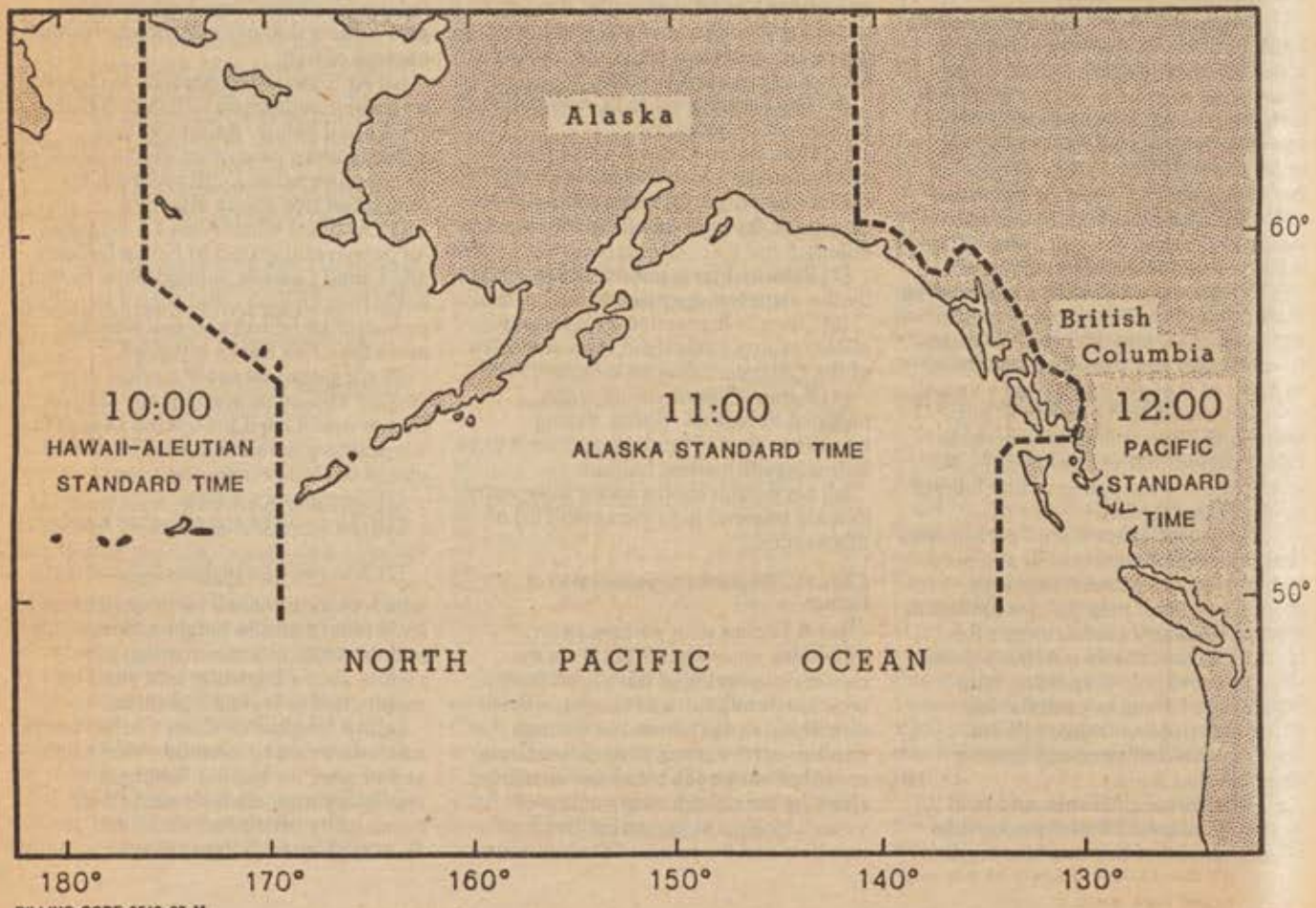
§ 301.18 Previous regulations superseded.

This part shall supersede all previous regulations of the Commission, and this part shall be effective each succeeding year until superseded.

SCHEDULE

[Legal Opening and Closing Hours for Halibut Fishing for Standard Time (ST) and Daylight Savings Time (DT) in Different Time Zones of the Northeastern Pacific Ocean]

Time zone	Pacific		Alaska		Aleutian	
	PST	PDT	AkST	AkDT	AlST	AlDT
Hours	1200	1300	1100	1200	1000	1100



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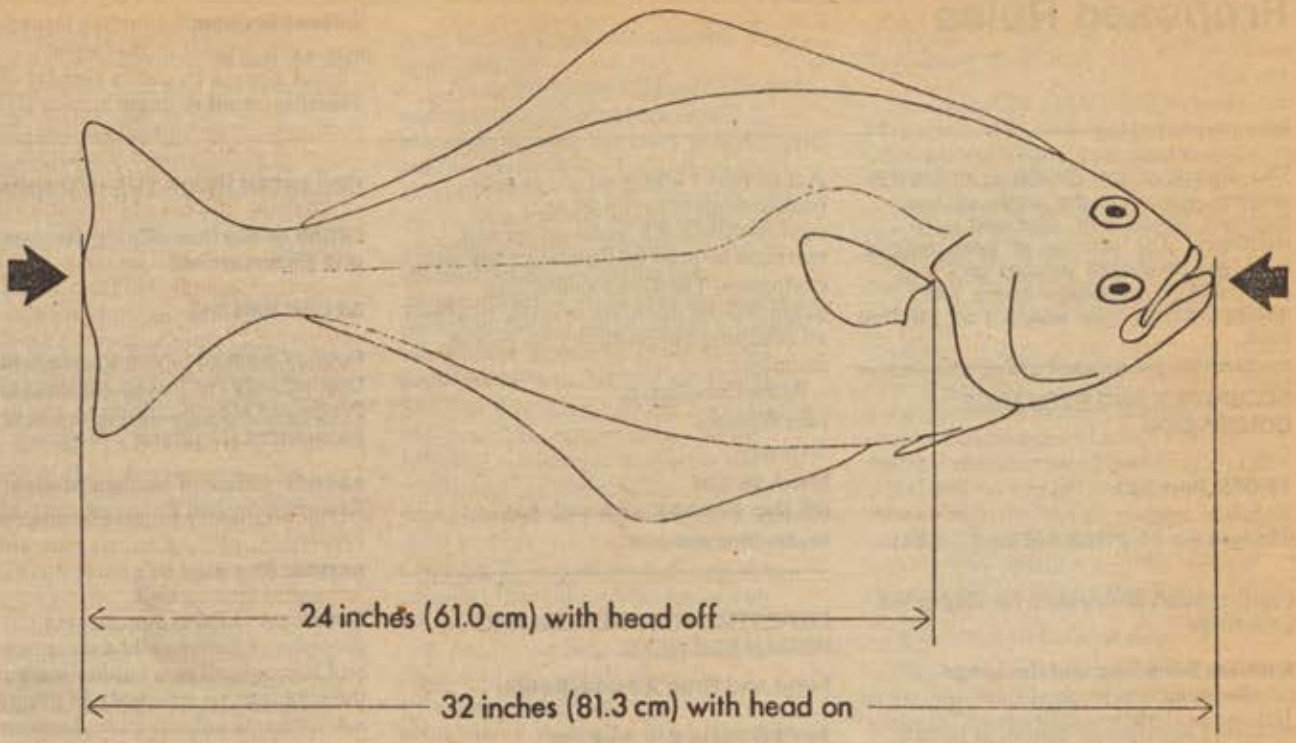
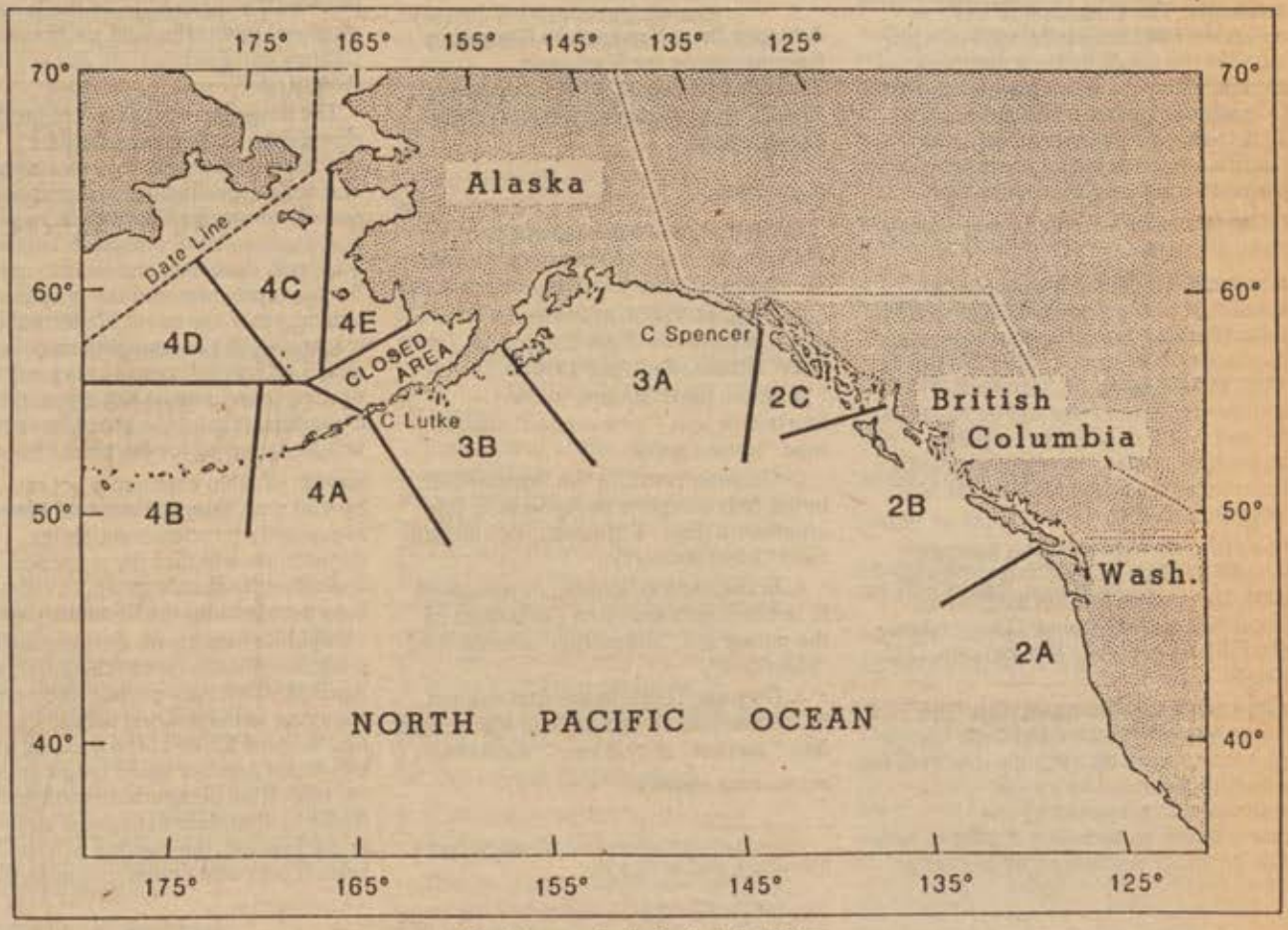


Minimum commercial size.



Regulatory areas for the Pacific halibut fishery.

[FR Doc. 85-7994 Filed 4-3-85; 8:45 am]
BILLING CODE 3510-22-C

Proposed Rules

Federal Register
Vol. 50, No. 65
Thursday, April 4, 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.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-21903; File No. S7-5-85]

Confirmation Disclosure for Reported Securities

AGENCY: Securities and Exchange Commission.

ACTION: Extension of comment period for proposed rule amendments.

SUMMARY: The Commission has extended from March 29, 1985 to April 30, 1985 the deadline for submitting comments on the amendments which the Commission proposed on February 4, 1985 to its rule governing customer confirmation disclosure for principal transactions in reported securities.

DATE: Comments are to be received by April 30, 1985.

ADDRESS: All comments should be submitted in triplicate and addressed to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. All comments should refer to File No. S7-5-85, and will be available for public inspection at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Leland H. Goss, (202) 272-2827, Room 5204, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission has extended from March 29, 1985 to April 30, 1985 the deadline for submitting comments on the amendments proposed by the Commission on February 4, 1985 to Rule 10b-10 under the Securities Exchange Act of 1934,[1] which would require broker-dealers to report on confirmations the trade prices and markups in principal transactions with customers. The Commission has extended the deadline in order to afford an additional opportunity for public comment.

By the Commission.

John Wheeler,

Secretary.

March 28, 1985.

[FR Doc. 85-8085 Filed 4-3-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 211 and 310

[Docket No. 84N-0311]

Adverse Drug Experience Reporting Requirements for Marketed Prescription Drugs Without Approved New Drug or Abbreviated New Drug Applications

Correction

In FR Doc. 85-6688 beginning on page 11478 in the issue of Thursday, March 21, 1985, make the following corrections:

1. On page 11479, in the first column, in the second line from the bottom, "pre-1983" should read "pre-1938".

2. In the third column, in the fourteenth line, "intervenous" should read "intravenous".

3. On page 11482, in the first column, in the first complete paragraph, in the nineteenth line, "§ 210.305(c)(5)" should read "§ 310.305(c)(5)".

4. In the second column, in paragraph E, in the fourth line from the bottom of the paragraph, "indentifier" should read "identifier".

5. On page 11483, in the first column, in the heading of § 310.305, in the second line, "market" should read "marketed".

BILLING CODE 1505-01-M

[1] *See* Securities Exchange Act Release No. 21708 (February 4, 1985) 50 FR 5706.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

Public Comment Procedures and Opportunity for Public Hearing on Proposed Modifications to the Iowa Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of program amendments submitted by Iowa as proposed amendments to the State's permanent regulatory program (hereinafter referred to as the Iowa program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendments consist of proposed changes to the Iowa regulations concerning civil penalty assessments and collections including a proposed penalty assessment schedule, and performance bond amounts. This notice sets forth the times and locations that the Iowa program and the proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed for the public hearing.

DATES: Written comments not received by 4:30 p.m., May 6, 1985, will not necessarily be considered in the decision on whether the proposed amendments should be approved and incorporated into the Iowa program.

A public hearing on the proposed amendments has been scheduled for April 24, 1985. Any person interested in speaking at the hearing should contact Mr. Richard Rieke at the address or telephone number listed below by April 19, 1985. If no person has contacted Mr. Rieke by that date to express an interest in the hearing, the hearing will not be held. If only one person requests the

opportunity to speak at the public hearing, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: The public hearing is scheduled for 1:00 p.m. at the Kansas City Field Office, Professional Building, Room 502, 1103 Grand Avenue, Kansas City, Missouri 64106

Written comments and requests for a hearing should be directed to Mr. Richard Rieke, Director, Kansas City Field Office, Professional Building, Room 502, 1103 Grand Avenue, Kansas City, Missouri 64106; Telephone: (816) 374–5527.

Copies of the Iowa program, the proposed modifications to the program, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the OSM Field Office listed above and at the OSM Headquarters Office and the Office of the State regulatory authority listed below, during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendments by contacting the Kansas City Field Office.

Office of Surface Mining, Administrative Record, Room 5124, 1100 "L" Street, NW., Washington, D.C. 20240

Office of Surface Mining, Kansas City Field Office, 1103 Grand Avenue, Professional Building, Room 502, Kansas City, Missouri 64106

Iowa Department of Soil Conservation, Mines and Minerals Division, Wallace State Office Building, Des Moines, Iowa 50319

FOR FURTHER INFORMATION CONTACT: Mr. Richard Rieke, Director, Kansas City Field Office, Professional Building, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone: (816) 374–5527.

SUPPLEMENTARY INFORMATION:

I. Background

The Iowa program was conditionally approved by the Secretary of the Interior on January 21, 1981 (46 FR 5885). The approval was made effective April 10, 1981. Information pertinent to the general background, revisions, modifications, and amendments to the Iowa program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Iowa program can be found in the January 21, 1981 **Federal Register**.

II. Submission of Revisions

By letters dated January 31, 1985 and February 5, 1985, Iowa submitted proposed program amendments consisting of:

1. An amendment to Iowa Code 83.15 concerning civil penalties, which is intended to bring the Iowa program into conformity with the Federal regulations at 30 CFR 845. The rule concerns the assessment of civil penalties for violations of an operator's permit. It establishes general criteria for determining the amount of the penalty and provides for establishing a penalty assessment schedule. The rule also provides for a penalty of not less than $750 per day during which the violations continue. The rule provides for an informal conference to review the recommended penalty. The rule also provides that the State Attorney General shall institute civil action in the district court for the assessment of a civil penalty. This rule is also known as House File 531;

2. An amendment establishing a new Iowa rule 780–4.6(83) "Penalty Schedule." This rule establishes a schedule by which the Iowa Department of Soil Conservation (DSC) will assign points for assessing penalties. The authority for this schedule was established in the amendment above;

3. An amendment to the Iowa program concerning the method used to calculate bond amounts. Iowa is proposing to use subrule 4.42(1) of its approved program. At the same time the State is withdrawing its request for consideration of a $10,000 per acre bonding maximum as well as the proposed six-point methodology for determining per acre bonding amounts, which were found to be inconsistent with SMCRA and disapproved by the Director, OSM, on December 7, 1984 (49 FR 47834).

The full text of the proposed amendments is available for review at the address listed above. Upon request to OSM's Field Office Director, each person may receive, free of charge one single copy of the proposed program amendments. The Director now seeks public comment on whether the proposed amendments are consistent with the Federal regulations. If approved, the amendments will become part of the Iowa program.

III. Procedural Requirements

1. Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements establish by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 915

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

(Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*))

Dated: March 29, 1985.

John D. Ward,

Director, Office of Surface Mining.

[FR Doc. 85–8055 Filed 4–3–85; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD3 84–33]

Drawbridge Operation Regulations; Mantua Creek, New Jersey

AGENCY: Coast Guard, Dot.

ACTION: Proposed rule.

SUMMARY: At the request of Consolidated Rail Corporation (CONRAIL), and New Jersey Department of Transportation (NJ DOT), the Coast Guard is considering a change to the regulations governing the Mantua Creek railroad and Route 44 drawbridges, respectively. Both bridges cross Mantua Creek at Paulsboro, New Jersey. The changes would allow the railroad bridge to open on advance notice form 11 p.m. to 7 a.m. from March

through November, and would permit both bridges to open on advance notice at all times from December through the last day of February. This proposal is being made because of minimal openings during the applicable periods. This action should relieve the bridge owners of the burden of having a person constantly available to open the draws and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before May 20, 1985.

ADDRESSES: Comments should be mailed to Commander (oan-br), Third Coast Guard District, Bldg. 135A, Governors Island, NY 10004. The comments and other materials referenced in this notice will be available for inspection and copying at this address. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District (212)668-7994.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for concurrence with or for any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Third Coast Guard District will evaluate all communications received and will determine a final course of action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Ernest J. Feemster, project manager, and Mary Ann Arisman, project attorney.

Discussion of Proposed Regulations

The Mantua Creek railroad bridge, about 1.4 miles from the creek mouth, has a one-foot vertical clearance at Mean High Water (MHW). The Route 44 bridge approximately 3/10 mile upstream has a vertical clearance of five feet at MHW. Both bridges have a five-foot greater clearance at Mean Low Water. Most vessels transiting upstream of the railroad bridge are smaller power vessels, many of which are enroute to or from a small marina located between the bridges. There are no other waterfront facilities upstream of the railroad bridge. The railroad bridge presently opens on signal and is required to open for most vessels due to its minimum vertical clearance.

CONRAIL requested that the railroad draw only be required to open on signal from March 1 through November 30 from 7 a.m. to 11 p.m., and open on four hours notice at all other times. Review of bridge opening logs for 1983 shows that there were 12 openings from December through February, and 7 openings from March through November from 11 p.m. to 7 a.m. These minimal openings do not appear to warrant maintaining a draw operator from December through February, and from 11 p.m. to 7 a.m. March through November.

The Route 44 bridge presently opens on signal, except four hours notice is required from 11 p.m. until 7 a.m. year-round. Because of minimal openings during the winter, NJ DOT requested that four hours notice be required at all times from December through February. Review of bridge opening logs for 1982–1984 (December through February) shows four openings and they were all in December 1982. These few openings in 1982 and lack of openings the last two years (during the winter) do not appear to warrant maintaining a draw operator during the winter months.

The changes requested by both bridge owners would result in identical regulations at both bridges. This would simplify opening requirements for vessels using the waterway. The Coast Guard, therefore, is proposing that: (1) The railroad bridge require four hours notice from 11 p.m. to 7 a.m., March through November and at all times December through the last day of February, and (2) the Route 44 bridge require four hours notice at all times December through the last day of February and continue to require four hours notice 11 p.m. to 7 a.m. from March through November.

Mantua Creek accommodates only recreational vessels, mainly in the boating season during the day. The few winter openings of the railroad draw include vessels engaged in hunting or trapping.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This is because the waterway is used only by recreational vessels and these regulations should respond to their needs. The regulations should similarly be responsive to the needs of the recreational boat marina located between the two bridges. Vessels operating outside hours the draw would open on signal will be required to give advance notice to receive an opening. This, however, should not pose a major inconvenience or significantly impact such vessels due to infrequency of such openings. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certified that, if adopted, it would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title, 33, Code of Federal Regulations, by revising § 117.729, to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§117.729 Mantua Creek.

(a) The draw of each moveable bridge shall be opened at all times as soon as possible for passage of a public vessel of the United States.

(b) The draw of the CONRAIL railroad bridge, mile 1.4 and the S.R. 44 bridge, mile 1.7, both at Paulsboro, shall open on signal from March 1 through November 30 from 7 a.m. to 11 p.m., and shall open on signal at all other times upon four hours notice.

(33 U.S.C. 499; 49 CFR 1.46(c)(2)); 33 CFR 1.05-1(g)(3))

Dated: March 19, 1985.

R.L. Johanson,

Captain, U.S. Coast Guard, Acting Commander, Third Coast Guard District.

[FR Doc. 85-8044 Filed 43-3-85; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2810-5]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing rulemaking to disapprove a revision to the Illinois State Implementation Plan (SIP) for Total Suspended Particulates (TSP). This revision pertains to the incorporation of a source-specific variance for Sours Grain Company into the Illinois SIP. USEPA's action to propose disapproval of the requested SIP revision is based on the failure of the State to demonstrate that the variance would not jeopardize attainment and maintenance of the TSP national ambient air quality standards (NAAQS).

DATE: Comments on this revision and on the proposed USEPA aciton must be received by May 6, 1985.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Randolph O. Cano, at (312) 886-6035, before visiting the Region V office.)

Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

Comments on this proposed rule should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6035.

SUPPLEMENTARY INFORMATION: In a March 8, 1984, Opinion and Order of the Board (IPCB 79-210), the Illinois Pollution Control Board (IPCB) granted Sours Grain Company a variance from IPCB Rules 203(d)(8)(B)(ii)(a) and 203(d)(8)(B)(iv) until November 8, 1985, for particulate emissions from the truck dumping pit and watercraft loading spout at its Pekin, Illinois grain elevator. This grain elevator is located in Pekin Township, Tazewell County. The present TSP air quality status designation for this Township is secondary nonattainment.

Rule 203(d)(8)(B)(ii)(a) requires the use of induced draft at major dump pits and their associated equipment so that a minimum face velocity is maintained at the effective grate surface sufficient to contain particulate emissions generated in unloading operations. Rule 203(d)(8)(B)(iv) requires the use of an induced draft air stream which is ducted through air pollution control equipment as emissions controls for load-out areas.

USEPA analysis of ths proposed SIP revision was completed in conformance with the provisions of a July 29, 1983, memorandum from Sheldon Meyers, Director of the Office of Air Quality Planning and Standards, to the Directors of the regional Air and Waste Management Divisions and with Section 110(a)(2) of the Clean Air Act (Act). This Sheldon Meyers memorandum sets forth USEPA's policy and requirements relative to the approval of source-specific SIP revisions. Prior to securing approval of a TSP source-specific relaxation that would maintain the overall approval status of the Part D SIP in a nonattainment area, USEPA policy requires the State to show that the SIP, as a whole, despite the relaxation, will continue to provide for the attainment and maintenance of the TSP national ambient air quality standards (NAAQS). This proposed SIP revision is a relaxation in that it provides additional time to comply with existing State requirement that have been approved as part of the Illinois SIP. For TSP, a modeling demostration using USEPA's reference modeling techniques and the best available information is required. The State's submittal failed to contain a modeling demonstration showing that the emission levels from this facility during the variance period would have no adverse impact on the timely attainment and maintenance of the particulate matter ambient standard. USEPA, therefore, proposes disapproval of this variance.

All interested persons are invited to submit written comments on the proposed SIP revision and on USEPA's proposed disapproval. Written comments received by the date specified above will be considered in USEPA's final rulemaking action.

Under 5 U.S.C. 605(b), USEPA has determined that this proposed action, if finally disapproved, will not have a significant economic impact on a substantial number of small entities. Only a single entity, Sours Grain Company, is affected by this action.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management of Budget (OMB) for review. Any comments from OMB to USEPA and any USEPA response are available for public inspection at the USEPA Region V office listed above.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Sec. 110, 172, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7502, and 7601(a))

Dated: December 27, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 85-8030 Filed 4-3-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 712

[OPTS-82012; FRL-2811-1]

Comprehensive Assessment Information Rule; Opportunity for Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public meetings.

SUMMARY: The Environmental Protection Agency is considering conducting a series of public meetings to discuss the concept and reporting requirements of a new comprehensive reporting rule. The rule, which is being developed under section 8(a) of the Toxic Substances Control Act (TSCA), will contain an extensive list of questions for which reporting by chemical manufacturers, importers, and processors may be required. Each time data are needed on a chemical the rule will be amended. The subject chemical and the specific question(s) which must be reported on will be listed in the amendment. Only those data elements which are of primary interest to the users of the data will be requested. EPA will use this rule to obtain information needed by it and other Federal agencies to support assessments of and regulations on chemical substances.'

DATE: Persons interested in participating in these meetings or in suggesting topics for discussion, or in requesting additional information, should contact the EPA TSCA Assistance Office on or before May 6, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator-202-554-1404).

I. Background

To protect the general public and the environment from toxic chemicals, the regulatory agencies in the Federal

Government generally follow similar information-gathering processes to support the development of risk assessment/management strategies. Once an agency receives information that a particular chemical may, in certain circumstances, produce adverse health or environmental effects, that agency proceeds to gather a variety of information on that chemical which is needed to determine possible courses of action. Even if enough general information is already available to assist in making a preliminary decision to initiate regulatory development, additional, more precise information often is needed to supplement available information so that the agency can develop an appropriate regulatory strategy.

The data elements needed on an almost routine basis by each agency involved with developing chemical regulations have many similarities. Much of the needed information is proprietary to chemical manufacturers and processors and is therefore not publicly available. In most cases these agencies then rely on statutory authority to require the industry in question to provide the necessary information via a reporting regulation.

The development of information-gathering regulations as it is now carried out can be time-consuming and relatively costly to both the companies submitting the information and the agency making the request. Before an agency can promulgate a reporting rule several actions must occur. These include: (1) The actual questions must be drafted, (2) a proposed rule must be drafted and undergo various stages of review, (3) the proposal must be published, (4) public comments must be reviewed, (5) a process and data base must be established for managing the information collected by the agency and (6) a final rule must be drafted, reviewed and published. Regardless of the nature of the rule, most of these stages must occur. The longer it takes to complete these stages and issue a rule, the longer it will be until actual data have been reported. This delays important assessments and regulatory actions.

EPA requires less time to add chemicals to a model rule (a rule used repetitively) by amendment than is needed to promulgate a chemical-specific rule. Unlike chemical-specific rules, a model rule probably will not require: (1) The design of a new data base each time a chemical is added to the rule, (2) the development of a new process for handling and receiving completed forms as they are received by the Agency, and (3) extensive review of the rule and reporting requirements by EPA each time chemicals are added to the rule by amendment. Agency experience with one model information gathering rule—the Preliminary Assessment Information Rule—has shown that the time to promulgate an amendment adding chemicals to this rule is one-quarter to one-third the time needed to publish the original rule.

Issuing a more detailed model rule would establish many of the information elements EPA considers important in preparing risk assessments and supporting chemical regulations. EPA's routine use of these standard information elements for the development of risk assessments should lead toward greater consistency in chemical evaluations. Further, the public will have a better understanding of what information is needed to complete these evaluations.

The Agency has found, through its experience with model rules that, as industry becomes more accustomed to a specific set of the reporting requirements, fewer mistakes are made in completing the model rule reporting form.

The Preliminary Assessment Information Rule issued by EPA and published in the **Federal Register** of June 22, 1982 (47 FR 26992), required chemical manufacturers to complete EPA Form No. 7710-35 on an initial list of approximately 250 chemicals and to submit their reports to the Agency no later than November 19, 1982. Each form submitted to the Agency was reviewed both manually and by computer to detect any reporting errors. For each error detected, the respondent was contacted and required to make the necessary corrections. In some cases where several respondents incorrectly answered the same questions, EPA reviewed the reporting form and published a supplement to clarify the original instructions.

Approximately one error was detected for each form submitted in response to the June 22, 1982 rule. With each of several subsequent amendments adding chemicals to the rule, fewer errors have been detected. This suggests that there is a learning curve for reporting for a model rule. As this learning takes place, fewer errors occur in reporting and fewer companies need to make corrections and resubmit their forms. This allows the Agency to have complete and accurate data sooner than would otherwise be possible if many correction cycles were required. Based on this experience, EPA believes that over time fewer EPA and company resources will be required to implement a model rule than for a series of individual chemical-specific rules.

Duplicative reporting from companies responding to EPA and other government agencies on the same chemical is a major problem for industry. With the development of a comprehensive information model rule EPA intends to consolidate all information reported into one data base. Such centralization of information will permit EPA and other agencies to verify quickly if a request for information on particular chemical has ever been made before using the model rule. At present, due to the wide variety of data bases and reporting rules in existence, it is difficult to search for data that may previously have been reported on a chemical. This new model rule should lead to greater coordination among EPA program offices and other Federal agencies that evaluate chemical data and should facilitate information collection and sharing among these groups. More effective and efficient information coordination between EPA and other agencies should reduce the information collection burden placed on industry.

Thus, to reduce industry compliance costs and to provide a quick and efficient mechanism for obtaining relevants data, EPA has begun development, under section 8(a) of TSCA, of the Comprehensive Assessment Information Rule (CAIR). This notice solicits public participation in the development of CAIR.

II. Areas of Discussion

A. CAIR

Under section 8(a)(2) of TSCA, EPA can require manufacturers and processors of chemical substances to keep such records and submit such information to the Agency as the Administrator may reasonably require. The information that can be required includes (but is not limited to): (1) Chemical identity, (2) categories of use, (3) quantities manufactured and/or processed, (4) description of byproducts, (5) exposure, (6) environmental and health effects, (7) environmental fate data, and (8) environmental release information.

In developing CAIR, EPA will create a comprehensive list of questions which will provide section 8(a)(2)-type information. Since many types of information will be needed, these questions will vary both in the type of information elements required and the level of accuracy. For example, information requirements could include: "What quantity of the chemical is

produced each year?", "What is the ambient air concentration in the workplace?", "What is the vapor pressure of the chemical?", "Provide a block diagram of the process you use in manufacturing the subject chemical", or "Are your employees required to undergo a complete medical examination before they are hired?" Questions may also vary in degrees of accuracy required; for example: "What is the percentage of impurities in your final product to an accuracy of 25 percent?" or, "What is the percentage of impurities in your final product to an accuracy of 5 percent?"

The rule will establish questions like these, together with appropriate reporting procedures, in the Code of Federal Regulations. Each time data are needed on a particular chemical, the rule will be amended. The subject chemical will be added and the specific question(s) in the rule which must be reported on will be listed in the amendment. Only those data elements for which information is needed on the specific chemical will be cited in a given reporting requirement rule. In addition to adding chemicals to the rule by amendment, the reporting form and instructions may change by the addition of new questions or modification of existing questions via amendments to the rule. In those instances where CAIR is not specific enough for a particular information need, and the addition of specific questions to the reporting form is not warranted due to the likelihood that the Agency will not need them for future reporting, the Agency will issue a chemical-specific rule.

EPA's Office of Toxic Substances (OTS) will be responsible for developing CAIR and for amending it by adding chemicals or additional questions when necessary. However, EPA also intends to use this rule to support certain information-gathering needs of other program offices in EPA and other Federal agencies that require information for chemical risk assessment/management purposes. Other offices and agencies will be consulted about chemicals of interest to them, and, as appropriate these chemicals will be included in the CAIR rule.

In addition to filling new information needs in EPA and other Federal agencies, CAIR may also be used to replace or supplement existing section 8(a) rules. In order to centralize reporting requirements, the Agency may incorporate other model rules (e.g., the Preliminary Assessment Information Rule) into the CAIR rule. Before modifying CAIR for these additions, the Agency will propose any changes for public comment.

B. Who Would Report

EPA may, according to section 8(a) of TSCA, require reporting from manufacturers, processors, and importers. For the Preliminary Assessment Information Rule, only manufacturers and certain importers were subject to the proposed rule. The Comprehensive Assessment Information Rule will be structured to allow EPA to require reporting by manufacturers, importers and/or processors; those who must report will be identified for each chemical-specific use of the rule.

C. Confidentiality

Respondents will be permitted to claim certain information required by the CAIR rule as confidential provided substantiation requirements are met. Any information covered by a claim would be disclosed by EPA only as provided in the procedures set forth at 40 CFR Part 2. If no claim accompanied the information at the time it was submitted to EPA or if certification as to the claim was not made on the reporting form, EPA would place the information in an open file available to the public without further notice to the submitter.

III. Public Meetings

The Agency is considering holding two sets of meetings. The first set will be concerned with the concept of the rule, including such topics as: "Who should be subject?" "What definitions should be incorporated into the rule?" "What chemicals should be added to the rule?" etc. The next series of meetings will deal with the actual reporting form. These meetings will discuss such issues as: "What questions should be included in the form?" "What degree of accuracy should be required?" etc. The Agency will determine, based on the responses to this Notice, whether such meetings are warranted. Therefore, EPA encourages persons interested in attending these meetings and/or suggesting alternative topics for discussion to contact the TSCA Assistance Office. A Notice will be published in the **Federal Register** announcing the dates and locations of any public meetings.

List of Subjects in 40 CFR Part 712

Chemicals, Environmental protection, Recordkeeping and reporting requirements.

Dated: March 28, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85-8033, Filed 4-3-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 761

[OPTS-62043; TSH-FRL 2812-3]

Polychlorinated Biphenyls; Proposed Incorporation by Reference Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA has incorporated by reference certain American Society for Testing and Materials (ASTM) test methods in the Polychlorinated Biphenyl (PCB) regulations. The test method ASTM D 3178-73 has been revised by ASTM. EPA is proposing that the revised method be used to meet particular PCB testing requirements and invites comments on the revised method.

DATE: Comments on this proposed amendment must be submitted by May 6, 1985.

ADDRESS: Address written comments to: TSCA Public Information Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

EPA requests that written comments be submitted in triplicate. Comments should include the docket control number OPTS-62043. Comments on this proposed rule will be available for review and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Rm. E-107, at the address given above.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: The ASTM test method ASTM D 3178-73 (Reapproved 1979)—Standard Test Methods for Carbon and Hydrogen in the Analysis Sample of Coke and Coal has been revised. The new number designation for the test method is ASTM D 3178-84. EPA invites comments on the revised test method, copies of which are available from the Document Control Officer (see ADDRESS reference above).

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Recordkeeping and reporting requirements, Incorporation by reference.

(Sec. 6, 90 Stat. 2020 (15 U.S.C. 2065))

Dated: March 28, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 761—[AMENDED]

Therefore, it is proposed that Part 761 of Title 40 of Chapter I be amended as follows:

§ 761.19 [Amended]

1. In § 761.19(b), the entry "ASTM D 3178–73" is revised to read "ASTM D 3178–84."

§ 761.60 [Amended]

2. In paragraph (a)3)(iii)(B)(*6*), the reference "ASTM D 3178–73" is revised to read "ASTM D 3178–84."

[FR Doc. 85–8026 Filed 4–3–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–6640]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 50 FR 3554 on January 25, 1985. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Borough of Bloomingdale, Passaic County, New Jersey.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Borough of Bloomingdale, previously published at 50 FR 3554 on January 25, 1985, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

Source of Flooding	Location	Elevation in feet national geodetic vertical datum
Cold Spring Brook	Approximately 600 feet upstream of Glen Wild Avenue.	*593
Van Dam Brook	Approximately 520 feet upstream of Knolls Road.	*322

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator.

Issued: March 25, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85–7990 Filed 4–3–85; 8:45 am]

BILLING CODE 6718–03–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 5, 18, 21, 22, 73, 83, 90, 95, and 99

[Gen. Docket No. 85–75; FCC 85–127]

List of Rules To Be Reviewed During 1985–1986

AGENCY: Federal Communications Commission.

ACTION: Notice of the Commission's list of rules to be reviewed during 1985–1986.

SUMMARY: This action (Notice) invites public comment on the Commission's List of Rules to be reviewed pursuant to section 610 of the Regulatory Flexibility Act of 1980, 5 U.S.C. 610. The purpose of the review is to determine whether such rules should be continued without change, or should be amended or rescinded to minimize any significant economic impact of the rules upon a substantial number of small entities. Upon receipt of comments from the public, said comments will be evaluated and action will be taken to rescind or amend the Commission's rules, as required.

DATES: Comments may be filed June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Donald L. McClure, Office of the General Counsel, (202) 254–6530.

SUPPLEMENTARY INFORMATION:

In the matter of Federal Communications Commission's list of rules to be reviewed pursuant to section 610 of the Regulatory Flexibility Act during 1985–1986; Gen. Docket No. 85–75.

Adopted: March 15, 1985.

Released March 21, 1985.

By the Commission.

1. On July 29, 1981, the Federal Communications Commission released its Regulatory Flexibility Act (REA) (5 U.S.C. 601 *et seq.*) Plan for periodic review of all rules issued by the agency which have, or will have, a significant economic impact upon a substantial number of small entities. See 46 FR 39183 (July 31, 1981). Attached to the Commission's plan was a table outlining a broad schedule for reviewing FCC regulations toward the ends specified by the FRA during the next five years. The Notice in Gen. Docket No. 81–706 implemented the first year of the five year plan. See 46 FR 56466 (November 17, 1981). The RFA Plan has been revised to accomplish the review of the Commission's Rules over the next three years (1982–1985) thereby decreasing the original term of review by one year.[1]

2. In accordance with the revised RFA Plan, the staff has reviewed the subparts of the Commission's regulations targeted for review from March 1985 through February 1986. The attached Appendix lists specific rules or closely related groups of rules which are to be examined pursuant to section 610(c) of the RFA during the fourth and final year of the Commission's RFA review. The public is invited to comment on these rules for regulatory flexibility purposes. Comments should address the following: (1) The nature of the economic impact the rule(s) has (or have) on the commenting party; (2) the continued need for the rule(s); (3) the complexity of the rule(s); (4) the extent to which the rule(s) overlap(s); duplicate(s) or conflict(s) with other Federal rules, and, to the extent feasible, with state and local governmental rules; (5) the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule(s); (6) any other matters that would

[1] The Notice in Gen. Docket No. 82–812 implemented the second year of the revised RFA Plan. See 47 FR 58315, (December 30, 1982). The Notice in Gen. Docket No. 84–361 implemented the third year of the revised RFA Plan. See 49 FR 17045, (April 23, 1984).

facilitate an informed review of the specified regulations.

3. Commenting parties should submit one original and five copies of each filing to the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.[2] Comments should specify the docket number of the proceeding and the name of the reviewing Bureau or Office.

4. Interested parties may file comments June 3, 1985.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Regulatory Review Plan

Office of the General Counsel

PART 1—PRACTICE AND PROCEDURE

Subpart A—General Rules of Practice and Procedure

Need: These rules prescribe general practice and procedures for parties, practitioners and witnesses appearing before the Commission.

Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title Description

1.001 Proceedings before the Commission.
1.002 Declaratory rulings.
1.003 Suspension, amendment, or waiver of rules.
1.004 Computation of time.
1.005 Mailing address furnished by licensee.
1.006 Availability of station logs and records for Commission inspection.
1.008 Withdrawal of papers.
1.010 Transcript of testimony; copies of documents submitted.
1.012 Notice to attorneys of Commission documents.
1.014 Citation of Commission documents.
1.021 Parties.
1.022 Authority for representation.
1.023 Persons who may be admitted to practice.
1.024 Censure, suspension, or disbarment of attorneys.
1.025 Former Commissioners and employees.
1.026 Appearances.
1.027 Witnesses; right to counsel.
1.041 Informal requests for Commission action.
1.042 Applications, reports, complaints; cross-reference.
1.043 Requests for stay; cross-reference.
1.044 Separate pleadings for different requests.
1.045 Pleadings; filing periods.
1.046 Motions for extension of time.
1.047 Service of documents and proof of service.
1.048 Length of pleadings.
1.049 Specifications as to pleadings and documents.
1.050 Specifications as to briefs.
1.051 Number of copies of pleadings, briefs, and other papers.
1.052 Subscription and verification.
1.061 Procedures for handling applications requiring special aeronautical study.
1.062 Operation pending action on renewal application.
1.065 Substantial and significant changes in information furnished by applicants to the Commission.
1.068 Action on application for license to cover construction permit.
1.077 Detailed application procedures; cross-references.
1.080 Forfeiture proceedings.
1.083 Application for radio operator license.
1.084 Procedure with respect to commercial radio operator license applications.
1.085 Suspension of operator licenses.
1.087 Modification of license or construction permit on motion of the Commission.
1.088 Predesignation pleading procedure.
1.089 Notice of violations.
1.091 Revocation and/or cease and desist proceedings; hearings.
1.092 Revocation and/or cease and desist proceedings; after waiver of hearing.
1.093 Consent orders.
1.094 Consent order procedures.
1.095 Violation of consent orders.
1.101 General provisions.
1.102 Effective dates of actions pursuant to delegated authority.
1.103 Effective dates of Commission actions; finality of Commission actions.
1.104 Preserving the right of review; deferred consideration of application for review.
1.106 Petitions for reconsideration.
1.108 Reconsideration on Commission's own motion.
1.110 Partial grants; rejection and designation for hearing.
1.113 Action modified or set aside by person, panel, or board.
1.115 Application for review of action taken pursuant to delegated authority.
1.117 Review on motion of the Commission.
1.120 Protests of grants without hearing.

Subpart B—Hearing Proceedings

Need: These rules prescribe hearing proceedings and procedures for parties, practitioners, and witnesses appearing before the Commission.

Legal Basis: 47 U.S.C. Sec. 154, 303.

Section Number and Title Description

1.201 Scope.
1.202 Official reporter; transcript.
1.203 The record.
1.204 Pleadings; definition.
1.205 Continuances and extensions.
1.207 Interlocutory matters, reconsideration and review; cross-references.
1.209 Identification of responsible officer in caption to pleading.
1.211 Service.
1.221 Notice of hearing; appearances.
1.223 Petitions to intervene.
1.224 Motion to proceed in forma pauperis.
1.225 Participation by non-parties; consideration of communications.
1.227 Consolidations.
1.229 Motions to enlarge, change or delete issues.
1.241 Designation of presiding officer.
1.243 Authority of presiding officer.
1.245 Disqualification of presiding officer.
1.246 Admission of facts and genuineness of documents.
1.248 Prehearing conferences; hearing conferences.
1.249 Prehearing statement.
1.250 Discovery and preservation of evidence; cross-references.
1.251 Summary decision.
1.253 Time and place of hearing.
1.254 Nature of the hearing; burden of proof.
1.255 Order of procedure.
1.258 Closing of the hearing.
1.260 Certification of transcript.
1.261 Corrections to transcript.
1.263 Proposed findings and conclusions.
1.264 Contents of findings of fact and conclusions.
1.267 Initial and recommended decisions.
1.271 Delegation of review function.
1.273 Waiver of initial or recommended decision.
1.274 Certification of the record to the Commission for initial or final decision.
1.276 Appeal and review of initial decision.
1.277 Exceptions; oral arguments.
1.279 Limitation of matters to be reviewed.
1.282 Final decision of the Commission.
1.291 General provisions.
1.294 Oppositions and replies.
1.296 Service.
1.297 Oral argument.
1.298 Rulings; time for action.
1.301 Appeal from presiding officer's interlocutory ruling; effective date of ruling.
1.302 Appeal from presiding officer's final ruling; effective date of ruling.
1.311 General.
1.313 Protective orders.
1.315 Depositions upon oral examination—notice and prelimimary procedure.
1.316 Depositions upon written interrogatories—notice and preliminary procedure.
1.318 The taking of depositions.
1.319 Objections to the taking of depositions.
1.321 Use of depositions at the hearing.
1.323 Interrogatories of parties.
1.325 Discovery and production of documents and things for inspection, copying or photographing.
1.331 Who may sign and issue.
1.333 Requests for issuance of subpena.
1.334 Motions to quash.
1.335 Rulings.
1.336 Service of subpenas.
1.337 Return of service.
1.338 Subpena forms.
1.339 Witness fees.
1.340 Attendance of witness; disobedience.
1.351 Rules of evidence.
1.352 Cumulative evidence.
1.353 Further evidence during hearings.
1.354 Documents containing matter or material.
1.355 Documents in foreign language.
1.356 Copies of exhibits.

[2] The original will be placed in the public docket and the Secretary will forward one copy to the appropriate Bureau or Office.

1.357 Mechanical reproductions as evidence.
1.358 Tariffs as evidence.
1.359 Proof of official record; authentication of copy.
1.360 Proof of lack of record.
1.361 Other proof of official record.
1.362 Production of statements.
1.363 Introduction of statistical data.
1.364 Testimony by speakerphone.

Subpart C—Rule Making Proceedings

Need: These rules prescribe rulemaking proceedings and procedures, such as petitions for and notice of proposed rule makings, form of comments, replies and further notice of rule makings before the Commission.
Legal Basis: 47 U.S.C. Sec. 154, 303.

Section Number and Title Description

1.399 Scope.
1.400 Definitions.
1.401 Petitions for rule making.
1.403 Notice and availability.
1.405 Responses to petitions; replies.
1.407 Action on petitions.
1.411 Commencement of rule making proceedings.
1.412 Notice of proposed rule making.
1.413 Content of notice.
1.415 Comments and replies.
1.419 Form of comments and replies; number of copies.
1.420 Additional procedures in proceedings for amendment of the FM, TV or air-ground Table of Assignments.
1.421 Further notice of rule making.
1.423 Oral argument and other proceedings.
1.425 Commission action.
1.427 Effective date of rules.
1.429 Petition for reconsideration.
1.430 Proceedings on a notice of inquiry.

Subpart D—Broadcast Applications and Proceedings

Need: These rules prescribe filing requirements, application forms and procedures for broadcast services.
Legal Basis: 47 U.S.C. Sec. 154, 303.

Section Number and Title Description

1.502 Emergency Broadcast Authorizations.
1.511 Applications required.
1.512 Where to file; number of copies.
1.513 Who may sign applications.
1.514 Content of applications.
1.516 Specification of facilities.
1.517 Contingent applications.
1.518 Inconsistent or conflicting applications.
1.519 Repetitious applications.
1.520 Multiple applications.
1.522 Amendment of applications.
1.525 Agreements between parties for amendment or dismissal of, or failure to prosecute broadcast applications.
1.526 Records to be maintained locally for public inspection by commercial applicants, permittees and licensees.
1.527 Records to maintained locally for public inspection by non-commercial educational applicants, permittees and licensees.
1.531 Formal and informal applications.
1.533 Application forms for authority to construct a new station or make changes in an existing station.
1.534 Application for extension of construction permit or for construction to replace expired construction permit.
1.536 Application for license to cover construction permit.
1.538 Application for modification of license.
1.539 Application for renewal of license.
1.540 Application for voluntary assignment of transfer of control.
1.541 Application for involuntary assignment of license or transfer of control.
1.542 Application for temporary authorization.
1.543 Application for renewal or modification of special service authorization.
1.544 Application for broadcast station to conduct field strength measurements and for experimental operation.
1.545 Application permit to deliver programs to foreign countries.
1.546 Application to determine operating power by direct measurement of antenna power.
1.547 Application for permission to use lesser grade operators.
1.548 Application to operate by remote control.
1.549 Requests for extensions of authority to operate without required monitors, indicating instruments, and EBS Attention Signal devices.
1.550 Requests for new or modified call sign assignments.
1.561 Staff consideration of applications which receive action by the Commission.
1.562 Staff consideration of applications which do not require action by the Commission.
1.564 Acceptance of applications.
1.566 Defective applications.
1.568 Dismissal of applications.
1.569 Applications for frequencies adjacent to Class I–A channels.
1.570 AM broadcast station applications involving other North American countries.
1.571 Processing AM broadcast station applications.
1.572 Processing TV broadcast and translator station applications.
1.573 Processing FM broadcast and translator station applications.
1.574 Processing of international broadcasting applications.
1.578 Amendments to applications for renewal, assignment or transfer of control.
1.580 Local public notice of filing of broadcast applications.
1.584 Pleadings to deny.
1.587 Procedure for filing informal applications.
1.591 Grants without hearing.
1.592 Conditional grant.
1.593 Designation for hearing.
1.594 Local public notice of designation for hearing.
1.597 Procedures on tranfer and assignment applications.
1.598 Period of construction.
1.599 Forfeiture of construction permit.
1.601 Simultaneous modification and renewal of license.
1.603 Special waiver procedure relative to applications.
1.605 Retention of applications in hearing status after designation for hearing.
1.611 Financial report.
1.612 Annual employment report.
1.613 Filing of contracts.
1.615 Ownership reports.

Private Radio Bureau

Subpart F—Private Radio Services Applications and Proceedings

Need: These rules prescribe filing criteria, application forms and procedures of private radio services.
Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title Description

1.901 Scope.
1.911 Applications required.
1.912 Where applications are to be filed.
1.913 Who may sign applications.
1.914 Full disclosures.
1.915 Shared use of broadcast antenna structure.
1.916 Repetitious applications.
1.918 Amendment of applications.
1.921 Procedure for obtaining a radio station authorization and for commencement of operation.
1.922 Forms to be used.
1.923 Waiver of construction permit requirement.
1.924 Assignment or transfer or control, voluntary and involuntary.
1.925 App. for special temp. authorization, temp. permit, temp. op. authority, or interim amateur permit.
1.926 Application for renewal of license.
1.927 App. for ship radio inspection or periodical survey of ships subject to compulsory radio regs.
1.928 Procedure w/respect to apps. for ship radio inspection or periodical survey.
1.929 Application for exemption from compulsory ship radio requirements.
1.930 Application for temporary waiver of annual inspection.
1.932 Time in which station must be placed in operation.
1.933 Installation or removal of apparatus.
1.934 Procedure with respect to amateur radio operator license.
1.951 How applications are distributed.
1.952 How file numbers are assigned.
1.953 How applications are processed.
1.955 Frequency coordination, Canada.
1.956 Rented communications equipment.
1.958 Defective applications.
1.959 Resubmitted applications.
1.961 Dismissal of applications.
1.962 Public notice of acceptance for filing; petitions to deny applications of specified categories.
1.971 Grants without a hearing.
1.981 Reports, annual and semiannual.

Subpart G—Schedule of Fees Filed with the Commission

Need: These rules specify a fee schedule for radio broadcast, common carrier, safety and special radio, cable television, cable TV relay and commercial radio services.

Legal Basis: 47 U.S.C. Sec. 154, 303.

Section Number and Title Description

1.1101 Authority.
1.1102 Payment of fees.
1.1103 Return or refund of fees.
1.1104 General exceptions.
1.1105 General rule (STA and waiver).
1.1111 Schedule of fees for Radio Broadcast Services.
1.1113 Schedule of fees for Common Carrier Services.
1.1115 Schedule of fees for the Safety and Special Radio Services.
1.1116 Schedule of fees for Cable Television and Cable TV Relay Services.
1.1117 Schedule of fees for commercial radio operator examinations and licensing.
1.1120 Schedule of fees for equipment type approval, type acceptance and certification.

Subpart H—Ex Parte Presentations

Need: These rules prescribe permissible and prohibited ex parte presentations before the Commission and decisionmaking Commission personnel.

Legal Basis: 47 U.S.C. Sec. 154, 303.

Section Number and Title Description

1.1201 Definitions.
1.1203 Restricted adjudicative proceedings.
1.1205 Decision-making Commission personnel (restricted adjudicative proceedings).
1.1207 Restricted rule making proceedings.
1.1209 Decision-making Commission personnel (restricted rule making proceedings).
1.1211 Non-restricted rule making proceedings.
1.1213 Decision-making Commission personnel (non-restricted rule making proceedings).
1.1221 Presentations prohibited in restricted proceedings which have been designated for hearing.
1.1223 Presentations prohibited in restricted adjudicative proceedings prior to designation for hearing.
1.1225 Solicitation of ex parte presentations.
1.1227 Permissible ex parte communications.
1.1229 Presentations prohibited in restricted informal rule making proceedings.
1.1231 Presentations in non-restricted informal rule making proceedings.
1.1241 Written ex parte communications.
1.1243 Oral ex parte communications.
1.1245 Disclosure of information concerning ex parte presentations.
1.1251 Sanctions.

Subpart I—Procedures Implementing the National Environmental Policy Act of 1969

Need: These rules prescribe Commission actions authorizing construction of certain classes of communications facilities which require the preparation of an environmental impact statement.

Legal Basis: 47 U.S.C. Sec. 154, 303.

Section Number and Title Description

1.1301 Basis and Purpose.
1.1303 Scope.
1.1305 Major actions.
1.1311 Environmental information to be submitted with applications for authority to construct major communications facilities.
1.1313 Commission consideration of environmental information.
1.1315 The draft environmental impact statement; comments.
1.1317 The final environmental impact statement.
1.1319 Consideration of the final environmental impact statement during the hearing and decision-making process.

Subpart J—Pole Attachment Complaint Procedures

Need: These rules provide complaint and enforcement procedures to ensure that rates, terms, and conditions for cable television pole attachments are reasonable.

Legal Basis: 47 U.S.C. Sec. 154, 303.

Section Number and Title Description

1.1401 Purpose.
1.1402 Definitions.
1.1403 Notice of removal and petition for temporary stay.
1.1404 Complaint.
1.1405 File numbers.
1.1406 Dismissal of complaints.
1.1407 Response and reply.
1.1408 Number of copies and form of pleadings.
1.1409 Commission consideration of the complaint.
1.1410 Remedies.
1.1411 Meeting and hearings.
1.1412 Enforcement.
1.1413 Forfeiture.
1.1414 State certification.
1.1415 Other orders.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS: GENERAL RULES AND REGULATIONS

Subpart L—Registration of Telephone Terminal Equipment

Need: These rules specify that telephone terminal equipment must be registered.

Legal Basis: 47 U.S.C. Sec. 154, 303.

Section Number and Title Description

2.1300 Cross Reference.
2.1302 Application for registration under Part 68.

PART 5—EXPERIMENTAL RADIO SERVICES (OTHER THAN BROADCAST)

Subpart C—Technical Standards

Need: These rules prescribe technical standards for frequencies used in Experimental Radio Services.

Legal Basis: 47 U.S.C. Sec. 154, 301, 303.

Section Number and Title Description

5.101 Frequency stability.
5.102 Types of emission.
5.103 Emission limitations.
5.104 Modulation requirements.
5.105 Power and antenna height.
5.106 Transmitter control requirements.
5.107 Transmitter measurements.
5.108 Wildlife tracking and ocean buoy tracking operations.
5.109 Acceptability of transmitters for licensing.

Subpart D—Operating Requirements

Need: These rules prescribe operating requirements for experimental radio services.

Legal Basis: 47 U.S.C. 154, 301, 303.

Section Number and Title Description

5.151 General limitations on use.
5.152 Station identification.
5.153 Suspension of transmission required.
5.154 Mobile installations in vehicles not under the continuous control of the licensee.
5.155 Operator requirements.
5.156 Evidence of operator license.
5.157 Posting station licenses.
5.158 Authorized points of communication.
5.159 Operation during an emergency.
5.160 Inspection of stations.
5.161 Inspection and maintenance of tower marking and lighting and associated control equipment.
5.162 Notice of violation.
5.163 Content of station records.
5.164 Form of station records.
5.165 Retention of station records.
5.166 Adherence to program of research.

Subpart E—Experimental Service (Research)

Need: These rules prescribe licensing eligibility, scope of service and reporting requirements for experimental service for research purposes.

Legal Basis: 47 U.S.C. 154, 301, 303.

Section Number and Title Description

5.201 Eligibility for license.
5.202 Scope of service.
5.203 Frequencies for experimental service (Research).
5.204 Experimental report.

Subpart F—Experimental Service (Developmental)

Need: These rules prescribe licensing eligibility, scope of service and reporting requirements for experimental service for developmental purposes.

Legal Basis: 47 U.S.C. 154, 301, 303.

Section Number and Title Description

5.251 Eligibility for license.
5.252 Scope of service.
5.253 Frequencies for Experimental Service (Developmental).
5.254 Frequencies for field strength surveys or equipment demonstrations.
5.255 Experimental report.

PART 18—INDUSTRIAL, SCIENTIFIC, AND MEDICAL EQUIPMENT

Subpart C—Ultrasonic Equipment

Need: These rules specify type approval and certification requirements for ultrasonic equipment which emits radio frequencies to prevent the propagation of harmful interference.

Legal Basis: 47 U.S.C. 154(i), 301, 303(r).

Section Number and Title Description

18.71 Operation without a license.
18.72 Technical limitations.
18.73 Type approval.
18.74 Identification of type approved equipment.
18.75 Effect of certificate of type approval.
18.76 Changes in type approved equipment.
18.77 Withdrawal of certificate of type approval.
18.78 Measurement of field strength.
18.79 Location of equipment.
18.80 Certification attesting compliance with rules.
18.81 Renewal of certification.
18.82 Certification after maintenance work.
18.83 Prototype certification permitted.
18.84 Effective date.

Subpart D—Industrial Heating Equipment

Need: These rules specify certification requirements for industrial heating equipment which emits radio frequencies to prevent the propagation of harmful interference.

Legal Basis: 47 U.S.C. 154(i), 301, 303(r).

Section Number and Title Description

18.101 Operation without a license.
18.102 Technical limitations.
18.105 Inspection of industrial heating equipment.
18.106 Renewal of certificate.
18.107 Measurement of field strength.
18.108 Location of equipment.
18.109 Report of radiation measurements.
18.111 Form of certificate.
18.112 Certification regarding operation.
18.113 Certification regarding radiation.
18.114 Prototype certification permitted.
18.115 Compliance with installation instructions.
18.116 Certificate to be filed with Commission.
18.117 Copy of certificate with equipment.
18.118 Rejection of certificate.
18.119 Elimination and investigation of harmful interference.
18.120 Interference to a radionavigation or safety service.
18.121 Interference to other radio services.
18.122 Report of interference investigation.
18.125 Prototype certification procedure.
18.126 Information to be filed for prototype certification.

Subpart E—Medical Diathermy Equipment

Need: These rules prescribe methods of operation procedures for type approval, and effect of certificate of approval for medical diathermy equipment.

Legal Basis: 47 U.S.C. Sec. 154(i), 301, 303(r).

Section Number and Title Description

18.141 Operation on assigned frequencies.
18.142 Operation on unassigned frequencies.
18.143 Measurement of field strength.
18.144 Procedure for type approval.
18.145 Effect of certificate of type approval.
18.146 Withdrawal of certificate of type approval.

Subpart F—RF Stabilized Arc Welders

Need: These rules prescribed technical and certification requirements for RF stabilized arc welders.

Legal Basis: 47 U.S.C. Sec. 154(i), 301, 303(r).

Section Number and Title Description

18.181 Technical specifications.
18.182 Certification requirements.
18.183 Location of Certificate.

Subpart H—Miscellaneous Equipment

Need: These rules specify technical operating limits and certification requirements for miscellaneous equipment which emits radio frequencies to prevent the propagation of harmful interference.

Legal Basis: 47 U.S.C. Sec. 154(i), 301, 303(r).

Section Number and Title Description

18.261 Miscellaneous equipment.
18.262 Existing epilation equipment.

Subpart I—Induction Cooking Ranges

Need: These rules describe the general purpose of regulations for induction cooking ranges.

Legal Basis: 47 U.S.C. Sec. 154(i), 303(r).

Section Number and Title Description

18.271 Purpose of regulations for an induction cooking range.
18.272 Induction cooking range subject to these rules.
18.273 Radiation Limit.
18.274 Conducted RF Limit.
18.275 Certification of an induction cooking range.
18.277 Induction range manufactured prior to February 1, 1980.

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

Subpart F—Developmental Authorizations

Need: These rules prescribe standards for developmental authorizations in the Domestic Public Fixed Radio Services.

Legal Basis: 47 U.S.C. 307–310.

Section Number and Title Description

21.400 Eligibility.
21.401 Scope of service.
21.402 Adherence to program of research and development.
21.403 Special procedure for the development of a new service contrary to rules.
21.404 Terms of grant; general limitations.
21.405 Supplementary showing required.
21.406 Developmental report required.

PART 22—PUBLIC MOBILE RADIO SERVICES

Subpart H—Rural Radio Service

Need: These rules prescribe standards for the rural radio service in the Public Mobile Radio Services.

Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title Description

22.600 Eligibility.
22.601 Frequencies.
22.602 Transmitter power.
22.603 Types of emission.
22.604 Emission limitations.
22.605 Modulation requirements.
22.606 Permissible communications.
22.607 Priority of service.
22.608 Supplementary showing required with application for interoffice stations.
22.609 Supplementary showing required with apps. for central office stat. and rural subscriber stations.
22.610 Rural subscriber, interoffice, and central office stations at temporary fixed locations.
22.611 Notification of station operation at temporary locations.

Subpart K—Domestic Public Cellular Radio Telecommunications Service

Need: These rules prescribe the eligibility requirements, application procedures, and operational and technical standards for stations licensed in the Domestic Public Cellular Radio Telecommunications Service.

Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title Description

22.900 Scope.
22.901 Eligibility.
22.902 Frequencies.
22.903 Cellular system service areas.
22.904 Power limitations.
22.905 Antenna height-power for base stations.
22.906 Types of emissions and modulation requirements.
22.907 Emission requirements.
22.908 Transmitter construction and installation.
22.909 Control point.
22.910 Station identification.
22.911 Permissible communications.
22.912 Responsibility for operational control and maintenance of mobile stations.
22.913 Content of applications.
22.914 Provisions of service to subscribers.
22.915 Cellular system capability specification.
22.916 Evaluation of cellular applications.
22.917 Demonstration of financial qualifications.
22.918 Amendment of cellular applications.
22.919 Restrictions on motions to enlarge issues.

Subpart L—Offshore Radio Telecommunications Service

Need: These rules prescribe standards for the Offshore Radio Telecommunication Service in the Public Mobile Radio Services.

Legal Basis: 47 U.S.C. Sec. 154, 303.

Section Number and Title Description

22.1000 Eligibility.
22.1001 Frequencies.
22.1002 Power limitations.
22.1003 Bandwidth and emission limitations.
22.1004 Modulation requirements.
22.1005 Permissible communication.
22.1006 Station at temporary-fixed locations.
22.1007 Modification of station operation at temporary locations.

PART 73—RADIO BROADCAST SERVICES

Subpart E—Television Broadcast Stations

Need: These rules prescribe licensing policies, technical and operational standards for all television broadcast stations.

Legal Basis: 47 U.S.C. Sec. 154, 301, 303, 307.

Section Number and Title Description

73.601 Scope of subpart.
73.602 Cross reference to rules in other parts.
73.603 Numerical designation of television channels.
73.606 Table of Assignments.
73.607 Availability of channels.
73.609 Zones.
73.610 Minimum distance separations between stations.
73.611 Reference points and distance computations.
73.612 Protection from interference.
73.614 Power and antenna height requirements.
73.615 Administrative changes in authorizations.
73.621 Noncommercial educational stations.
73.635 Use of common antenna site.
73.636 Multiple ownership.
73.641 Subscription TV definitions.
73.642 Subscription TV licensing policies.
73.643 Subscription TV operating requirements.
73.644 Subscription TV transmission systems.
73.646 Teletext Service.
73.653 Operation of TV aural and visual transmitters.
73.658 Affil. agreements & network prog. prac.; territorial exclus. in non-network prog. arranges.
73.661 TV operator requirements.
73.663 Determining operating power.
73.665 Use of TV Aural Baseband subcarriers.
73.667 TV Subsidiary Communications Services.
73.669 TV Stereophonic aural and multiplex subcarrier operation.
73.676 Remote control operation.
73.677 TV remote control authorizations.
73.681 Definitions.
73.682 Transmission standards.
73.683 Field intensity contours.
73.684 Prediction of coverage.
73.685 Transmitter location and antenna system.
73.686 Field strength measurements.
73.687 Transmission system requirements.
73.688 Indicating instruments.
73.691 Modulation monitors.
73.694 Requirements for type approval of aural modulation monitors.
73.698 Tables.
73.699 TV engineering charts.

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

Subpart O—Use of Radiotelephony

Need: These rules prescribe the use of radiotelephony by stations on shipboard in the maritime services.

Legal Basis: 47 U.S.C. 152, 154, 155, 301, 303, 307, 309, 315, 317.

Section Number and Title Description

83.351 Frequencies available.
83.352 Frequencies for use in distress and search and rescue operations.
83.353 Frequencies for calling.
83.354 Frequencies below 5000 kHz for public correspondence.
83.355 Frequencies below 5000 kHz to 27.5 MHz for public correspondence.
83.357 Additional frequencies for ship to shore communication.
83.358 Frequencies below 3000 kHz for safety purposes.
83.359 Frequencies in the band 156–162 MHz available for assignment.
83.360 Frequencies for business and operational purposes.
83.361 Frequencies available for use in Vessel Traffic Service Systems.
83.362 Frequencies below 3000 kHz for safety, business, and operational purposes.
83.363 Use of U.S. Government frequencies for telephony.
83.364 Identification of station.
83.365 Procedure in testing.
83.366 General radiotelephone operating procedure.
83.367 Station documents.
83.368 Radiotelephone station log.
83.369 Operation under interim ship station license.
83.370 Frequencies below 27.5 MHz available in the Alaska area.
83.371 Public telephone service, ship stations to common carrier coast stations.
83.372 Frequencies available in one or more zones of the Alaska area.
83.373 Frequencies available for radiotelephony—216–220 MHz.

Subpart P—Use of Radiodetermination

Need: These rules prescribe the use of radiodetermination by stations on shipboard in the maritime services.

Legal Basis: 47 U.S.C. 152, 154, 155, 301, 303, 307, 309, 315, 317.

Section Number and Title Description

83.401 Assignable frequencies for direction finding.
83.403 Radiodetermination by cable-repair ship.
83.404 Assignable frequencies above 2400 MHz.
83.405 Special provisions applicable to ship-radar stations.
83.406 Special provisions applicable to emergency positions indicating radiobeacons.

Subpart Q—Developmental Stations

Need: These rules prescribe the use of developmental stations on shipboard in the maritime services.

Legal Basis: 47 U.S.C. Sec. 152, 154, 155, 301, 303, 307, 309, 315, 317.

Section Number and Title Description

83.431 Supplemental eligibility.
83.432 Showing and statement required.
83.433 Assignable frequencies.
83.434 Use of developmental stations.
83.435 Developmental program.
83.436 Report of operation required.
83.437 Identification of station.

Subpart S—Radiotelephone Stations Pro. for Comp. With Part II of Title III

Need: These rules specify that radiotelephone stations must comply with appropriate provisions of the Communications Act or the Radio Provisions of the Safety Convention.

Legal Basis: 47 U.S.C. Sec. 152, 154, 155, 301, 303, 307, 309, 315, 317.

Section Number and Title Description

83.481 Inspection of station.
83.482 Radiotelephone station.

83.483 Radiotelephone installation.
83.484 Radiotelephone transmitter.
83.486 Automatic radiotelephone alarm signal generator.
83.487 Installation of automatic radiotelephone alarm signal generator.
83.488 Radiotelephone receivers.
83.489 Main source of energy.
83.491 Reserve source of energy.
83.492 Required capacity.
83.493 Proof of capacity.
83.494 Antenna system.
83.496 Emergency electric lights.
83.497 Radiotelephone station clock.
83.498 Spare antenna.
83.499 Tools and testing equipment.
83.501 Card of instructions.
83.502 Test of radiotelephone station.

Subpart T—Radiotelephone Installation Pro. for Comp. w/Part II of Title III of the Communications Act

Need: These rules specify that radiotelephone installation must comply with appropriate provisions of Part II of Title III of the Communication Act.

Legal Basis: 47 U.S.C. Sec. 152, 154, 155, 301, 303, 307, 309, 315, 317.

Section Number and Title Description

83.511 Applicability.
83.512 Inspection of radiotelephone installation.
83.513 Posting of certificate.
83.514 Radiotelephone installation.
83.516 Principal operating position.
83.517 Medium frequency transmitter.
83.518 Very high frequency transmitter.
83.519 Radiotelephone receivers.
83.521 Main source of energy.
83.522 Reserve source of energy.
83.523 Required capacity.
83.524 Proof of capacity.
83.526 Antenna system.
83.527 Electic light.
83.528 Antenna redio frequency indicator.
83.529 Nameplate.
83.531 Test of radiotelephone installation.
83.532 General exemptions.

Subpart U—Radiotelephone Installation in Compliance With Great Lakes Radio Agreement

Need: These rules specify that radiotelephone installation must comply with the Great Lakes Radio Agreement.

Legal Basis: 47 U.S.C. 152, 154, 155, 301, 303, 307, 309, 315, 317.

Section Number and Title Description

83.536 Applicability to vessels.
83.537 Survey and certification.
83.539 Radiotelephone installation.
83.541 Principal operating position.
83.542 Radiotelephone transmitter.
83.543 Radiotelephone receiver.
83.544 Main source of energy.
83.545 Auxiliary source of energy.
83.546 Atenna system.
83.547 Illumination of operating controls.
83.548 Trial of radiotelephone installation.
83.550 Antenna radio frequency indicator.

Subpart V—Type Approval of Compulsory Shipboard Equipment

Need: These rules prescribe type approval of compulsory shipboard equipment in the maritime services.

Legal Basis: 47 U.S.C. 152, 154, 155, 301, 303, 307, 309, 315, 317.

Section Number and Title Description

83.551 Scope of type approval.
83.552 Requirements for main transmitter.
83.553 Requirements for reserve transmitter.
83.554 Requirements for radiotelegraph auto alarm.
83.555 Requirements for automatic-alarm-signal keying device.
83.556 General requirements for survival craft radio equipment.
83.557 Requirements for survival craft portable radio equipment.
83.558 Requirements for survival craft nonportable radio equipment.
83.559 Radiotelephone distress frequency watch receiver.

Subpart W—Violations

Need: These rules prescribe procedures for radiotelegraph violations.

Legal Basis: 47 U.S.C. 152, 154, 155, 301, 303, 307, 309, 315, 317.

Section Number and Title Description

83.601 Answers to notice of violation.
83.602 Reports of infringements of the International Radio Regulations.

Subpart X—Radiotelegraph Stations Provided for Compliance With Vessel Bridge-to-Bridge Radiotelephone Act

Need: These rules specify that radiotelephone status must be in compliance with the Vessel Bridge-to-Bridge Radiotelephone Act.

Legal Basis: 47 U.S.C. 152, 154, 155, 301, 303, 307, 309, 315, 317.

Section Number and Title Description

83.701 Applicability.
83.703 bridge-to-Bridge station.
83.705 Inspection of bridge-to-bridge station.
83.709 Bridge-to-bridge radiotelephone installation.
83.711 Principal operating position.
83.713 Bridge-to-bridge transmitter.
83.715 Bridge-to-bridge receiver.
83.717 Bridge-to-bridge source of energy.
83.719 Bridge-to-bridge antenna system.
83.721 Antenna radio frequency indicator.
83.723 Nameplate.
83.725 Test of radiotelephone installation.

Subpart Z—Use of On-board Communications

Need: These rules prescribe procedures for the use of on-board communication in the maritime services.

Legal Basis: 47 U.S.C. 152, 154, 155, 301, 303, 307, 309, 315, 317.

Section Number and Title Description

83.811 Authorized frequencies.
83.813 Supplemental eligibility requirements.
83.815 Points of communication.
83.817 Antenna height.
83.819 Station records.
83.821 Station logs.
83.823 Station operation.
83.825 Identification of station.
83.835 Remote control for maneuvering or navigation.

Subpart BB—VHF Radiotelephone Stations Provided for Compliance With the Radio Provisions of the Safety Convention

Need: These rules specify that VHF radiotelephone stations in the maritime services must comply with the Radio Provisions of the Safety Convention.

Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title Description

83.851 VHF radiotelephone station.
83.852 The VHF radiotelephone installation.
83.853 VHF radiotelephone transmitter.
83.854 VHF radiotelephone receiver.
83.855 VHF radiotelephone source of energy.
83.856 VHF radiotelephone antenna system.
83.857 Controls and indicators required for the VHF radiotelephone installations.

Subpart CC—How to Use Your VHF Marine Radio

Need: These rules prescribe the general licensing and operating requirements and procedures for VHF marine radio in the maritime services.

Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title Description

83.1001 (VHF Marine Rule 1) Who are these rules for?
83.1002 (VHF Marine Rule 2) What do these rules tell me?
83.1003 (VHF Marine Rule 3) Do I need a license?
83.1004 (VHF Marine Rule 4) How do I apply for my license and for my RP?
83.1005 (VHF Marine Rule 5) May I operate my marine radio while my applications are being processed?
83.1006 (VHF Marine Rule 6) How do I make changes during my license term?
83.1007 (VHF Marine Rule 7) How do I renew my license?
83.1008 (VHF Marine Rule 8) What do I do if I lose my license or RP?
83.1009 (VHF Marine Rule 9) What must I do if I sell my boat?
83.1010 (VHF Marine Rule 10) What type of equipment must I have?
83.1011 (VHF Marine Rule 11) May I install and service my marine radio by myself?
83.1012 (VHF Marine Rule 12) What channels may I use?
83.1013 (VHF Marine Rule 13) How do I operate my marine radio?
83.1014 (VHF Marine Rule 14) What communications are prohibited?
83.1015 (VHF Marine Rule 15) Do I have to keep a radio log?

83.1016 (VHF Marine Rule 16) Do I need a copy of the FCC's rules?
83.1017 (VHF Marine Rule 17) Do I have to make my ship station available for inspection?
83.1018 (VHF Marine Rule 18) What happens if I violate these rules?
83.1019 (VHF Marine Rule 19) How do I call another boat?
83.1020 (VHF Marine Rule 20) How do I place a call through a public coast station?
83.1021 (VHF Marine Rule 21) What are the marine emergency signals?
83.1022 (VHF Marine Rule 22) What is the marine distress procedure?

Subpart DD—Inland Waterways Communication System (IWCS)

Need: These rules prescribe general procedures and eligibility requirements for Inland Waterways Communication System (IWCS).

Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title Description

83.1100 Service authorized.
83.1103 Supplemental eligibility requirements.
83.1105 Frequencies available.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

Subpart N—Operating Requirements

Need: These rules prescribed general operating requirements to include points of communications, methods of station identification and record keeping for private land mobile radio services.

Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title Description

90.401 Scope.
90.403 General operating requirements.
90.405 Permissible communications.
90.407 Communications permitted during emergency.
90.409 Emergency operations of Public Safety and Special Emergency mobile stations at fixed locations.
90.411 Civil Defense Communications in the Public Safety and Special Emergency Radio Services.
90.413 Civil Defense Communications in the Taxicab Radio Service.
90.415 Prohibited uses.
90.417 Interstation communication.
90.419 Points of communication.
90.421 Operation of mobile units in vehicles not under the control of the licensee.
90.423 Operation on board aircraft.
90.425 Station identification.
90.427 Precautions against unauthorized operation.
90.429 Control point and dispatch point requirements.
90.431 Unattended operation.
90.433 Operator license requirements.
90.435 Posting of operator license.
90.437 Posting station licenses.
90.439 Inspection of stations.
90.441 Inspections and maintenance of tower marking and associated control equipment.
90.443 Content of station records.
90.445 Form of station records.
90.447 Retention of station records.
90.449 Answers to a notice of violation.

Subpart O—Transmitter Control

Need: These rules prescribe terms and conditions for transmitter control or the private land mobile radio services.

Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title Description

90.460 Scope.
90.461 Direct and remote control of transmitters.
90.463 Transmitter control points.
90.465 Control of systems of communication.
90.467 Dispatch points.
90.469 Unattended operation.
90.471 Points of operation in internal transmitter control systems.
90.473 Operation of internal transmitter control systems through licensed fixed control points.
90.475 Operation of internal transmitter control systems in specially equipped systems.
90.476 Interconnection of fixed stations and certain mobile stations.
90.477 Interconnected systems.
90.483 Permissible methods and requirements of interconnecting private & public systems of communications.

Subpart Q—Developmental Operation

Need: These rules prescribe procedures and requirements for filing of applications for developmental licenses.

Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title Description

90.501 Scope.
90.503 Eligibility.
90.505 Showing required.
90.507 Limitations on use.
90.509 Frequencies available for assignment.
90.511 Interference.
90.513 Special provisions.
90.515 Change or cancellation of authorization without hearing.
90.517 Report of operation.

Subpart R—Emergency Communications Pursuant to the ICEP and LATICEP Plans

Need: These rules prescribe procedures for emergency communications pursuant to Industrial Communications Emergency Plan and the Land Transportation Industries Communications Emergency Plan.

Legal Basis: 47 U.S.C. 154, 301, 303, 307, 308, 309, 312, 316, 318, 319, 606.

Section Number and Title Description

90.525 Industrial Communications Emergency Plan (ICEP).
90.527 Land Transportation Industries Communications Emergency Plan (LATICEP).
90.555 Combined frequency listing.

PART 95—PERSONAL RADIO SERVICES

Subpart E—Technical Regulations

Need: These rules prescribe the technical standards necessary for operation and maintenance of, and type acceptance of equipment used in the Personal Radio Services.

Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title Description

95.601 Basis and purpose.
95.603 Definitions.
95.611 Availability of frequencies.
95.613 Transmitter power.
95.615 Frequency tolerance.
95.617 Emission limitations.
95.618 Antenna limitations.
95.619 Modulation requirements.
95.621 Compliance with technical requirements.
95.631 External radio frequency power amplifiers prohibited.
95.641 Acceptability of transmitters for licensing.
95.643 Procedure for type acceptance of equipment.
95.645 Additional requirements for type acceptance.
95.647 Submission of non-crystal controlled R/C station transmitters for type approval.
95.649 Type approval of receiver-transmitter combinations.
95.651 Minimum equipment specifications.
95.653 Test procedure.
95.655 Certificate of type-approval.
95.657 Modification of transmitters.

PART 99—DISASTER COMMUNICATIONS SERVICE

Subpart A—General

Need: These rules provide for licensing of radio stations to provide essential communications incident to or in connection with disasters or other incidents which involve loss of communication facilities.

Legal Basis: 47 U.S.C. 154, 303, 307.

Section Number and Title Description

99.1 Basis and purpose.
99.3 Definitions.

Subpart B—Station License or Authorization

Need: These rules prescribe eligibility criteria for stations licensed in the Disaster Communications Service.

Legal Basis: 47 U.S.C. 154, 303, 307.

Section Number and Title Description

99.07 Eligibility.
99.09 Organization of networks.

99.11 Applications.
99.13 Limitation on antenna structures.
99.15 License term.

Subpart C—Use of Stations

Need: These rules prescribe licensing policies, technical and operational standards of stations in the Disaster Communications Service.

Legal Basis: 47 U.S.C. 154, 303, 307.

Section Number and Title Description

99.17 Activation of stations.
99.19 Points of communications.
99.21 Limitations on use.
99.23 Permissible communications.
99.25 Station identification.
99.27 Radio station log.

Subpart D—Operating Requirements

Need: These rules prescribe operating requirements of stations in the Disaster Communications Service.

Legal Basis: 47 U.S.C. 154, 303, 307.

Section Number and Title Description

99.29 Limitations on use of frequencies.
99.31 Liaison with licensees in the Industrial Radio-location Service.
99.33 Assigned frequencies and authorized emissions.
99.35 Transmitting power.
99.37 Equipment requirements.
99.39 Operator requirements.
99.41 Availability of station and operator licenses.

[FR Doc. 85-7047 Filed 4-3-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-758; RM-4733]

TV Broadcast Stations in Crystal River, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: Action taken herein dismisses the petition filed by William F. Parrish to assign UHF televison channel 39 to Crystal River, Florida for lack of continuing interest.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations (Crystal River, Florida); MM Docket No. 84-758, RM-4733.

Adopted: March 11, 1985.
Released: March 27, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 49 FR 32410, published August 14, 1984, proposing the assignment of UHF Television Channel 39 to Crystal River, Florida, as that community's first local television broadcast service.[1] The *Notice* was adopted in response to a petition filed by William F. Parrish ("petitioner"). Petitioner failed to file comments reaffirming his intention to apply for the channel, if assigned. He also failed to comply with Section 1.52 of the Commission's Rules by not providing his mailing address or telephone number. No other comments on the proposal were received.

2. As stated in the *Notice*, a showing of continuing interest is required before a channel will be assigned. Therefore, in accordance with Commission policy, no further consideration will be given to the assignment of UHF Television Channel 39 to Crystal River, Florida.

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and sections 0.61, 0.204 and 0.283 of the Commission's Rules, it is ordered, that the petition of William F. Parrish is dismissed and this proceeding is terminated.

4. For further information concerning the above, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-8095 Filed 4-3-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Petitioner subsequently submitted an amendment to the original petition seeking assignment of Channel 57 instead of 39 to Crystal River, Florida.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 78-16; Notice 4]

Federal Motor Vehicle Safety Standards; Steering Control Rearward Displacement

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: In November 1979, the agency initially applied Standard No. 204, *Steering Control Rearward Displacement*, to trucks, buses and multipurpose passenger vehicles (MPV's) with an unloaded vehicle weight of 4,000 pounds or less. This notice proposes to extend the coverage of the standard to vehicles with an unloaded vehicle weight of 5,500 pounds or less. Agency research has consistently shown that steering assemblies are a major source of driver-related injuries in light trucks and vans. Research has also demonstrated the effectiveness of Standard No. 204 in reducing those injuries.

DATES: Comment closing date for the proposal is May 20, 1985. The proposed effective date is September 1, 1987.

ADDRESS: Comments should refer to the docket number and notice number of the notice and be sumitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. (Docket hours are from 8 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. William Smith, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-2242).

SUPPLEMENTARY INFORMATION: On November 9, 1978 (43 FR 53364), the agency proposed extending the applicability of Standard No. 204, as well as that of two other standards, to trucks, buses, and multipurpose passenger vehicles (MPV's) with a gross vehicle weight rating of 10,000 pounds or less. The agency proposed these changes to reduce the markedly higher fatality rates in light trucks and vans as compared to passenger cars. In particular, research had indicated that additional safety improvements were needed to reduce steering assembly-

related injuries to drivers of light trucks and vans. Based on the demonstrated effectiveness of steering assembly-related improvements in passenger cars, the agency, on November 29, 1979 (44 FR 68470), amended Standard No. 204, *Steering Column Rearward Displacement*, to extend its applicability only to vehicles with an unloaded vehicle weight of 4,000 pounds or less. The agency explained that it took that action while it continued to study methods for dealing with certification problems, discussed below, experienced by final-stage manufacturers of vehicles that have an unloaded vehicle weight greater than 4,000 pounds. The agency is now proposing to complete this rulemaking action by extending the benefits of Standard No. 204 to additional vehicles.

Certification Problems

The certification problems faced by final-stage manufacturers stem from the nature of the final-stage manufacturing process. There are approximately 3,500 final-stage manufacturers in the U.S. They purchase incomplete vehicles from a major vehicle manufacturer, such as Chrysler, Ford or General Motors. (An incomplete vehicle usually consists of a stripped chassis and driver's compartment.) When an incomplete vehicle manufacturer sells an incomplete vehicle, it makes a representation that the vehicle will comply with all applicable Federal safety standards if the vehicle is completed in accordance with certain restrictions. These restrictions often involve weight and center of gravity limitations.

The final-stage manufacturer adds the remaining portions of the body and other equipment to the chassis to complete it as a specialized vehicle, such as tow truck. If a final-stage manufacturer potentially jeopardizes a vehicle's compliance with the standards by not adhering to the restrictions imposed by the incomplete vehicle manufacturer, NHTSA's certification regulations require the final-stage manufacturer to rectify the vehicle based upon its own information, analysis or testing. Because of the stringent nature of the restrictions imposed by incomplete vehicle manufacturers, final-stage manufacturers have not been able to rely on the incomplete vehicle manufacturer's certification or to complete vehicles on the same chassis they previously used prior to the application of Federal safety standards to those vehicles. As a result, the final-stage manufacturer must either buy the same chassis as before and then recertify them or buy a more expensive chassis with a higher GVWR that has less stringent weight and center of gravity limitations.

The agency first addressed possible solutions to the problems of final-stage manufacturers in the rulemaking that proposed extending Standard No. 212, *Windshield Mounting*, and Standard No. 219, *Windshield Zone Intrusion*, to light trucks, buses and MPV's. In that rulemaking, the agency proposed two alternative test methods of determining compliance with the standards. Both methods were designed to test vehicles at lower weights. The agency believed that either method would encourage incomplete vehicle manufacturers to reduce the number of weight and center of gravity limitations they place on final-stage manufacturers.

As a result of that rulemaking, the agency, in April 1980 (45 FR 22044), extended the applicability of the two standards to trucks, buses and MPV's with a GVWR of 10,000 pounds or less and an unloaded vehicle weight of 5,500 pounds. The agency concluded that limiting the application of the standard would reduce compliance problems for final-stage manufacturers without compromising occupant safety.

The agency is now proposing to extend Standard No. 204 to vhicles that have an unloaded weight of between 4,000 and 5,500 pounds. As discussed in more detail below, the agency is proposing that the standard become effective with model year 1988 vehicles. Based on the agency analysis of manufacturer submitted data, it is the agency's best judgment that approximately 13 to 25 percent of the light vehicle fleet in model year 1988 will consist of vehicles with an unloaded vehicle weight between 4,000 and 5,500 pounds. Based on the agency's estimate of approximately 4.4 million light trucks and van sales in MY 1988, the agency expects that approximately 570,000 to 1.1 million vehicles may be affected by the proposed amendment.

It is possible that some of these vehicles might already comply with the standard. When the agency initially extended the applicability of the standard, manufacturers may have voluntarily redesigned the steering columns of all of their vehicles with a GVWR of 10,000 pounds or less. The agency specifically requests the manufacturers to provide information on the current levels of compliance.

Editorial Changes

As presently codified in the Code of Federal Regulations, the text of Standard No. 204 is followed by a note setting forth two agency interpretations concerning the test procedures of the standard. The agency adopted these interpretations soon after the original standard was issued in 1967. The first interpretation states that a driver test dummy may be used during a compliance test without measuring the impact force developed on the chest. The agency has never used a driver test dummy in its compliance test because of the possibility that the test dummy could interfere with the rearward displacement of the steering column and the use of such a dummy would preclude the use of a scratch tube device for measuring steering control dynamic displacement. It is the agency's understanding that manufacturers also do not use test dummies when doing Standard No. 204 compliance tests. The agency is thus proposing to delete this interpretation since it is unnecessary.

The second interpretation explains how to correct steering column rearward displacement measurements for impact speeds greater than 30 mph. At present, the test speeds for barrier impact test can be precisely controlled to within ±0.5 mph. Because of this advance in the state-of-the-art of impact testing, there is no need for a correction factor and thus the agency is proposing to delete it.

The agency is also adopting into the standard requirements from the agency's compliance test procedures for Standard No. 204. (Document TP-204-07 March 17, 1982) These pre-impact test requirements include latching the vehicle's door, disengaging the parking brake, placing the transmission in neutral and inflating the vehicle's tires to the manufacturer's specified tire pressure.

In addition, the agency is proposing to adopt in Standard No. 204, several of the test procedures that are currently incorporated in the agency's other standards involving frontal barrier impact tests. Those requirements include latching the doors, placing an adjustable steering wheel at its mid-position, and filling the fuel tank to 90 to 95 percent of its capacity. These procedures have been routine in the agency's other crash test standards and adopting them in Standard No. 204 will make the agency's standards more consistent.

Leadtime

At the time that Standard No. 204 was originally extended to trucks, buses and MPV's, the agency provided approximately two years of leadtime. This leadtime was based on a cost analysis performed for the agency that estimated the required leadtime as 18 to 24 months. The agency is proposing to

provide two years of leadtime for the proposed extension of the standard.

Cost and Benefits

NHTSA has examined the effect of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has placed in the docket a regulatory evaluation of the economic and other effects of this rulemaking action. This proposed rule would increase the number of vehicles which are covered by the standard and the modifications necessary to comply with the standard will cost approximately $3.50 for trucks and $17.50 for MPV's and buses. Since most of the vehicles in the 4,000–5,500 pound unloaded vehicle weight fleet are trucks, the average cost per affected vehicle is in the $6 to $8 range. Using the worst case assumption that none of the affected vehicles are currently in compliance, the total consumer cost of the proposed amendment is $3.4 to $8.8 million per year.

At the time the agency originally extended Standards Nos. 203 and 204, the agency estimated that those standards would reduce 0.85 to 1.7 percent of all light truck fatalities and serious injuries. (The agency combined the benefits from both standards since each affects the steering column.) Assuming that none of the vehicles that would be covered by the proposed extrension of Standard No. 204 currently comply with the standard, the agency estimates that this rulemaking action annually will reduce an estimated 6 to 12 fatalities and 85 to 170 serious injuries once all vehicles in the fleet meet the standard.

Regulatory Flexibility Act

NHTSA has also considered the effects of this rulemaking action under the Regulatory Flexibility Act and I hereby certify that it would not have a significant economic impact on a substantial number of small entities. The primary cost effect of this proposed rule will be on incomplete vehicle manufacturers, which are large corporations. Although many final-stage manufacturers are small businesses, the impact on them should be minor since the relatively small increase in price of the incomplete vehicle can be passed on to the ultimate consumer, small organizations and governmental units.

Environmental Effects

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Council, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

For the reasons set out in the preamble, the agency proposes to amend § 571.204 of Title 49 of the Code of Federal Regulations as follows:

§ 571.204 [Amended]

1. The first sentence of Section 2 is revised to read as follows:

This standard applies to passenger cars and to multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less and an unloaded vehicle weight of 5,500 pounds or less.

2. Section 4 is revised to read as follows:

S4 *Requirements.* When a vehicle traveling longitudinally forward at any speed up to and including 30 mph impacts a fixed collision barrier that is perpendicular to the line of travel of the vehicle, under the conditions of S5, the upper end of the steering column and shaft shall not be displaced more than 5 inches horizontally rearward parallel to the longitudinal axis of the vehicle relative to an undisturbed point on the vehicle. The amount of rearward displacement is determined by dynamic measurement.

3. Section 5 is revised to read as follows:

S5 *Test conditions.* The requirements of S4 shall be met when the vehicle is tested in accordance with the following conditions.

S5.1 The vehicle, including test devices and instrumentation, is loaded to its unloaded vehicle weight. For the purposes of this section, unloaded vehicle weight does not include the weight of workperforming accessories.

S5.2 Adjustable steering controls are adjusted so that a tilting steering wheel hub is at the geometric center of the locus it describes when it is moved through its full range of driving positions. A telescoping steering control is set at the adjustment position midway between the forwardmost and rearwardmost position.

S5.3 Convertibles and open-body type vehicles have the top, if any, in place in the closed passenger compartment configuration.

S5.4 Doors are fully closed and latched but not locked.

S5.5 The fuel tank is filled to any level from 90 to 95 percent of capacity.

S5.6 The parking brake is disengaged and the transmission is in neutral.

S5.7 Tires are inflated to the vehicle manufacturer's specifications.

4. The note following the text of Standard No. 204 is removed.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 501.8)

Issued: March 29, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-8048 Filed 4-3-85; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 683

Bottomfish and Seamount Groundfish Fisheries; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings.

SUMMARY: The Western Pacific Fishery Management Council will hold a series of public hearings to obtain comments on the draft fishery management plan (FMP) for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific. The draft FMP (1) addresses the need for cooperative Federal/State management of the bottomfish resource through a "framework" procedure in the island areas where unilateral Federal or unilateral State management would be less effective; (2) addresses the need to maintain bottomfish harvesting capacity in balance with harvestable stocks in the fishery conservation zone (FCZ) of the Northwestern Hawaiian Islands where there is a rapidly-expanding fishery; and (3) incorporates the recommendation for a moratorium on trawling in the FCZ portion of the seamount groundfish fishery.

DATE: All hearings will begin at 7:30 p.m., except for the hearing scheduled for April 29, 1985, in American Samoa, which will begin at 4:30 p.m. See **"SUPPLEMENTARY INFORMATION"** for locations and dates of the public hearings. All written comments should be received by May 1, 1985.

ADDRESS: All written comments should be sent to the Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, Hawaii 96813, telephone 808-523-1368.

SUPPLEMENTARY INFORMATION: The hearings are scheduled as follows:

Oahu

April 1, 1985—Wainae Satellite City Hall, 75-670 Farrington Highway, Wainae, Hawaii 96792

April 2, 1985—Old Haleiwa Gym, Haleiwa, Hawaii 96712

April 4, 1985—Heeia Kea State Park, 46—465 Kam Highway, Kaneohe, Hawaii 96744

April 11, 1985—United Fishing Agency, Ltd., 117 Ahui Street, Honolulu, Hawaii 96813

Kauai

April 3, 1985—Kauai County Council Office, County Building, Lihue, Kauai, Hawaii 96766

Hilo

April 8, 1985—University of Hawaii Cooperative Extension Service Office, 875 Komohana, Hilo, Hawaii 96720

Kona

April 9, 1985—First Hawaiian Bank, Kona Branch Meeting Room, 74-5593 Palani Road, Kailua-Kona, Hawaii 96740

Maui

April 10, 1985—Maalaea Boat and Fishing Club House, Maalaea Harbor, Maui, Hawaii, 96753

Guam

April 11, 1985—Guam Legislative Session Hall, Chalan Santo Papa, Agana, Guam 96910

American Samoa

April 29, 1985—American Samoa Government, Convention Center, Fagatogo, Pago Pago, American Samoa 96799

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 85-7958 Filed 4-1-85; 8:48 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 50, No. 65
Thursday, April 4, 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.

ACTION

Senior Companion Program; Availability of Demonstration Funds

AGENCY: ACTION.
ACTION: Notice of availability of demonstration funds; Senior Companion Program.

The Office of Older American Volunteer Programs, ACTION, announces the availability of funds in fiscal year 1985 to initiate the Homebound Elderly grants under the Senior Companion Program authorized by the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113, Title II, Part C, 42 U.S.C. 5013).

The funds appropriated by Congress for the Senior Companion Program, approximately $3,000,000., shall be available for the start-up of the in-home health care program recently authorized under Pub. L. 98–288. Approximately 50%, or $1,500,000., will be allocated to Regional Offices for new projects on a demonstration basis; approximately 20%, or $600,000., will be allocated to existing ACTION-funded Senior Companion Programs, for new components on a demonstration basis; and approximately 30%, or $900,000., will be allocated to ACTION HQs for Congressionally mandated evaluations and for new projects on a demonstration basis selected on a national competitive basis. Applications for new projects should be developed for a minimum of 30 volunteer service years to 65 volunteer service years in size. Applications for new components to existing ACTION-funded Senior Companion Programs should be developed for 10 or more volunteer service years in size. Sponsors who are awarded a demonstration grant for either a new project or a new component will be required to actively participate in an extensive evaluation program and must fully cooperate with ACTION Headquarters staff who will be doing the evaluation and collecting the required data.

Publication of this announcement does not obligate ACTION to award any specific number of demonstration grants. Application kits will be available in ACTION State and Regional Offices after April 15, 1985. Both new projects and new components will be awarded according to the guidance described in these application kits. A completed application form, with original signature, must be received in the appropriate ACTION State Office no later than 5:00 pm local standard time on Monday, June 3, 1985. Any applications received after that date will not be considered for fiscal year 1985 funds.

Following is an address list of ACTION Regional Offices, along with the addresses of ACTION State Offices under their jurisdiction:

Region I

ACTION Region Office, 411 Stuart Street, 9th Floor, Boston MA 02116
ACTION State Office, Abraham Ribicoff Fed. Bldg., 450 Main St., Rm 524, Hartford, CT 06103
ACTION State Office, Federal Bldg., Rm 210, 66 Pearl Street, Portland, ME 04101
ACTION State Office, 441 Stuart Street, 9th Floor, Boston, MA 02116

New Hampshire/Vermont

ACTION State Office, Federal Post Office & Courthouse, 55 Pleasant Street, Rm 316, Concord, NH 03301
ACTION State Office, John E. Fogarty Bldg., Rm 200, 24 Weybosset Street, Providence, RI 02903

Region II

ACTION Region Office, Jacob K. Javits Fed. Bldg., 26 Federal Plaza, Suite 1611, New York, NY 10278
ACTION State Office, 143 East State St., Rm 506, Broad Street Bank Bldg., Trenton, NJ 08608

Metropolitan New York

ACTION State Office, Jacob K. Javits Fed. Bldg., 26 Federal Plaza, Suite 1609, New York, NY 12207

Upstate New York

ACTION State Office, US Courthouse & Federal Bldg., 445 Broadway, Room 103, Albany, NY 12207

Puerto Rico/Virgin Islands

ACTION State Office, Frederico Gatau Federal Ofc. Bldg., Carlos Chardon Avenue, Suite 662, Hato Rey, PR 00918

Region III

ACTION Region Office, U.S. Customs House, 2d and Chestnut St., Rm 108, Philadelphia, PA 19106
ACTION State Office, Federal Building, Room 372–D, 600 Federal Place, Louisville, KY 40202
ACTION State Office, Federal Building, 31 Hopkins Plaza, Room 918H, Baltimore, MD 21201
ACTION State Office, Federal Building, Room 500, 85 Marconi Blvd., Columbus, OH 43215
ACTION State Office, US Customs House, Room 108, 2d and Chestnut Streets, Philadephia, PA 19106

Virginia/Dist. of Columbia

ACTION State Office, 400 North 8th Street, P.O. Box 10066, Richmond, VA 23240
ACTION State Office, 603 Morris Street, 2d Floor, Charleston, WV 25305

Region IV

ACTION Region Office, 101 Marietta St., NW., Suite 1003, Atlanta, GA 30323
ACTION State Office, 2121 8th Avenue North, Rm 722, Birmingham, AL 35203
ACTION State Office, 930 Woodcock Road, Suite 221, Orlando, FL 32803
ACTION State Office, 75 Piedmont Ave., NE, Suite 412, Atlanta, GA 30303
ACTION State Office, Federal Building, Rm 1005–A, 100 West Capital Street, Jackson, MS 39269
ACTION State Office, Federal Bldg., P.O. Century Station, 300 Fayetteville Street Mall, Rm 131, Raleigh, NC 27601
ACTION State Office, Federal Building, Room 872, 1835 Assembly Street, Columbia, SC 29201
ACTION State Office, Federal Bldg./US Courthouse, 801 Broadway, Room 246, Nashville, TN 37203

Region V

ACTION Region Office, 10 West Jackson Blvd., 3rd Floor, Chicago, IL 60604
ACTION State Office, 10 West Jackson Blvd., 3rd Floor, Chicago, IL 60604
ACTION State Office, 46 East Ohio Street, Room 457, Indianapolis, IN 46204
ACTION State Office, 950 Office Park Road, Suite 220, West Des Moines, IA
ACTION State Office, Federal Bldg., Room 652, 231 West Lafayette Blvd., Detroit, MI 48226
ACTION State Office, Old Federal Bldg., Room 126, 212 Third Avenue South, Minneapolis, MN 55401
ACTION State Office, 517 East Wisconsin Ave., Rm 601, Milwaukee, WI 53202

Region VI

ACTION Region Office, 1100 Commerce, Rm 6B11, Dallas, TX 75242
ACTION State Office, Federal Building, Room 2506, 700 West Capitol Street, Little Rock, AR 72201

ACTION State Office, Federal Building, Room 171, 444 S.E. Quincy, Topeka, KS 66603
ACTION State Office, 626 Main Street, Suite 102, Baton Rouge, LA 70801
ACTION State Office, Federal Office Building, 911 Walnut, Room 1701, Kansas City, MO 64106
ACTION State Office, Federal Building, Cathedral Place, Room 129, Sante Fe, NM 87501
ACTION State Office, 722 North Broadway, Room 101, Oklahoma City, OK 73102
ACTION State Office, 611 East Sixth Street, Suite 107, Austin, TX 78701

Region VIII (No Region VII)

ACTION Region Office, Executive Tower Building, 1405 Curtis Street, Suite 2930, Denver, CO 80202
ACTION State Office, Columbia Bldg., Room 301, 1845 Sherman Street, Denver, CO 80203
ACTION State Office, Federal Building, Room 8036, 2120 Capitol Avenue, Cheyenne, WY 82001
ACTION State Office, Federal Office Bldg., Room 1982, Helena, MT 59626
ACTION State Office, Federal Bldg., Room 293, 100 Centennial Mall North, Lincoln, NE 68508

North & South Dakota

ACTION State Office, Federal Building, Room 213, 225 S. Pierre Street, Pierre, SD 57501
ACTION State Office, U.S. Post Office & Courthouse, 350 South Main St., Room 107, Salt Lake City, UT 84101

Region IX

ACTION Region Office, 211 Main Street, Rm 530, San Francisco, CA 94105
ACTION State Office, 522 North Central, Room 205–A, Phoenix, AZ 85004
ACTION State Office, 211 Main Street, Room 534, San Francisco, CA 94105
ACTION State Office, Federal Bldg., Room 14218, 11000 Wilshire Blvd., Los Angeles, CA 90024

Hawaii/Guam/American Samoa

ACTION State Office, Federal Building, P.O. Box 50024, Honolulu, HI 96850
ACTION State Office, 4600 Kietzke Lane, Suite E–141, Reno, NV 89502

Region X

ACTION Region Office, 1111 Third Avenue, Suite 330, Seattle, WA 98101
ACTION State Office, Owyhee Plaza, Suite 260, 1109 Main Street, Boise, ID 8702

Alaska

ACTION State Office, 1111 Third Avenue, Suite 330, Seattle, WA 98101
ACTION State Office, Federal Bldg., Room 647, 511 N. W. Broadway, Portland, OR 97205
ACTION State Office, 1111 Third Avenue, Suite 330, Seattle, WA 98101.

(42 U.S.C. 5013; 5042)

Dated in Washington, D.C. on March 29, 1985.

Thomas W. Pauken,

Director, ACTION.

[FR Doc. 85–8045 Filed 4–3–85; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Hall-Flat Creek Watershed, IN; Deauthorization of Federal Funding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of deauthorization of Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83–566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the deauthorization of Federal funding for the Hall-Flat Creek Watershed project, Dubois County, Indiana, effective on March 19, 1985.

FOR FURTHER INFORMATION CONTACT: Robert L. Eddleman, State Conservationist, Soil Conservation Service, Suite 2200, 5610 Crawfordsville Road, Indianapolis, Indiana 46224, telephone 317/248–4350.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular No. A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Robert L. Eddleman,

State Conservationist.

[FR Doc. 85–8073 Filed 4–3–85; 8:45 am]

BILLING CODE 3410–16–M

Benson Critical Area Bank Stabilization RC&D Measure, AZ; Environmental Impact

AGENCY: Soil Conservation Service.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Benson Critical Area Bank Stabilization RC&D Measure, Cochise County, Arizona.

FOR FURTHER INFORMATION CONTACT: Verne M. Bathurst, State Conservationist, Soil Conservation Service, 201 East Indianola, Suite 200, Phoenix, Arizona 85012, telephone 602–241–2247.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Verne M. Bathurst, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan to prevent damages to a trailer park, the Benson town well, city sewage lagoon and other utilities from bank erosion and wash scouring. Gabion bank protectors and grade stabilization structures will be used to correct the problem.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Verne M. Bathurst.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Verne M. Bathurst,

State Conservationist.

[FR Doc. 85–8066 Filed 4–3–85; 8:45 am]

BILLING CODE 3410–16–M

Big Creek (Tri-County) Watershed, TX; Record of Decision

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of a record of decision.

SUMMARY: Billy C. Griffin, responsible Federal official for projects administered under the provisions of Pub. L. 83–566, 16 U.S.C. 1001–1008, in the State of Texas, is hereby providing notification that a record of decision to

proceed with the installation of the Big Creek (Tri-County) Watershed project is available. Single copies of this record of decision may be obtained from Billy C. Griffin at the address shown below.

FOR FURTHER INFORMATION CONTACT: Billy C. Griffin, State Conservationist, Soil Conservation Service, 101 South Main, Temple, Texas 76501–7682, telephone 817–774–1214.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. State and local review procedures for Federal and federally assisted programs and projects are applicable)

Dated: March 22, 1985.

O. Dale Fischgrabe,

Deputy State Conservationist.

[FR Doc. 85–8081 Filed 4–3–85; 8:45 am]

BILLING CODE 3410–16–M

Finding of No Significant Impact; Grassy Creek Watershed, MO

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Grassy Creek Watershed, Lewis and Marion Counties, Missouri.

FOR FURTHER INFORMATION CONTACT: Paul F. Larson, State Conservationist, Soil Conservation Service, 555 Vandiver Drive, Columbia, Missouri 65202, telephone 314/875–5214.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul F. Larson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood control and watershed protection. The planned works of improvement include 66 small reservoirs, and accelerated financial and technical assistance for land treatment.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Paul F. Larson.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects are applicable)

Dated: March 28, 1985.

Paul F. Larson,

State Conservationist.

[FR Doc. 85–8100 Filed 4–3–85; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

Short Supply Determinations on Steel Pipe and Tube; Request for Comments

AGENCY: International Trade Admimistration/Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Article 8 of the U.S.-EC Pipe and Tube Arrangement with respect to welded rectangular steel tubing in the following metric sizes:

A. 80 mm x 60 mm x 4 mm
B. 100 mm x 80 mm x 3 mm
C. 40 mm x 40 mm x 4 mm
D. 60 mm x 40 mm x 4 mm
E. 50 mm x 40 mm x 4 mm
F. 80 mm x 60 mm x 6mm

EFFECTIVE DATE: Comments must be submitted no later than ten days after publication of this notice.

ADDRESS: Send all comments to Joseph A. Spetrini, Director, Agreements Compliance Division, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, D.C. 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Nicholas C. Tolerico, Agreement Compliance Division, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, D.C. 20230, Room 3087B, (202) 377–4036.

SUPPLEMENTARTY INFORMAATION: On January 10, 1985, the United States (U.S.) and European Economic Community (EEC) concluded a clarification of the Pipe and Tube Arrangement agreed to on October 21, 1982. The January 10 clarification provides in Article 8 that ". . . the U.S. shall accept exports of pipes and tubes in addition to those permitted under sections 1 and 2 where a shortage of supply is identified, i.e., where the U.S. industry is unable to meet demand in the United States for a particular product." Under the terms of Article 8 the Department ". . . shall make a decision under this section on the basis of objective evidence from all relevant sources."

We have received a request for short supply for the following product:

1. Welded rectangular steel tubing conforming to either DIN specification 2395 PT 3 or ASTM specification A–513 in the following metric sizes:

A. 80 mm x 60 mm x 4 mm
B. 100 mm x 80 mm x 3 mm
C. 40 mm x 40 mm x 4 mm
D. 60 mm x 40 mm x 4 mm
E. 50 mm x 40 mm x 4 mm
F. 80 mm x 60 mm x 6 mm

Any party interested in commenting on this request should send written comments as soon as possible, and no later than April 12, 1985. Comments should focus on the economic factors involved in granting or denying these requests.

Commerce will maintain these requests and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of their submission and also submit with it a non-confidential submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B–099 at the above address.

April 1, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85–8060 Filed 4–3–85; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Permits; Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of experimental fishing permit application and request for comment.

SUMMARY: This notice acknowledges receipt of an experimental fishing permit (EFP) application and announces a public comment period. The applicant proposes to conduct an experimental fishery to harvest shortbelly rockfish from a domestic vessel using a trawl net in the fishery conservation zone (FCZ) off the coast of Oregon. If granted, the EFP would allow fishing which otherwise would be prohibited by Federal regulations governing the mesh size of trawls.

DATE: Comments on this experimental fishing permit application must be received by April 12, 1985.

ADDRESS: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Building 1, Seattle, Washington 98115.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206–526–6150.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) and its regulations specify that EFPs may be issued under § 663.10 to authorize fishing that would otherwise be prohibited.

An EFP application to harvest shortbelly rockfish (*Sebastes jordani*) with mid-water trawl gear with a liner of one and one-half inch mesh in the codend of the net in the FCZ off the coast of Oregon was received by the Northwest Regional Office, NMFS, on March 7, 1985. Current groundfish regulations at § 663.26(b) prohibit use of a mesh size smaller than three inches in pelagic trawls in the area off Oregon where the applicant proposes to fish. If granted, the EPA would suspend the mesh size restriction for the time, area, and vessel specified.

The applicant proposes to place a liner of one and one-half inch mesh in the codend of a mid-water trawl net to catch shortbelly rockfish effectively. The purpose and goal of the experiment is to develop a market for a currently underutilized species. The applicant proposes to harvest approximately 45 metic tons of shortbelly rockfish per week off the coast of souther Oregon. In addition, the applicant proposes to utilize other nonprohibited species caught with the experimental gear. The applicant has requested that the EFP be issued for one year beginning May 1, 1985.

In 1982, four EFPs were issued to U.S. fishing vessels to harvest shortbelly rockfish with pelagic trawls in the FCZ off the coast of California for delivery to a foreign processing vessel. Of the amount delivered, 89 percent was shortbelly rockfish, 11 percent was Pacific whiting, and less than one-half of one percent was other rockfish, sablefish, flatfish, and other fish. No salmon were taken. One EFP was issued in 1983 and one in 1984 to U.S. fishing vessels to harvest shortbelly rockfish for delivery to a shorebased, domestic processor. However, no fishing was done under these EFPs for technical reasons.

Other EFP applications have been received in 1985; none of these requested permission to fish off Oregon.

(16 U.S.C. 180 *et seq.*)

Dated: March 29, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85–7793 Filed 4–3–85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

April 1, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 1, 1985. For further information contact Diana Solkoff, International Trade Specialist (202) 377–4212.

Background

A CITA directive dated May 10, 1984 (49 FR 20751), as amended, established restraint limits for specified categories of cotton, wool and man-made fiber textile products including categories 331, 334, 335, 340, 341, 347, 631, 635, 640, 641, 645/646, and 648, produced or manufactued in SRI Lanka and exported during the twelve-month period which began on June 1, 1984. The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983 between the Governments of the United States and Sri Lanka, under the terms of which these limits were established, also includes provisions for the carryover of shortfalls from the previous agreement year in certain categories (carrover), for percentage increases in certain designated categories (swing), and for the borrowing of yardage from the subsequent agreement year with the amount used being deducted from the limit in that following year (carryforward). Pursuant to these provisions of the bilateral agreement and at the request of the Government of Sri Lanka, the limits established for the foregoing categories are being variously adjusted. These adjustments result in decreases in the limits for Categories 335, 640 and 641. All remaining limits are increased.

A description of the textile categories in terms of T.S.U.S.A. members 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 in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

April 1, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of May 10, 1984 from the Chairman of the Committee for the Implementation of Textile Agreements concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1984.

Effective on April 1, 1985, paragraph 1 of the directive of May 10, 1984, is hereby further amended to include the following adjusted restraint limits.[1]

[1]The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1984 between the Governments of the United States and Sri Lanka provides, in part, that: (1) Any specific limit and sublimit may be exceeded by designated percentages of the square yard equivalent total in any agreement period, provided that the amount of the increase is compensated for by an equivalent square yard decrease in one of more other specific limits; (2) specific limits may be increased for carryover and carryforward up to 11 percent of the applicable category limit or sublimit; however, carryover will not be available in the agreement period during which the specific limit is first established; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Category	Adjusted 12-month restraint limit [1]
331	949,341 Dozen pairs.
334	193,274 Dozen.
335	128,781 Dozen.
340	518,630 Dozen.
341	523,574 Dozen.
347	371,277 Dozen.
631	275,667 Dozen.
635	180,777 Dozen.
640	84,221 Dozen.
641	462,953 Dozen.
645/646	109,710 Dozen.
646	67,416 Dozen.
648	168,506 Dozen.

[1] The limits have not been adjusted to account for any imports exported after May 31, 1984.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation for Textile Agreements.

[FR Doc. 85-8006 Filed 4-3-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Chemical Warfare and Biological Defense; Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Chemical Warfare and Biological Defense will meet in closed session on 1 May 1985 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting on 1 May 1985 the Task Force will continue its review of progress in chemical warfare and biological defense since the 1980 DSB Summer Study on Chemical Warfare and changes in the chemical/biological threat environment.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: April 1, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-7996 Filed 4-3-85; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on On-Site Inspection; Meetings.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on On-Site Inspection will meet in closed session on April 30-May 1, 1985 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine concepts for on-site inspection technical sensor systems which could verify possible arms control limits.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: April 1, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-7997 Filed 4-3-85; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Soviet Imprecisely Located Targets for Strategic Systems; Meetings.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Soviet Imprecisely Located Targets for Strategic Systems will meet in closed session on 15-16 May and 12-13 June 1985 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will continue their study on how to hold Soviet imprecisely located targets at risk.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: April 1, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-7998 Filed 4-3-85; 8:45 am]

BILLING CODE 3810-01-M

Strategic Defense Initiative Advisory Committee; Meetings.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Strategic Defense Initiative (SDI) Advisory Committee will meet in closed session, in Washington, D.C., on April 29 and 30, 1985.

The mission of the SDI Advisory Committee is to advise the Secretary of Defense and the Director, Strategic Defense Initiative Organization on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting on April 29 and 30, the committee will discuss status of SDI research and management issues.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this SDI Advisory Committee meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: April 1, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-7995 Filed 4-3-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meetings.

March 26, 1985.

The USAF Scientific Advisory Board's Ad Hoc Committee on Artificial Intelligence will meet at the Pentagon, Washington, DC on April 25-26, 1985.

The purpose of the meeting will be to review contractor and Air Force near-term AI application plans. There will also be a short working session for report writing. The meeting will convene

from 8:30 a.m. to 5:00 p.m. on April 25, and from 8:30 a.m. to 4:00 p.m. on April 26.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8845.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-8005 Filed 4-3-85; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Office of Civilian Radioactive Waste Mangement; Toll-Free Telephone Information Service

On June 17 and June 27, 1983, the U.S. Nuclear Regulatory Commission (NRC) and the U.S. Department of Energy (DOE) respectively signed a Procedural Agreement (48 FR 38701, 8-25-83) which outlines the procedures which DOE and NRC will observe in their interactions on the characterization of sites for a geologic repository under the Nuclear Waste Policy Act of 1982 (Pub. L. 97-425, 96 Stat. 2201).

The Procedural Agreement specifies that schedules for acitivities pertaining to technical meetings between DOE and NRC will be made publicly available by DOE in a timely manner with members of the public invited to attend as observers.

To provide members of the public with timely information pertaining to the time, location and agenda for all such public meetings, DOE established a toll-free telephone information service as follows:

For calls originating in Maryland 800-492-4610

For calls originating in the other 49 states 800-368-2235

The procedural agreement also specifies that DOE will notify the public that a toll-free telephone service is available by annually noticing in the **Federal Register** the toll-free telephone numbers. This notice fulfills DOE's commitment.

For additional information about the toll-free telephone information service contact: Charles Head, Office of Civilian Radioactive Waste Mangement, U.S. Department of Energy, RW-23, Washington, D.C. 20585.

Dated: March 28, 1985.

Ben Rusche,

Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 85-8106 Filed 4-3-85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-FC-84-027; OFP Case No. 55119-9193-03-12]

Order Granting to General Motors Corp. Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978 and Rescission of an Order Granting Permanent Fuel Mixtures Exemption for the Same Facility

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act") to General Motors Corporation (GMC or "the petitioner"). The permanent exemption permits the use of natural gas as the primary energy source for a boiler located at its plant in Shreveport, Louisiana, based on the lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section, below.

DATES: The order shall take effect on June 3, 1985. The public file containing a copy of the order, 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., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

George G. Blackmore, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA-045, Washington, D.C. 20585, Phone (202) 252-1251.

Steven E. Ferguson, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW, Washington, D.C. 20585, Phone (202) 252-6947.

SUPPLEMENTARY INFORMATION: On September 28, 1984, GMC petitioned ERA under section 212 of FUA and 10 CFR 503.32(c) for a permanent exemption to permit the use of natural gas in an existing boiler. The petition for exemption based on the lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum was filed simultaneously with a request that ERA, pursuant to 10 CFR 501.000 *et seq.*, rescind a permanent 25 percent fuel mixtures exemption previously granted by ERA on June 15, 1981, applicable to the same boiler.[1] Since ERA is granting the petition pursuant to 10 CFR 503.32(c), the Rescission Order will be effective contemporaneously. The project for which the exemption is requested is a boiler located at GMC's Shreveport plant. The unit, which is already in place, is designated as Boiler No. 3, and will burn natural gas.

Basis for Permanent Exemption Order

The permanent exemption order is based upon evidence in the record that shows that in accordance with the requirements of 10 CFR 503.32(c), GMC has certified that:

1. The unit will be operated less than 1500 full load hours annually;

2. The use of mixtures is not feasible, as required under § 503.9; and

3. Prior to operation, all applicable environmental certifications will be secured.

The last certification is required under 10 CFR 503.13(b)(1). In further compliance with that section, GMC submitted and certified as accurate the information required by the environmental checklist in §503.13(b)(2).

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7976) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of certain FUA permanent exemptions, including the permanent exemption based on the lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion). GMC has certified that it will secure all applicable permits and approvals prior to commencement of operation of the unit under exemption. DOE's Office of Environment, in consultation with the Office of the General Counsel, has reviewed the completed environmental

[1] OFC Case No. 55119-9193-01, 02, 03-12 46 FR 32305 (June 22, 1981) as modified by 47 FR 43774 (October 4, 1982).

checklist submitted by GMC pursuant to 10 CFR § 503.13, together with other relevant information. It appeared during the proceeding on GMC's exemption that the grant of the exemption will not significantly affect the quality of the human environment, and that no additional environmental review will be required.

Pursuant to 10 CFR 501.3, ERA hereby grants GMC's petition for a permanent exemption for lack of alternate fuel supplies at a cost which does not substantially exceed the cost of using imported petroleum for Boiler No. 3.

Rescission Request

ERA hereby grants GMC's request for Rescission of Permanent 25 percent Fuel Mixtures Exemption Applicable to Boiler No. 3. GMC's request for rescission was based on its determination that significantly changed circumstances as defined in 10 CFR 501.102(b) exist with respect to the applicability of the fuel mixtures exemption to GMC. Accordingly, pursuant to 10 CFR 501.101(f), GMC submitted documentation supporting its Request for Rescission. It was originally anticipated that operation of Boiler No. 3, a given steaming capacity would be necessary at various times to meet the then anticipated demand at the plant. However, subsequent to commencement of commercial operations, GMC has determined that the plant would be operated more efficiently if Boiler No. 3 were permitted to operate with a 1500 hour full load exemption.

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 and Availability of Certification in the Federal Register on January 30, 1985 (50 FR 42554), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on March 18, 1985; no comments were received and no hearing was requested.

Order Granting Permanent Exemption

Based upon the entire record of this proceeding, ERA has determined that GMC has satisfied the eligibility requirements for the requested permanent exemption, as set forth in 10 CFR 503.32(c). Therefore, pursuant to section 212 of FUA, ERA hereby grants a permanent exemption to GMC to permit the use of natural gas as the primary energy source for a 1500 hour full load exemption for Boiler No. 3 at its Shreveport, Louisiana, plant.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the Federal Register.

Issued in Washington, D.C., on March 27, 1985.

Robert L. Davies,

Director, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-8104 Filed 4-3-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TA85-8-20-000 and TA85-8-20-001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

April 1, 1985.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on March 25, 1985 tendered for filing Substitute First Revised Sheet No. 204 to its FERC Gas Tariff, Second Revised Volume No. 1.

Algonquin Gas states that Substitute First Revised Sheet No. 204 is being filed to reflect in Algonquin Gas' Rate Schedule F-3 revised rates in National Fuel Gas Supply Corporation's ("National Fuel") underlying Rate Schedule RQ.

Algonquin Gas requests that the Commission accept such tariff sheet, to be effective February 1, 1985, to concide with the proposed effective date of National Fuel's rate change.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

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, NE., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protest should be filed on or before April 8, 1985. Protest will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceding. 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. 85-7981 Filed 4-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-375-000, et al.]

Centel Corp.—Kansas, et al.; Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission:

1. Centel Corporation—Kansas

[Docket No. ER85-275-000]

March 28, 1985.

Take notice that on March 18, 1985, Centel Corporation—Kansas (Centel), formerly Centel Corporation, Western Power Division, tendered for filing the proposed following proposed rate schedules:

Rate Schedule 85-CWh-2, replacing Rate Schedule 84-CWh-2, for service to ten rural electric distribution cooperatives (the RECs);

Rate Schedule 85-MWh-5, replacing Rate Schedule 84-CWH-5, for service to 11 distribution municipalities (the Municipals);

Service Schedule 85-A-1, replacing Service Schedule 84-A-1, for firm partial requirements service to the cities of Anthony, Attica, Beloit, Hoisington, Kingman, Osborne, Pratt, Stockton, Russell, and Washington, Kansas (the Firm Municipals);

Transmission Tariff 85-TSv-1, replacing Transmission Tariff 84-TSv-1, for firm transmission service to Kansas Electric Power Cooperative, Inc. (KEPCo).

Transmission Tariff 85-TSv-2, a new Transmission Tariff, for firm transmission service to Kansas Electric Power Cooperative, Inc. (KEPCo).

Service Schedule 85-D, replacing Service Schedule 84-D, for Off-Peak partial requirements customers eligible for service under Service Schedule 85-A-1.

Centel proposes May 18, 1985 as the effective date of these rate schedules and states that copies of this filing were served upon each of the wholesale customers affected by this filing and the Kansas State Corporation Commission.

Comment date: April 10, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Electric Energy, Inc.

[Docket No. ER85-372-000]

March 28, 1985.

Take notice that on March 15, 1985, Electric Energy, Inc. (EEI) tendered for filing a First Revised Service Schedule E, Additional Power Requirements, dated February 1, 1985, revising Amendment No. 5 to the Interim, Supplemental and Surplus Power Agreement, FERC Rate Schedule No. 8, between EEI and its Sponsoring Companies (Central Illinois Public Service Company, Illinois Power Company, Kentucky Utilities Company and Union Electric Company). First Revised Service Schedule E provides for a change in the pricing of additional power which EEI purchases from time to time from the Sponsoring Companies when the United States Department of Energy (DOE) requests power in excess of the amounts EEI is contractually obligated to supply to DOE pursuant to contract ATO (40-1)-1312, Modification No. 11, as amended, FERC Rate Schedule No. 7, between EEI and DOE.

EEI asks an effective date of February 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been sent to the Sponsoring Companies, the DOE, the Illinois Commerce Commission, the Kentucky Public Service Commission and the Missouri Public Service Commission.

Comment date: April 10, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Oklahoma Gas and Electric Company

[Docket No. ER85-378-000]

March 28, 1985.

Take notice that on March 18, 1985, Oklahoma Gas and Electric Company (OG&E) tendered for filing a set of three Agreements dated February 20, 1985, between OG&E and Oklahoma Municipal Power Authority (OMPA).

The three Agreements are as follows: (1) Power Sales Agreement, (2) Transmission Service Agreement, and (3) Dispatch and Load Regulation Agreement.

OG&E states these Agreements provide the basis whereby OMPA will privide electric service to certain municipalities which are formerly customers (Blackwell, Edmond, Kingfisher, Okeene, Ponca City, Pond Creek, Waynoka and Wynnewood) of OG&E or formerly customers of the Southwestern Power Administration (Goltry, Lexington, Spiro and Yale). Additionally, OG&E indicates these Agreements are intended to facilitate OMPA's ability to acquire the electrical resources necessary to meet its Participants' capacity and energy requirements.

OG&E requests an effective date of June 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing have been served upon each OMPA Participant, SWPA, Oklahoma Corporation Commission and Arkansas Public Service Commission.

Comment date: April 10, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power & Light Company

[Docket No. ER85-380-000]

March 28, 1985.

Take notice that on March 20, 1985, Florida Power & Light Company (FP&L) tendered for filing a notice of an increase in transmission service rates under its various transmission service agreements. FP&L provides transmission service under long term contracts with the Florida Municipal Power Agency, the Orlando Utilities Commission, the Utilities Commission, City of New Smyrna Beach, the Seminole Electric Cooperative. FP&L also provides transmission service to support interchange transaction between third party utilities under 17 transmission service agreements (TSAs). FP&L has submitted with the instant filing amendments to each of the above agreements reflecting the increased rates proposed herein.

FP&L states that the proposed new transmission service rates are designed to take effect, if necessary in two phases. FP&L requests an effective date of May 19, 1985, for the Phase II rates, and requests a one day suspension so that the Phase II rates may go into effect on May 20, 1985. In the event the Commission determines that the Phase II rates should be suspended for more than one day, FP&L requests the Commission place into effect its proposed Phase I rates on May 20, 1985, following a one day suspension, and until the Phase II suspension period is over. Finally, the Commission determines that FP&L's proposed Phase I rates should be placed into effect only after a full-five month suspension, FP&L requests that the Phase I rates be considered withdrawn, and that the Phase II rates be placed into effect at the end of the five-month suspension period.

The proposed Phase II rates would produce an increase in revenues of $8,141,000 from long term transmission service based on the twelve-month period ending December 31, 1985, which represents a 51% increase over FP&L's existing rates. The proposed Phase I rates would produce an increase in revenues of $3,987,000 based on the same period, which represents a 25% increase over existing rates. FP&L states that it has requested this rate increase in order that it can recover its cost of providing service and earn a fair and adequate return on its rate base used to provide transmission service.

EP&L states that copies of the filing were served upon each of its transmission service customers and upon the Florida Public Service Commission.

Comment date: April 10, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Kansas Gas and Electric Company

[Docket No. ER85-376-000]

March 28, 1985.

Take notice that on March 18, 1985, Kansas Gas and Electric Company (KG&E) tendered for filing a proposed change in its FERC Electric Service Tariff No. 93. The proposed Letter of Intent specifies the amount of transmission capacity requirements for the existing Delivery Points and establishes the fourth delivery point for the Kansas Power and Light Company for the period from June 1, 1985 through May 31, 1986. The proposed change also constitutes complete cancellation of full requirements service under the Agreement for Wholesale Electric Service, FERC Rate Schedule No. 150.

The Letter of Intent is necessary because KP&L has requested a change in the amount of transmsission capacity to be reserve for KP&L's use.

Copies of this filing were served upon the Kansas Power and Light Company and the Kansas Corporation Commission.

Comment date: April 10, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Kansas Power and Light Company

[Docket No. ER85-377-000]

March 28, 1985.

Take notice that on March 18, 1985, Kansas Power and Light Company (KP&L) tendered for filing a newly executed renewal contract dated March 6, 1985, with the City of Holton, Kansas renewal for wholesale service to that community. KP&L states that this contract permits the City of Holton to receive service under rate schedule WTU-12/83 designated Supplement No. 9 to R. S. FERC No. 189. The proposed effective date is June 1, 1985. The proposed contract change provides essentially for the ten year extension of the original terms of the presently approved contract. In addition, KP&L

states that copies of the contract have been mailed to the City of Holton and the State Corportion Commission of Kansas.

Comment date: April 10, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Idaho Power Company

[Docket No. ES85-35-000]

March 29, 1985.

Take notice that on March 25, 1985, Idaho Power Company (Applicant) filed an Application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act seeking an Order authorizing the applicant to change the par value of the authorized shares of the Applicant's Common Stock from $5.00 per share to $2.50 per share and to change each share of outstanding Common Stock with the par value of $5.00 per share into two shares of Common Stock with the par value of $2.50 per share.

Comment date: April 24, 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, NE., 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. 85-7988 Filed 4-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-18-001]

Natural Gas Pipeline Company of America; Compliance Filing

April 1, 1985.

Take notice that on March 5, 1985, Natural Gas Pipeline Company of American (Natural) tendered for filing a report in accordance with the Federal Energy Regulatory Commission's Order (Order) that issued January 29, 1985, in Docket No. RP85-18-000. Natural states that this report details the one-time billing allowed by said Order. Natural asserts that additional production-related cost information required by the January 29, 1985 Order is identical to information filed by Natural on February 19, 1985 in Docket No. RP85-99-000 and therefore incorporates this material, available at the Commission for public inspection, by reference.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 8, 1985. 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. 85-7982 Filed 4-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-1-26-003]

Natural Gas Pipeline Company of America; Compliance Filing

April 1, 1985.

Take notice that on March 25, 1985, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 (Tariff), the listed tariff sheets to be effective March 1, 1985.

Second Substitute Fifty-seventh Revised Sheet No. 5
Second Substitute Twenty-fourth Revised Sheet No. 5A

The purpose of the instant filing is to reflect rate adjustments in compliance with the Commission Order issued February 28, 1985, in Docket Nos. TA85-1-26, *et al.* (Order). These tariff sheets also reflect the effect of Natural's Stipulation and Agreement in Docket Nos. RP83-68, *et al.*, approved by Commission Order issued December 19, 1984 (Settlement) which had not become final at the time of the original filing.

The above listed tariff sheets reflect the impact on Natural's rates of the recently renegotiated pricing terms for Canadian gas purchases as required by Ordering Paragraph (D) of the Order. Using as a base of comparison the Settlement rates, the overall effect of the adjustments on Natural's DMQ-1 rates is a decrease of 4.99 cents in the commodity component, and increase of $.53 in the demand component, and an increase of 2.4 cents in the entitlement component. Of the 4.99 cents commodity rate decrease, (.01) cents is attributable to the Research, Development and Demonstration Adjustment (RD&D) and (.07) cents is attributable to an Advance Payment Tracking Adjustment. In addition, appropriate adjustments have been made with respect to Natural's other sales rate schedules. The effect of these rate changes over the next six month deferred account recovery period is a slight revenue decrease of $.5 million compared to a revenue increase of $21.6 million in the original filing.

Further, Natural submitted additional information in compliance with Ordering Paragraphs (E), (F) and (G) of the above subject order. None of this information which dealt with NGPA category codes, Natural's RD&D adjustment, and the interest calculation on Natural's deferred account balance, respectively, produced a rate adjustment.

Natural requests waivers of the Commission's Regulations to the extent necessary to permit the tariff sheets submitted herein to become effective on March 1, 1985.

A copy of this filing has been being mailed to Natural's jurisdictional customers and to interested state regulatory agencies.

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, NE., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211. All such motions or protests must be filed on or before April 8, 1985. 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. 85-7983 Filed 4-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-156-001 and ER84-604-000]

Southwestern Public Service Co.; Order Accepting for Filing and Suspending Rates, Granting Intervention, Granting Waiver of Notice, Establishing Hearing Procedures, and Consolidating Dockets

Issued April 1, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On January 31, 1985, Southwestern Public Service Company (SPS) submitted for filing a revised Bulk Power Market Experiemental Adjustment Clause (EAC) and a Fuel Adjustment Clause (FAC) rider,[1] in response to a deficiency letter dated January 3, 1985 from the Director of the Commission's Office of Electirc Power Regulation.[2] SPS requests waiver of the notice requirements to permit an effective date of October 1, 1984.

Notice of SPS' filing was published in the **Federal Register**,[3] with comments due on or before March 8, 1985. A timely pretest, motion to intervene, and motion to suspend was jointly filed by Lubbock Power & Light of the City of Lubbock, Texas and the Cities of Brownfield, Floydada, and Tulia, Texas (Municipals). The Municipals state that they have not fully reviewed the SPS filing and that they have no objection to the filing or the requested effective date at this time. However, the Municipals request that the Commission suspend the filing for one day and set the matter for hearing to preserve their rights as partial requirements customers of SPS.

On March 12, 1985, the full requirements cooperative customers of SPS (Cooperatives) [4] filed a motion for late intervention in the proceeding. Although not protesting the EAC filing, the Cooperatives request intervenor status in this docket to protect their interests in the EAC as it may affect SPS' rate increase filing in Docket No. ER84-604-000. The Cooperatives assert that the procedural status of Docket Nos. ER84-604-000 and ER85-156-000 constitutes good cause for their late intervention in this proceeding and that no prejudice or delay should result from granting them intervenor status at this time.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely motion to intervene serves to make the Municipals parties to this proceeding. We also note that, as wholesale customers of SPS, the Cooperatives appear to have a direct interest in the outcome of this proceeding. Furthermore, given their relatively short delay in seeking to intervene and the early stage of this proceeding, granting the motion should result in no undue prejudice or delay. Accordingly, we find that good cause exists to grant the Cooperatives' untimely motjon to intervene.

Our review of the company's filing and the pleadings indicates that the submittal has not been shown to be just and reasonable and may unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the submittal for filing and suspend it as ordered below.

In *West Texas Utilities Company*, 19 FERC ¶ 61,189 (1982), we explained our suspension policy primarily in the context of increased utility rates. Here, through its proposed EAC and FAC rider, SPS seeks to change the way in which it collects FAC revenues which would affect the rates collected under the FAC. We note that, although SPS has requested an effective date of October 1, 1984 here, it requested an effective date of October 16, 1984 for its general rate increase in Docket No. ER 84-604-000. The Commission suspended the first phase of the proposed rate increase in that docket for one day, to become effective, subject to refund, on October 17, 1984. We believe that Opinion No. 203 requires that bulk power market adjustment clauses become effective at the same time as the requirements rates with which the clauses are associated. 25 FERC at 62,055. Under these circumstances, given the affected customers' lack of opposition to the requested waiver of notice, we find that good cause exists to waive the notice requirements and to suspend SPS' submittal for a nominal period, to become effective, subject to refund, on October 17, 1984.

We find that common questions of law and fact may be presented in Docket Nos. ER84-604-000 and ER85-156-001. As a result, we shall consolidate those dockets for purposes of hearing and decision.

Finally, we note that we have previously dealt with the bulk power market experiment in Opinion No. 203, 25 FERC ¶ 61,469 (1983), and in Opinion No. 203-A, 27 FERC ¶ 61,154 (1984). In those orders, we approved the bulk power market experiment agreement and accepted it for filing without suspension. We consider the scope of the proceeding in Docket No. ER85-156-001 to be limited to the question of whether SPS' submittal is consistent with the Commission's regulations and the pertinent portions of Opinion Nos. 203 and 203-A. We do not intend that issues previously dealt with in Opinion Nos. 203 and 203-A be raised again in the consolidated proceeding we order here.

The Commission Orders

(A) The Cooperatives' untimely motion to intervene is hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) SPS' request for waiver of the notice requirements is hereby granted for good cause shown.

(C) SPS' submittal is hereby accepted for filing and suspended for a nominal period, to become effective on October 17, 1984, subject to refund.

(D) 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 Procerdure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of SPS' submittal.

(E) Docket No ER85-156-001 is hereby consolidated with Docket No. ER84-604-000 for purposes of hearing and decision.

(F) The administrative law judge designated to preside in Docket No. ER84.604-000 shall determine

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[1] See Attachment for rate schedule designations and affected customers.

[2] SPS had originally tendered for filing an EAC as part of its compliance filing in Docket No. ER84-604-001. This EAC was not required to be filed pursuant to the Commission's order in that docket, 29 FERC ¶ 61,056, and therefore was separately docketed as Docket No. ER85-156-000. The January 3, 1985 deficiency letter informed SPS that the EAC should be filed separately under part 35 of the Commission's regulations. The company was also informed of certain deficiencies in the filed EAC and of the need to revise its existing FAC to take account of transactions under the bulk power market experiment approved in Opinion No. 203, 25 FERC ¶ 61,469 (1983).

[3] 50 FR 8655 (1985).

[4] The Cooperatives consist of Golden Spread Electric Cooperative, Inc., Kimwood Electric Cooperative, Inc., Bailey County Electirc Cooperative, Central Valley Electric Cooperative, Deaf Smith Electric Cooperative, Farmers Electric Cooperative, Greenbelt Electric Cooperative, Lamb County Electric Cooperative, Lea County Electric Cooperative, Lighthouse Electric Cooperative, Lyntegar Electric Cooperative, Midwest Electric Cooperative, North Plains Electric Cooperative, Rita Blanca Electric Cooperative, Roosevelt County Electric Cooperative, South Plains Electric Cooperative, Swisher Electric Cooperative, and Tri-County Electric Cooperative.

procedures best suited to accommodate consolidation of this docket with the pending proceeding.

(G) The secretary shall promptly publish this order in the **Federal Register**

By the Commission.

Kenneth F. Plumb,

Secretary.

SOUTHWESTERN PUBLIC SERVICE COMPANY
RATE SCHEDULE DESIGNATINGS

[Docket No. ER85-156-001]

Supplement No.	To supplement No.	Rate schedule FERC No.	Other party
1	3	86	Bailey County Electric Cooperative, Inc.
1	3	87	Central Valley Electric Cooperative, Inc.
1	3	88	Deaf Smith Electric Cooperative, Inc.
1	3	89	Farmers Electric Cooperative, Inc.
1	3	90	Greenbelt Electric Cooperative, Inc.
1	3	91	Lamb County Electric Cooperative, Inc.
1	3	103	Lea County Electric Cooperative, Inc.
1	3	92	Lighthouse Electric Cooperative, Inc.
1	3	93	Lyntegar Electric Cooperative, Inc.
1	3	105	Midwest Electric Cooperative, Inc.
1	3	99	North Plains Electric Cooperative, Inc.
1	4	94	Northfolk Electric Cooperative, Inc.
1	1	102	Public Service Company of New Mexico.
1	3	98	Rita Blanca Electric Cooperative, Inc.
1	3	95	Roosevelt County Electric Electric Cooperative, Inc.
1	3	96	South Plains Electric Cooperative, Inc.
1	3	97	Swisher Electric Cooperative, Inc.
1	9	75	Texas-New Mexico Power Company.
1	3	100	Tri-County Electric Cooperative, Inc.
1	4	86	Bailey County Electric Cooperative, Inc.
1	4	87	Central Valley Electric Cooperative, Inc.
1	4	88	Deaf Smith Electric Cooperative, Inc.
1	4	89	Farmers Electric Cooperative, Inc.
1	4	90	Greenbelt Electric Cooperative, Inc.
1	4	91	Lamb County Electric Cooperative, Inc.
1	4	103	Lea County Electric Cooperative, Inc.
1	4	92	Lighthouse Electric Cooperative, Inc.
1	4	93	Lyntegar Electric Cooperative, Inc.
1	4	105	Midwest Electric Cooperative, Inc.
1	4	99	North Plains Electric Cooperative, Inc.
1	5	94	Northfolk Electric Cooperative, Inc.
1	2	102	Public Service Company of New Mexico.
1	4	98	Rita Blanca Electric Cooperative, Inc.
1	4	95	Roosevelt Electric Cooperative, Inc.
1	4	96	South Plains Electric Cooperative, Inc.
1	4	97	Swisher Electric Cooperative, Inc.

SOUTHWESTERN PUBLIC SERVICE COMPANY
RATE SCHEDULE DESIGNATINGS—Continued

[Docket No. ER85-156-001]

Supplement No.	To supplement No.	Rate schedule FERC No.	Other party
1	10	75	Texas-New Mexico Power Company.
1	4	100	Tri-County Electric Cooperative, Inc.
1	9	81	Brownfield, Texas.
1	9	83	Floydada, Texas.
1	7	85	Lubbock Power and light Company.
1	7	101	Tulia, Texas.
1	4	107	Texas-New Mexico Power Company.

[FR Doc. 85-7985 Filed 4-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-93-006]

Trunkline Gas Co.; Change in Tariff

April 1, 1985.

Take notice that Trunkline Gas Company (Trunkline), on March 25, 1985 tendered for filing revised tariff sheets to its FERC Gas Tariff, Original Volume Nos. 1 and 2.

The proposed effective date of the revised tariff sheets other than those for Rate Schedule OST, is March 1, 1985, and are listed in Appendix A to Trunkline's filing. The Appendix B tariff sheets relating to Trunkline's Rate Schedule OST, are proposed to become effective April 1, 1985.

Trunkline states that the instant filing contains the revised tariff sheets necessary to implement the reduced rates resulting from the Docket No. RP83-93, *et al.* Stipulation and Agreement that was filed with the Commission on March 22, 1985, pending FERC approval of that instrument and is requesting the necessary waivers of the Commission's regulations to place the reduced rates into effect on March 1, 1985 and April 1, 1985 respectively, on an interim basis, subject to being superseded by those currently in effect if the Stipulation and Agreement is not approved on or before June 20, 1985.

Copies of the filing were served on all jurisdictional customers and applicable State Regulatory agencies.

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, NE., 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 April 8, 1985. 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. 85-7984 Filed 4-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-52]

United Gas Pipe Line Co.; Customer Meeting

April 1, 1985.

Pursuant to the Stipulation and Agreement approved in the above-captioned proceeding, a meeting of United Gas Pipe Line Company and its interested customers will be held on April 11, 1985, at 10:00 a.m. at the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7986 Filed 4-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-365-000, et al.]

Williston Basin Interstate Pipeline Co., et al.; Natural Gas Certificate Applications

Take notice that the following filings have been made with the Commission:

1. Williston Basin Interstate Pipeline Company

[Docket No. CP85-365-000]

March 28, 1985.

Take notice that on March 14 1985, Williston Basin Interstate Pipeline Company (WBI), 304 East Rosser Avenue, Suite 200, Bismarck, North Dakota 58501, filed in Docket No. CP85-365-000 an application pursuant to section 7(c) of the Natural GAs Act for a certificate of public convenience and necessity authorizing the construction and operation of certain jurisdictional natural gas storage facilities in Fallon County, Montana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WBI proposes to construct and operate eight storage field meter stations, convert 10.5 miles of gathering line from native production to jurisdictional storage line and repalce 1.2 miles of various sized field gathering

pipeline with 3.5-inch field storage related pipeline. WBI estimates the cost of the proposed facilities to be $114,080, which would be financed through internally generated funds and/or interim short-term bank loans.

WBI asserts that the installation of the eight storage field meter stations would give WBI more detailed injection/withdrawal data at selected well groups and provide greater efficiency for operating the storage field in Unit 8A of the Baker Storage field. WBI also asserts that a general upgrade of the facilities in Unit 8A is required in order to handle the higher injection pressure associated with the storage process, hence WBI's proposal to replace 1.2 miles of ¾-inch, 1-inch, 1½-inch and 2-inch pipeline formerly use for field gathering with 3.5 inch pipeline to be used for storage related activities.

Comment date: April 18, 1985, in accordance with Standard Paragraph F at the end of this notice.

2. Southern Natural Gas Company

[Docket No. CP70-7-029 (Phase II)]

March 28, 1985.

Take notice that on March 8, 1985, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP70-7-029 (Phase II) a petition to amend the order issued October 29, 1969, 42 FPC 944, in Docket No. CP70-7 (Phase II), as amended, pursuant to section 7(c) of the Natural Gas Act so as to authorize the operation of six existing sales taps and appurtenant facilities for delivery of gas to United States Steel Corporation (USS), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Southern states that it was authorized by the October 29, 1969 order, as amended, to transport natural gas and to operate facilities for deliveries to USS in Jefferson County, Alabama, for use by USS in its mills for the manufacture and/or finishing of steel and steel products. Southern further states that it proposes to operate six sales taps and appurtenant facilities to serve as additional points of delivery to USS under a direct sales agreement between Southern and USS dated May 14, 1982, (sales agreement), as amended. Southern asserts that operation of the proposed sales taps would enable USS to utilize natual gas it purchases under the sales agreement to operate at other business locations in addition to those located in Alabama.

Southern states that the proposed sales taps would be the existing facilities located at (1) the point of interconnection between the facilities of Sea Robin Pipeline Company (Sea Robin) and Columbia Gulf Transmission Company (Columbia Gulf) at the terminus of Sea Robin's offshore pipeline near Erath in Vermilion Parish, Louisiana (Erath delivery point); (2) the point of the interconnection between the jointly-owned facilities of Southern and ANR Pipeline Company (ANR) and Southern's Shadyside compressor station in St. Mary Parish, Louisana (Shadyside delivery point); (3) the point of interconnection between Southern's pipeline and Texas Eastern Transmission Corporation's (Texas Eastern) 36-inch pipeline in Iberville Parish, Louisiana (White Castle delivery point); (4) the point of interconnection between an existing meter located near milepost 34.4 on Southern's 24-inch Duck Lake-Frankinton loop line and Acadian Gas Pipeline System's (Acadian) 16-inch pipeline in the Iverbille Parish, Louisiana (Carville delivery point); (5) the flange or weld connecting the pipeline facilities of Transcontinental Gas Pipe Line Corporation (Transco) with the outlet of Southern's meter in Livinston Parish, Louisiana (Livingston delivery point); and (6) the point of interconnection between the facilities of Southern and Natural Gas Pipeline Company of America (Natural) located near the outlet of Texaco Inc.'s Henry plant in Vermilion Parish, Louisiana (Henry plant delivery point). Southern indicates that the gas would be transported from the Erath, Shadyside, White Castle, Carville, Livingston and Henry Plant delivery points by Columbia Gulf, ANR, Texas Eastern, Acadian, Transco, and Natural, respectively, for delivery to USS to be used for operations in Indiana, Ohio and Pennsylvania.

It is stated that USS is entitled under the sales agreement, as amended, to purchase from Southern at the old and new delivery points a quantity of gas not to exceed USS's total requirements of 74,798 Mcf of natual gas per day as set forth in the Index of Requirements in Southern's currently effective FERC Gas Tariff. Except at the Carville delivery point where deliveries are limited to 60,000 Mcf per day, it is explained that USS may purchase the maximum amount at any delivery point or at any combination of delivery points. Southern states that USS would pay a negotiated rate under the sales agreement, as amended, that tracks changes in the price payable under Southern's OCD-2 Rate Schedule.

Comment date: April 18, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Texas Gas Transmission Corporation

[Docket No. CP85-360-000]

March 28, 1985.

Take notice that on March 13, 1985, Texas Gas Transmission Corporation (Applicant), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP85-360-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Occidental Chemical Corporation (Occidental) under the certificate issued in Docket No. CP82-407-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant proposes to transport up to 1.3 billion Btu of natual gas per day on an interruptible basis for Ohio River Pipeline Corporation (Ohio River), as agent for Occidental, for ultimate delivery to Occidental at its Jefferson, Indiana, plant. Applicant proposes to render the service until June 30, 1985, with an extension for a term to end no later than October 31, 1985, should the Commission extend the end-user transportation program beyond June 30, 1985. Pursuant to a gas transportation agreement dated January 30, 1985, between Applicant and Ohio River, Applicant would receive the gas to be transported at an existing point on Applicant's pipeline in Bossier Parish, Louisiana. Applicant would then transport and redeliver such gas, less a 4 percent reduction for fuel, to Ohio River at Applicant's New Albany/Crestwood sales meter station located near Crestwood in Oldham County, Kentucky. It is explained that Ohio River would then transport the subject gas for ultimate delivery to Occidental. Applicant indicates that the gas to be transported would be purchased by Occidental from Entrade Corporation.

Applicant states that it would charge its TSC-4 contract service rate for Rate Schedule G sales customer, currently 23.66 cents, plus 1.25 cents GRI surcharge, for each million Btu redelivered at the point of redelivery.

Applicant also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by Occidental. The flexible authority requested would apply only to points related to sources of gas supply not to delivery points in the market area. Applicant would 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 13, 1985, in accordance with Standard Paragraph G at the end of this notice.

4. Northwest Central Pipeline Corporation

[Docket No. CP85-363-000]

March 29, 1985.

Take notice that on March 13, 1985, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74102, filed in Docket No. CP85-363-000 an application pursuant to section 7 of the Natural Gas Act for permission and approval to abandon by reclaim facilities involving 1,000 horsepower of compression and for a certificate of public convenience and necessity authorizing the construction and operation of facilities involving 230 horsepower of compression, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest Central proposes to abandon the compression facilities at its West Waynoka station which contains a single 500-horsepower compressor unit and appurtenant facilities, stating that this station did not operate on the 1983-1984 peak day. Additionally, Northwest Central would abandon the compression facilities at its East Waynoka station which also contains a single 500-horsepower compressor unit and appurtenant facilities. It is stated that both stations are located in Woods County, Oklahoma.

Northwest Central proposes to replace the abandoned facilities by installing two new 115-horsepower 2-stage compressor units at the East Waynoka station. It is explained that such compressor units would be used to compress all gas received from the Northeast Waynoka field as well as the West and East Waynoka fields for delivery into the Pampa-Wichita 20-inch pipeline. It is further explained that the smaller-sized replacement compression facilities are required due to the declining production in the area.

Northwest Central states that the estimated cost of the facilities proposed to be constructed is $593,000, which would be paid from treasury cash. The estimated total reclaim cost for the facilities proposed to be abandoned is $98,000 and the estimated salvage value is $200,000.

Comment date: April 19, 1985, in accordance with Standard Paragraph F 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. 85-7987 Filed 4-3-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-41016; TSH-FRL 2811-7]

Interagency Testing Committee; Establishment of Intent-To-Designate Category of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Interagency Testing Committee (ITC) decision to establish a new intent-to-designate category of chemical substances as part of its selection process. This selection process leads to the recommendation of chemicals for priority testing consideration under the Toxic Substances Control Act (TSCA). The new category of chemicals will provide industry and the public the opportunity to supply information before the ITC designates the chemicals for priority testing and sets into motion an expensive regulatory process. If the needed information is forthcoming, the Committee will determine whether the new information would justify modifying its intention to designate the chemicals in question. The first group of chemicals in this new category appears elsewhere in this issue of the Federal Register.

EFFECTIVE DATE: This procedural change is effective on April 4, 1985.

FOR FURTHER INFORMATION CONTACT:

By mail:

Arthur Stern, Acting Executive Secretary, Interagency Testing Committee (TS-792), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and phone number: Rm. E-539C, 401 M St., SW., Washington, D.C. 20460, (202-382-4281).

SUPPLEMENTARY INFORMATION:

I. Background

Section 4(a) of the Toxic Substances Control Act (TSCA) (Pub. L. 94-469, 90 Stat. 2006 *et sec.*; 15 U.S.C. 2603 *et seq.*), authorizes the Administrator of the Environmental Protection Agency to require testing of chemical substances or mixtures if the Administrator makes certain findings that are set forth in

section 4(a) of TSCA. Section 4(e) established the TSCA Interagency Testing Committee. The ITC is charged with recommending to the EPA Administrator chemical substances or mixtures (chemicals) to which EPA should give priority consideration for promulgating testing rules for health effects, ecological effects, and chemical fate under section 4(a) of TSCA. The EPA Administrator must respond to the ITC recommendations by initiating rulemaking to require testing of recommended chemicals or by publishing in the **Federal Register** the Agency's reasons for not doing so.

In developing its testing priorities, the ITC considers, together with all other relevant information, the following factors with respect to chemical substances or mixtures under consideration:

1. Quantity manufactured or which will be manufactured.
2. Quantity which enters or will enter the environment.
3. Occupational exposures and their duration.
4. General human population exposures.
5. Similarity in chemical structure to other substances which are known to present an unreasonable risk of injury to health or the environment.
6. Existence of data concerning the effects on health and the environment.
7. The extent to which testing will develop data upon which the effects on health or the environment can reasonably be determined or predicted.
8. The reasonably foreseeable availability of testing facilities and personnel.

II. Committee's Chemical Selection and Designation Process

In meeting its charge, the Committee conducts a multi-step screening procedure (approximately every 18–24 months) to identify, for detailed review, a limited number of substances likely to have priority for testing to determine their effects on human health and the environment.

The basic steps in the process adopted by the Committee are as follows:

1. Establishment of an initial listing of substances suspected of being a potential risk to human health or the environment.
2. Compilation of a smaller master file of substances through elimination from the initial listing of substances not subject to TSCA regulations or of lower priority to the Committee for various reasons.
3. Selection of a preliminary list of substances for further consideration based on evaluation of the production volume, occupational exposure, and general human and environmental exposure potential of the substances in the master file.
4. Selection about 80–100 candidates for detailed review based on evaluation of the potential exposure, biological activity, and the need for health effects, ecological effects, and chemical fate testing.
5. Evaluation of the need for testing based on review of all available information on each candidate.

The Committee's evaluation of each chemical substance for possible testing leads to one of three decisions:

1. Designation for testing: Substances in this category are placed on the priority list submitted to the EPA Administrator, and require priority consideration and response within 12 months.
2. Recommendation for testing: Substances in this category are placed on the priority list without a specified time for EPA response.
3. Deferral: Substances are so categorized when the Committee believes that: (a) There is insufficient exposure to be of concern; (b) the chemical is not likely to be hazardous; (c) sufficient information/test data are already available.

III. Notice of Intent-to-Designate

The Committee designates chemicals for testing when it believes that the potential for exposure and adverse effects is sufficient to warrant testing and when sufficient data to adequately characterize the hazards of the chemicals are lacking. Designation sets into motion an extensive and expensive regulatory process by both EPA and industry. However, in a limited number of cases, the needed information may be relatively small.

If the additional information needed by the ITC to reach a more informed decision could be forthcoming from industry or the public-at-large, a considerable amount of time and expense on the part of both government and industry might be obviated.

Therefore, the Committee is establishing an "intent-to-designate" category as part of its selection process. "Intent-to-designate" a particular chemical means that the Committee is offering to industry and to the public a prescribed time period in which to provide additional information on the chemical.

Lists of chemicals in the intent-to-designate category will be published in the **Federal Register** from time-to-time, as the need arises. The Committee will cite specifically what additional information it needs on each substance in order to possibly modify its intention to designate. The completeness and quality of the submitted information or data will also play a major role in the Committee's considerations.

Dated: March 29, 1985.

Bernard Greifer,

Chairman, TSCA Interagency Testing Committee.

[FR Doc. 85–8024 Filed 4–3–85; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–41017; TSH–FPL 2811–8]

Certain Chemicals, Placement in the Intent-To-Designate Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Interagency Testing Committee (ITC) decision to include 1*H*-benzotriazole, C. I. Pigment Green 7, and *N*-ethyl-*N*-benzylaniline in its new intent-to-designate category of chemical substances. The decision to establish this category and the ITC's rationale for so doing appear elsewhere in this issue of the **Federal Register.** Comments and information are desired before ITC designates the chemicals for priority consideration for testing requirements and sets into motion an expensive regulatory process.

DATE: Comments and information, identified by the document control number [OPTS–41017], must be submitted by September 1, 1985.

FOR FURTHER INFORMATION CONTACT:

By mail:

Arthur Stern, Acting Executive Secretary, Interagency Testing Committee (TS–792), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and phone number: Rm. E–539C, 401 M St., SW., Washington, D.C. 20460, (202–382–4281).

SUPPLEMENTARY INFORMATION: Section 4(a) of the Toxic Substances Control Act (TSCA) (Pub. L. 94–469, 90 Stat. 2006 *et seq.*; 15 U.S.C. 2603 *et seq.*), authorizes the Administrator of the Environmental Protection Agency to require testing of chemical substances or mixtures if the Administrator makes certain findings that are set forth in section 4(a) of TSCA. Section 4(e) established the TSCA Interagency Testing Committee. The ITC is charged with recommending to the EPA Administrator chemical substances or mixtures (chemicals) to which EPA should give priority

consideration for promulgating testing rules for health effects, ecological effects, and chemical fate under section 4(a) of TSCA. The EPA Administrator must respond to the ITC recommendations by initiating rulemaking to require testing of recommended chemicals or by publishing in the **Federal Register** the Agency's reasons for not doing so.

In meeting its charge, the Committee conducts a multi-step screening procedure, concluding with a detailed review of a limited number of substances likely to have priority for testing to determine their effects on human health and the environment.

The Committee's evaluation of each chemical substance for possible testing leads to one of three decisions:

1. *Designation for testing.* Substances in this category are placed on the priority list submitted to the EPA Administrator, and require priority consideration and response within 12 months.

2. *Recommendation for testing.* Substances in this category are placed on the priority list without a specified time for EPA response.

3. *Deferral.* Substances are so categorized when the Committee believes that: (a) there is insufficient exposure to be of concern; (b) the chemical is not likely to be hazardous; (c) sufficient information/test data are already available.

The Committee designates chemicals for testing when it believes that the potential for exposure and adverse effects is sufficient to warrant testing and when sufficient data to adequately characterize the hazards of the chemicals are lacking. Designation sets into motion an extensive and expensive regulatory process by both EPA and industry. However, in a limited number of cases, the needed information may be relatively small. If the additional information needed by the ITC to reach a more informed decision could be forthcoming from industry or the public-at-large, a considerable amount of time and expense on the part of both government and industry might be obviated.

Therefore, the Committee has established an "intent-to-designate" category of chemicals as part of its screening process. Lists of chemicals in the intent-to-designate category are published in the **Federal Register** from time-to-time, as the need arises. The Committee cites specifically what additional information it needs on each chemical. The completeness and quality of the submitted information or data also plays a major role in the Committee's considerations. At the end of this period, the Committee will re-evaluate the chemical(s) in this category and make a final decision regarding their disposition.

The TSCA Interagency Testing Committee (ITC) intends to designate the following three chemicals for chemical fate and ecological effects testing in its November 1985 Report to the EPA Administrator. The list indicates the minimum amount of information needed for a determination of the environmental hazard potential of each compound. If this information is received by September 1, 1985, the Committee will determine whether the new information would justify modifying its intention to designate.

CHEMICALS INTENDED TO BE DESIGNATED AND INFORMATION NEEDED

Chemical	Information needed	Comments
1. 1H-Benzotriazole (CAS No. 95-14-7).	Chemical Fate: Persistence in surface waters.	
	Ecological Effects: Acute toxicity to fish, aquatic invertebrates and algae.	Reliable estimates of concentrations toxic to organisms cannot be made from fish toxicity data previously provided.
2. C.I. Pigment Green 7 (CAS No. 1328-53-6).	Chemical Fate: Water solubility.	
	Ecological Effects: Acute toxicity to fish, aquatic invertebrates and algae.	Reliable estimates of concentrations toxic to aquatic organisms cannot be made from available fish and aquatic invertebrate studies previously provided.
3. N-Ethyl-N-Benzylaniline (CAS No. 92-59-1).	Chemical Fate: Water solubility, soil adsorption coefficient, and persistence in soil and water.	
	Ecological Effects: Acute toxicity to fish, aquatic invertebrates and algae; bioconcentration in fish.	No data were found on the chemical fate and ecological effects of the chemical.

The information submitted will become part of the public record of the ITC review process unless it is clearly designated as Confidential Business Information (CBI). Submitters should separate CBI from other information and mark such information clearly as "TSCA CBI." It will be treated in accordance with procedures outlined in the "TSCA Confidential Business Information Security Manual."

Information or data are being solicited from industry and the public on each chemical. The deadline for receipt of this information or data is September 1, 1985.

Dated: March 29, 1985.

Bernard Greifer,

Chairman, TSCA Interagency Testing Committee.

[FR Doc. 85-8023 Filed 4-3-85; 8:45 am]

BILLING CODE 6560-50-M

[SAB-FRL-2811-6]

Science Advisory Board; Risk Assessment Guidelines Review Group; April 22-23, 1985—Open Meeting

Under Pub. L. 92-463, notice is hereby given that a meeting of the Risk Assessment Guidelines Review Group of the Science Advisory Board will be held at the Sheraton Grand Hotel, 525 New Jersey Avenue, NW., Washington, D.C. 20001. The meeting will begin at 9:00 a.m. and will adjourn at approximately 5:00 p.m. on both days.

This is the second meeting of the Risk Assessment Guidelines Review Group. The purpose of the meeting is to enable the Review Group to evalute and provide comment to the Environmental Protection Agency (EPA) on the scientific adequacy of the Agency's proposed Risk Assessment Guidelines. EPA has previously published in the **Federal Register** and solicited public comment on the guidelines for Carcinogenicity, Mutagenicity, Developmental Effects, Complex Mixtures and Exposure.

The format for the meeting consists of the Review Group subdividing into five separate panels, one for each of the guidelines, meeting in parallel session to carry out its charge. These panels will periodically convene into a committee-of-the-whole to exchange information and provide status reports on the course of their respective reviews, and they will prepare draft reports of their major conclusions and recommendations.

The meeting is open to the public. Any member of the public wishing to attend, obtain information or participate in the meeting should contact Dr. Terry F. Yosie, Director, Science Advisory Board, U.S. Environmental Protection Agency (A-101), 401 M Street, SW., Washington, D.C. 20460, by close of business April 15, 1985. The telephone number is (202) 382-4126. The public is advised that seating at the meeting is limited.

Dated: March 24, 1985.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 85-8035 Filed 4-3-85; 8:45 am]

BILLING CODE 6560-50-M

[SAB-FRL-2811-5]

Science Advisory Board; Executive Committee April 25-26, 1985—Open Meeting

Under Pub. L. 92-463, notice is hereby given that a meeting of the Executive Committee of the Science Advisory Board will be held at the Environmental Protection Agency, 401 M Street, SW., Conference Room 1101, West Tower, Washington, D.C. 20460. The meeting will begin at 9:00 a.m. on both days and will adjourn at approximately 12:00 noon on April 26.

The major purposes of this meeting are to review the draft reports to the Administrator on (1) the EPA Risk Assessment Guidelines for Carcinogenicity, Mutagenicity, Developmental Effects, Complex Mixtures, and Exposure prepared by the Risk Assessment Guidelines Review Group; (2) Water Quality Criteria prepared by the Environmental Effects, Transport and Fate Committee; and (3) a review, by the Environmental Engineering Committee, of a methodology developed by the EPA Office of Solid Wastes to be used as a basis for determining which hazardous wastes to ban from landfills; and other issues of member interest.

The meeting is open to the public. Any member of the public wishing to attend or obtain information should contact Dr. Terry F. Yosie, Director, Science Advisory Board (A-101), 401 M Street, SW, Washington, D.C. 20460 or call (202) 382-4126 before close of business April 15, 1985. The public is advised that seating at the meeting is limited.

March 28, 1985

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 85-8036 Filed 4-3-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: New

Title: Activities-Results List

Abstract: States will use this list as the core format for their statements of work. Each quarter States will update numbers completed vs. expected on the lists, reproduce them, and submit them as quarterly reports. Program managers will then monitor progress.

Type of respondents: State or Local Governments, Federal Agencies or employees

Number of respondents: 56

Burden hours: 7,420

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 287-9906, 500 C. Street, SW., Washington, D.C. 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: March 28, 1985.

Walter A. Girstantas, *Director, Administrative Support.*

[FR Doc. 85-7992 Filed 4-3-85; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-735-DR]

Major Disaster and Related Determinations; Illinois

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA-735-DR), dated March 29, 1985, and related determinations.

DATED: March 29, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 646-3616.

Notice

Notice is hereby given that, in a letter of March 29, 1985 the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of Illinois, resulting from severe storms and flooding beginning on February 23, 1985, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the affected areas. You also are authorized to provide necessary Public Assistance in the affected areas, once an acceptable State commitment has been provided. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Ronald Buddecke of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Illinois to have been affected adversely by this declared major disaster: Calhoun, Cass, Clark, Fulton, Grundy, Mason, Morgan, Peoria, Pike, Rock Island, Tazewell, Will and Woodford Counties for Individual Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 85-7991 Filed 4-3-85; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

[Agreement No. 117-010726]

Space Charter Agreement Between Puget Sound Tug and Barge Company and Foss Alaska Line, Inc.; Availability of Finding of No Significant Impact

Upon completion of an environmental assessment, the Federal Maritime Commission Office of Energy and Environmental Impact has determined that the Commission's final resolution of Agreement No. 117-010726 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning

of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required.

Agreement No. 117–010726 is between Puget Sound Tug and Barge Company and Foss Alaska Line Inc. (FOSS). It covers transportation of cargo between Washington and ports in Western Alaska and permits space-available charter of space to FOSS during the 1985 shipping season in the Seattle, Washington/Western Alaska trade. The Agreement, which is open to membership to any common carrier by water in this trade, has been filed with the Commission pursuant to section 15, Shipping Act, 1916, as amended.

This Finding of No Significant Impact (FONSI) will become final within 10 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 504.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523–5725.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–8101 Filed 4–3–85; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Annual Report; Availability of Filing

Notice is hereby given that pursuant to section 13 of Pub. L. 92–463 (5 U.S.C. Appendix I), the Fiscal Year 1984 Annual Report for the following advisory committee utilized by the Centers for Disease Control has been filed with the Library of Congress:

Immunization Practices Advisory Committee

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, D.C. (telephone 202/287–6310). Additionally, on weekdays between 9:00 a.m. and 4:30 p.m. copies will be available for inspection at the Department of Health and Human Services, Department Library, HHS North Building, Room 1436, 300 Independence Avenue, SW., Washington, D.C. (telephone 202/245–6791).

Dated: March 29, 1985.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 85–8011 Filed 4–3–85; 8:45 am]

BILLING CODE 4160–18–M

Public Health Service

Angelchik Anti-Gastroesophageal Reflux Implantable Devise

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), has announced that it is conducting a reassessment of what is known of the safety, clinical effectiveness of, and indications for the surgical implantation and use of the Angelchik anti-gastroesophageal reflux implantable device. Specifically the PHS is soliciting information that would define the population of patients that might benefit from the implantation of this device. In addition information is sought regarding the post implantation followup experience with these devices from the standpoint of safety as well as efficacy as an antireflux measure.

Since the publication of the previous **Federal Register** notice of assessment (FR Vol 46:No.227,57758, November 25, 1981) the PHS completed and forwarded to the Health Care Financing Administration an assessment of the subject technology. This reassessment now seeks to update the existing experience with the use of this device and to determine if a change in existing Medicare coverage policy is warranted.

The PHS assessment consists of a synthesis of information obtained from appropriate organizations in the private sector and from PHS Agencies and others in the Federal Government. PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS recommendations 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 by no later than June 17, 1985.

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 clinical acceptability and relative utility 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 26, 1985.

Enrique D. Carter,

Director, Office of Health Technology Assessment, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 85–8039 Filed 4–3–85; 8:45 am]

BILLING CODE 4160–17–M

General Powers and Duties of the Public Health Service; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of January 14, 1981 (46 FR 10016) by the Secretary of Health and Human Services to the Assistant Secretary for Health, the Acting Assistant Secretary for Health has delegated to the Director, National Center for Health Services Research and Health Care Technology Assessment, (NCHSR) with authority to redelegate, the following authorities under Title III of the Public Health Service Act (42 U.S.C. 241 *et seq*):

(1) Section 301 of the Public Health Service Act (42 U.S.C. 241), as amended, authority relative to research, investigation, and testing functions.

(2) Section 304 of the Public Health Service Act (42 U.S.C. 242b), as amended, general authority respecting research, evaluations, and demonstrations in health statistics, health services, and health care technology.

(3) Section 305 of the Public Health Service Act (42 U.S.C. 242c), as amended, authority pertaining to the National Center for Health Services Research and Health Care Technology Assessment.

(4) Section 307 of the Public Health Service Act (42 U.S.C. 2421), as amended, international cooperation authority.

(5) Section 308 of the Public Health Service Act (42 U.S.C. 242m), as amended, insofar as general provisions apply to sections 304, 305, 306, and 307.

(6) Section 310 of the Public Health Service Act (42 U.S.C. 242o), as amended, authority relative to health conferences and health education information.

The December 24, 1981 delegation by the Acting Deputy Assistant Secretary for Health Research, Statistics, and Technology to the Director, National

Center for Health Services Research has been superseded insofar as it pertains to authorities under Title III of the Public Health Service Act. Provision has been made for previous delegations and redelegations made to other officials currently within the NCHSR to continue in effect for no longer than 90 days from the date of the delegation to the Director, NCHSR, provided they are consistent with the delegation to the Director, NCHSR.

The delegation to the Director, National Center for Health Services Research and Health Care Technology Asssessment became effective on March 22, 1985.

Dated March 22, 1985.

James O. Mason,

Acting Assistant Secretary for Health.

[FR Doc. 85-8038 Filed 4-3-85; 8:45 am]

BILLING CODE 4160-17-M

National Research Institutes; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of July 20, 1979 (44 FR 46318) by the Secretary of Health and Human Services to the Assistant Secretary for Health, the Acting Assistant Secretary for Health has delegated to the Director, National Center for Health Services Research and Health Care Technology Assessment (NCHSR), with authority to redelegate, the following authorities under Title IV of the Public Health Service Act (42 U.S.C. 281 *et seq*):

(1) Section 472 of the Public Health Service Act, (42 U.S.C. 2891-1), as amended, pertaining to National Research Service Awards, excluding the authority to promulgate regulations; and

(2) Section 473 of the Public Health Service Act, (42 U.S.C. 2891-2), as amended, pertaining to studies respecting biomedical and behavioral research personnel, excluding the authority to submit reports to Congress or its Committees.

The December 24, 1981 delegation by the Acting Deputy Assistant Secretary for Health Research, Statistics, and Technology to the Director, National Center for Health Services Research has been superseded insofar as it pertains to the authorities under Title IV of the Public Health Service Act.

Provision has been made for previous delegations and redelegations made to other officials currently within the NCHSR of these authorities to continue in effect for no longer than 90 days from the date of the delegation to the Director, NCHSR, provided they are consistent with the delegation to the Director, NCHSR.

The delegation to the Director, National Center for Health Services Research and Health Care Technology Assessment became effective on March 22, 1985.

Dated: March 22, 1985.

James O. Mason,

Acting Assistant Secretary for Health.

[FR Doc. 85-8037 Filed 4-3-85; 8:45 am]

BILLING CODE 4160-17-M

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) covers the Social Security Administration (SSA). Notice is given that Part S, as published in the **Federal Register** on June 1, 1983, (48 FR 24465-24467) is being amended to reflect the changes in the organizational designation and functional responsibilities for the Office of Research, Statistics and International Policy (ORSIP), Office of Policy (OP). Accordingly, the sections of Chapter SR which describe the mission, organization and functions of OP are begin amended to reflect the changes in the organizational designation and functional responsibilities of the Office. The revisions are as follows:

Section SR.10 *The Office of Policy*—(Organization):

E. The Office of Research, Statistics and International Policy (SRV).

Delete Subsection 2. The Research Grants and Contracts Staff (SRV3).

Add Subsection 2. The Program Analysis Staff ( ).

Retitle Subsection 4 to read: 3. The Division of Statistical Operations and Services (SRV7).

Add Subsection 5. The Division of Statistics Analysis ( ).

Renumber Subsection 5 to 6. The International Policy Staff (SRVE).

Section SR.20 *The Office of Policy*—(Functions):

E. The Office of Research, Statistics and International Policy (SRV).

Delete Subsections 2., a, b, c, d and e.

Add Subsection 2. The Program Analysis Staff ( ).

Plans, designs and conducts surveys of program target groups and performs policy-relevant research. Analyzes the impact of proposed policy options and legislative proposals, analyzes special high-priority issues and prepares briefing materials for SSA administrators.

Redescribe Subsection 3., a and b, and add c. The Division of Economic Research (SRV5).

a. Plans, directs and executes issue-oriented research to provide information about relationships between the Social Security program, the economy and other aspects of society.

b. Makes program revenue projections and interprets changing demographic and economic trends as they relate to the broad field of economic security and to overall economic and social policy.

c. Studies such major areas as: Social Security financing, economic impacts of Social Security, income maintenance, effects of Social Security on lifetime income redistribution, alternative measures of income adequacy, and labor market and retirement behavior.

Retitle Subsection 4 to read: The Division of Statistical Operations and Services (SRV7).

Redescribe Subsections 4., a and b as follows:

a. Plans and directs the development, maintenance and revision of a broad statistical program concerning the basic retirement, survivors, disability insurance and SSI program statistics.

b. Provides statistical services throughout SSA and technical consultation to users of these statistics, both within and outside SSA.

Adds Subsection 5. The Division of Statistic Analysis ( ).

a. Plans and develops a continuing program of reseach and analysis related to Social Security, Supplemental Security Income (SSI), other social welfare programs and to the employment, earnings and coverage status of the nation's work force.

b. Plans and directs the collection for publication of OASDI and SSI statistics as well as statistics on employment and earnings covered under the Social Security program.

Renumber Subsection 5 to 6. The International Policy Staff (SRVE).

Dated: March 13, 1985.

Nelson J. Sabatini,

Acting Deputy Commissioner for Management and Assessment.

[FR Doc. 85-8019 Filed 4-3-85; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance offices at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer, Ramona Moore, telephone (202) 343-3574 and to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C., 20503, telephone 202-395-7313.

Title: Subchapter M Part 271 General Contract Requirements—25 CFR 271.46 and 271.49.

Abstract: Parts 271.46 and 271.49 require a tribal contractor to establish and maintain a recordkeeping system and provide financial status and program progress reports; such records and reports are essential to proper administration, monitoring and evaluation of contracts awarded under Pub. L. 93-638

Bureau Form Number: None.

Frequency: Quarterly

Description of Respondents: Indian tribes or tribal organizations across tribal lands

Annual Responses: 11,440

Annual Burden Hours: 5,720

Bureau clearance officer; Ramona Moore, (202) 343-3574.

John W. Fritz,

Assistant Secretary—Indian Affairs.

[FR Doc. 85-8082 Filed 4-3-85; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Arizona; Notice of Conveyance

[A-18822-F]

Notice is hereby given that, pursuant to sections 203 and 209 of the Act of October 21, 1976 (90 Stat. 2750, 2757; 43 U.S.C. 1713, 1719), Fred D. and Corlene Armstrong, 2514 Greenway Street, Arlington, Texas 76010, have purchased by competitive sale, for $13,950.00 public land situated in Mohave County described as follows:

Gila and Salt River Meridian, Arizona

T. 21 N., R. 18 N.,
Sec. 34, N½SE¼, N½SW¼SE¼, E½SW¼SW¼SE¼, SE¼SW¼SE¼, SE¼SE¼.

Containing 155.00 acreas.

The purpose of the Notice is to inform the public and interested State and local governmental officials of the transfer of land out of Federal ownership.

Don R. Mitchell,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-8069 Filed 4-3-85; 8:45 am]

BILLING CODE 4310-32-M

Arizona; Notice of Conveyance

[A-18822-E]

March 25, 1985.

Notice is hereby given that, pursuant to sections 203 and 209 of the Act of October 21, 1976 (90 Stat. 2750, 2757; 43 U.S.C. 1713, 1719), Ralph M. Born, 170 Pinto Place, Norco, California 91760, has purchased by competitive sale, for $17,110.00, public land situated in Mohave County described as follows:

Gila and Salt Rvier Meridian, Arizona

T. 21 N., R. 18 W.,
Sec. 34, NE¼,

Containing 160.00 acreas.

The purpose of the Notice is to inform the public and interested State and local governmental officials of the transfer of land out of Federal ownership.

Don R. Mitchell,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-8071 Filed 4-3-85; 8:45 am]

BILLING CODE 4310-32-M

Realty Action; Disposal of Public Lands in Rio Arriba and Taos County, NM

Dated: March 26, 1985.

AGENCY: Bureau of Land Management Albuquerque District Office, Interior.

ACTION: Notice of realty action on proposed land disposal.

SUMMARY: This notice is to advise the public that the Albuquerque District, of the Bureau of Land Management (BLM) is proposing to dispose of approximately 64.04 acres of public land near the unicorporated villages of Embudo, Pilar, and Dixon within Taos and Rio Arriba Counties, State of New Mexico.

SUPPLEMENTARY INFORMATION: The BLM has determined that the 64.04 acres of public land described below are suitable for disposal under the Color-of-Title Acts of 1928 (45 Stat. 1069), 1932 (47 Stat. 53; 43 U.S.C. 178), the Recreation and Public Purposes Act (43 U.S.C. 869 et seq), and Sales under section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1713 (1976).

Dixon I, New Mexico Public Land Disposal Block:

T. 23 N., R. 10 E., NMPM,
Sec. 19: Lots 29, 30, 31, 32;
Sec. 20: Lot 10;
Sec. 28: Lot 69;
Sec. 29: Lots 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32.
T. 24 N., R. 11 E., NMPM,
Sec. 29: Lot 11.

Comprising approximately 64.04 acres.

Disposal of these lands is consistent with: (1) The approved Land Use Recommendations of the BLM's 1979 Rio Grande, Management Framework Plan. (2) Their location as well as the physical characteristics and the private ownership of adjoining lands, make them difficult and uneconomical to manage as public lands, so disposal would best serve the public interest. (3) various public meetings were held throughout the area during the land use planning process. (4) This Notice of Realty Action will be published once a week for three weeks in a newspaper of general circulation and will be sent to the New Mexico Congressional delegation and the relevant congressional committees by BLM.

The specific parcels of public land will be disposed of using the following "Tract Disposal Criteria" in descending order of priority:

1. *Color-of-Title.* Color-of-Title disposals will be made to any applicant within the disposal area who qualifies under the Color-to-Title Acts.

2. *Non-Competitive (Direct) Sale.* Public lands within the disposal block will be sold without competition at Fair Market Value to those individuals who occupied the parcels before June 11, 1979 (the date land use plans were approved) but who do not qualify for title under one of the color-of-title acts.

3. *Public Purposes.* If unoccupied lands within the disposal area are identified for recreational or other public purposes by state or local governments or other qualified public purposes applicants, they will be considered for disposal under the R&PP Act.

The terms and conditions applicable to the disposal are:

1. The patents will contain a reservation to the United States for ditches and canals.

2. All disposals are for surface estate only. The patents will contain a

reservation to the United States for all minerals.

3. Tracts which lie within the 100 year floodplain of the Embudo river will be subject to EO 11988 which precludes the seeking of compensation from the Untied States or its agencies in the event existing or future facilities on those tracts are damaged by flood.

4. All disposals will be made subject to prior existing rights. Additional information pertaining to this disposal including the environmental documents are available for review at the Taos Resource Area Office, Plaza Montevideo, Cruz Alta Road, Taos, New Mexico 87571 or telephone (505) 758-8851. For a period of 45 days from the date of this notice, interested parties may submit written comments to the Taos Resource Area Manager. Any adverse comments will be evaluated by the New Mexico State Director, Bureau of Land Management who may vacate or modify this realty action and issue a final determination.

In the absence of any action by the state Director, this realty action will become the final determination of the Department of the Interior.

L. Paul Applegate,

District Manager.

[FR Doc. 85-8084 Filed 4-3-85; 8:45 am]

BILLING CODE 4310-FB-M

[N-39182]

Nevada; Realty Action-Noncompetitive Sale of Public Land in Mineral County, NV

The following described land, comprising approximately .32 acre, has been examined and identified as suitable for sale under section 203 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750), 43 U.S.C. 1713:

Mount Diablo Meridian, Nevada

T. 8 N., R. 34 E.,
Sec. 34: Lots 2 and 6.

The land will be offered at the appraised fair market value to Wilfred Buffington who owns land on three sides of each lot and controls access to lot 2. The land would become a part of a planned construction project. If sold as individual lots, neither would be large enough to meet County requirements for a building permit.

The sale is consistent with Bureau planning and is compatible with County plans. The land, due to its location, is without access, is uneconomic to manage, and is not needed for any federal purpose. It would best be managed in private ownership to allow for community expansion. The public interest will be well served by making the land available for sale.

Patent, if and when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States; Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

A more detailed description of this mineral reservation, which will be incorporated in the patent document, is available for review at this BLM Office.

Detailed information concerning the sale is available for review at the Carson City District Office.

Upon publication of this notice in the **Federal Register**, the land described above will be segregated from all forms of nondiscretionary appropriation under the public land laws, including the mining laws, except the mineral leasing laws. The segregative effect of this notice of realty action shall terminate upon issuance of patent or other document of conveyance to such land, upon publication in the **Federal Register** of a termination of the segregation or 270 days from the date of publication, whichever occurs first.

The land will not be offered for sale sooner than 60 days after the date of this notice. For a period of 45 days after the date of this notice, interested parties may submit comments to the Bureau of Land Management, Carson City District Office, 1050 E. William Street, Suite 335, Carson City, Nevada 89701. Any adverse comments will be evaluated by the District Manager. The Nevada State Director, Bureau of Land Management, may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated this 28th day of March 1985.

Thomas J. Owen,

District Manager, Carson City District.

[FR Doc. 85-8065 Filed 4-3-85; 8:45 am]

BILLING CODE 4310-HC-M

[N-36597, et al]

Reality Action; Sale of Public Lands in Lincoln County, NV

The following described lands have been examined and identified as suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at no less than the appraised fair market value shown:

Mount Diablo Meridian, Lincoln County, State of Nevada

Parcel No.	Serial No.	Legal description	Acres	Minimum bid appraised value (dollars)
		T.7S.,R. 61E.		
		Section 8		
85-01	N-36598	N½NW¼NW¼	20.0	30,000
		Section 5		
85-02	N-36597	N½NW¼SW¼NW¼	5.0	3,000
85-03	N-39393	S½NW¼SW¼NW¼	5.0	5,000
85-04	N-39394	N½SW¼SW¼NW¼	5.0	5,000
85-05	N-39395	S½SW¼SW¼NW¼	5.0	5,000
85-06	N-39396	N½NW¼NW¼SW¼	5.0	4,000
85-07	N-39397	S½NW¼NW¼SW¼	5.0	4,500
85-08	N-39398	N½SW¼NW¼SW¼	5.0	4,500
85-09	N-39399	S½SW¼NW¼SW¼	5.0	5,000
85-10	N-39400	N½NE¼SW¼NW¼	5.0	3,500
85-11	N-39401	S½NE¼SW¼NW¼	5.0	4,500
85-12	N-39402	N½SE¼SW¼NW¼	5.0	4,500
85-13	N-39403	S½SE¼SW¼NW¼	5.0	5,000
85-14	N-39404	N½NE¼NW¼SW¼	5.0	3,500
85-15	N-39405	S½NE¼NW¼SW¼	5.0	4,500
85-16	N-39406	N½SE¼NW¼SW¼	5.0	4,500
85-17	N-39407	S½SE¼NW¼SW¼	5.0	5,000

The method of sale will be competitive sealed bid. The land sale will be held at the Las Vegas District Office, 4765 W. Vegas Drive, Las Vegas, Nevada 89126, at a date to be announced later.

This sale is consistent with the Bureau of Land Management's planning system and the Master Plan for Lincoln County. The public interest will be served by offering this land for sale. Based on a recent ocular reconnaissance survey, the sale lands support approximately 3-4 AUMs livestock carrying capacity in the West Pahranagat Grazing Allotment. However, until sheduled monitoring studies over the total allotment have been completed and evaluated, the sale

will not result in an adjustment in total preference. Particulars for this sale will be made available to the public prior to the scheduled sale date. The land will not be offered for sale until 60 days after the date of this notice.

Detailed information concerning the sale, including the planning documents, and the environmental assessment/land report is available for review at the Bureau of Land Management Las Vegas District Office, 4765 W. Vegas Drive, Las Vegas, Nevada 89126. Federal law requires that bidders be U.S. citizens, 18 years of age or older.

Sealed bids may be submitted to our Las Vegas District Office, 4765 W. Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126. Bids must be received at the District Office no later than close of business (4:15 p.m.) the day prior to the bid opening date to be eligible for that bid opening. Qualified sealed bids will be opened starting at 9:00 a.m. at the Las Vegas District Office. Sealed bids for each subsequent bid opening date may be submitted starting the third Thursday of each month for opening the third Wednesday of the following month.

Sealed bids must be enclosed in an envelope identified with the parcel number and labled "sealed bid—do not open" on the outside. The enclosure within the envelope must contain the parcel number, the amount of the bid, the bidder's name and address, and payment of at least 20% of the bid tendered. Certified check, postal money order, bank draft or a cashier's check made payable to the Department of Interior, Bureau of Land Management are the only acceptable forms of payment. No bids will be accepted for less than the minimum bid specified for each parcel.

If you are the successful bidder at the sale offering (i.e. bid opening date), the balance of the amount bid is due within 180 days of your receipt of the notice declaring you the successful bidder. Failure to submit the full bid price within 180 days shall result in cancellation of the sale of the parcel and the deposit shall be forfeited and disposed of as other receipts of sale.

The patent when issued will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. All mineral deposits in the land so patented, and to it, or persons authorized by it, the right to prospect, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.[1]

3. Parcels 85–02 through 85–17 will further be subject to those rights granted by oil and gas lease, N–32207, made under Section 29 of the Act of February 25, 1920, 41 Stat. 437 and the Act of March 4, 1933, 47 Stat. 1570. This patent is issued subject to the right of the prior permittee or lessee to use so much of the surface of said land as is required for oil and gas exploration and development operations, without compensation to the patentee for damages resulting from proper oil and gas operations, for the duration of oil and gas lease, N–32207, and any authorized extension of that lease. Upon termination or relinquishment of said oil and gas lease, this reservation shall terminate.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comment will be evaluated by the District Manager, who may vacate or modify this reality action. BLM may accept or reject any or all offers, or withdraw any land or interest in land from the sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA or other applicable laws.

Dated: March 22, 1985.

Kemp Conn,

District Manager, Las Vegas.

[FR Doc. 85–8067 Filed 4–3–85; 8:45 am]

BILLING CODE 4310-HC-M

Intent To Hold Public Scoping Meetings and To Prepare an Environmental Impact Statement for a Coal Preference Right Lease Application (PRLA) Located in the Craig District, CO; Amendment

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Public Scoping and Information Meetings for Preparation of an Amendment to the White River Management Framework Plan (MFP) and Environmental Impact Statement (EIS) (James Creek PRLA EIS).

SUMMARY: This notice amends and supplements a Notice of Intent published on February 26, 1985, in the following ways:

(1) Advising the public that both an EIS and an MFP Amendment will be prepared. The requirements for both actions will be integrated into one process with documentation for both contained in the EIS.

(2) Correcting the deadline for public comments from March 8, 1985 (an error in the February 26, 1985, Notice), to April 18, 1985.

An original Notice of Intent was published on January 4, 1984. This notice (and the February 26, 1985, notice) update that original notice and advise the public that the Bureau of Land Management will accept comments through April 18, 1985, to assist BLM in defining the range of uses and issues or concerns. The information gathered will be considered in preparation of:

(1) The White River MFP amendment which will identify those parts of PRLA C–0126998 which are acceptable for further consideration for coal leasing by applying 20 unsuitability criteria (43 CFR Part 3461); and

(2) The EIS on the leasing and development of the PRLA and adjacent existing leases.

This notice is issued in accordance with the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) regulations (40 CFR 1501.7 and 1508.22), and BLM planning regulations (43 CFR 1610.2) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are solicited. Any information or issues identified in January 1984 to BLM will be considered and need not be resubmitted.

For Further Information and Submission of Comments

An information packet and PRLA location map will be available upon request from the Craig District Office at the address given below. Written comments may be mailed to Greg Goodenow, Project Manager, Bureau of Land Management, Craig District Office, 455 Emerson Street, Craig, Colorado 81625. Written comments will be accepted through April 18, 1985. For more information you may also call the BLM at (303) 824–8261.

SUPPLEMENTARY INFORMATION: The EIS is intended to evaluate leasing/development alternatives as well as identifying mitigating measures and special stipulations that the applicant must take into consideration when preparing the PRLA's final showing. Alternatives that have been tentatively identified include the following: (1) No Action, or no development alternative.

[1] The succesful bidder may request conveyance of the Federally owned mineral interest (with the exception of oil and gas) under Section 209 of the Federal Land Policy and Management Act of October 21, 1976, 90 Stat. 2757, 43 U.S.C. 1719.

(2) Applicant's Proposed Action (a 10 million ton per year surface mine), and (3) Applicant's Proposed Action incorporating BLM Mitigating Measures and Special Stipulations. The purpose of the meetings is to encourage participation from interested persons in defining significant environmental issues and concerns which may result from the issuance of a noncompetitive coal lease. This participation is designed to supplement information gathered in January 1984. Issues and concerns previously identified will be considered. Duplicate information need not be provided.

The next opportunity for public comment and participation will be provided on publication of the Draft EIS. At that time BLM will distribute copies and publish a Notice of Availability to inform the public that the Draft EIS is available and public meetings will be held to gather comments. All comments received will be considered in preparation of the Final EIS. On publication of the Final, BLM will again distribute copies and publish notice in the **Federal Register.** Public comment on the Final will be received for 30 days.

Potential issues in the area associated with development of this PRLA include impacts to wildlife, groundwater hydrology, and socioeconomics. Preparation of the EIS is being conducted in accordance with the requirements of the National Environmental Policy Act of 1969, Council on Environmental Quality Regulations, (40 CFR Part 1500), Federal Coal Management Regulations (43 CFR Part 3430), BLM Planning Regulations (43 CFR Part 1600), and other Federal laws and regulations, and Department of the Interior policies and procedures.

Disciplines Included in the Analysis and Location of the Project Area

Disciplines included in the analysis are: Air quality, Hydrology, Soils and reclamation, Wildlife, Cultural resources, Transportation and noise, Socioeconomics, Vegetation, land-use and grazing, Geology and mineral resources.

The PRLA is located about nine miles northeast of Meeker, Colorado and encompass 5,100 acres, most of which lies in the James Creek Drainage.

Location and Availability of Relevant Documents

The following documents are available for public review:

- 1982 White River MFP amendment applied the unsuitability criteria to the 1982 White River surrounding areas.
- Consolidation Coal PRLA Environmental Assessment prepared in 1982 addressing development of an underground mine on the PRLA.
- A development proposal submitted by Consolidation Coal Company to BLM in December 1984.

The above documents are available at the following BLM offices:

Place	Address
Denver, CO	BLM, Colorado State Office, 2020 Arapahoe, Denver, CO 80205.
Craig, CO	BLM, Craig District Office, 455 Emerson St., Craig, CO 81265.

Kannon Richards,

State Director.

[FR Doc. 85-8068 Filed 4-3-85; 8:45 am]

BILLING CODE 4310-84-M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget desk officer, at (202) 395-7340.

Title: Oil and Gas Leasing—National Petroleum Reserve—Alaska

Abstract: Respondents supply information which will be used to determine the eligibility of an applicant to hold leases, to explore for, and produce oil and gas in the National Petroleum Reserve—Alaska under the authority of the Department of the Interior Appropriations Act of 1981.

Bureau Form Numbers: N/A

Frequency: On Occasion

Description of Respondents: General public, small businesses, and oil companies.

Annual Responses: 150

Annual Burden Hours: 150

Bureau Clearance Officer: Evelyn Weeks (202) 653-8853

James M. Parker,

Acting Director.

January 28, 1985.

[FR Doc. 85-8004 Filed 4-3-85; 8:45 am]

BILLING CODE 4310-84-M

Designation of Area of Critical Environmental Concern; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of designation of area of critical environmental concern.

SUMMARY: Pursuant to the authority in the Federal Land Policy and Management Act of October 21, 1976 (Section 202(c)(3)) and 43 CFR 1610.7-2, the following area is designated as an area of critical environmental concern. The designation and associated managment requirements were developed with public involvement in the Glenwood Springs Resource Management Plan, available for inspection at the addresses listed below.

Thompson Creek Natural Environment Area, an Area of Critical Environmental Concern

4,286 acres of BLM-administered land in T. 8 S., R. 88 W., Secs. 20, 21, 28, 29, 30, 31, 32, and 33 and T. 8 S., R. 89 W., Secs. 25, 35, and 36, 6th P.M., Pitkin County, Colorado.

This area is designated to perserve geological, ecological, cultural and scenic values in Thompson Creek and to provide for educational and recreational use. The combination of features present provides an outstanding setting for environmental education activities by local schools and for recreational activities including hiking and cross-country skiing. Management of the area has been prescribed in the Record of Decision for the Glenwood Springs Resource Management Plan and will be directed toward maintaining relatively undisturbed conditions, acquiring legal public access and developing trailhead facilities. Limitations on resource uses include: designation as unsuitable for utility and communication facilities, no surface occupancy stipulation on oil and gas leasing, prohibition of vegetation manipulation and timber harvesting, and closure to off-road vehicle use.

ADDRESSES: For further information about the designation or specific management requirements, contact either of the following Bureau of Land Management offices:

Grand Junction District Office, 764 Horizon Drive, Grand Junction, Colorado 81506.

Glenwood Springs Resource Area Office, P.O. Box 1009, 50629 Highway 6 and 24, Glenwood Springs, Colorado 81602.

Dated: March 28, 1985.

Kannon Richards,

Colorado State Director.

[FR Doc. 85-8002 Filed 4-3-85; 8:45 am]

BILLING CODE 4310-JB-M

[A20346-C]

Realty Action; Exchange of Public Lands, Navajo County, AZ

BLM proposes to exchange public land with the State of Arizona in order to achieve more efficient management of the public land through consolidation of ownership.

The following public land is being considered for disposal by exchange pursuant to Section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

T. 19 N., R. 16 E.,
Sec. 20, E½NE¼.
Containing 80 acres.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.(b), publication of this Notice will segregate the public lands, as described in this Notice, from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: March 27, 1985.

Marlyn V. Jones,

District Manager.

[FR Doc. 85-7999 Filed 4-3-85; 8:45 am]

BILLING CODE 4310-32-M

[AA-54894]

Realty Action; Lease of Public Lands; Southcentral Alaska

SUMMARY: This Notice of Realty Action involves a lease on public lands administered by the Bureau of Land Management (BLM) and selected by the State of Alaska near Denali National Park. The lease is intended to authorize a pre-existing unauthorized use of approximately five (5) acres of public land at Purkeypile landing strip. These lands have been examined and found suitable for leasing under the provisions of Section 302 of the Federal Land Policy and Management Act (FLPMA) of 1976, and are located within the area described as follows:

Section 23, Township 33 North, Range 16 West, Seward Meridian, Alaska.

The lands will be leased on a non-competitive basis. Annual rental has been estimated at $200 per acre per year, subject to final appraisal. No application will be accepted for less than the appraised price per acre. In addition, the lessee shall reimburse the United States for reasonable administrative and other costs incurred by the United States in processing and monitoring the lease.

Applications may be hand-delivered or mailed to the Anchorage District Office, Bureau of Land Management, 4700 East 72nd Avenue, Anchorage, Alaska 99507, within 60 days following publication of this notice. Applications must include a reference to this notice.

For more details of application content, refer to 43 CFR 2920, copies of which are available at the BLM Anchorage District Office, McGrath Resource Area. Also available is information on terms and conditions that will apply to the lease, location maps, etc. The Environmental Assessment prepared for the adjacent airport lease, AA-53262, is also available for public review.

For a period of 60 days following **Federal Register** publication, interested parties may submit comments to the McGrath Resource Area Manager, 4700 E. 72nd Ave., Anchorage, Alaska 99507. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination.

In the absence of any action by the District Manager, this realty action will become the final determination of the Bureau.

Robert Conquergood,

Area Manager, McGrath Resource Area.

[FR Doc. 85-8003 Filed 4-3-85; 8:45 am]

BILLING CODE 4310-JA-M

Emergency Notice (Less Than 30 Days); Shoshone District Advisory Council and Grazing Advisory Board Joint; Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a joint meeting of the Shoshone District Advisory Council and Grazing Advisory Board.

DATE: Wednesday, April 24, 1985 at 9:30 a.m.

ADDRESS: BLM District Office, 400 West F Street, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: Jon Idso, ADM for Resources, Shoshone District Office, P.O. Box 2 B, Shoshone, Idaho 83352. Telephone (208) 886-2206 or FTS 554-6576.

SUPPLEMENTARY INFORMATION: The proposed agenda for the meeting includes the following items: Grazing Fee Study, BLM/Forest Service Interchange.

It is anticipated the meeting will adjourn by noon, however, the Grazing Board may continue in session to complete actions on financial matters.

The Shoshone District Advisory Council is established under Section 309 of the Federal Land Policy and Management Act of 1976 (Pub. L. 94-579; 43 U.S.C. 1701 et seq.) as amended. The Shoshone District Grazing Advisory Board is established under Section 403 of the Federal Land Policy and Management Act, as amended. Operation and administration of the Council and Board will be in accord with the Federal Advisory Committee Act of 1972 (Pub. L. 92-463; 5 U.S.C Appendix 1) and Department of Interior regulations, including 43 CFR Part 1784.

The meeting will be open to the public. Anyone may present an oral statement between 11:00 a.m. and 12:00 noon, or may file a written statement regarding matters on the agenda. Oral statements will be limited to ten minutes. Anyone wishing to make an oral statement should notify the Shoshone District Management by April 23, 1985. Records of the meeting will be available in the Shoshone District Office for public inspection or copying within 30 days after the meeting.

Charles J. Haszier,

District Manager.

[FR Doc. 85-8001 Filed 4-3-85; 8:45 am]

BILLING CODE 4310-GG-M

[PHX-077993]

Arizona; Order Providing for Opening of Public Lands

Correction

In FR Doc. 85-5229 appearing on page 8793 in the issue of Tuesday, March 5, 1985, make the following correction: In the first column, the land description following paragraph 2, the second line, "Sec. 31, NE¼, SW¼" should read "Sec. 32, N½, SW¼".

BILLING CODE 1505-01-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone (202) 395-7313; with copies to David A. Schuenke; Chief, Branch of Rules, Orders and Standards; Offshore Rules and Operations Division; Mail Stop 646; Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: OCS Order No. 8, "Platforms and Structures."

Abstract: Respondents are required to submit information pertaining to a platform's strength, foundation, structural integrity, fabrication method, and installation. The information submitted will be used by the Minerals Management Service Regions to determine the structural integrity of all offshore structures and to ensure that such integrity will be maintained throughout the useful life of the structure.

Bureau Form Number: None

Frequency: On Occasion

Description of Respondents: Federal oil and gas lessees performing offshore opertions under OCS Order No. 8, "Platforms and Structures."

Annual Responses: 237

Annual Burden Hours: 7,202

Bureau Clearance Officer: Dorothy Christopher, (703) 435-6214

Dated: March 5, 1985.

Bruce G. Weetman,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 85-8000 Filed 4-3-85; 8:45 am]

BILLING CODE 4310-MR-M

Receipt of Proposed Development Operations Coordination Document; ARCO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 1608 and 2137, Block 60, and Lease OCS-G 2943, Block 59, South Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on March 26, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS PLans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 26, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-8072 Filed 4-3-85; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Receipt of Proposed Development Operations Coordination Document, McMoran Offshore Exploration Co.

AGENCY: Minerals Management Service Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that McMoRan Offshore Exploration Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4102, Block 36, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on March 25, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/

Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 25, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–8070 Filed 4–3–85; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 94)]

Seaboard System Railroad, Inc.; Abandonment in Boone, Carroll, Clinton, Hamilton, and Marion Counties, IN; Findings

The Commission has found that the public convenience and necessity permit Seaboard System Railroad, Inc., to abandon its 42.95-mile line of railroad between milepost B–137.50 near Frankfort and milepost B–180.95 near Indianapolis, in Clinton, Boone, Marion, and Hamilton Counties, IN. A certificate will be issued authorizing this abandonment unless, within 15 days after this publication, the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in boldface in the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10 day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27(b).

James H. Bayne,

Secretary.

[FR Doc. 85–8017 Filed 4–3–85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30619]

Southern Pacific Transportation Co.; Trackage Rights Exemption in Fort Worth, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts Southern Pacific Transportation Company from the prior approval requirements of 49 U.S.C. 11343 for its acquisition of trackage rights over a 1.36-mile line of The Atchison, Topeka and Santa Fe Railway Company in Forth Worth, TX, subject to standard employee protective conditions.

DATES: This exemption will be effective on April 11, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30619 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: March 25, 1985.

By the Commission, Chairman Taylor, Vice Chariman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Chairman Taylor dissenting in part, would have made the exemption effective immediately.

James H. Bayne,

Secretary.

[FR Doc. 85–8018 Filed 4–3–85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

[Order No. 1089–85]

President's Commission on Organized Crime; Meetings

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: This notice announces five forthcoming meetings of the President's Commission on Organized Crime. This notice also sets forth a summary of the agenda for the five meetings, together with an explanation of why the second meeting will be closed to the public. Notice of these meetings is required by the Federal Advisory Committee Act, 5 U.S.C. App. I, section 10(a)(2).

DATES: April 22, 23, 24, 25, 1984, 10:00 a.m. to 12:00 noon; 1:00 p.m. to 3:00 p.m. (public hearing). April 22, 1985, 4:00 p.m. to 6:00 p.m. (closed meeting).

ADDRESS: Ceremonial Courtroom, Room 2525, Dirksen Building, 219 S. Dearborn Street, Chicago, Illinois 60604 (public hearing); Room 2502, Dirksen Building, 219 S. Dearborn Street, Chicago, Illinois 60604 (closed meeting).

FOR FURTHER INFORMATION CONTACT: James D. Harmon, Jr., Executive Director and Chief Counsel, President's Commission on Organized Crime, 1425 K Street, NW., Suite 700, Washington, D.C. 20005; (202) 786–3500.

SUPPLEMENTARY INFORMATION: The closed meeting on April 22 will be conducted to discuss several matters. The Commission will be briefed concerning the investigation by the Commission staff of the organized criminal groups whose illegal activities are to be described at the public hearings. This briefing is likely to include repeated references to specific individuals who are confidential sources for the Commission, or who are alleged to be direct participants in illegal activities but whose participation will not specifically be discussed by witnesses at the public hearing. The physical safety of these individuals could be placed in jeopardy if the identities of the witnesses and the time and place of their testimony were to be made public in advance of the public hearings. Pursuant to the authority vested in him by section 8 of Pub. L. 98–368, the Chairman of the Commission has determined that these discussions are exempted from the public meeting requirements of the the Federal Advisory Committee Act by 5 U.S.C. 552b(c) (5) and (7) (C), (D), and (F).

which is incorporated by reference into the Federal Advisory Committee Act.

The Commission will also discuss at the closed meeting a number of issues specifically concerning the Commission's issuance of subpoenas. It will discuss, for example, issues relating to certain individuals who have already been, or may be, served with subpoenas by the Commission, and who are to testify in depositions conducted by the staff of the Commission or in public hearings conducted by the Commission. Pursuant to the authority vested in him by section 8 of Pub. L. 98–368, the Chairman of the Commission has determined that this discussion is exempted from the public meeting requirements of the Federal Advisory Committee Act by 5 U.S.C. 552b(c)(10), which is incorporated by reference into the Federal Advisory Committee Act.

The public hearings on April 22, 23, 24, and 25 are to be open to both the public and press, and are for the purpose of receiving testimony concerning organized criminal groups in the United States involved in labor-management and union racketeering activities. The Commission will solicit testimony concerning the scope of activities of such groups, the manner in which their operations are conducted, and the effectiveness of Federal and state statutes and agencies in dealing with such groups. In particular, the Commission will solicit testimony from labor officials and members of the public who have been victimized by labor-management and union racketeering, persons believed to be involved in racketeering activities, and law enforcement officials with experience in this type of racketeering investigation. Members of the public who wish to present written statements to the Commission are invited to send such statements to the President's Commission on Organized Crime, 1425 K Street, N.W., Suite 700, Washington, D.C. 20005.

Dated: March 28, 1985.

Edwin Meese III,

Attorney General.

[FR Doc. 85–8020 Filed 4–3–85; 8:45 am]

BILLING CODE 4410-01-M

Lodging of a Modification to a Consent Decree Pursuant to the Clean Air Act; United States Steel Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 19, 1985, a proposed Fifth Modification of Consent Decree in *United States* v. *United States Steel Corporation*, Civil Action No. 79–709, (W.D. Pa) was lodged with the United States District Court for the Western District of Pennsylvania. The proposed modification addresses alleged violations of the Clean Air Act at coke oven batteries 19, 20, 21, and 22 at U.S. Steel's Clairton, Pennsylvania works. The alleged violations involved exceedences of the requirement, contained in the Consent Decree (the "Mon Valley" Consent Decree) and Pennsylvania's State Implementation Plan, that U.S. Steel shall permit visible emissions from no more than 2% of the charging ports or charging port seals (lids) on Batteries 19, 21, and 22, and from no more than 1% of the lids at Battery 20, a rebuilt coke battery. The proposed Modification requires U.S. Steel to pay $50,000 in civil penalties for the violations, and provides for stipulated penalties of $2,500 each for any such violations in the future. In addition, the proposed Modification contains provisions: (1) Continuing in effect through December 31, 1985 a progam to improve the performance of pushing emission cleaning cars (CHEMICO cars); (2) permitting U.S. Steel to cease the operation of emission control equipment on the combustion stack at Battery 21, providing that strict conditions are met and, if three governmental agencies permit the equipment to be shut off, that a continuous emission monitoring system must be installed to monitor the opacity of visible emissions from the stack; (3) modifying the fugitive dust emissions program to reflect current operations in U.S. Steel's Monongahela Valley complex; (4) revising and extending U.S. Steel's self-monitoring obligations under the Decree, while maintaining the Decree's requirement that U.S. Steel perform a total of 5,000 man-hours of observations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Modification. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *United States Steel Corporation*, DOJ Ref. 90–5–2–3–1087A.

The proposed Modification may be examined at the Office of the United States Attorney, Western District of Pennsylvania, Room 633, United States Post Office and Courthouse, 7th and Grant Streets, Pittsburgh, Pennsylvania 15219, at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19106; and at the Environmenal Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, D.C. 20530. A copy of the proposed Modification may be obtained in person by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.90 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85–8083 Filed 4–3–85; 8:45 am]

BILLING CODE 4410-01-M

LEGAL SERVICES CORPORATION

Funding Availability for Development of Plans To Encourage the Private Bar To Provide Higher Quality Paid Services and To Expand Pro Bono Programs

AGENCY: Legal Services Corporation.

ACTION: Announcement of funding.

SUMMARY: The Legal Services Corporation (LSC) through its Office of Field Services (OFS) requests proposals for the development of plans to encourage the private bar to provide higher quality paid services and expand *pro bono* programs which would increase the legal services to the elderly poor. LSC/OFS will distribute one-time non-annualized grants totalling approximately $200,000 for a term of up to twelve (12) months. Applicants may request funding up to $40,000 per grantee. All awards will be made pursuant to authority conferred by Pub. L. 98–411 and section 1006(a)(1)(B and section 1006(a)(3) of the Legal Services Corporation Act of 1974, as amended. Recipients are required to guarantee that more than 50 per centum of the funds required shall come from non-Federal sources and that federally funded assets and projects will not be included in in-kind services.

Proposals for the grants will be solicited from all law schools which are currently accredited by The American Bar Association, or accredited for purposes of bar admission by state bar associations of the state in which the law schools is located. Proposals may be submitted by either a single law school or a consortium of law schools.

Additionally proposals will be solicited from bar associations and others interested in encouraging the

private bar to provide better *pro bono* and higher quality paid services to the elderly poor. An effort will be made to ensure nationwide participation and geographic distribution.

Copies of the solicitation package are available from the LSC Office of Field Services.

DATE: All grant proposals must either be postmarked or received by the Office of Field Services on or before May 6, 1985. Grant awards will be announced no later than June 1985.

FOR FURTHER INFORMATION CONTACT: Beverly Bunn, Legal Services Corporation, Office of Field Services, 733 Fifteenth Street, NW., Washington, D.C. 20005, (202) 272–4351.

SUPPLEMENTARY INFORMATION: Proposals under the solicitation should focus on the development of plans to encourage the private bar to provide higher quality paid service and expand *pro bono* programs which would increase legal service to the elderly.

Consistent with that view, this LSC/OFS initiative has been conceptualized to achieve five major goals: (1) Developing or expanding private bar programs which address the civil legal needs of the elderly poor. These should supplement the current levels of delivery either in a substantive manner or in geographic scope; (2) enhancing *pro bono* programs which sensitize and educate the private bar to legal issues most frequently affecting the elderly. Existing areas can be updated and new areas identified and both expanded upon; (3) expanding the number of lawyers interested in and providing legal services to elderly poor persons; (4) maximizing cooperation between the established bar and all segments of the legal community (e.g. LSC grantees, law schools, etc.); and (5) developing and disseminating materials which help to provide better *pro bono* services and higher quality paid services to the elderly.

All proposals will be evaluated by OFS using selection criteria which include: (1) The provision of a clear description of proposed activities which includes an effective plan for management of the project and a plan for development and distribution of the results; (2) an explanation of how the proposed project complements, supplements or enhances existing coverage both in substantive legal matters and in geographic coverage. Identify and discuss current elderlaw or *pro bono* activity; (3) the extent to which a coordinated effort is shown between an area's legal service providers and the private bar in the development or expansion of the *pro bono* program. Cooperative efforts should help to negate duplication. Letters or other evidence of support and assistance may be attached where appropriate; (4) the extent to which the proposed project will increase the participation of both senior attorneys and young lawyers in the delivery of legal services to the elderly. Note any interest in and willingness to continue cooperative development in this area; (5) evidence that the proposed project provides for the high quality training of volunteer attorneys in the necessary areas of the law; (6) evidence that the project director and key staff have the qualification and experience to effectively administer the proposed project and will be able to allocate an adequate amount of time and resources to the project; (7) the provision of a budget which is adequate to support project activities, and which cites costs that are reasonable in relation to the duration and objectives of the proposed project. Indirect administrative costs must be specified in the proposal. Lower indirect costs will be given a higher rating; in order to maximize service delivery, an absence of indirect costs would be preferred; (8) the degree to which the applicants regular budget is currently allocated to its elderlaw or *pro bono* program and activities. Assurances or evidence that such budgetary support will be maintained during and beyond the term of the grant. The viability of the project beyond the term of the grant must be specifically addressed; and (9) demonstration that the applicant plans to make an adequate in-kind contribution which, among other things, could include contribution of adequate facilities and equipment to the proposed project.

Note.—Federally funded assets and projects cannot be counted as an in-kind contribution.

Peter P. Broccoletti,

Acting Director, Office of Field Services.

[FR Doc. 85–7979 Filed 4–3–85; 8:45 am]

BILLING CODE 6820–35–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 85–21]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report form under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by April 11, 1985. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Carl F. Steinmetz, NASA Agency Clearance Officer, Code NIM, NASA Headquarters, Washington, DC 20546; Kenneth Allen, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Carl. F. Steinmetz, NASA Agency Clearance Officer, (202) 453–2941.

Reports

Title: Space Transportation System: Duty-Free Entry of Space Articles.

OMB Number: 2700–0044.

Type of Request: Extension.

Frequency of Report: As required.

Type of Respondent: Individual or households, state or local governments, businesses or other for-profit, federal agencies or employees, non-profit institutions, small businesses or organizations.

Annual Responses: 8.

Annual Reporting Hours: 16.

Abstract-Needs/Uses: This collection of information will enable NASA to monitor and evaluate the extent of applications for benefits and the conformance of statutory requirements of Pub. L. 97–446 for duty-free entry of space materials into the U.S.

L.W. Vogel,

Director, Logistics Management and Information Programs Division.

[FR Doc. 7978 Filed 4–3–85; 8:45 am]

BILLING CODE 7510–01–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 the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: New.

2. The title of the information collection: Licenses and Radiation Safety Requirements for Well-Logging Operations, 10 CFR Part 39.

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 in oil and gas industry.

6. An estimate of the number of responses: 10 per year.

7. An estimate of the total number of hours needed annually to complete the requirement or request: 14,539 hours per year.

8. An indication of whether section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: The Nuclear Regulatory Commission is proposing a new 10 CFR Part 39 that would provide a single source of application, recordkeeing, reporting, and radiation safety requirements for the use of licensed radioactive material in well-logging operations by the oil and gas industry.

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 29th day of March 1985.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 85-8049 Filed 4-3-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the schedular requirement of 10 CFR 50.71(e)(3)(ii) to the Connecticut Yankee Atomic Power Company (CYAPCo) (the licensee) for the Haddam Neck Plant, located at the licensee's site in Middlesex County, Connecticut.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirement of 10 CFR 50.71(e)(3)(ii) to submit an updated Facility Description and Safety Analysis (FDSA) for the Haddam Neck Plant within 24 months of receipt of a letter notifying the licensee that the systematic evaluation program has been completed. By letter dated July 20, 1983, the staff informed CYAPCo that the systematic evaluation program had been completed for the Haddam Neck Plant and that, pursuant to 10 CFR 50.71(e)(3), the licensee was required to file an updated FDSA. By letter dated February 4, 1985, the licensee requested an exemption to defer submittal of the updated FDSA for the Haddam Neck Plant. The deferral of the submittal of the updated FDSA is the proposed action being considered by the staff.

The Need For The Proposed Action

For most plants covered by 10 CFR 50.71(e)(3)(ii), ample time was available for updating the FDSA within the 24-month interval allowed in the regulations. However, the Haddam Neck Plant requested participation in an expanded assessment of outstanding regulatory requirements with the idea of establishing an integrated schedule for the completion of these issues in a resource efficient manner.

The licensee has other ongoing activities which would directly affect the quality and substance of an updated FDSA. For example, CYAPCo is contracting with Westinghouse to develop and document detailed information on the design and licensing bases for key systems at the Haddam Neck Plant. CYAPCo has also undertaken an extensive design bases reanalysis which will result in new analyses for all FDSA Chapter 10 transients and accidents for several systematic evaluation program topics. The licensee believes that these additional efforts will facilitate a better understanding of the plant design bases when the updated FDSA is submitted.

The staff is now implementing a limited Integrated Safety Assessment Program (ISAP) for the Haddam Neck Plant. Because the licensee had placed the updating of its FDSA into its original integrated assessment proposal, the staff will be reviewing this licensing action as part of its screening review of ISAP related topics. Consistent with the policy statement on ISAP (49 FR 45112), the Commission has authorized the staff to suspend specific existing implementation schedule requirements for the plants to be reviewed. The submittal date for the updated FDSA will therefore be determined by its safety significance in relation to other regulatory requirements that constitute the ISAP effort.

Environmental Impacts of the Proposed Action

The proposed exemption affects only the required date for updating the FDSA and does not affect the risk of facility accidents. Thus, post-accident radiological release will not differ from those determined previously, and the proposed exemption does not otherwise affect facility radiological effluents or occupational exposures. With regard to potential nonradiological impacts, the proposed exemption does not affect plant non-radiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative to the exemption would be to require an earlier date for submittal of the updated FDSA. Such an action would not enhance the protection of the environment and would result in unnecessary diversion of utility engineering resources from other work of higher safety significance.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for the Haddam Neck Plant.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated February 4, 1985. This letter is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Russell Library, 123 Broad Street, Middletown, Connecticut 06547.

Dated at Bethesda, Maryland, this 28th day of March 1985.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Assistant Director for Safety Assessment, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85-8054 Filed 4-3-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-245]

Northeast Nuclear Energy Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the schedular requirement of 10 CFR 50.71(e)(3)(ii) to the Northeast Nuclear Energy Company (NNECO) (the licensee) for Millstone Unit 1, located at the licensee's site in New London County, Connecticut.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirement of 10 CFR 50.71(e)(3)(ii) to submit an updated Final Safety Analysis Report (FSAR) for Millstone Unit 1 within 24 months of receipt of a letter notifying the licensee that the systematic evaluation program has been completed. By letter dated March 16, 1983, the staff informed NNECO that the systematic evaluation program had been completed for Millstone Unit 1 and that pursuant to 10 CFR 50.71(e)(3), the licensee was required to file an updated FSAR. By letter dated February 4, 1985, the licensee requested an exemption to defer submittal of the updated FSAR for Millstone Unit 1. The deferral of the submittal of the updated FSAR is the proposed action being considered by the staff.

The Need for the Proposed Action

For most plants covered by 10 CFR 50.71(e)(3)(ii), ample time was available for updating the FSAR within the 24-month interval allowed in the regulations. However, Millstone Unit 1 requested participation in an expanded assessment of outstanding regulatory requirements with the idea of establishing an integrated schedule for the completion of these issues in a resource efficient manner. The staff is now implementing a limited Integrated Safety Assessment Program (ISAP) for Millstone Unit 1. Because the licensee had placed the updating of its FSAR into its original integrated assessment proposal, the staff will be reviewing the licensing action as part of its screening review of ISAP related topics. The submittal date for the updated FSAR would therefore be based upon its safety significance in relation to other regulatory requirements that comprise the ISAP effort.

Environmental Impact of the Proposed Action

The proposed exemption affects only the required date for updating the FSAR and does not affect the risk of facility accidents. Thus, post-accident radiological releases will not differ from those determined previously, and the proposed exemption does not otherwise affect facility radiological effluents or occupational exposures. With regard to potential nonradiological impacts, the proposed exemption does not affect plant nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to require an earlier date for submittal of the updated FSAR. Such an action would not enhance the protection of the environment and would result in unnecessary diversion of utility engineering resources from other work of higher safety significance.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Millstone Unit 1.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated February 4, 1985. This letter is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Dated at Bethesda, Maryland, this 28th day of March 1985.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Assistant Director for Safety Assessment, Division of Licensing.

[FR Doc. 85-8053 Filed 4-3-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-333]

Power Authority of the State of New York; Consideration of Issuance of Amendment To Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. DPR-59 issued to Power Authority of the State of New York (the licensee), for operation of the James A. FitzPatrick Nuclear Power Plant (the facility), located in Oswego County, New York.

In accordance with the licensee's application dated March 21, 1985, the proposed amendment would change the Technical Specifications (TS) to support facility operation with a newly installed Analog Trip Transmitter System (ATTS). Plant modifications related to ATTS installation are scheduled for completion during the Reload 6/Cycle 7 refueling outage currently in progress. The modifications include replacement

of existing direct and differential pressure activated mechanical sensor switches with an analog system capable of more accurately monitoring certain Emergency Core Cooling System (ECCS) and Reactor Protection System (RPS) protection parameters. In addition, temperature elements associated with leak detection systems located in the steam tunnel and crescent areas are being replaced with nuclear qualified Class 1E Resistance Temperature Detectors (RTD). System components such as switches, racks, and accessories are also being replaced with equipment meeting more stringent codes and standards.

The proposed TS changes which support these modifications and implement use of the new ATTS would revise surveillance requirements to reduce functional test and calibration frequencies. In addition, the TS concerning functional and calibration testing would be clarified and the bases would be changed to clarify the use of "Non-ATTS and ATTS" analog devices.

Before issuance of the proposed license amendment, the Commission will have made findings as required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The FitzPatrick plant currently uses mechanically operated sensors and relays in the design logic for the Reactor Protection System and in the aumomatic initiation logic for the Emergency Core Cooling System. Operating experience has shown that due that due to age and wear, mechanical sensors inherently drift out of tolerance and require frequent maintenance, testing, calibration and repair.

The ATTS is an all solid-state electronic trip system designed to provide stable and accurate monitoring of certain RPS and ECCS parameters. Changing to an analog system will improve overall sensor accuracy and reliability; reduce the time the RPS logic will be in a half scram condition and therefore reduce the potential for inadvertent plant scrams; reduce the functional test calibration frequency and simplify calibration procedures; reduce the number of Licensee Event Reports filed for setpoint drift; and reduce radiation exposure to plant personnel. The replacement of mechanical sensor switches with an analog trip transmitter system does not alter the requirements for instrument initiation, function, and operability that existed prior to the modifications. Therefore, implementation of the ATTS only effects the system at the sensor level, not the logic level.

The proposed TS changes would relax surveilliance requirements without reducing system availability, accuracy, and reliability below levels which existed prior to ATTS installation. This is attributed to the characteristically lower failure rates and higher accuracy associated with the electronic ATTS components, as compared to mechanical sensors.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed TS changes submitted in support of ATTS installation would not involve a significant increase in the probability or consequences of an accident previously evaluated because, as noted above, system reliability and availability would not be reduced below those levels existing prior to ATTS installation. Furthermore, the ATTS installation does not alter the requirements for instrument initiation, function, and operability which currently apply. For similar reasons, the proposed TS changes would not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed TS changes also would not involve a significant reduction in the margin of safety since the reduced surveillance frequencies are consistent with the improved reliability and accuracy of the new ATTS components, and, again, instrument initiation function, and operability requirements are not changed as a result of ATTS installation.

On this basis, the staff proposes to determine that the proposed amendment does not involve significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By May 6, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A

petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Domenic B. Vassallo: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Mr. Charles M. Pratt, Assistant General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York, New York 10019, attorney for the licenses.

Nontimely filing of petitions for leave to intervene, amended petitions, supplemental petition and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balance of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment, dated March 21, 1985, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Penfield Library, State University College of Oswego, Oswego, New York.

Dated at Bethesda, Maryland, this 29th day of March, 1985.

For the Nuclear Regulatory Commission.

Robert A. Hermann,

Acting Chief, Operating Rectors Branch No. 2, Division of Licensing.

[FR Doc. 85–8052 Filed 4–3–85; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Reliability Assurance Meeting

The ACRS Subcommittee on Reliability Assurance will hold a meeting on April 23, 1985, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, April 23, 1985—8:30 a.m. Until the Conclusion of Business

The Subcommittee will continue discussions from the March 19 meeting regarding methods of enhance the reliability of air- and motor-operated valves.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call of the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: April 1, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 8050 Filed 4–3–85; 8:45 am]

BILLING CODE 7590–01–M

Veterans Administration Medical Center; Order Modifying License

[Docket Nos. 30–0123, 30–01314, 70–2199; License Nos. 08–00942–04, 08–00942–05, SNM–1605, EA No. 85–31]

I.

The Veterans Administration Medical Center, Washington, DC, (the "licensee"), is the holder of specific byproduct Material License Nos. 08–00942–04 and 08–00942–05, and Special Nuclear Material License No. SNM–1605 issued by the Nuclear Regulatory Commission (the "NRC") pursuant to 10 CFR Parts 30, 33, 35 and 70, which

authorize the licensee to possess and use radioactive materials for medical diagnosis, therapy and research.

II.

On January 22, 1985, an NRC safety inspection of the licensee's program was conducted. During the inspection, six violations of NRC requirements were identified. The violations involved: improper disposal of materials to a landfill; inadequate security of licensed material; failure to perform a survey; failure to implement certain training requirements; inadequate control of materials upon receipt; and failure to maintain the minimum number of survey instruments. The violations are described in greater detail in the Notice of Violation being issued concurrently with this Order, and the Notice of Violation is incorporated herein by reference as a basis for this Order.

The number of these violations and the fact that several of them had been identified previously by the licensee's Radiation Safety Committee, but had remained uncorrected, demonstrate inadequate management control of the radiation safety program. In view of the licensee's lack of follow-up to correct previously identified deficiencies, significant corrective measures to prevent similar violations in the future are necessary. Accordingly, I have determined that an assessment of the licensee's radiation safety program should be performed, including the licensee's management of the program, and a plan should be developed and implemented to upgrade the program to correct deficiencies identified during the assessment.

III.

In view of the foregoing, and pursuant to sections 53, 81, 161(b), 161(o), and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Parts 30, 33, 35 and 70, it is hereby ordered that:

A. Within 30 days from the effective date of this Order the licensee shall retain the services of an expert, independent of the licensee's staff, with extensive experience in the management and implementation of a broad scope licensed medical radiation safety program to perform an assessment of the licensee's radiation safety program. Within the same 30 days the licensee shall submit the name and qualifications of the expert to the Regional Administrator, Region I.

B. Within 60 days of the effective date of this Order, the assessment shall be performed. The assessment of the licensee's radiation safety program shall include, but need not be limited to, a review of:

1. The licensee's organization, and assigned responsibilities and authorities within that organization;

2. The licensee's program for training and retraining individuals working with NRC-licensed materials in NRC regulations, in the conditions of the licenses, and in safe practices for using licensed material;

3. The licensee's methods of approving individuals for the use of licensed materials and developing procedures for the safe use of licensed materials;

4. The licensee's program for training and qualifying all individuals involved in managing, supervising, inspecting and auditing licensed activities;

5. The licensee's program of surveillances and audits to determine compliance by individual users of licensed materials with NRC regulations, the conditions of the NRC licenses, and the licensee's own procedures for the safe use of radioactive materials; and,

6. The licensee's management of the radiation safety program, including the function of the Radiation Safety Committee and its methods of monitoring the program to ensure that problems are identified and that indentified problems are promptly corrected.

C. Within 90 days of the effective date of this Order, the expert performing the evaluaton shall provide the Hosptial Director a written report which describes any weaknesses identified during the assessment and recommendation for improvement. A copy of this report shall be provided to the Regional Administrator, NRC Region I, at the same time it is transmitted to the licensee.

D. Within 120 days of the effective date of this Order, the licensee shall submit a report to the Regional Administrator, NRC Region I, describing the methods of implementing the recommendations of the assessment report, or providing justification for alternative or no corrective action if any specific recommendations are not adopted. This report shall include:

1. Action items completed or to be performed;

2. Schedules for, or dates of, completion of each specific action item; and

3. A system for monitoring and tracking the status and completion of the action items.

Upon completion of all action items, a final report shall be submitted to the Regional Administrator, NRC Region I.

E. The Regional Administrator, NRC Region I, may relax or terminate any of the preceding conditions for good cause shown.

IV.

The licensee or any other person whose interest is adversely affected by this Order may request a hearing on this Order. Any request for hearing shall be submitted to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the date of this Order. A copy of the request shall also be sent to the Executive Legal Director at the same address and to the regional Administrator, NRC Region I, 631 Park Avenue, King of Prussia, Pennsylvania 19406.

If a hearing is to be held concerning this Order, the Commission will issue an Order deisgnating the time and place of the hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order shall be sustained.

This Order shall become effective upon expiration of the time during which a hearing may be requested or, in the event a hearing is requested, on the date specified in an Order issued following further proceedings on this Order.

Dated at Bethesda, Maryland, this 27th day of March 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 85-8051 Filed 4-3-85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14439; 811-1513]

Centennial Growth Fund, Inc.; Application for an Order Declaring Applicant Has Ceased To Be an Investment Company

March 28, 1985.

Notice is hereby given that Centennial Growth Fund, Inc. ("Applicant"), 3410 South Galena Street, Denver, Colorado 80231, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on February 19, 1985, pursuant to section 8(f) of the Act, and Rule 8f-1 thereunder, for an order declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are

referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the pertinent statutory provisions.

Applicant states that it was organized under the laws of the State of Maryland on May 1, 1967, as International Growth Fund, Inc. On July 24, 1967, Applicant registered under the Act, filing a registration statement pursuant to section 8(b) of the Act on that date, as well. On July 9, 1968, Applicant changed its name to Hamilton Growth Fund, Inc., and on July 25, 1968, it filed a registration statement on Form S–5 under the Securities Act of 1933, declared effective December 6, 1968, to register 100,000,000 shares of capital stock (par value $1.00 per share) at an offering price of $10.97 per share. Applicant changed its name to Centennial Growth Fund, Inc. on September 18, 1981.

Applicant further states that it has been reorganized pursuant to section 368(a)(1)(C) of the Internal Revenue Code of 1954, through the acquisition by Oppenheimer Equity Income Fund, Inc. ("Equity Income"), registered under the Act as an open-end, diversified management company, of all the Applicant's assets in exchange for shares of the voting stock of Equity Income. The terms of this transaction were set forth in The Agreement and Plan of Reorganization ("Plan"), which was unanimously adopted by Applicant's board of directors on March 27, 1984, and subsequently approved by Applicant's shareholders at a special meeting held on October 3, 1984. The closing date for the acquisition was November 19, 1984, at which time all of Applicant's assets (other than a cash reserve of $9,950) were exchanged for Equity Income shares, with necessary valuation of assets and shares made as of the close of business of the New York Stock Exchange on November 16, 1984, the business day preceding the closing date ("valuation date"). Shares of Equity Income thus transferred were thereupon re-distributed, on a pro rate basis, by Applicant to its shareholders of record on the valuation date. It is represented that as of the close of business on November 16, 1984, Applicant had 1,813,131 shares of capital stock outstanding, representing an aggregate net asset value of $17,242,078, and a redemption value per share of $9.51. Applicant also states that it has retained a cash reserve of $9,950 for dissolution expenses and acquisition costs incurred, which were billed after the closing date. Said reserve will be fully expended, it is stated, and will not presently, nor will it in the future be, invested in securities. Applicant's only outstanding debts are the $9,950 of incurred expenses billed after the closing, and payable out of the cash reserve.

Applicant states, in addition, that First Interstate Bank of Denver, N.A., as Custodian for the Certificate Holders of Hamilton Growth Fund Periodic Investment Plan (a unit investment trust having Applicant's shares as one of its underlying portfolio securities), was the record owner as of October 31, 1984, of 47,148 Applicant's shares, or 2.5% of the total number of such shares outstanding on that date. In accordance with the aquisition of Applicant's assets by Equity Income, shares of the latter fund have been substituted for those of the former in the Hamilton Growth Periodic Investment Plan.

Applicant further represents that it is in the process of winding up its affairs with the objective of effecting its dissolution in accordance with the requirements of Maryland law. Pursuant to the express terms of the Plan, Applicant is to complete the process of dissolution within one year of the closing date, November 19, 1984; it is represented that Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary to the winding-up of its affairs. There are no securityholders of Applicant to whom distributions in complete liquidation of their interests have not been made. Applicant represents that although under Maryland law dissenting shareholders are accorded appraisal rights in connection with the transactions agreed to in the Plan, none of Applicants shareholders has sought to exercise such appraisal rights. Finally, Applicant represents that it is not a party to any litigation or administrative proceeding.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 22, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-8086 Filed 4-3-85 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14440; 812-6036]

Colonial Government Securities Plus Trust; Application for an Order Granting Exemption

March 29, 1985.

Notice is hereby given that Colonial Government Securities Plus Trust ("Applicant"), 75 Federal Street, Boston, Massachusetts 02110, registered under the Investment Company Act of 1940 ("Act"), as an open-end, diversified, management investment company, filed an application on February 4, 1985, for an order of the Commission, pursuant to section 6(c) of the act exempting Applicant from the provisions of section 19(b) of the Act, and Rule 19b–1 thereunder, to permit Applicant to make quarterly distributions of long-term capital gains from certain options transactions. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the pertinent statutory provisions.

Applicant is designed for investors who seek a high current return with frequent dividends. Applicant pursues its investment objectives by investing in U.S. Government securities, including Government National Mortgage Association mortgage-backed certificates ("GNMAs"), writing covered call options and covered put options and purchasing put options with respect to certain of such securities on national securities exhanges, and by entering into closing purchase and sale transactions with respect to certain of such options.

Applicant pays dividends from net investment income monthly. Distributions of net capital gains from options transactions and net short-term capital gains from other sources currently are made quarterly. Distributions of any net long-term capital gains realized on the sale of investment during a fiscal year are usually made with the first quarterly distribution after such fiscal year closes on September 30.

Applicant further states that the Tax Reform Act of 1984, amended section 1256 of the Internal Revenue Code of 1954, and thereby significantly altered

the tax treatment of capital gains from options on U.S. Government securities held and written by Applicant, all of which have become section 1256 contracts. Prior to the 1984 amendments to section 1256, gain or loss recognized with respect to options on U.S. Government securities was treated as short-term capital gain or loss, which Applicant distributes quarterly. Under the 1984 amendments to section 1256, 60% of the gain or loss recognized by Applicant with respect to options is treated as long-term capital gain or loss.

Applicant represents that its shareholders invest with expectation of receiving these distributions of gain from options transactions, which are an integral part of Applicant's investment objective and policies. Applicant believes that it is desirable to apply the tax treatment resulting from the 1984 amendments to section 1256 to its quarterly distributions of gains from option transactions in order to benefit its shareholders. Applicant notes that the purpose in amending section 1256 was to eliminate certain abuses related to the realization of short-term capital losses from options transactions; there is no evidence, Applicant asserts, that Congress intended the amendment to limit the frequency with which registered investment companies may distribute capital gains from options transactions. Precisely such a restriction obtains, however, from the characterization of 60% of the gain from options transactions as long-term capital gain under the recent amendment of section 1256, when this provision is read together with the limitation of section 19(b) of the act, and Rule 19b–1 promulgated thereunder, Applicant states.

Applicant argues that no purpose embodied in section 19(b), or Rule 19b–1, would be served by a strict application of those provisions to 60% of the capital gains generated by Applicant's options transactions. Applicant asserts that the revised characterization of these gains as long-term gains will not make shareholders more likely to confuse them with dividends paid from net interest income, since shareholders have always received quarterly distributions of these gains, which were considered to be short-term gains until section 1256 was amended. Applicant represents that it will continue clearly to distinguish any distribution of capital gains from distributions out of net interest income in an accompanying notice to its shareholders.

Applicant states further that section 19(b) and Rule 19b–1 were also intended to prevent investment companies from excessive trading of their portfolios in contravention of a stated investment objective of long-term capital appreciation. Applicant explains that the revised treatment of 60% of the capital gain from options transactions as long-term is not expected to affect is investment decisions or distribution practices, as Applicant has as its investment objective high current return, rather than long-term capital appreciation. Applicant reiterates that one of its important policies has been to seek to realize such gains from options transactions and to distribute them quarterly to its shareholders. Therefore, Applicant concludes, ther is no need for the protective mechanisms of section 19(b) and Rule 19b–1.

Applicant represents that quarterly distribution of long-term capital gains from options transactions will not increase its administrative expenses, since Applicant heretofore has made, and expects to continue to make, quarterly distributions of short-term capital gains.

It is further stated that if Applicant were unable to designate the appropriate part of each quarterly distribution of gains from options transactions as long-term gains, Applicant would, in the alternative, designate its final distribution of gains with respect to a fiscal year, made shortly after the close of the fiscal year, as a distribution of long-term gains. Applicant believes, however, that this alternative would be disadvantageous to its shareholders because a portion of the long-term capital gain realized on options transactions may not be designated as such where such portion exceeds the amount of the year-end distribution, and because this method of distribution would not pass on the benefit of the lower capital gains tax rate to persons who are shareholders of Applicant at various points during the year, but who have ceased to be shareholders by the end of the year, or have reduced their investment by that time.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 23, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–8067 Filed 4–3–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–14442; File No. 811–3160]

IDS Ready Income Money Fund, Inc.; Application and Opportunity for Hearing

March 29, 1985.

Notice is hereby given that IDS Ready Income Money Fund, Inc. ("Applicant"), 2900 IDS Tower, Minneapolis, MN 55402, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on February 19, 1985, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

The application states that Applicant, which filed a notification of registration and registration statement pursuant to section 8(b) of the Act on March 31, 1981, has never made a public offering of its securities, has fewer than 100 securityholders for purposes of section 3(c)(1) of the Act and the rules thereunder, and does not propose to make a public offering or engage in business of any kind. The application further states that Applicant does not have any securityholders or assets, that it is not a party to any litigation or administrative proceeding and does not intend to engage in business activities other than those necessary for the winding up of its affairs. Finally, the application represents that the Applicant's charter has been revoked under Nevada state law.

Notice is futher given that any interested person wishing to request a hearing on the application may, not later than April 22, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific

issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-8088 Filed 4-3-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14441; File No. 811-3588]

Sponsored Money Fund, Inc.; Application and Opportunity for Hearing

March 29, 1985.

Notice is hereby given that Sponsored Money Fund, Inc. ("Applicant"), 2900 IDS Tower, Minneapolis, MN 55402, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on February 19, 1985, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

The application states that Applicant, which filed a notification of registration and registration statement pursuant to section 8(b) of the Act on October 27, 1982, has never made a public offering of its securities, has fewer than 100 securityholders for purposes of section 3(c)(1) of the Act and the rules thereunder, and does not propose to make a public offering or engage in business of any kind. The application further states that Applicant does not have any securityholders or assets, that it is not a party to any litigation or administrative proceeding and does not intend to engage in business activities other than those necessary for the winding up of its affairs. Finally, the application represents that the Applicant's charter has been revoked under Nevada state law.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 22, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or my mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-8089 Filed 4-3-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21907; SR-CBOE-84-21, SR-Amex-84-30, SR-Phlx-84-25, and SR-PSE-85-1]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc., et al.; Order Approving Amended Proposed Rule Changes

March 29, 1985.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 A"Act") and Rule 19b-4 thereunder, the American ("Amex"), Chicago Board Options ("CBOE"), Pacific ("PSE") and Philadelphia ("Phlx") Stock Exchanges have filed with the Commission amended proposed rule changes to increase position and excercise limits for individual stock options.[1] The amended proposed rule changes would establish a three-tiered system of position and exercise limits of 3,000, 5,500 or 8,000 contracts. The limit applicable to a particular option contract would depend on certain criteria relating to the trading volume of the underlying stock or a combination of both the trading volume and the number of shares outstanding of the underlying stock.[2] Under current rules, a two-tiered limit of either 2,500 or 4,000 contracts applies to individual stock options.[3]

Notice of the proposed urle changes together with their terms of substance was given by publication of Commission

Notice of the proposed rule changes together with their terms of substance was given by publication of Commission releases and by publication in the **Federal Register.**[4] All written statements

[1] Position limits impose a ceiling on the number of options contracts of each class on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls) that can be held or written by an investor or group of investors acting in concert. Exercise limits prohibit the exercise by an investor or group of investors acting in concert of more than a specified number of puts or calls in a particular underlying security within five consecutive business days.

[2] Specifically, the exchange proposals establish position and exercise limits of:

(1) 8,000 contracts for options on an underlying stock that had either (a) trading volume of at least 40,000,000 shares during the most recent six month trading period, or (b) trading volume of at least 30,000,000 shares during the most recent six month trading period and at least 120,000,000 shares currently outstanding;

(2) 5,500 contracts for options on an underlying stock that had either (a) trading volume of at least 20,000,000 shares during the most recent six month trading period; or (b) trading volume of at least 15,000,000 shares during the most recent six month trading period and at least 40,000,000 shares currently outstanding; and

(3) 3,000 contracts for all other options classes.

[3] The eligibility criteria for the largest (8,000 contract) tier are double the eligibility criteria for the existing 4,000 contract tier. Specifically, trading volume of 40 million (rather than 20 million shares) or 30 million shares traded and 120 million shares outstanding (rather than 15 and 60 million shares) is required to qualify for the 8,000 contract limits. The eligibility criteria for the middle tier are identical to the current 4,000 contract tier, except that the 60 million float criterion has been reduced to 40 million shares. Under the proposals, the exchanges will continue to review the volume and outstanding share information of all underlying stocks every six months to determine which limit should apply.

[4] *See* File No. SR-CBOE-84-21, Securities Exchange Act Release No. 21239, August 14, 1984, 49 FR 33073, August 20, 1984; File No. SR-Amex-84-30, Securities Exchange Act Release No. 21467, November 2, 1984, 49 FR 4469, November 13, 1984; File No. SR-Phlx-84-25, Securities Exchange Act Release No. 21528, November 29, 1984, 49 FR 47672, December 6, 1984; SR-PSE-85-1, Securities Exchange Act Release No. 21775, February 19, 1985, 50 FR 8040, February 27, 1985. The Amex, CBOE, PSE and Phlx submitted amendments to their proposed rule changes on November 28, 1984, December 11, 1984, January 18, 1985 and January 24, 1985, respectively. The Amex, CBOE, and Phlx submissions published for comment proposed position and exercise limits of 4,000, 6,000 and 8,000 contracts. Subsequently, these exchanges amended their filings to propose increases of only 3,000, 5,500 or 8,000 contracts. CBOE also amended the public float criterion that would apply to the middle tier of 5,500 contracts so that its proposal was consistent with the proposals of the other exchanges. The Commission published for comment PSE's proposed limits of 3,000, 5,500 or 8,000 contracts which references the amended proposals of the other three exchanges.

filed with the Commission and all written communications between the Commission and any person relating to the proposed rule changes 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.[5]

II. Background

Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of large options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. They also impose a ceiling on the maximum position an investor with inside corporate or market information can establish through the use of options. In addition, they serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.

In establishing position and exercise limits, the Commission always has been careful to balance two competing concerns. The Commission has recognized that the limits must be sufficient to prevent investors from disrupting the market for the underlying security by acquiring and exercising a number of options contracts disproportionate to the deliverable supply and average trading volume of the underlying security. At the same time, the Commission has realized that the limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.

In 1978, the Report of the Special Study of the Options Market, while recognizing the important functions served by position and exercise limit rules, set forth some of the deleterious effects of the 1,000 contract position and exercise limits then in effect.[6] In particular, the *Options Study* noted that those limits impeded market access by institutional investors interested in using options in connection with large securities portfolios and also might have served to impair market depth and liquidity by restricting, for example, proprietary trading by member firms. Thus, the *Options Study* suggested that position limit rules be completely reviewed and that their future relaxation or elimination be considered.

In October 1980, the Commission approved proposed rule changes by the four options exchanges to increase position and exercise limits from 1,000 to 2,000 contracts for all options classes.[7] In conjunction with the approval, the Commission received commitments from the options exchanges to study the effects of the increased limits. The Commission indicated that the experience gained under the increased limits, if coupled with adequate monitoring and surveillance procedures, could serve as a basis for considering further position and exercise limit modifications.[8]

In July 1983, the Commission approved a further increase in position and exercise limits for individual stock options based on a tiering approach.[9] Limits for options on stocks with the greatest trading volume and public float were increased to 4,000 contracts and limits on all other options classes were increased to 2,500 contracts.[10] In approving the increased limits under a two-tiered approach, the Commission recognized that securities with active and deep trading markets, as well as broad public ownership, are more difficult to manipulate or disrupt than securities having less active and deep markets and having smaller public floats.[11] Accordingly, the Commission believed that the tiering approach to position and exercise limits was appropriate because it would increase the depth and liquidity of the stock options markets without significantly increasing concerns regarding manipulation and disruption of the market for the underlying securities.[12] In addition, the Commission noted that tiering was consistent with the gradual, evolutionary approach that the Commission and the exchanges have adopted in increasing position and exercise limit.

As noted above, the Amex, COBE, PSE, and Phlx are currently proposing a three-tier structure that would establish position and exercise limits of either 3,000, 5,500 or 8,000 contracts depending on certain criteria related to the trading volume of the underlying stock or a combination of both the trading volume and the number of shares outstanding of the underlying stock.[13]

III. Discussion

The Commission has concluded that the proposed limits of 3,000, 5,500, or 8,000 contracts will further increase the potential depth and liquidity of the individual stock options market without significantly increasing concerns

[5] The CBOE submitted two letters in connection with its proposed rule change. *See* letter from Anne Taylor, Secretary and Associate General Counsel, CBOE, to Richard T. Chase, Associate Director, Division of Market Regulation, dated July 25, 1984, which contains a list of the options that would fall within each tier under CBOE's initial proposal for limits of 4,000, 6,000 or 8,000 contracts. In addition, at the request of the Commission's staff, the CBOE submitted certain data on the stocks underlying CBOE traded options indicating their public float and trading volume from January through June 1984, along with the options trading volume on these stocks for the same six month trading period. Letter from Anne Taylor to Eneida Rosa, Branch Chief, Division of Market Regulation, dated August 15, 1984. No other comments on the proposed rule changes were received.

[6] H.R. Rep. No. IFC-3, 96th Cong., 1st Sess at 189-91 (Comm. Print 1978) ("*Options Study*").

[7] Securities Exchange Act Release No. 17237, October 22, 1980; 45 FR 71453, October 28, 1980 ("1980 Release").

[8] The evaluation reports subsequently submitted by the options exchanges were, for the most part, inconclusive although it did not appear that the increases had any appreciable effect on the nature of the underlying stock market or any adverse effect on liquidity in the options market. *See* letter to George T. Simon, Associate Director, Division of Market Regulation, from Robert B. Gilmore, Senior Vice President, Phlx, dated August 31, 1981; letter to George T. Simon, from Paul G. Stevens, Senior Vice President, Options Division, Amex, dated September 17, 1981; letter to George T. Simon, from William J. Young, Senior Vice President, Regulatory Division, CBOE, dated September 22, 1981; letter to Richard T. Chase, Assistant Director, Division of Market Regulation, from Jerry M. Gluck, Vice President, PSE.

[9] *See* Securities Exchange Act Release No. 19975, July 15, 1983; 48 FR 33380, July 21, 1983.

[10] To be eligible for the 4,000 contract limit an underlying security must have either (i) trading volume of at least 20,000,000 shares during the most recent six month trading period; or (ii) trading volume of at least 15,000,000 shares during the most recent six month trading period and at least 60,000,000 shares currently outstanding. All other options not meeting these requirements are subject to the 2,500 contract limits.

[11] The initiatives of the options exchanges to relax position and exercise limits have been concurrent with exchange initiatives to relax the listing standards or eligibility criteria for underlying securities. As a result, while options are traded on some stocks with a public float of several hundred million shares, exchange rules authorize options to be traded on stocks with as few as seven million shares outstanding. Similarly, while some options stocks have average daily trading volume of up to a million or more shares, exchange rules authorize options trading on stocks with annual trading volume as low as 2.4 million shares. *See, e.g.*, CBOE Rule 5.1.

[12] In approving the higher two-tiered limits, the Commission also noted that the absence of discernible manipulation problems under the current limits were an indication that modest additional increases were justified.

[13] *See* note 2, *supra* for the specific qualifying criteria for each tier.

regarding intermarket manipulations or disruptions of the market for the options or underlying securities.

The Commission previously has noted that the markets for securities with active and deep trading markets, as well as broad public ownership, are more difficult to manipulate or disrupt than those securities that are less active with smaller public floats. The proposed increases, based on a three-tiered approach, recognize this by seeking to minimize the restraints on those options classes that can accommodate larger limits without raising increased manipulation concerns. In particular, the proposal to create a third-tier, with a limit of 8,000 contracts, for options on the most actively traded, widely held securities, permits the Commission to avoid placing unnecessary restraints on those options where the manipulative potential is the least and the need for increased positions, both by traders and institutional investors, likely would be the greatest.[14]

Under the proposals, the current lowest tier of 2,500 contracts would be increased 20% to 3,000 contracts.[15] An increase of only 500 contracts for the lowest tier appears to be appropriate because the options that fall within this category raise the greatest manipulative concerns.[16] In addition, it appears from discussions with the exchanges and with institutional investors that market participants do not need a substantial increase in the limits for options in the lowest tier. A 500 contract increase for the lowest tier is consistent with the Commission's gradual approach in approving position and exercise limit increases.[17]

Finally, the absence of discernible manipulative problems under the current two-tiered limits leads the Commission to conclude that the increases being proposed by the exchanges are warranted. In this regard, the Commission has recognized that there are no ideal limits in the sense that options positions of any given size can be stated conclusively to be free of any manipulative concents. The exchanges and the Commission, however, have relied largely on the absence of discernible manipulation or disruption problems under current limits as an indicator that additional increases can be safely considered. The Commission believes for these reasons that liberalization of the existing limits is now appropriate.[18]

The Commission does not believe that the addition of a third tier will have any significant adverse effects on the options markets. In approving the two-tiered system, the Commission stated that it did not believe requiring traders to keep track of two limits rather than one is burdensome or confusing or would lead to accidental violations. The Commission does not believe that a change from two tiers to three tiers should change this conclusion. We note that the exchanges have had experience monitoring the current two tiered system along with other position and exercise limits for various new options products.[19] We have not found that the differing position and exercise limits have created programming or monitoring problems for securities firms, or that they have led to significant customer confusion. Based on the current experience in handling position and exercise limits, the Commission believes that the transition from two to three tiers will not cause significant problems.

In addition, the position and exercise limit rules will continue to minimize any customer confusion or market impact caused by stock options that, after the six month evaluation,[20] move from the highest tier to the middle tier or the middle tier to the lowest tier. In this regard, because the rules provide that a decrease from a higher to a lower tier will only occur after the expiration of the last options series trading at the time an option ceases to meet the higher tier criteria, there should be little danger of inadvertent violations or forced liquidations.

In approving the current two-tiered limits, the Commission recommended that the options exchanges implement certain enhancements to their surveillance systems. In response, each options exchange adopted new or modified procedures or techniques to detect mini-manipulations.[21] To the extent the potential for manipulation increases because of the higher limits, the Commission believes the exchanges' surveillance programs will be adequate to detect as well as deter attempted manipulative activity. The Commission will, of course, continue to monitor the exchanges' surveillance programs to ensure that problems have not arisen due to increased position and exercise limits.

The Commission staff also has discussed with the exchanges the extent to which the addition of a third tier would present operational difficulties for surveillance. The exchanges have informed the staff that because surveillance systems are already in place, only minor system changes will need to be made to accommodate the monitoring of a third tier.

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[14] Options that would be eligible for the highest tier limit of 8,000 contracts currently have a 4,000 contract limit. Although a 4,000 contract limit increase for some options may appear to be substantial, the Commission believes that the qualifying criteria for the highest tier (*see* note 2, *supra*) ensure that only options on the most actively traded and heavily capitalized securities will be eligible for the 8,000 contract limit.

[15] Modifying the qualifying criteria for the middle tier by lowering the public float requirement from 60 to 40 million shares also would permit a 5,500 contract limit to apply to certain options that currently have a limit of 2,500 contracts. After carefully evaluating the proposed criteria for the middle tier, the Commission believes that this increase does not raise serious concerns. First, we note that the trading volume requirement (15 million shares over a 6 month period) that must be met in addition to the public float criteria has not been changed, thus insuring that options with a 5,500 contract limit overlie actively traded stocks. Second, the Commission believes that a public float of 40 million shares, rather than 60 million, is still substantial and should alleviate any possible corner or squeeze concerns while helping to prevent options on illiquid securities from receiving a 5,500 contract limit.

[16] These options are on the least active securities and have the smallest number of shares outstanding. The 3,000 contract limit would permit the establishment of liquidation of an options position equal to almost 5 percent of the public float, and over 12 percent of the annual trading volume, of an underlying security meeting the option exchanges' minimum eligibility criteria. *See* note 11, *supra*.

[17] We note that the current limit (adopted in 1983) of 2,500 contracts resulted in a 500 contract increase from the then existing levels of 2,000 contracts. In other words, the limits for the lowest tier will have increased by 50% over the last two years.

[18] The Commission continues to believe that proposals to increase position and exercise limits must be justified and evaluated separately. After reviewing the proposed exercise limits, along with the eligibility criteria for each tier, the Commission has concluded that exercise limit increases of 3,000, 5,500 or 8,000 contracts for the low, middle and high tier options classes, respectively, should not raise serious manipulation problems or increased concerns over market disruption in the underlying securities.

[19] Currently, for example, position and exercise limits for options on narrow-based indices are set at 4,000, 6,000 or 8,000 contracts, depending on the degree of concentration of a component stock of the index. At the same time, the exchanges administer different limits for broad-based index options. For example, the limits for broad-based index options are set at 10,000 contracts on Amex and 15,000 contracts on the PSE while CBOE and Phlx prohibits positions exceeding a value greater than $300 million in terms of aggregate price.

[20] *See* note 3, *supra*.

[21] In addition to the new surveillance techniques adopted at that time, the options exchanges have since enhanced their surveillance capabilities in various ways. For example, the CBOE (where most highest tier options will trade) is currently implementing new procedures that will substantially enhance its audit trail. The CBOE also is developing a sophisticated data base and retrieval system for surveillance purposes. Together these systems will permit quicker, more comprehensive and more precise surveillance procedures to detect possible manipulation and other trading abuse.

IV. Conclusion

For the foregoing reasons, the Commission finds that the amended proposed rule changes of Amex, CBOE, PSE, and Phlx to increase position and exercise limits for individual stock options to either 3,000 5,500 or 8,000 contracts (depending on certain market related criteria) are consistent with the requirements of the Act and the rules and regulations thereunder applicble to national securities exchanges, and in particular, the requirements of Section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above mentioned proposed rule changes be, and they hereby are, approved.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85-8090 Filed 4-3-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21908; SR-MCC-84-7 and SR-MSTC-84-7]

Self-Regulatory Organizations; Midwest Clearing Corp. and Midwest Securities Trust Co.; Order Approving Proposed Rule Changes

Midwest Clearing Corporation and Midwest Securities Trust Company (together, "MCC/MSTC") on August 17, 1984, submitted proposed rule changes to the Commission under section 19(b)(1) of the Securities Exchange Act of 1934. MCC/MSTC filed amendments to these proposals on October 12, 1984 and January 7, 1985. On February 27, 1985, the Commission published notice of the proposals to solicit public comment.[1] No comment has been received. This Order approves the proposals.

I. Description

The proposals, as amended, would permit MCC/MSTC Participants to secure the non-cash portion of their Participants Fund contributions with letters of credit. MCC/MSTC will continue to require Participants to make a minimum $5,000 cash contribution to their respective Participants Funds, plus additional contributions based on Participants' daily settling activity. Under current MCC/MSTC rules, these additional contributions must be in the form of cash or United States Government securities. Under the proposals MCC/MSTC Participants also could satisfy the additional contribution requirements with letters of credit issued in favor of MCC/MSTC on behalf of the Participant.

MCC/MSTC's proposals contain several safeguards to ensure the controlled use of letters of credit. These include criteria for approving letter of credit issuers, concentration limits for issuers, terms of acceptable letters of credit, and MCC/MSTC's authority to pledge letters of credit.

A. Issuer Criteria

Guidelines for issuers of letters of credit under the proposal would be as follows. MCC/MSTC may approve a domestic issuer if it is a bank or trust company whose long-term debt securities and commercial paper, or those of its parent, have received the first rating by Moody's Investors Service or by Standard and Poor's Corporation. Alternatively, a domestic issuer may be approved if: (1) Its lending limit to any individual borrower is at least $10 million, (2) its shareholder equity is at least $66 million, or (3) its total assets equal at least $1.3 billion. A foreign issuer may be approved if it is a bank or trust company having: (1) Long term debt securities or commercial paper that has received a first rating by Moody's Investors Service or Standard and Poor's Corporation, and (2) shareholder equity of at least $200 million or total assets of at least $1.3 billion. In addition, foreign issuers must issue letters of credit through a United States branch.

The proposals also would authorize MCC/MSTC's boards of directors to specially approve domestic or foreign issuers that do not meet the above criteria. In those instances, the issuer must meet alternative limiting terms and conditions that will be set by the MCC/MSTC boards of directors to protect MCC/MSTC and its participant community.

B. Concentration Limits

The proposals would establish concentration limits for issuers of letters of credit. Specifically, without a special decision by the board of directors, no single issuer's letters of credit, in the aggregate, may exceed 25% of either Participants Fund. However, letters of credit from a specially approved issuer, in the aggregate, may not exceed ½ of 1% of the appropriate Participants Fund.

C. Terms

The proposals would require letters of credit to be issued for terms of six months, expiring either on March 1 or September 1. This will enable MCC/MSTC to monitor letters of credit and ensure that Participants renew or substitute expiring letters of credit. At least 30 days prior to expiration of a letter of credit, the letter must either be replaced with other deposits, extended for another six months, or substituted with a new six month letter.

Letters of credit must be irrevocable. However, if an issuer gives five business days' notice of intention to revoke a letter of credit, MCC/MSTC may consent to revocation. Consent will be given only if the Participant's liability to MCC/MSTC has been discharged or satisfied by other means.

Under the proposals, MCC/MSTC may refuse or revoke approval of any issuer at any time, regardless of whether the issuer meets any of the above standards. MCC/MSTC would immediately notify Participants of any revocation of approval and would give Participants 48 hours to substitute a letter of credit from an approval issuer or any other acceptable deposit.

D. Pledge of Letters of Credit

MCC/MSTC's proposals would authorize MCC/MSTC to pledge letters of credit as security for loans made to MCC/MSTC for purposes allowable under MCC/MSTC Rules. Any loan to MCC/MSTC secured by letters of credit must be repaid within 30 days if the loan was taken to cover a loss or liability of MCC/MSTC.

II. MCC/MSTC's Rationale

MCC/MSTC believes the proposals are consistent with Section 17A of the Act. Specifically, MCC/MSTC believes the financial integrity of their Participants funds will be protected by the limits set by the proposals for acceptable issuers, issuer concentration limits, and letter of credit terms. Additionally, MCC/MSTC believes that the authority to plege letters of credit will ensure the liquidity of its Participants Funds. MCC/MSTC therefore believes the proposals will assure the safeguarding of securities and funds in their custody or control or for which they are responsible.

III. Discussion

For the reasons discussed below, the Commission believes that the proposals are consistent with MCC/MSTC's duties under the Act to safeguard funds and securities in their custody or control or for which they are responsible. The Commission therefore believes the proposals should be approved.

In prior Orders concerning letter of credit programs of registered clearing agencies, the Commission has looked at three primary factors in determining

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[1] 50 FR 8038.

whether a program should be approved.[3] These are the program's standards for the financial integrity of the issuing bank, the diversification of issuers of letters of credit, and the liquidity of financial protection systems that use letters of credit. After evaluating MCC/MSTC's proposals in light of these factors, the Commission is satisfied that the proposals will adequately control the use of letters of credit.

The Commission believes that a registered clearing agency should only accept letters of credit from financially secure banks. MCC/MSTC's proposal requires issuers to have either the highest rating by one of the two principal commercial rating services or a certain minimum asset size or sharesholder equity. The Commission has reviewed the precise standards chosen by MCC/MSTC, enumerated above, in relation to the universe of banks operating in the United States and believes that these standards should ensure that approved letter of credit issuers will be financially secure.

The Commission believes that a registered clearing agency should not become overly dependent on any one issuer. To prevent such dependence, the concentration of letter of credit issuers should be limited. MCC/MSTC's proposals limit any regularly approved issuer of 25% of the Participant Fund of each clearing agency. Specifically approved issuers are limited much more severely, to ½% of each Participants Fund. The Commission believes that these concentration limits are reasonable and should adequately diversify letter of credit issuers even if letter of credit use expands to a substantial part of MCC/MSTC's Participants Funds.

Finally, the Commission believes that registered clearing agencies must maintain sufficient liquidity in their financial safeguarding systems. Letters of credit, payment on which possibly may be delayed or refused, must not be allowed to impair the liquidity of these systems. In light of the several steps included in MCC/MSTC's proposals to ensure liquidity, the Commission is satisfied that the proposals will not jeopardize the liquidity of their financial safequarding systems. First, MCC/MSTC will continue to require minimum cash contributions to their Participants Funds. Second, letters of credit will be issued for standard six months terms, allowing MCC/MSTC to easily ensure that all letters of credit are current and can be drawn upon if necessary. Third, the proposals authorize MCC/MSTC to pledge letters of credit, on a short-term basis,[3] to secure bank loans. MCC/MSTC can pledge solvent participants' letters of credit in the remote chance that a letter of credit issuer delays in honoring MCC/MSTC's request to draw on an insolvent participant's letter of credit.[4] The Commission believes that this authority is critical to ensuring liquidity of clearing agency financial protection systems, especially since it is anticipated that letters of credit will comprise a substantial portion of Participants Funds. Additionally, the Commission notes that Participants Funds are only one level of financial protection within a larger safeguarding system. That system contains other financial protection mechanisms, such as activity and position monitoring and marketing to the market, that ordinarily should prevent financial losses to MCC/MSTC before Participants Funds need to be used.

In summary, the Commission believes that MCC/MSTC's proposals establish adequate standards for controlling the use of letters of credit and therefore that the proposals are consistent with the Act. The Commission recognizes that cost savings for participants can be achieved through use of letters of credit instead of cash or government securities for additional Participants Fund contributions. Therefore, the Commission believes that the proposals should be approved.

IV. Conclusion

On the basis of the foregoing, the Commission finds the proposed rule changes consistent with the Act and, in particular, with Section 17A of the Act.

Accordingly, it is therefore ordered, under section 19(b)(2) of the Act, that the proposed rule changes be, and they hereby are, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-8091 Filed 4-3-85; 8:45 am]

BILLING CODE 8010-01-M

[3] *See, e.g.*, Securities Exchange Act Release No. 19422 (January 12, 1983), 48 FR 2481 (January 19, 1983), approving a proposed rule change of Options Clearing Corporation adopting criteria for issuers of letters of credit. Similar programs also have been approved for National Securities Clearing Corporation and for Pacific Clearing Corporation/Pacific Securities Depository Trust Company.

[4] As noted above, under the proposal any loan taken to cover a loss or liability of MCC/MSTC must be repaid within 30 days if the loan is secured by pledged letters of credit.

[4] In such an instance, pledges of letters of credit would be more desirable than immediate drawing on a letter. A pledge of a participant's letter of credit would not require that participant to make immediate repayment to the Participants Fund, as would drawing on that participant's letter of credit.

[Release No. 34-21899; SR-OCC-84-20]

Self-Regulatory Organizations; Options Clearing Corp.; Order Granting Accelerated Approval of Proposed Rule Change

Options Clearing Corporation ("OCC") on Janury 2, 1985, submitted a proposed rule change to the Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1). Notice of the proposal was published in Securities Exchange Act Release No. 21724 (February 6, 1985), 50 FR 8806 (March 5, 1985). The Commission received no letters of comment on the proposal. This Order approves the proposal.

The proposed rule change would modify substantially OCC's random exercise assignment procedures. Under OCC's current procedures, OCC calculates the total quantity of all short options positions for an options series. Each exercise notice for that series is assigned a random number between one and the number representing the total short options for the series being exercised.[1] OCC uses this random number as the starting point for the assignment process. OCC assigns only one random number per exercise notice regardless of how many contracts are to be exercised by the notice.

OCC lists the short options positions in Clearing Member order and within each Clearing Member by account origin. The first short position is assigned position 1 and the last short position is assigned position N, which represents the total number of the short options positions. If the random number is the number of a short position that has been assigned to a prior exercise notice, the assignment is paired with the next unassigned short position.

OCC's current random assignment process works as follows:

1st exercise notice is an ACY April 50, quantity 50
2nd exercise notice is an ACY April 50, quantity 29
3rd exercise notice is an ACY April 50, quantity 2

1. The total short positions for ACY April 50's is 192.

2. The random numbers generated by the algorithm are:
1st exercise notice random number 47
2nd exercise notice random number 180
3rd exercise notice random number 92

3. The first exercise notice will be assigned to short position 47–96 (quantity exercised was 50).

[1] The random number for each exercise notice is generated using an IBM algorithm.

The second exercise notice will be assigned to short positions 180–192 and short positions 1–17 (quantity exercised was 29).

The third exercise notice will be assigned to short positions 97–98 (quantity exercised was 2). Because the random number was 92 and short positions 92 through 96 had previously been assigned, the assignment is made to the next unassigned short position, number 97.

Upon completion of the assignment process, the data is available for printing. Each assigned Clearing Member is notified of the exercise assignment by a Delivery Advice Report which details the class, series and quantity of the assignment.

Under OCC's proposed procedures, all open short positions in a given options series are totalled, and then the number of exercised contracts for that series is totalled. If the number of exercised contracts equals the number of open short positions, the entire open interest for that series will be assigned automatically. However, if the number of exercised contracts is less than the number of open short positions, the number of exercised contracts is subdivided into standardized "assignment increments" of 25 contracts.[2] Next, OCC calculates a "skip interval."[3] The proposed system then chooses a random starting point for the first exercise assignment, and the first 25 contracts are assigned to the 25 positions beginning with the randomly selected starting position. The system then skips to that short options positions whose number equals the number of the randomly selected starting position plus the predetermined skip interval. At that point, another 25 contracts are assigned. This process continues until all exercised notices have been assigned to open short options positions.

The proposed system works as follows: Assuming the same quantities as the above example, and assuming the assignment increment is 25, T=192, S=81, and I=25, the skip interval would be calculated as follows:

$$\frac{\frac{192}{81+25-1}}{25} = 48$$

After calculating the skip interval, the system would choose a random starting point, *e.g.*, short position number 47. Twenty-five contracts would be assigned to short positions 47–71. The system would skip an interval of 48 (from position 47) and assign the next 25 contracts to positions 95–119. Skipping another 48 contracts (from position 95), the next 25 assignments would cover numbers 143–167. Skipping 48 contracts from position 143, positions 191 and 192 as well as positions 1–4 would be assigned, in order to total 81 contracts.

OCC believes that the proposed system will provide a more uniform exercise assignment procedure through the use of assignment increments and uniform skip intervals. Consequently, OCC states in its filing that the proposed system will not assign disproportionately large segments of open interest as a block. OCC further states that the proposed system will operate in a substantially more efficient manner and will result in significant savings in processing time and costs. OCC estimates that the proposed system should take only 20–30 minutes running time each day while the current system takes approximately 90 minutes.

For the following reasons, the Commission believes that the proposed rule change is consistent with section 17A of the Act and should be approved. The Commission agrees with OCC that the proposed system should provide more unformity in OCC's exercise assignment process and should reduce the probability that disproportionately large segments of open interest will be assigned as a block. The Commission also believes that both OCC and its Clearing Members will benefit from the proposed system because the system will operate more efficiently and in turn will decrease substantially processing time and related costs.

The Commission is approving OCC's proposal prior to the thirteenth day after the publication date of notice of the proposed rule change. First, the Commission received no public comment on the proposal. Moreover, OCC has notified its clearing member community of the pending proposed rule change and has received favorable comments. Second, accelerated approval should enable OCC to implement the proposed system as planned on March 29, 1985, in more than enough time for the next expiration. Without accelerated approval, OCC would have to delay system implementation and realization of the proposal's benefits for at least a month.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that OCC's proposed rule change be, and thereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

March 27, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-8092 Filed 4-3-85; 8:45 am]

BILLING CODE 8010-01-M

[2] OCC has determined that initially the assignment increment for all option exercises will be 25 contracts. OCC, however, may subsequently determine to use different assignment increments for options on different underlying interests.

[3] OCC will calculate the skip interval as follows:

$$\text{Skip Interval} = \frac{S+I-1}{I} \text{ (with decimal points truncated)}$$

S = the total number of contracts exercised for the particular series.

T = the total number of contracts on the wheel for a particular series.

I = the assignment increment.

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2187]

Illinois; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on March 29, 1985, I find that the Counties of Cass, Fulton, Morgan, Peoria, Taxewell, Will, Calhoun, Clark, Grundy, Mason, Pike, Rock Island, and Woodford constitute a disaster loan area because of damage from severe storms, flooding, and ice jams beginning on or about February 13, 1985. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on May 30, 1985, and for economic injury until December 30, 1985, at:

Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Bldg., 75 Spring St., SW., Suite 822, Atlanta, Georgia 30303.

or other locally announced locations.

Interest rates are:

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 (nonprofit organizations including charitable and religious organizations)	11.125

The number assigned to this disaster is 218706 for physical damage and for economic injury the number is 629800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: April 1, 1985.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85-8107 Filed 4-3-85; 8:45 am]

BILLING CODE 8025-01-M

[Designation of Disaster Loan Area No. 6248]

[Amdt. #2]

Minnesota; Designation of Federal Action Economic Injury Loan Area

The above numbered Declaration (50 FR 2640) and amendment #1 (50 FR 4824) are amended to include the County of Cottonwood. All other information remains the same, i.e., the termination date for filing applications is the close of business on October 10, 1985.

(Catalog of Federal Domester Assistance Program Nos. 59002 and 59008)

Dated: March 29, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-8105 Filed 4-3-85; 8:45 am]

BILLING CODE 8025-01-M

Presidential Advisory Committee on Small and Minority Business Ownership; Public Meeting

The Presidential Advisory Committee on Small and Minority Business Ownership, located in Washington, D.C., will hold a public meeting at 9:00 a.m. until 5:00 p.m., Monday, April 15, 1985, in the City Council Chamber, City Hall, 315 E. Kennedy Boulevard, Tampa, Florida 33630, to discuss such business as may be presented by the Committee members. The meeting will be open to the interested public, however, space is limited.

Persons wishing to present written statements should notify Mrs. Maurine Fisher, Committee Coordinator, Office of Private Industry Programs, Small Business Administration, Room 602, 1441 L Street, NW., Washington, D.C. 29416 in writing no later than April 12, 1985.

Dated: March 29, 1985.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 85-8108 Filed 4-3-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Monterey County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Withdrawal of notice of intent.

SUMMARY: The FHWA is issuing this Notice to advise the public that an Environmental Impact Statement (EIS) will not be prepared for the proposed highway project in Monterey County, CA.

FOR FURTHER INFORMATION CONTACT: C. Glenn Clinton, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, CA 95809. Telephone: (916) 440-2804.

SUPPLEMENTARY INFORMATION: The FHWA, California Division, issued a Notice of Intent to prepare an EIS on October 12, 1983 (48 FR 46465) for the proposal to improve the traffic flow and reduce cross traffic conflicts on 1.7 miles of State Highway 68 in the vicinity of Toro Regional Park. FHWA is withdrawing that Notice at this time because the California Department of Transportation, the project sponsor, has revised the scope of the project and studies have determined that there will be no significant adverse environmental effects from the proposed project. An Environmental Assessment has been circulated for the proposed project and a Finding of No Significant Impact was signed on February 8, 1985.

Questions concerning this proposed action should be directed to the FHWA at the address provided above.

Date issued: March 27, 1985.

C.G. Clinton,

District Engineer, Sacramento, California.

[FR Doc. 85-8012 Filed 4-3-85; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. IP 85-5; Notice 1]

Chrysler Corp.; Receipt of Petition for Determination of Inconsequential Noncompliance

Chrysler Corporation, of Detroit, Michigan, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.111, Motor Vehicle Safety Standard No. 111, *Rearview Mirrors*, on the basis that it is inconsequential as it relates to motor vehicle safety.

This Notice of Receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S7.1 of Federal Motor Vehicle Safety Standard No. 111 requires that multipurpose passenger vehicles with a GVWR of more than 10,000 and less than 25,000 pounds be fitted with mirrors with at least 50 square inches of reflective surface each, on both sides of vehicles.

Paragraph S6.1(b) states that similar vehicles with a GVWR of 10,000 pounds or less must have mirrors with surface areas of at least 19.5 square inches. Chrysler has produced 2,145 Dodge D-350 pickup trucks rated at 10,100 pounds GVW with outside rearview mirrors with reflective surface areas of either 43 (about 2,000 vehicles) or 35 (about 145 vehicles) square inches. These 1984 and 1985 model year vehicles were produced for sale in the United States from August 1983 through mid-December 1984.

The petitioner states that the configurations of the subject vehicles (conventional and crew cab pickup trucks with dual rear wheels) are the same as the 1981 to 1983 model year equivalent vehicles which were rated at 10,000 pounds. The petitioner claims that the difference in GVWR of 100 pounds is only a "paper change"; the requirement to increase the surface area of the mirrors was inadvertently overlooked. Chrysler states that the noncompliance was detected during a routine review of design release specifications for future model year vehicles rated at more than 10,000 pounds GVW, and took immediate steps to correct the problem on subsequent vehicles.

Chrysler claims that the mirrors provide the driver with rear views on both sides of the vehicle, adjust in both horizontal and vertical directions, and meet all other requirements of the Standard. Chrysler states that the vehicle model configurations are unchanged from previous model years and so the mirrors on the vehicles in question should still be adequate in all respects. Furthermore, Chrysler is unaware of any complaints or problems relating to the outside rearviews mirrors, and is willing to install new mirrors that exceed 50 square inches at no cost to the owner, should any complaints arise.

Interested persons are invited to submit written data, views and arguments on the petition of Chrysler Corporation described above.

Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition in granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: May 6, 1985.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: April 1, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-8009 Filed 4-3-85; 8:45 am]

BILLING CODE 4910-59-M

Urban Mass Transportation Administration

Managerial Training Grants for Transit Agencies

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of grant availability.

SUMMARY: To meet the growing demands for transit industry managerial, supervisory and technical personnel training, UMTA has initiated the section 10 Single Agency Grant Program. Training acquired through section 10 grants should contribute to the understanding and resolution of the problems confronting public transportation organizations and advance the efficient operation and quality of service provided by public transportation systems. The purpose of the program is to encourage the development and implementation of innovative training programs by public transportation organizations.

States, local public bodies, and agencies thereof, and operators of public transportation services may apply for the grants. Individual employees are not eligible applicants. Single agency grants support employee training activities for a period not to exceed 12 months. Instruction made possible by these grants should respond to the needs of the grantee's overall training/education plan. UMTA will give particular consideration to applications which provide for a variety of instructional activities that address the most pressing training needs of the total organization.

Training must encompass technical or managerial training courses having relevance to the field of public transportation. To be eligible for reimbursement, training for transportation agency employees must be provided by a training organization on a contract basis. Such training includes, but it is not limited to, the UMTA endorsed short course providers. Eligibility is limited to managerial, technical and supervisory personnel only. Blue collar training (operator and mechanical) is not eligible for funding under section 10 of the UMT Act. UMTA Circular 6300.1, dated October 24, 1984 contains guidance and specific details of the preparation of section 10 grant applications. Applications should be sent to UMTA's Regional Offices.

DATE: Open until further notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information, including copies of UMTA Circular 6300.1, "Section 10 Single Agency Training Grant Program Guidance and Application Instructions," can be obtained from UMTA Regional Administrators listed below:

Richard Doyle, URO-1, Transportation System Center, Kendall Square, Suite 921, 55 Broadway, Cambridge, MA 02142, (617) 494-2055

Richard T. Nasti, URO-2, 26 Federal Plaza, Suite 14-110, New York, NY 10278, (212) 264-8162

Peter N. Stowell, URO-3, 434 Walnut Street, Suite 1010, Philadelphia, PA 19106, (215) 597-8098

James A. O'Connor, URO-4, 1720 Peachtree Road, NW, Suite 400, Atlanta, GA 30309, (404) 881-3948

Joel Ettinger, URO-5, 300 S. Wacker Drive, Suite 1720, Chicago, IL 60606, (312) 353-2789

Wilbur E. Hare, URO-6, 819 Taylor Street, Suite 9A32, Ft. Worth, TX 76102, (817) 334-3787

Lee O. Waddleton, URO-7, 6301 Rockhill Road, Suite 100, Kansas City, MO 64131, (816) 926-5053

Louis Mraz, URO-8, 1050 17th Street, Suite 1822 Prudential Plaza, Denver, CO 80265, (303) 844-3242

Brigid Hynes-Cherin, URO-9, 211 Main Street, Room 1160, San Francisco, CA 94105, (415) 974-7313

Aubrey Davis, URO-10, 915 2nd Avenue, Suite 3142, Seattle, WA 98174, (206) 442-4210.

Issued on: March 26, 1985.

Ralph L. Stanley,

Urban Mass Transportation Administrator.

[FR Doc. 85-8007 Filed 4-3-85; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: March 29, 1985.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB No. 1545-0021
Form No. IRS Form 709-A
Type of Review: Extension
Title: United States Short Form Gift Tax Return

OMB No. 1545-0202
Form No. IRS Forms 5310 and 6088
Type of Review: Revision
Title: (1) Application for Determination Upon Termination; Notice of Merger, Consolidation or Transfer of Plan Assets and Liabilities; Notice of Intent to Terminate; and (2) Distributable Benefits from Employee Benefit Plans
Clearance Officer: Garrick Shear, (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW., Washington, D.C. 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Bureau of the Public Debt

OMB No. 1535-0019
Form No. PD 4733
Type of Review: Extension
Title: Tenders for Treasury Notes/Bonds at the Department of the Treasury

OMB No. 1535-0023
Form No. PD 4000
Type of Review: Extension
Title: Request by Owner for Reissue of U.S. Savings Bonds/Notes to Add Beneficiary or Coowner, Eliminate Beneficiary or Decedent, Show Change of Name, and/or Correct Error in Registration

OMB No. 1535-0024
Form No. PD 3905
Type of Review: Extension

Title: Request for Securities Transactions
Clearance Officer: Peter Lougesen, (202) 376-4902, Bureau of the Public Debt, Room 445, 999 E Street, NW., Washington, D.C. 20226
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Joseph F. Maty,
Departmental Reports Management Office.
[FR Doc. 85-7976 Filed 4-3-85; 8:45 am]
BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. USIA is requesting a three year extension of the approval for the use of our Form IAP-17, Application for Certificate of International Educational Character.

DATE: Comments must be received by May 3, 1985.

Copies of the request for clearance (SF-83), supporting statement, instructions, transmittal letter and other documents submitted to OMB for review may be obtained from the USIA Clearance Officer. Comments on the item listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for USIA.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Charles N. Canestro, United States Information Agency, M/M, 301 Fourth Street SW., Washington, D.C. 20547, telephone (202) 485-8676. And OMB review: Michael Weinstein, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, telephone (202) 395-4814.

SUPPLEMENTARY INFORMATION: Application for Certificate of International Educational Character.

Abstract

This information collection is used to certify the international character of visual and auditory materials (motion pictures, videotapes, recordings, sound recordings, filmstrips, slides, maps, charts, posters, models, etc.) for producers and distributors who have an interest in exporting their materials abroad, in accordance with the provisions of Pub. L. 89-634.

Dated: April 1, 1985.
Charles N. Canestro,
Federal Register Liaison.
[FR Doc. 85-8016 Filed 4-3-85; 8:45 am]
BILLING CODE 8230-01-M

Culturally Significant Objects; Import For Exhibition; Determination

AGENCY: United States Information Agency.

ACTION: Modification of notice.

SUMMARY: The United States Information Agency is further modifying a notice found at 49 FR 2993 (January 24, 1984) and modified at 49 FR 20973 (May 17, 1984) and 49 FR 44585 (November 7, 1984) regarding immunity from judicial seizure for the art exhibit *Silk Roads, China Ships*, initially on loan to the American Museum of Natural History. The initial loan was subsequently extended to the Cincinnati Art Museum and further extended to the Center for the Fine Arts, Miami. The immunity is further extended to cover the exhibit of the items at the Baltimore Museum of Art from on or about May 20, 1985, to on or about August 30, 1985.

EFFECTIVE DATE: The modification is effective April 4, 1985.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Office of the General Counsel and Congressional Liaison, United States Information Agency, 301 4th Street, S.W., Washington, D.C. 20547.

SUPPLEMENTARY INFORMATION: The United States Information Agency is further modifying a notice published at 49 FR 2993 (January 24, 1984), as previously modified by notices published at 49 FR 20973 (May 17, 1984), and 49 FR 44585 (November 7, 1984). The notice rendered immune from judicial process the exhibit titled *Silk Roads, China Ships*, on loan to the American Museum of Natural History and due to terminate on or about May 30, 1984. The first modification of notice extended judicial immunity of the loan to the Cincinnati Art Museum, where the temporary exhibition of the items was due to terminate on or about August 31, 1984. The second modification further extended the judicial immunity of the temporary exhibition of the items to include display at the Center for the Fine Arts, Miami, from on or about November 10, 1984, to on or about February 3, 1985. This additional modification further extends immunity to include display at the Baltimore Museum of Art from on or about May 20, 1985, to on or about August 30, 1985.

Dated: March 28, 1985.
Thomas E. Harvey,
General Counsel and Congressional Liaison.
[FR Doc. 85-8015 Filed 4-3-85; 8:45 am]
BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Privacy Act of 1974; Amendment of Systems Notices Additional Routine Use Statements

Notice is hereby given that the VA (Veterans Administration) is considering adding new routine use statements for three VA systems of records. The systems are entitled "Veterans and Armed Forces Personnel United States Government Life Insurance Records—VA" (36VA00), "Veterans, Beneficiaries and Attorneys United States Government Insurance Award Records—VA" (46VA00), and "Veteran and Beneficiary Identification and Records Locator Subsystem—VA" (38VA23), respectively set forth on pages 29436 and 29438 of the **Federal Register** of July 6, 1982 and page 368 of the **Federal Register** of January 5, 1982.

The VA Office of Inspector General under the authority of the Inspector General's Act (Pub. L. 95-452, Section 4(a)), plans to conduct a series of computer matches to validate entitlement to benefits granted under Title 38, United States Code and prevent fraud and abuse. The matches will compare Federal, State, County and Municipal records with various VA veterans benefits records, including, but not limited to, compensation, pension, education, rehabilitation and insurance records, to determine if the eligibility of veterans for waivers of premiums based on disability has changed. Past computer matches by the VA involving other systems of records have revealed individuals who were receiving benefits to which they were not entitled.

Additionally, in some cases, the VA will disclose veterans' names and addresses to a Federal agency in order to obtain the necessary information from the agency if the agency cannot respond to our query without the veterans' names and addresses. Some State, County and Municipal agencies will be unable to respond to the VA's

request for information without veterans' names and addresses; however, the VA generally does not have statutory authority to release veterans' names and addresses to State, County and Municipal agencies.

In order to disclose identifying information, e.g., social security number and date of birth, to a Federal, State, County or Municipal agency and to use the information generated by the matches to detect unwarranted VA benefit payments and meet the requirements of due process, new routine uses must be added.

The proposed new routine uses will permit the disclosure of identifying information regarding veterans except for names and addresses, to a Federal, State, County or Municipal agency. The new routine uses will also permit the disclosure of the name and address of a veteran to a Federl agency when required by the Federal agency to respond to the VA inquiry.

The VA has determined that release of information for these purposes is a necessary and proper use of information in these systems of records and that specific routine uses for transfer of this information is appropriate.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed new routine use to the Administrator of Veterans' Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All relevant material received before May 6, 1985, will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until May 20, 1985. Any person visiting Central Office for the purpose of inspecting any such comments will be received by Central Office Veterans Service Unit in room 132. Visitors to any field station will be informed that the records are available only in Central Office and furnished the above address and room number.

If no public comment is received during the 30-day review period allowed for public comment or unless otherwise published in the **Federal Register** by the Veterans Administration, the new routine use statements included herein are effective May 6, 1985.

Approved: March 28, 1985.

By direction of the Administrator:

Everett Alvarez, Jr.,

Deputy Administrator.

Notice of System of Records

In the system identified as 36VA00, "Veterans and Armed Forces Personnel United States Government Life Insurance Records—VA," as set forth on page 29436 of the **Federal Register** of July 6, 1982, the following routine use statement is added to read as follows:

36VA00

SYSTEM NAME:

Veterans and Armed Forces Personnel United States Government Life Insurance Records—VA

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS:

* * * * *

26. Identifying information, except for the name and address of a veteran, may be disclosed to a Federal, State, County or Municipal agency for the purpose of conducting computer matches to obtain information to validate the entitlement of a veteran who is receiving or has received veterans insurance benefits under Title 38, United States Code. The name and address of a veteran may also be disclosed to a Federal agency under this routine use if they are required by the Federal agency to respond to the VA inquiry.

* * * * *

In the system identified as 46VA00, "Veterans, Beneficiaries and Attorneys United States Government Insurance Award Records—VA," as set forth on page 29438 of the **Federal Register** of July 6, 1982, the following routine use statement is added to read as follows:

46VA00

SYSTEM NAME:

Veterans Beneficiaries and Attorneys United States Government Insurance Award Records—VA

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS:

* * * * *

12. Identifying information, except for the name and address of a veteran, may be disclosed to a Federal, State, County or Municipal agency for the purpose of conducting computer matches to obtain information to validate the entitlement of a veteran who is receiving or has received veterans insurance benefits under Title 38, United States Code. The name and address of a veteran may also be disclosed to a Federal agency under this routine use if they are required by the Federal agency to respond to the VA inquiry.

* * * * *

In the system identified as 38VA00, "Veterans and Beneficiary Identification and Records Locator Subsystem—VA," as set forth on page 2368 of the **Federal Register** of January 5, 1982, the following routine use statement is added to read as follows:

38VA23

SYSTEM NAME:

Veterans and Beneficiary Identification and Records Locator Subsystem—VA

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS:

* * * * *

17. Identifying information, except for the name and address of a veteran, may be disclosed to a Federal, State, County or Municipal agency for the purpose of conducting computer matches to obtain information to validate the entitlement of a veteran who is receiving or has received veterans insurance benefits under Title 38, United States Code. The name and address of a veteran may also be disclosed to a Federal agency under this routine use if they are required by the Federal agency to respond to the VA inquiry.

* * * * *

[FR Doc. 85-8046 Filed 4-3-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 65
Thursday, April 4, 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).

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Legal Services Corporation	2
Uniformed Services University of the Health Sciences	3

1

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

April 1, 1985.

TIME AND DATE: 9:30 a.m., Wednesday, April 10, 1985.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. UMWA on behalf of James Rowe, et al. v. Peabody Coal Company, Docket No. KENT 82-103-D, etc.; Issues include the extent of the miners' right to training under section 115 of the Mine Act and the protection afforded by section 105(c)(1).

2. Secretary of Labor on behalf of I.B. Acton, et al. v. Jim Walter Resources, Inc., Docket No. SE 84-31-D, etc.; Issues are same as above.

TIME AND DATE: 2:30 p.m., Wednesday, April 10, 1985.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: The Commission will consider and act on the above listed cases. It was determined by a unanimous vote of Commissioners that this meeting be closed.

Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR 2706.150(a)(3) and 2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5632.

[FR Doc. 85-8157 Filed 4-2-85; 1:52 pm]

BILLING CODE 6735-01-M

2

LEGAL SERVICES CORPORATION SPECIAL COMMITTEE ON PRESIDENTIAL SEARCH

TIME AND DATE: Meeting will commence at 9:00 a.m. and continue until all official business is completed, Sunday, April 14, 1985.

PLACE: Hyatt Regency O'Hare, 9300 West Bryn Mawr Ave., Continental A Room, Rosemont, IL 60018.

STATUS OF MEETING: Closed by unanimous vote to discuss matters related to Presidential Search as authorized under The Government in the Sunshine Act (5 U.S.C. 552b(c)(2), (6) and (9) (B) and (d)(1) and 45 CFR 1622.5(a), (e), and (g) and 1622.6(b).

MATTERS TO BE CONSIDERED:

1. Review of Resumes
2. Review of Procedures
3. Selection of Candidates for Interview

CONTRACT PERSON FOR MORE INFORMATION: Tim Baker, Office of General Counsel, (202) 272-4010.

Date issued: April 1, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85-8123 Filed 4-2-85; 10:10 am]

BILLING CODE 6820-35-M

3

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Meeting Notice

TIME AND DATE: 8:00 a.m., April 15, 1985.

PLACE: Uniformed Services University of the Health Sciences, Room D3-001, 4301 Jones Bridge Road, Bethesda, Maryland 20814-4799.

STATUS: Open—under "Government in the Sunshine Act" [5 U.S.C. 552(e)(3)].

MATTERS TO BE CONSIDERED:

8:00: Meeting—Board of Regents

(1) Approval of Minutes—18 January 1985; (2) Faculty Appointments; (3) Report: Admissions; (4) Report: Associate Dean for Operations—Budget; (5) Report—President, USUHS: (a) University Awards, (b) Graduate and Continuing Education: (1) Certification of Graduate Students, (2) Associate Dean for Continuing Education, (3) Accreditation Council for Continuing Medical Education and Military Residency Programs, (4) Allied Health Sciences Report, (c) F. Edward Hebert School of Medicine: (1) Recommendation of Fourth Year Students, (2) Admissions Requirements, (3) Defense Officer Personnel Management Act, (d) Henry M. Jackson Foundation for the Advancement of Military Medicine, (e) H.R. 917, (f) Informational Items, (g) Briefing: (1) Report on Preventive Medicine Cooperative Project, (2) Report on Military Medical Field Studies; (6) Comments: Members, Board of Regents; (7) Comments: Chairman, Board of Regents.

New Business

SCHEDULED MEETINGS: July 15, 1985.

CONTACT PERSON FOR MORE INFORMATION: Donald L. Hagengruber, Executive Secretary of the Board of Regents, 202/295-3049.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

April 1, 1985.

[FR Doc. 85-8064 Filed 4-1-85; 4:25 p.m.]

BILLING CODE 3810-01-M

federal register

Thursday
April 4, 1985

Part II

Environmental Protection Agency

40 CFR Parts 117 and 302

Notification Requirements; Reportable Quantity Adjustments; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 117 and 302

[SW H-FRL 2665-6(b)]

Notification Requirements; Reportable Quantity Adjustments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Sections 103(a) and 103(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") require that persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than the reportable quantities immediately notify the National Response Center of the release. Section 102(b) sets a reportable quantity of one pound for hazardous substances, except those for which reportable quantities have been established pursuant to section 311(b)(4) of the Clean Water Act ("CWA").

Section 102(a) authorizes the Environmental Protection Agency ("EPA") to adjust reportable quantities for hazardous substances and to designate as hazardous substances, substances which when released into the environment may present substantial danger to the public health or welfare or the environment. This final rule adjusts many of the reportable quantities established in section 102(b). These reportable quantity adjustments are intended to reduce the burdens of reporting on the regulated community, allow EPA to focus its resources on the most serious releases, and protect public health and welfare and the environment more effectively. This rule also designates, under section 102(a) all substances listed under the various statutory provisions referenced in section 101(14) of CERCLA. This rule also revises reportable quantities established pursuant to section 311(b)(4) of the Clean Water Act for discharges of hazardous substances into navigable waters, so that the CWA section 311 reportable quantities will be identical to and therefore consistent with those promulgated under CERCLA.

To help implement these changes, today's rule clarifies requirements for notifying the National Response Center of a release of a hazardous substance in a quantity equal to or greater than its reportable quantity. The toll-free telephone number of the National Response Center is listed under "ADDRESSES."

EFFECTIVE DATE: July 3, 1985.

CERCLA section 305 provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha*, 462 U.S. 919, 103 S. Ct. 2764 (1983), cast doubt on the validity of the legislative veto, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives. If any action by Congress calls the effective date of this regulation into question, the Agency will publish a notice of clarification in the Federal Register.

ADDRESSES: The toll-free telephone number of the National Response Center is (800) 424-8802; in the Washington, D.C. metropolitan area (202) 426-2675.

The record supporting this rulemaking is available for public inspection at Room S-325, U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460 (Docket Number 102RQ). The docket may be inspected between 8:00 a.m. and 4:00 p.m. Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT:

Dr. K. Jack Kooyoomjian, Response Standards and Criteria Branch, Emergency Response Division (WH-548B), U.S. Environmental Protection Agency, 401 M Street, SW, Washington D.C. 20460,

or the

RCRA/Superfund Hotline (800) 424-9346, in Washington, D.C., (202) 382-3000.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction
- A. Statutory Authority
- B. Background of this Rulemaking
- C. Organization of the Final Rule

II. Summary of Changes From the Proposed Rule

III. Issues Addressed in the Notice of Proposed Rulemaking But Not Resolved in This Rule
- A. Continuous Releases
- B. Federally Permitted Releases
- C. Radionuclide RQs
- D. Carcinogen RQs

IV. Notification
- A. Introduction
- B. Purposes and Mechanics of Notification
- C. Persons Covered by This Rule
- D. Releases Covered by This Rule
- E. Exemptions From the CERCLA Notification Requirements
- F. Duplicate Reporting
- G. Regulatory Consistency
- H. Penalties

V. Reportable Quantity Adjustments
- A. Introduction
- B. Number of Reportable Quanity Levels and Their Values
- C. Methodology Used To Adjust Reportable Quantities
- D. Criteria Used To Adjust Reportable Quantities
- E. Future RQ Adjustments
- F. Application of the Methodology and Criteria
- G. Summary of RQ Changes From the May 25, 1983 NPRM
- H. Retention of Statutory RQ for Methyl Isocyanate
- I. Table 302.4

VI. Reportable Quantity Adjustments Under Section 311 of the Clean Water Act

VII. Summary of Supporting Analyses
- A. Classification and Regulatory Impact Analysis
- B. Regulatory Flexibility Analysis
- C. Information Impact Analysis

I. Introduction

A. Statutory Authority

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [Pub. L. 96-510], 42 U.S.C. 9601 *et seq.*, enacted on December 11, 1980, establishes broad federal authority to deal with releases or threats of releases of hazardous substances from vessels and facilities. The Act defines a set of "hazardous substances" by reference to other environmental statutes (section 101(14)); this list currently contains 698 substances. The Environmental Protection Agency ("EPA") may designate additional hazardous substances (section 102).

The Act requires the person in charge of a vessel or facility to notify the National Response Center ("NRC") immediately when there is a release of a designated hazardous substance in an amount equal to or greater than the reportable quantity ("RQ") for that substance (sections 103(a) and (b)). Section 102(b) of CERCLA establishes RQs for releases of designated hazardous substances at one pound, unless other reportable quantities were assigned under section 311 of the Federal Water Pollution Control Act ("Clean Water Act" or "CWA"). Section 102 authorizes EPA to adjust all of these reportable quantities.

A major purpose of the section 103(a) and (b) notification requirements is to alert the appropriate government officials to releases of hazardous substances that may require rapid response to protect public health and welfare and the environment. Under the Act, the federal government may respond whenever there is a release or a substantial threat of a release into the environment of a hazardous substance or of other pollutants or contaminants which may present an imminent and

substantial danger to public health or welfare (section 104). Response activities are to be taken, to the extent possible, in accordance with the National Contingency Plan (40 CFR Part 300), which was originally developed under the CWA and which has been revised to reflect the responsibilities and authority created by CERCLA. EPA emphasizes that notification based on reportable quantities is merely a trigger for informing the government of a release so that the appropriate federal personnel can evaluate the need for a federal response action and undertake any necessary response (removal or remedial action) in a timely fashion. Reportable quantities serve no other purpose; for example, a reportable quantity need not be released before a claim for damages or cleanup costs may be filed against the Hazardous Substance Response Trust Fund. Federal personnel will evaluate all reported releases, but will not necessarily initiate a removal or remedial action in response to all reported releases, because the release of a reportable quantity will not necessarily pose a hazard to public health or welfare or the environment. Government personnel will assess each release on a case-by-case basis.

B. Background of This Rulemaking

On May 25, 1983, EPA proposed a rule (48 FR 23552) to clarify procedures for reporting releases and to adjust reportable quantities for 387 of the 698 CERCLA hazardous substances. That Notice of Proposed Rulemaking (NPRM) also listed, for the first time, the "hazardous substances" designated by section 101(14) of CERCLA. The NPRM discussed in detail the CERCLA notification provisions (including the persons required to notify the NRC of a release, the substances for which notification is required, the types of releases subject to the notification requirements, and the exemptions from these requirements), the methodology and criteria used to adjust the reportable quantity levels, and the RQ adjustments proposed under section 102 of CERCLA and under section 311 of the CWA. That same day, EPA also published an Advance Notice of Proposed Rulemaking (ANPRM) concerning the designation of hazardous substances in addition to those specified in section 101(14) of the Act (48 FR 23602). In response to requests, and to increase the public's opportunity to express its opinion on the NPRM and ANPRM, the original 60-day comment period for both notices was extended by 30 days, so that the comment period closed on August 25, 1983. EPA received 136 comment letters totalling over 1,000 pages; these comments represent the first formal statements of public opinion on the methodology developed for adjusting RQs, the actual RQ adjustments proposed, and various issues relating to notification. A summary of the comments received, together with the Agency's responses, is contained in the Responses to Comments on the Notice of Proposed Rulemaking on the Adjustment of Reportable Quantities ["Responses to Comments"], which is available for inspection at Room S-325, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

Today, the Agency is promulgating RQ adjustments and clarifications of reporting procedures. The RQs of 340 CERCLA hazardous substances (including 21 hazardous waste streams) are adjusted in this final rule. Today's Federal Register also contains an NPRM proposing RQ adjustments for 105 of the remaining 358 hazardous substances. All of these adjustments apply not only to CERCLA RQs, but to RQs established pursuant to section 311(b)(4) of the CWA. In preparing the final rule, EPA has carefully considered all of the public comments submitted on the proposals made in the May 25, 1983 NPRM.

Section II of this preamble notes the significant differences between today's rule and the NPRM and refers the reader to the detailed discussion of each change elsewhere in the preamble. Section III presents issues raised in the NPRM that are not resolved in today's rule. Sections IV, V, and VI discuss the operation of the rule, major public comments, and the Agency's responses to these comments. Section VII provides a summary of the analyses supporting the rule.

As was stated in the preamble to the proposed rule, other provisions of the Act may be applicable even where notification is not required. Therefore, nothing in this preamble or final rule should be interpreted as reflecting Agency policy or the applicable law with respect to other provisions of the Act. For example, a party responsible for a release is liable for the costs of cleaning up that release and for any natural resource damages, even if the release is not subject to the notification requirements of sections 103 (a) and (b). Similarly, claims may be filed against the Hazardous Substance Response Trust Fund for cleanup costs and damages even if less than a reportable quantity has been released. Moreover, proper reporting of a release in accordance with sections 103 (a) and (b) does not preclude liability for cleanup costs. The fact that a release of a hazardous substance is properly reported or that it is not subject to the notification requirements of sections 103 (a) and (b) will not prevent EPA or other governmental agencies from taking response actions under section 104, seeking reimbursement from responsible parties under section 107, or pursuing an enforcement action against responsible parties. Note also that this rule does not affect hazardous substance reporting requirements imposed by certain other regulations and statutes. [See, e.g., the discussion of MARPOL 73/78 and TSCA section 8(e) in section IV.G. below.]

This final rule formally designates those substances which are listed under the statutes referred to in section 101(14). Substances listed under the Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act ("RCRA"), will now be "hazardous substances" under CERCLA, regardless of whether they are hazardous wastes under RCRA. This final rule does not otherwise address the designation of hazardous substances which are not already designated under the statutes listed in CERCLA section 101(14). The Agency has conducted several preliminary economic and technical analyses on this subject (see 48 FR 23603), and the May 25, 1983 ANPRM invited public comment. EPA has carefully reviewed the comments received and is in the process of further developing its designation policy. The Agency's designation policy will be the subject of a separate rulemaking.

C. Organization of the Final Rule

Today's final rule amends 40 CFR by adding Part 302. Section 302.1 describes the fourfold purpose of the new regulation, including (1) listing those substances designated as hazardous under section 101(14) of CERCLA; (2) identifying reportable quantities for these substances; (3) describing the notification requirements for releases of these substances; and (4) identifying reportable quantities for hazardous substances that were previously assigned RQs under section 311(b)(4) of the Clean Water Act.

Section 302.2 explains the abbreviations used in the rule. Section 302.3 defines the following terms:

1. "The Act," "CERCLA," and "Superfund"
2. "Administrator"
3. "Consumer product"
4. "Environment"
5. "Facility"
6. "Hazardous substance"
7. "Hazardous waste"
8. "Navigable waters"

9. "Offshore facility"
10. "Onshore facility"
11. "Person"
12. "Release"
13. "Reportable quantity"
14. "United States"
15. "Vessel"

Section 302.4 includes Table 302.4, which lists the substances designated as hazardous under section 101(14) (and now section 102) of CERCLA together with the RQ established for each substance. Section 302.4 also denotes the conditions whereby a solid waste not specifically listed as a hazardous substance can still be a hazardous substance if it exhibits any of certain characteristics. Section 302.5 provides that each quantity listed as the "Final RQ" in Table 302.4 is the reportable quantity for that listed hazardous substance. Section 302.5 also presents the RQs for unlisted hazardous wastes. Section 302.6 incorporates the statutory requirement that any person in charge of a vessel or facility must immediately notify the NRC whenever he or she has knowledge of any release of a hazardous substance from the vessel or facility in a quantity equal to or greater than the RQ; it also provides rules for determining when notification is required for releases of (1) mixtures or solutions that contain hazardous substances, and (2) releases of massive forms of metals. Section 302.7 incorporates by reference the statutory penalties for failure to notify the NRC of hazardous substance releases that equal or exceed the RQs. Today's rule also has an appendix that lists each hazardous substance in Chemical Abstracts Service Registry Number (CASRN) order.

Finally, this rule revises 40 CFR 117.3 to make the CWA RQs equal to those shown in Table 302.4 of 40 CFR 302.4.

II. Summary of Changes From the Proposed Rule

EPA has made the following changes from the proposed rule. Each change is discussed in detail in the preamble section noted.

1. Wastes classified as hazardous under RCRA that are properly delisted, deleted, or exempted by a state pursuant to an approved state program shall not be considered hazardous substances for purposes of CERCLA notification requirements so long as they do not contain any other listed CERCLA substances (see section IV.D.1.b.).

2. A supplement to Table 302.4 that lists CERCLA hazardous substances in CASRN order has been added as an appendix to today's rule to help users identify hazardous substances (see section IV.D.1.d.).

3. The exemption from notification requirements of releases of metal where the diameter of the particles of metal equals or exceeds 100 micrometers (0.004 inches) now appears both as a footnote to Table 302.4 and as part of 40 CFR 302.6 (see section IV.D.1.f.).

4. Proper disposal of hazardous substances in interim status facilities or facilities with final permits under RCRA need not be reported under CERCLA (see section IV.D.2.a.).

5. The rule for determining when notification is required for releases of mixtures and solutions containing hazardous substances is now stated in 40 CFR 302.6 (see section IV.D.3.b.).

6. "[N]ormal application of pesticides" is no longer defined in 40 CFR 302.3; instead, the preamble interprets the statutory phrase "application of pesticides" (see section IV.E.).

7. The specific penalties imposed by CERCLA Section 103(b) no longer appear in 40 CFR 302.7(a); instead, the section incorporates the statutory penalties by reference (see section IV.H.).

8. Language has been added to the 40 CFR 302.5(b) discussion of "Unlisted Hazardous Substances" to emphasize: (1) that the 100-pound RQ for unlisted hazardous wastes applies only to substances which are wastes prior to their initial release; and (2) that the RQ given in Table 302.4 for unlisted wastes that exhibit EP toxicity applies to the waste itself, not merely to the toxic contaminant (see sections IV.D.1. and V.F.4.).

9. Various RQ changes have been made (see section V.G.).

10. Retention of statutory RQ for methyl isocyanate (see section V.H.).

11. Various other changes have been made in Table 302.4 (see sections V.G. through V.I.).

III. Issues Addressed in the NPRM But Not Resolved in This Rule

A. Continuous Releases

Section 103(f)(2) of CERCLA exempts certain releases from the general notification requirements of CERCLA if they are "continuous," "stable in quantity and rate," and notification has been given either under sections 103(a) and (b) "for a period sufficient to establish the continuity, quantity, and regularity" of the release or under section 103(c) (which relates to notification of the existence of certain facilities that are or have been used for storage, treatment, or disposal of hazardous wastes). Notification of continuous releases must be given "annually, or at such time as there is any statistically significant increase" in the quantity of the hazardous substance being released.

In the May 25, 1983 NPRM, EPA requested comment on the types of releases that could qualify for the section 103(f)(2) exemption and on possible notification systems for such releases. Many comments on these issues were received. Due to the complexity of the issues involved, the Agency has decided to study the continuous release exemption further; today's rule does not resolve continuous release issues.

B. Federally Permitted Releases

One of the exemptions from section 103 reporting requirements is for "federally permitted releases." The definition of "federally permitted release" in CERCLA section 101(10) specifically identifies releases permitted under other environmental statutes.

In the NPRM, EPA explained the Agency's interpretation of each of the types of releases exempted by the definition of "federally permitted release." EPA received many comments on various aspects of the federally permitted release exemption, most of which urged a broader interpretation of one or more of the federally permitted releases. Due to the complexity of the issues involved, the Agency has decided to study the scope of this exemption further; today's rule does not resolve the "federally permitted release" issue.

C. Radionuclide RQs

Radionuclides are hazardous substances under CERCLA because they are designated as hazardous air pollutants under section 112 of the Clean Air Act. The NPRM noted that EPA is considering several issues for future adjustments to radionuclide RQs. Two major related issues are:

(1) The units the Agency should use to measure RQs; and

(2) Whether one RQ should be set for all radionuclides or whether different RQs for specific radionuclides should be used.

EPA received many comments on these issues. Today's final rule does not adjust the RQ for radionuclides; the issue is being evaluated for action in a future rulemaking. Until then, the one-pound (0.454 kilogram) RQ is applicable. As noted in the NPRM, the Agency recognizes that the pound or kilogram is not a suitable unit on which to base a notification requirement for radionuclides, because releases much smaller than one pound may pose a significant threat to public health or welfare or the environment. The Agency encourages releasers to report

radionuclide releases of less than one pound.

D. Carcinogen RQs

The May 25, 1983 NPRM noted that the Agency has been collecting and evaluating data on the relative activity of substances as potential carcinogens. The methodology for adjusting RQs on the basis of potential carcinogenicity will be presented for public comment in a future rulemaking, and adjusted RQs for potentially carcinogenic substances will be proposed at that time. Until these substances receive final adjusted RQs, their statutory RQs will apply.

The NPRM published elsewhere in today's **Federal Register** proposes adjusted RQs for 12 substances that were evaluated as potential carcinogens but for which EPA's Carcinogen Assessment Group (CAG) did not find any sound evidence of potential carcinogenicity.

IV. Notification

A. Introduction

CERCLA sections 103 (a) and (b) require any person in charge of an offshore or onshore facility or a vessel to report to the National Response Center as soon as he or she has knowledge of any release of a hazardous substance that is equal to or greater than the reportable quantity. In the preamble to the May 25, 1983 NPRM, EPA elaborated on the notification requirements established by CERCLA, addressing such issues as the mechanics of notification, the persons required to notify the NRC of a release, the substances for which notification is required, the types of releases subject to the notification requirements, the exemptions from these requirements, and duplicate reporting. The following sections discuss comments received on these and other notification issues.

B. Purposes and Mechanics of Notification

Notification based on RQs serves as a trigger for informing the government of a release so that the need for response can be evaluated and any necessary response undertaken in a timely fashion. Federal personnel will evaluate all reported releases, although the government will not necessarily respond to all reported releases with a removal or remedial action. The reportable quantities do not themselves represent any determination that releases of a particular quantity are actually harmful to public health or welfare or the environment.

Reporting of releases pursuant to CERCLA sections 103 (a) and (b) is to be made by telephone to the National Response Center. The toll-free number of the NRC is (800) 424–8802; in the Washington, D.C. metropolitan area the number is (202) 426–2675. Pursuant to the National Contingency Plan (NCP) (40 CFR Part 300), the duty officer at the NRC will record pertinent information about the release and relay this release information directly to an On-Scene Coordinator ("OSC") at either the relevant EPA regional office or the relevant U.S. Coast Guard district office. The OSC will then evaluate the circumstances of the release, give pertinent information to appropriate state and local officials, and decide whether and in what manner the federal government should respond to the release.

A few commenters stated that it is a misuse of time and money to report releases which do not result in a federal removal or remedial action; they argued that the probability of a federal response action should be an important consideration in designing the notification system. EPA disagrees. The government is not obligated to respond to every release to which it has authority to respond and therefore should not design a notification system on such a basis. Reportable quantities have been established so that the Agency is alerted promptly to situations that may warrant a government response. While EPA will not initiate a removal or remedial action for every release that is reported, EPA must obtain the information it needs to determine who has response authority, to assess whether there is a need for a federal response action, and to check that action is properly taken by others where appropriate.

C. Persons Covered by This Rule

The NPRM preamble considered the issue of which persons are required to notify the NRC of a release. In so doing, definitions of the key terms of the CERCLA notification requirements were presented. Responses to the major comments received are provided below.

1. Facility

Several commenters discussed the Agency's statement that "for notification purposes, EPA will consider the entire contiguous plant or installation and contiguous grounds under common ownership to be the reporting facility rather than each vent, pipe, or piece of equipment at such a plant" (48 FR 23553). Some of the commenters appeared to misinterpret EPA's intentions.

The Agency intended the statement to reflect its belief that numerous concurrent releases (releases occurring within the same 24-hour period) of the same hazardous substance from one contiguous plant or installation need not be reported individually, but should be reported in a single notification. This policy will avoid unnecessary and burdensome calls where a plant is experiencing more than one reportable release, because it allows the regulated community to consider multiple concurrent releases of the same substance as one release for reporting purposes.

The comments received favored this policy, although a few commenters suggested that EPA expand the definition of facility to include outdoor areas within the boundary of a plant. In addition, some commenters questioned whether a releaser must aggregate the total volume of concurrent releases in order to determine if a reportable quantity has been met or exceeded.

The "facility" from which a release has entered or may enter into the environment does not include outdoor areas. Rather, the definition of "environment" includes all outdoor (i.e., not completely enclosed) areas surrounding and within a given facility. All concurrent releases of the same substance from a particular facility into the environment must be aggregated to determine if an RQ has been exceeded. Releases from separate facilities, however, need not be aggregated. EPA intends for multiple concurrent releases of the same substance from a single facility to be reported in a single notification as a single release. Where multiple concurrent RQ releases are occurring at various parts of a contiguous plant or installation on contiguous grounds under common ownership (e.g., at a chemical manufacturing plant or an oil refinery), the person in charge should also report these multiple concurrent releases in a single notification. The policy of consolidating notifications also applies to concurrent releases from separate storage facilities, so long as the releases are at the same location, i.e., located on contiguous grounds under common ownership.

2. Person In Charge

The NPRM preamble discussion of "person in charge" stated that EPA would not seek to designate the specific individuals or positions within business entities who would be responsible for reporting hazardous substance releases. The Agency indicated that such decisions are better made by the management of the affected organization. Two commenters argued

that the lack of a clear definition of "person in charge" would result in responsible individuals being unaware of their duty to report releases and would lead to delayed reporting or failure to report. EPA was urged to define explicitly the term "person in charge."

EPA disagrees with these commenters. The proper assignment of reporting responsibilities depends on the specific operation involved, management structure, and other case-specific considerations. It would be unnecessary and unwise for the government to try to determine "persons in charge" at all entities affected by CERCLA.

D. Releases Covered by This Rule

The NPRM addressed the substances for which notification is required, the types of releases subject to the notification requirements, and the determination of when a reportable quantity has been released. Many comments were received on various topics under each of these issues.

1. Hazardous Substances Subject to This Rule

a. ICRE Substances. Any hazardous waste having the characteristics identified or listed pursuant to Section 3001 of the Solid Waste Disposal Act (commonly known as the Resource Conservation and Recovery Act, or "RCRA"), but not including any waste the regulation of which has been suspended by Act of Congress, is considered a hazardous substance under section 101(14)(C) of CERCLA. These characteristics are commonly known as ICRE: ignitability, corrosivity, reactivity, and extraction procedure toxicity (see 40 CFR 261.21–261.24).

The obligation to report releases to the environment of substances exhibiting the characteristics of ignitability, corrosivity, or reactivity has been the subject of some confusion.[1] Under section 103(a) of CERCLA, persons in charge of a vessel or facility must notify the NRC of the release of a "hazardous substance." The term "hazardous substance" includes all substances designated in § 302.4 of today's rule as well as wastes exhibiting the ICR characteristics under RCRA. Therefore, the release of a non-designated substance exhibiting an ICR characteristic is the release of a hazardous substance only if the substance is a waste. If a non-designated ICR substance is spilled and immediately cleaned up for repackaging, reprocessing, recycling, or reuse, it is not a waste and the spill need not be reported (see 45 FR 78540, Nov. 25, 1980). However, if the substance is not cleaned up, or is cleaned up for eventual disposal, it is then a waste (and thus a hazardous substance) which has been released to the environment and must be reported if it exceeds the RQ.

The Agency acknowledges that the proposed rulemaking may not have been clear on this point. Accordingly, we are publishing elsewhere in today's **Federal Register** a proposal to set the RQ at 100 pounds for non-designated substances which are not wastes prior to their initial release but which exhibit an ICR characteristic.

Pending completion of final rulemaking on that proposal, notice given to the NRC pursuant to 49 CFR 171.15, if required under that section, of the release of a non-designated substance that is not a waste prior to its initial release, will be deemed to satisfy the reporting requirements of section 103(a) of CERCLA. Note that this policy does not apply to the release of non-designated substances which exhibit an ICR characteristic and which are wastes prior to their initial release. Such releases must be reported if they are equal to or in excess of the 100-pound RQ. Section 302.5(b) of today's final rule has been clarified to show the distinction between substances that are wastes prior to their initial release and substances that become wastes after their initial release.

b. State Delisting under RCRA. Several commenters disagreed with EPA's statement in the NPRM that reporting is required even for releases of hazardous waste which the state has properly delisted, deleted, or exempted from the state's RCRA program pursuant to authority granted by EPA. Upon further review of the RCRA regulations governing "delisting" of RCRA hazardous wastes, EPA has decided to alter its policy. Under 40 CFR 260.22, a person may petition for a regulatory amendment to exclude a waste at a particular generating facility from the lists of hazardous wastes in §§ 261.30–261.33. The petitioner must demonstrate that the waste produced by the particular facility does not meet any of the criteria under which the waste type was listed or characterized as a hazardous waste. Moreover, if granted, the exclusion applies only to the waste generated at the individual facility covered by the petitioner's demonstration. State RCRA regulations must be substantially equivalent to these federal regulations to obtain EPA approval of the state program.

Once a specific waste from a particular facility has been shown not to contain constituents or exhibit characteristics that are considered hazardous under RCRA, there appears to be no reason to require notification under CERCLA of a release of the exempted waste. By definition, exempted wastes lack the hazardous constituents or characteristics for which the waste type was listed as hazardous. Therefore, so long as a state-exempted waste does not contain any other listed CERCLA substances, EPA will not consider the exempted waste subject to CERCLA notification requirements.

c. Petroleum Exclusion. As defined in CERCLA section 101(14), the term "hazardous substance" under CERCLA does not include

> petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

Some commenters raised questions about the limits of the exclusion of petroleum from the definition of hazardous substance. EPA interprets the petroleum exclusion to apply to materials such as crude oil, petroleum feedstocks, and refined petroleum products, even if a specifically listed or designated hazardous substance is present in such products. However, EPA does not consider materials such as waste oil to which listed CERCLA substances have been added to be within the petroleum exclusion. Similarly, pesticides are not within the petroleum exclusion, even though the active ingredients of the pesticide may be contained in a petroleum distillate; when an RQ of a listed pesticide is released, the release must be reported.

d. Nomenclature. The May 25, 1983 NPRM requested comments on several options for a nomenclature system that would be most useful for the promulgated list of CERCLA hazardous substances. The first option was that actually employed in Table 302.4 as it appeared in the NPRM, i.e., the names of the substances as they appear in the environmental statutes (and implementing regulations) that are incorporated in the CERCLA definition of a hazardous substance. A second alternative presented was to use only the Chemical Abstracts Collective Index System name, and a third was to list the

[1] Substances exhibiting the characteristic of extraction procedure (EP) toxicity are not at issue here, because the chemicals at which the EP toxicity test is aimed are all specifically designated as hazardous under Section 302.4 of today's regulation.

major synonyms for each hazardous substance.

Five commenters recommended use of the names provided by the Chemical Abstracts Service (CAS) in the Chemical Abstracts Collective Index System. Although use of the Collective Index names would avoid much of the confusion involved with using synonyms and would serve as positive identification of the material, many of the individuals who may need to report releases will not have easy access to Collective Index names for the substances under their control. Even among professional chemists, CAS Collective Index names are not yet widely used. For example, the term "chloroform" remains widely preferred over the Collective Index name "methane, trichloro-."

Several commenters recommended listing the "major" synonyms for each substance, pointing out that most individuals who must report releases are not chemists and therefore are familiar with the substance only by the name provided by the supplier. The commenters stated that the potential releaser cannot be expected to determine whether the substance he is dealing with is a CERCLA hazardous substance unless the name provided is also on the CERCLA list.

The Agency recognizes that listing major synonyms would, in some respects, simplify determining whether a particular named chemical is a hazardous substance. However, as several commenters pointed out, the difficulties involved in making such a list would be great. For some of the substances, more than 80 synonyms might be necessary, making Table 302.4 very unwieldy. The length of the table would be increased by a factor of at least five, increasing the difficulty of finding a named material on the list. Moreover, the choice of synonyms to be included would still be subjective, and constant updates would be needed as omitted names were found.

The names of the CERCLA hazardous substances that appeared in Table 302.4 are those that are already familiar to the regulated community under other statutes. The Agency has therefore determined that, in today's final rule, Table 302.4 will contain the same names as were listed in the NPRM, plus any other names not previously discovered by which a substance is identified in the other statutes listed in section 101(14) and their implementing regulations. Several commenters suggested that in addition to the list of names in Table 302.4, a supplementary list in CAS Registry Number order be provided. EPA has adopted this suggestion. The CAS Registry Number, when available, uniquely identifies the designated hazardous substance. Such a list appears as an appendix to the rule as a convenience to the regulated community.

e. Generic Classes of Organic and Metallic Compounds. EPA decided not to establish RQs for the many broad generic classes of organic and metallic compounds designated as toxic pollutants under section 307(a) of the Clean Water Act, such as "chlorinated phenols," "phthalate esters," "polynuclear aromatic hydrocarbons," and "zinc and compounds." The majority of the commenters who addressed this issue understood and supported this decision. It was recognized that to establish a single RQ for broad classes of hazardous substances would be inappropriate for many of the compounds within each class. Many of the generic classes of compounds encompass hundreds or even thousands of specific compounds. It would be virtually impossible for the Agency to develop a reportable quantity for a generic class of compounds that would take into account the varying characteristics of all of the specific compounds in the class. To establish reportable quantities for generic groups of chemicals would conflict with existing knowledge of individual chemicals and their properties.

Several commenters were unsure of the Agency's position on reporting and liability for generic classes. These commenters believed that if no other RQ is established for a generic class, then they must still use the statutory one pound RQ established under CERCLA section 102(b). EPA has determined that the notification requirements need apply only to those specific compounds for which RQs are listed in Table 302.4, rather than to the generic classes of compounds. However, as the Agency indicated in the NPRM preamble, this does not preclude liability with respect to releases of specific compounds which are within one of these generic listings but which are not listed in Table 302.4. In other words, a releaser is liable for the cleanup of releases of hazardous substances which fall under any of the broad, generic classes, but does not have to report such releases when the specific compounds, and hence the RQs, are not listed in Table 302.4.

f. Massive Forms of Metals. EPA proposed that it would not require notification of releases of massive forms of the twelve solid metals originally listed under CWA section 307(a) when the diameter of the pieces of metal released equals or exceeds 100 micrometers (0.004 inches). Eleven of fourteen commenters supported this approach, while three commenters suggested a smaller cutoff level. One of these commenters suggested that the cutoff be set at 10 micrometers rather than 100 micrometers, consistent with standards developed pursuant to the Occupational Safety and Health Act.

The cutoff size was deliberately set ten times larger than the maximum size considered by EPA to be respirable dust to ensure that releases containing small particles of metals would result in notification to the NRC. The Agency has determined that the 100-micrometer cutoff is sufficiently small to be the particle size below which notification of release of an RQ is required. The primary purpose of notification is to ensure that releasers notify the government so that the government, pursuant to the NCP, can assess the need to respond to the release. Although it is extremely unlikely that a release of solid metal particles of 100 micrometers or larger would require a response, the Agency wants to be notified of releases of smaller particles because, under some circumstances, releases of metal particles in the 10- to 100-micrometer range may require a response.

One of the eleven commenters supporting the 100-micrometer cutoff level suggested that this policy be more prominently displayed in the wording of the final rule. (In the NPRM, the 100-micrometer limitation appeared only as a footnote to Table 302.4.) 40 CFR 302.6 now states:

> Notification of the release of an RQ of solid particles of antimony, arsenic, beryllium, cadmium, chromium, copper, lead, nickel, selenium, silver, thallium, or zinc is not required if the mean diameter of the particles released is larger than 100 micrometers (0.004 inches).

A particle larger than 100 micrometers in diameter will not pass through an American Society for Testing and Materials standard 140-mesh sieve.

2. Definition of Releases Subject to This Rule

a. Disposal of Hazardous Substances in RCRA Facilities. The May 25, 1983 NPRM discussion of the term "release" did not specify whether the term included or excluded the proper disposal of hazardous substances at a disposal facility that has been accorded interim status or that has received a final permit under RCRA. Some commenters suggested clarification of the meaning of the term in this regard.

EPA agrees that disposal of hazardous substances at a disposal facility in accordance with EPA regulations is not subject to CERCLA notification

provisions. Where the disposal of wastes into permitted or interim status facilities is properly documented through the RCRA manifest system and RCRA regulations are followed, notification under CERCLA does not provide a significant additional benefit, so long as the facility is in substantial compliance with all applicable regulations and permit conditions. Where the disposer knows that the facility is not in substantial compliance, disposal of an RQ of a hazardous substance must be reported to the NRC. Of course, spills and accidents occurring during disposal that result in releases of reportable quantities of hazardous substances must also be reported to the NRC.

b. Releases "Into the Environment." A key element of the definition of "release" is the phrase "into the environment." As defined in CERCLA section 101(22), a hazardous substance must be released "into the environment" in a reportable quantity before notification of the release is required under CERCLA. Thus, the distinction between the "facility" (or "vessel") from which a substance is released and the "environment" into which a substance passes is the determining factor in requiring notification.

Hazardous substances may be released "into the environment" even if they remain on plant or installation grounds. Examples of such releases are spills from tanks or valves onto concrete pads or into lined ditches open to the outside air, releases from pipes into open lagoons or ponds, or any other discharges that are not wholly contained within buildings or structures. Such a release, if it occurs in a reportable quantity (e.g., evaporation of an RQ into the air from a dike or concrete pad), must be reported under CERCLA. On the other hand, hazardous substances may be spilled at a plant or installation but not enter the environment, e.g., when the substance spills onto the concrete floor of an enclosed manufacturing plant. Such a spill would need to be reported only if the substance were in some way to leave the building or structure in a reportable quantity. (Note, however, that the federal government may still respond and recover costs where there is a *threatened* release into the environment.)

Most of the commenters on this issue agreed with EPA's position that the distinction between "facility" and "environment" is central to determining when notification is required and that a release "into the environment" is a reportable event, but they disagreed with EPA on when a release reaches the environment. The most common suggestion was to exclude from the definition of "environment" all of the grounds surrounding a facility that are controlled by the facility's owners or operators. Several commenters suggested that reporting should not be required as long as the facility operators are in control of released substances and initiate swift and adequate response efforts to prevent the environment from being endangered, consistent with prudent management practices. It was also suggested that so long as a release remains on facility property it would be inaccessible to the public and thus would not be a public hazard.

While EPA recognizes and appreciates the caution exercised by the majority of handlers of hazardous substances, accepting this redefinition of "environment" would be inconsistent both with the broad definition of environment in CERCLA section 101(8) and with the purpose of reporting. A primary function of CERCLA is to ensure that the government is made aware of any potentially serious release of a hazardous substance, so that the government has the opportunity to determine whether and how it needs to act. To exclude releases occurring near handling and storage facilities from CERCLA notification requirements would keep the federal government unaware of a very common form of release that may require government action. Releases onto the grounds surrounding a plant can migrate off-site through ground water or through release into the air. Defining "environment" to begin at the property line of a manufacturing plant or other installation is thus unacceptable to the Agency.

Following this same reasoning, defining environment in terms of public access, as several commenters suggested, is also unacceptable. Lack of public access to the site of a release does not preclude adverse effects on public health or welfare or the environment from the release. The volatilization of substances or their migration via ground water are obvious examples of how releases can travel off-site and threaten adjacent areas. EPA does not believe a reinterpretation of when a release enters the environment is necessary. A release into the environment will be reportable whether or not it remains on the grounds of a facility site.

One commenter requested that EPA clarify the meaning of the term "ambient air" in the definition of "environment" provided in 40 CFR Section 302.3. For the purposes of CERCLA, "ambient air" shall refer to the air that is not completely enclosed in a building or structure and that is over and around the grounds of a facility.[2] A release into the air of a building or structure that does not reach the ambient air (either directly or via a ventilation system) is not a reportable event under CERCLA.

c. "Workplace Exposure" Exclusion. CERCLA section 101(22) excludes from the definition of release "any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons." In the May 25, 1983 NPRM preamble, EPA stated that the workplace exclusion was apparently intended to restrict the potential scope of third-party actions for personal injuries under the Act and that the limitation of hazardous substance exposure to persons within a workplace is not relevant in determining whether notification is appropriate.

Several commenters argued that the workplace exposure exclusion should be applied to workplace releases for purposes of CERCLA notification requirements. EPA disagrees. By its terms, the exclusion applies only to claims compensable through workers' compensation. The availability of workers' compensation does not appear to have any relation to the need for reporting of hazardous substance releases that threaten public health or welfare or the environment. While Congress intended to bar payment of Superfund monies to persons covered by workers' compensation systems, the legislative history clearly indicates that Congress did not intend to exclude all workplace releases of hazardous substances from CERCLA reporting requirements and response authorities. "For example, if a release occurring solely within a workplace created a hazard of damage to human life or to the environment, it is contemplated that the Fund would have the authority to respond with all of its authorities except for compensating workers whose employers are liable for their injuries under worker's compensation law" (S. Rep. 848, 96th Cong., 2d Sess. 94 (1980)). Thus, the need for notification must be determined by whether or not a release from a CERCLA "facility" or "vessel"

[2] The Agency's interpretation of "ambient air" for CERCLA reporting purposes differs from the definition of ambient air in the regulations promulgated pursuant to the Clean Air Act (CAA). These regulations define ambient air with reference to public access (see 40 CFR 50.1(e)). EPA believes that the CAA definition is inappropriate for CERCLA purposes, because the point of release for some potentially serious releases may be inaccessible to the general public, e.g., on private property.

enters "into the environment." If a release does not remain wholly contained within a building or structure, then it is a release into the environment for CERCLA purposes, whether or not it occurs within a workplace.

3. Determination of When a Reportable Quantity Has Been Released

Once it has been determined that a hazardous substance release is covered by CERCLA, the releaser must determine if the release is in a quantity equal to or greater than the reportable quantity of that substance. Two critical issues in making this determination are the period of release and the application of RQs to mixtures and solutions. This section discusses EPA's positions on these issues and responds to comments received on the NPRM.

a. Period of Release. EPA proposed to use a 24-hour period for measuring whether the reportable quantity of a substance has been released, noting that the 24-hour period has been used successfully under regulations implementing the CWA section 311. As soon as the person in charge knows that the amount of a release within that period equals or exceeds the applicable reportable quantity, the NRC must be notified. Eleven commenters concurred with the Agency's decision to use the 24-hour period, citing the consistency of the decision with the CWA section 311 regulations.

Three commenters misinterpreted the purpose of the 24-hour period as the time a person has in which to establish the knowledge that a release has occurred. EPA wants to clarify that when the amount of a CERCLA hazardous substance release equals or exceeds the reportable quantity, the person in charge, once he or she knows of the release, must immediately notify the National Response Center. The 24-hour period refers to the period within which a reportable quantity of a hazardous substance must be released for the release to be considered reportable; it does not refer to the time available for a person to report a release. Such reporting must occur immediately.

b. Mixtures of Hazardous Substances. When determining if notification is required for releases of mixtures and solutions containing hazardous substances, the Agency intends to apply the mixture rule developed in connection with the CWA section 311 regulations. This rule provides that "[d]ischarges of mixtures and solutions are subject to these regulations only where a component hazardous substance of the mixture or solution is discharged in a quantity equal to or greater than its RQ" (44 FR 50767, August 29, 1979). RQs of different substances are not additive under the mixture rule, so that spilling a mixture containing half an RQ of one hazardous substance and half an RQ of another hazardous substance does not require a report.

Most commenters supported using the CWA mixture rule. These commenters agreed with EPA that it is generally technically appropriate to consider the RQs of component hazardous substances of a mixture individually when determining if a report is required. They also note that applying the CWA mixture rule to CERCLA hazardous substances would allow the regulated community to continue with existing monitoring and notification procedures.

One commenter opposed use of the CWA mixture rule, arguing that EPA has no data to support the implicit assumption that toxic effects are not additive or synergistic. The commenter stated that additive or synergistic effects often occur.

EPA recognizes that the toxic effects of chemical mixtures may in some instances be additive, synergistic, or even antagonistic. Unfortunately, only limited data exist on the extent of such effects. Moreover, trying to incorporate such data into the mixture rule for CERCLA notification purposes would make the determination of whether an RQ had been released much more complex and confusing. The RQ would vary with each mixture, depending on whether the components of the mixture had additive, synergistic, or antagonistic effects. Thus, a different RQ would have to be determined for each potential release situation, a highly complex approach that EPA has consistently tried to avoid (see section V.C.2. below). To be effective, the CERCLA notification system must be simple to administer and apply. For this reason, the Agency will apply the CWA mixture rule—contained in § 302.6 of today's rule—to releases subject to CERCLA reporting requirements.

Several commenters were uncertain when to apply the mixture rule to the various RCRA regulated wastes (F and K lists) and to the unlisted ICRE wastes. The Agency emphasizes that, for CERCLA purposes, the CWA mixture rule applies to ICRE wastes and to the RCRA F and K waste streams (all of which tend to be mixtures), if the concentrations of all the hazardous substances in the waste are known. If the concentrations of the substances are unknown, the RQ of the waste stream or unlisted waste applies. In addition, if the person in charge knows that an RQ of a hazardous constituent of a waste has been released before the RQ for the waste stream or unlisted waste has been exceeded, he or she must report the release. However, CERCLA does not itself impose any testing reqirements.

Some commenters objected to application of the CWA mixture rule to waste streams, arguing that under-reporting could result if the components of the waste were incorrectly identified. The Agency, however, maintains that if the concentrations of the hazardous substances contained in the mixture are known, waste streams should be treated like any other mixture. If the releaser does not know the composition of the listed waste stream, EPA agrees that applying the RQ of the entire waste stream is the only reasonably conservative alternative.

For example, a mixture of spent (used) cresols and nitrobenzene is identified in the RCRA regulations (40 CFR 261.31) as a hazardous waste from a non-specific source, F004. F004 has an RQ of 100 pounds, because the RQ for cresols is 100 pounds, the RQ for nitrobenzene is 1000 pounds, and the lowest RQ for any of the hazardous substances in the mixture applies. If the person in charge knows only that a waste material contains unspecified amounts of cresols and nitrobenzene, then he or she would have to report if 100 pounds or more of the waste were released. The person in charge may, however, if sufficient data are available, apply the CWA mixture rule. If he or she knows that the F004 waste contains 50 percent cresols and 50 percent nitrobenzene, the releaser would have to report only when the total release equalled or exceeded 200 pounds, because at that point the 100-pound RQ of the cresol component would be equalled or exceeded. Because the concentrations of the hazardous substances in the waste stream are known, there is no reason to restrict the releaser to the F004 waste RQ of 100 pounds. In this case, for notification purposes, the waste stream is no different than a known mixture of pure substances.

A few commenters questioned whether the mixture rule applies to products where the active chemical ingredient for which it is named is present in less than 100 percent concentration. While the NPRM discussion of the mixture rule did not explicitly mention "formulations of less than 100 percent strength," such formulations are indeed mixtures or solutions and are covered by the mixture rule. Two commenters wanted EPA to waive the CERCLA notification requirements for mixtures containing very low concentrations of hazardous

substances. These commenters suggested assigning a concentration value to each hazardous substance below which notification would not be required. This approach would, in effect, result in two rules for each substance, making application of the mixture rule cumbersome for the regulated community. Moreover, determining each concentration value would require the use of specific release scenarios, a methodology that EPA has rejected (see 48 FR 23569 and Section V.C.3. of this preamble). For these reasons, EPA is retaining the mixture rule for all mixtures containing any concentration of a hazardous substance, no matter how low the concentration.

E. Exemptions From the CERCLA Notification Requirements

CERCLA provides four types of exemptions from the notification requirements applicable to releases of hazardous substances in reportable quantities. Each type of exemption was discussed in the May 25, 1983 NPRM preamble. Responses to major comments received on the exemption for the application of pesticide products registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) are provided below. Issues relating to the limited exemption for continuous releases and exemptions for "federally permitted releases" are not resolved in today's rule.

Section 103(e) of CERCLA exempts from the notification provisions of the Act "the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) [and] the handling and storage of such a pesticide product by an agricultural producer." In the proposed rule, EPA interpreted the application of pesticides as the normal application of registered pesticides (and pesticides used in accordance with FIFRA section 5 experimental use permits or FIFRA section 18 emergency exemptions) in ways that are consistent with the labeling instructions.

Commenters objected to several aspects of EPA's pesticide exemption policy as stated in the NPRM. The first category of objections concerned the wording of the policy. Some commenters suggested that the phrase "pursuant to the label directions" as used in the definition of "normal application of pesticides" applies more to consumer goods than to industrial chemicals, because the label directions of the latter may not include complete application practices. Other commenters objected to the use of the term "normal" in the definition of "normal application of pesticides," because the term does not appear in CERCLA section 103(e) and constitutes a potentially unnecessary restriction on the exemption.

EPA agrees that the definition of "normal application of pesticides" is unnecessary, and the definition does not appear in today's final rule. The legislative history of CERCLA suggests that Congress intended that the pesticide exemption apply to the application of a pesticide generally in accordance with its purpose. S. Rep. No. 848, 96th Cong., 2d Sess. 45 (July 13, 1980). While strict compliance with labeling direction is not a prerequisite for the exemption, the extent of compliance will be a critical factor in determining whether the application was generally in accordance with the pesticide's purpose. EPA does not consider a spill of a pesticide to be either an "application" of the pesticide or in accordance with the pesticide's purpose. Consequently, such spills must be reported. Note, moreover, that use of a pesticide inconsistent with its labeling is a violation of FIFRA that is potentially subject to both civil and criminal penalties.

F. Duplicate Reporting

1. General

EPA is seeking to minimize unnecessary duplication between CERCLA reporting requirements and the reporting requirements of other environmental statutes. However, some commenters complained of the duplicative reporting burden created by CERCLA and of a lack of coordination among federal, state, and local agencies. Eight of these commenters suggested that one report to the NRC should suffice for all government agencies. Currently, one call to the NRC fulfills the requirement to report releases of hazardous substances under CERCLA and several other regulatory programs, including the Clean Water Act, the Resource Conservation and Recovery Act, and the Hazardous Materials Transportation Act, which is administered by the Department of Transportation. The May 25, 1983 NPRM preamble discussed the equivalence of compliance with certain RCRA reporting requirements and CERCLA notification requirements. Section 103(f)(1) of CERCLA exempts from the notification requirements of sections 103 (a) and (b) releases that are subject to reporting requirements (or specifically exempted from such reporting) under Subtitle C of RCRA and have been reported to the National Response Center. The Agency has reviewed all other areas of duplicate reporting created by CERCLA and has found that the burden imposed by CERCLA notification requirements is not great. At most, the duplication that exists may require that more than one telephone call concerning a release be made by the releaser and recorded by government agencies.

Today's final rule does not affect hazardous substance reporting requirements imposed by certain other regulations and statutes, as discussed in section IV.G. below.

2. Newspaper Notification Requirement

CERCLA section 111(g) requires that owners or operators of any vessel or facility "provide reasonable notice to potential injured parties by publication in local newspapers serving the affected area" of any release of a hazardous substance. One commenter asked whether RQ notification requirements revoke section 111(g). The newspaper notification requirement established by section 111(g) of CERCLA is not affected by any of the notification requirements in today's rule.

G. Regulatory Consistency

EPA has always made every effort to coordinate its regulations of hazardous substances with other government agencies. For example, EPA and the Department of Transportation (DOT) (which includes the U.S. Coast Guard) have cooperated over the years in a series of regulatory actions, including the establishment of the centralized toll-free telephone number for reporting spills of hazardous substances to the NRC. EPA recognizes that cooperation with other agencies is vital to the development of clear and consistent regulatory policies in areas of complementary or shared responsibility. The Agency has carefully reviewed comments from other government agencies on the NPRM and does not believe that the CERCLA RQs or notification requirements create regulatory inconsistencies.

Many commenters questioned the extent of EPA–DOT coordination concerning CERCLA RQ regulations and regulations pursuant to the Hazardous Materials Transportation Act (HMTA). EPA recognizes the need for consistency between the RQ regulations and DOT's Hazardous Material Regulations (HMR). The Agency believes that the cooperative efforts of EPA and DOT will result in an RQ adjustment regulatory approach that will be consistent with any related regulations promulgated by DOT. EPA has promoted and will continue to promote coordination between the RQ adjustment regulation and the HMR. EPA wishes to clarify, however, that while it strongly supports

cooperation between EPA and DOT, it has no authority to revise the HMR. Any changes must be made by DOT.

The International Convention for the Prevention of Pollution from Ships (MARPOL 73/78), as implemented through the Act to Prevent Pollution from Ships (33 U.S.C. 1901 *et seq.*), currently imposes reporting requirements concerning releases of harmful substances from U.S. ships wherever located and from foreign ships within the navigable waters of the United States. Under 33 U.S.C. 1906, as soon as a person in charge of a ship has knowledge of an event involving the actual or probable release into the sea of a harmful substance (broadly defined), he or she must report the incident to the Secretary of the department in which the Coast Guard is operating (currently DOT). No reportable quantities are specified. Thus, MARPOL 73/78, as implemented by 33 U.S.C. § 1906, may require reporting even where CERCLA does not.

Annex II of MARPOL 73/78 prohibits discharges of noxious liquid substances within 12 miles from shore. Beyond 12 miles, discharges are either prohibited or limited, depending on the nature of the cargo and compliance with several criteria. Annex II, scheduled to take effect in October 1986, applies to all ships carrying noxious liquid substances in bulk and limits operational discharges of these substances by setting minimum or maximum numerical values for distance from shore, depth of water, ship speed, concentration of substance in ship's wake, and maximum quantity of cargo residues that may be discharged. To improve regulatory consistency and enhance coordination with the U.S. Coast Guard, EPA intends to investigate the scope and intent of MARPOL 73/78 Annex II regulations (including a Coast Guard ANPRM (48 FR 1519–1521, Jan. 13, 1983) dealing with certain types of hazardous substances that are intended to be regulated in accord with MARPOL) and to examine regulatory and technical concerns arising from coordination between CERCLA and MARPOL.

Section 8(e) of the Toxic Substances Control Act (TSCA) may also require reporting where CERCLA does not. Pursuant to a Statement of Interpretation published March 16, 1978, 43 FR 11110, all emergency incidents of environmental contamination that present a "substantial risk of injury to health or the environment" must be reported to EPA under TSCA section 8(e). Section 8(e) could require notification even where no CERCLA hazardous substances or RQs have been released. Persons subject to the notification requirement include both natural persons and business entities engaged in the manufacturing, processing, or commercial distribution of chemical substances or mixtures. No notification is required if the manufacturer, processor, or distributor knows that EPA has been informed of the risk presented by the incident. For hazardous substance releases subject to CERCLA, a single notification to the NRC will satisfy both CERCLA and TSCA section 8(e) reporting requirements; the Agency will ensure that section 8(e) reports are passed to the proper authorities.

H. Penalties

Section 302.7(a) of the proposed rule set forth the penalties imposed by CERCLA Section 103(b) for failure to notify the NRC of a reportable release. Section 302.7(a) of today's final rule does not specify the penalties established by CERCLA section 103(b); rather, the rule incorporates the statutory penalties by reference. The regulation still informs responsible parties of the statutory sanctions for failure to notify, but the change will avoid the need to amend 40 CFR 302.7 should CERCLA section 103(b) be amended. Currently, CERCLA section 103(b) provides that any person in charge of a facility or vessel from which a hazardous substance is released, other than a federally permitted release, in a quantity equal to or greater than the reportable quantity, who fails to notify the appropriate federal agency as soon as he has knowledge of the release, shall upon conviction be fined not more than $10,000 or imprisoned for not more than one year, or both. Notifications received under sections 103(a) or 103(b) or information obtained by such notice cannot be used against any reporting person in any criminal case, except a prosecution for perjury or for giving a false statement.

V. Reportable Quantity Adjustments

A. Introduction

The primary purpose of the CERCLA notification requirements, discussed above in section IV, is to ensure that releasers notify the government so that the need for a federal response can be evaluated and any necessary response undertaken in a timely fashion.

With this purpose in mind, EPA proposed adjustments to the statutory RQs of CERCLA hazardous substances based on specific scientific and technical criteria that relate to the possibility of harm from the release of a hazardous substance in a reportable quantity. The adjusted RQs do not reflect a determination that a release of a substance will be hazardous at the RQ level and not hazardous below that level. EPA has not attempted to make such a determination because the actual hazard will vary with the unique circumstances of the release, and extensive data and analysis would be necessary to determine the hazard presented by each substance in a number of possible circumstances. Instead, the RQs reflect the Agency's judgment of which releases should trigger mandatory notification to the federal government so that the government may assess to what extent, if any, a federal removal or remedial action may be necessary.

Over forty commenters supported both the methodology EPA used in determining RQs and the results of this methodology. These commenters agreed that the RQ adjustments will:

(1) Increase the efficiency and certainty of the Superfund program;

(2) Reduce burdens on the regulated community; and

(3) Improve EPA's ability to concentrate its attention and resources on the releases that are potentially most threatening to public health or welfare or the environment.

In addition, EPA received many comments on various specific topics relating to the RQ adjustments that were discussed in the NPRM. Some commenters also discussed issues that were not explicitly addressed in the proposed rule. Responses to both types of comments are presented below.

B. Number of Reportable Quantity Levels and Their Values

1. Five RQ Levels

For purposes of making RQ adjustments under CERCLA, EPA has adopted the five RQ levels of 1, 10, 100, 1000, and 5000 pounds originally established pursuant to CWA section 311 (see 40 CFR Part 117). The Agency adopted the CWA five-level system primarily because (1) it has been successfully used pursuant to the CWA, (2) the regulated community is already familiar with these five levels, and (3) it provides a relatively high degree of discrimination among the potential hazards posed by different CERCLA hazardous substances. Many commenters voiced general support of the five-level system; however, as the next section discusses, some commenters criticized the use of one pound as the lowest RQ level.

2. One-Pound RQs

Several comments were received on the one-pound RQ level. A few commenters argued that a one-pound RQ is too small for reporting purposes. They reasoned that a one-pound release of a hazardous substance would have an inconsequential impact on public health and welfare and the environment and that federal agencies would not respond to such small releases.

The one-pound RQ is consistent with prior regulation under the Clean Water Act (see 40 CFR Part 117). One pound was selected under the Clean Water Act as the lowest reporting level because one pound is typically the smallest container size used in commerce for transporting moderately or extremely hazardous substances 40 FR 59989, December 30, 1975. Moreover, the Agency interviewed a large cross-section of field response personnel, and all of those interviewed indicated that they want to be notified of most releases, even at the one-pound level. In the interviews, the field response personnel recognized that the government may not institute removal or remedial actions for many one-pound releases, but they emphasized that notification was a prerequisite for determining (1) the need for a response under the circumstances, (2) the adequacy of any cleanup efforts, and (3) the degree to which post-release monitoring may be required. Furthermore, many releases tend to be escalating events, and early notification helps ensure an effective response.

Six commenters criticized the one-pound RQ level for posing an unreasonable burden on the regulated community. One commenter indicated that the adoption of one-pound RQs will require many companies to do extensive testing of raw materials in order to assure compliance with this regulation. CERCLA does not require any testing, and EPA does not intend to require any further testing beyond that which is already required by other statutes and their implementing regulations.

C. Methodology Used To Adjust Reportable Quantities

1. The Methodology Chosen

The selected strategy for adjusting RQs begins with an evaluation of the intrinsic physical, chemical, and toxicological properties of each designated hazardous substance. The intrinsic properties examined—called "primary criteria"—are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, and chronic toxicity. (For the purposes of this rule, chronic toxicity—referred to as "other toxic effects" in the May 25, 1983 NPRM—is defined as toxicity resulting from repeated or continuous exposure to either a single release or multiple releases of a hazardous substance.) In addition, substances that were identified as potential carcinogens have been evaluated for their relative activity as potential carcinogens; the RQs for these substances will be proposed in a separate rulemaking, and the methodology for adjusting RQs on the basis of potential carcinogenicity will at that time be presented for public comment.

The Agency ranks each intrinsic property on a five-tier scale, associating a specified range of values on each scale with a particular RQ value. Thus, each substance receives several tentative RQ values based on its particular properties.[3] The lowest of all of the tentative RQs becomes the "primary criteria RQ" for that substance. (See Section V.D.1. below for further detail.)

After the primary criteria RQs are assigned, substances are further evaluated for their susceptibility to certain extrinsic degradation processes. These extrinsic processes (referred to as "secondary criteria" in the May 25, 1983 NPRM) are biodegradation, hydrolysis, and photolysis, or "BHP." If the analysis indicates that a substance degrades relatively rapidly to a less harmful compound through one or more of these processes when it is released into the environment, the primary criteria RQ is raised one level. (See section V.D.2. below for further detail.) The single RQ assigned to each substance on the basis of the primary criteria and BHP becomes the adjusted RQ for that substance.

2. Multiple RQs and Media-Specific RQs

Many commenters objected to the Agency's proposal to establish a single RQ for each hazardous substance. It was suggested that either (1) the Agency should develop several RQs for each hazardous substance, for example, one RQ for each of the various environmental media (air, water, soil) into which a release might occur, or (2) the Agency should base the adjusted RQ for each substance on the most likely medium of release rather than on the most sensitive environmental trigger (as is currently done).

Several of the objecting commenters believed that the RQs would be arbitrary if they did not reflect the varying degrees of risk presented by releases into different environmental media. For similar reasons, they argued that the RQs should vary depending on the form of the substance released (i.e., whether it is a solid, a liquid, or a gas) and its ability to dissipate into the environment. The objecting commenters believed that if the RQs were to reflect more accurately the hazards of given releases, the overall reporting burden would be reduced, because reports would not have to be made in situations where the government would be unlikely to respond.

As has been stated, the RQs are not intended to represent judgments by the Agency as to the specific degree of hazard associated with certain releases. The actual hazard will vary with the circumstances of the particular release, and many factors other than the size of the release will influence the government's response. The single RQ approach was adopted to provide a relatively simple reporting system that does not unduly burden either EPA or the regulated community. Since releases into more than one medium often occur, the single RQ approach will prevent confusion. Section 102(a) of CERCLA expressly authorizes the Administrator to set a single quantity for each hazardous substance, and the legislative history emphasizes the virtues of simplicity and administrative convenience (see Sen. Rep. 848, 96th Cong., 2d Sess. 29 (1980)). Moreover, the Agency simply does not have the resources to obtain the vast quantity of technical data required to develop RQs that, on the one hand, are tailored to fit every release situation, and that, on the other hand, are consistent, equitable, and adequately protective of public health and welfare and the environment.

EPA will be able to refine the single-RQ approach over time as more information becomes available, without having to expend substantial resources to develop a massive technical data base and undertake other burdensome rulemaking support. Radionuclides, because of their unique characteristics, are the one category of substances for which the Agency is considering deviation from the single RQ approach. As noted in section III.C. of this preamble, radionuclide RQs will be addressed in a separate rulemaking.

A number of commenters expressed the opinion that the RQ adjustment criteria should take particular release circumstances into consideration. The suggested circumstances included release into a sewer system, release near a public drinking water supply, release near a residential area, and air

[3] If available evidence shows that a substance hydrolyzes into a reaction product that is more hazardous than the original substance, the primary criteria are applied to the reaction product rather than to the original substance to determine the primary criteria RQ values for the original substance.

emissions from elevated sources (tall stacks). One commenter even stated that "determinations of actual harm" should be made for all substances with one- and ten-pound RQs by examining release potential, release history, the degree of hazard or risk of particular releases in various environmental media, and the likelihood that such releases would require federal action. The Agency position is that particular circumstances should not affect the RQ level; instead, they may influence the government's decisions concerning whether and how it should respond to a particular release.

Many commenters focused on the appropriateness of a single RQ governing emissions into the air as well as releases into other media. They argued as follows:

- Because the government cannot respond to most air emissions by containing or cleaning up the emissions, and because other government responses (e.g., evacuation of the nearby populace) are required only infrequently, requiring routine reporting of air emissions under a single-RQ approach would be wasteful and burdensome.
- The impacts of emissions into ambient air are substantially less than releases of similar size to water or soil, and the photolysis and degradation of many air emissions tend to be relatively rapid.
- Relatively few substances would be eligible for separate air release RQs, and EPA would not have to devote a substantial amount of effort and resources to make the appropriate adjustments.

The Agency believes that an exception to the single-RQ approach for air releases could not be restricted to air releases alone under the above reasoning. Several other types of releases exhibit certain of the characteristics of air releases, such as releases into large bodies of rapidly moving water. If the circumstances of particular releases were taken into account in setting RQs, the entire process would place an intolerable burden on Agency resources. The process would also become potentially inconsistent, inequitable, and subject to delay. Moreover, the resulting complexity in RQs would be likely to engender both confusion and further charges of arbitrariness.

One commenter believed that, for the most part, releases that would be affected by a separate air release RQ would be those which are "continuous" and released from facilities subject to Clean Air Act regulations. If an air release falls within the exemptions provided by CERCLA for "continuous" or "federally permitted" releases, of course, no notification is necessary (except as required for continuous releases); if many air releases are exempt, a separate air release RQ would provide very few benefits.

3. Alternative Methodologies Considered

In the May 25, 1983 NPRM, EPA described and solicited comments on three alternative methodologies for adjusting RQs: Hazard Index, Scenarios, and Fate and Effects. Most commenters agreed with the Agency that these methodologies would be impractical to implement and would introduce unnecessary complexities into the RQ adjustment process, although several commenters encouraged further research into the Hazard Index approach. No new data to facilitate a more complete evaluation of these methodologies have been submitted. Because these methodologies are complex and require much data that are unavailable at this time, EPA is not currently pursuing these methodologies further for RQ adjustment purposes.

D. Criteria Used To Adjust Reportable Quantities

1. Primary Criteria

a. Aquatic Toxicity. In adjusting RQs, EPA used the categories of aquatic toxicity that were established pursuant to section 311 of the CWA. As Exhibit 1 shows, each category is linked to one of the five RQ levels. The RQ value based on aquatic toxicity is identical to the RQ promulgated under the CWA section 311 except where the use of updated aquatic toxicity data has resulted in a different RQ (see section V.F.2. below).

EXHIBIT 1.—CATEGORIES FOR REPORTABLE QUANTITY ASSIGNMENTS PURSUANT TO CWA SECTION 311

RQ (pounds)	Aquatic toxicity	Category
1	LC_{50}* <0.1 mg/liter	X
10	0.1mg/liter <LC_{50} <1 mg/liter	A
100	1 mg/liter <LC_{50} <10 mg/liter	B
1000	10 mg/liter <LC_{50} <100 mg/liter	C
5000	100 mg/liter <LC_{50} <500 mg/liter	D

* "LC_{50}" refers to that concentration of material which is lethal to one-half of the test population of aquatic animals upon continuous exposure for 96 hours. (See 40 CFR 116.14).

Source: 43 FR 10492, March 13, 1978.

One commenter questioned the rationale for assigning one-pound RQs to substances in the highest aquatic toxicity category. The commenter indicated that an RQ of 10 pounds, or even 100 pounds, could be assigned just as easily. The five-level reportable quantity scale for aquatic toxicity was taken directly from section 311 of the Clean Water Act. The CWA section 311 reporting categories are being retained for CERCLA reporting purposes in order to ensure consistency between the two closely related acts. The aquatic toxicity RQ scale has been used successfully in implementing the Clean Water Act, and the regulated community is familiar with it. Moreover, as noted above in the section on one-pound RQs, many releases tend to be escalating events requiring prompt attention.

b. Mammalian Toxicity. EPA separately evaluated oral, dermal, and inhalation toxicity for the mammalian toxicity criterion. A five-level scale was devised for each type of toxicity. These scales are shown in Exhibit 2. The RQ chosen for mammalian toxicity represents the lowest of the values derived from the three scales. These scales were discussed in detail in the NPRM (48 FR 23562–23563).

One commenter believed that the Agency's mammalian toxicity scales assign RQs which are too high for some poisonous substances. The commenter therefore proposed new scales based on mammalian toxicity that would assign many more one-pound RQs than the Agency's scales. The Agency believes that the scales suggested by the commenter are overly broad and could lead to unnecessary reporting.

EXHIBIT 2.—CATEGORIES FOR REPORTABLE QUANTITY ADJUSTMENTS BASED ON MAMMALIAN TOXICITY *

RQ (pounds)	Mammalian toxicity (oral)	Mammalian toxicity (dermal)	Mammalian toxicity (inhalation)
1	LD_{50}* <0.1 mg/kg	LD_{50} <0.04 mg/kg	LC_{50}* <0.4 ppm.
10	0.1 mg/kg <LD_{50} <1 mg/kg	0.04 mg/kg <LD_{50} <0.4 mg/kg	0.4 ppm <LC_{50} <4 ppm.
100	1 mg/kg <LD_{50} <10 mg/kg	0.4 mg/kg <LD_{50} <4 mg/kg	4 ppm <LC_{50} <40 ppm.
1000	10 mg/kg <LD_{50} <100 mg/kg	4 mg/kg <LD_{50} <40 mg/kg	40 ppm <LC_{50} <400 ppm.
5000	100 mg/kg <LD_{50} <500 mg/kg	40 mg/kg <LD_{50} <200 mg/kg	400 ppm <LC_{50} <2000 ppm.

* For a detailed explanation of the derivation of these categories, see Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102.

* "LD_{50}" refers to that dose of a substance expected to cause the death of 50 percent of a defined experimental mammalian population.

* "LC_{50}" refers to that concentration of a substance in the air that is expected to cause the death of 50 percent of a defined experimental mammalian population.

c. *Ignitability and Reactivity.* The Agency used a five-level scale to assign RQs based on ignitability. The NPRM discussed this scale in detail (48 FR 23563). Exhibit 3 shows the scale used. The Agency did not assign one-pound RQs based on ignitability because small releases of a flammable substance would generally be consumed so quickly that any federal government response action would be infeasible.

EXHIBIT 3.—CATEGORIES FOR REPORTABLE QUANTITY ADJUSTMENTS BASED ON IGNITABILITY *

RQ (pounds)	Ignitability (fire)
1	No 1-pound RQs on the basis of ignitability.
10	Pyrophoric or self-ignitable.
100	FP_m [b] <100°F, BP [c] <100°F.
1000	FP_m <100°F, BP >100°F.
5000	FP_m 100°F-140°F.

* For a detailed explanation of the derivation of these categories, see Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102.
[b] "FP_m" refers to the flash point, the temperature at which a substance forms an ignitable mixture with the air at the surface of the substance, measured using the closed cup test.
[c] "BP" refers to the boiling point, the temperature at which a liquid boils.

The Agency also used five-level scales for assigning RQs based on two types of reactivity: reactivity with water and self-reaction. For reactivity, as for ignitability, no one-pound RQs were assigned. The NPRM discussed the reactivity scales and their development. Exhibit 4 shows the scales used.

One commenter requested that the minimum RQ level for the ignitability and reactivity RQ scales be set at 100 pounds instead of 10 pounds. The Agency has decided to retain the 10-pound minimum RQ level. As a result of interviews with federal government field response personnel, the Agency decided to remove the one-pound RQ level from the ignitability and reactivity RQ scales. Government response personnel indicated that releases of less than 10 pounds of ignitable and reactive substances normally would be adequately handled by appropriate local or state response personnel, and they concurred with the Agency's proposal to raise to 10 pounds the minimum reporting level for the ignitability and reactivity RQ scales. Government response personnel, however, objected to raising the minimum reporting level any further. They believed that reporting levels should be kept low to ensure timely reporting of releases and timely government response, if necessary.

EXHIBIT 4—CATEGORIES FOR REPORTABLE QUANTITY ADJUSTMENTS BASED ON REACTIVITY *

RQ (pounds)	Reactivity [b]	
	With water	Self-reaction
1	No 1-pound RQs on the basis of reactivity.	No 1-pound RQs on the basis of reactivity
10	Inflames (e.g., Na, CaC_2).	Extreme self-reaction; may cause explosion or detonation.
100	Extreme reaction (e.g., SO_3).	High; may polymerize; requires stabilizer.
1000	High reaction (e.g., oleum).	Moderate; contamination may cause polymerization; no inhibitor required.
5000	Moderate reaction (e.g., NH_3).	Slight; may polymerize with low heat release.

* For a detailed explanation of the derivation of these categories, see Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102.
[b] Based on heat release.

d. *Chronic Toxicity.* The Agency used data on chronic toxicity (referred to as "other toxic effects" in the May 25, 1983 NPRM) to adjust the statutory RQs for some hazardous substances. For other hazardous substances, data on chronic toxicity were still being evaluated at the time of the May 25, 1983 NPRM. RQs were not adjusted for those substances undergoing evaluation; thus, the statutory RQ applies. In addition, there are a few substances for which an RQ was proposed in the NPRM but for which EPA subsequently determined that further evaluation was necessary. The statutory RQ applies for these substances until a final RQ is promulgated (see section V.F.2. below).

When analyzed for chronic toxicity, substances are assigned scores based on both the minimum effective dose (MED) levels for repeated exposures and the severity of the effects caused by repeated or continuous exposure. The scores are then used to assign RQs. The NPRM described the methodology used (48 FR 23564); Exhibit 5 shows the RQ levels based on chronic toxicity.

EXHIBIT 5.—CATEGORIES FOR REPORTABLE QUANTITY ADJUSTMENTS BASED ON CHRONIC TOXICITY *

RQ (pounds)	Composite score
1	81-100
10	41-80
100	21-40
1000	6-20
5000	1-5

* For a detailed explanation of the derivation of these categories, see Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102.

A number of commenters suggested that chronic toxicity should not be used to determine RQs or should be used only with additional restrictions. These commenters believed that chronic toxicity, which is a function of prolonged exposure, should not be considered because the purpose of the RQ program is to monitor episodic releases. The Agency decided to use chronic toxicity as a criterion in setting RQs because episodic releases which are not rapidly and completely cleaned up may result in repeated or continuous exposure to a toxic substance. Moreover, CERCLA reporting requirements cover both episodic and continuous releases. Continuous releases may also lead to repeated or continuous exposure to toxic substances.

e. *Potential Carcinogenicity.* Today's rule does not use any measure of potential carcinogenicity to adjust RQs. EPA is in the process of developing adjusted RQs for substances which have been identified as potential carcinogens. The statutory RQs for these substances apply while they are being considered for RQ adjustment. Table 302.4 notes those substances which are being evaluated for their relative activity as potential carcinogens (but which may or may not be potential carcinogens).

2. Other Criteria Used to Adjust RQs (BHP)

a. *Use of BHP Criteria.* Twenty commenters supported the use of the natural degradation processes of biodegradation, hydrolysis, and photolysis ("BHP") as additional criteria for adjusting RQs. The BHP criteria are used, where appropriate, to raise RQ values one level from that suggested by the primary criteria analysis. Four commenters opposed the use of BHP to adjust RQs.

The supporting commenters agreed that the above degradation processes tend to reduce the relative potential for harm to public health and welfare and the environment of certain harzardous substance releases. It was seen that taking the environmental fate characteristics of particular substances into account in setting RQ levels was an appropriate method to reduce the overall reporting burden while still adequately protecting public health and welfare and the environment. However, one commenter emphasized that the BHP criteria are a useful RQ adjustment tool only where the associated analysis is not overly complex, expensive, or time-consuming.

Several commenters requested clarification of the methodology used in

applying BHP. The Technical Background Document supporting this rulemaking sets forth in detail the relatively simple, yet scientifically conservative methodology used to apply these criteria. First, several elimination criteria are used to limit the number of substances eligible for the one-level increase based on BHP. The elimination criteria include the following: tendency to bioaccumulate, environmental persistence, the presence of unusual hazards (e.g., high reactivity), the existence of hazardous degradation or transformation products, or a primary criteria RQ already at the maximum assignable level of 5000 pounds. The remaining substances are evaluated for their susceptibility to biodegradation, hydrolysis, and photolysis. As discussed below, the Agency uses ranges of degradation rates sufficient to ensure that the substances selected for the one-level increase in RQ (27 in today's final rule) are in fact relatively degradable.

Two commenters believed that the Agency's evaluation pursuant to the BHP criteria should lead to a downward adjustment if the risk posed by the release of a hazardous substance is increased as a result of biodegradation, hydrolysis, or photolysis (i.e., if the natural degradation processes produce materials in the environment that are more hazardous than the original substance released). The Agency agrees that consideration must be given to the toxicity of the degradation products. Where reaction products more hazardous than the original substance are readily known and identified, the Agency has based the primary criteria RQ of the original substance on the characteristics of the more hazardous reaction products, effectively resulting in a "downward adjustment."

Application of the primary criteria to the reaction products rather than to the original substances occurred in ten cases for the substances assigned final adjusted RQs in this rule. For example, substances known to generate hydrogen sulfide or phosphine upon hydrolysis have been assigned primary criteria RQs on the basis of these reaction products.

The few commenters opposing the use of BHP felt that biodegradation, hydrolysis, and photolysis should be considered by the On-Scene Coordinator in determining the government's response after a release has been reported, but that EPA should not use such processes to alter the initial reporting level suggested by the primary criteria. For the reasons given below, the Agency disagrees.

First, the commenters asserted that biodegradation, hydrolysis, and photolysis should not be applied in the setting of RQs because these processes may not affect the immediate hazard posed by a given release and instead may only reduce the potential long-term dangers of the release. However, EPA has used degradation measures that address both short- and long-term potential hazards. The RQ of a substance is not raised unless (1) the reported biological oxygen demand of the substance over a five-day period at 20 degrees Celsius is at least fifty percent of the theoretical oxygen demand (the stoichiometric quantity of oxygen needed to oxidize a substance completely to carbon dioxide and water), or (2) when subjected to hydrolysis, photolysis, or either process in conjunction with biodegradation, the estimated half-life of the substance is equal to or less than five days.

The primary criteria RQs of four substances (allyl chloride, butylamine, diazinon, and ethyl acrylate) were adjusted upwards in the May 25, 1983 NPRM on the basis of degradation data involving periods greater than five days, because data for shorter periods were unavailable. The Agency has since decided to adjust RQs according to the criteria stated above (i.e., evidence of degradation within five days), to ensure that all substances selected for the one-level increase will tend to degrade rapidly once they are released. Therefore, allyl chloride, butylamine, diazinon, and ethyl acrylate are assigned their primary criteria RQs in today's final rule.

The second major argument raised by the commenters opposed to the use of BHP was that the methods for measuring the occurrence and rate of biodegradation, hydrolysis, and photolysis do not take into account the entire range of environmental conditions that could potentially affect each process. The Agency acknowledges this limitation in its analysis. RQs cannot be designed to account for every environmental condition of each release of a hazardous substance. Instead, each RQ level represents the Agency's best judgment concerning the threshold at which the NRC should be notified.

Although environmental conditions are not considered in the RQ adjustment process, EPA has taken into account certain physical characteristics of substances in adjusting RQs on the basis of biodegradability. The test for biodegradability is performed using a closed container, which may provide misleading data for highly volatile substances that are unlikely to remain in microbe-bearing soil or water. The Agency has therefore elected not to apply the biodegradation criterion to any highly volatile substance (i.e., with a boiling point less than 100 degrees Fahrenheit) unless that substance is also highly water soluble. Highly water soluble substances will tend to be retained in water or in soil (by soil moisture). The primary criteria RQ of acetaldehyde was raised one level under these circumstances; even though the boiling point of acetaldehyde is less than 100 degrees Fahrenheit, the substance is also highly water soluble.

b. Other Criteria Considered and Rejected. In the NPRM preamble, EPA noted that it had considered using volatilization (the process by which a substance vaporizes into the air) as an additional criterion for adjusting RQs, but had rejected it because the hazard posed by a release of a hazardous substance does not necessarily decrease when the substance moves from soil or water into the air. One commenter disagreed with the Agency's decision not to use volatilization, arguing that where a compound is particularly volatile, no response action may be feasible. EPA maintains its earlier position that the movement of a substance between environmental media (from the soil or water into the air) does not necessarily affect the potential hazard. The feasibility of a response is a decision for the On-Scene Coordinator.

c. Broadening the Scope of the BHP Criteria. The NPRM noted, without discussion, that the criteria of biodegradation, hydrolysis, and photolysis were not used to raise RQs based on chronic toxicity, and it did not mention the application of BHP to substances being evaluated for potential carcinogenicity. Several commenters expressed the opinion that BHP should be applied to hazardous substances evaluated for chronic toxicity and/or potential carcinogenicity. They noted that the processes of biodegradation, hydrolysis, and photolysis may, in certain cases, reduce the potential hazard of such substances. EPA agrees that BHP should be applied to those hazardous substances evaluated for chronic toxicity, and the Agency is considering whether to apply BHP to substances evaluated for potential carcinogenicity.

In fact, the Agency has already evaluated BHP with respect to those substances that were analyzed for chronic toxicity. Two substances evaluted for chronic toxicity have had their primary criteria RQs increased one level on the basis of biodegradability: acetonitrile (1000 to 5000 pounds) and methyl ethyl ketone (1000 to 5000 pounds).

A number of commenters argued that RQs should be adjusted more than one RQ level on the basis of the BHP criteria to reflect the speed and completeness with which a substance degrades. In a related suggestion, several commenters requested that EPA develop formal ranking scales for these criteria.

The lack of extensive data and the uncertainty of much of the existing data concerning the environmental fate of various hazardous substances prevent adjustments of more than one level to reflect the speed and completeness with which a substance degrades. The Agency believes that an upward adjustment of one level adequately lessens the reporting burden on the regulated community regarding releases of the 27 substances involved and satisfactorily protects public health and welfare and the environment.

Similar data gaps hinder development of formal ranking scales for the BHP criteria. Moreover, even if adequate data were available, the BHP criteria could not be easily applied through a more formal multi-tier ranking system, for many of the same reasons a hazard index is currently impractical. For example, there is no objective way to determine the proper numerical weights for the different primary and BHP criteria that would be combined in a more formal ranking system. Therefore, the Agency has determined that more formal ranking scales for the application of BHP are not practical at this time. Further refinement of the use of BHP may be undertaken in connection with a future rulemaking.

For a more detailed discussion of the BHP criteria and the problems of combining different criteria ranking, see the discussion of hazard indices in the May 25, 1983 NPRM at 48 FR 23568–23569, and the Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102, available for inspection at Room S–325, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

d. Additional Data Suggested. Some commenters suggested specific data sources for analysis of BHP. EPA used one of these sources in making the adjustments proposed in the May 25, 1983 NPRM. On the basis of data contained in the other available sources, the RQs of acetonitrile and furfural have each been raised one level to 5000 pounds.

3. Additional Criteria Considered but Not Currently Used To Adjust RQs

a. Release History and Release Potential. Several comments were received on the use of release history and release potential as criteria for adjusting RQs. EPA agrees with those commenters who stated that the manner in which releases have been handled in the past under different circumstances is not directly related to whether a particular release in the future will pose a threat to public health or welfare or the environment. The potential hazards of each release must be considered on a case-by-case basis. For this reason, and because of the data problems mentioned in the NPRM, the Agency has decided not to adjust RQs on the basis of release history and release potential at this time.

b. Corrosivity. Two commenters supported the use of corrosivity as a criterion for adjusting RQs. A major difficulty in applying corrosivity as a criterion is developing a scale relating corrosivity to RQs that is useful for all CERCLA hazardous substances. None of the comments included a scale that the Agency considered adequate, and EPA has not identified a corrosivity scale that would be generally practicable. Therefore, corrosivity will not be used at this time as a criterion for adjusting RQs.

E. Future RQ Adjustments

1. Interim RQs

As noted below in section V.G., adjusted RQs for 358 of the 698 CERCLA hazardous substances do not appear in today's rule. One commenter urged EPA to publish proposed RQs for these substances as quickly as possible. Today's **Federal Register** contains an NPRM proposing RQs for 105 of the 358 substances not receiving an adjusted RQ in today's rule. EPA will propose RQ adjustments for the remaining substances as soon as sound technical evaluations for them are complete.

Another commenter indicated that potential delays in performing such evaluations could result in an unfair reporting burden for many substances that will temporarily retain their present RQs. The commenter therefore recommended that EPA propose interim RQ adjustments for such substances based on existing information and scientific judgments.

EPA disagrees. Proposing new temporary RQs for hazardous substances would be time-consuming in itself, and, because the temporary RQs would be based on incomplete analysis, they would be unfair to the regulated community and the general public. Interim levels would still need to be changed when RQ evaluations are completed. EPA will move expeditiously to complete its evaluations of the remaining CERCLA substances, but will not establish a set of interim RQs.

2. New Data

One commenter requested that provisions be specified for allowing RQ changes when new information relating to the primary criteria or BHP becomes available. This commenter felt that EPA should acknowledge the role of interested parties in effecting appropriate revisions to the final RQs and should clarify procedures for the submission of new data.

EPA welcomes the submission of new data concerning the primary criteria and BHP at any time. RQs are based on the best data available at the time of promulgation, but they are subject to change on the basis of new information. The Agency will periodically review submitted data to ensure that RQs are not based on superseded information.

F. Application of the Methodology and Criteria

1. Introduction

Many commenters voiced general support for EPA's choice of methodology and the results of the methodology. These commenters stated that the proposed RQ adjustments would increase the efficiency of the Superfund program, reduce burdens on the regulated community, and allow EPA to concentrate its resources on the releases which pose the potentially greatest threat to public health or welfare or the environment.

The remainder of this section responds briefly to comments received by the Agency concerning the RQs of various specific substances and discusses in greater detail the comments received concerning PCBs and unlisted hazardous wastes.

2. Comments on RQs of Specific Substances

The Agency received comments from over 100 commenters concerning the RQs of 90 individual substances and 12 groups of waste streams. The majority of these comments suggested raising the RQs for specific substances.

One commenter recommended several RQ changes on the basis of aquatic toxicity data recently compiled by the U.S. Department of the Interior. The Agency has reevaluated the RQs of several hazardous substances in light of these new data, and four of the substances singled out by the commenter have received new adjusted RQs. In addition, the new data were used to alter the proposed adjusted RQs of 12 other substances. Exhibit 6 lists the 16 substances which received new

adjusted RQs on the basis of the new aquatic toxicity data. Statements by the same commenter contributed to a reexamination of the mammalian toxicity data for phosgene and the lowering of the phosgene RQ from 1000 to 10 pounds.

EXHIBIT 6.—SUBSTANCES WHICH RECEIVED FINAL ADJUSTED RQS DIFFERENT FROM PROPOSED ADJUSTED RQS ON THE BASIS OF NEW AQUATIC TOXICITY DATA

Substance	Proposed RQ	Final RQ
Aldicarb	10	1
4-Bromophenyl phenyl ether	10	100
Butyl benzyl phthalate	5000	100
N-Butyl phthalate	100	10
Dichlobenil	1000	100
4,6-Dinitro-o-cresol and salts	100	10
Dinitrophenol (and 2,5- and 2,6-isomers)	100	10
2,4-Dinitrophenol	100	10
Diethyl phthalate	100	1000
Kelthane	5000	10
Methomyl	1000	100
Pyrethrins	1000	1
2,4,5-T	100	1000
2,4,5-T Amines	100	5000
2,4,5-T Esters	100	1000
2,4,5-T Salts	100	1000

Some commenters suggested RQ changes for particular substances on the basis of volatility or particular incidents. Similarly, one commenter proposed new RQs for several waste streams based on the public impact of past releases of these wastes. However, as discussed in previous sections, neither volatility nor release history are currently being used to adjust RQs. The RQs of these substances and waste streams will therefore not be changed.

Commenters suggested raising the RQs of four substances on the basis of biodegradability. Two of these substances—crotonaldehyde and pentachlorophenol—have already been examined for biodegradability and been found not to meet the criteria for an upward RQ adjustment. EPA has reexamined the third substance, ammonia, on the basis of both chronic toxicity and BHP (although ammonia is volatile, it is also highly water soluble) and has proposed for ammonia an adjusted RQ of 100 pounds in the NPRM published in today's **Federal Register**. EPA has adjusted the RQ of the fourth substance, methyl ethyl ketone, from 1000 pounds to 5000 pounds on the basis of biodegradability.

Several commenters suggested that the RQs of metals might be based on the metal compound RQs (for soluble salts) that were assigned under CWA section 311. However, solid metal powders do not necessarily have the same effects as their soluble salts, and, therefore, the same RQs would not necessarily apply.

Many commenters argued that the RQ of ammonia should be raised from its current level of 100 pounds under the CWA; they cited the volatility of ammonia, the fact that most ammonia releases occur into air, the fact that the aquatic toxicity of the ammonium ion is much lower than that of ammonia itself, and the biodegradability of ammonia. It was also suggested that the 100-pound RQ would create a burdensome reporting requirement. Ammonia has undergone reevaluation since the May 25, 1983 NPRM; based on this reevaluation, the NPRM in today's **Federal Register** proposes to retain the 100-pound RQ for ammonia under CERCLA. The 100-pound RQ established under the CWA applies until a final adjusted RQ is promulgated.

3. PCBs

In the May 25, 1983 NPRM, the Agency proposed to lower the RQ for PCBs to one pound from the original 10-pound level set under section 311 of the Clean Water Act. The lower RQ was based on more recent aquatic toxicity data. The Agency acknowledged that because of the ubiquitous use of PCBs, it was concerned about the increased notification burden that might result from this proposed reduction of the PCB RQ. Comments were requested on these issues.

All of the comments received on this issue objected to the Agency's proposal to reduce the PCB RQ to one pound. The major concern of the commenters was that the one-pound RQ would appreciably increase the number of reportable releases and the burden on the regulated community while negligibly improving the protection of public health or welfare or the environment. Most commenters argued that restrictions on the location of equipment containing PCBs, current PCB management regulations under TSCA, and existing industry good housekeeping practices with regard to PCBs make exposure to PCBs unlikely.

Several commenters also expressed concern that significant over-reporting may dramatically increase the government's administrative costs for the notification program. Other commenters suggested alternative methods for estimating the number of PCB releases of different quantities for the purpose of calculating the economic effects of changing the PCB RQ.

Several commenters questioned the validity of the aquatic toxicity data used by the Agency and the manner in which it was employed to set the proposed RQ. Also, two commenters cited data indicating that PCBs do not pose any serious threats to human health, even though the Agency had explained that the proposed PCB RQ was based on aquatic toxicity.

After considering the comments received on the PCB RQ, the Agency has decided to defer any promulgation of a final PCB RQ until a future rulemaking. The Agency is currently evaluating PCBs to determine whether the RQ should be based on the primary criterion of potential carcinogenicity. Until a final RQ is promulgated for PCBs, the existing RQ of 10 pounds (established under the CWA) will remain in effect.

4. Unlisted RCRA Wastes (ICRE Wastes)

CERCLA section 101(14)(c) includes in the definition of hazardous substances "any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act. . . ." Therefore, solid wastes, as defined by RCRA, which exhibit one or more of the characteristics of ignitability, corrosivity, reactivity, or extraction procedure toxicity (ICRE) are considered CERCLA hazardous substances, even though they are not specifically listed under RCRA. The RQs of ICRE wastes are listed in Table 302.4 under "Unlisted Hazardous Wastes." These RQs apply only to substances that are wastes prior to being released (see section IV.D.1. above). The RQ for ignitable, corrosive, or reactive unlisted wastes is 100 pounds, and unlisted hazardous wastes that exhibit extraction procedure (EP) toxicity have the reportable quantities listed in Table 302.4.

Some commenters suggested changing the RQ established for ignitable, corrosive, or reactive wastes. The comments that suggested raising the RQ for ICR wastes were based mainly on the assumption that a government response would seldom be required for releases of these wastes smaller than 1000 pounds. However, each of these suggestions assumes some specific scenario and ignores the fact that an RQ only reflects the Agency's judgment that the federal government should be notified of releases to which a response might be necessary. Especially when releases are of unknown mixtures, conservatism is a sensible approach; therefore, the RQ is designed to cover all hazardous substances potentially present. With this in mind, the RQ for ICR wastes will remain as proposed at 100 pounds.

Two commenters suggested that the releaser be given the opportunity to report releases of reactive or ignitable wastes based on the primary criteria RQ

scales of Exhibits 3 and 4 in the NPRM (48 FR 23563). However, simply testing for the reactivity or ignitability of the waste does not further identify the composition of the waste; therefore, the waste is still unlisted. The primary criteria are designed to apply only to specific substances. Moreover, the Agency has not determined that listed and unlisted wastes pose similar potential hazards.

If an unlisted ICRE waste is analyzed and the concentrations of all of its hazardous components are identified, the waste is no longer an unlisted waste, but one characterized by its components. The specific substances present will then determine the applicable RQ in accordance with the Clean Water Act mixture rule (see section IV.D.3.b. above). For example, if a waste is known to be corrosive because of its sulfuric acid content, and no other CERCLA hazardous substances or other ICRE characteristics are present, the RQ of the waste is reached when 1000 pounds of sulfuric acid is released. If the aforementioned waste is a 25 percent solution of sulfuric acid in water, the RQ of the waste is not reached until 4000 pounds of the waste is released.

Several commenters suggested that the RQ for an EP toxic waste should apply to the EP toxic constituents of the waste rather than to the waste itself. If the composition of the waste stream is completely known, the waste is no longer an unlisted waste, and the mixture rule will apply. If the hazardous constituents of the waste and their concentrations are not completely known, however, it is impossible to apply the mixture rule as these commenters suggested. Unlisted wastes that exhibit EP toxicity have the reportable quantities listed in Table 302.4 for the contaminant on which the characteristic of EP toxicity is based; the RQ given applies to the waste itself, not merely to the toxic constituent. A sentence has been added to § 302.5(b) to clarify this point.

G. Summary of RQ Changes From the May 25, 1983 NPRM

The May 25, 1983 NPRM proposed raising the RQs for 177 CERCLA substances (including 15 waste streams) and lowering the RQs for 28 substances, leaving the RQs of 182 substances (including 11 waste streams) at their previous levels. On the basis of new aquatic toxicity data located by a commenter, the proposed adjusted RQs of 16 substances have been changed. Exhibit 6 lists these 16 substances. Similarly, new data on BHP has led to a one-level increase in the adjusted RQ of furfural, and a reevaluation of mammalian toxicity data has led to a decrease in the phosgene RQ from 1000 to 10 pounds. Applying BHP to substances exhibiting chronic toxicity has raised the adjusted RQs of two other substances. The decision not to apply BHP to substances for which five-day degradation rates are insufficient to justify a one-level increase in RQ has resulted in a lower RQ for four substances. The use of data overlooked at the time of the NPRM has affected the adjusted RQs of four additional substances.

The NPRM proposed adjusted RQs for 47 substances (including 8 waste streams) that were subsequently selected for chronic toxicity and/or potential carcinogenicity assessment; these 47 substances will therefore remain at their statutory RQ levels pending future RQ adjustments. Of these 47 substances, however, 23 (including 6 waste streams) already had RQs of one pound on the basis of one or more of the other primary criteria. Further evaluation of chronic toxicity or potential carcinogenicity is unlikely to change these one-pound RQs, because there is no RQ level less than one pound and the analysis of the other primary criteria indicates that a one-pound RQ is appropriate (although new data on the primary criteria or on BHP may suggest otherwise).

Table 302.4 in the May 25, 1983 NPRM incorrectly described eighteen substances as having one-pound statutory RQs under CERCLA; however, these substances had been assigned RQs under the Clean Water Act (40 CFR Parts 116 and 117.3). Exhibit 7 lists the eighteen substances and their correct statutory and (where appropriate) final RQs.

In sum, final adjusted RQs now appear for 319 of 608 specific substances and 21 of 90 waste streams. Statutory RQs appear for the remaining substances.[4]

For further information concerning these RQ changes, see the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, available for inspection at Room S-325, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

[4] Adjustments have been proposed for 105 of these substances in an NPRM that appears in today's Federal Register. These substances are noted by two number symbols (##) in the "Pounds (Kg)" column of Table 302.4.

H. Retention of Statutory RQ for Methyl Isocyanate

The December 4, 1984 release of methyl isocyanate (MIC) in Bhopal, India caused major loss of human life. This event pointed out the extraordinarily serious nature of MIC's acute toxicity. At this point, EPA is withdrawing its proposal to amend the RQ for MIC and is requesting further data on its toxicity.

The one-pound statutory reporting requirement will continue to apply to releases of this hazardous substance until a rule adjusting its RQ is promulgated.

EXHIBIT 7.—SUBSTANCES WITH RQS ASSIGNED UNDER THE CLEAN WATER ACT THAT THE MAY 25, 1983 NPRM LISTED AS HAVING ONE-POUND STATUTORY RQS UNDER CERCLA

Substance	Correct CWA section 311 RQ	Final RQ
Aroclor 1016	10	*10
Aroclor 1221	10	*10
Aroclor 1232	10	*10
Aroclor 1242	10	*10
Aroclor 1248	10	*10
Aroclor 1254	10	*10
Aroclor 1260	10	*10
o-Dichlorobenzene	100	100
p-Dichlorobenzene	100	100
1,2-Dichloropropane	5000	1000
1,3-Dichloropropene	5000	100
2,4-Dinitrophenol	1000	10
2,4-Dinitrotoluene	1000	*1000
2,6-Dinitrotoluene	1000	*1000
2-Nitrophenol	1000	100
4-Nitrophenol	1000	100
2,4,5-Trichlorophenol	10	*10
2,4,6-Trichlorophenol	10	*10

* These substances were selected for evaluation of chronic toxicity and/or potential carcinogenicity and adjusted RQs will be proposed for them in a future rulemaking.

I. Table 302.4

1. Introduction

Table 302.4 lists all of the CERCLA hazardous substances together with their adjusted and statutory RQs. The first part of the table lists the individual hazardous substances regulated under the statutes cited in CERCLA section 101(14). The generic groups of chemicals designated under CWA section 307(a), such as "SILVER AND COMPOUNDS," are printed in capital letters and have no RQ assigned to them. These generic groups of chemicals could potentially encompass hundreds of specific compounds with varying toxicities; it is therefore not appropriate to establish a single RQ for each generic group. Although CERCLA notification requirements apply only to specific compounds for which RQs are listed in Table 302.4, CERCLA liability may still attach to releases of specific compounds that are within one of the generic

listings but not specifically listed in Table 302.4.

The second part of the table contains the 90 hazardous waste streams designated under 40 CFR 261.31 and 261.32 (RCRA F and K lists). The Agency designated many of these waste streams as hazardous under RCRA because of the presence of specific hazardous constituents in the waste streams as set forth in Appendix VII of 40 CFR Part 261. The Agency is assigning RQs for these waste streams based on these hazardous constituents. The primary criteria and BHP, discussed above, were applied to each hazardous constituent in order to derive an RQ value. If a waste stream in 40 CFR 261.31 and 261.32 has more than one hazardous constituent, the RQ assigned to the particular waste stream represents the lowest RQ associated with the hazardous constituents present in that waste stream.

2. Minor Changes

In addition to the changes in proposed RQs described above in Section G, the following minor changes in Table 302.4 have been made:

(1) The listing for Chromium D007, one of the constituents of the characteristic of EP toxicity under the "Unlisted Hazardous Wastes," will now be "total chromium" (although it may be changed to hexavalent chromium at some time in the future under proposed amendments to RCRA). It was listed incorrectly as hexavalent chromium (VI) in Table 302.4 in the NPRM.

(2) The RCRA waste numbers for the characteristics of ignitability (D001), corrosivity (D002), and reactivity (D003) are now included in Table 302.4. They were omitted from Table 302.4 in the NPRM. In addition, the waste identification numbers for the constituents of the characteristic of EP toxicity, and the waste identification numbers for wastes F001 through K106, which were also omitted in the NPRM, are now properly included in the column for RCRA Waste Numbers in Table 302.4.

(3) In response to the suggestion of a commenter, the Table now notes that the RQ for asbestos is limited to friable forms of the substance; reporting of releases of other forms is not required, although other CERCLA liabilities may attach.

VI. Reportable Quantity Adjustments Under Section 311 of the Clean Water Act

In the May 25, 1983 NPRM, EPA requested comments on its proposal to make RQs adjusted under CERCLA the applicable RQs for purposes of reporting discharges of hazardous substances pursuant to section 311 of the Clean Water Act. Making RQs the same for substances listed under both statutes would make the notification requirements for the substances involved consistent and less confusing for the regulated community.

Of nine comments received on the issue of adjusting CWA RQs, five were completely in favor of the Agency's proposal and agreed that it would alleviate much confusion. However, four comments indicated that such adjustment should proceed only for those substances for which CWA RQs would be raised. These commenters claimed that CWA RQs are based on aquatic toxicity, while CERCLA RQs must consider releases into other media. Thus, they reasoned, lowering CWA RQs based on criteria used to set CERCLA RQs would be unfair.

EPA does not feel that different RQs under the two statutes would serve any purpose. Even if the CWA RQs were not lowered, releases of CWA substances would still be reportable when released at CERCLA RQ levels because CERCLA's scope and jurisdiction fully encompass all hazardous substance discharges reportable under CWA. The primary purpose of equalizing RQs under CERCLA and the CWA is to make the task of reporting releases less confusing for the regulated community.

VII. Summary of Supporting Analyses

A. Classification and Regulatory Impact Analysis

Rulemaking protocol under Executive Order 12291 requires that proposed regulations be classified as "major" or "non-major" for purposes of review by the Office of Management and Budget. According to the E.O. 12291, major rules are regulations that are likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Regulatory Impact Analysis, available for inspection at Room S-325, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, shows that today's regulation is "non-major" because it results in a net cost savings of approximately $17 million annually, of which about $2.6 million annually will be saved by the regulated community (the remainder to be saved by the government).[5]

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have "significant impact on a substantial number of small entities." Chapter 7 of the Regulatory Impact Analysis estimates the potential impact of today's regulation on a model small chemical firm. The chapter first estimates an upper-bound total annual cost of compliance by a small firm at $5,604 (in 1983 dollars) and then compares this figure to other measures of a small firm's economic status. Even with this extremely conservative estimate, the total cost per year of compliance is a negligible percentage of both the pre-tax annual cash flow and equity of the model small firm—a fraction of one percent for both measures. EPA therefore certifies that this regulation will not have a significant impact on a substantial number of small entities, and thus no Regulatory Flexibility Analysis is needed.

C. Information Impact Analysis

EPA anticipates that RQ adjustments will change the paperwork burden imposed on the regulated community for information collection associated with reporting releases. As estimated in the Regulatory Impact Analysis, today's regulation will reduce the paperwork burden of notification and recordkeeping on private parties by almost 50,000 hours.

The information collection requirements contained in this rule are covered by the U.S. Coast Guard submission for information collection by the National Response Center. The requirements have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2115-0137.

List of Subjects in 40 CFR Part 302

Air pollution control, Chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Intergovernmental relations, Natural resources, Nuclear materials, Pesticides and pests, Radioactive materials, Reporting and recordkeeping

[5] These figures do not include the costs or benefits associated with the continuous release exemption.

requirements, Superfund, Waste treatment and disposal, Water pollution control.

Dated: February 13, 1985.

Lee M. Thomas,

Administrator.

1. 40 CFR is amended by adding Part 302 as follows:

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

Sec.

302.1 Applicability.
302.2 Abbreviations.
302.3 Definitions.
302.4 Designation of hazardous substances.
302.5 Determination of reportable quantities.
302.6 Notification requirements.
302.7 Penalties.

Authority: Section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 USC 9602; Sections 311 and 501(a) of the Federal Water Pollution Control Act, 33 USC 1321 and 1361.

§ 302.1 Applicability.

This regulation designates under section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act") those substances in the statutes referred to in section 101(14) of the Act, identifies reportable quantities for these substances, and sets forth the notification requirements for releases of these substances. This regulation also sets forth reportable quantities for hazardous substances designated under section 311(b)(2)(A) of the Clean Water Act.

§ 302.2 Abbreviations.

CASRN = Chemical Abstracts Service Registry Number
RCRA = Resource Conservation and Recovery Act of 1976, as amended
lb = pound
kg = kilogram
RQ = reportable quantity

§ 302.3 Definitions.

As used in this part, all terms shall have the meaning set forth below:

"The Act", "CERCLA", or "Superfund" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Pub. L. 96–510);

"Administrator" means the Administrator of the United States Environmental Protection Agency ("EPA");

"consumer product" shall have the meaning stated in 15 U.S.C. 2052;

"environment" means (1) the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Fishery Conservation and Management Act of 1976, and (2) any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States;

"facility" means (1) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (2) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel;

"hazardous substance" means any substance designated pursuant to 40 CFR 302;

"hazardous waste" shall have the meaning provided in 40 CFR 261.3;

"navigable waters" or "navigable waters of the United States means waters of the United States, including the territorial seas;

"offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;

"onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land or non-navigable waters within the United States;

"person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body;

"release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, but excludes (1) any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons, (2) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine, (3) release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under Section 170 of such Act, or for the purposes of Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act or any other response action, any release of source, byproduct, or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978, and (4) the normal application of fertilizer;

"reportable quantity" means that quantity, as set forth in this part, the release of which requires notification pursuant to this part;

"United States" include the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction; and

"vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

§ 302.4 Designation of hazardous substances.

(a) *Listed hazardous substances.* The elements and compounds and hazardous wastes appearing in Table 302.4 are designated as hazardous substances under section 102(a) of the Act.

(b) *Unlisted hazardous substances.* A solid waste, as defined in 40 CFR 261.2, which is not excluded from regulation as a hazardous waste under 40 CFR 261.4(b), is a hazardous substance under section 101(14) of the Act if it exhibits any of the characteristics identified in 40 CFR 261.20 through 261.24.

Table 302.4—List of Hazardous Substances and Reportable Quantities

Note—The numbers under the column headed "CASRN" are the Chemical Abstracts Service Registry Numbers for each hazardous substance. Other names by which each hazardous substance is identified in other statutes and their implementing regulations are provided in the "Regulatory Synonyms" column. The "Statutory RQ" column lists the RQs for hazardous substances established by section 102 of CERCLA. The "Statutory Code" column indicates the statutory source for designating each substance as a CERCLA hazardous substance: "1" indicates that the statutory source is section 311(b)(4) of the Clean Water Act, "2" indicates that the source is section 307(a) of the Clean Water Act, "3" indicates that the source is section 112 of the Clean Air Act, and "4" indicates that the source is RCRA section 3001. The

"RCRA Waste Number" column provides the waste identification numbers assigned to various substances by RCRA regulations. The column headed "Category" lists the code letters "X," "A," "B," "C," and "D," which are associated with reportable quantities of 1, 10, 100, 1000, and 5000 pounds, respectively. The "Pounds (kg)" column provides the reportable quantity for each hazardous substance in pounds and kilograms.

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Acenaphthene	83329		1*	2		X	1## (0.454)
Acenaphthylene	208968		1*	2		X	1## (0.454)
Acetaldehyde	75070	Ethanal	1000	1,4	U001	C	1000 (454)
Acetaldehyde, chloro-	107200	Chloracetaldehyde	1*	4	P023	C	1000 (454)
Acetaldehyde, trichloro-	75876	Chloral	1*	4	U034	X	1#(0.454)
Acetamide, N-(aminothioxomethyl)-	591082	1-Acetyl-2-thiourea	1*	4	P002	C	1000 (454)
Acetamide, N-(4-ethoxyphenyl)-	62442	Phenacetin	1*	4	U187	X	1# (0.454)
Acetamide, N-9H-fluoren-2-yl-	53963	2-Acetylaminofluorene	1*	4	U005	X	1# (0.454)
Acetamide, 2-fluoro-	640197	Fluoroacetamide	1*	4	P057	B	100(45.4)
Acetic acid	64197		1000	1		D	5000 (2270)
Acetic acid, ethyl ester	141786	Ethyl acetate	1*	4	U112	D	5000 (2270)
Acetic acid, fluoro-, sodium salt	62748	Fluoroacetic acid, sodium salt	1*	4	P058	A	10 (4.54)
Acetic acid, lead salt	301042	Lead acetate	5000	1,4	U144	D	5000# (2270)
Acetic acid, thallium(I) salt	563688	Thallium(I) acetate	1*	4	U214	X	1## (0.454)
Acetic anhydride	108247		1000	1		D	5000 (2270)
Acetimidic acid,N-[(methylcarbamoyl) oxy]thio-, methyl ester.	16752775	Methomyl	1*	4	P066	B	100 (45.4)
Acetone	67641	2-Propanone	1*	4	U002	D	5000 (2270)
Acetone cyanohydrin	75865	2-Methyllactonitrile Propanenitrile, 2-hydroxy-2-methyl-	10	1,4	P069	A	10 (4.54)
Acetonitrile	75058	Ethanenitrile	1*	4	U003	D	5000 (2270)
3-(alpha-Acetonylbenzyl)- 4-hydroxycoumarin and salts	81812	Warfarin	1*	4	P001	B	100 (45.4)
Acetophenone	98862	Ethanone, 1-phenyl-	1*	4	U004	D	5000 (2270)
2-Acetylaminofluorene	53963	Acetamide, N-9H-fluoren-2-yl-	1*	4	U005	X	1# (0.454)
Acetyl bromide	506967		5000	1		D	5000 (2270)
Acetyl chloride	75365	Ethanoyl chloride	5000	1,4	U006	D	5000 (2270)
1-Acetyl-2-thiourea	591082	Acetamide, N-(aminothioxomethyl)-	1*	4	P002	C	1000 (454)
Acrolein	107028	2-Propenal	1	1,2,4	P003	X	1 (0.454)
Acrylamide	79061	2-Propenamide	1*	4	U007	D	5000 (2270)
Acrylic acid	79107	2-Propenoic acid	1*	4	U008	D	5000 (2270)
Acrylonitrile	107131	2-Propenenitrile	100	1,2,4	U009	B	100# (45.4)
Adipic acid	124049		5000	1		D	5000 (2270)
Alanine, 3-[p-bis(2-chloroethyl)amino]phenyl-,L-	148823	Melphalan	1*	4	U150	X	1# (0.454)
Aldicarb	116063	Propanal, 2-methyl-2-(methylthio)-, O-[(methylamino) carbonyl]oxime.	1*	4	P070	X	1 (0.454)
Aldrin	309002	1,2,3,4,10-10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo, exo- dimethanonaphthalene.	1	1,2,4	P004	X	1# (0.454)
Allyl alcohol	107186	2-Propen-1-ol	100	1,4	P005	B	100 (45.4)
Allyl chloride	107051		1000	1		C	1000 (454)
Aluminum phosphide	20859738		1*	4	P006	B	100 (45.4)
Aluminum sulfate	10043013		5000	1		D	5000 (2270)
5-(Aminomethyl)-3-isoxazolol	2763964	3(2H)-Isoxazolone, 5-(aminomethyl)-	1*	4	P007	C	1000 (454)
4-Aminopyridine	504245	4-Pyridinamine	1*	4	P008	C	1000 (454)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Amitrole	61825	1H-1,2,4-Triazol-3-amine	1*	4	U011	X	1# (0.454)
Ammonia	7664417		100	1		B	100## (45.4)
Ammonium acetate	631618		5000	1		D	5000 (2270)
Ammonium benzoate	1863634		5000	1		D	5000 (2270)
Ammonium bicarbonate	1066337		5000	1		D	5000 (2270)
Ammonium bichromate	7789095		1000	1		C	1000# (454)
Ammonium bifluoride	1341497		5000	1		D	5000## (2270)
Ammonium bisulfite	10192300		5000	1		D	5000 (2270)
Ammonium carbamate	1111780		5000	1		D	5000 (2270)
Ammonium carbonate	506876		5000	1		D	5000 (2270)
Ammonium chloride	12125029		5000	1		D	5000 (2270)
Ammonium chromate	7788989		1000	1		C	1000# (454)
Ammonium citrate, dibasic	3012655		5000	1		D	5000 (2270)
Ammonium fluoborate	13826830		5000	1		D	5000 (2270)
Ammonium fluoride	12125018		5000	1		B	100 (45.4)
Ammonium hydroxide	1336216		1000	1		C	1000 (454)
Ammonium oxalate	6009707 5972736 14258492		5000	1		D	5000 (2270)
Ammonium picrate	131748	Phenol, 2,4,6-trinitro-, ammonium salt	1*	4	P009	A	10 (4.54)
Ammonium silicofluoride	16919190		1000	1		C	1000 (454)
Ammonium sulfamate	7773060		5000	1		D	5000 (2270)
Ammonium sulfide	12135761		5000	1		B	100 (45.4)
Ammonium sulfite	10196040		5000	1		D	5000 (2270)
Ammonium tartrate	14307438 3164292		5000	1		D	5000 (2270)
Ammonium thiocyanate	1762954		5000	1		D	5000 (2270)
Ammonium thiosulfate	7783188		5000	1		D	5000 (2270)
Ammonium vanadate	7803556	Vanadic acid, ammonium salt	1*	4	P119	C	1000 (454)
Amyl acetate iso- sec- tert-	628637 123922 626380 625161		1000	1		D	5000 (2270)
Aniline	62533	Benzenamine	1000	1,4	U012	D	5000 (2270)
Anthracene	120127		1*	2		X	1## (0.454)
Antimony 11	7440360		1*	2		X	1## (0.454)
ANTIMONY AND COMPOUNDS			1*	2			**
Antimony pentachloride	7647189		1000	1		C	1000 (454)
Antimony potassium tartrate	28300745		1000	1		B	100 (45.4)
Antimony tribromide	7789619		1000	1		C	1000 (454)
Antimony trichloride	10025919		1000	1		C	1000(454)
Antimony trifluoride	7783564		1000	1		C	1000 (454)
Antimony trioxide	1309644		5000	1		C	1000 (454)
Aroclor 1016	12674112	Polychlorinated Biphenyls (PCBs)	10	1,2		A	10# (4.54)
Aroclor 1221	11104282	Polychlorinated Biphenyls (PCBs)	10	1,2		A	10# (4.54)
Aroclor 1232	11141165	Polychlorinated Biphenyls (PCBs)	10	1,2		A	10# (4.54)
Aroclor 1242	53469219	PolychlorinatedBiphenyls (PCBs)	10	1,2		A	10# (4.54)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Aroclor 1248	12672296	Polychlorinated Biphenyls (PCBs)	10	1,2		A	10# (4.54)
Aroclor 1254	11097691	Polychlorinated Biphenyls (PCBs)	10	1,2		A	10# (4.54)
Aroclor 1260	11096825	Polychlorinated Biphenyls (PCBs)	10	1,2		A	10# (4.54)
Arsenic ††	7440382		1*	2,3		X	1#(0.454)
Arsenic acid	1327522 7778394		1*	4	P010	X	1# (0.454)
ARSENIC AND COMPOUNDS			1*	2			**
Arsenic disulfide	1303328		5000	1		D	5000# (2270)
Arsenic(III) oxide	1327533	Arsenic trioxide	5000	1,4	P012	D	5000# (2270)
Arsenic(V) oxide	1303282	Arsenic pentoxide	5000	1,4	P011	D	5000#(2270)
Arsenic pentoxide	1303282	Arsenic(V) oxide	5000	1,4	P011	D	5000# (2270)
Arsenic trichloride	7784341		5000	1		D	5000# (2270)
Arsenic trioxide	1327533	Arsenic(III) oxide	5000	1,4	P012	D	5000# (2270)
Arsenic trisulfide	1303339		5000	1		D	5000# (2270)
Arsine, diethyl-	692422	Diethylarsine	1*	4	P038	X	1# (0.454)
Asbestos †††	1332214		1*	2,3		X	1# (0.454)
Auramine	492808	Benzenamine, 4,4'-carbonimidoylbis(N,N-dimethyl-	1*	4	U014	X	1# (0.454)
Azaserine	115026	L-Serine, diazoacetate (ester)	1*	4	U015	X	1# (0.454)
Azindine	151564	Ethylenimine	1*	4	P054	X	1# (0.454)
Azirino(2',3':3,4)pyrrolo(1,2-a)indole-4,7-dione,6-amino-8-[((aminocarbonyl)oxy)methyl]- 1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-	50077	Mitomycin C	1*	4	U010	X	1# (0.454)
Barium cyanide	542621		10	1,4	P013	A	10 (4.54)
Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	56495	3-Methylcholanthrene	1*	4	U157	X	1# (0.454)
Benz[c]acridine	225514	3,4-Benzacridine	1*	4	U016	X	1# (0.454)
3,4-Benzacridine	225514	Benz[c]acridine	1*	4	U016	X	1# (0.454)
Benzal chloride	98873	Benzene, dichloromethyl-	1*	4	U017	D	5000 (2270)
Benz[a]anthracene	56553	1,2-Benzanthracene Benzo[a]anthracene	1*	2,4	U018	X	1# (0.454)
1,2-Benzanthracene	56553	Benz[a]anthracene Benzo[a]anthracene	1*	2,4	U018	X	1# (0.454)
1,2-Benzanthracene, 7,12-dimethyl-	57976	7,12-Dimethylbenz[a]anthracene	1*	4	U094	X	1# (0.454)
Benzenamine	62533	Aniline	1000	1,4	U012	D	5000 (2270)
Benzenamine, 4,4'-carbonimidoylbis(N,N-dimethyl-	492808	Auramine	1*	4	U014	X	1# (0.454)
Benzenamine, 4-chloro-	106478	p-Chloroaniline	1*	4	P024	C	1000 (454)
Benzenamine, 4-chloro-2-methyl-,hydrochloride	3165933	4-Chloro-o-toluidine, hydrochloride	1*	4	U049	X	1# (0.454)
Benzenamine, N,N-dimethyl-4-phenylazo-	60117	Dimethylaminoazobenzene	1*	4	U093	X	1# (0.454)
Benzenamine, 4,4'-methylenebis(2-chloro-	101144	4,4'-Methylenebis(2-chloroaniline)	1*	4	U158	X	1# (0.454)
Benzenamine, 2-methyl-, hydrochloride	636215	o-Toluidine hydrochloride	1*	4	U222	X	1# (0.454)
Benzenamine, 2-methyl-5-nitro-	99558	5-Nitro-o-toluidine	1*	4	U181	X	1# (0.454)
Benzenamine, 4-nitro-	100016	p-Nitroaniline	1*	4	P077	D	5000 (2270)
Benzene	71432		1000	1,2,3,4	U019	C	1000# (454)
Benzene, 1-bromo-4-phenoxy-	101553	4-Bromophenyl phenyl ether	1*	2,4	U030	B	100 (45.4)
Benzene, chloro-	108907	Chlorobenzene	100	1,2,4	U037	B	100 (45.4)
Benzene, chloromethyl-	100447	Benzyl chloride	100	1,4	P028	B	100# (45.4)
Benzene, 1,2-dichloro-	95501	1,2-Dichlorobenzene o-Dichlorobenzene	100	1,2,4	U070	B	100 (45.4)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Benzene, 1,3-dichloro-	541731	1,3-Dichlorobenzene m-Dichlorobenzene	1*	2,4	U071	B	100 (45.4)
Benzene, 1,4-dichloro-	106467	1,4-Dichlorobenzene p-Dichlorobenzene	100	1,2,4	U072	B	100 (45.4)
Benzene, dichloromethyl-	98873	Benzal chloride	1*	4	U017	D	5000 (2270)
Benzene, 2,4-diisocyanatomethyl-	584849 91087 26471625	Toluene diisocyanate	1*	4	U223	B	100 (45.4)
Benzene, dimethyl m- o- p-	1330207 108383 95476 106423	Xylene m- o- p-	1000	1,4	U239	C	1000 (454)
Benzene, hexachloro-	118741	Hexachlorobenzene	1*	2,4	U127	X	1# (0.454)
Benzene, hexahydro-	110827	Cyclohexane	1000	1,4	U056	C	1000 (454)
Benzene, hydroxy-	108952	Phenol	1000	1,2,4	U188	C	1000## (454)
Benzene, methyl-	108883	Toluene	1000	1,2,4	U220	C	1000 (454)
Benzene, 1-methyl-2,4-dinitro-	121142	2,4-Dinitrotoluene	1000	1,2,4	U105	C	1000# (454)
Benzene, 1-methyl-2,6-dinitro-	606202	2,6-Dinitrotoluene	1000	1,2,4	U106	C	1000# (454)
Benzene, 1,2-methylenedioxy-4-allyl-	94597	Safrole	1*	4	U203	X	1# (0.454)
Benzene, 1,2-methylenedioxy-4-propenyl-	120581	Isosafrole	1*	4	U141	X	1# (0.454)
Benzene, 1,2-methylenedioxy-4-propyl-	94586	Dihydrosafrole	1*	4	U090	X	1# (0.454)
Benzene, 1-methylethyl-	98828	Cumene	1*	4	U055	D	5000 (2270)
Benzene, nitro-	98953	Nitrobenzene	1000	1,2,4	U169	C	1000 (454)
Benzene, pentachloro-	608935	Pentachlorobenzene	1*	4	U183	X	1## (0.454)
Benzene, pentachloronitro-	82688	Pentachloronitrobenzene	1*	4	U185	X	1# (0.454)
Benzene, 1,2,4,5-tetrachloro-	95943	1,2,4,5-Tetrachlorobenzene	1*	4	U207	D	5000 (2270)
Benzene, trichloromethyl-	98077	Benzotrichloride	1*	4	U023	X	1# (0.454)
Benzene, 1,3,5-trinitro-	99354	sym-Trinitrobenzene	1*	4	U234	X	1## (0.454)
Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester.	510156	Ethyl 4,4'-dichlorobenzilate	1*	4	U038	X	1# (0.454)
1,2-Benzenedicarboxylic acid anhydride	85449	Phthalic anhydride	1*	4	U190	D	5000 (2270)
1,2-Benzenedicarboxylic acid,[bis(2-ethylhexyl)] ester	117817	Bis(2-ethylhexyl)phthalate	1*	2,4	U028	X	1# (0.454)
1,2-Benzenedicarboxylic acid,dibutyl ester	84742	n-Butyl phthalate Dibutyl phthalate Di-n-butyl phthalate	100	1,2,4	U069	A	10 (4.54)
1,2-Benzenedicarboxylic acid,diethyl ester	84662	Diethyl phthalate	1*	2,4	U088	C	1000 (454)
1,2-Benzenedicarboxylic acid,dimethyl ester	131113	Dimethyl phthalate	1*	2,4	U102	D	5000 (2270)
1,2-Benzenedicarboxylic acid,di-n-octyl ester	117840	Di-n-octyl phthalate	1*	2,4	U107	D	5000 (2270)
1,3-Benzenediol	108463	Resorcinol	1000	1,4	U201	D	5000 (2270)
1,2-Benzenediol,4-[1-hydroxy-2-(methylamino)ethyl]-	51434	Epinephrine	1*	4	P042	C	1000 (454)
Benzenesulfonic acid chloride	98099	Benzenesulfonyl chloride	1*	4	U020	B	100 (45.4)
Benzenesulfonyl chloride	98099	Benzenesulfonic acid chloride	1*	4	U020	B	100 (45.4)
Benzenethiol	108985	Thiophenol	1*	4	P014	B	100 (45.4)
Benzidine	92875	(1,1'-Biphenyl)-4,4'diamine	1*	2,4	U021	X	1# (0.454)
1,2-Benzisothiazolin-3-one,1,1-dioxide, and salts	81072	Saccharin and salts	1*	4	U202	X	1# (0.454)
Benzo[a]anthracene	56553	Benz[a]anthracene 1,2-Benzanthracene	1*	2,4	U018	X	1# (0.454)
Benzo[b]fluoranthene	205992		1*	2		X	1# (0.454)
Benzo(k)fluoranthene	207089		1*	2		X	1# (0.454)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Benzo[j,k]fluorene	206440	Fluoranthene	1*	2,4	U120	X	1## (0.454)
Benzoic acid	65850		5000	1		D	5000 (2270)
Benzonitrile	100470		1000	1		D	5000 (2270)
Benzo[ghi]perylene	191242		1*	2		X	1## (0.454)
Benzo[a]pyrene	50328	3,4-Benzopyrene	1*	2,4	U022	X	1# (0.454)
3,4-Benzopyrene	50328	Benzo[a]pyrene	1*	2,4	U022	X	1# (0.454)
p-Benzoquinone	106514	1,4-Cyclohexadienedione	1*	4	U197	X	1## (0.454)
Benzotrichloride	98077	Benzene, trichloromethyl-	1*	4	U023	X	1# (0.454)
Benzoyl chloride	98884		1000	1		C	1000 (454)
1,2-Benzphenanthrene	218019	Chrysene	1*	2,4	U050	X	1# (0.454)
Benzyl chloride	100447	Benzene, chloromethyl-	100	1,4	P028	B	100# (45.4)
Beryllium ††	7440417	Beryllium dust	1*	2,3,4	P015	X	1# (0.454)
BERYLLIUM AND COMPOUNDS			1*	2			**
Beryllium chloride	7787475		5000	1		D	5000# (2270)
Beryllium dust	7440417	Beryllium	1*	2,3,4	P015	X	1# (0.454)
Beryllium fluoride	7787497		5000	1		D	5000# (2270)
Beryllium nitrate	13597994 7787555		5000	1		D	5000# (2270)
alpha - BHC	319846		1*	2		X	1# (0.454)
beta - BHC	319857		1*	2		X	1# (0.454)
gamma - BHC	58899	Hexachlorocyclohexane (gamma isomer) Lindane	1	1,2,4	U129	X	1# (0.454)
delta - BHC	319868		1*	2		X	1## (0.454)
2,2'-Bioxirane	1464535	1,2:3,4-Diepoxybutane	1*	4	U085	X	1# (0.454)
(1,1'-Biphenyl)-4,4'diamine	92875	Benzidine	1*	2,4	U021	X	1# (0.454)
(1,1'-Biphenyl)-4,4'diamine,3,3'dichloro-	91941	3,3'-Dichlorobenzidine	1*	2,4	U073	X	1# (0.454)
(1,1'-Biphenyl)-4,4'diamine,3,3'dimethoxy-	119904	3,3'-Dimethoxybenzidine	1*	4	U091	X	1# (0.454)
(1,1'Biphenyl)-4,4'-diamine,3,3'-dimethyl-	119937	3,3'-Dimethylbenzidine	1*	4	U095	X	1# (0.454)
Bis(2-chloroethoxy) methane	111911	Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro-	1*	2,4	U024	C	1000 (454)
Bis (2-chloroethyl) ether	111444	Dichloroethyl ether Ethane, 1,1'-oxybis[2-chloro-	1*	2,4	U025	X	1# (0.454)
Bis(2-chloroisopropyl) ether	108601	Propane, 2,2'-oxybis(2-chloro-	1*	2,4	U027	C	1000 (454)
Bis(chloromethyl) ether	542881	Methane, oxybis(chloro-	1*	4	P016	X	1# (0.454)
Bis(dimethylthiocarbamoyl) disulfide	137268	Thiram	1*	4	U244	A	10 (4.54)
Bis(2-ethylhexyl)phthalate	117817	1,2-Benzenedicarboxylic acid, [bis(2-ethylhexyl)] ester	1*	2,4	U028	X	1# (0.454)
Bromine cyanide	506683	Cyanogen bromide	1*	4	U246	C	1000 (454)
Bromoacetone	598312	2-Propanone, 1-bromo-	1*	4	P017	C	1000 (454)
Bromoform	75252	Methane, tribromo-	1*	2,4	U225	B	100 (45.4)
4-Bromophenyl phenyl ether	101553	Benzene, 1-bromo-4-phenoxy-	1*	2,4	U030	B	100 (45.4)
Brucine	357573	Strychnidin-10-one, 2,3-dimethoxy-	1*	4	P018	B	100 (45.4)
1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	87683	Hexachlorobutadiene	1*	2,4	U128	X	1# (0.454)
1-Butanamine, N-butyl-N-nitroso-	924163	N-Nitrosodi-n-butylamine	1*	4	U172	X	1# (0.454)
Butanoic acid, 4-[bis(2-chloroethyl)amino]benzene-	305033	Chlorambucil	1*	4	U035	X	1# (0.454)
1-Butanol	71363	n-Butyl alcohol	1*	4	U031	D	5000 (2270)
2-Butanone	78933	Methyl ethyl ketone	1*	4	U159	D	5000 (2270)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
2-Butanone peroxide	1338234	Methyl ethyl ketone peroxide	1*	4	U160	A	10 (4.54)
2-Buteral	123739 4170303	Crotonaldehyde	100	1,4	U053	B	100 (45.4)
2-Butene, 1,4-dichloro-	764410	1,4-Dichloro-2-butene	1*	4	U074	X	1 (0.454)
Butyl acetate	123864		5000	1		D	5000 (2270)
iso-	110190						
sec-	105464						
tert-	540885						
n-Butyl alcohol	71363	1-Butanol	1*	4	U031	D	5000 (2270)
Butylamine	109739		1000	1		C	1000 (454)
iso-	78819						
sec-	513495						
sec-	13952846						
tert-	75649						
Butyl benzyl phthalate	85687		1*	2		B	100 (45.4)
n-Butyl phthalate	84742	1,2-Benzenedicarboxylic acid,dibutyl ester Dibutyl phthalate Di-n-butyl phthalate	100	1,2,4	U069	A	10 (4.54)
Butyric acid	107926		5000	1		D	5000 (2270)
iso-	79312						
Cacodylic acid	75605	Hydroxydimethylarsine oxide	1*	4	U136	X	1# (0.454)
Cadmium 11	7440439		1*	2		X	1# (0.454)
Cadmium acetate	543908		100	1		B	100# (45.4)
CADMIUM AND COMPOUNDS			1*	2			**
Cadmium bromide	7789426		100	1		B	100# (45.4)
Cadmium chloride	10108642		100	1		B	100# (45.4)
Calcium arsenate	7778441		1000	1		C	1000# (454)
Calcium arsenite	52740166		1000	1		C	1000# (454)
Calcium carbide	75207		5000	1		A	10 (4.54)
Calcium chromate	13765190	Chromic acid, calcium salt	1000	1,4	U032	C	1000# (454)
Calcium cyanide	592018		10	1,4	P021	A	10 (4.54)
Calcium dodecylbenzene sulfonate	26264062		1000	1		C	1000 (454)
Calcium hypochlorite	7778543		100	1		A	10(4.54)
Camphene, octachloro-	8001352	Toxaphene	1	1,2,4	P123	X	1# (0.454)
Captan	133062		10	1		A	10## (4.54)
Carbamic acid, ethyl ester	51796	Ethyl carbamate (Urethan)	1*	4	U238	X	1# (0.454)
Carbamic acid, methylnitroso-,ethyl ester	615532	N-Nitroso-N-methylurethane	1*	4	U178	X	1# (0.454)
Carbamide, N-ethyl-N-nitroso-	759739	N-Nitroso-N-ethylurea	1*	4	U176	X	1# (0.454)
Carbamide, N-methyl-N-nitroso-	684935	N-Nitroso-N-methylurea	1*	4	U177	X	1# (0.454)
Carbamide, thio-	62566	Thiourea	1*	4	U219	X	1# (0.454)
Carbamimidoselenoic acid	630104	Selenourea	1*	4	P103	X	1## (0.454)
Carbamoyl chloride, dimethyl-	79447	Dimethylcarbamoyl chloride	1*	4	U097	X	1# (0.454)
Carbaryl	63252		100	1		B	100 (45.4)
Carbofuran	1563662		10	1		A	10 (4.54)
Carbon bisulfide	75150	Carbon disulfide	5000	1,4	P022	D	5000## (2270)
Carbon disulfide	75150	Carbon bisulfide	5000	1,4	P022	D	5000## (2270)
Carbonic acid, dithallium (I) salt	6533739	Thallium(I) carbonate	1*	4	U215	X	1## (0.454)
Carbonochloridic acid, methyl ester	79221	Methyl chlorocarbonate	1*	4	U156	C	1000 (454)
Carbon oxyfluoride	353504	Carbonyl fluoride	1*	4	U033	C	1000 (454)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Carbon tetrachloride	56235	Methane, tetrachloro-	5000	1,2,4	U211	D	5000# (2270)
Carbonyl chloride	75445	Phosgene	5000	1,4	P095	A	10 (4.54)
Carbonyl fluoride	353504	Carbon oxyfluoride	1*	4	U033	C	1000 (454)
Chloral	75876	Acetaldehyde, trichloro-	1*	4	U034	X	1#(0.454)
Chlorambucil	305033	Butsnoic acid, 4-[bis(2-chloroethyl)amino]benzene-	1*	4	U035	X	1# (0.454)
CHLORDANE (TECHNICAL MIXTURE AND METABOLITES).			1*	2			**
Chlordane	57749	Chlordane, technical 4,7-Methanoindan, 1,2,4,5,6,7,8,8-octachloro- 3a,4,7,7a-tetrahydro-	1	1,2,4	U036	X	1# (0.454)
Chlordane, technical	57749	Chlordane 4,7-Methanoindan, 1,2,4,5,6,7,8,8-octachloro- 3a,4,7,7a-tetrahydro-	1	1,2,4	U036	X	1# (0.454)
CHLORINATED BENZENES			1*	2			**
CHLORINATED ETHANES			1*	2			**
CHLORINATED NAPHTHALENE			1*	2			**
CHLORINATED PHENOLS			1*	2			**
Chlorine	7782505		10	1		A	10 (4.54)
Chlorine cyanide	506774	Cyanogen chloride	10	1,4	P033	A	10 (4.54)
Chlornaphazine	494031	2-Naphthylamine, N,N-bis(2-chloroethyl)-	1*	4	U026	X	1# (0.454)
Chloroacetaldehyde	107200	Acetaldehyde, chloro-	1*	4	P023	C	1000 (454)
CHLOROALKYL ETHERS			1*	2			**
p-Chloroaniline	106478	Benzenamine, 4-chloro-	1*	4	P024	C	1000 (454)
Chlorobenzene	108907	Benzene, chloro-	100	1,2,4	U037	B	100 (45.4)
4-Chloro-m-cresol	59507	p-Chloro-m-cresol Phenol, 4-chloro-3-methyl-	1*	2,4	U039	D	5000 (2270)
p-Chloro-m-cresol	59507	4-Chloro-m-cresol Phenol, 4-chloro-3-methyl-	1*	2,4	U039	D	5000 (2270)
Chlorodibromomethane	124481		1*	2		B	100 (45.4)
1-Chloro-2,3-epoxypropane	106896	Epichlorohydrin Oxirane, 2-(chloromethyl)-	1000	1,4	U041	C	1000# (454)
Chloroethane	75003		1*	2		X	1## (0.454)
2-Chloroethyl vinyl ether	110758	Ethene, 2-chloroethoxy-	1*	2,4	U042	C	1000 (454)
Chloroform	67663	Methane, trichloro-	5000	1,2,4	U044	D	5000# (2270)
Chloromethyl methyl ether	107302	Methane, chloromethoxy-	1*	4	U046	X	1# (0.454)
beta-Chloronaphthalene	91587	2-Chloronaphthalene Naphthalene, 2-chloro-	1*	2,4	U047	D	5000 (2270)
2-Chloronaphthalene	91587	beta-Chloronaphthalene Naphthalene, 2-chloro-	1*	2,4	U047	D	5000 (2270)
2-Chlorophenol	95578	o-Chlorophenol Phenol, 2-chloro-	1*	2,4	U048	B	100 (45.4)
o-Chlorophenol	95578	2-Chlorophenol Phenol, 2-chloro-	1*	2,4	U048	B	100 (45.4)
4-Chlorophenyl phenyl ether	7005723		1*	2		D	5000 (2270)
1-(o-Chlorophenyl)thiourea	5344821	Thiourea, (2-chlorophenyl)-	1*	4	P026	B	100 (45.4)
3-Chloropropionitrile	542767	Propanenitrile, 3-chloro-	1*	4	P027	C	1000 (454)
Chlorosulfonic acid	7790945		1000	1		C	1000 (454)
4-Chloro-o-toluidine, hydrochloride	3165933	Benzenamine, 4-chloro-2-methyl-,hydrochloride	1*	4	U049	X	1# (0.454)
Chlorpyrifos	2921882		1	1		X	1 (0.454)
Chromic acetate	1066304		1000	1		C	1000## (454)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Chromic acid	11115745 7738945		1000	1		C	1000# (454)
Chromic acid, calcium salt	13765190	Calcium chromate	1000	1,4	U032	C	1000# (454)
Chromic sulfate	10101538		1000	1		C	1000## (454)
Chromium ††	7440473		1*	2		X	1# (0.454)
CHROMIUM AND COMPOUNDS			1*	2			**
Chromous chloride	10049055		1000	1		C	1000## (454)
Chrysene	218019	1,2-Benzphenanthrene	1*	2,4	U050	X	1# (0.454)
Cobaltous bromide	7789437		1000	1		C	1000(454)
Cobaltous formate	544183		1000	1		C	1000 (454)
Cobaltous sulfamate	14017415		1000	1		C	1000 (454)
Coke Oven Emissions	N.A.		1*	3		X	1# (0.454)
Copper ††	7440508		1*	2		X	1## (0.454)
COPPER AND COMPOUNDS			1*	2			**
Copper cyanide	544923		1*	4	P029	A	10 (4.54)
Coumaphos	56724		10	1		A	10 (4.54)
Creosote	8001589		1*	4	U051	X	1# (0.454)
Cresol(s) m- o- p-	1319773 108394 95487 106445	Cresylic acid	1000	1,4	U052	C	1000## (454)
Cresylic acid m- o- p-	1319773 108394 95487 106445	Cresol(s)	1000	1,4	U052	C	1000## (454)
Crotonaldehyde	123739 4170303	2-Butenal	100	1,4	U053	B	100 (45.4)
Cumene	98828	Benzene, 1-methylethyl-	1*	4	U055	D	5000 (2270)
Cupric acetate	142712		100	1		B	100 (45.4)
Cupric acetoarsenite	12002038		100	1		B	100# (45.4)
Cupric chloride	7447394		10	1		A	10## (4.54)
Cupric nitrate	3251238		100	1		B	100 (45.4)
Cupric oxalate	5893663		100	1		B	100 (45.4)
Cupric sulfate	7758987		10	1		A	10## (4.54)
Cupric sulfate ammoniated	10380297		100	1		B	100 (45.4)
Cupric tartrate	815827		100	1		B	100## (45.4)
CYANIDES			1*	2			**
Cyanides (soluble cyanide salts), not elsewhere specified	57125		1*	4	P030	A	10 (4.54)
Cyanogen	460195		1*	4	P031	B	100 (45.4)
Cyanogen bromide	506683	Bromine cyanide	1*	4	U246	C	1000 (454)
Cyanogen chloride	506774	Chlorine cyanide	10	1,4	P033	A	10 (4.54)
1,4-Cyclohexadienedione	106514	p-Benzoquinone	1*	4	U197	X	1## (0.454)
Cyclohexane	110827	Benzene, hexahydro-	1000	1,4	U056	C	1000(454)
Cyclohexanone	108941		1*	4	U057	D	5000 (2270)
1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	77474	Hexachlorocyclopentadiene	1	1,2,4	U130	X	1# (0.454)
Cyclophosphamide	50180	2H-1,3,2-Oxazaphosphorine,2-[bis(2-chloroethyl)amino] tetrahydro-2-oxide.	1*	4	U058	X	1# (0.454)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
2,4-D Acid	94757	2,4-D, salts and esters 2,4-Dichlorophenoxyacetic acid, salts and esters	100	1,4	U240	B	100 (45.4)
2,4-D Esters	94111 94791 94804 1320189 1928387 1928616 1929733 2971382 25168267 53467111		100	1		B	100 (45.4)
2,4-D, salts and esters	94757	2,4-D Acid 2,4-Dichlorophenoxyacetic acid, salts and esters	100	1,4	U240	B	100 (45.4)
Daunomycin	20830813	5,12-Naphthacenedione, (8S-cis)-8-acetyl-10-[3-amino-2,3,6-trideoxy- alpha-L-lyxo- hexopyranosyl)oxy]-7,8,9,10-tetrahydro- 6,8,11-trihydroxy- 1-methoxy-.	1*	4	U059	X	1# (0.454)
DDD	72548	4,4' DDD Dichlorodiphenyl dichloroethane TDE	1	1,2,4	U060	X	1# (0.454)
4,4' DDD	72548	DDD Dichlorodiphenyl dichloroethane TDE	1	1,2,4	U060	X	1# (0.454)
DDE	72559	4,4' DDE	1*	2		X	1# (0.454)
4,4' DDE	72559	DDE	1*	2		X	1# (0.454)
DDT	50293	4,4' DDT Dichlorodiphenyl trichloroethane	1	1,2,4	U061	X	1# (0.454)
4,4'DDT	50293	DDT Dichlorodiphenyl trichloroethane	1	1,2,4	U061	X	1# (0.454)
DDT AND METABOLITES			1*	2			**
Decachlorooctahydro-1,3,4-metheno-2H-cyclobuta[c,d]-pentalen-2-one.	143500	Kepone	1	1,4	U142	X	1# (0.454)
Diallate	2303164	S-(2,3-Dichloroallyl) diisopropylthiocarbamate	1*	4	U062	X	1# (0.454)
Diamine	302012	Hydrazine	1*	4	U133	X	1# (0.454)
Diaminotoluene	95807 25376458 496720 823405	Toluenediamine	1*	4	U221	X	1# (0.454)
Diazinon	5333415		1	1		X	1 (0.454)
Dibenz[a,h]anthracene	53703	1,2:5,6-Dibenzanthracene Dibenzo[a,h]anthracene	1*	2,4	U063	X	1# (0.454)
1,2:5,6-Dibenzanthracene	53703	Dibenz[a,h]anthracene Dibenzo[a,h]anthracene	1*	2,4	U063	X	1# (0.454)
Dibenzo[a,h]anthracene	53703	Dibenz[a,h]anthracene 1,2:5,6-Dibenzanthracene	1*	2,4	U063	X	1# (0.454)
1,2:7,8-Dibenzopyrene	189559	Dibenz[a,i]pyrene	1*	4	U064	X	1# (0.454)
Dibenz[a,i]pyrene	189559	1,2:7,8-Dibenzopyrene	1*	4	U064	X	1#(0.454)
1,2-Dibromo-3-chloropropane	96128	Propane, 1,2-dibromo-3-chloro-	1*	4	U066	X	1# (0.454)
Dibutyl phthalate	84742	1,2-Benzenedicarboxylic acid,dibutyl ester Di-n-butyl phthalate n-Butyl phthalate	100	1,2,4	U069	A	10 (4.54)
Di-n-butyl phthalate	84742	1,2-Benzenedicarboxylic acid,dibutyl ester n-Butyl phthalate Dibutyl phthalate	100	1,2,4	U069	A	10 (4.54)
Dicamba	1918009		1000	1		C	1000 (454)
Dichlobenil	1194656		1000	1		B	100 (45.4)
Dichlone	117806		1	1		X	1 (0.454)
S-(2,3-Dichloroallyl) diisopropylthiocarbamate	2303164	Diallate	1*	4	U062	X	1# (0.454)
3,5-Dichloro-N-(1,1-dimethyl-2-propynyl)benzamide	23950585	Pronamide	1*	4	U192	D	5000 (2270)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Dichlorobenzene (mixed)	25321226		100	1		B	100 (45.4)
1,2-Dichlorobenzene	95501	Benzene, 1,2-dichloro- o-Dichlorobenzene	100	1,2,4	U070	B	100 (45.4)
1,3-Dichlorobenzene	541731	Benzene, 1,3-dichloro- m-Dichlorobenzene	1*	2,4	U071	B	100 (45.4)
1,4-Dichlorobenzene	106467	Benzene, 1,4-dichloro- p-Dichlorobenzene	100	1,2,4	U072	B	100 (45.4)
m-Dichlorobenzene	541731	Benzene, 1,3-dichloro- 1,3-Dichlorobenzene	1*	2,4	U071	B	100 (45.4)
o-Dichlorobenzene	95501	Benzene, 1,2-dichloro- 1,2-Dichlorobenzene	100	1,2,4	U070	B	100 (45.4)
p-Dichlorobenzene	106467	Benzene, 1,4-dichloro- 1,4-Dichlorobenzene	100	1,2,4	U072	B	100 (45.4)
DICHLOROBENZIDINE			1*	2			**
3,3'-Dichlorobenzidine	91941	(1,1'-Biphenyl)-4,4'diamine,3,3'dichloro-	1*	2,4	U073	X	1# (0.454)
Dichlorobromomethane	75274		1*	2		D	5000 (2270)
1,4-Dichloro-2-butene	764410	2-Butene, 1,4-dichloro-	1*	4	U074	X	1 (0.454)
Dichlorodifluoromethane	75718	Methane, dichlorodifluoro-	1*	4	U075	D	5000 (2270)
Dichlorodiphenyl dichloroethane	72548	DDD 4,4' DDD TDE	1	1,2,4	U060	X	1# (0.454)
Dichlorodiphenyl trichloroethane	50293	DDT 4,4'DDT	1	1,2,4	U061	X	1# (0.454)
1,1-Dichloroethane	75343	Ethane, 1,1-dichloro- Ethylidene dichloride	1*	2,4	U076	C	1000 (454)
1,2-Dichloroethane	107062	Ethane, 1,2-dichloro- Ethylene dichloride	5000	1,2,4	U077	D	5000# (2270)
1,1-Dichloroethylene	75354	Ethene, 1,1-dichloro- Vinylidene chloride	5000	1,2,4	U078	D	5000# (2270)
1,2-trans-Dichloroethylene	156605	Ethene, trans-1,2-dichloro-	1*	2,4	U079	C	1000 (454)
Dichloroethyl ether	111444	Bis (2-chloroethyl) ether Ethane, 1,1'-oxybis(2-chloro-	1*	2,4	U025	X	1# (0.454)
2,4-Dichlorophenol	120832	Phenol, 2,4-dichloro-	1*	2,4	U081	B	100 (45.4)
2,6-Dichlorophenol	87650	Phenol, 2,6-dichloro-	1*	4	U082	B	100 (45.4)
2,4-Dichlorophenoxyacetic acid, salts and esters	94757	2,4-D Acid 2,4-D, salts and esters	100	1,4	U240	B	100 (45.4)
Dichlorophenylarsine	696286	Phenyl dichloroarsine	1*	4	P036	X	1# (0.454)
Dichloropropane 1,1-Dichloropropane 1,3-Dichloropropane	26638197 78999 142289		5000	1		C	1000 (454)
1,2-Dichloropropane	78875	Propylene dichloride	5000	1,2,4	U083	C	1000 (454)
Dichloropropane - Dichloropropene (mixture)	8003198		5000	1		D	5000## (2270)
Dichloropropene 2,3-Dichloropropene	26952238 78886		5000	1		D	5000## (2270)
1,3-Dichloropropene	542756	Propene, 1,3-dichloro-	5000	1,2,4	U084	D	5000## (2270)
2,2-Dichloropropionic acid	75990		5000	1		D	5000 (2270)
Dichlorvos	62737		10	1		A	10 (4.54)
Dieldrin	60571	1,2,3,4,10,10-Hexachloro-6,7-epoxy- 1,4,4a,5,6,7,8,8a-octahydro-endo,exo- 1,4:5,8- dimethanonaphthalene.	1	1,2,4	P037	X	1# (0.454)
1,2:3,4-Diepoxybutane	1464535	2,2'-Bioxirane	1*	4	U085	X	1# (0.454)
Diethylamine	109897		1000	1		C	1000## (454)
Diethylarsine	692422	Arsine, diethyl-	1*	4	P038	X	1# (0.454)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
1,4-Diethylene dioxide	123911	1,4-Dioxane	1*	4	U108	X	1# (0.454)
N,N'-Diethylhydrazine	1615801	Hydrazine, 1,2-diethyl-	1*	4	U086	X	1# (0.454)
O,O-Diethyl S-[2-(ethylthio)ethyl]phosphorodithioate	298044	Disulfoton	1	1,4	P039	X	1 (0.454)
O,O-Diethyl S-methyl dithiophosphate	3288582	Phosphorodithioic acid, O,O-diethyl S-methylester	1*	4	U087	D	5000 (2270)
Diethyl-p-nitrophenyl phosphate	311455	Phosphoric acid,diethyl p-nitrophenyl ester	1*	4	P041	B	100 (45.4)
Diethyl phthalate	84662	1,2-Benzenedicarboxylic acid,diethyl ester	1*	2,4	U088	C	1000 (454)
O,O-Diethyl O-pyrazinyl phosphorothioate	297972	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester	1*	4	P040	B	100 (45.4)
Diethylstilbestrol	56531	4,4'-Stilbenediol, alpha,alpha'-diethyl-	1*	4	U089	X	1# (0.454)
1,2-Dihydro-3,6-pyridazinedione	123331	Maleic hydrazide	1*	4	U148	D	5000 (2270)
Dihydrosafrole	94586	Benzene, 1,2-methylenedioxy-4-propyl-	1*	4	U090	X	1# (0.454)
Diisopropyl fluorophosphate	55914	Phosphorofluoridic acid,bis(1-methylethyl) ester	1*	4	P043	B	100 (45.4)
Dimethoate	60515	Phosphorodithioic acid,O,O-dimethyl S-[2(methylamino)-2-oxoethyl] ester.	1*	4	P044	A	10 (4.54)
3,3'-Dimethoxybenzidine	119904	(1,1'-Biphenyl)-4,4'diamine,3,3'dimethoxy-	1*	4	U091	X	1# (0.454)
Dimethylamine	124403	Methanamine, N-methyl-	1000	1,4	U092	C	1000## (454)
Dimethylaminoazobenzene	60117	Benzenamine, N,N-dimethyl-4-phenylazo-	1*	4	U093	X	1# (0.454)
7,12-Dimethylbenz[a]anthracene	57976	1,2-Benzanthracene, 7,12-dimethyl-	1*	4	U094	X	1# (0.454)
3,3'-Dimethylbenzidine	119937	(1,1'Biphenyl)-4,4'-diamine,3,3'-dimethyl-	1*	4	U095	X	1# (0.454)
alpha,alpha-Dimethylbenzylhydroperoxide	80159	Hydroperoxide, 1-methyl-1-phenylethyl-	1*	4	U096	A	10 (4.54)
3,3-Dimethyl-1-(methylthio)-2-butanone, O-[(methylamino)carbonyl] oxime.	39196184	Thiofanox	1*	4	P045	B	100 (45.4)
Dimethylcarbamoyl chloride	79447	Carbamoyl chloride, dimethyl-	1*	4	U097	X	1# (0.454)
1,1-Dimethylhydrazine	57147	Hydrazine, 1,1-dimethyl-	1*	4	U098	X	1# (0.454)
1,2-Dimethylhydrazine	540738	Hydrazine, 1,2-dimethyl-	1*	4	U099	X	1# (0.454)
O,O-Dimethyl O-p-nitrophenyl phosphorothioate	298000	Methyl parathion	100	1,4	P071	B	100## (45.4)
Dimethylnitrosamine	62759	N-Nitrosodimethylamine	1*	2,4	P082	X	1# (0.454)
alpha,alpha-Dimethylphenethylamine	122098	Ethanamine, 1,1-dimethyl-2-phenyl-	1*	4	P046	D	5000 (2270)
2,4-Dimethylphenol	105679	Phenol, 2,4-dimethyl-	1*	2,4	U101	B	100 (45.4)
Dimethyl phthalate	131113	1,2-Benzenedicarboxylic acid,dimethyl ester	1*	2,4	U102	D	5000 (2270)
Dimethyl sulfate	77781	Sulfuric acid, dimethyl ester	1*	4	U103	X	1# (0.454)
Dinitrobenzene (mixed)	25154545		1000	1		B	100 (45.4)
m-	99650						
o-	528290						
p-	100254						
4,6-Dinitro-o-cresol and salts	534521	Phenol, 2,4-dinitro-6-methyl-, and salts	1*	2,4	P047	A	10 (4.54)
4,6-Dinitro-o-cyclohexylphenol	131895	Phenol, 2-cyclohexyl-4,6-dinitro-	1*	4	P034	B	100 (45.4)
Dinitrophenol	25550587		1000	1		A	10 (4.54)
2,5-	329715						
2,6-	573568						
2,4-Dinitrophenol	51285	Phenol, 2,4-dinitro-	1000	1,2,4	P048	A	10 (4.54)
Dinitrotoluene	25321146		1000	1,2		C	1000# (454)
3,4-Dinitrotoluene	610399						
2,4-Dinitrotoluene	121142	Benzene, 1-methyl-2,4-dinitro-	1000	1,2,4	U105	C	1000# (454)
Dinoseb	88857	Phenol, 2,4-dinitro-6-(1-methylpropyl)-	1*	4	P020	C	1000 (454)
Di-n-octyl phthalate	117840	1,2-Benzenedicarboxylic acid,di-n-octyl ester	1*	2,4	U107	D	5000 (2270)
1,4-Dioxane	123911	1,4-Diethylene dioxide	1*	4	U108	X	1# (0.454) **
DIPHENYLHYDRAZINE			1*	2			**
1,2-Diphenylhydrazine	122667	Hydrazine, 1,2-diphenyl-	1*	2,4	U109	X	1# (0.454)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Diphosphoramide, octamethyl-	152169	Octamethylpyrophosphoramide	1*	4	P085	B	100 (45.4)
Dipropylamine	142847	1-Propanamine, N-propyl-	1*	4	U110	D	5000 (2270)
Di-n-propylnitrosamine	621647	N-Nitrosodi-n-propylamine	1*	2,4	U111	X	1# (0.454)
Diquat	85007 2764729		1000	1		C	1000 (454)
Disulfoton	298044	O,O-Diethyl S-[2-(ethylthio)ethyl] phosphorodithioate	1	1,4	P039	X	1 (0.454)
2,4-Dithiobiuret	541537	Thioimidodicarbonic diamide	1*	4	P049	B	100 (45.4)
Dithiopyrophosphoric acid, tetraethyl ester	3689245	Tetraethyldithiopyrophosphate	1*	4	P109	B	100 (45.4)
Diuron	330541		100	1		B	100 (45.4)
Dodecylbenzenesulfonic acid	27176870		1000	1		C	1000 (454)
Endosulfan	115297	5-Norbornene-2,3-dimethanol,1,4,5,6,7,7-hexachloro, cyclic sulfite.	1	1,2,4	P050	X	1 (0.454)
alpha - Endosulfan	959988		1*	2		X	1 (0.454)
beta - Endosulfan	33213659		1*	2		X	1 (0.454)
ENDOSULFAN AND METABOLITES			1*	2			**
Endosulfan sulfate	1031078		1*	2		X	1 (0.454)
Endothall	145733	7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid	1*	4	P088	C	1000 (454)
Endrin	72208	1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo,endo- 1,4:5,8-dimethanonaphthalene.	1	1,2,4	P051	X	1 (0.454)
Endrin aldehyde	7421934		1*	2		X	1 (0.454)
ENDRIN AND METABOLITES			1*	2			**
Epichlorohydrin	106898	1-Chloro-2,3-epoxypropane Oxirane, 2-(chloromethyl)-	1000	1,4	U041	C	1000# (454)
Epinephrine	51434	1,2-Benzenediol, 4-[1-hydroxy-2-(methylamino)ethyl]-	1*	4	P042	C	1000 (454)
Ethanal	75070	Acetaldehyde	1000	1,4	U001	C	1000 (454)
Ethanamine, 1,1-dimethyl-2-phenyl-	122098	alpha,alpha-Dimethylphenethylamine	1*	4	P046	D	5000 (2270)
Ethanamine, N-ethyl-N-nitroso-	55185	N-Nitrosodiethylamine	1*	4	U174	X	1# (0.454)
Ethane, 1,2-dibromo-	106934	Ethylene dibromide	1000	1,4	U067	C	1000# (454)
Ethane, 1,1-dichloro-	75343	1,1-Dichloroethane Ethylidene dichloride	1*	2,4	U076	C	1000 (454)
Ethane, 1,2-dichloro-	107062	1,2-Dichloroethane Ethylene dichloride	5000	1,2,4	U077	D	5000# (2270)
Ethane, 1,1,1,2,2,2-hexachloro-	67721	Hexachloroethane	1*	2,4	U131	X	1# (0.454)
Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro-	111911	Bis(2-chloroethoxy) methane	1*	2,4	U024	C	1000 (454)
Ethane, 1,1'-oxybis-	60297	Ethyl ether	1*	4	U117	B	100 (45.4)
Ethane, 1,1'-oxybis[2-chloro-	111444	Bis (2-chloroethyl) ether Dichloroethyl ether	1*	2,4	U025	X	1# (0.454)
Ethane, pentachloro-	76017	Pentachloroethane	1*	4	U184	X	1## (0.454)
Ethane, 1,1,1,2-tetrachloro-	630206	1,1,1,2-Tetrachloroethane	1*	4	U208	X	1# (0.454)
Ethane, 1,1,2,2-tetrachloro-	79345	1,1,2,2-Tetrachloroethane	1*	2,4	U209	X	1# (0.454)
Ethane, 1,1,2-trichloro-	79005	1,1,2-Trichloroethane	1*	2,4	U227	X	1# (0.454)
Ethane, 1,1,1-trichloro-2,2-bis(p-methoxyphenyl)-	72435	Methoxychlor	1	1,4	U247	X	1 (0.454)
1,2-Ethanediylbiscarbamodithioic acid	111546	Ethylenebis(dithiocarbamic acid)	1*	4	U114	D	5000 (2270)
Ethanenitrile	75058	Acetonitrile	1*	4	U003	D	5000 (2270)
Ethanethioamide	62555	Thioacetamide	1*	4	U218	X	1# (0.454)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Ethanol, 2,2'-(nitrosoimino)bis-	1116547	N-Nitrosodiethanolamine	1*	4	U173	X	1# (0.454)
Ethanone, 1-phenyl-	98862	Acetophenone	1*	4	U004	D	5000 (2270)
Ethanoyl chloride	75365	Acetyl chloride	5000	1,4	U006	D	5000 (2270)
Ethenamine, N-methyl-N-nitroso-	4549400	N-Nitrosomethylvinylamine	1*	4	P084	X	1# (0.454)
Ethene, chloro-	75014	Vinyl chloride	1*	2,3,4	U043	X	1# (0.454)
Ethene, 2-chloroethoxy-	110758	2-Chloroethyl vinyl ether	1*	2,4	U042	C	1000 (454)
Ethene, 1,1-dichloro-	75354	1,1-Dichloroethylene Vinylidene chloride	5000	1,2,4	U078	D	5000# (2270)
Ethene, 1,1,2,2-tetrachloro-	127184	Tetrachloroethylene	1*	2,4	U210	X	1# (0.454)
Ethene, trans-1,2-dichloro-	156605	1,2-trans-Dichloroethylene	1*	2,4	U079	C	1000 (454)
Ethion	563122		10	1		A	10## (4.54)
Ethyl acetate	141786	Acetic acid, ethyl ester	1*	4	U112	D	5000 (2270)
Ethyl acrylate	140885	2-Propenoic acid, ethyl ester	1*	4	U113	C	1000 (454)
Ethylbenzene	100414		1000	1,2		C	1000 (454)
Ethyl carbamate (Urethan)	51796	Carbamic acid, ethyl ester	1*	4	U238	X	1# (0.454)
Ethyl cyanide	107120	Propanenitrile	1*	4	P101	A	10 (4.54)
Ethyl 4,4'-dichlorobenzilate	510156	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester.	1*	4	U038	X	1# (0.454)
Ethylene dibromide	106934	Ethane, 1,2-dibromo-	1000	1,4	U067	C	1000# (454)
Ethylene dichloride	107062	1,2-Dichloroethane Ethane, 1,2-dichloro-	5000	1,2,4	U077	D	5000# (2270)
Ethylene oxide	75218	Oxirane	1*	4	U115	X	1# (0.454)
Ethylenebis(dithiocarbamic acid)	111546	1,2-Ethanediylbiscarbamodithioic acid	1*	4	U114	D	5000 (2270)
Ethylenediamine	107153		1000	1		D	5000 (2270)
Ethylenediamine tetraacetic acid (EDTA)	60004		5000	1		D	5000 (2270)
Ethylenethiourea	96457	2-Imidazolidinethione	1*	4	U116	X	1# (0.454)
Ethylenimine	151564	Aziridine	1*	4	P054	X	1# (0.454)
Ethyl ether	60297	Ethane, 1,1'-oxybis-	1*	4	U117	B	100 (45.4)
Ethylidene dichloride	75343	1,1-Dichloroethane Ethane, 1,1-dichloro-	1*	2,4	U076	C	1000 (454)
Ethyl methacrylate	97632	2-Propenoic acid, 2-methyl-, ethyl ester	1*	4	U118	C	1000 (454)
Ethyl methanesulfonate	62500	Methanesulfonic acid, ethyl ester	1*	4	U119	X	1# (0.454)
Famphur	52857	Phosphorothioic acid, O,O-dimethyl-O-[p-[(dimethylamino)- sulfonyl]phenyl] ester.	1*	4	P097	C	1000 (454)
Ferric ammonium citrate	1185575		1000	1		C	1000 (454)
Ferric ammonium oxalate	2944674 55488874		1000	1		C	1000 (454)
Ferric chloride	7705080		1000	1		C	1000 (454)
Ferric dextran	9004664	Iron dextran	1*	4	U139	X	1## (0.454)
Ferric fluoride	7783508		100	1		B	100 (45.4)
Ferric nitrate	10421484		1000	1		C	1000 (454)
Ferric sulfate	10028225		1000	1		C	1000 (454)
Ferrous ammonium sulfate	10045893		1000	1		C	1000 (454)
Ferrous chloride	7758943		100	1		B	100 (45.4)
Ferrous sulfate	7720787 7782630		1000	1		C	1000 (454)
Fluoroacetic acid, sodium salt	62748	Acetic acid, fluoro-, sodium salt	1*	4	P058	A	10 (4.54)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Fluoranthene	206440	Benzo[j,k]fluorene	1*	2,4	U120	X	1## (0.454)
Fluorene	86737		1*	2		X	1## (0.454)
Fluorine	7782414		1*	4	P056	A	10 (4.54)
Fluoroacetamide	640197	Acetamide, 2-fluoro-	1*	4	P057	B	100 (45.4)
Formaldehyde	50000	Methylene oxide	1000	1,4	U122	C	1000# (454)
Formic acid	64186	Methanoic acid	5000	1,4	U123	D	5000 (2270)
Fulminic acid, mercury(II)salt	628864	Mercury fulminate	1*	4	P065	X	1## (0.454)
Fumaric acid	110178		5000	1		D	5000 (2270)
Furan	110009	Furfuran	1*	4	U124	B	100 (45.4)
Furan, tetrahydro-	109999	Tetrahydrofuran	1*	4	U213	C	1000 (454)
2-Furancarboxaldehyde	98011	Furfural	1000	1,4	U125	D	5000 (2270)
2,5-Furandione	108316	Maleic anhydride	5000	1,4	U147	D	5000 (2270)
Furfural	98011	2-Furancarboxaldehyde	1000	1,4	U125	D	5000 (2270)
Furfuran	110009	Furan	1*	4	U124	B	100 (45.4)
D-Glucopyranose, 2-deoxy-2-[3-methyl-3-nitrosoureido]-	18883664	Streptozotocin	1*	4	U206	X	1# (0.454)
Glycidylaldehyde	765344	1-Propanal, 2,3-epoxy-	1*	4	U126	X	1# (0.454)
Guanidine, N-nitroso-N-methyl-N'-nitro-	70257	N-Methyl-N'-nitro-N-nitrosoguanidine	1*	4	U163	X	1# (0.454)
Guthion	86500		1	1		X	1 (0.454)
HALOETHERS			1*	2			**
HALOMETHANES			1*	2			**
Heptachlor	76448	4,7-Methano-1H-indene,1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-.	1	1,2,4	P059	X	1#(0.454)
HEPTACHLOR AND METABOLITES			1*	2			**
Heptachlor epoxide	1024573		1*	2		X	1# (0.454)
Hexachlorobenzene	118741	Benzene, hexachloro-	1*	2,4	U127	X	1# (0.454)
Hexachlorobutadiene	87683	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	1*	2,4	U128	X	1# (0.454)
HEXACHLOROCYCLOHEXANE (all isomers)	608731		1*	2			**
Hexachlorocyclohexane (gamma isomer)	58899	gamma - BHC Lindane	1	1,2,4	U129	X	1# (0.454)
Hexachlorocyclopentadiene	77474	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	1	1,2,4	U130	X	1# (0.454)
1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo,endo- 1,4:5,8-dimethanonaphthalene.	72208	Endrin	1	1,2,4	P051	X	1 (0.454)
1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo,exo- 1,4:5,8-dimethanonaphthalene.	60571	Dieldrin	1	1,2,4	P037	X	1# (0.454)
Hexachloroethane	67721	Ethane, 1,1,1,2,2,2-hexachloro-	1*	2,4	U131	X	1# (0.454)
Hexachlorohexahydro-endo,endo-dimethanonaphthalene	465736	1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4,5,8-endo,endo- dimethanonaphthalene.	1*	4	P060	X	1 (0.454)
1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4,5,8-endo,endo- dimethanonaphthalene.	465736	Hexachlorohexahydro-endo,endo-dimethanonaphthalene	1*	4	P060	X	1 (0.454)
1,2,3,4,10-10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8- endo, exo-dimethanonaphthalene	309002	Aldrin	1	1,2,4	P004	X	1# (0.454)
Hexachlorophene	70304	2,2'-Methylenebis(3,4,6-trichlorophenol)	1*	4	U132	X	1## (0.454)
Hexachloropropene	1888717	1-Propene, 1,1,2,3,3,3-hexachloro-	1*	4	U243	C	1000 (454)
Hexaethyl tetraphosphate	757584	Tetraphosphoric acid, hexaethyl ester	1*	4	P062	B	100 (45.4)
Hydrazine	302012	Diamine	1*	4	U133	X	1# (0.454)
Hydrazine, 1,2-diethyl-	1615801	N,N'-Diethylhydrazine	1*	4	U086	X	1# (0.454)
Hydrazine, 1,1-dimethyl-	57147	1,1-Dimethylhydrazine	1*	4	U098	X	1# (0.454)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Hydrazine, 1,2-dimethyl-	540738	1,2-Dimethylhydrazine	1*	4	U099	X	1# (0.454)
Hydrazine, 1,2-diphenyl-	122667	1,2-Diphenylhydrazine	1*	2,4	U109	X	1# (0.454)
Hydrazine, methyl-	60344	Methyl hydrazine	1*	4	P068	A	10 (4.54)
Hydrazinecarbothioamide	79196	Thiosemicarbazide	1*	4	P116	B	100 (45.4)
Hydrochloric acid	7647010		5000	1		D	5000 (2270)
Hydrocyanic acid	74908	Hydrogen cyanide	10	1,4	P063	A	10 (4.54)
Hydrofluoric acid	7664393	Hydrogen fluoride	5000	1,4	U134	B	100 (45.4)
Hydrogen cyanide	74908	Hydrocyanic acid	10	1,4	P063	A	10 (4.54)
Hydrogen fluoride	7664393	Hydrofluoric acid	5000	1,4	U134	B	100 (45.4)
Hydrogen phosphide	7803512	Phosphine	1*	4	P096	B	100 (45.4)
Hydrogen sulfide	7783064	Hydrosulfuric acid Sulfur hydride	100	1,4	U135	B	100## (45.4)
Hydroperoxide, 1-methyl-1-phenylethyl-	80159	alpha,alpha-Dimethylbenzylhydroperoxide	1*	4	U096	A	10 (4.54)
Hydrosulfuric acid	7783064	Hydrogen sulfide Sulfur hydride	100	1,4	U135	B	100## (45.4)
Hydroxydimethylarsine oxide	75605	Cacodylic acid	1*	4	U136	X	1# (0.454)
2-Imidazolidinethione	96457	Ethylenethiourea	1*	4	U116	X	1# (0.454)
Indeno(1,2,3-cd)pyrene	193395	1,10-(1,2-Phenylene)pyrene	1*	2,4	U137	X	1# (0.454)
Iron dextran	9004664	Ferric dextran	1*	4	U139	X	1## (0.454)
Isobutyl alcohol	78831	1-Propanol, 2-methyl-	1*	4	U140	D	5000 (2270)
Isocyanic acid, methyl ester	624839	Methyl isocyanate	1*	4	P064	X	1###(0.454)
Isophorone	78591		1*	2		D	5000 (2270)
Isoprene	78795		1000	1		C	1000## (454)
Isopropanolamine dodecylbenzenesulfonate	42504461		1000	1		C	1000 (454)
Isosafrole	120581	Benzene, 1,2-methylenedioxy-4-propenyl-	1*	4	U141	X	1# (0.454)
3(2H)-Isoxazolone, 5-(aminomethyl)-	2763964	5-(Aminomethyl)-3-Isoxazolol	1*	4	P007	C	1000 (454)
Kelthane	115322		5000	1		A	10 (4.54)
Kepone	143500	Decachlorooctahydro-1,3,4-metheno-2H-cyclobuta[c,d]-pentalen-2-one.	1	1,4	U142	X	1# (0.454)
Lasiocarpine	303344		1*	4	U143	X	1# (0.454)
Lead ††	7439921		1*	2		X	1## (0.454)
Lead acetate	301042	Acetic acid, lead salt	5000	1,4	U144	D	5000# (2270)
LEAD AND COMPOUNDS			1*	2			**
Lead arsenate	7784409 7645252 10102484		5000	1		D	5000# (2270)
Lead chloride	7758954		5000	1		D	5000## (2270)
Lead fluoborate	13814965		5000	1		D	5000## (2270)
Lead fluoride	7783462		1000	1		C	1000## (454)
Lead iodide	10101630		5000	1		D	5000## (2270)
Lead nitrate	10099748		5000	1		D	5000## (2270)
Lead phosphate	7446277	Phosphoric acid, lead salt	1*	4	U145	X	1# (0.454)
Lead stearate	7428480 1072351 56189094 52652592		5000	1		D	5000## (2270)
Lead subacetate	1335326		1*	4	U146	X	1# (0.454)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Lead sulfate	15739807 7446142		5000	1		D	5000## (2270)
Lead sulfide	1314870		5000	1		D	5000## (2270)
Lead thiocyanate	592870		5000	1		D	5000## (2270)
Lindane	58899	gamma - BHC Hexachlorocyclohexane (gamma isomer)	1	1,2,4	U129	X	1# (0.454)
Lithium chromate	14307358		1000	1		C	1000# (454)
Malathion	121755		10	1		B	100 (45.4)
Maleic acid	110167		5000	1		D	5000 (2270)
Maleic anhydride	108316	2,5-Furandione	5000	1,4	U147	D	5000 (2270)
Maleic hydrazide	123331	1,2-Dihydro-3,6-pyridazinedione	1*	4	U148	D	5000 (2270)
Malononitrile	109773	Propanedinitrile	1*	4	U149	C	1000 (454)
Melphalan	148823	Alanine, 3-[p-bis(2-chloroethyl)amino]phenyl-,L-	1*	4	U150	X	1# (0.454)
Mercaptodimethur	2032657		100	1		A	10 (4.54)
Mercuric cyanide	592041		1	1		X	1 (0.454)
Mercuric nitrate	10045940		10	1		A	10## (4.54)
Mercuric sulfate	7783359		10	1		A	10## (4.54)
Mercuric thiocyanate	592858		10	1		A	10## (4.54)
Mercurous nitrate	10415755 7782867		10	1		A	10## (4.54)
Mercury	7439976		1*	2,3,4	U151	X	1 (0.454)
MERCURY AND COMPOUNDS			1*	2			**
Mercury, (acetato-O)phenyl-	62384	Phenylmercuric acetate	1*	4	P092	X	1##(0.454)
Mercury fulminate	628864	Fulminic acid, mercury(II)salt	1*	4	P065	X	1## (0.454)
Methacrylonitrile	126987	2-Propenenitrile, 2-methyl-	1*	4	U152	C	1000 (454)
Methanamine, N-methyl-	124403	Dimethylamine	1000	1,4	U092	C	1000## (454)
Methane, bromo-	74839	Methyl bromide	1*	2,4	U029	C	1000 (454)
Methane, chloro-	74873	Methyl chloride	1*	2,4	U045	X	1## (0.454)
Methane, chloromethoxy-	107302	Chloromethyl methyl ether	1*	4	U046	X	1# (0.454)
Methane, dibromo-	74953	Methylene bromide	1*	4	U068	C	1000 (454)
Methane, dichloro-	75092	Methylene chloride	1*	2,4	U080	C	1000 (454)
Methane, dichlorodifluoro-	75718	Dichlorodifluoromethane	1*	4	U075	D	5000 (2270)
Methane, iodo-	74884	Methyl iodide	1*	4	U138	X	1# (0.454)
Methane, oxybis(chloro-	542881	Bis(chloromethyl) ether	1*	4	P016	X	1# (0.454)
Methane, tetrachloro-	56235	Carbon tetrachloride	5000	1,2,4	U211	D	5000# (2270)
Methane, tetranitro-	509148	Tetranitromethane	1*	4	P112	A	10 (4.54)
Methane, tribromo-	75252	Bromoform	1*	2,4	U225	B	100 (45.4)
Methane, trichloro-	67663	Chloroform	5000	1,2,4	U044	D	5000# (2270)
Methane, trichlorofluoro-	75694	Trichloromonofluoromethane	1*	4	U121	D	5000 (2270)
Methanesulfonic acid, ethyl ester	62500	Ethyl methanesulfonate	1*	4	U119	X	1# (0.454)
Methanethiol	74931	Methylmercaptan Thiomethanol	100	1,4	U153	B	100 (45.4)
Methanesulfenyl chloride, trichloro-	594423	Trichloromethanesulfenyl chloride	1*	4	P118	B	100 (45.4)
4,7-Methano-1H-indene,1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	76448	Heptachlor	1	1,2,4	P059	X	1# (0.454)
Methanoic acid	64186	Formic acid	5000	1,4	U123	D	5000 (2270)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
4,7-Methanoindan, 1,2,4,5,6,7,8,8-octachloro- 3a,4,7,7a-tetrahydro-.	57749	Chlordane Chlordane, technical	1	1,2,4	U036	X	1# (0.454)
Methanol	67561	Methyl alcohol	1*	4	U154	D	5000 (2270)
Methapyrilene	91805	Pyridine, 2-[(2-(dimethylamino)ethyl)-2-thenylamino]-	1*	4	U155	D	5000 (2270)
Methomyl	16752775	Acetimidic acid, N-[(methylcarbamoyl)oxy]thio-, methyl ester.	1*	4	P066	B	100 (45.4)
Methoxychlor	72435	Ethane, 1,1,1-trichloro-2,2-bis(p-methoxyphenyl)-	1	1,4	U247	X	1 (0.454)
Methyl alcohol	67561	Methanol	1*	4	U154	D	5000 (2270)
2-Methylaziridine	75558	1,2-Propylenimine	1*	4	P067	X	1# (0.454)
Methyl bromide	74839	Methane, bromo-	1*	2,4	U029	C	1000 (454)
1-Methylbutadiene	504609	1,3-Pentadiene	1*	4	U186	B	100 (45.4)
Methyl chloride	74873	Methane, chloro-	1*	2,4	U045	X	1## (0.454)
Methyl chlorocarbonate	79221	Carbonochloridic acid, methyl ester	1*	4	U156	C	1000 (454)
Methyl chloroform	71556	1,1,1-Trichloroethane	1*	2,4	U226	C	1000 (454)
4,4'-Methylenebis(2-chloroaniline)	101144	Benzenamine, 4,4'-methylenebis(2-chloro-	1*	4	U158	X	1# (0.454)
2,2'-Methylenebis(3,4,6-trichlorophenol)	70304	Hexachlorophene	1*	4	U132	X	1## (0.454)
3-Methylcholanthrene	56495	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	1*	4	U157	X	1# (0.454)
Methylene bromide	74953	Methane, dibromo-	1*	4	U068	C	1000 (454)
Methylene chloride	75092	Methane, dichloro-	1*	2,4	U080	C	1000 (454)
Methylene oxide	50000	Formaldehyde	1000	1,4	U122	C	1000# (454)
Methyl ethyl ketone	78933	2-Butanone	1*	4	U159	D	5000 (2270)
Methyl ethyl ketone peroxide	1338234	2-Butanone peroxide	1*	4	U160	A	10 (4.54)
Methyl hydrazine	60344	Hydrazine, methyl-	1*	4	P068	A	10 (4.54)
Methyl iodide	74884	Methane, iodo-	1*	4	U138	X	1# (0.454)
Methyl isobutyl ketone	108101	4-Methyl-2-pentanone	1*	4	U161	D	5000 (2270)
Methyl isocyanate	624839	Isocyanic acid, methyl ester	1*	4	P064	X	1###(0.454)
2-Methyllactonitrile	75865	Acetone cyanohydrin Propanenitrile, 2-hydroxy-2-methyl-	10	1,4	P069	A	10 (4.54)
Methylmercaptan	74931	Methanethiol Thiomethanol	100	1,4	U153	B	100 (45.4)
Methyl methacrylate	80626	2-Propenoic acid, 2-methyl-, methyl ester	5000	1,4	U162	C	1000 (454)
N-Methyl-N'-nitro-N-nitrosoguanidine	70257	Guanidine, N-nitroso-N-methyl-N'-nitro-	1*	4	U163	X	1# (0.454)
Methyl parathion	298000	O,O-Dimethyl O-p-nitrophenyl phosphorothioate	100	1,4	P071	B	100## (45.4)
4-Methyl-2-pentanone	108101	Methyl isobutyl ketone	1*	4	U161	D	5000 (2270)
Methylthiouracil	56042	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-	1*	4	U164	X	1# (0.454)
Mevinphos	7786347		1	1		A	10 (4.54)
Mexacarbate	315184		1000	1		C	1000 (454)
Mitomycin C	50077	Azirino(2',3':3,4)pyrrolo(1,2-a)indole-4,7-dione,6-amino-8-[[(aminocarbonyl)oxy]methyl]- 1,1a,2,8,8a,8b- hexahydro-8a-methoxy- 5-methyl-.	1*	4	U010	X	1# (0.454)
Monoethylamine	75047		1000	1		C	1000## (454)
Monomethylamine	74895		1000	1		B	100 (45.4)
Naled	300765		10	1		A	10 (4.54)
5,12-Naphthacenedione, (8S-cis)-8-acetyl-10-[3-amino-2,3,6-trideoxy-alpha-L- lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro- 6,8,11-trihydroxy- 1-methoxy-.	20830813	Daunomycin	1*	4	U059	X	1# (0.454)
Naphthalene	91203		5000	1,2,4	U165	B	100 (45.4)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Naphthalene, 2-chloro-	91587	beta-Chloronaphthalene 2-Chloronaphthalene	1*	2,4	U047	D	5000 (2270)
1,4-Naphthalenedione	130154	1,4-Naphthoquinone	1*	4	U166	D	5000 (2270)
2,7-Naphthalenedisulfonic acid,3,3'-[(3,3'-dimethyl- [1,1'-biphenyl]-4,4'-diyl)- bis(azo)]bis(5-amino- 4-hydroxy)-tetrasodium salt	72571	Trypan blue	1*	4	U236	X	1# (0.454)
Naphthenic acid	1338245		100	1		B	100 (45.4)
1,4-Naphthoquinone	130154	1,4-Naphthalenedione	1*	4	U166	D	5000 (2270)
1-Naphthylamine	134327	alpha-Naphthylamine	1*	4	U167	X	1# (0.454)
2-Naphthylamine	91598	beta-Naphthylamine	1*	4	U168	X	1# (0.454)
alpha-Naphthylamine	134327	1-Naphthylamine	1*	4	U167	X	1# (0.454)
beta-Naphthylamine	91598	2-Naphthylamine	1*	4	U168	X	1# (0.454)
2-Naphthylamine, N,N-bis(2-chloroethyl)-	494031	Chlornaphazine	1*	4	U026	X	1# (0.454)
alpha-Naphthylthiourea	86884	Thiourea, 1-naphthalenyl-	1*	4	P072	B	100 (45.4)
Nickel ††	7440020		1*	2		X	1# (0.454)
NICKEL AND COMPOUNDS			1*	2			**
Nickel ammonium sulfate	15699180		5000	1		D	5000# (2270)
Nickel carbonyl	13463393	Nickel tetracarbonyl	1*	4	P073	X	1# (0.454)
Nickel chloride	7718549 37211055		5000	1		D	5000# (2270)
Nickel cyanide	557197	Nickel(II) cyanide	1*	4	P074	X	1# (0.454)
Nickel(II) cyanide	557197	Nickel cyanide	1*	4	P074	X	1# (0.454)
Nickel hydroxide	12054487		1000	1		C	1000# (454)
Nickel nitrate	14216752		5000	1		D	5000# (2270)
Nickel sulfate	7786814		5000	1		D	5000# (2270)
Nickel tetracarbonyl	13463393	Nickel carbonyl	1*	4	P073	X	1# (0.454)
Nicotine and salts	54115	Pyridine, (S)-3-(1-methyl-2-pyrrolidinyl)-, and salts	1*	4	P075	B	100 (45.4)
Nitric acid	7697372		1000	1		C	1000 (454)
Nitric oxide	10102439	Nitrogen(II) oxide	1*	4	P076	A	10 (4.54)
p-Nitroaniline	100016	Benzenamine, 4-nitro-	1*	4	P077	D	5000 (2270)
Nitrobenzene	98953	Benzene, nitro-	1000	1,2,4	U169	C	1000 (454)
Nitrogen dioxide	10102440 10544726	Nitrogen(IV) oxide	1000	1,4	P078	A	10 (4.54)
Nitrogen(II) oxide	10102439	Nitric oxide	1*	4	P076	A	10 (4.54)
Nitrogen(IV) oxide	10102440 10544726	Nitrogen dioxide	1000	1,4	P078	A	10 (4.54)
Nitroglycerine	55630	1,2,3-Propanetriol, trinitrate-	1*	4	P081	A	10 (4.54)
Nitrophenol (mixed) m- o- p-	25154556 554847 88755 100027	 2-Nitrophenol 4-Nitrophenol Phenol, 4-nitro-	1000	1		B	100 (45.4)
p-Nitrophenol	100027	4-Nitrophenol Phenol, 4-nitro-	1000	1,2,4	U170	B	100 (45.4)
2-Nitrophenol	88755	o-Nitrophenol	1000	1,2		B	100 (45.4)
4-Nitrophenol	100027	p-Nitrophenol Phenol, 4-nitro-	1000	1,2,4	U170	B	100 (45.4)
NITROPHENOLS			1*	2			**
2-Nitropropane	79469	Propane, 2-nitro-	1*	4	U171	X	1# (0.454)
NITROSAMINES			1*	2			**

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
N-Nitrosodi-n-butylamine	924163	1-Butanamine, N-butyl-N-nitroso-	1*	4	U172	X	1# (0.454)
N-Nitrosodiethanolamine	1116547	Ethanol, 2,2'-(nitrosoimino)bis-	1*	4	U173	X	1# (0.454)
N-Nitrosodiethylamine	55185	Ethanamine, N-ethyl-N-nitroso-	1*	4	U174	X	1# (0.454)
N-Nitrosodimethylamine	62759	Dimethylnitrosamine	1*	2,4	P082	X	1# (0.454)
N-Nitrosodiphenylamine	86306		1*	2		B	100 (45.4)
N-Nitrosodi-n-propylamine	621647	Di-n-propylnitrosamine	1*	2,4	U111	X	1# (0.454)
N-Nitroso-N-ethylurea	759739	Carbamide, N-ethyl-N-nitroso-	1*	4	U176	X	1# (0.454)
N-Nitroso-N-methylurea	684935	Carbamide, N-methyl-N-nitroso-	1*	4	U177	X	1# (0.454)
N-Nitroso-N-methylurethane	615532	Carbamic acid, methylnitroso-, ethyl ester	1*	4	U178	X	1# (0.454)
N-Nitrosomethylvinylamine	4549400	Ethenamine, N-methyl-N-nitroso-	1*	4	P084	X	1# (0.454)
N-Nitrosopiperidine	100754	Pyridine, hexahydro-N-nitroso-	1*	4	U179	X	1# (0.454)
N-Nitrosopyrrolidine	930552	Pyrrole, tetrahydro-N-nitroso-	1*	4	U180	X	1# (0.454)
Nitrotoluene m- o- p-	1321126 99081 88722 99990		1000	1		C	1000 (454)
5-Nitro-o-toluidine	99558	Benzenamine, 2-methyl-5-nitro-	1*	4	U181	X	1# (0.454)
5-Norbornene-2,3-dimethanol,1,4,5,6,7,7-hexachloro, cyclic sulfite	115297	Endosulfan	1	1,2,4	P050	X	1 (0.454)
Octamethylpyrophosphoramide	152169	Diphosphoramide, octamethyl-	1*	4	P085	B	100 (45.4)
Osmium oxide	20816120	Osmium tetroxide	1*	4	P087	C	1000 (454)
Osmium tetroxide	20816120	Osmium oxide	1*	4	P087	C	1000 (454)
7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid	145733	Endothall	1*	4	P088	C	1000 (454)
1,2-Oxathiolane, 2,2-dioxide	1120714	1,3-Propane sultone	1*	4	U193	X	1# (0.454)
2H-1,3,2-Oxazaphosphorine,2-[bis(2-chloroethyl)amino] tetrahydro-2-oxide	50180	Cyclophosphamide	1*	4	U058	X	1# (0.454)
Oxirane	75218	Ethylene oxide	1*	4	U115	X	1# (0.454)
Oxirane, 2-(chloromethyl)-	106898	1-Chloro-2,3-epoxypropane Epichlorohydrin	1000	1,4	U041	C	1000# (454)
Paraformaldehyde	30525894		1000	1		C	1000 (454)
Paraldehyde	123637	1,3,5-Trioxane, 2,4,6-trimethyl-	1*	4	U182	C	1000 (454)
Parathion	56382	Phosphorothioic acid,O,O-diethyl O-(p-nitrophenyl) ester	1	1,4	P089	X	1# (0.454)
Pentachlorobenzene	608935	Benzene, pentachloro-	1*	4	U183	X	1## (0.454)
Pentachloroethane	76017	Ethane, pentachloro-	1*	4	U184	X	1## (0.454)
Pentachloronitrobenzene	82688	Benzene, pentachloronitro-	1*	4	U185	X	1# (0.454)
Pentachlorophenol	87865	Phenol, pentachloro-	10	1,2,4	U242	A	10# (4.54)
1,3-Pentadiene	504609	1-Methylbutadiene	1*	4	U186	B	100 (45.4)
Phenacetin	62442	Acetamide, N-(4-ethoxyphenyl)-	1*	4	U187	X	1# (0.454)
Phenanthrene	85018		1*	2		X	1## (0.454)
Phenol	108952	Benzene, hydroxy-	1000	1,2,4	U188	C	1000## (454)
Phenol, 2-chloro-	95578	2-Chlorophenol o-Chlorophenol	1*	2,4	U048	B	100 (45.4)
Phenol, 4-chloro-3-methyl-	59507	4-Chloro-m-cresol p-Chloro-m-cresol	1*	2,4	U039	D	5000 (2270)
Phenol, 2-cyclohexyl-4,6-dinitro-	131895	4,6-Dinitro-o-cyclohexylphenol	1*	4	P034	B	100 (45.4)
Phenol, 2,4-dichloro-	120832	2,4-Dichlorophenol	1*	2,4	U081	B	100 (45.4)
Phenol, 2,6-dichloro-	87650	2,6-Dichlorophenol	1*	4	U082	B	100 (45.4)
Phenol, 2,4-dimethyl-	105679	2,4-Dimethylphenol	1*	2,4	U101	B	100 (45.4)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Phenol, 2,4-dinitro-	51285	2,4-Dinitrophenol	1000	1,2,4	P048	A	10 (4.54)
Phenol, 2,4-dinitro-6-(1-methylpropyl)-	88857	Dinoseb	1*	4	P020	C	1000 (454)
Phenol, 2,4-dinitro-6-methyl-, and salts	534521	4,6-Dinitro-o-cresol and salts	1*	2,4	P047	A	10 (4.54)
Phenol, 4-nitro-	100027	p-Nitrophenol 4-Nitrophenol	1000	1,2,4	U170	B	100 (45.4)
Phenol, pentachloro-	87865	Pentachlorophenol	10	1,2,4	U242	A	10# (4.54)
Phenol, 2,3,4,6-tetrachloro-	58902	2,3,4,6-Tetrachlorophenol	1*	4	U212	A	10 (4.54)
Phenol, 2,4,5-trichloro-	95954	2,4,5-Trichlorophenol	10	1,4	U230	A	10# (4.54)
Phenol, 2,4,6-trichloro-	88062	2,4,6-Trichlorophenol	10	1,2,4	U231	A	10# (4.54)
Phenol, 2,4,6-trinitro-, ammonium salt	131748	Ammonium picrate	1*	4	P009	A	10 (4.54)
Phenyl dichloroarsine	696286	Dichlorophenylarsine	1*	4	P036	X	1# (0.454)
1,10-(1,2-Phenylene)pyrene	193395	Indeno(1,2,3-cd)pyrene	1*	2,4	U137	X	1# (0.454)
Phenylmercuric acetate	62384	Mercury, (acetato-O)phenyl-	1*	4	P092	X	1## (0.454)
N-Phenylthiourea	103855	Thiourea, phenyl-	1*	4	P093	B	100 (45.4)
Phorate	298022	Phosphorodithioic acid, O,O-diethyl S-(ethylthio), methyl ester.	1*	4	P094	X	1## (0.454)
Phosgene	75445	Carbonyl chloride	5000	1,4	P095	A	10 (4.54)
Phosphine	7803512	Hydrogen phosphide	1*	4	P096	B	100 (45.4)
Phosphoric acid	7664382		5000	1		D	5000 (2270)
Phosphoric acid,diethyl p-nitrophenyl ester	311455	Diethyl-p-nitrophenyl phosphate	1*	4	P041	B	100 (45.4)
Phosphoric acid, lead salt	7446277	Lead phosphate	1*	4	U145	X	1# (0.454)
Phosphorodithioic acid, O,O-diethyl S-methylester	3288582	O,O-Diethyl S-methyl dithiophosphate	1*	4	U087	D	5000 (2270)
Phosphorodithioic acid, O,O-diethyl S-(ethylthio), methyl ester.	298022	Phorate	1*	4	P094	X	1## (0.454)
Phosphorodithioic acid,O,O-dimethyl S-[2(methylamino)-2-oxoethyl] ester.	60515	Dimethoate	1*	4	P044	A	10 (4.54)
Phosphorofluoridic acid,bis(1-methylethyl) ester	55914	Diisopropyl fluorophosphate	1*	4	P043	B	100 (45.4)
Phosphorothioic acid,O,O-diethyl O-(p-nitrophenyl) ester	56382	Parathion	1	1,4	P089	X	1# (0.454)
Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester	297972	O,O-Diethyl O-pyrazinyl phosphorothioate	1*	4	P040	B	100 (45.4)
Phosphorothioic acid, O,O-dimethyl O-[p-[(dimethylamino)-sulfonyl]phenyl] ester.	52857	Famphur	1*	4	P097	C	1000 (454)
Phosphorus	7723140		1	1		X	1 (0.454)
Phosphorus oxychloride	10025873		5000	1		C	1000 (454)
Phosphorus pentasulfide	1314803	Phosphorus sulfide Sulfur phosphide	100	1,4	U189	B	100 (45.4)
Phosphorus sulfide	1314803	Phosphorus pentasulfide Sulfur phosphide	100	1,4	U189	B	100 (45.4)
Phosphorus trichloride	7719122		5000	1		C	1000 (454)
PHTHALATE ESTERS			1*	2			**
Phthalic anhydride	85449	1,2-Benzenedicarboxylic acid anhydride	1*	4	U190	D	5000 (2270)
2-Picoline	109068	Pyridine,2-methyl-	1*	4	U191	D	5000 (2270)
Plumbane, tetraethyl-	78002	Tetraethyl lead	100	1,4	P110	B	100## (45.4)
POLYCHLORINATED BIPHENYLS (PCBs)	1336363 12674112 11104282 11141165 53469219 12672296 11097691 11096825	Aroclors Aroclor 1016 Aroclor 1221 Aroclor 1232 Aroclor 1242 Aroclor 1248 Aroclor 1254 Aroclor 1260	10	1,2		A	10# (4.54)
POLYNUCLEAR AROMATIC HYDROCARBONS			1*	2			**

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Potassium arsenate	7784410		1000	1		C	1000# (454)
Potassium arsenite	10124502		1000	1		C	1000# (454)
Potassium bichromate	7778509		1000	1		C	1000# (454)
Potassium chromate	7789006		1000	1		C	1000# (454)
Potassium cyanide	151508		10	1,4	P098	A	10 (4.54)
Potassium hydroxide	1310583		1000	1		C	1000 (454)
Potassium permanganate	7722647		100	1		B	100 (45.4)
Potassium silver cyanide	506616		1*	4	P099	X	1 (0.454)
Pronamide	23950585	3,5-Dichloro-N-(1,1-dimethyl-2-propynyl)benzamide	1*	4	U192	D	5000 (2270)
1-Propanal, 2,3-epoxy-	765344	Glycidylaldehyde	1*	4	U126	X	1# (0.454)
Propanal, 2-methyl-2-(methylthio)-,O-[(methylamino) carbonyl]oxime.	116063	Aldicarb	1*	4	P070	X	1 (0.454)
1-Propanamine	107108	n-Propylamine	1*	4	U194	D	5000 (2270)
1-Propanamine, N-propyl-	142847	Dipropylamine	1*	4	U110	D	5000 (2270)
Propane, 1,2-dibromo-3-chloro-	96128	1,2-Dibromo-3-chloropropane	1*	4	U066	X	1# (0.454)
Propane, 2-nitro-	79469	2-Nitropropane	1*	4	U171	X	1# (0.454)
Propane, 2,2'-oxybis[2-chloro-	108601	Bis(2-chloroisopropyl) ether	1*	2,4	U027	C	1000 (454)
1,3-Propane sultone	1120714	1,2-Oxathiolane, 2,2-dioxide	1*	4	U193	X	1# (0.454)
Propanedinitrile	109773	Malononitrile	1*	4	U149	C	1000 (4.54)
Propanenitrile	107120	Ethyl cyanide	1*	4	P101	A	10 (4.54)
Propanenitrile, 3-chloro-	542767	3-Chloropropionitrile	1*	4	P027	C	1000 (454)
Propanenitrile, 2-hydroxy-2-methyl-	75865	Acetone cyanohydrin 2-Methyllactonitrile	10	1,4	P069	A	10 (4.54)
1,2,3-Propanetriol, trinitrate-	55630	Nitroglycerine	1*	4	P081	A	10 (4.54)
1-Propanol, 2,3-dibromo-, phosphate (3:1)	126727	Tris(2,3-dibromopropyl) phosphate	1*	4	U235	X	1# (0.454)
1-Propanol, 2-methyl-	78831	Isobutyl alcohol	1*	4	U140	D	5000 (2270)
2-Propanone	67641	Acetone	1*	4	U002	D	5000 (2270)
2-Propanone, 1-bromo-	598312	Bromoacetone	1*	4	P017	C	1000 (454)
Propargite	2312358		10	1		A	10 (4.54)
Propargyl alcohol	107197	2-Propyn-1-ol	1*	4	P102	C	1000 (454)
2-Propenal	107028	Acrolein	1	1,2,4	P003	X	1 (0.454)
2-Propenamide	79061	Acrylamide	1*	4	U007	D	5000 (2270)
Propene, 1,3-dichloro-	542756	1,3-Dichloropropene	5000	1,2,4	U084	D	5000## (2270)
1-Propene, 1,1,2,3,3,3-hexachloro-	1888717	Hexachloropropene	1*	4	U243	C	1000 (454)
2-Propenenitrile	107131	Acrylonitrile	100	1,2,4	U009	B	100# (45.4)
2-Propenenitrile, 2-methyl-	126987	Methacrylonitrile	1*	4	U152	C	1000 (454)
2-Propenoic acid	79107	Acrylic acid	1*	4	U008	D	5000 (2270)
2-Propenoic acid, ethyl ester	140885	Ethyl acrylate	1*	4	U113	C	1000 (454)
2-Propenoic acid, 2-methyl-, ethyl ester	97632	Ethyl methacrylate	1*	4	U118	C	1000 (454)
2-Propenoic acid, 2-methyl-, methyl ester	80626	Methyl methacrylate	5000	1,4	U162	C	1000 (454)
2-Propen-1-ol	107186	Allyl alcohol	100	1,4	P005	B	100 (45.4)
Propionic acid	79094		5000	1		D	5000 (2270)
Propionic acid, 2-(2,4,5-trichlorophenoxy)-	93721	Silvex 2,4,5-TP acid	100	1,4	U233	B	100 (45.4)
Propionic anhydride	123626		5000	1		D	5000 (2270)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
n-Propylamine	107108	1-Propanamine	1*	4	U194	D	5000 (2270)
Propylene dichloride	78875	1,2-Dichloropropane	5000	1,2,4	U083	C	1000 (454)
Propylene oxide	75569		5000	1		B	100 (45.4)
1,2-Propylenimine	75558	2-Methylaziridine	1*	4	P067	X	1# (0.454)
2-Propyn-1-ol	107197	Propargyl alcohol	1*	4	P102	C	1000 (454)
Pyrene	129000		1*	2		X	1## (0.454)
Pyrethrins	121299 121211 8003347		1000	1		X	1 (0.454)
4-Pyridinamine	504245	4-Aminopyridine	1*	4	P008	C	1000 (454)
Pyridine	110861		1*	4	U196	X	1## (0.454)
Pyridine, 2-[(2-(dimethylamino)ethyl)-2-thenylamino]-	91805	Methapyrilene	1*	4	U155	D	5000 (2270)
Pyridine, hexahydro-N-nitroso-	100754	N-Nitrosopiperidine	1*	4	U179	X	1# (0.454)
Pyridine,2-methyl-	109068	2-Picoline	1*	4	U191	D	5000 (2270)
Pyridine, (S)-3-(1-methyl-2-pyrrolidinyl)-, and salts	54115	Nicotine and salts	1*	4	P075	B	100 (45.4)
4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-	56042	Methylthiouracil	1*	4	U164	X	1# (0.454)
Pyrophosphoric acid, tetraethyl ester	107493	Tetraethyl pyrophosphate	100	1,4	P111	B	100## (45.4)
Pyrrole, tetrahydro-N-nitroso-	930552	N-Nitrosopyrrolidine	1*	4	U180	X	1§ (0.454)
Quinoline	91225		1000	1		D	5000 (2270)
RADIONUCLIDES			1*	3		X	1§ (0.454)
Reserpine	50555	Yohimban-16-carboxylic acid,11,17-dimethoxy-18-[(3,4,5- trimethoxybenzoyl)oxy]-, methyl ester.	1*	4	U200	D	5000 (2270)
Resorcinol	108463	1,3-Benzenediol	1000	1,4	U201	D	5000 (2270)
Saccharin and salts	81072	1,2-Benzisothiazolin-3-one,1,1-dioxide, and salts	1*	4	U202	X	1# (0.454)
Safrole	94597	Benzene, 1,2-methylenedioxy-4-allyl-	1*	4	U203	X	1# (0.454)
Selenious acid	7783008		1*	4	U204	X	1## (0.454)
Selenium ††	7782492		1*	2		X	1## (0.454)
SELENIUM AND COMPOUNDS			1*	2			**
Selenium dioxide	7446084	Selenium oxide	1000	1,4	U204	C	1000## (454)
Selenium disulfide	7488564	Sulfur selenide	1*	4	U205	X	1# (0.454)
Selenium oxide	7446084	Selenium dioxide	1000	1,4	U204	C	1000## (454)
Selenourea	630104	Carbamimidoselenoic acid	1*	4	P103	X	1## (0.454)
L-Serine, diazoacetate (ester)	115026	Azaserine	1*	4	U015	X	1# (0.454)
Silver ††	7440224		1*	2		C	1000 (454)
SILVER AND COMPOUNDS			1*	2			**
Silver cyanide	506649		1*	4	P104	X	1 (0.454)
Silver nitrate	7761888		1	1		X	1 (0.454)
Silvex	93721	Propionic acid, 2-(2,4,5-trichlorophenoxy)- 2,4,5-TP acid	100	1,4	U233	B	100 (45.4)
Sodium	7440235		1000	1		A	10 (4.54)
Sodium arsenate	7631892		1000	1		C	1000# (454)
Sodium arsenite	7784465		1000	1		C	1000# (454)
Sodium azide	26628228		1*	4	P105	C	1000 (454)
Sodium bichromate	10588019		1000	1		C	1000# (454)
Sodium bifluoride	1333831		5000	1		D	5000## (2270)
Sodium bisulfite	7631905		5000	1		D	5000 (2270)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Sodium chromate	7775113		1000	1		C	1000# (454)
Sodium cyanide	143339		10	1,4	P106	A	10 (4.54)
Sodium dodecylbenzene sulfonate	25155300		1000	1		C	1000 (454)
Sodium fluoride	7681494		5000	1		C	1000 (454)
Sodium hydrosulfide	16721805		5000	1		D	5000 (2270)
Sodium hydroxide	1310732		1000	1		C	1000 (454)
Sodium hypochlorite	7681529 10022705		100	1		B	100 (45.4)
Sodium methylate	124414		1000	1		C	1000 (454)
Sodium nitrite	7632000		100	1		B	100## (45.4)
Sodium phosphate, dibasic	7558794 10039324 10140655		5000	1		D	5000 (2270)
Sodium phosphate, tribasic	7601549 7785844 10101890 10361894 7758294 10124568		5000	1		D	5000 (2270)
Sodium selenite	10102188 7782823		1000	1		C	1000## (454)
4,4'-Stilbenediol, alpha,alpha'-diethyl-	56531	Diethylstilbestrol	1*	4	U089	X	1# (0.454)
Streptozotocin	18883664	D-Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-	1*	4	U206	X	1# (0.454)
Strontium chromate	7789062		1000	1		C	1000# (454)
Strontium sulfide	1314961		1*	4	P107	B	100 (45.4)
Strychnidin-10-one, and salts	57249	Strychnine and salts	10	1,4	P108	A	10 (4.54)
Strychnidin-10-one, 2,3-dimethoxy-	357573	Brucine	1*	4	P018	A	10 (4.54)
Strychnine and salts	57249	Strychnidin-10-one, and salts	10	1,4	P108	A	10 (4.54)
Styrene	100425		1000	1		C	1000 (454)
Sulfur hydride	7783064	Hydrogen sulfide Hydrosulfuric acid	100	1,4	U135	B	100## (45.4)
Sulfur monochloride	12771083		1000	1		C	1000 (454)
Sulfur phosphide	1314803	Phosphorus pentasulfide Phosphorus sulfide	100	1,4	U189	B	100 (45.4)
Sulfur selenide	7488564	Selenium disulfide	1*	4	U205	X	1# (0.454)
Sulfuric acid	7664939 6014957		1000	1		C	1000 (454)
Sulfuric acid, dimethyl ester	77781	Dimethyl sulfate	1*	4	U103	X	1# (0.454)
Sulfuric acid, thallium(I) salt	7446186 10031591	Thallium(I) sulfate	1000	1,4	P115	C	1000## (454)
2,4,5-T	93765	2,4,5-T acid 2,4,5-Trichlorophenoxyacetic acid	100	1,4	U232	C	1000 (454)
2,4,5-T acid	93765	2,4,5-T 2,4,5-Trichlorophenoxyacetic acid	100	1,4	U232	C	1000 (454)
2,4,5-T amines	2008460 6369968 6369977 1319728 3813147		100	1		D	5000 (2270)
2,4,5-T esters	93798 2545597 61792072 1928478 25168154		100	1		C	1000 (454)
2,4,5-T salts	13560991		100	1		C	1000 (454)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
TDE	72548	DDD 4,4' DDD Dichlorodiphenyl dichloroethane	1	1,2,4	U060	X	1# (0.454)
1,2,4,5-Tetrachloroberizene	95943	Benzene, 1,2,4,5-tetrachloro-	1*	4	U207	D	5000 (2270)
2,3,7,8-Tetrachlorodibenzo-p-dioxin(TCDD)	1746016		1*	2		X	1# (0.454)
1,1,1,2-Tetrachloroethane	630206	Ethane,1,1,1,2-tetrachloro-	1*	4	U208	X	1# (0.454)
1,1,2,2-Tetrachloroethane	79345	Ethane, 1,1,2,2-tetrachloro-	1*	2,4	U209	X	1# (0.454)
Tetrachloroethylene	127184	Ethene, 1,1,2,2-tetrachloro-	1*	2,4	U210	X	1# (0.454)
2,3,4,6-Tetrachlorophenol	58902	Phenol, 2,3,4,6-tetrachloro-	1*	4	U212	A	10 (4.54)
Tetraethyldithiopyrophosphate	3689245	Dithiopyrophosphoric acid,tetraethyl ester	1*	4	P109	B	100 (45.4)
Tetraethyl lead	78002	Plumbane, tetraethyl-	100	1,4	P110	B	100## (45.4)
Tetraethyl pyrophosphate	107493	Pyrophosphoric acid, tetraethyl ester	100	1,4	P111	B	100## (45.4)
Tetrahydrofuran	109999	Furan, tetrahydro-	1*	4	U213	C	1000 (454)
Tetranitromethane	509148	Methane, tetranitro-	1*	4	P112	A	10 (4.54)
Tetraphosphoric acid, hexaethyl ester	757584	Hexaethyl tetraphosphate	1*	4	P062	B	100 (45.4)
Thallic oxide	1314325	Thallium(III) oxide	1*	4	P113	X	1## (0.454)
Thallium ††	7440280		1*	2		X	1## (0.454)
THALLIUM AND COMPOUNDS			1*	2			**
Thallium(I) acetate	563688	Acetic acid, thallium(I) salt	1*	4	U214	X	1## (0.454)
Thallium(I) carbonate	6533739	Carbonic acid, dithallium (I) salt	1*	4	U215	X	1## (0.454)
Thallium(I) chloride	7791120		1*	4	U216	X	1## (0.454)
Thallium(I) nitrate	10102451		1*	4	U217	X	1## (0.454)
Thallium(III) oxide	1314325	Thallic oxide	1*	4	P113	X	1## (0.454)
Thallium(I) selenide	12039520		1*	4	P114	X	1## (0.454)
Thallium(I) sulfate	7446186 10031591	Sulfuric acid, thallium(I) salt	1000	1,4	P115	C	1000## (454)
Thioacetamide	62555	Ethanethioamide	1*	4	U218	X	1# (0.454)
Thiofanox	39196184	3,3-Dimethyl-1-(methylthio)-2-butanone,O-[(methylamino) carbonyl] oxime.	1*	4	P045	B	100 (45.4)
Thioimidodicarbonic diamide	541537	2,4-Dithiobiuret	1*	4	P049	B	100 (45.4)
Thiomethanol	74931	Methanethiol Methylmercaptan	100	1,4	U153	B	100 (45.4)
Thiophenol	108985	Benzenethiol	1*	4	P014	B	100 (45.4)
Thiosemicarbazide	79196	Hydrazinecarbothioamide	1*	4	P116	B	100 (45.4)
Thiourea	62566	Carbamide, thio-	1*	4	U219	X	1# (0.454)
Thiourea, (2-chlorophenyl)-	5344821	1-(o-Chlorophenyl)thiourea	1*	4	P026	B	100 (45.4)
Thiourea, 1-naphthalenyl-	86884	alpha-Naphthylthiourea	1*	4	P072	B	100 (45.4)
Thiourea, phenyl-	103855	N-Phenylthiourea	1*	4	P093	B	100 (45.4)
Thiram	137268	Bis(dimethylthiocarbamoyl) disulfide	1*	4	U244	A	10 (4.54)
Toluene	108883	Benzene, methyl-	1000	1,2,4	U220	C	1000 (454)
Toluenediamine	95807 25376458 496720 823405	Diaminotoluene	1*	4	U221	X	1# (0.454)
Toluene diisocyanate	584849 91087 26471625	Benzene, 2,4-diisocyanatomethyl-	1*	4	U223	B	100 (45.4)
o-Toluidine hydrochloride	636215	Benzenamine, 2-methyl-, hydrochloride	1*	4	U222	X	1# (0.454)
Toxaphene	8001352	Camphene, octachloro-	1	1,2,4	P123	X	1# (0.454)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
2,4,5-TP acid	93721	Propionic acid, 2-(2,4,5-trichlorophenoxy)- Silvex	100	1,4	U233	B	100 (45.4)
2,4,5-TP acid esters	32534955		100	1		B	100 (45.4)
1H-1,2,4-Triazol-3-amine	61825	Amitrole	1*	4	U011	X	1# (0.454)
Trichlorfon	52686		1000	1		C	1000## (454)
1,2,4-Trichlorobenzene	120821		1*	2		B	100 (45.4)
1,1,1-Trichloroethane	71556	Methyl chloroform	1*	2,4	U226	C	1000 (454)
1,1,2-Trichloroethane	79005	Ethane, 1,1,2-trichloro-	1*	2,4	U227	X	1# (0.454)
Trichloroethene	79016	Trichloroethylene	1000	1,2,4	U228	C	1000# (454)
Trichloroethylene	79016	Trichloroethene	1000	1,2,4	U228	C	1000# (454)
Trichloromethanesulfenyl chloride	594423	Methanesulfenyl chloride, trichloro-	1*	4	P118	B	100 (45.4)
Trichloromonofluoromethane	75694	Methane, trichlorofluoro-	1*	4	U121	D	5000 (2270)
Trichlorophenol	25167822		10	1		A	10# (4.54)
2,3,4-Trichlorophenol	15950660						
2,3,5-Trichlorophenol	933788						
2,3,6-Trichlorophenol	933755						
2,4,5-Trichlorophenol	95954	Phenol, 2,4,5-trichloro-					
2,4,6-Trichlorophenol	88062	Phenol, 2,4,6-trichloro-					
3,4,5-Trichlorophenol	609198						
2,4,5-Trichlorophenol	95954	Phenol, 2,4,5-trichloro-	10	1,4	U230	A	10# (4.54)
2,4,6-Trichlorophenol	88062	Phenol, 2,4,6-trichloro-	10	1,2,4	U231	A	10# (4.54)
2,4,5-Trichlorophenoxyacetic acid	93765	2,4,5-T 2,4,5-T acid	100	1,4	U232	C	1000 (454)
Triethanolamine dodecylbenzenesulfonate	27323417		1000	1		C	1000 (454)
Triethylamine	121448		5000	1		D	5000 (2270)
Trimethylamine	75503		1000	1		C	1000## (454)
sym-Trinitrobenzene	99354	Benzene, 1,3,5-trinitro-	1*	4	U234	X	1## (0.454)
1,3,5-Trioxane, 2,4,6-trimethyl-	123637	Paraldehyde	1*	4	U182	C	1000 (454)
Tris(2,3-dibromopropyl) phosphate	126727	1-Propanol, 2,3-dibromo-, phosphate (3:1)	1*	4	U235	X	1# (0.454)
Trypan blue	72571	2,7-Naphthalenedisulfonic acid,3,3'-[(3,3'-dimethyl- [1,1'-biphenyl]-4,4'-diyl)- bis(azo)]bis(5-amino-4- hydroxy)-tetrasodium salt.	1*	4	U236	X	1# (0.454)
Unlisted Hazardous Wastes			1*	4			
Characteristic of Ignitability			1*	4	D001	B	100 (45.4)
Characteristic of Corrosivity			1*	4	D002	B	100 (45.4)
Characteristic of Reactivity			1*	4	D003	B	100 (45.4)
Characteristic of EP Toxicity			1*	4			
Arsenic			1*	4	D004	X	1# (0.454)
Barium			1*	4	D005	C	1000 (454)
Cadmium			1*	4	D006	X	1# (0.454)
Chromium			1*	4	D007	X	1# (0.454)
Lead			1*	4	D008	X	1## (0.454)
Mercury			1*	4	D009	X	1 (0.454)
Selenium			1*	4	D010	X	1## (0.454)
Silver			1*	4	D011	X	1 (0.454)
Endrin			1	1,4	D012	X	1 (0.454)
Lindane			1	1,4	D013	X	1# (0.454)
Methoxychlor			1	1,4	D014	X	1 (0.454)
Toxaphene			1	1,4	D015	X	1# (0.454)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
2,4-D	*		100	1,4	D016	B	100 (45.4)
2,4,5-TP			100	1,4	D017	B	100 (45.4)
Uracil, 5-[bis(2-chloroethyl)amino]-	66751	Uracil mustard	1*	4	U237	X	1# (0.454)
Uracil mustard	66751	Uracil, 5-[bis(2-chloroethyl)amino]-	1*	4	U237	X	1# (0.454)
Uranyl acetate	541093		5000	1		D	5000## (2270)
Uranyl nitrate	10102064 36478769		5000	1		D	5000## (2270)
Vanadic acid, ammonium salt	7803556	Ammonium vanadate	1*	4	P119	C	1000 (454)
Vanadium(V) oxide	1314621	Vanadium pentoxide	1000	1,4	P120	C	1000## (454)
Vanadium pentoxide	1314621	Vanadium(V) oxide	1000	1,4	P120	C	1000## (454)
Vanadyl sulfate	27774136		1000	1		C	1000## (454)
Vinyl acetate	108054		1000	1		D	5000 (2270)
Vinyl chloride	75014	Ethene, chloro-	1*	2,3,4	U043	X	1# (0.454)
Vinylidene chloride	75354	1,1-Dichloroethylene Ethene, 1,1-dichloro-	5000	1,2,4	U078	D	5000# (2270)
Warfarin	81812	3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin and salts	1*	4	P001	B	100 (45.4)
Xylene (mixed) m- o- p-	1330207 108383 95476 106423	Benzene,dimethyl m- o- p-	1000	1,4	U239	C	1000 (454)
Xylenol	1300716		1000	1		C	1000 (454)
Yohimban-16-carboxylic acid,11,17-dimethoxy- 18-[(3,4,5- trimethoxybenzoyl)oxy]-, methylester.	50555	Reserpine	1*	4	U200	D	5000 (2270)
Zinc ††	7440666		1*	2		X	1## (0.454)
ZINC AND COMPOUNDS			1*	2			**
Zinc acetate	557346		1000	1		C	1000## (454)
Zinc ammonium chloride	52628258 14639975 14639986		5000	1		D	5000## (2270)
Zinc borate	1332076		1000	1		C	1000## (454)
Zinc bromide	7699458		5000	1		D	5000## (2270)
Zinc carbonate	3486359		1000	1		C	1000## (454)
Zinc chloride	7646857		5000	1		D	5000## (2270)
Zinc cyanide	557211		10	1,4	P121	A	10## (4.54)
Zinc fluoride	7783495		1000	1		C	1000## (454)
Zinc formate	557415		1000	1		C	1000## (454)
Zinc hydrosulfite	7779864		1000	1		C	1000## (454)
Zinc nitrate	7779886		5000	1		D	5000## (2270)
Zinc phenolsulfonate	127822		5000	1		D	5000## (2270)
Zinc phosphide	1314847		1000	1,4	P122	C	1000## (454)
Zinc silicofluoride	16871719		5000	1		D	5000##(2270)
Zinc sulfate	7733020		1000	1		C	1000## (454)
Zirconium nitrate	13746899		5000	1		D	5000 (2270)
Zirconium potassium fluoride	16923958		5000	1		C	1000 (454)
Zirconium sulfate	14644612		5000	1		D	5000 (2270)
Zirconium tetrachloride	10026116		5000	1		D	5000 (2270)
F001			1*	4	F001	X	1# (0.454)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
The following spent halogenated solvents used in degreasing and sludges from the recovery of these solvents in degreasing operations:							
(a) Tetrachloroethylene	127184					X	1# (0.454)
(b) Trichloroethylene	79016					C	1000# (454)
(c) Methylene chloride	75092					C	1000 (454)
(d) 1,1,1-Trichloroethane	71556					C	1000 (454)
(e) Carbon tetrachloride	56235					D	5000# (2270)
(f) Chlorinated fluorocarbons	(N.A.)					D	5000 (2270)
F002			1*	4	F002	X	1# (0.454)
The following spent halogenated solvents and the still bottoms from the recovery of these solvents:							
(a) Tetrachloroethylene	127184					X	1# (0.454)
(b) Methylene Chloride	75092					C	1000 (454)
(c) Trichloroethylene	79016					C	1000# (454)
(d) 1,1,1-Trichloroethane	71556					C	1000 (454)
(e) Chlorobenzene	108907					B	100 (45.4)
(f) 1,1,2-Trichloro-1,2,2-trifluoroethane	76131					D	5000 (2270)
(g) o-Dichlorobenzene	106467					B	100 (45.4)
(h) Trichlorofluoromethane	75694					D	5000 (2270)
F003			1*	4	F003	B	100 (45.4)
The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents:							
(a) Xylene	1330207					C	1000 (454)
(b) Acetone	67641					D	5000 (2270)
(c) Ethyl acetate	141786					D	5000 (2270)
(d) Ethylbenzene	100414					C	1000 (454)
(e) Ethyl ether	60297					B	100 (45.4)
(f) Methyl isobutyl ketone	108101					D	5000 (2270)
(g) n-Butyl alcohol	71363					D	5000 (2270)
(h) Cyclohexanone	108941					D	5000 (2270)
(i) Methanol	67561					D	5000 (2270)
F004			1*	4	F004	X	1## (0.454)
The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents:							
(a) Cresols/Cresylic acid	1319773					C	1000# (454)
(b) Nitrobenzene	98953					C	1000 (454)
F005			1*	4	F005	X	1## (0.454)
The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents:							
(a) Toluene	108883					C	1000 (454)
(b) Methyl ethyl ketone	78933					D	5000 (2270)
(c) Carbon disulfide	75150					D	5000# (2270)
(d) Isobutanol	78831					D	5000 (2270)
(e) Pyridine	110861					X	1## (0.454)
F006			1*	4	F006	X	1# (0.454)
Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum							
F007			1*	4	F007	A	10 (4.54)
Spent cyanide plating bath solutions from electroplating operations (except for precious metals electroplating spent cyanide plating bath solutions)							
F008			1*	4	F008	A	10 (4.54)
Plating bath sludges from the bottom of plating baths from electroplating operations where cyanides are used in the process (except for precious metals electroplating plating bath sludges)							
F009			1*	4	F009	A	10 (4.54)
Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process (except for precious metals electroplating spent stripping and cleaning bath solutions)							
F010			1*	4	F010	A	10 (4.54)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Quenching bath sludge from oil baths from metal heat treating operations where cyanides are used in the process (except for precious metals heat-treating quenching bath sludges)							
F011			1*	4	F011	A	10 (4.54)
Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations (except for precious metals heat treating spent cyanide solutions from salt bath pot cleaning)							
F012			1*	4	F012	A	10 (4.54)
Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process (except for precious metals heat treating quenching wastewater treatment sludges)							
F019			1*	4	F019	X	1# (0.454)
Wastewater treatment sludges from the chemical conversion coating of aluminum							
F024			1*	4	F024	X	1# (0.454)
Wastes, including but not limited to distillation residues, heavy ends, tars, and reactor cleanout wastes, from the production of chlorinated aliphatic hydrocarbons,having carbon content from one to five, utilizing free radical catalyzed processes. (This listing does not include light ends, spent filters and filter aids, spent dessicants(sic), wastewater, wastewater treatment sludges, spent catalysts,and wastes listed in Section 261.32.)							
K001			1*	4	K001	X	1# (0.454)
Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol							
K002			1*	4	K002	X	1# (0.454)
Wastewater treatment sludge from the production of chrome yellow and orange pigments							
K003			1*	4	K003	X	1# (0.454)
Wastewater treatment sludge from the production of molybdate orange pigments							
K004			1*	4	K004	X	1# (0.454)
Wastewater treatment sludge from the production of zinc yellow pigments							
K005			1*	4	K005	X	1# (0.454)
Wastewater treatment sludge from the production of chrome green pigments							
K006			1*	4	K006	X	1# (0.454)
Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated)							
K007			1*	4	K007	X	1# (0.454)
Wastewater treatment sludge from the production of iron blue pigments							
K008			1*	4	K008	X	1# (0.454)
Oven residue from the production of chrome oxide green pigments							
K009			1*	4	K009	X	1# (0.454)
Distillation bottoms from the production of acetaldehyde from ethylene							
K010			1*	4	K010	X	1# (0.454)
Distillation side cuts from the production of acetaldehyde from ethylene							
K011			1*	4	K011	X	1# (0.454)
Bottom stream from the wastewater stripper in the production of acrylonitrile							
K013			1*	4	K013	X	1# (0.454)
Bottom stream from the acetonitrile column in the production of acrylonitrile							
K014			1*	4	K014	D	5000 (2270)
Bottoms from the acetonitrile purification column in the production of acrylonitrile							

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
K015 Still bottoms from thedistillation of benzyl chloride			1*	4	K015	X	1# (0.454)
K016 Heavy ends or distillation residues from the productionof carbon tetrachloride			1*	4	K016	X	1# (0.454)
K017 Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin			1*	4	K017	X	1# (0.454)
K018 Heavy ends from the fractionation column in ethyl chloride production			1*	4	K018	X	1# (0.454)
K019 Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production			1*	4	K019	X	1# (0.454)
K020 Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production			1*	4	K020	X	1# (0.454)
K021 Aqueous spent antimony catalyst waste from fluoromethanes production			1*	4	K021	X	1# (0.454)
K022 Distillation bottom tars from the production of phenol/acetone from cumene			1*	4	K022	X	1# (0.454)
K023 Distillation light ends from the production of phthalic anhydride from naphthalene			1*	4	K023	D	5000 (2270)
K024 Distillation bottoms from the production of phthalic anhydride from naphthalene			1*	4	K024	D	5000 (2270)
K025 Distillation bottoms from the production of nitrobenzene by the nitration of benzene			1*	4	K025	X	1# (0.454)
K026 Stripping still tails from the production of methyl ethyl pyridines			1*	4	K026	X	1## (0.454)
K027 Centrifuge and distillation residues from toluene diisocyanate production			1*	4	K027	X	1# (0.454)
K028 Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane			1*	4	K028	X	1# (0.454)
K029 Waste from the product steam stripper in the production of 1,1,1-trichloroethane			1*	4	K029	X	1# (0.454)
K030 Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene			1*	4	K030	X	1# (0.454)
K031 By-product salts generated in the production of MSMA and cacodylic acid			1*	4	K031	X	1# (0.454)
K032 Wastewater treatment sludge from the production of chlordane			1*	4	K032	X	1# (0.454)
K033 Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane			1*	4	K033	X	1# (0.454)
K034 Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane			1*	4	K034	X	1# (0.454)
K035 Wastewater treatment sludges generated in the production of creosote			1*	4	K035	X	1# (0.454)
K036			1*	4	K036	X	1 (0.454)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Still bottoms from toluene reclamation distillation in the production of disulfoton							
K037			1*	4	K037	X	1 (0.454)
Wastewater treatment sludges from the production of disulfoton							
K038			1*	4	K038	X	1# (0.454)
Wastewater from the washing and stripping of phorate production							
K039			1*	4	K039	X	1## (0.454)
Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate							
K040			1*	4	K040	X	1# (0.454)
Wastewater treatment sludge from the production of phorate							
K041			1*	4	K041	X	1# (0.454)
Wastewater treatment sludge from the production of toxaphene							
K042			1*	4	K042	X	1# (0.454)
Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T							
K043			1*	4	K043	X	1# (0.454)
2,6-Dichlorophenol waste from the production of 2,4-D							
K044			1*	4	K044	A	10 (4.54)
Wastewater treatment sludges from the manufacturing and processing of explosives							
K045			1*	4	K045	A	10 (4.54)
Spent carbon from the treatment of wastewater containing explosives							
K046			1*	4	K046	X	1## (0.454)
Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds							
K047			1*	4	K047	A	10 (4.54)
Pink/red water from TNT operations							
K048			1*	4	K048	X	1# (0.454)
Dissolved air flotation (DAF) float from the petroleum refining industry							
K049			1*	4	K049	X	1# (0.454)
Slop oil emulsion solids from the petroleum refining industry							
K050			1*	4	K050	X	1# (0.454)
Heat exchanger bundle cleaning sludge from the petroleum refining industry							
K051			1*	4	K051	X	1# (0.454)
API separator sludge from the petroleum refining industry							
K052			1*	4	K052	X	1## (0.454)
Tank bottoms (leaded) from the petroleum refining industry							
K060			1*	4	K060	X	1# (0.454)
Ammonia still lime sludge from coking operations							
K061			1*	4	K061	X	1# (0.454)
Emission control dust/sludge from the primary production of steel in electric furnaces							
K062			1*	4	K062	X	1# (0.454)
Spent pickle liquor from steel finishing operations							
K069			1*	4	K069	X	1# (0.454)
Emission control dust/sludge from secondary lead smelting							
K071			1*	4	K071	X	1 (0.454)
Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used							

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
K073 Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production			1*	4	K073	X	1# (0.454)
K083 Distillation bottoms from aniline extraction			1*	4	K083	B	100 (45.4)
K084 Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds			1*	4	K084	X	1# (0.454)
K085 Distillation or fractionation column bottoms from the production of chlorobenzenes			1*	4	K085	X	1# (0.454)
K086 Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead			1*	4	K086	X	1# (0.454)
K087 Decanter tank tar sludge from coking operations			1*	4	K087	X	1## (0.454)
K093 Distillation light ends from the production of phthalic anhydride from ortho-xylene			1*	4	K093	D	5000 (2270)
K094 Distillation bottoms from the production of phthalic anhydride from ortho-xylene			1*	4	K094	D	5000 (2270)
K095 Distillation bottoms from the production of 1,1,1-trichloroethane			1*	4	K095	X	1# (0.454)
K096 Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane			1*	4	K096	X	1# (0.454)
K097 Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane			1*	4	K097	X	1# (0.454)
K098 Untreated process wastewater from the production of toxaphene			1*	4	K098	X	1# (0.454)
K099 Untreated wastewater from the production of 2,4-D			1*	4	K099	X	1# (0.454)
K100 Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting (Components of this waste are identical with those of K069).			1*	4	K100	X	1# (0.454)
K101 Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds			1*	4	K101	X	1# (0.454)
K102 Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds			1*	4	K102	X	1# (0.454)
K103 Process residues from aniline extraction from the production of aniline			1*	4	K103	B	100 (45.4)
K104 Combined wastewater streams generated from nitrobenzene/aniline chlorobenzenes			1*	4	K104	X	1# (0.454)
K105 Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes			1*	4	K105	X	1# (0.454)
K106 Wastewater treatment sludge from the mercury cell process in chlorine production			1*	4	K106	X	1 (0.454)

See footnotes on following page.

† - indicates the statutory source as defined by 1, 2, 3, or 4 below
1 - indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA Section 311(b)(4)
2 - indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA Section 307(a)
3 - indicates that the statutory source for designation of this hazardous substance under CERCLA is CAA Section 112
4 - indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA Section 3001
†† - no reporting of releases of this hazardous substance is required if the diameter of the pieces of the solid metal released is equal to or exceeds 100 micrometers (0.004 inches)
††† - the RQ for asbestos is limited to friable forms only
§ - the Agency may adjust the RQ for radionuclides in a future rulemaking; until then the statutory 1-pound RQ applies
1* - indicates that the 1-pound RQ is a CERCLA statutory RQ
** - indicates that no RQ is being assigned to the generic or broad class
# - indicates that the RQ is subject to change when the assessment of potential carcinogenicity and/or chronic toxicity is completed
- indicates that an adjusted RQ is proposed in a separate NPRM in today's Federal Register
- the Agency may adjust the RQ for methyl isocyanate in a future rulemaking; until then the statutory 1-pound RQ applies

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES

CASRN	Hazardous Substance
50000	Formaldehyde Methylene oxide
50077	Azirino(2',3':3,4)pyrrolo(1,2-a)indole-4,7-dione,6-amino-8-[((aminocarbonyl)oxy)methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl- Mitomycin C
50180	Cyclophosphamide 2H-1,3,2-Oxazaphosphorine,2-[bis(2-chloroethyl)amino]tetrahydro-2-oxide
50293	DDT 4,4' DDT Dichlorodiphenyl trichloroethane
50328	Benzo[a]pyrene 3,4-Benzopyrene
50555	Reserpine Yohimban-16-carboxylic acid,11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-,methyl ester
51285	2,4-Dinitrophenol Phenol, 2,4-dinitro-
51434	1,2-Benzenediol,4-[1-hydroxy-2-(methylamino)ethyl]- Epinephrine
51796	Carbamic acid, ethyl ester Ethyl carbamate (Urethan)
52686	Trichlorfon
52857	Famphur Phosphorothioic acid, O,O-dimethyl-O-[p-[(dimethylamino)-sulfonyl]phenyl] ester
53703	Dibenz[a,h]anthracene 1,2:5,6-Dibenzanthracene Dibenzo[a,h]anthracene
53963	Acetamide, N-9H-fluoren-2-yl- 2-Acetylaminofluorene
54115	Nicotine and salts Pyridine, (S)-3-(1-methyl-2-pyrrolidinyl)-,and salts
55185	Ethanamine, N-ethyl-N-nitroso- N-Nitrosodiethylamine
55630	Nitroglycerine 1,2,3-Propanetriol, trinitrate-
55914	Disopropyl fluorophosphate Phosphorofluoridic acid,bis(1-methylethyl) ester
56042	Methylthiouracil 4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-
56235	Carbon tetrachloride Methane, tetrachloro-
56382	Parathion Phosphorothioic acid,O,O-diethyl O-(p-nitrophenyl)ester
56495	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl- 3-Methylcholanthrene
56531	Diethylstilbestrol 4,4'-Stilbenediol, alpha,alpha'-diethyl-

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
56553	Benz[a]anthracene 1,2-Benzanthracene Benzo[a]anthracene
56724	Coumaphos
57125	Cyanides (soluble cyanide salts), not elsewhere-specified
57147	1,1-Dimethylhydrazine Hydrazine, 1,1-dimethyl-
57249	Strychnidin-10-one, and salts Strychnine and salts
57749	Chlordane Chlordane, technical 4,7-Methanoindan, 1,2,4,5,6,7,8,8-octachloro-3a,4,7,7a-tetrahydro-
57976	1,2-Benzanthracene, 7,12-dimethyl- 7,12-Dimethylbenz[a]anthracene
58899	gamma - BHC Hexachlorocyclohexane (gamma isomer) Lindane
58902	Phenol, 2,3,4,6-tetrachloro- 2,3,4,6-Tetrachlorophenol
59507	4-Chloro-m-cresol p-Chloro-m-cresol Phenol, 4-chloro-3-methyl-
60004	Ethylenediamine tetraacetic acid (EDTA)
60117	Benzenamine, N,N-dimethyl-4-phenylazo- Dimethylaminoazobenzene
60297	Ethane, 1,1'-oxybis- Ethyl ether
60344	Hydrazine, methyl- Methyl hydrazine
60515	Dimethoate Phosphorodithioic acid,O,O-dimethyl S-[2(methylamino)-2-oxoethyl] ester
60571	Dieldrin 1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo,exo-1,4:5,8-dimethanonaphthalene
61825	Amitrole 1H-1,2,4-Triazol-3-amine
62384	Mercury, (acetato-O)phenyl- Phenylmercuric acetate
62442	Acetamide, N-(4-ethoxyphenyl)- Phenacetin
62500	Ethyl methanesulfonate Methanesulfonic acid, ethyl ester
62533	Aniline Benzenamine
62555	Ethanethioamide Thioacetamide
62566	Carbamide, thio- Thiourea

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
62737	Dichlorvos
62748	Acetic acid, fluoro-, sodium salt Fluoroacetic acid, sodium salt
62759	Dimethylnitrosamine N-Nitrosodimethylamine
63252	Carbaryl
64186	Formic acid Methanoic acid
64197	Acetic acid
65850	Benzoic acid
66751	Uracil, 5-[bis(2-chloroethyl)amino]- Uracil mustard
67561	Methanol Methyl alcohol
67641	Acetone 2-Propanone
67663	Chloroform Methane, trichloro-
67721	Ethane, 1,1,1,2,2,2-hexachloro- Hexachloroethane
70257	Guanidine, N-nitroso-N-methyl-N'-nitro- N-Methyl-N'-nitro-N-nitrosoguanidine
70304	Hexachlorophene 2,2'-Methylenebis(3,4,6-trichlorophenol)
71363	1-Butanol n-Butyl alcohol
71432	Benzene
71556	Methyl chloroform 1,1,1-Trichloroethane
72208	Endrin 1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo,endo-1,4:5,8-dimethanonaphthalene
72435	Ethane, 1,1,1-trichloro-2,2-bis(p-methoxyphenyl)- Methoxychlor
72548	DDD 4,4' DDD Dichlorodiphenyl dichloroethane TDE
72559	DDE 4,4' DDE
72571	2,7-Naphthalenedisulfonic acid,3,3'-[(3,3'-dimethyl-[1,1'-biphenyl]-4,4'-diyl)-bis(azo)]bis(5-amino-4-hydroxy)-tetrasodium salt Trypan blue
74839	Methane, bromo- Methyl bromide
74873	Methane, chloro- Methyl chloride
74884	Methane, iodo- Methyl iodide

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
74895	Monomethylamine
74908	Hydrocyanic acid Hydrogen cyanide
74931	Methanethiol Methylmercaptan Thiomethanol
74953	Methane, dibromo- Methylene bromide
75003	Chloroethane
75014	Ethene, chloro- Vinyl chloride
75047	Monoethylamine
75058	Acetonitrile Ethanenitrile
75070	Acetaldehyde Ethanal
75092	Methane, dichloro- Methylene chloride
75150	Carbon bisulfide Carbon disulfide
75207	Calcium carbide
75218	Ethylene oxide Oxirane
75252	Bromoform Methane, tribromo-
75274	Dichlorobromomethane
75343	1,1-Dichloroethane Ethane, 1,1-dichloro- Ethylidene dichloride
75354	1,1-Dichloroethylene Ethene, 1,1-dichloro- Vinylidene chloride
75365	Acetyl chloride Ethanoyl chloride
75445	Carbonyl chloride Phosgene
75503	Trimethylamine
75558	2-Methylaziridine 1,2-Propylenimine
75569	Propylene oxide
75605	Cacodylic acid Hydroxydimethylarsine oxide
75649	tert-Butylamine
75694	Methane, trichlorofluoro- Trichloromonofluoromethane
75718	Dichlorodifluoromethane Methane, dichlorodifluoro-
75865	Acetone cyanohydrin 2-Methyllactonitrile Propanenitrile, 2-hydroxy-2-methyl-
75876	Acetaldehyde, trichloro- Chloral
75990	2,2-Dichloropropionic acid
76017	Ethane, pentachloro- Pentachloroethane
76448	Heptachlor 4,7-Methano-1H-indene,1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
77474	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro- Hexachlorocyclopentadiene
77781	Dimethyl sulfate Sulfuric acid, dimethyl ester
78002	Plumbane, tetraethyl- Tetraethyl lead
78591	Isophorone
78795	Isoprene
78819	iso-Butylamine
78831	Isobutyl alcohol 1-Propanol, 2-methyl-
78875	1,2-Dichloropropane Propylene dichloride
78886	2,3-Dichloropropene
78933	2-Butanone Methyl ethyl ketone
78999	1,1-Dichloropropane
79005	Ethane, 1,1,2-trichloro- 1,1,2-Trichloroethane
79016	Trichloroethene Trichloroethylene
79061	Acrylamide 2-Propenamide
79094	Propionic acid
79107	Acrylic acid 2-Propenoic acid
79196	Hydrazinecarbothioamide Thiosemicarbazide
79221	Carbonochloridic acid, methyl ester Methyl chlorocarbonate
79312	iso-Butyric acid
79345	Ethane, 1,1,2,2-tetrachloro- 1,1,2,2-Tetrachloroethane
79447	Carbamoyl chloride, dimethyl- Dimethylcarbamoyl chloride
79469	2-Nitropropane Propane, 2-nitro-
80159	alpha,alpha-Dimethylbenzylhydroperoxide Hydroperoxide, 1-methyl-1-phenylethyl-
80626	Methyl methacrylate 2-Propenoic acid, 2-methyl-, methyl ester
81072	1,2-Benzisothiazolin-3-one,1,1-dioxide, and salts Saccharin and salts
81812	3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin and salts Warfarin
82688	Benzene, pentachloronitro- Pentachloronitrobenzene
83329	Acenaphthene
84662	1,2-Benzenedicarboxylic acid,diethyl ester Diethyl phthalate
84742	1,2-Benzenedicarboxylic acid,dibutyl ester n-Butyl phthalate Dibutyl phthalate Di-n-butyl phthalate

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
85007	Diquat
85018	Phenanthrene
85449	1,2-Benzenedicarboxylic acid anhydride Phthalic anhydride
85687	Butyl benzyl phthalate
86306	N-Nitrosodiphenylamine
86500	Guthion
86737	Fluorene
86884	alpha-Naphthylthiourea Thiourea, 1-naphthalenyl-
87650	2,6-Dichlorophenol Phenol, 2,6-dichloro-
87683	1,3-Butadiene, 1,1,2,3,4,4-hexachloro- Hexachlorobutadiene
87865	Pentachlorophenol Phenol, pentachloro-
88062	Phenol, 2,4,6-trichloro 2,4,6-Trichlorophenol
88722	o-Nitrotoluene
88755	o-Nitrophenol 2-Nitrophenol
88857	Dinoseb Phenol, 2,4-dinitro-6-(1-methylpropyl)-
91087	Benzene, 2,4-diisocyanatomethyl- Toluene diisocyanate
91203	Naphthalene
91225	Quinoline
91587	beta-Chloronaphthalene 2-Chloronaphthalene Naphthalene, 2-chloro-
91598	2-Naphthylamine beta-Naphthylamine
91805	Methapyrilene Pyridine, 2-[(2-(dimethylamino)ethyl)-2-thenylamino]-
91941	(1,1'-Biphenyl)-4,4'diamine,3,3'dichloro- 3,3'-Dichlorobenzidine
92875	Benzidine (1,1'-Biphenyl)-4,4'diamine
93721	Propionic acid, 2-(2,4,5-trichlorophenoxy)- Silvex 2,4,5-TP acid
93765	2,4,5-T 2,4,5-T acid 2,4,5-Trichlorophenoxyacetic acid
93798	2,4,5-T esters
94111	2,4-D Esters
94586	Benzene, 1,2-methylenedioxy-4-propyl- Dihydrosafrole
94597	Benzene, 1,2-methylenedioxy-4-allyl- Safrole
94757	2,4-D Acid 2,4-D, salts and esters 2,4-Dichlorophenoxyacetic acid, salts and esters

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
94791	2,4-D Esters
94804	2,4-D Esters
95476	Benzene, o-dimethyl- o-Xylene
95487	o-Cresol o-Cresylic acid
95501	Benzene, 1,2-dichloro- 1,2-Dichlorobenzene o-Dichlorobenzene
95578	2-Chlorophenol o-Chlorophenol Phenol, 2-chloro-
95807	Diaminotoluene Toluenediamine
95943	Benzene, 1,2,4,5-tetrachloro- 1,2,4,5-Tetrachlorobenzene
95954	Phenol, 2,4,5-trichloro- 2,4,5-Trichlorophenol
96128	1,2-Dibromo-3-chloropropane Propane, 1,2-dibromo-3-chloro-
96457	Ethylenethiourea 2-Imidazolidinethione
97632	Ethyl methacrylate 2-Propenoic acid, 2-methyl-, ethyl ester
98011	2-Furancarboxaldehyde Furfural
98077	Benzene, trichloromethyl- Benzotrichloride
98099	Benzenesulfonic acid chloride Benzenesulfonyl chloride
98828	Benzene, 1-methylethyl- Cumene
98862	Acetophenone Ethanone, 1-phenyl-
98873	Benzal chloride Benzene, dichloromethyl-
98884	Benzoyl chloride
98953	Benzene, nitro- Nitrobenzene
99081	m-Nitrotoluene
99354	Benzene, 1,3,5-trinitro- sym-Trinitrobenzene
99558	Benzenamine, 2-methyl-5-nitro- 5-Nitro-o-toluidine
99650	m-Dinitrobenzene
99990	p-Nitrotoluene
100016	Benzenamine, 4-nitro- p-Nitroaniline
100027	p-Nitrophenol 4-Nitrophenol Phenol, 4-nitro-
100254	p-Dinitrobenzene
100414	Ethylbenzene
100425	Styrene
100447	Benzene, chloromethyl- Benzyl chloride

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
100470	Benzonitrile
100754	N-Nitrosopiperidine Pyridine, hexahydro-N-nitroso-
101144	Benzenamine, 4,4'-methylenebis(2-chloro- 4,4'-Methylenebis(2-chloroaniline)
101553	Benzene, 1-bromo-4-phenoxy- 4-Bromophenyl phenyl ether
103855	N-Phenylthiourea Thiourea, phenyl-
105464	sec-Butyl acetate
105679	2,4-Dimethylphenol Phenol, 2,4-dimethyl-
106423	Benzene, p-dimethyl- p-Xylene
106445	p-Cresol p-Cresylic acid
106467	Benzene, 1,4-dichloro- 1,4-Dichlorobenzene p-Dichlorobenzene
106478	Benzenamine, 4-chloro- p-Chloroaniline
106514	p-Benzoquinone 1,4-Cyclohexadienedione
106898	1-Chloro-2,3-epoxypropane Epichlorohydrin Oxirane, 2-(chloromethyl)-
106934	Ethane, 1,2-dibromo- Ethylene dibromide
107028	Acrolein 2-Propenal
107051	Allyl chloride
107062	1,2-Dichloroethane Ethane, 1,2-dichloro- Ethylene dichloride
107108	1-Propanamine n-Propylamine
107120	Ethyl cyanide Propanenitrile
107131	Acrylonitrile 2-Propenenitrile
107153	Ethylenediamine
107186	Allyl alcohol 2-Propen-1-ol
107197	Propargyl alcohol 2-Propyn-1-ol
107200	Acetaldehyde, chloro- Chloroacetaldehyde
107302	Chloromethyl methyl ether Methane, chloromethoxy-
107493	Pyrophosphoric acid, tetraethyl ester Tetraethyl pyrophosphate
107926	Butyric acid
108054	Vinyl acetate
108101	Methyl isobutyl ketone 4-Methyl-2-pentanone
108247	Acetic anhydride
108316	2,5-Furandione Maleic anhydride

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
108383	Benzene, m-dimethyl- m-Xylene
108394	m-Cresol m-Cresylic acid
108463	1,3-Benzenediol Resorcinol
108601	Bis(2-chloroisopropyl) ether Propane, 2,2'-oxybis(2-chloro-
108883	Benzene, methyl- Toluene
108907	Benzene, chloro- Chlorobenzene
108941	Cyclohexanone
108952	Benzene, hydroxy- Phenol
108985	Benzenethiol Thiophenol
109068	2-Picoline Pyridine, 2-methyl-
109739	Butylamine
109773	Malononitrile Propanedinitrile
109897	Diethylamine
109999	Furan, tetrahydro- Tetrahydrofuran
110009	Furan Furfuran
110167	Maleic acid
110178	Fumaric acid
110190	iso-Butyl acetate
110758	2-Chloroethyl vinyl ether Ethene, 2-chloroethoxy-
110827	Benzene, hexahydro- Cyclohexane
110861	Pyridine
111444	Bis (2-chloroethyl) ether Dichloroethyl ether Ethane, 1,1'-oxybis(2-chloro-
111546	1,2-Ethanediylbiscarbamodithioic acid Ethylenebis(dithiocarbamic acid)
111911	Bis(2-chloroethoxy) methane Ethane, 1,1'-(methylenebis(oxy))bis(2-chloro-
115026	Azaserine L-Serine, diazoacetate (ester)
115297	Endosulfan 5-Norbornene-2,3-dimethanol,1,4,5,6,7,7-hexachloro,cyclic sulfite
115322	Kelthane
116063	Aldicarb Propanal, 2-methyl-2-(methylthio)-,O-[(methylamino)carbonyl]oxime
117806	Dichlone
117817	1,2-Benzenedicarboxylic acid,[bis(2-ethylhexyl)] ester Bis(2-ethylhexyl)phthalate
117840	1,2-Benzenedicarboxylic acid,di-n-octyl ester Di-n-octyl phthalate

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
118741	Benzene, hexachloro- Hexachlorobenzene
119904	(1,1'-Biphenyl)-4,4'diamine,3,3'dimethoxy- 3,3'-Dimethoxybenzidine
119937	(1,1'Biphenyl)-4,4'-diamine,3,3'-dimethyl- 3,3'-Dimethylbenzidine
120127	Anthracene
120581	Benzene, 1,2-methylenedioxy-4-propenyl- Isosafrole
120821	1,2,4-Trichlorobenzene
120832	2,4-Dichlorophenol Phenol, 2,4-dichloro-
121142	Benzene, 1-methyl-2,4-dinitro- 2,4-Dinitrotoluene
121211	Pyrethrins
121299	Pyrethrins
121448	Triethylamine
121755	Malathion
122098	alpha,alpha-Dimethylphenethylamine Ethanamine, 1,1-dimethyl-2-phenyl-
122667	1,2-Diphenylhydrazine Hydrazine, 1,2-diphenyl-
123331	1,2-Dihydro-3,6-pyridazinedione Maleic hydrazide
123626	Propionic anhydride
123637	Paraldehyde 1,3,5-Trioxane, 2,4,6-trimethyl-
123739	2-Butenal Crotonaldehyde
123864	Butyl acetate
123911	1,4-Diethylene dioxide 1,4-Dioxane
123922	iso-Amyl acetate
124049	Adipic acid
124403	Dimethylamine Methanamine, N-methyl-
124414	Sodium methylate
124481	Chlorodibromomethane
126727	1-Propanol, 2,3-dibromo-, phosphate (3:1) Tris(2,3-dibromopropyl) phosphate
126987	Methacrylonitrile 2-Propenenitrile, 2-methyl-
127184	Ethene, 1,1,2,2-tetrachloro- Tetrachloroethylene
127822	Zinc phenolsulfonate
129000	Pyrene
130154	1,4-Naphthalenedione 1,4-Naphthoquinone
131113	1,2-Benzenedicarboxylic acid,dimethyl ester Dimethyl phthalate
131748	Ammonium picrate Phenol, 2,4,6-trinitro-, ammonium salt
131895	4,6-Dinitro-o-cyclohexylphenol Phenol, 2-cyclohexyl-4,6-dinitro-

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
133062	Captan
134327	1-Naphthylamine alpha-Naphthylamine
137268	Bis(dimethylthiocarbamoyl) disulfide Thiram
140885	Ethyl acrylate 2-Propenoic acid, ethyl ester
141786	Acetic acid, ethyl ester Ethyl acetate
142289	1,3-Dichloropropane
142712	Cupric acetate
142847	Dipropylamine 1-Propanamine, N-propyl-
143339	Sodium cyanide
143500	Decachlorooctahydro-1,3,4-metheno-2H-cyclobuta[c,d]-pentalen-2-one Kepone
145733	Endothall 7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid
148823	Alanine, 3-[p-bis(2-chloroethyl)amino]phenyl-,L- Melphalan
151508	Potassium cyanide
151564	Aziridine Ethylenimine
152169	Diphosphoramide, octamethyl- Octamethylpyrophosphoramide
156605	1,2-trans-Dichloroethylene Ethene, trans-1,2-dichloro-
189559	1,2:7,8-Dibenzopyrene Dibenz[a,j]pyrene
191242	Benzo[ghi]perylene
193395	Indeno(1,2,3-cd)pyrene 1,10-(1,2-Phenylene)pyrene
205992	Benzo[b]fluoranthene
206440	Benzo[j,k]fluorene Fluoranthene
207089	Benzo[k]fluoranthene
208968	Acenaphthylene
218019	1,2-Benzphenanthrene Chrysene
225514	Benz[c]acridine 3,4-Benzacridine
297972	O,O-Diethyl O-pyrazinyl phosphorothioate Phosphorothioic acid, O,O-diethyl, O-pyrazinyl ester
298000	O,O-Dimethyl O-p-nitrophenyl phosphorothioate Methyl parathion
298022	Phorate Phosphorodithioic acid, O,O-diethyl S-(ethylthio),methyl ester
298044	O,O-Diethyl S-[2-(ethylthio)ethyl] phosphorodithioate Disulfoton
300765	Naled
301042	Acetic acid, lead salt Lead acetate
302012	Diamine Hydrazine

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
303344	Lasiocarpine
305033	Butanoic acid, 4-[bis(2-chloroethyl)amino] benzene- Chlorambucil
309002	Aldrin 1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo,exo-dimethanonaphthalene
311455	Diethyl-p-nitrophenyl phosphate Phosphoric acid,diethyl,p-nitrophenyl ester
315184	Mexacarbate
319846	alpha - BHC
319857	beta - BHC
319868	delta - BHC
329715	2,5-Dinitrophenol
330541	Diuron
333415	Diazinon
353504	Carbon oxyfluoride Carbonyl fluoride
357573	Brucine Strychnidin-10-one, 2,3-dimethoxy-
460195	Cyanogen
465736	Hexachlorohexahydro-endo,endo-dimethanonaphthalene 1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo,endo-dimethanonaphthalene
492808	Auramine Benzenamine, 4,4'-carbonimidoylbis (N,N-dimethyl-
494031	Chlornaphazine 2-Naphthylamine, N,N-bis(2-chloroethyl)-
496720	Diaminotoluene Toluenediamine
504245	4-Aminopyridine 4-Pyridinamine
504609	1-Methylbutadiene 1,3-Pentadiene
506616	Potassium silver cyanide
506649	Silver cyanide
506683	Bromine cyanide Cyanogen bromide
506774	Chlorine cyanide Cyanogen chloride
506876	Ammonium carbonate
506967	Acetyl bromide
509148	Methane, tetranitro- Tetranitromethane
510156	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-,ethyl ester Ethyl 4,4'-dichlorobenzilate
513495	sec-Butylamine
528290	o-Dinitrobenzene
534521	4,6-Dinitro-o-cresol and salts Phenol,2,4-dinitro-6-methyl-, and salts
540738	1,2-Dimethylhydrazine Hydrazine, 1,2-dimethyl-

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
540885	tert-Butyl acetate
541093	Uranyl acetate
541537	2,4-Dithiobiuret Thioimidodicarbonic diamide
541731	Benzene, 1,3-dichloro- 1,3-Dichlorobenzene m-Dichlorobenzene
542621	Barium cyanide
542756	1,3-Dichloropropene Propene, 1,3-dichloro-
542767	3-Chloropropionitrile Propanenitrile, 3-chloro-
542881	Bis(chloromethyl) ether Methane, oxybis(chloro-
543908	Cadmium acetate
544183	Cobaltous formate
544923	Copper cyanide
554847	m-Nitrophenol
557197	Nickel cyanide Nickel(II) cyanide
557211	Zinc cyanide
557346	Zinc acetate
557415	Zinc formate
563122	Ethion
563688	Acetic acid, thallium(I) salt Thallium(I) acetate
573568	2,6-Dinitrophenol
584849	Benzene, 2,4-diisocyanatomethyl- Toluene diisocyanate
591082	Acetamide, N-(aminothioxomethyl)- 1-Acetyl-2-thiourea
592018	Calcium cyanide
592041	Mercuric cyanide
592858	Mercuric thiocyanate
592870	Lead thiocyanate
594423	Methanesulfenyl chloride, trichloro- Trichloromethanesulfenyl chloride
598312	Bromoacetone 2-Propanone, 1-bromo-
606202	Benzene, 1-methyl-2,6-dinitro- 2,6-Dinitrotoluene
608935	Benzene, pentachloro- Pentachlorobenzene
609198	3,4,5-Trichlorophenol
610399	3,4-Dinitrotoluene
615532	Carbamic acid, methylnitroso-,ethyl ester N-Nitroso-N-methylurethane
621647	Di-n-propylnitrosamine N-Nitrosodi-n-propylamine
624839	Isocyanic acid, methyl ester Methyl isocyanate

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
625161	tert-Amyl acetate
626380	sec-Amyl acetate
628637	Amyl acetate
628864	Fulminic acid, mercury(II)salt Mercury fulminate
630104	Carbamimidoselenoic acid Selenourea
630206	Ethane, 1,1,1,2-tetrachloro- 1,1,1,2-Tetrachloroethane
631618	Ammonium acetate
636215	Benzenamine, 2-methyl-, hydrochloride o-Toluidine hydrochloride
640197	Acetamide, 2-fluoro- Fluoroacetamide
684935	Carbamide, N-methyl-N-nitroso- N-Nitroso-N-methylurea
692422	Arsine, diethyl- Diethylarsine
696286	Dichlorophenylarsine Phenyl dichloroarsine
757584	Hexaethyl tetraphosphate Tetraphosphoric acid, hexaethyl ester
759739	Carbamide, N-ethyl-N-nitroso- N-Nitroso-N-ethylurea
764410	2-Butene, 1,4-dichloro- 1,4-Dichloro-2-butene
765344	Glycidylaldehyde 1-Propanal, 2,3-epoxy-
815827	Cupric tartrate
823405	Diaminotoluene Toluenediamine
924163	1-Butanamine, N-butyl-N-nitroso- N-Nitrosodi-n-butylamine
930552	N-Nitrosopyrrolidine Pyrrole, tetrahydro-N-nitroso-
933755	2,3,6-Trichlorophenol
933788	2,3,5-Trichlorophenol
959988	alpha - Endosulfan
1024573	Heptachlor epoxide
1031078	Endosulfan sulfate
1066304	Chromic acetate
1066337	Ammonium bicarbonate
1072351	Lead stearate
1111780	Ammonium carbamate
1116547	Ethanol, 2,2'-(nitrosoimino)bis- N-Nitrosodiethanolamine
1120714	1,2-Oxathiolane, 2,2-dioxide 1,3-Propane sultone
1185575	Ferric ammonium citrate
1194656	Dichlobenil
1300716	Xylenol
1303282	Arsenic(V) oxide Arsenic pentoxide

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
1303328	Arsenic disulfide
1303339	Arsenic trisulfide
1309644	Antimony trioxide
1310583	Potassium hydroxide
1310732	Sodium hydroxide
1314325	Thallic oxide Thallium(III) oxide
1314621	Vanadium(V) oxide Vanadium pentoxide
1314803	Phosphorus pentasulfide Phosphorus sulfide Sulfur phosphide
1314847	Zinc phosphide
1314870	Lead sulfide
1314961	Strontium sulfide
1319726	2,4,5-T amines
1319773	Cresol(s) Cresylic acid
1320189	2,4-D Esters
1321126	Nitrotoluene
1327522	Arsenic acid
1327533	Arsenic(III) oxide Arsenic trioxide
1330207	Benzene, dimethyl- Xylene
1332076	Zinc borate
1332214	Asbestos
1333831	Sodium bifluoride
1335326	Lead subacetate
1336216	Ammonium hydroxide
1336363	POLYCHLORINATED BIPHENYLS (PCBs) Aroclors
1338234	2-Butanone peroxide Methyl ethyl ketone peroxide
1338245	Naphthenic acid
1341497	Ammonium bifluoride
1464535	2,2'-Bioxirane 1,2:3,4-Diepoxybutane
1563662	Carbofuran
1615801	N,N'-Diethylhydrazine Hydrazine, 1,2-diethyl-
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin(TCDD)
1762954	Ammonium thiocyanate
1863634	Ammonium benzoate
1888717	Hexachloropropene 1-Propene, 1,1,2,3,3,3-hexachloro-

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
1918009	Dicamba
1928387	2,4-D Esters
1928478	2,4,5-T esters
1928616	2,4-D Esters
1929733	2,4-D Esters
2008460	2,4,5-T amines
2032657	Mercaptodimethur
2303164	Diallate S-(2,3-Dichloroallyl) diisopropylthiocarbamate
2312358	Propargite
2545597	2,4,5-T esters
2763964	5-(Aminomethyl)-3-isoxazolol 3(2H)-Isoxazolone, 5-(aminomethyl)-
2764729	Diquat
2921882	Chlorpyrifos
2944674	Ferric ammonium oxalate
2971382	2,4-D Esters
3012655	Ammonium citrate, dibasic
3164292	Ammonium tartrate
3165933	Benzenamine, 4-chloro-2-methyl-,hydrochloride 4-Chloro-o-toluidine, hydrochloride
3251238	Cupric nitrate
3268582	O,O-Diethyl S-methyl dithiophosphate Phosphorodithioic acid, O,O-diethyl S-methylester
3486359	Zinc carbonate
3689245	Dithiopyrophosphoric acid,tetraethyl ester Tetraethyldithiopyrophosphate
3813147	2,4,5-T amines
4170303	2-Butenal Crotonaldehyde
4549400	Ethenamine, N-methyl-N-nitroso- N-Nitrosomethylvinylamine
5344821	1-(o-Chlorophenyl)thiourea Thiourea, (2-chlorophenyl)-
5893663	Cupric oxalate
5972736	Ammonium oxalate
6009707	Ammonium oxalate
6369966	2,4,5-T amines
6369977	2,4,5-T amines
6533739	Carbonic acid, dithallium (I) salt Thallium(I) carbonate
7005723	4-Chlorophenyl phenyl ether
7421934	Endrin aldehyde

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
7428480	Lead stearate
7439921	Lead
7439976	Mercury
7440020	Nickel
7440224	Silver
7440235	Sodium
7440280	Thallium
7440360	Antimony
7440382	Arsenic
7440417	Beryllium Beryllium dust
7440439	Cadmium
7440473	Chromium
7440508	Copper
7440666	Zinc
7446084	Selenium dioxide Selenium oxide
7446142	Lead sulfate
7446186	Sulfuric acid, thallium(i) salt Thallium(I) sulfate
7446277	Lead phosphate Phosphoric acid, lead salt
7447394	Cupric chloride
7488564	Selenium disulfide Sulfur selenide
7558794	Sodium phosphate, dibasic
7601549	Sodium phosphate, tribasic
7631892	Sodium arsenate
7631905	Sodium bisulfite
7632000	Sodium nitrite
7645252	Lead arsenate
7646857	Zinc chloride
7647010	Hydrochloric acid
7647189	Antimony pentachloride
7664382	Phosphoric acid
7664393	Hydrofluoric acid Hydrogen fluoride
7664417	Ammonia
7664939	Sulfuric acid
7681494	Sodium fluoride
7681529	Sodium hypochlorite

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
7697372	Nitric acid
7699458	Zinc bromide
7705080	Ferric chloride
7718549	Nickel chloride
7719122	Phosphorus trichloride
7720787	Ferrous sulfate
7722647	Potassium permanganate
7723140	Phosphorus
7733020	Zinc sulfate
7738945	Chromic acid
7758294	Sodium phosphate, tribasic
7758943	Ferrous chloride
7758954	Lead chloride
7758987	Cupric sulfate
7761888	Silver nitrate
7773060	Ammonium sulfamate
7775113	Sodium chromate
7778394	Arsenic acid
7778441	Calcium arsenate
7778509	Potassium bichromate
7778543	Calcium hypochlorite
7779864	Zinc hydrosulfite
7779886	Zinc nitrate
7782414	Fluorine
7782492	Selenium
7782505	Chlorine
7782630	Ferrous sulfate
7782823	Sodium selenite
7782867	Mercurous nitrate
7783008	Selenious acid
7783064	Hydrogen sulfide Hydrosulfuric acid Sulfur hydride
7783188	Ammonium thiosulfate
7783359	Mercuric sulfate
7783462	Lead fluoride
7783495	Zinc fluoride
7783508	Ferric fluoride
7783564	Antimony trifluoride

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
7784341	Arsenic trichloride
7784409	Lead arsenate
7784410	Potassium arsenate
7784465	Sodium arsenite
7785844	Sodium phosphate, tribasic
7786347	Mevinphos
7786814	Nickel sulfate
7787475	Beryllium chloride
7787497	Beryllium fluoride
7787555	Beryllium nitrate
7788989	Ammonium chromate
7789006	Potassium chromate
7789062	Strontium chromate
7789095	Ammonium bichromate
7789426	Cadmium bromide
7789437	Cobaltous bromide
7789619	Antimony tribromide
7790945	Chlorosulfonic acid
7791120	Thallium(I) chloride
7803512	Hydrogen phosphide Phosphine
7803556	Ammonium vanadate Vanadic acid, ammonium salt
8001352	Camphene, octachloro- Toxaphene
8001589	Creosote
8003198	Dichloropropane - Dichloropropene (mixture)
8003347	Pyrethrins
8014957	Sulfuric acid
9004664	Ferric dextran Iron dextran
10022705	Sodium hypochlorite
10025873	Phosphorus oxychloride
10025919	Antimony trichloride
10026116	Zirconium tetrachloride
10028225	Ferric sulfate
10031591	Sulfuric acid, thallium(I) salt Thallium(I) sulfate
10039324	Sodium phosphate, dibasic
10043013	Aluminum sulfate
10045893	Ferrous ammonium sulfate

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
10045940	Mercuric nitrate
10049055	Chromous chloride
10099748	Lead nitrate
10101538	Chromic sulfate
10101630	Lead iodide
10101890	Sodium phosphate, tribasic
10102064	Uranyl nitrate
10102188	Sodium selenite
10102439	Nitric oxide Nitrogen(II) oxide
10102440	Nitrogen dioxide Nitrogen(IV) oxide
10102451	Thallium(I) nitrate
10102484	Lead arsenate
10108642	Cadmium chloride
10124502	Potassium arsenite
10124568	Sodium phosphate, tribasic
10140655	Sodium phosphate, dibasic
10192300	Ammonium bisulfite
10196040	Ammonium sulfite
10361894	Sodium phosphate, tribasic
10380297	Cupric sulfate ammoniated
10415755	Mercurous nitrate
10421484	Ferric nitrate
10544726	Nitrogen dioxide Nitrogen(IV) oxide
10588019	Sodium bichromate
11096825	Aroclor 1260 Polychlorinated Biphenyls (PCBs)
11097691	Aroclor 1254 Polychlorinated Biphenyls (PCBs)
11104282	Aroclor 1221 Polychlorinated Biphenyls (PCBs)
11115745	Chromic acid
11141165	Aroclor 1232 Polychlorinated Biphenyls (PCBs)
12002038	Cupric acetoarsenite
12039520	Thallium(I) selenide
12054487	Nickel hydroxide
12125018	Ammonium fluoride
12125029	Ammonium chloride
12135761	Ammonium sulfide
12672296	Aroclor 1248 Polychlorinated Biphenyls (PCBs)
12674112	Aroclor 1016 Polychlorinated Biphenyls (PCBs)
12771083	Sulfur monochloride
13463393	Nickel carbonyl Nickel tetracarbonyl

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
13560991	2,4,5-T salts
13597994	Beryllium nitrate
13746899	Zirconium nitrate
13765190	Calcium chromate Chromic acid, calcium salt
13814965	Lead fluoborate
13826830	Ammonium fluoborate
13952846	sec-Butylamine
14017415	Cobaltous sulfamate
14216752	Nickel nitrate
14258492	Ammonium oxalate
14307358	Lithium chromate
14307438	Ammonium tartrate
14639975	Zinc ammonium chloride
14639986	Zinc ammonium chloride
14644612	Zirconium sulfate
15699180	Nickel ammonium sulfate
15739807	Lead sulfate
15950660	2,3,4-Trichlorophenol
16721805	Sodium hydrosulfide
16752775	Acetimidic acid, N-[(methylcarbamoyl)oxy]thio-,methyl ester Methomyl
16871719	Zinc silicofluoride
16919190	Ammonium silicofluoride
16923958	Zirconium potassium fluoride
18883664	D-Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)- Streptozotocin
20816120	Osmium oxide Osmium tetroxide
20830813	Daunomycin 5,12-Naphthacenedione, (8S-cis)-8-acetyl-10-[3-amino-2,3,6-trideoxy-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-
20859738	Aluminum phosphide
23950585	3,5-Dichloro-N-(1,1-dimethyl-2-propynyl)benzamide Pronamide
25154545	Dinitrobenzene (mixed)
25154556	Nitrophenol (mixed)
25155300	Sodium dodecylbenzene sulfonate
25167822	Trichlorophenol
25168154	2,4,5-T esters
25168267	2,4-D Esters
25321146	Dinitrotoluene
25321226	Dichlorobenzene (mixed)
25376458	Diaminotoluene Toluenediamine

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
25550587	Dinitrophenol
26264062	Calcium dodecylbenzene sulfonate
26471625	Benzene, 2,4-diisocyanatomethyl- Toluene diisocyanate
26628228	Sodium azide
26638197	Dichloropropane
26952238	Dichloropropene
27176870	Dodecylbenzenesulfonic acid
27323417	Triethanolamine dodecylbenzene sulfonate
27774136	Vanadyl sulfate
28300745	Antimony potassium tartrate
30525894	Paraformaldehyde
32534955	2,4,5-TP acid esters
33213659	beta - Endosulfan
36478769	Uranyl nitrate
37211055	Nickel chloride
39196184	3,3-Dimethyl-1-(methylthio)-2-butanone,O-[(methylamino)carbonyl] oxime Thiofanox
42504461	Isopropanolamine dodecylbenzene sulfonate
52628258	Zinc ammonium chloride
52652592	Lead stearate
52740166	Calcium arsenite
53467111	2,4-D Esters
53469219	Aroclor 1242 Polychlorinated Biphenyls (PCBs)
55488874	Ferric ammonium oxalate
56189094	Lead stearate
61792072	2,4,5-T esters

§ 302.5 Determination of reportable quantities.

(a) *Listed hazardous substances.* The quantity listed in the column "Final RQ" for each substance in Table 302.4 is the reportable quantity for that substance.

(b) *Unlisted hazardous substances.* Unlisted hazardous substances designated by 40 CFR 302.4(b), which substances are wastes prior to their initial release into the environment, have the reportable quantity of 100 pounds, except for those unlisted hazardous wastes exhibiting the characteristic of extraction procedure (EP) toxicity identified in 40 CFR 261.24. Unlisted hazardous wastes which exhibit EP toxicity have the reportable quantities listed in Table 302.4 for the contaminant on which the characteristic of EP toxicity is based. The reportable quantity applies to the waste itself, not merely to the toxic contaminant. If an unlisted hazardous waste exhibits EP toxicity on the basis of more than one contaminant, the reportable quantity for that waste shall be the lowest of the reportable quantities listed in Table 302.4 for those contaminants. If an unlisted hazardous waste exhibits the characteristic of EP toxicity and one or more of the other characteristics referenced in 40 CFR 302.4(b), the reportable quantity for that waste shall be the lowest of the applicable reportable quantities.

§ 302.6 Notification requirements.

(a) Any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he has knowledge of any release (other than a federally permitted release or application of a pesticide) of a hazardous substance from such vessel or facility in a quantity equal to or exceeding the reportable quantity determined by this part in any 24-hour period, immediately notify the National Response Center ((800) 424–8802; in Washington, D.C. (202) 426–2675).

(b) Releases of mixtures and solutions are subject to these notification requirements only where a component hazardous substance of the mixture or solution is released in a quantity equal to or greater than its reportable quantity.

(c) Notification of the release of an RQ of solid particles of antimony, arsenic, beryllium, cadmium, chromium, copper, lead, nickel, selenium, silver, thallium, or zinc is not required if the mean diameter of the particles released is larger than 100 micrometers (0.004 inches).

(Approved by the Office of Management and Budget under the control number 2115–0137)

§ 302.7 Penalties.

(a) Any person

(1) In charge of a vessel from which a hazardous substance is released, other than a federally permitted release, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone,

(2) In charge of a vessel from which a hazardous substance is released, other than a federally permitted release, which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), and who is otherwise subject to the jurisdiction of the United States at the time of the release, or

(3) In charge of a facility from which a hazardous substance is released, other than a federally permitted release, in a quantity equal to or greater than that reportable quantity determined under this part who fails to notify immediately the National Response Center as soon as he has knowledge of such release shall be subject to all of the sanctions, including criminal penalties, set forth in section 103 of the Act with respect to such failure to notify.

(b) Notification received pursuant to this section or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(c) This section shall not apply to the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act or to the handling and storage of such a pesticide product by an agricultural producer.

PART 117—[AMENDED]

2. 40 CFR Part 117 is amended by revising § 117.3 to read as follows:

§ 117.3 Determination of reportable quantities.

Each substance in Table 117.3 that is listed in Table 302.4, 40 CFR Part 302, is assigned the reportable quantity listed in Table 302.4 for that substance.

[FR Doc. 85–4238 Filed 4–3–85; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 302

[SW H-FRL 2665(a)]

Reportable Quantity Adjustments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Sections 103(a) and 103(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") require that persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than the reportable quantities ("RQs") immediately notify the National Response Center of the release. Section 102(b) sets a reportable quantity of one pound for hazardous substances, except those substances for which reportable quantities have been established pursuant to section 311(b)(4) of the Clean Water Act ("CWA").

Section 102(a) authorizes the Environmental Protection Agency ("EPA") to adjust reportable quantities for hazardous substances and to designate as hazardous substances, substances which when released into the environment may present substantial danger to the public health or welfare or the environment. A final rule published elsewhere in today's **Federal Register** adjusts many of the reportable quantities established in section 102(b). EPA is proposing in this rulemaking to adjust additional reportable quantities. These RQ adjustments are intended to reduce the burdens of reporting on the regulated community, allow EPA to focus its resources on the most serious releases, and protect public health and welfare and the environment more effectively. The RQ adjustments proposed in this rulemaking will affect both CERCLA RQs and corresponding RQs in regulations promulgated pursuant to section 311(b)(4) of the CWA.

Notification of a release of a hazardous substance in a quantity equal to or greater than its RQ is to be made by telephone to the National Response Center. The toll-free telephone number of the National Response Center is listed under the "Addresses".

DATES: Comments must be received on or before June 3, 1985.

ADDRESSES: The toll-free telephone number of the National Response Center is (800) 424-8802; in the Washington, D.C. metropolitan area (202) 426-2675.

Comments: Comments should be submitted in triplicate to: Emergency Response Division, Docket Clerk, Attention: Docket Number 102RQ, Room S-325, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Docket: Copies of materials relevant to this rulemaking are contained in Room S-325 at the U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. The docket is available for inspection between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Dr. K. Jack Kooyoomjian, Response Standards and Criteria Branch, Emergency Response Division (WH-548B), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, or the RCRA/Superfund Hotline (800) 424-9346, in Washington, D.C., (202) 382-3000.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction
II. Reportable Quantity Adjustments
  A. Introduction
  B. Summary of the Methodology Underlying the Reportable Quantity Adjustments
  C. Substances for Which Adjusted RQs Are Being Proposed
  D. ICR Substances
III. Reportable Quantity Adjustments Under Section 311 of the Clean Water Act
IV. Summary of Supporting Analyses

I. Introduction

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Pub. L. 96-510), 42 U.S.C. 9601 *et seq.* ("Superfund," "CERCLA," or "the Act"), enacted on December 11, 1980, establishes broad federal authority to deal with releases or threats of releases of hazardous substances from vessels and facilities into the environment. The Act defines a set of "hazardous substances" by reference to other environmental statutes (section 101(14)); this list currently contains 698 substances. The Environmental Protection Agency ("EPA") may designate additional hazardous substances (section 102).

The Act requires the person in charge of a vessel or facility to notify the National Response Center ("NRC") immediately when there is a release of a designated hazardous substance in an amount equal to or greater than the reportable quantity ("RQ") for that substance (sections 103 (a) and (b)). Section 102(b) of CERCLA establishes RQs for releases of designated hazardous substances at one pound, unless other reportable quantities were assigned under section 311 of the Federal Water Pollution Control Act ("Clean Water Act" or "CWA"). Section 102(a) authorizes EPA to adjust all of these reportable quantities.

A major purpose of the section 103(a) and (b) notification requirements is to alert the appropriate government officials to releases of hazardous substances that may require a rapid federal response to protect public health and welfare and the environment. Under the Act, the federal government may respond whenever there is a release or a substantial threat of a release into the environment of a hazardous substance or of other pollutants or contaminants which may present an imminent and substantial danger to public health or welfare (section 104). Response activities are to be taken, to the extent possible, in accordance with the National Contingency Plan (40 CFR Part 300), which was originally developed under the CWA and which has been revised to reflect the responsibilities and authority created by CERCLA. EPA emphasizes that notification based on reportable quantities is merely a trigger for informing the government of a release so that the need for a federal removal or remedial action can be evaluated by the appropriate federal personnel and any necessary action undertaken in a timely fashion. Federal personnel will evaluate all reported releases, but will not necessarily initiate a removal or remedial action in response to all reported releases, because the release of a reportable quantity will not necessarily pose a hazard to public health or welfare or the environment. Government personnel will assess each release on a case-by-case basis.

Section 103(b) establishes penalties, including criminal sanctions, for persons in charge of vessels or facilities who fail to report releases of hazardous substances which equal or exceed reportable quantities. Any person who, as soon as he has knowledge of a reportable release, fails to report the release pursuant to section 103(a) or (b) shall, upon conviction, be fined no more than $10,000 or imprisoned for not more than one year, or both. Notifications received under section 103(a) or information obtained by such notice cannot be used against any reporting person in any criminal case, except a prosecution for perjury or for giving a false statement.

On May 25, 1983, EPA proposed a rule (48 FR 23552) to clarify procedures for

reporting releases and to adjust reportable quantities for 387 of the 698 CERCLA hazardous substances. That Notice of Proposed Rulemaking (NPRM) also listed, for the first time, the "hazardous substances" designated by section 101(14) of CERCLA. The NPRM discussed in detail the CERCLA notification provisions (including the persons required to notify the NRC of a release, the substances for which notification is required, the types of releases subject to the notification requirements, and the exemptions from these requirements), the methodology and criteria used to adjust the reportable quantity levels, and the RQ adjustments proposed under section 102 of CERCLA and under section 311 of the CWA. Today's **Federal Register** contains a final rule that clarifies reporting procedures and promulgates most of the previously proposed RQ adjustments. The final rule contains adjusted RQs for 319 of the 608 specific substances and 21 of the 90 waste streams that are designated as hazardous substances under CERCLA. In preparing the final rule, EPA carefully considered all of the public comments submitted on the proposals made in the May 25, 1983 NPRM.

This NPRM proposes RQ adjustments for 105 additional CERCLA hazardous substances (including 7 waste streams) for which the Agency has now completed its analysis. These proposed adjustments would amend Table 302.4 of 40 CFR 302.4 and, consistent with 40 CFR 117.3 as amended in today's final rule, would apply not only to CERCLA RQs, but also to RQs established under section 311(b)(4) of the Clean Water Act. Section II of this preamble discusses the proposed RQ adjustments and the methodology used in making these adjustments. Section III addresses RQ adjustments under section 311 of the Clean Water Act. Section IV provides a summary of the analyses supporting this proposed rulemaking.

It should be noted that other provisions of the Act may apply even where CERCLA does not require notification. Therefore, nothing in this rulemaking should be interpreted as reflecting Agency policy or the applicable law with respect to other provisions of the Act. For example, a party responsible for a release is liable for the costs of cleaning up that release and for any natural resource damages, even if the release is not subject to the notification requirements of sections 103 (a) and (b). Similarly, proper reporting of a release in accordance with sections 103(a) and (b) does not preclude liability for cleanup costs. The fact that a release of a hazardous substance is properly reported or that it is not subject to the notification requirements of section 103 (a) and (b) will not prevent EPA or other governmental agencies from taking response actions under section 104, seeking reimbursement from responsible parties under section 107, or pursuing an enforcement action against responsible parties. Note also that this rule does not affect hazardous substance reporting requirements imposed by other regulations and statutes (except the CWA—see Section III below).

Neither this rulemaking nor today's final rule addresses the designation of hazardous substances which are not designated under the statutes listed in CERCLA section 101(14). The Agency has conducted several preliminary economic and technical analyses on this subject (see 48 FR 23603), and an Advance Notice of Proposed Rulemaking (ANPRM), also published on May 25, 1983, invited public comment. EPA has carefully reviewed the comments received and is in the process of further developing its designation policy. The Agency's designation policy will be the subject of a separate rulemaking.

II. Reportable Quantity Adjustments

A. Introduction

Section 102(b) establishes a reportable quantity of one pound for all hazardous substances other than those with different RQs established under section 311 of the Clean Water Act; for these latter substances, section 102(b) adopts the CWA section 311 RQs. Congress enacted this provision in part to ensure that reporting of releases would begin immediately upon enactment of CERCLA, because reporting is essential for response.

The RQs established by CERCLA were intended to be temporary pending EPA review and adjustment of those RQs. EPA committed to Congress in late 1980 to revise those reportable quantities (126 Cong. Rec. H 11792 (December 3, 1980)). This rulemaking proposes adjustments to the statutory RQs based upon specific scientific and technical criteria that relate to the possibility of harm from the release of a substance in a reportable quantity. These revised RQs, therefore, enable the Agency to focus its resources on those releases which are most likely to pose potential threats to public health and welfare and the environment. Such RQ adjustments will also relieve the regulated community and emergency response personnel from the burden of making and responding to reports of releases which are unlikely to pose such threats.

This NPRM proposes adjusted RQs for 98 of the 289 specific substances and 7 of the 69 waste streams that are not assigned adjusted RQs by today's final rule. EPA is proposing to raise the RQs of 34 specific substances, lower the RQs of 31 specific substances, and leave the RQs of 33 specific substances at the levels originally established by CERCLA (or under CWA section 311). EPA is also proposing to raise the RQs of the 7 waste streams. In addition, this NPRM proposes a 100-pound RQ for releases of non-designated substances which exhibit the RCRA characteristics of ignitability, corrosivity, or reactivity but which are not "wastes" (and thus CERCLA hazardous substances) until after they are released and are not cleaned up for repackaging, recycling, or reuse. Adjusted RQs for the remaining 191 specific substances and 62 waste streams not addressed by this notice or today's final rule will be proposed, as appropriate, as soon as the RQ adjustment analysis for these substances (now ongoing) is complete.

The primary purpose of notification is to ensure that releasers notify the federal government so that federal personnel can assess the need to respond to the release. The different RQ levels do not reflect a determination that a release of a substance will be hazardous at the RQ level and not hazardous below that level. EPA has not attempted to make such a determination, because the actual hazard will vary with the unique circumstances of the release, and extensive scientific data and analysis would be necessary to determine the hazard presented by each substance under a number of possible circumstances. Instead, the RQs reflect the Agency's judgment that the federal government should be notified of releases to which a federal response might be necessary. The reportable quantities do not represent any determination that releases of a particular size are actually harmful to public health or welfare or the environment.

Many other considerations besides the quantity released affect the government's decision concerning whether and how it should conduct a removal or remedial action pursuant to the National Contingency Plan (40 CFR Part 300) with respect to a particular release. The location of the release, its proximity to drinking water supplies or other valuable resources, the likelihood of exposure or injury to nearby populations, and other factors must be

assessed by the federal On-Scene Coordinator on a case-by-case basis. The reporting requirement enables the government to learn when such assessments should be made.

Because CERCLA's RQ adjustment methodology differs from that used pursuant to section 311 of the Clean Water Act, some of the RQs being proposed today are not the same as those initially promulgated under the CWA. In the final rule published elsewhere in today's **Federal Register**, EPA has amended 40 CFR 117.3 to make RQs adjusted under CERCLA the applicable RQs for purposes of CWA section 311. Thus, when made final, today's proposed RQ adjustments will apply to both CERCLA and CWA RQs. A person in charge need not report a release into navigable waters twice under CERCLA and the CWA; one report to the NRC suffices.

B. Summary of the Methodology Underlying the Reportable Quantity Adjustments

The Agency has wide discretion in adjusting the statutory RQs for hazardous substances under CERCLA.[1] Administrative feasibility and convenience are important considerations. The Agency's selected strategy for adjusting RQs begins with an evaluation of the intrinsic physical, chemical, and toxicological properties of each designated hazardous substance. The intrinsic properties examined—called "primary criteria"—are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, chronic toxicity, and potential carcinogenicity. (For the purposes of this rule, chronic toxicity—referred to as "other toxic effects" in the May 25, 1983 NPRM—is defined as toxicity resulting from repeated or continuous exposure to either a single release or multiple releases of a hazardous substance.)

The Agency ranks each intrinsic property on a five-tier scale, associating a specific range of values on each scale with a particular RQ value. This five-tier scale uses the five RQ levels of 1, 10, 100, 1000, and 5000 pounds originally established pursuant to CWA section 311 (see 40 CFR Part 117). Each substance receives several tentative RQ values based on its particular properties.[2] The lowest of all of the tentative RQs becomes the "primary criteria RQ" for that substance.

For a more detailed discussion of the primary criteria, see the preamble of the May 25, 1983 NPRM (48 FR 23562–23565), the preamble of today's final rule adjusting reportable quantities (Section V.D.1), and the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, available for inspection at Room S–325, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

After the primary criteria RQs are assigned, substances are further evaluated for their susceptibility to certain extrinsic degradation processes. These extrinsic processes are biodegradation, hydrolysis, and photolysis, or "BHP." These processes of degradation tend to reduce the relative potential for harm to public health and welfare and the environment of many hazardous substance releases. If substances have primary criteria RQs already at the maximum assignable level of 5000 pounds or are found to be bioaccumulative, environmentally persistent, highly reactive (or otherwise unusually hazardous), or degradable to more hazardous products, their susceptibility to degradation is considered only in relation to the primary criteria analysis (see footnote 2), and they are not eligible for a one-level RQ increase on the basis of BHP. On the other hand, if analysis indicates that an eligible substance degrades relatively rapidly to a less harmful substance or compound through one or more of these processes when it is released into the environment, the primary criteria RQ is raised on the basis of BHP. The single RQ assigned to each substance on the basis of the primary criteria and BHP becomes the adjusted RQ for the substance.

The portion of Table 302.4 (40 CFR 302.4) printed in this Notice lists only those CERCLA hazardous substances for which adjusted RQs are being proposed in this rulemaking. The table shows both the statutory RQ currently in effect and the proposed adjusted RQ for each substance.

For a more detailed discussion of the BHP criteria and their use in combination with the primary criteria, see the preamble of the May 25, 1983 NPRM (48 FR 23565), the preamble of today's final rule adjusting reportable quantities (Sections V.C.1. and V.D.2.), and the Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102, available for inspection at Room S–325, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

C. Substances for Which Adjusted RQs Are Being Proposed

The 105 substances for which this NPRM proposes adjusted RQs have all been evaluated for potential chronic toxicity and/or potential carcinogenicity. This section describes the process by which EPA selected these 105 substances for proposal in this NPRM.

Prior to the May 25, 1983 NPRM, EPA identified a number of CERCLA substances that potentially exhibited chronic toxicity or carcinogenicity (or both). Lists of these substances were submitted to EPA's Environmental Criteria and Assessment Office (ECAO) for further chronic toxicity analysis and to EPA's Carcinogen Assessment Group (CAG) for further carcinogenicity analysis. EPA identified the potentially chronically toxic substances using a variety of EPA background documents, reports prepared by state agencies, and other sources. EPA identified the potential carcinogens using the Monographs of the International Agency for Research on Cancer and the First and Second Annual Reports on Carcinogens of the National Toxicology Program, U.S. Department of Health and Human Services.

For further information concerning the selection of substances for ECAO and CAG review, see the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, available for inspection at Room S–325, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

Because all of the potential carcinogens and many of the potential chronic toxicants (as identified at that time) were undergoing evaluation when the May 1983 NPRM was published, these substances retain their statutory RQ levels in the final rule published in today's **Federal Register**. Analysis is now completed, however, for the substances that were being evaluated for chronic toxicity in May 1983. In addition, CAG has performed a more detailed and more critical review of available data than the initial review

[1] As Senate Report No. 848, 96th Congress, Second Session (1980) notes at page 29: "In determining reportable quantities under this paragraph [section 3(a)(2) of S. 1480], the President may consider any factors deemed relevant to administering the reporting requirements or the President's other responsibilities under this Act."

[2] If available evidence shows that a substance hydrolyzes into a reaction product that is more hazardous than the original substance, the primary criteria are applied to the more hazardous reaction product rather than to the original substance to determine the tentative RQ values for the original substance. For example, substances known to generate hydrogen sulfide or phosphine upon hydrolysis are assigned primary criteria RQs on the basis of these degradation products. Application of the primary criteria to the reaction products rather than to the original substances occurred in four cases for the substances for which this NPRM proposes adjusted RQs.

used to place the substances on the CAG list. The CAG assessment determined that there is no sound evidence of potential carcinogenic effect for a number of the substances on the list.

The 105 substances in this NPRM consist of substances that have been evaluated for chronic toxicity and, where appropriate, assigned a chronic toxicity ranking, and substances for which CAG has determined that no sound evidence of potential carcinogenicity exists. Because assessments under all primary and BHP criteria have been completed for these 105 substances, proposing RQ adjustments is appropriate at this time. The portion of Table 302.4 printed in this NPRM lists only the CERCLA substances for which adjusted RQs are being proposed in this rulemaking. The table indicates both the RQ level originally established by CERCLA and the proposed adjusted RQ for each substance. EPA is proposing to raise the RQs of 34 specific substances and 7 waste streams, lower the RQs of 31 specific substances, and leave the RQs of 33 specific substances at their original levels.

D. ICR Substances

As noted in the preamble to the final rule on RQs published elsewhere in today's **Federal Register**, the obligation to report releases into the environment of substances exhibiting the RCRA characteristics of ignitability, corrosivity, or reactivity ("ICR") (see 40 CFR 261.21–261.23)[3] has been the subject of some confusion. Under section 103(a) of CERCLA, the person in charge of a vessel or facility must notify the NRC of the release of a "hazardous substance." The term "hazardous substance" includes all substances designated in § 302.4 of today's final rule as well as wastes exhibiting the ICR characteristics under RCRA. Therefore, the release of a non-designated substance exhibiting an ICR characteristic is the release of a hazardous substance only if the substance is a waste. If a non-designated ICR substance is spilled and immediately cleaned up for repackaging, reprocessing, recycling, or reuse, it is not a waste and the spill need not be reported (see 45 FR 78540, Nov. 25, 1980). However, if the substance is not cleaned up, or is cleaned up for eventual disposal, it is then a waste (and thus a hazardous substance) which has been released to the environment and must be reported if the release equals or exceeds the RQ.

The Agency acknowledges that the May 25, 1983 NPRM may not have been clear on this point. Accordingly, we are now proposing to create a separate RQ for releases of non-designated substances which are not wastes prior to their initial release but which exhibit an ICR characteristic. We propose to set an RQ of 100 pounds for such releases. This is the same RQ that has been established for ICR substances that are wastes prior to their initial release, as the environmental impact of a release of a substance exhibiting an ICR characteristic does not depend on whether that substance was a waste prior to its release. We hereby solicit public comment on whether a different RQ is warranted. Of course, if the substance is recovered for purposes of recycling or use as a product, it never becomes a waste (or a hazardous substance) and thus is not subject to reporting requirements.

EPA recognizes that transporters may not be aware that products they are carrying exhibit ICR characteristics. We acknowledge that in order for a criminal prosecution to be warranted, the person in charge must have known or reasonably should have known that the substance was a hazardous substance. Accordingly, EPA would enforce the reporting requirement for releases by transporters of non-designated substances exhibiting an ICR characteristic only if the substance was labeled as hazardous under DOT or State regulations or if other circumstances put the transporter on notice that a hazardous substance was released. If a product which is so labeled is spilled in excess of the reportable quantity of 100 pounds (or such other RQ as may be finally promulgated) the transporter will be liable for failure to report, if it turns out that the waste exhibiting an ICR characteristic was released to the environment in excess of the RQ.

As noted in the preamble to today's final rule, pending completion of final rulemaking on this proposal, notice given to the NRC pursuant to 49 CFR 171.15, if required under that section, of the release of a non-designated substance that is not a waste prior to its initial release, will be deemed to satisfy the reporting requirements of section 103(a) of CERCLA. Note that this policy does not apply to the release of non-designated substances which exhibit an ICR characteristic and which are wastes prior to their initial release. Such releases must be reported if they are equal to or in excess of the 100-pound RQ. See § 302.5(b) of today's final rule.

III. Reportable Quantity Adjustments Under Section 311 of the Clean Water Act

The final rule published elsewhere in today's **Federal Register** amends 40 CFR § 117.3 to make reportable quantities adjusted under CERCLA the applicable reportable quantities for notification of discharges of hazardous substances pursuant to Clean Water Act section 311. Thus, when made final, the RQ adjustments proposed in this rulemaking will apply to both CERCLA and CWA section 311 RQs. Reportable quantities under both statutes are set forth in Table 302.4. A single report of a release into navigable waters to the National Response Center by the person in charge will satisy the notification requirements of both statutes. (For a further discussion of the relationship between CERCLA RQs and CWA section 311 RQs, see the May 25, 1983 NPRM preamble at 48 FR 23569.)

IV. Summary of Supporting Analyses

Rulemaking protocol under Executive Order 12291 requires that proposed regulations be classified as major or non-major for purposes of review by the Office of Management and Budget. According to E.O. 12291, major rules are regulations that are likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

An economic analysis performed by the Agency, available for inspection at Room S–325, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, shows that today's proposed regulation is non-major, because adoption of the proposed rule will result in additional net cost savings (beyond those provided by today's final rule) of approximately $1.3 million annually. Of this amount, about $200,000 annually will be saved by the regulated community (the remainder to be saved by government).

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a "significant impact

[3] Substances exhibiting the characteristic of extraction procedure (EP) toxicity are not at issue here, because the chemicals at which the EP toxicity test is aimed are all specifically designated as hazardous under section 302.4 of today's final rule.

on a substantial number of small entities." This NPRM proposes adjusted RQs for substances that have a substantially lower total production volume than the substances receiving adjusted RQs in today's final rule. The economic effects as estimated in EPA's analysis are proportional to production volume. Thus, the impact of the proposed rule on small entities will be substantially less than the impact of the final rule. The analysis of the final rule demonstrated that the final rule will not have a significant impact on small entities. See the Regulatory Impact Analysis of Reportable Quantity Adjustments Under sections 102 and 103 of CERCLA, available for inspection in Room S-325, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Therefore, as with the final rule, EPA certifies that no Regulatory Flexibility Analysis is necessary for the proposed rule.

The Information Impact Analysis performed for the final rule indicated that the final rule would decrease the paperwork burden imposed on parties outside EPA by about 50,000 hours. A brief analysis indicates that the RQ adjustments proposed by this NPRM will provide a small additional reduction in the paperwork burden imposed on the regulated community for information collection associated with reporting releases. Because the effect of this proposed rule on the paperwork burden is not only minimal, but also a reduction, EPA has determined that no further Information Impact Analysis need be performed.

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. section 3501 *et seq.*, and has assigned OMB control number 2115-0137. Submit comments on these requirements to the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place, NW, Washington, D.C. 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 302

Air pollution control, Chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Intergovernmental relations, Natural resources, Nuclear materials, Pesticides and pests, Radioactive materials, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control.

Dated: February 13, 1985.

Lee M. Thomas,

Administrator.

PART 302—[AMENDED]

For the reasons set out in the preamble, it is proposed to amend 40 CFR Part 302 as follows:

1. The authority citation for Part 302 reads as follows:

Authority: Section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9602; sections 311 and 501(a) of the Federal Water Pollution Control Act, 33 U.S.C. 1321 and 1361.

2. In Part 302, Table 302.4 of § 302.4 is amended by revising certain hazardous substance entries to read as follows:

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Proposed RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Acenaphthene	83329		1*	2		B	100 (45.4)
Acenaphthylene	208968		1*	2		D	5000 (2270)
Acetic acid, thallium(I) salt	563688	Thallium(I) acetate	1*	4	U214	B	100 (45.4)
Ammonia	7664417		100	1		B	100 (45.4)
Ammonium bifluoride	1341497		5000	1		B	100 (45.4)
Anthracene	120127		1*	2		D	5000 (2270)
Antimony ††	7440360		1*	2		D	5000 (2270)
Benzene, hydroxy-	108952	Phenol	1000	1,2,4	U188	C	1000 (454)
Benzene, pentachloro-	608935	Pentachlorobenzene	1*	4	U183	C	1000 (454)
Benzene, 1,3,5-trinitro-	99354	sym-Trinitrobenzene	1*	4	U234	A	10 (4.54)
Benzo[j,k]fluorene	206440	Fluoranthene	1*	2,4	U120	B	100 (45.4)
Benzo[ghi]perylene	191242		1*	2		D	5000 (2270)
p-Benzoquinone	106514	1,4-Cyclohexadienedione	1*	4	U197	A	10 (4.54)
delta - BHC	319868		1*	2		X	1 (0.454)
Captan	133062		10	1		A	10 (4.54)
Carbamimidoselenoic acid	630104	Selenoureas	1*	4	P103	C	1000 (454)
Carbon bisulfide	75150	Carbon disulfide	5000	1,4	P022	B	100 (45.4)
Carbon disulfide	75150	Carbon bisulfide	5000	1,4	P022	B	100 (45.4)
Carbonic acid, dithallium(I) salt	6533739	Thallium(I) carbonate	1*	4	U215	B	100 (45.4)
Chloroethane	75003		1*	2		B	100 (45.4)
Chromic acetate	1066304		1000	1		C	1000 (454)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Proposed RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Chromic sulfate	10101538		1000	1		C	1000 (454)
Chromous chloride	10049055		1000	1		C	1000 (454)
Copper ††	7440508		1*	2		D	5000 (2270)
Cresol (s)	1319773	Cresylic acid	1000	1,4	U052	C	1000 (454)
m-	108394	m-					
o-	95487	o-					
p-	106445	p-					
Cresylic acid	1319773	Cresol (s)	1000	1,4	U052	C	1000 (454)
m-	108394	m-					
o-	95487	o-					
p-	106445	p-					
Cupric chloride	7447394		10	1		A	10 (4.54)
Cupric sulfate	7758987		10	1		A	10 (4.54)
Cupric tartrate	815827		100	1		B	100 (45.4)
1,4-Cyclohexadienedione	106514	p-Benzoquinone	1*	4	U197	A	10 (4.54)
Dichloropropane - Dichloropropene (mixture)	8003198		5000	1		B	100 (45.4)
Dichloropropene(s)	26952238		5000	1		B	100 (45.4)
2,3-Dichloropropene (isomer)	78886						
1,3-Dichloropropene	542756	Propene, 1,3-dichloro-	5000	1,2,4	U084	B	100 (45.4)
Diethylamine	109897		1000	1		B	100 (45.4)
Dimethylamine	124403	Methanamine, N-methyl-	1000	1,4	U092	C	1000 (454)
O,O-Dimethyl O-p-nitrophenyl phosphorothioate	298000	Methyl parathion	100	1,4	P071	B	100 (45.4)
Ethane, pentachloro-	76017	Pentachloroethane	1*	4	U184	A	10 (4.54)
Ethion	563122		10	1		A	10 (4.54)
Ferric dextran	9004664	Iron dextran	1*	4	U139	D	5000 (2270)
Fluoranthene	206440	Benzo[j,k]fluorene	1*	2,4	U120	B	100 (45.4)
Fluorene	86737		1*	2		D	5000 (2270)
Fulminic acid, mercury(II) salt	628864	Mercury fulminate	1*	4	P065	A	10 (4.54)
Hexachlorophene	70304	2,2'-Methylenebis(3,4,6-trichlorophenol)	1*	4	U132	B	100 (45.4)
Hydrogen sulfide	7783064	Hydrosulfuric acid	100	1,4	U135	B	100 (45.4)
		Sulfur hydride					
Hydrosulfuric acid	7783064	Hydrogen sulfide	100	1,4	U135	B	100 (45.4)
		Sulfur hydride					
Iron dextran	9004664	Ferric dextran	1*	4	U139	D	5000 (2270)
Isoprene	78795		1000	1		B	100 (45.4)
Lead ††	7439921		1*	2		D	5000 (2270)
Lead chloride	7758954		5000	1		B	100 (45.4)
Lead fluoborate	13814965		5000	1		B	100 (45.4)
Lead fluoride	7783462		1000	1		B	100 (45.4)
Lead iodide	10101630		5000	1		B	100 (45.4)
Lead nitrate	10099748		5000	1		B	100 (45.4)
Lead stearate	7428480		5000	1		D	5000 (2270)
	1072351						
	56189094						
	52652592						
Lead sulfate	15739807		5000	1		B	100 (45.4)
	7446142						
Lead sulfide	1314870		5000	1		B	100 (45.4)
Lead thiocyanate	592870		5000	1		B	100 (45.4)
Mercuric nitrate	10045940		10	1		A	10 (4.54)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Proposed RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Mercuric sulfate	7783359		10	1		A	10 (4.54)
Mercuric thiocyanate	592858		10	1		A	10 (4.54)
Mercurous nitrate	10415755		10	1		A	10 (4.54)
Mercury fulminate	628864	Fulminic acid, mercury(II) salt	1*	4	P065	A	10 (4.54)
Mercury, (acetato-O)phenyl-	62384	Phenylmercuric acetate	1*	4	P092	B	100 (45.4)
Methanamine, N-methyl-	124403	Dimethylamine	1000	1,4	U092	C	1000 (454)
Methane, chloro-	74873	Methyl chloride	1*	2,4	U045	B	100 (45.4)
Methyl chloride	74873	Methane, chloro-	1*	2,4	U045	B	100 (45.4)
Methyl parathion	298000	O,O-Dimethyl O-p-nitrophenyl phosphorothioate	100	1,4	P071	B	100 (45.4)
2,2'-Methylenebis(3,4,6-trichlorophenol)	70304	Hexachlorophene	1*	4	U132	B	100 (45.4)
Monoethylamine	75047		1000	1		B	100 (45.4)
Pentachlorobenzene	608935	Benzene, pentachloro-	1*	4	U183	C	1000 (454)
Pentachloroethane	76017	Ethane, pentachloro-	1*	4	U184	A	10 (4.54)
Phenanthrene	85018		1*	2		D	5000 (2270)
Phenol	108952	Benzene, hydroxy-	1000	1,2,4	U188	C	1000 (454)
Phenylmercuric acetate	62384	Mercury, (acetato-O)phenyl-	1*	4	P092	B	100 (45.4)
Phorate	298022	Phosphorodithioic acid, O,O-diethyl S-(ethylthio)methyl ester.	1*	4	P094	C	1000 (454)
Phosphorodithioic acid, O,O-diethyl S-(ethylthio)methyl ester.	298022	Phorate	1*	4	P094	C	1000 (454)
Plumbane, tetraethyl-	78002	Tetraethyl lead	100	1,4	P110	A	10 (4.54)
Propane, 1,3-dichloro-	542756	1,3-Dichloropropene	5000	1,2,4	U084	B	100 (45.4)
Pyrene	129000		1*	2		D	5000 (2270)
Pyridine	110861		1*	4	U196	C	1000 (454)
Pyrophosphoric acid, tetraethyl ester	107493	Tetraethyl pyrophosphate	100	1,4	P111	A	10 (4.54)
Selenious acid	7783008		1*	4	U204	A	10 (4.54)
Selenium ††	7782492		1*	2		B	100 (45.4)
Selenium dioxide	7446084	Selenium oxide	1000	1,4	U204	A	10 (4.54)
Selenium oxide	7446084	Selenium dioxide	1000	1,4	U204	A	10 (4.54)
Selenourea	630104	Carbamimidoselenoic acid	1*	4	P103	C	1000 (454)
Sodium bifluoride	1333831		5000	1		B	100 (45.4)
Sodium nitrite	7632000		100	1		B	100 (45.4)
Sodium selenite	10102188		1000	1		B	100 (45.4)
Sulfur hydride	7783064	Hydrogen sulfide Hydrosulfuric acid	100	1,4	U135	B	100 (45.4)
Sulfuric acid, thallium(I) salt	10031591 7446186	Thallium(I) sulfate	1000	1,4	P115	B	100 (45.4)
Tetraethyl lead	78002	Plumbane, tetraethyl-	100	1,4	P110	A	10 (4.54)
Tetraethyl pyrophosphate	107493	Pyrophosphoric acid, tetraethyl ester	100	1,4	P111	A	10 (4.54)
Thallic oxide	1314325	Thallium(III) oxide	1*	4	P113	B	100 (45.4)
Thallium ††	7440280		1*	2		C	1000 (454)
Thallium(I) acetate	563688	Acetic acid, thallium(I) salt	1*	4	U214	B	100 (45.4)
Thallium(I) carbonate	6533739	Carbonic acid, dithallium(I) salt	1*	4	U215	B	100 (45.4)
Thallium(I) chloride	7791120		1*	4	U216	B	100 (45.4)
Thallium(I) nitrate	10102451		1*	4	U217	B	100 (45.4)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Proposed RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Thallium(III) oxide	1314325	Thallic oxide	1*	4	P113	B	100 (45.4)
Thallium(I) selenide	12039520		1*	4	P114	C	1000 (454)
Thallium(I) sulfate	10031591 7446186	Sulfuric acid, thallium(I) salt	1000	1,4	P115	B	100 (45.4)
Trichlorfon	52686		1000	1		B	100 (45.4)
Trimethylamine	75503		1000	1		B	100 (45.4)
sym-Trinitrobenzene	99354	Benzene, 1,3,5-trinitro-	1*	4	U234	A	10 (4.54)
Unlisted Hazardous Wastes	N.A.						
Characteristic of EP Toxicity							
Selenium			1*	4	D010	A	10 (4.54)
Uranyl acetate	541093		5000	1		B	100 (45.4)
Uranyl nitrate	10102064		5000	1		B	100 (45.4)
Vanadium(V) oxide	1314621	Vanadium pentoxide	1000	1,4	P120	C	1000 (454)
Vanadium pentoxide	1314621	Vanadium(V) oxide	1000	1,4	P120	C	1000 (454)
Vanadyl sulfate	27774136		1000	1		C	1000 (454)
Zinc ††	7440666		1*	2		C	1000 (454)
Zinc acetate	557346		1000	1		C	1000 (454)
Zinc ammonium chloride	52628258		5000	1		C	1000 (454)
Zinc borate	1332076		1000	1		C	1000 (454)
Zinc bromide	7699458		5000	1		C	1000 (454)
Zinc carbonate	3486359		1000	1		C	1000 (454)
Zinc chloride	7646857		5000	1		C	1000 (454)
Zinc cyanide	557211		10	1,4	P121	A	10 (4.54)
Zinc fluoride	7783495		1000	1		C	1000 (454)
Zinc formate	557415		1000	1		C	1000 (454)
Zinc hydrosulfite	7779864		1000	1		C	1000 (454)
Zinc nitrate	7779886		5000	1		C	1000 (454)
Zinc phenolsulfonate	127822		5000	1		D	5000 (2270)
Zinc phosphide	1314847		1000	1,4	P122	B	100 (45.4)
Zinc silicofluoride	16871719		5000	1		D	5000 (2270)
Zinc sulfate	7733020		1000	1		C	1000 (454)
F004 The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents: (a) Cresols/Cresylic acid (b) Nitrobenzene			1*	4	F004	C	1000 (454)
F005 The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents: (a) Toluene (b) Methyl ethyl ketone (c) Carbon disulfide (d) Isobutanol (e) Pyridine			1*	4	F005	B	100 (45.4)
K026 Stripping still tails from the production of methyl ethyl pyridines			1*	4	K026	C	1000 (454)
K039 Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate			1*	4	K039	B	100 (45.4)
K046 Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds			1*	4	K046	B	100 (45.4)
K052			1*	4	K052	A	10 (4.54)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Proposed RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Tank bottoms (leaded) from the petroleum refining industry							
K087			1*	4	K087	B	100 (45.4)
Decanter tank tar sludge from coking operations							

† - indicates the statutory source as defined by 1, 2, 3, or 4 below
†† - no reporting of releases of this hazardous substance is required if the diameter of the pieces of the solid metal released is equal to or exceeds 100 micrometers (0.004 inches)
1 - indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA Section 311(b)(4)
2 - indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA Section 307(a)
3 - indicates that the statutory source for designation of this hazardous substance under CERCLA is CAA Section 112
4 - indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA Section 3001
1* - indicates that the 1-pound RQ is a CERCLA statutory RQ

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April 4, 1985

Part III

Department of Commerce

Assistant Secretary for Productivity, Technology, and Innovation

37 CFR Ch. IV

Rights to Inventions Made by Nonprofit Organizations and Small Business Firms; Proposed Rule

DEPARTMENT OF COMMERCE

Office of the Assistant Secretary for Productivity, Technology, and Innovation

37 CFR Part 401

[Docket No. 41278-4178]

Rights to Inventions Made by Nonprofit Organizations and Small Business Firms

AGENCY: Assistant Secretary for Productivity, Technology, and Innovation, Commerce.

ACTION: Notice of proposed rule making.

SUMMARY: Pub. L. 98-620 amended Chapter 18 of Title 35, United States Code, dealing with patent rights in inventions made with Federal funding by nonprofit organizations and small business firms and reassigned responsibility for the promulgation of regulations implementing 35 U.S.C. 202-204 to the Secretary of Commerce. The proposed regulation, if adopted, will implement 35 U.S.C. 202-204.

DATE: Comments due by June 3, 1985.

ADDRESS: Send comments to Mr. Norman Latker, Director, Federal Technology Management Policy Division, Office of Productivity, Technology and Innovation, Department of Commerce, Rm. H4837, Washington, D.C. 20230. Phone: 202-377-0659.

FOR FURTHER INFORMATION CONTACT: Norman Latker at the address above or Jesse E. Lasken (202-377-8100) at the same address.

SUPPLEMENTARY INFORMATION:

Background

Section 501 of Pub. L. 98-620 includes a series of amendments to chapter 18 of title 35, U.S.C., including the assignment of regulatory authority to the Secretary of Commerce. The Secretary has delegated his authority under 35 U.S.C. 206 to the Assistant Secretary for Productivity, Technology and Innovation. Since the amendments became effective on November 9, 1984 when Pub. L. 98-620 was signed, we are attempting to complete the rulemaking process in an expeditious manner. Pending the issuance of a final regulation, we believe that the provisions of OMB Circular A-124 continue to apply except to the extent that amendments to Chapter 18 are clearly inconsistent. We suggest that agencies use these proposed regulations as guidance in the modification of clauses and procedures that may be required pending the issuance of a final regulation.

Comparison of Proposed Regulation to OMB Circular A-124

The proposed regulation closely follows OMB Circular A-124. The following discussion compares the proposed regulation to OMB Circular A-124 with particular emphasis on the reasons for any substantive differences and additions.

Section 401.1 Scope.

This section contains provisions similar to those now found in parts 5, 7.c., 17, and 18 of OMB Circular A-124. Language has been included in section 401.1(a) giving recognition to the requirement of new 35 U.S.C. 212 that funding agreements made primarily for educational purposes would not be subject to the regulation and that agencies should not take any rights in inventions made under such agreements.

Section 401.1(b) is intended to make clear that the amended march-in rights procedures established by amended 35 U.S.C. 203 apply to proceedings initiated under existing funding agreements. We interpret the amended procedures to apply to all new march-in proceedings even if the funding agreement predates the amendment of chapter 18. This section takes the same approach to the various appeal rights established in part 14 of OMB Circular A-124, which are carried over in the proposed regulation with only minor revisions.

Section 401.1(c) directs agencies, at the request of the contractor, to amend outstanding funding agreements for the operation of Government-owned facilities by substituting the applicable clause at section 401.14 for the clause presently in such funding agreements. Pub. L. 98-620 has substantially narrowed the previous exception applicable to "GOCOs". Since these contracts are typically for extended terms (usually 5 years), we believe the intent of the Congress should not be delayed. Most of these contracts are routinely amended to adjust funds on a regular basis. As part of such an amendment the patent rights provisions should be amended if the contractor requests. A number of agencies have outstanding GOCO contracts in which the exception was not invoked and the contract includes the clause at Attachment A to OMB Circular A-124. Section 401.1(c) does not require that these contracts be amended unless the contractor so requests.

Section 401.1(f) is new and is intended to clarify the applicability of chapter 18 and the proposed regulations to arrangements for use of Government-owned facilities. Such arrangements, whether on a reimbursable or nonreimbursable basis, are not considered to fall under the Act's definition of "funding agreement" since the work is not being directly funded by the Government even though it is being assisted by the making available of facilities. Of course, if the Government were also funding the research through a grant or contract, the grant or contract transaction would make chapter 18 applicable if a small business firm or nonprofit organization was the recipient of the grant or contract.

Section 401.1(f) does point out, however, that in cases when the facility operator is a nonprofit organization or a small business firm, there is a possibility that the operator may be entitled to rights under its funding agreement if its employees make an invention in cooperation with a facility user. The regulation therefore notes the advisability of reaching advance agreements on the rights of the three parties if there is a liklihood that operator employees may be involved in the making of inventions by a facility user.

We have not attempted to state what the allocation of rights should be in such cases since this is beyond the scope of this regulation. However, we believe that consistency with chapter 18 of Title 35 U.S.C. and the President's Memorandum of February 18, 1983, would dictate that the user should normally retain title to its own inventions. If operator employees make an invention in cooperation with a facility user, then the operator-contractor should, perhaps, obtain some share of any income generated by the invention. However, absent the active cooperation and involvement of the operator in the project, title in any inventions may be assigned to the user as part of the initial arrangement and the agency should approve, in advance, the assignment of any rights in inventions made during a project from the operator to the user as authorized by 35 U.S.C. 202(c)(7)(A).

Section 401.2 Definitions.

Section 401.2 uses the same definitions as in part 6 of OMB Circular A-124 except that the definitions of "invention" and "subject invention" have been modified to accommodate Pub. L. 98-620 changes to the definitions at 35 U.S.C. 201. Definitions of "chapter 18" and "Assistant Secretary" have also been added.

Section 401.3 Use of the clauses at § 401.14.

Section 401.3(a) is based on part 7.a. of OMB Circular A-124 with some

modifications to reflect new 35 U.S.C. 212 and amended 35 U.S.C. 202(a).

Section 401.3(b) is new. In part it implements, in combination with § 401.14(b), language in amended 35 U.S.C. 202(a) concerning the exception for certain Department of Energy funding agreements. This section also prescribes for the first time certain guidelines in connection with the drafting of alternative provisions when certain of the exceptions at 35 U.S.C. 202(a) are used. We particularly encourage comments or suggestions regarding this proposed language.

Section 401.3(c) is new. It gives specific recognition that many contracts are of extended duration and may involve a variety of task orders. This section is intended to clarify that agencies have the flexibility to use the exceptions with respect to a specific task order, including one added after the original funding agreement is executed, even though the remainder of the contract is subject to one the clauses at § 401.14.

Section 401.3 (d) and (e) is equivalent to part 7.(b)(1) of OMB Circular A–124 except that it was necessary to make a number of changes because of amendments to 35 U.S.C. 202(b) (1) and (2). Section 401.3 (f) and (g) substantially follow parts 7. b.(2) and d. of the OMB Circular.

One issue that is not expressly addressed by these regulations on which we would like comments is whether agencies should be allowed to make class determinations to use exceptions. Commentators who favor this are asked to provide examples of when this might prove useful. We are seeking to determine whether we should generally authorize class determinations, generally bar them, or limit their use to specific types of situations.

Section 401.4 Contractor appeals of exceptions.

Section 401.4 is new and has no counterpart in the OMB Circular. It implements new 35 U.S.C. 202(b)(4) which allows a contractor certain rights to contest the use of the exceptions at 35 U.S.C. 202(a). We encourage comments on whether the proposed section carries out the statutory language and Congressional intent.

We interpret 35 U.S.C. 202(b)(4) as requiring an administrative procedure similar to that afforded under a march-in. The proposed procedure is intended to rapidly resolve contractor claims that agency authority to invoke the exceptions at 35 U.S.C. 202(a) was misused. The agency is authorized to execute the contract with alternative provisions pending the resolution of the issue. If the issue is resolved in the contractor's favor then the contract is to be amended retroactively. Of course, the contractor could refuse to sign a contract until the matter was resolved. However, in this case the agency could consider going to alternative sources. But the section provides, in effect, that if the contractor is willing to sign a contract subject to its retroactive amendment, the agency may not refuse to contract with the contractor on account of the contractor's exercise of its rights under 35 U.S.C. 202(b)(4).

We would also note that the contractors appeal is not to be handled under the Contract Disputes Act. We consider this a statutorily created right. Moreover, it cross references to 35 U.S.C. 203(2) which specifically states that determinations under that section are not subject to the Contracts Disputes Act.

Section 401.5 Modification and Tailoring of Clauses.

Sections 401.5(a)–(c) substantially follow parts 8.a.–c. of OMB Circular A–124.

Section 401.5(d) is based on part 8.d. of the OMB Circular. However, because of amendments to 35 U.S.C. 202(c)(4) it has been modified to require the listing of specific treaties or international agreements that will be applicable to the contractor. As amended, 35 U.S.C. 202(c)(4) no longer contains a reference to "future" treaties. Senator Dole's explanation of the bill at S14142 of the Congressional Record for October 10, 1984, states that the revised language was intended to require an agency "to tie its use of this right to a foreign treaty or agreement that is in existence at the time the contract is executed." However, in recognition of the fact that some funding agreements may extend over fairly long periods of time, we have included optional language that will allow an agency to add new treaties that go into effect after the date the contract is originally signed.

It should be noted that the provisions of § 401.5(d) should have application, albeit indirectly, to funding agreements with larger, commercial contractors as well as those with small businesses and nonprofit organizations. That is, 35 U.S.C. 210 was amended by Pub. L. 98–620 to provide "that all funding agreements, including those with other than small business firms and nonprofit organizations, shall include the requirements established in paragraph 202(c)(4) and section 203 of this title." Section 202(c)(4) establishes the minimum license rights of the Government, including its right to obtain rights to honor foreign agreements. We interpret this language as carrying with it the implementing language developed under 35 U.S.C. 206. Therefore, we believe that it will be necessary to amend the standard Federal Acquisition Regulation (FAR) patent rights clauses to conform to the language prescribed in § 401.5(d). Section 203 of Title 35 deals with march-in rights, and, thus, for the same reasons, for-profit contractors that are not small businesses should also review proposed § 401.6.

Section 401.5(e) is based on part 8.e. of the OMB Circular. However, two optional administrative requirements have been eliminated. The option to require periodic listing of invention reports has been dropped. This is considered an unjustified paperwork exercise. Agencies desiring this information can presently obtain it from their own files. The language concerning notification of R&D subcontracts has been dropped since such reporting is normally required under other FAR provisions or agency grant provisions.

Section 401.5(f) is new and implements the requirement of 35 U.S.C. 202(c)(7)(E) which was added by Pub. L. 98–620. The statutory language has been followed with some minor editorial revisions including some language to clarify that income is to be used "at the facility." This clarification was added to reflect the clear intent of the Congress as reflected on p. 21 of House Report 98–983 on HR 5003 that the income was to be in "a research account controlled by the facility."

One agency that informally reviewed this proposed rule suggested that another paragraph be added to section 401.5 advising agencies to supplement the clause in contracts for the operation of Government owned facilities with provisions dealing with the transfer of patent rights to successor contractors. We are considering including coverage in this area, and seek comments and suggestions concerning this. Any suggestions for specific language or particular concerns that should be addressed in either the regulatory guidance or the clause language are encouraged.

Section 401.6 Exercise of march-in rights.

Section 401.6 generally follows part 13 of OMB Circular A–124, except that language in the Circular authorizing the use of Boards of Contract Appeals to review appeals has been eliminated to reflect the amendment of 35 U.S.C. 203. Modifications have been made in § 401.6(e) to reflect the greater protection afforded utilization information by amended 35 U.S.C.

202(c)(5). 35 U.S.C. 401.6 (f) and (g) have been revised slightly to require the fact finder to transmit a proposed decision and to specifically give the contractor and agency representatives the right to prepare written arguments in response to these findings and recommendations. The contractor is also given the right to request oral arguments before the decision-maker. These changes are intended to reflect the fact that march-in decisions are policy as well as factual decisions.

Section 401.6(j) follows the principle of OMB Circular A–124 in requiring that march-in determinations be held in abeyance pending the exhaustion of all appeals. Previously 35 U.S.C. 203 did not cover this question. As amended, it now requires two of the four categories of march-ins be held in abeyance until exhaustion of appeals. However, we do not believe that the amended language precludes extending this requirement, as in the part, to all categories of march-ins.

Section 401.7 Small business preference.

Section 401.7, in combination with new language at paragraph (k)(4) of the clauses at § 401.14, implements the new requirement of amended 35 U.S.C. 202(c)(7) that funding agreements with nonprofit organizations contain provisions to effectuate a requirement that except where it proves infeasible after a reasonable inquiry that a preference in the licensing of subject inventions shall be given to small business firms. We encourage comments on these provisions.

It should be noted that there has been an inadvertent typographical error in the language of amended 35 U.S.C. 202(c)(7)(D) and that the words "a preference" should have been inserted between "inquiry," and "in the licensing . . ." Our implementation of this provision is based on the intended language, since without it the clause, at best, would be ambiguous.

We have attempted to develop a provision that will meet the objectives of the statute without interjecting agencies or this Department into the individual licensing negotiations and decisions of nonprofit contractors. The clause language and section 401.7 implement the preference in two ways. First, nonprofit organizations are required to make reasonable efforts under the circumstances to attract small business licensees. The regulations recognize that in some cases the nature of the development efforts may preclude seeking small business licensees. On the other hand, this will not always be the case, and the contractor would be expected to undertake efforts to seek small business licenses. It is not possible to say exactly what these efforts should consist of, but we would expect nonprofit organizations to ensure that their efforts to promote inventions are not exclusively focused on larger firms. If no other means are available, perhaps, in selected cases, a notice in a suitable trade journal might be satisfactory. We also think it is probably unreasonable and unrealistic for nonprofit organizations to be aware of the interests and capabilities of small businesses, especially those which they have not previously dealt with and which are not otherwise well known. Established small businesses that have an interest in developing university technology should let their interests be known to research universities and centers, particularly any local universities or centers.

The specific preference required by the clause is modeled after the language at 35 U.S.C. 209(c)(3) which requires a preference for small business firms in Government licensing programs. This appears to be consistent with Congressional intent as set forth in Senator Dole's statement at p. S14142 of the October 10, 1984, Congressional Record.

The clause language and section 401.7 provide that the Assistant Secretary of Commerce for Productivity, Technology, and Innovation will provide a forum to consider small businesses complaints that a particular contractor is not meeting his obligations under the clause. However, only an informal procedure is established. The Assistant Secretary will initiate further investigation and discussions with a particular institution when it appears warranted. Formal hearings and the like are not contemplated. In no event will the Assistant Secretary become involved in the negotiation of specific licenses or in attempts to have specific licenses terminated and renegotiated. We have not assigned this review function to the individual agency, since we believe that any review of the contractor's licensing efforts will have to focus on the full range of its program and not just on those subject inventions that may eminate from the support of a single agency. However, the Department will coordinate its activities in this area with the Small Business Administration and, as warranted, appropriate agencies. For example, if the complaint stems from the activities of a contractor operating a Government-owned facility, the funding agency will be consulted. The Department also anticipates working with university organizations such as the Society of University Patent Administrators and the Committee on Government Relations to foster compliance with the requirements of these provisions.

Section 401.8 Reporting on utilization of subject inventions.

Section 401.8 generally follows part 10 of OMB Circular A–124. However, subparagraph (b) has been revised to reflect changes made by Pub. L. 98–620. Marking of data is not required and agencies must protect all utilization information, since amended 35 U.S.C. 202(c)(5) has established an absolute requirement for confidentiality and a so-called "(b)(3)" exemption under the Freedom of Information Act. Section 401.8 requires that the revised requirement be also applied to information collected under funding agreements predating the new Part 401.

Section 401.9 Retention of rights by inventor.

Section 401.9 substantially follows part 11 of OMB Circular A–124.

Section 401.10 Government assignment to contractor of rights in invention of government employee.

Section 401.10 substantially follows part 12 of OMB Circular A–124, but some wording changes have been made to further clarify that contractor rights in the invention are subject only to the conditions in the standard patent rights clause that was included in the funding agreement. Agencies exercising the authority of 35 U.S.C. 202(e) to assign the rights of the agency derived through an agency employee co-inventor to the contractor are not to condition such an assignment with additional terms beyond those specified in the statute and applicable patent rights clause that was included in the funding agreement.

Section 401.11 Appeals.

Section 401.11 substantially follows part 14 of OMB Circular A–124. Because of certain revisions to the march-in procedures discussed above which are cross-referenced in this section, there are minor differences between the appeals procedures in the proposed regulation and those now prescribed by the OMB Circular. As provided at section 401.1(b), these procedures will apply to actions initiated under earlier funding agreements.

Section 401.12 Licensing of background patent rights to third parties.

Section 401.12 substantially follows part 15 of OMB Circular A–124.

Section 401.13 Administration of patent rights clauses.

Section 401.13 is, in part, derived from part 16 of OMB Circular A–124, but also contains new material.

Section 401.13(a) substantially follows part 16.c. of the OMB Circular. However, part 16.a. has been eliminated since the subject matter is covered in the clauses at § 401.14. Part 16.b. has been dropped since the Federal Procurement Regulations (FPR) references are obsolete and do not appear to have any counterparts in the FAR.

Section 401.13(b), coupled with the change to section 401.5(e) discussed earlier, further emphasizes that annual or other periodic listing of subject inventions, except at close-out of the funding agreement is not to be imposed on contractors.

Section 401.13(c) reflects Pub. L. 98–620 elimination of two limitations on the conditions under which nonprofit organizations may license or assign subject inventions. Since these limitations are included in many outstanding funding agreements which allow agencies to waive them, the proposed language advises agencies to normally make such waivers. This is consistent with the legislative history of the bill, as reflected in Senator Dole's answer at S14142, Congressional Record October 10, 1984, which indicates that agencies are expected to grant such waivers liberally.

Section 401.13(d) establishes requirements for agencies to treat certain contractor information on a confidential basis. It cross-references language in the standard clause that is based on part 9 of OMB Circular A–124. While modified, we believe that in combination with the clause language this section is substantially the same as part 9. of the OMB Circular.

Section 401.14 Standard clauses.

Section 401.14(a) contains the basic clause to be used in most contracts with small businesses and nonprofit organizations. Section 401.14(b) contains a standard clause for use in situations when the Department of Energy exercises the exception at 35 U.S.C. 202(a)(iv).

The clause at § 401.14(a) substantially follows the clause at Attachment A of OMB Circular A–124 with the following changes:

1. The definitions of "invention" and "subject invention" have been revised to conform to statutory changes.

2. The period for election of rights in paragraph (c)(2) has been lengthened to 2 years to conform to statutory changes.

3. The period for filing after election has been reduced from two years to one year because of the extended election period.

4. Subparagraphs (4) and (5) have been added to paragraph (e) which reflect the obligations of the agency to maintain certain records in confidence as required by 35 U.S.C. 205 and the President's Memorandum of February 18, 1983, on Government Patent Policy. We believe it will be helpful to both contractor and agency personnel if these obligations are clearly spelled out in the contract document.

5. The last sentence of paragraph (h) has been amended to conform to the revision of 35 U.S.C. 202(c)(5).

6. Paragraph (k), the special provisions for contracts with nonprofit organizations, has been revised to conform to the amendment of 35 U.S.C. 202(c)(7). Most of these changes are simply deletions of conditions that were removed by the amendment. However paragraph (k)(4) implements the new statutory language on small business preferences and we would encourage comments on this proposal.

The clause at § 401.14(b) is designed to be used by the Department of Energy in those cases in which it exercises 35 U.S.C. 202(a)(iv). The standard clause at § 401.14(a) is prescribed with two main changes.

First, paragraph (c) is amended to create a two tier system. Inventions falling under the naval nuclear propulsion and nuclear weapons programs of DOE will be subject to deferred determinations. Those that fall outside the programs will belong to the contractor under the standard clause provisions if the contract elects title. And a procedure is established for determining under which category individual inventions fall.

Second, paragraph (e) has been amended to guarantee the contractor an exclusive license in inventions to which the Government obtains title in fields of use outside of naval nuclear propulsion and nuclear weapons. This provision would not come into effect, of course, if DOE waives its right to obtain title. However, pending such waiver, this should provide the contractor with the ability and incentive to attempt to commercialize promising inventions.

Section 401.15 Deferred determinations.

Section 401.15 is new and contains guidance and procedures for the handling of contractor requests for greater rights in those cases when one of the exceptions at 35 U.S.C. 202(a) has been applied. As noted earlier § 401.3(b) requires that in most instances when an exception is used that the contractor be allowed at least the right to request greater rights. The proposed procedures are intended to foster the expeditious handling of these requests in a manner that is consistent with the reasons behind the original application of an exception and the policies and objectives of 35 U.S.C. 200. We encourage comments on these proposed procedures.

Applicability of E.O. 12291

This proposed rule is not considered a major rule as defined in Executive Order 12291. Its purposes, objectives, and basic substance are the same as OMB Circular A–124 which was not considered a major rule. Nevertheless a regulatory impact analysis was prepared for that rule which concluded that its benefits substantially outweighed any costs and that there should be a net cost savings. That continues to be true. Several years experience have now borne this out. This regulation adds no new paperwork burdens, and, in fact, reduces certain paperwork requirements of the current FAR and OMB Circular A–124.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this rule will not have a substantial economic impact on a substantial number of small entities. However, for these limited number of small business concerns in areas of high technology that deal with the Government, the proposed regulation, like OMB Circular A–124, makes it easier for small business firms to participate in Government R&D programs by guaranteeing the protection of their intellectual property. The small business preference provisions in § 401.7 and the clauses at § 401.14 should also prove of benefit to the limited number of small businesses that may be interested in obtaining licenses to university technology.

List of Subjects in 37 CFR Ch. IV

Inventions, Patents, Nonprofit Organizations, Small business firms.

Dated: March 28, 1985.

D. Bruce Merrifield,

Assistant Secretary for Productivity, Technology and Innovation.

Accordingly, it is proposed to add a new Chapter IV to title 37 of the Code of Federal Regulations consisting at this time of Part 401 to read as follows:

CHAPTER IV—ASSISTANT SECRETARY FOR PRODUCTIVITY, TECHNOLOGY, AND INNOVATION, DEPARTMENT OF COMMERCE

PART 401—RIGHTS TO INVENTIONS MADE BY NONPROFIT ORGANIZATIONS AND SMALL BUSINESS FIRMS UNDER GOVERNMENT GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS

Sec.

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401.11 Appeals.
401.12 Licensing of background patent rights to third parties.
401.13 Administration of patent rights clauses.
401.14 Standard clauses.
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Authority: 35 U.S.C. 206 and the delegation of authority by the Secretary of Commerce to the Assistant Secretary for Productivity, Technology and Innovation at section 3(g) of DOO 10-1.

§ 401.1 Scope.

(a) This part implements 35 U.S.C. 202-204 and is applicable to all Federal agencies. It applies to all funding agreements with small business firms and nonprofit organizations executed after the effective date of this part, except for a funding agreement made primarily for educational purposes. In accordance with 35 U.S.C. 212 no scholarship, fellowship, training grant, or other funding agreement made by a Federal agency primarily to an awardee for educational purposes will contain any provision giving the Federal agency any rights to inventions made by the awardee.

(b) The "march-in" and appeals procedures in §§ 401.6 and 401.11 shall apply with respect to any march-in or appeal proceeding initiated after the effective date of this part, under a funding agreement subject to chapter 18 of title 35, U.S.C., even if the funding agreement was executed prior to that date.

(c) At the request of the contractor, a funding agreement for the operation of a Government-owned facility which is in effect on the effective date of this part shall be promptly amended to include the provisions required by § 401.3(a) unless the Agency determines that one of the exceptions at 35 U.S.C. 202(a)(i)-(iv) (§ 401.3(a)(1)-(4) of this part) is applicable and will be applied. If the exception at § 401.3(a)(4) is determined to be applicable, the funding agreement will be promptly amended to include the provisions required by § 401.3(b).

(d) This regulation supercedes OMB Circular A-124 and shall take precedence over any agency regulations, including regulations issued under the FAR system, which are inconsistent with it. Existing agency regulations, including those under the FAR system, shall be promptly amended to conform to this part and amended Chapter 18 of title 35. No deviations from this regulation or the clauses prescribed in it shall be made except with the approval of the Assistant Secretary. Regulations supplementing this part shall be submitted to the Assistant Secretary for review for consistency with this part prior to their issuance.

(e) In the event an agency has outstanding prime funding agreements that do not contain patent flow-down provisions consistent with this part or earlier OFPP regulations (OMB Circular A-124 or OMB Bulletin 81-22), the agency shall take appropriate action to ensure that small business firms or nonprofit organizations that are subcontractors under any such agreements and that received their subcontracts after July 1, 1981, receive rights in their subject inventions that are consistent with chapter 18 and this part.

(f) This part is not intended to apply to arrangements under which nonprofit organizations, small business firms, or others are allowed to use Government-owned research facilities and normal technical assistance provided to users of those facilities, whether on a reimbursable or nonreimbursable basis. Such arrangements are not considered "funding agreements" as defined at 35 U.S.C. 201(b) and § 401.2(a) of this part. However, if such facilities are operated by nonprofit organizations or small business firms and if an employee of the operator is a co-inventor (along with a user's employee) or a sole inventor, then chapter 18 and this regulation will govern the rights of the operator in the invention as derived through its employee-inventor. It is therefore advisable, and especially so if collaborative research is contemplated, for the user, the operator, and the agency to reach advance agreement on how rights to inventions will be allocated under arrangements for use of Government-owned facilities being operated by nonprofit organizations or small business firms.

§ 401.2 Definitions.

As used in this part—

(a) The term "funding agreement" means any contact, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

(b) The term "contractor" means any person, small business firm or nonprofit organization which is a party to a funding agreement.

(c) The term "invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

(d) The term "subject invention" means any invention of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement; provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(e) The term "practical application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

(f) The term "made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(g) The term "small business firm" means a small business concern as defined at Section 2 of Pub. L. 85536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purposes of this part, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 121.3-12, respectively, will be used.

(h) The term "nonprofit organization" means universities and other institutions of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(i) The term "chapter 18" means chapter 18 of title 35 of the United States Code.

(j) The term "Assistant Secretary" means the Assistant Secretary of Commerce for Productivity, Technology, and Innovation or his or her designee.

§ 401.3 Use of the standard clauses at § 401.14.

(a) Each funding agreement awarded to a small business firm or nonprofit organization (except those subject to 35 U.S.C. 212) shall contain the clause found in § 401.14(a) with such modifications and tailoring as authorized or required elsewhere in this part. However, a funding agreement may contain alternative provisions—

(1) when the contractor is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign Government; or

(2) in exceptional circumstances when it is determined by the agency that restriction or elimination of the right to retain title to any subject invention will better promote the policy and objectives of chapter 18 of Title 35 of the United States Code; or

(3) when it is determined by a Government authority which is authorized by statute or executive order to conduct foreign intelligence or counterintelligence activities that the restriction or elimination of the right to retain title to any subject invention is necessary to protect the security of such activities; or

(4) when the funding agreement includes the operation of a Government-owned, contractor-operated facility of the Department of Energy primarily dedicated to that Department's naval nuclear propulsion or weapons related programs.

(b) When the Department of Energy exercises the exception at § 401.3(a)(4), it shall use the clause prescribed at § 401.14(b) with such modification and tailoring as authorized or required elsewhere in this part. When any agency exercises the exceptions at § 401.3(a)(2) or (3), it shall use the standard clause at § 401.14(a) with only such modifications as are necessary to address the exceptional circumstances or concerns which led to the use of the exception. For example, if the justification relates to a particular field of use or market, the clause might be modified along lines similar to those described in § 401.14(b). In any event, the clause should provide the contractor with an opportunity to receive greater rights in accordance with the procedures at § 401.15.

(c) When a funding agreement involves a series of separate task orders, an agency may apply the exceptions at § 401.3(a)(2) or (3) to individual task orders, and it may structure the contract so that modified patent rights provisions will apply to the task order even though the clauses at either § 401.14(a) or (b) are applicable to the remainder of the work. Agencies are authorized to negotiate such modified provisions with respect to task orders added to a funding agreement after its initial award.

(d) Before utilizing any of the exceptions in paragraph (a) the agency shall prepare a written determination, including a statement of facts supporting the determination, that the conditions identified in the exception exist. In cases when § 401.3(a)(2) is used the determination shall also include an analysis justifying the determination. This analysis should address with specificity how the alternate provisions will better achieve the objectives set forth in 35 U.S.C. 200. A copy of each determination, statement of facts, and, if applicable, analysis shall be promptly provided to the contractor or prospective contractor.

(e) Except for determinations under § 401.3(a)(3), the agency shall also provide copies of each determination, statement of fact, and analysis to Assistant Secretary. These shall be sent within 30 days after the award of the funding agreement to which they pertain. Copies shall also be sent to the Chief Counsel for Advocacy of the Small Business Administration if the funding agreement is with a small business firm.

(f) To assist the Comptroller General of the United States to accomplish his or her responsibilities under 35 U.S.C. 202, each Federal agency that enters into any funding agreements with nonprofit organizations or small business firms shall accumulate and, at the request of the Comptroller General, provide the Comptroller General or his or her duly authorized representative the total number of prime agreements entered into with small business firms or nonprofit organizations that contain the patent rights clause in this part or under OMB Circular A–124 for each period of October 1 through September 30, beginning with October 1, 1982.

(g) To qualify for the standard clause a prospective contractor may be required by an agency to certify that it is either a small business firm or a nonprofit organization. If the agency has reason to question the status of the prospective contractor as a small business firm or nonprofit organization, it may file a protest in accordance with 13 CFR 121.3–5 if small business firm status is questioned or require the prospective contractor to furnish evidence to establish its status as a nonprofit organization.

§ 401.4 Contractor appeals or exceptions.

(a) In accordance with 35 U.S.C. 202(b)(4) a contractor has the right to an administrative review of a determination to use one of the exceptions at §§ 401.3(a) (1)–(4) if the contractor believes that a determination is either contrary to the policies and objectives of this chapter or constitutes an abuse of discretion by the agency. Paragraph (b) of this section specifies the procedures to be followed by contractors and agencies in such cases. The assertion of such a claim by the contractor shall not be used as a basis for withholding or delaying the award of a funding agreement or for suspending performance under an award. However, pending final resolution of the claim the contract may be issued with the patent rights provision proposed by the agency; but should the final decision be in favor of the contractor, the funding agreement will be amended accordingly and the amendment made retroactive to the effective date of the funding agreement.

(b)(1) A contractor may appeal a determination by providing written notice to the Agency within 30 working days from the time it receives a copy of the agency's determination, or within such longer time as an agency may specify in its regulations. The contractor's notice should specifically identify the basis for the appeal.

(2) The appeal shall be decided by the head of the agency or by an official of the agency designated by the head of the agency who is at a level above the person who made the determination. If the notice raises a genuine dispute over the material facts, the head of the agency or the designee shall undertake or refer the matter for fact-finding.

(3) Fact-finding shall be conducted in accordance with procedures established by the agency. Such procedures shall be as informal as practicable and be consistent with principles of fundamental fairness. The procedures should afford the contractor the opportunity to appear with counsel, submit documentary evidence, present

witnesses and confront such persons as the agency may present. A transcribed record shall be made and shall be available at cost to the contractor upon request. The requirement for a transcribed record may be waived by mutual agreement of the contractor and the agency.

(4) The official conducting the fact-finding shall prepare written findings of fact and transmit them to the head of the agency or designee promptly after the conclusion of the fact-finding proceeding along with a recommended decision. A copy of the findings of fact and recommended decision shall be sent to the contractor (assignee or exclusive licensee) by registered or certified mail.

(5) Fact-finding should be completed within 45 working days from the date the agency receives the contractor's written notice.

(6) When fact-finding has been conducted, the head of the agency or designee shall base his or her decision on the facts found, together with any argument submitted by the contractor, agency officials or any other information in the administrative record. In cases referred for fact-finding the agency head or the designee may reject only those facts that have been found that are clearly erroneous and the agency head or the designee may hear oral arguments after fact-finding provided that the contractor or contractor's attorney or representative is present and given an opportunity to make its own arguments and rebuttal. The decision of the agency head or the designee shall be in writing and include an explanation of the basis of the decision if it is unfavorable to the contractor. The decision of the agency or designee shall be made within 30 working days after fact-finding or, if there was no fact-finding, within 45 working days from the date the agency received the contractor's written notice.

§ 401.5 Modification and tailoring of clauses.

(a) Agencies should complete the blank in paragraph (g)(2) of the clauses at § 401.14 in accordance with their own or applicable Government-wide regulations such as the Federal Acquisition Regulation.

(b) Agencies should complete paragraph (1), "Communications" at the end of the clauses at § 401.14 by designating a central point of contact for communications on matters relating to the clause. Additional instructions on communications may also be included in paragraph (1).

(c) Agencies may replace the underlined words and phrases in the clauses at § 401.14 with those appropriate to the particular funding agreement. For example, "contracts" could be replaced by "grant," "contractor" by "grantee," and "contracting officer" by "grants officer." Depending on its use, "Federal agency" can be replaced either by the identification of the agency or by the specification of the particular office or official within the agency.

(d)(1) When the agency head or duly authorized designee determines at the time of contracting with a small business firm or nonprofit organization that it would be in the national interest to acquire the right to sublicense foreign Governments or international organizations pursuant to any existing treaty or international agreement, a sentence may be added at the end of paragraph (b) of the clauses at § 401.14 as follows:

This license will include the right of the Government to sublicense foreign Governments and international organizations pursuant to the following treaties or international agreements: ————.

The blank above should be completed with the names of applicable existing treaties or international agreements, agreements of cooperation, memoranda of understanding, or similar arrangements including military agreements relating to weapons development and production. The above language is not intended to apply to treaties or other agreements that are in effect on the date of the award but which are not listed. Alternatively, agencies may use substantially similar language relating the Government's rights to specific treaties or other agreements identified elsewhere in the funding agreement. The language may also be modified to make clear that the rights granted to the foreign Government or international organization may be for additional rights beyond a license or sublicense if so required by the applicable treaty or international agreement. For example, in some cases exclusive licenses or even the assignment of title in the foreign country involved might be required. Agencies may also modify the language above to provide for the direct licensing by the contractor of the foreign Government or international organization.

(2) If the funding agreement is expected to involve a series of changing tasks over an extended period of time, such as the typical funding agreement for the operation of a Government-owned facility, the following language may also be added:

The *agency* reserves the right to unilaterally amend this *funding agreement* to identify specific treaties or international agreements entered into by the Government after the effective date of this *funding agreement* pursuant to which the *contractor* shall grant the Government (or foreign Governments or international organizations designated by the *Agency*) with respect to subject inventions made after the date of the amendment those license or other rights which are necessary for the Government to meet its obligations to foreign Governments and international organizations under such treaties or international agreements.

(e) Agencies may add additional subparagraphs to paragraph (f) of the clauses at § 401.14 to require the contractor to do one or both of the following:

(1) Provide a report prior to the close-out of a funding agreement listing all subject inventions or stating that there were none.

(2) Provide, upon request, the filing date, serial number and title; a copy of the patent application; and patent number and issue date for any subject invention in any country in which the contractor has applied for patents.

(f) If the contract is with a nonprofit organization and is for the operation of a Government-owned facility the following will be substituted for paragraph (k)(3) of the clause at § 401.14(a):

(3) After payment of patenting costs, licensing costs, payments to inventors, and other expenses incidental to the administration of subject inventions, the balance of any royalties or income earned and retained by the *contractor* during any fiscal year on subject inventions under this or any successor *contract* containing the same requirement, up to any amount equal to five percent of the budget of the facility for that fiscal year, shall be used by the contractor for scientific research, development, and education at the facility consistent with the research and development mission and objectives of the facility, including activities that increase the licensing potential of other inventions of the facility. If the balance exceeds five percent, 75 percent of the excess above five percent shall be payed by the contractor to the Treasury of the United States and the remaining 25 percent shall be used by the *contractor* only for the same purposes as described above. To the extent it provides the most efficient technology transfer, the licensing of subject inventions shall be administered by *contractor* employees on location at the facility.

This paragraph shall not be used in contracts for the operation of or performance of work at facilities or laboratories that are not Government-owned regardless of what percentage of the work at the facility or laboratory is funded by the Government and regardless of whether or not the construction or equipping of the facility was paid for out of funds provided by the Government.

§ 401.6 Exercise of march-in rights.

(a) The following procedures shall govern the exercise of the march-in rights of the agencies set forth in 35 U.S.C. 203 and the clause at § 401.14.

(b) Whenever an agency receives information that it believes might warrant the exercise of march-in rights, before initiating any march-in proceeding, it shall notify the contractor in writing of the information and request informal written or oral comments from the contractor as well as information relevant to the matter. In the absence of any comments from the contractor within 30 days, the agency may, at its discretion proceed with the procedures below. If a comment is received, whether or not within 30 days, then the agency shall, within 60 days after it receives the comment, either initiate the procedures below or notify the contractor, in writing, that it will not pursue march-in rights based on the information about which the contractor was notified.

(c) A march-in proceeding shall be initiated by the issuance of a written notice by the agency to the contractor and its assignee or exclusive licensee, as applicable, stating that the agency is considering the exercise of march-in rights. The notice shall state the reasons for the proposed march-in in terms sufficient to put the contractor on notice of the facts upon which the action would be based and shall specify the field or fields of use in which the agency is considering requiring licensing. The notice shall advise the contractor (assignee or exclusive licensee) of its rights, as set forth in this section and in any supplemental agency regulations. The determination to exercise march-in rights shall be made by the head of the agency or his or her designee.

(d) Within 30 days after the receipt of the written notice of march-in, the contractor (assignee or exclusive licensee) may submit in person, in writing, or through a representative, information or argument in opposition to the proposed march-in, including any additional specific information which raises a genuine dispute over the material facts upon which the march-in is based. If the information presented raises a genuine dispute over the material facts, the head of the agency or disignee shall undertake or refer the matter to another official for fact-finding.

(e) Fact-finding shall be conducted in accordance with the procedures established by the agency. Such procedures shall be as informal as practicable and be consistent with principles of fundamental fairness. The procedures should afford the contractor the opportunity to appear with counsel, submit documentary evidence, present witnesses and confront such persons as the agency may present. A transcribed record shall be made and shall be available at cost to the contractor upon request. The requirement for a transcribed record may be waived by mutual agreement of the contractor and the agency. Any portion of the march-in proceeding, including a fact-finding hearing that involves testimony or evidence relating to the utilization or efforts at obtaining utilization that are being made by the contractor, its assignee, or licensees shall be closed to the public, including potential licensees. In accordance with 35 U.S.C. 202(c)(5), agencies shall not disclose any such information obtained during a march-in proceeding to persons outside the Government except when such release is authorized by the contractor (assignee or licensee).

(f) The official conducting the fact-finding shall prepare written findings of fact and transmit them to the head of the agency or designee promptly after the conclusion of the fact-finding proceeding along with a recommended determination. A copy of the findings of fact shall be sent to the contractor (assignee or exclusive licensee) by registered or certified mail. The contractor (assignee or exclusive licensee) and agency representatives will be given 30 days to submit written arguments to the head of the agency or designee; and, upon request by the contractor oral arguments will be held before the agency head or designee that will make the final determination.

(g) In cases in which fact-finding has been conducted, the head of the agency or designee shall base his or her determination on the facts found, together with any other information and written or oral arguments submitted by the contractor (assignee or exclusive licensee) and agency representatives, and any other information in the administrative record. The consistency of the exercise of march-in rights with the policy and objectives of 35 U.S.C. 200 shall also be considered. In cases referred for fact-finding, the head of the agency or designee may reject only those facts that have been found that are clearly erroneous. Written notice of the determination whether march-in rights will be exercise shall be made by the head of the agency or designee and sent to the contractor (assignee or exclusive licensee) by certified or registered mail within 90 days after the completion of fact-finding or 90 days after oral arguments, whichever is later, or the proceedings will be deemed to have been terminated and thereafter no march-in based on the facts and reasons upon which the proceeding was initiated may be exercise.

(h) An agency may, at any time, terminate a march-in proceeding if it is satisfied that it does not wish to exercise march-in rights.

(i) The procedures of this part shall also apply to the exercise of march-in rights against inventors receiving title to subject inventions under 35 U.S.C. 202(d) and, for that purpose, the term "contractor" as used in this section shall be deemed to include the inventor.

(j) An agency determination unfavorable to the contractor (assignee or exclusive licensee) shall be held in abeyance pending the exhaustion of appeals or petitions filed under 35 U.S.C. 206(2).

(k) Agencies are authorized to issue supplemental procedures not inconsistent with this part for the conduct of march-in proceedings.

§ 401.7 Small business preference.

(a) Paragraph (k)(4) of the clauses at § 401.14 implements the small business preference requirement of 35 U.S.C. 202(c)(7)(D). Contractors are expected to use efforts that are reasonable under the circumstances to attract small business licensees. They are also expected to give small business firms that meet the standard outlined in the clause a preference over other applicants for licenses. What constitutes reasonable efforts to attract small business licensees will vary with the circumstances and the nature, duration, and expense of efforts needed to bring the invention to the market.

(b) Small business firms that believe a nonprofit organization is not meeting its obligations under the clause may report their concerns to the Assistant Secretary. To the extent deemed appropriate, the Assistant Secretary will undertake informal investigation of the concern, and, if appropriate, enter into discussions or negotiations with the nonprofit organization to the end of improving its efforts in meetings its obligations under the clause. However, in no event will the Assistant Secretary intervene in negotiations or contractor decisions concerning the licensing of a specific subject invention. As appropriate the investigations, discussions, and negotiations of the Assistant Secretary will be coordinated with other agencies, including the Small Business Administration; and in the case of a contract for the operation of a Government-owned, contractor operated research or production facility, the Assistant Secretary will coordinate with

the agency responsible for the facility prior to any discussions or negotiations with the contractor.

§ 401.8 Reporting on utilization of subject inventions.

(a) Paragraph (h) of the clauses at §401.14 and its counterpart in the clause at Attachment A to OMB Circular A–124 provides that agencies have the right to receive periodic reports from the contractor on utilization of inventions. In accordance with such instructions as may be issued by the Department of Commerce, agencies shall obtain such information from their contractors. Pending such instructions, agencies should not impose reporting requirements.

(b) In accordance with 35 U.S.C. 202(c)(5) and the terms of the clauses at § 401.14, agencies shall not disclose such information to persons outside the Government. Agencies should note that because of the amendment to 35 U.S.C. 202(c)(5), the clauses at § 401.14 do not require the contractor to mark the data as proprietary. This is a change from the clause prescribed by OMB Circular A–124 which requires the contractor to mark data if it wishes the agency to protect it. Agencies which obtain reports on utilization of subject inventions made under funding agreements with the marking requirements of the earlier OMB clause shall treat these reports in accordance with the provisions of amended 35 U.S.C. 202(c)(5) and shall not require them to be marked in order to afford them protection. The provisions of 35 U.S.C. 202(c)(5), as amended, shall take precedence over the conflicting language in the clause previously prescribed by OMB Circular A–124. Despite the lack of a formal requirement for contractors to mark reports on utilization, contractors are encouraged to include confidentiality markings to better insure that their reports will not be inadvertently released outside the agency.

§ 401.9 Retention of rights by contractor employee inventor.

Agencies which allow an employee/inventor of the contractor to retain rights to a subject invention made under a funding agreement with a small business firm or nonprofit organization contractor, as authorized by 35 U.S.C. 202(d), will impose upon the inventor at least those conditions that would apply to a small business firm contractor under paragraphs (d)(1) (i) and (iii); (f)(4); (h); (i); and (j) of the clause at § 401.14(a).

§ 401.10 Government assignment to contractor of rights in invention of government employee.

In any case when a Federal employee is a co-inventor of any invention made under a funding agreement with a small business firm or nonprofit organization and the Federal agency employing such co-inventor transfers or reassigns the right it has acquired in the subject invention from its employee to the contractor as authorized by 35 U.S.C. 202(e), the assignment will be made subject to the same conditions, but no others, as apply to the contractor under the patent rights clause of its funding agreement so that only one set of conditions applies to the subject invention.

§ 401.11 Appeals.

(a) The agency official initially authorized to take any of the following actions shall provide the contractor with a written statement of the basis for his or her action at the time the action is taken, including any relevant facts that were relied upon in taking the action.

(1) A refusal to grant an extension under paragraph (c)(4) of the standard clauses.

(2) A request for a conveyance of title under paragraph (d) of the standard clauses.

(3) A refusal to grant a waiver under paragraph (i) of the standard clauses.

(4) A refusal to approve an assignment under paragraph (k)(1) of the standard clauses.

(5) A refusal to grant an extension of the exclusive license period under paragraph k. (2) of the clauses prescribed by either OMB Circular A–124 or OMB Bulletin 81–22.

(b) Each agency shall establish and publish procedures under which any of the agency actions listed in paragraph (a) of this section may be appealed to the head of the agency or designee. Review at this level shall consider both the factual and legal basis for the actions and its consistency with the policy and objectives of 35 U.S.C. 200–206.

(c) Appeals procedures established under paragraph (b) of this section shall include administrative due process procedures and standards for fact-finding at least comparable to those set forth in § 401.6(e)–(g) whenever there is a dispute as to the factual basis for an agency request for a conveyance of title under paragraph d. of the standard clauses, including any dispute as to whether or not an invention is a subject invention.

(d) To the extent that any of the actions described in paragraph (a) of this section are subject to appeal under the Contracts Dispute Act, the procedures under that Act will satisfy the requirements of paragraphs (b) and (c) of this section.

(e) As used in this section the term "standard clause:" means the clauses of § 401.14 of this Part and the clauses previously prescribed by either OMB Circular A–124 or OMB Bulletin 81–22.

§ 401.12 Licensing of background patent rights to third parties.

(a) A funding agreement with a small business firm or a domestic nonprofit organization will not contain a provision allowing a Federal agency to require the licensing to third parties of inventions owned by the contractor that are not subject inventions unless such provision has been approved by the agency head and a written justification has been signed by the agency head. Any such provision will clearly state whether the licensing may be required in connection with the practice of a subject invention, a specifically identified work object, or both. The agency head may not delegate the authority to approve such provisions or to sign the justification required for such provisions.

(b) A Federal agency will not require the licensing of third parties under any such provision unless the agency head determines that the use of the invention by others is necessary for the practice of a subject invention or for the use of a work object of the funding agreement and that such action is necessary to achieve practical application of the subject invention or work object. Any such determination will be on the record after an opportunity for an agency hearing and the contractor shall be given prompt notification of the determination by certified or registered mail.

§ 401.13 Administration of patent rights clauses.

(a) In the event a subject invention is made under funding agreements of more than one agency at the request of the contractor or on their own initiative, the agencies shall designate one agency as responsible for administration of the rights of the Government in the invention.

(b) Agencies shall not require yearly or other periodic reports by contractors listing subject inventions in any funding agreements entered into after the effective date of this Part. Close out reports are authorized at § 401.5(e).

(c) Agencies shall promptly grant, unless there is a significant reason not to, a request by a nonprofit organization under paragraph k. (2) of the clauses prescribed by either OMB Circular A–

124 or OMB Bulletin 81–22 since 35 U.S.C. 202(c)(7) has since been amended to eliminate the limitation on the duration of exclusive licenses. Similarly, unless there is a significant reason not to, agencies shall promptly approve an assignment by a nonprofit organization to an organization which has as one of its primary functions the management of inventions when a request for approval has been necessitated under paragraph k. (1) of the clauses prescribed by either OMB Circular A–124 or OMB Bulletin 81–22 because the patent management organization is engaged in or holds a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention. As amended, 35 U.S.C. 202(c)(7) no longer contains this limitation.

(d) Paragraph (e)(4)–(6) of the clauses at § 401.14 obligates agencies to treat contractor invention disclosures and other related documents as confidential. These requirements were in part 9 of OMB Circular A–124 and should also be followed with respect to funding agreements predating this Part 401.

§ 401.14 Standard patent rights clauses.

(a) The following is the standard patent rights clause to be used as specified in § 401.3(a).

Patent Rights (Small Business Firms and Nonprofit Organizations) (Mar 1984)

(a) Definitions.

(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et. seq.).

(2) "Subject invention" means any invention of the *contractor* conceived or first actually reduced to practice in the performance of work under this *contract*, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of *contract* performance.

(3) "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(4) "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) "Small Business Firm" means a small business concern as defined at Section 2 of Pub. L. 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3–8 and 13 CFR 121.3–12, respectively, will be used.

(6) "Nonprofit Organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(b) Allocation of Principal Rights.

The *contractor* may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the *contractor* retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention disclosure, Election of Title and Filing of Patent Application by *Contractor*.

(1) The *contractor* will disclose each subject invention to the *Federal agency* within two months after the inventor discloses it in writing to *contractor* personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the *contract* under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time or the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the *agency*, the *contractor* will promptly notify the *agency* of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the *contractor*.

(2) The *contractor* will elect in writing whether or not to retain title to any such invention by notifying the *Federal agency* within two years of disclosure to the *Federal agency*. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the *agency* to a date that is no more than 60 days prior to the end of the statutory period.

(3) The *contractor* will file its initital patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The *contractor* will file patent applications in additional countries within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosing and electing title under subparagraphs (1) and (2) may, at the discretion of the *agency*, be granted.

(d) Conditions When the Government May Obtain Title.

(1) The *contractor* will convey to the *Federal agency*, upon written request, title to any subject invention—

(i) If the *contractor* fails to disclose or elect title to the subject invention within the times specified in (c), above, or elects not to retain title.

(ii) In those countries in which the *contractor* fails to file patent applications within the times specified in (c) above; provided, however, that if the *Contractor* has filed a patent application in a country after the times specified in (c) above, but prior to its receipt of the written request of the *Federal agency*, the *contractor* shall continue to retain title in that country.

(iii) In any country in which the *contractor* decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum Rights to *Contractor* and Protection of the *Contractor* Right to File.

(1) The *contractor* will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the *contractor* fails to disclose the invention within the times specified in (c), above. The *contractor's* license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the *contractor* is a party and includes the right to grant sublicenses of the same scope to the extent the *contractor* was legally obligated to do so at the time the *contractor* was awarded. The license is transferable only with the approval of the *Federal agency* except when transferred to the successor of that party of the *contractor's* business to which the invention pertains.

(2) the *contractor's* domestic license may be revoked or modified by the *funding Federal agency* to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404. This license will not be revoked in that field of use or the geographical areas in which the *contractor* has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the *funding Federal agency* to the extent the *contractor*, its licensees, or the domestic

subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the *funding Federal agency* will furnish the *contractor* a written notice of its intention to revoke or modify the license, and the *contractor* will be allowed thirty days (or such other time as may be authorized by the *funding Federal agency* for good cause shown by the *contractor*) after the notice to show cause why the license should not be revoked or modified. The *contractor* has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(4) The *agency* agrees that in accordance with 35 U.S.C. 205 it will not disclose or release to third parties pursuant to requests under the Freedom of Information Act or otherwise copies of any document which the *agency* obtained under this clause which is part of an application for patent with the U.S. Patent and Trademark Office or any foreign patent office filed by the *contractor* (or its assignees, licensees, or employees) on a subject invention to which the *contractor* has elected to retain title.

(5) The *agency* agrees that in accordance with 35 U.S.C. 205 it will not disclose or release to third parties pursuant to requests under the Freedom of Information Act or otherwise any information submitted under paragraph (c), above, disclosing a subject invention for a reasonable time in order for the *contractor* to file a patent application on any subject invention in which it has elected or retains the right to elect retention of title. For purposes of this paragraph, a reasonable time shall be the time during which an initial patent application may be filed under paragraph (c) of this clause; provided, however, that the *agency* may make disclosure at its discretion if it finds that the same information has been previously published by the inventor, *contractor*, or otherwise.

(6) Nothing in subparagraphs (4) and (5) of this paragraph shall preclude the *agency* publishing as part of its regular technical information dissemination programs materials describing a subject invention to the extent such materials were provided as part of a technical report or other submissions of the *contractor* which were submitted independently of the requirements of this clause. However, if the *contractor* notifies the *agency* that a particular report or submission contains a disclosure of a subject invention to which it has elected or may elect title, the *agency* will use reasonable efforts to restrict its publication of the material for at least six months from the date of its receipt of the report or submission or, if earlier, until the *contractor* has filed an initial patent application. Moreover, nothing in subparagraphs (4) and (5) of this paragraph shall preclude the *agency* from releasing the documents described in those subparagraphs to other contractors of the *agency* on a confidential basis if such documents are relevant to the work being performed by those contractors.

(f) *Contractor* Action to Protect the Government's Interest.

(1) The *contractor* agrees to execute or to have executed and promptly deliver to the *Federal agency* all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the *contractor* elects to retain title, and (ii) convey title to the *Federal agency* when requested under paragraph (d) above and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The *contractor* agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the *contractor* each subject invention made under *contract* in order that the *contractor* can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (c)(1), above. The *contractor* shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S or foreign statutory bars.

(3) The *contractor* will notify the *Federal agency* of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) The *contractor* agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the *contract*) awarded by (identify the Federal agency). The Government has certain rights in the invention."

(g) Subcontracts.

(1) The *contractor* will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the *contractor* in this clause, and the *contractor* will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The *contractor* will include in all other subcontracts, regardless of tier, for experimental, developmental or research work the patent rights clause required by (*cite section of agency implementing regulations or FAR*).

(3) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the *agency*, subcontractor, and the contractor agreed that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) Reporting on Utilization of Subject Inventions.

The *contractor* agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the *contractor* or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and such other data and information as the *agency* may reasonably specify. The *contractor* also agrees to provide additional reports as may be requested by the *agency* in connection with any march-in proceeding undertaken by the *agency* in accordance with paragraph (j) of this clause. As required by 35 U.S.C 202(c)(5), the *agency* agrees it will not disclose such information to persons outside the Government.

(i) Preference for United States Industry.

Notwithstanding any other provision of this clause, the *contractor* agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject inventions will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the *Federal agency* upon a showing by the *contractor* or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in Rights.

The *contractor* agrees that with respect to any subject invention in which it has required title, the *Federal agency* has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the *agency* to require the *contractor*, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the *contractor*, assignee, or exclusive licensee refuses such a request the *Federal agency* has the right to grant such a license itself if the *Federal agency* determines that:

(1) Such action is necessary because the *contractor* or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the *contractor*, assignee or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the *contractor*, assignee or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special Provisions for *Contracts* with Nonprofit Organizations. If the *contractor* is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of the *Federal agency*, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the *contractor*;

(2) The *contractor* will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the *contractor* with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject invention will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the *contractor* determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the *contractor* is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the *contractor*. However, the *contractor* agrees that the Assistant Secretary of Commerce for Productivity, Technology, and Innovation or his or her designee may review the *contractor's* licensing program and decisions regarding small business applicants, and the contractor will negotiate changes to its licensing policies, procedures, or practices with the Assistant Secretary or designee when the Assistant Secretary's review discloses that the contractor could take reasonable steps to more effectively implement the requirements of this paragraph (k)(4).

(l) Communications. (Complete According to Instructions at 401.5(b))

(b) When the Department of Energy (DOE) determines to use alternative provisions under §401.3.(a)(4), the standard clause at § 401.14(a), above, shall be used with the following modifications:

(1) The title of the clause shall be changed to read as follows:

Patent Rights to Nonprofit DOE Facility Operators (Mar 1984)

(2) Add an "(A)" after "(1)" in paragraph (c)(1) and add subparagraphs (B) and (C) to paragraph (c)(1) as follows:

(B) If the invention was made under activities funded by the Naval Nuclear Propulsion or Nuclear Weapons Programs of *DOE*, then the provisions of this subparagraph (c)(1)(B) will apply in lieu of paragraph (c)(2) and (3). In such cases the contractor agrees to assign the Government the entire right, title, and interest thereto throughout the world in and to the subject invention except to the extent that rights are retained by the contractor through a greater rights determination or under paragraph (e), below. The contractor, or an employee-inventor, after consideration with the contractor, may submit a request for greater rights at the time the invention is disclosed and anytime thereafter. *DOE* agrees to process such a request in accordance with procedures at 37 CFR 401.15. Each determination of greater rights will be subject to paragraphs (b) and (g) of this clause and such additional conditions, if any, deemed to be appropriate by the *Department of Energy*.'

(C) At the time an invention is disclosed in accordance with (c)(1)(A) above, or within 90 days thereafter, the contractor will submit a written statement as to whether or not the invention was made under a naval nuclear propulsion or nuclear weapons related program of the Department of Energy. If this statement is not filed within this time, subparagraph (c)(1)(B) will apply in lieu of paragraphs (c) (2) and (3). The contractor statement will be deemed conclusive unless, within 60 days thereafter, the Contracting Officer disagrees in writing, in which case the matter will be handled as a dispute under the Contract Disputes Act. Pending resolution of the matter the invention will be subject to paragraph (c)(1)(B). Pending resolution of the dispute the Department will either allow the contractor to file for a patent or work with the contractor so that any patent application filed by the Department is adequately drawn to address potential commercial applications of the invention.

(3) Paragraph (e) of the clause will be modified by adding the following:

(7) In addition to the license rights provided by subparagraph (1), above, in subject inventions to which the Government obtains title, the contractor will retain in such inventions an exclusive, royalty-free license, with right to sublicense, throughout the world, except if the contractor fails to disclose the invention within the times specified in (c) above, for the practice of the subject invention in all fields of use other than naval nuclear propulsion or nuclear weapons. Contractor's rights under this subparagraph are subject to paragraphs (h)–(k) of this clause, but they are not subject to subparagraph (2) of this paragraph. The Department will work with the contractor, if the contractor requests, so that any patent application filed by the Department is adequately drawn to address potential commercial applications of the invention in fields of use of interest to the contractor.

4. Paragraph (k)(3) of the clause will be modified as prescribed at § 401.5(f).

§ 401.15 Deferred determinations.

(a) This section applies to requests for greater rights in subject inventions made by contractors when deferred determination provisions were included in the funding agreement because one of the exceptions at § 401.3(a) was applied. A contractor requesting greater rights should include with its request information on its plans and intentions to bring the invention to practical application. Within 90 days after receiving a request and supporting information, or sooner if a statutory bar to patenting is imminent, the agency should seek to make a determination. In any event if a bar to patenting is imminent, unless the agency plans to file on its own, it shall authorize the contractor to file a patent application pending a determination by the agency. Such a filing shall normally be at the contractor's own risk and expense. However, if the agency subsequently refuses to allow the contractor to retain title and elects to proceed with the patent application under Government ownership, it shall reimburse the contractor for the cost of preparing and filing the patent application.

(b) If the circumstances or concerns which originally led the agency to invoke an exception under § 401.3(a) are not applicable to the actual subject invention or are no longer valid because of subsequent events, the agency should allow the contractor to retain title to the invention on the same conditions as would have applied if the standard clause at § 401.14(a) had been used originally.

(c) If paragraph (b) is not applicable then the agency shall make its determination based on an assessment whether its own plans regarding the invention will better promote the policies and objectives of 35 U.S.C. 200 than will contractor ownership of the invention. Moreover, if the agency is concerned only about specific uses or applications of the invention, it shall consider leaving title in the contractor with additional conditions imposed upon the contractor's use of the invention for such applications or with expanded Government license rights in such applications.

(d) A determination not to allow the contractor to retain title to a subject invention or to restrict or condition its title with conditions differing from those in the clause at § 401.14(a), unless made by the head of the agency, shall be appealable by the contractor to an agency official at a level above the person who made the determination. This appeal shall be subject to the procedures applicable to appeals under § 401.11 of this part.

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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.**

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