7-1-85
Vol. 50 No. 126
Pages 26961-27212

Federal Register

Monday
July 1, 1985

Briefings on How To Use the Federal Register—
For information on briefings in Chicago, IL, New York, NY, and Washington, DC, see announcement on the inside cover of this issue.

Selected Subjects

CONTINUED INSIDE

Selected Subjects

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

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

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

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

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

CHICAGO, IL

WHEN: July 8 and 9; at 9 a.m. (identical sessions)

WHERE: Room 1654, Insurance Exchange Building, 175 W. Jackson Blvd., Chicago, IL.

RESERVATIONS: Call the Chicago Federal Information Center, 312-353-4242.

NEW YORK, NY

WHEN: July 9 and 10; at 9 a.m. (identical sessions)

WHERE: 2T Conference Room, Second Floor, Veterans Administration Building, 252 Seventh Avenue (between W. 24th and W. 25th Streets), New York, NY.

RESERVATIONS: Call Arlene Shapiro or Steve Colon, New York Federal Information Center, 212-264-4810.

WASHINGTON, DC

WHEN: September (two dates to be announced later).

Contents

Federal Register
Vol. 50, No. 126
Monday, July 1, 1985

Separate Parts in This Issue

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR
Executive Orders:
12523 ... 26963
Proclamations:
5356 ... 26961

5 CFR
771 ... 26965

7 CFR
52 ... 26965
226 ... 26972
400 ... 26976
979 ... 26976
991 ... 26977
1427 ... 26978
Proposed Rules:
Ch. X ... 27003
51 ... 27004

10 CFR
Proposed Rules:
50 ... 27006

14 CFR
39 ... 26979
71 ... 26980
Proposed Rules:
39 (2 documents) ... 27009, 27012
71 (3 documents) ... 27013, 27014
75 ... 27014

16 CFR
13 ... 26981

17 CFR
288 ... 26981

19 CFR
4 ... 26981

21 CFR
101 ... 26984
Proposal Rules:
201 ... 27016
211 ... 27016
514 ... 27016
559 ... 27016
1002 ... 27024

30 CFR
Proposed Rules:
913 ... 27025

31 CFR
51 ... 26987

32 CFR
Parts 1-39 ... 26987
199 ... 26988

33 CFR
110 ... 26988
117 ... 26989
150 ... 26989
166 ... 26989
Proposed Rules:
117 (2 documents) ... 27026-27029

35 CFR
101 ... 26990
103 ... 26990
121 ... 26990

36 CFR
1200 ... 27196
1202 ... 27196
1250 ... 27196

37 CFR
Proposed Rules:
1 ... 27030

40 CFR
52 ... 26991
600 ... 27172
Proposed Rules:
52 ... 27030
600 ... 27188

41 CFR
Chs. 1-49 ... 26987
105-63 ... 26992
201-1 ... 27142
201-2 ... 27142
201-8 ... 27142
201-11 ... 27142
201-16 ... 27142
201-20 ... 27142
201-21 ... 27142
201-23 ... 27142
201-24 ... 27142
201-26 ... 27142
201-30 ... 27142
201-31 ... 27142
201-32 ... 27142
201-38 ... 27142
201-39 ... 27142
201-40 ... 27142

42 CFR
412 ... 27208

44 CFR
64 (2 documents) ... 26993, 26994

46 CFR
153 ... 26996

48 CFR
504 ... 26996
533 ... 26998

49 CFR
Proposed Rules:
Ch. X ... 27031
571 ... 27032

50 CFR
17 ... 26999

Federal Register
Vol. 50, No. 126
Monday, July 1, 1985

Presidential Documents

Title 3—

The President

Proclamation 5356 of June 27, 1985

National P.O.W./M.I.A. Recognition Day, 1985

By the President of the United States of America

A Proclamation

Since the Revolutionary War, America's men and women have made unselfish sacrifices to defend freedom. In each of America's wars, America's prisoners of war have faced extraordinary hardships and overcome them through extraordinary sacrifices. The bravery, suffering, and profound devotion to duty of our P.O.W.s and M.I.A.s have earned them a preeminent place in the hearts of all Americans. Their heroism is a beacon to follow forever. Their spirit of hope and commitment to the defense of freedom reflects the basic tenets of our Nation.

This country deeply appreciates the pain and suffering endured by families whose fathers, sons, husbands, or brothers are today still missing or unaccounted for. These families are an example of the strength and patriotism of all Americans. We as a people are united in supporting efforts to return the captive, recover the missing, resolve the accounting, and relieve the suffering of the families who wait. We accept our continuing obligation to these missing servicemen. Until the P.O.W./M.I.A. issue is resolved, it will continue to be a matter of the highest national priority. As a symbol of this national commitment, the P.O.W./M.I.A. Flag will fly over the White House, the Departments of State and Defense, the Veterans' Administration, and the Vietnam Veterans Memorial on July 19, 1985, and over the Vietnam Veterans Memorial on Memorial Day and Veterans Day.

By Senate Joint Resolution 87, the Congress has designated July 19, 1985, as "National P.O.W./M.I.A. Recognition Day." On this day, we recognize the special debt all Americans owe to our fellow citizens who gave up their freedom in the service of our country; we owe no less to their families.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Friday, July 19, 1985, as National P.O.W./M.I.A. Recognition Day. I call on all Americans to join in honoring all former American prisoners of war, those still missing, and their families who have endured and still suffer extraordinary sacrifices on behalf of this country. I also call upon State and local officials and private organizations to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of June, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 85-15871
Filed 6-28-85; 10:40 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12523 of June 27, 1985

National White House Conference on Small Business

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to implement the White House Conference on Small Business Authorization Act (Public Law 98–276), it is hereby ordered as follows:

Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act applicable to the White House Conference on Small Business Authorization Act, except that of reporting annually to the Congress, shall be performed by the Administrator of the Small Business Administration in accordance with the guidelines and procedures established by the Administrator of General Services.

Ronald Reagan

THE WHITE HOUSE,
June 27, 1985.

[FR Doc. 85–15872
Filed 6–28–85; 10:41 am]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 50, No. 126
Monday, July 1, 1985

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 771

Agency Administrative Grievance System

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment to OPM regulations clarifies the meaning of one of the regulatory exclusions of subject matter from coverage under the agency administrative grievance system. The affected exclusion concerns nonselection for promotion from a group of properly ranked and certified candidates, and as amended, also excludes decisions not to promote an employee noncompetitively.

EFFECTIVE DATE: July 31, 1985.

FOR FURTHER INFORMATION CONTACT: Gary D. Wahlert; Office of Employee, Labor and Agency Relations: (202) 653–8557.

SUPPLEMENTARY INFORMATION: OPM proposed this amendment with a 60-day comment period in 49 FR 28721 on July 16, 1984. Responses were received from 9 agencies, 3 labor organizations, and 1 individual.

The great majority of the commenters strongly endorsed the change and said that the amendment should be implemented as written. Many agency comments contained such phrases as "very much endorse," "fully endorse," and "strongly concurs." One agency commenter agreed with the proposed amendment but recommended that OPM go further and add a new exclusion that had not been proposed. OPM did not adopt this recommendation.

The labor organizations that commented generally argued that the agency administrative grievance system should be a broad forum available to employees on the full scope of disputable matters and, therefore, should not exclude decisions on noncompetitive promotions. In addition, one of the unions expressed the view that career ladder promotions (which they noted are acquired through competitive staffing procedures) are "conditions of employment" which should be recognized by the agency as entitling the employee to the training, counseling, etc. necessary for the employee to advance steadily through the applicable grade structure. They further argued that bargaining unit employees and their unions are allowed by statute to grieve changes in conditions of employment, and that the regulation would circumvent that right.

However, OPM continues to believe that nonselection for promotion, whether it concerns a competitive or a noncompetitive circumstance, is a decision which is not subject to administrative grievance system review. In addition, OPM does not agree that selection for a career ladder position establishes a "condition of employment." With respect to bargaining unit employees' statutory right to grieve changes in conditions of employment, we note that these regulations, which concern the agency administrative grievance system, would not, except in unusual circumstances, apply to or affect bargaining unit employees. Finally, althought the nonselection decision (or lack of decision) is not grievable under the agency administrative grievance system, employees may be able to grieve related matters they believe affect their opportunities to be considered for promotions.

Therefore, OPM is amending its regualtions by adding language that excludes grievances over management decisions not to promote an employee noncompetitively. As amended, the exclusion applies to any noncompetitive promotion decision (or lack of decision), including decisions not to promote an employee occupying a position in a career ladder series.

Executive Order 12291, Federal Regulation

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

Regulatory Flexibility Act

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

List of Subject in 5 CFR Part 771

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.,
Loretta Cornelius,
Acting Director.

PART 771—AGENCY ADMINISTRATIVE GRIEVANCE SYSTEM

Accordingly, OPM amends 5 CFR Part 771 as follows:

1. The authority for Part 771 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, 7301; E.O. 9830, 3 CFR 1943–1948 Comp., pp. 606–624; E.O. 11222, 3 CFR Parts 1964–1969 Comp., p. 306.

2. Section 771.206(c)(1)(iii) is revised to read as follows:

§ 771.206 Exclusions.

* * * * *

(c) *Matters excluded.*

(1) * * *

(iii) Nonselection for promotion from a group of properly ranked and certified candidates or failure to receive a noncompetitive promotion.

* * * * *

[FR Doc. 85–15703 Filed 6–28–85; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

United States Standards for Grades of Canned Clingstone Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to revise the voluntary U.S. Standards for Grades of Canned Clingstone Peaches. The standards were developed by the United States Department of Agriculture (USDA) at the request of major segments of the canned clingstone

peach industry. Their effect will be to better serve the needs of the canned clingstone peach industry and allow for more orderly marketing of canned clingstone peaches.

EFFECTIVE DATE: July 1, 1985.

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

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated as a "nonmajor" rule. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or exports markets.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601), because it reflects current marketing practices.

It is found that good cause exists for making this document effective upon publication in the **Federal Register** (5 U.S.C. 533) because: (1) The 1985 crop begins in late June, and this final rule should be effective by the time new crop deliveries from growers to processors begin; (2) postponing the effective date of this final rule would serve no useful purpose and could cause administrative problems in the application of the U.S. Standards for Grades of Canned Clingstone Peaches.

Based on industry recommendations, the voluntary grade standards for canned clingstone peaches were revised to institute an "attributes standards" type of grading on July 1, 1978. Before that time, the grade standards utilized the "variable standards" type of grading. Even though the attributes standards may have greater statistical validity, the clingstone peach processing industry claims that they are more cumbersome in their practical application than the former variable standards. Therefore, major segements of the canned clingstone peach industry now believe that attributes standards do not best serve their needs. They believe it is difficult to communicate quality levels between processors, buyers, brokers, and other users through these standards.

Under the attributes standards, one type or several types of physical defects may be present in each classification. The classifications are minor, major, severe, and critical. This allows more of an individual type of defect to be present than under the variable standards in the absence of other types of defects within the classification. For example, defects such as color, blemishes, and mechanical damage are grouped and their sum is used to determine compliance with the classification tolerance. Such determinations of tolerance compliance could be based solely on blemishes if no color defects or mechanical damage is present. The clingstone peach industry has asked for standards, such as the previous variables standards, that require each defect to be separately classified without grouping with other defects. Therefore, in the above example, if the variable standards were used, the number of blemishes allowed to meet the tolerance would be set without regard to whether color defects or mechanical damage were present. In addition to the individual tolerances, the sample would also have to meet a minimum total score. This rule revises the current attributes standards type of grading to a variables standards type of grading that is basically the same as the former variables standards.

On April 17, 1985, a proposed rule, revising the current clingstone peach standards, was published in the **Federal Register** (50 FR 15160). Comments could be filed until May 17, 1985. No comments were received.

Therefore, the USDA hereby finalizes the proposed rule for clingstone peaches to establish a variables standards type of grading that is basically the same as the standards that were used before the attributes standards became effective on July 1, 1978.

List of Subjects in 7 CFR Part 52

Fruits and vegetables, Food grades, Standards.

PART 52—[AMENDED]

Accordingly, the United States Standards for Grades of Canned Clingstone Peaches (7 CFR 52.2561-52.2576) are amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, 1090, as amended (7 U.S.C. 1622, 1624).

2. In Part 52, §§52.2562, 52.2563 and 52.2564 are revised to read as follows:

§ 52.2562 Styles.

(a) *"Halves" or "Halved"* canned peaches are peeled and pitted peaches, cut approximately in half along the suture from stem to apex.

(b) *"Quarters" or "Quartered"* canned peaches are halved peaches cut into two approximately equal parts.

(c) *"Slices" or "Sliced"* canned peaches are peeled and pitted peaches cut into sectors smaller than quarters.

(d) *"Dice" or "Diced"* canned peaches are peeled and pitted peaches cut into approximate cubes.

(e) *"Whole"* canned peaches are peeled, unpitted, whole peaches with or without stems removed.

(f) *"Mixed pieces of irregular sizes and shapes"* are peeled, pitted, and cut units of canned peaches that are predominantly irregular in size and shape which do not conform to a single style of halves, quarters, slices, or dice and which may consist of:

(1) Units (commonly called "salad cuts" or "salad pieces") which may have been prepared originally as peach halves but which are irregular in size and shape in that more than one-fourth of the unit appears to have been removed at the outer curved surface and which have been cut further into pieces;

(2) Units which may have been prepared originally as peach slices but which are irregular in size and shape in that they have been cut further into pieces; or

(3) Mixtures of two or more of the following styles which may or may not be of normal shape: Halves, quarters, slices, or diced.

§ 52.2563 Grades.

(a) *"U.S. Grade A"* is the quality of halves, quarters, slices, dice, or whole canned clingstone peaches that possess similar varietal characteristics, that possess a normal flavor and odor; that possess a good color; that are practically uniform in size and symmetry for the applicable style; that are practically free from defects; that possess a good character; and that for those factors which are scored in accordance with the scoring system outlined in this subpart the total score is not less than 90 points: Provided, That halves, quarters, slices, dice, or whole canned clingstone peaches may possess a reasonably good color; may be reasonably uniform in size and symmetry; and may possess a reasonably good character, if the total score is not less than 90 points.

(b) *"U.S. Grade B"* is the quality of halves, quarters, slices, dice, whole, or

mixed pieces of irregular sizes and shapes of canned clingstone peaches that possess similar varietal characteristics; that possess a normal flavor and odor; that possess a reasonably good color; that are reasonably uniform in size and symmetry for the applicable style; that are reasonably free from defects; that possess a reasonably good charcter; and that for those factors which are scored in accordance with the scoring system outlined in this subpart the total score is not less than 80 points: Provided, That halves, quarters, slices, dice, or whole canned clingstone peaches may be fairly uniform in size and symmetry if the total score is not less than 80 points.

(c) *"U.S. Grade C"* is the quality of halves, quarters, slices, diced, whole, or mixed pieces of irregular sizes and shapes of canned clingstone peaches that possess similar varietal characteristics; that possess a normal flavor and odor; that possess a fairly good color; that are fairly uniform in size and symmetry for the applicable style; that are fairly free from defects; that possess a fairly good character; and that for those factors which are scored in accordance with the scoring system outlined in this subpart the total score is not less than 70 points.

(d) *"U.S. Grade D"* is the quality of halves, quarters, slices, diced, whole, or mixed pieces of irregular sizes and shapes of canned clingstone peaches that may possess dissimilar varietal characteristics; that possess a normal flavor odor; that possess a fairly good color; that may vary in size and symmetry for the applicable style; that are fairly free from defects except for crushed and broken units in the styles of halves, quarters, or whole style; that possess a noticeable variability in character; and that for those factors which are scored in accordance with the scoring system outlined in this subpart the total score is not less than 60 points. Canned clingstone peaches of this grade may or may not meet the minimum standards of quality for canned peaches issued pursuant to the Federal Food, Drug, and Cosmetic Act.

(e) *"Substandard"* is the quality of canned clingstone peaches that fails to meet the applicable requirements of U.S. Grade C or of U.S. Grade D and is the quality of canned clingstone peaches that may or may not meet the minimum standards of quality for canned peaches issued pursuant to the Federal Food, Drug, and Cosmetic Act.

§ 52.2564 Grades of canned "solid-pack" clingstone peaches.

(a) *"U.S. Grade C Solid-Pack"* is the quality of halves, quarters, slices, dice, or mixed pieces of irregular sizes and shapes of canned "solid-pack" clingstone peaches that possess a normal flavor and odor; that possess a fairly good color; that are fairly free from defects for canned "solid-pack" clingstone peaches; that possess a fairly good character for "solid-pack" clingstone peaches; and that for those factors which are scored in accordance with the scoring system outlined in this subpart the total score is not less than 70 points.

(b) *"Substandard Solid-pack"* is the quality of halves, quarters, slices, dice, or mixed pieces of irregular sizes and shapes of canned "solid-pack" clingstone peaches that fail to meet the requirements of "U.S. Grade C Solid-Pack."

3. In Part 52, §§ 52.2570 through 52.2575 are revised to read as follows:

§ 52.2570 Ascertaining the grade.

(a) *"General."* In addition to considering other requirements outlined in the standards the following quality factors are evaluated:

(1) Factors not rated by score points in canned clingstone peaches other than "solid-pack" clingstone peaches are:

(i) Varietal characteristics.

(ii) Flavor and odor.

(2) Factor not rated by score points in "solid-pack" clingstone peaches: Flavor and odor.

(3) Factors rated by score points. The relative importance of each factor which is scored is expressed numerically on the scale of 100. The maximum number of points that may be given such factors are:

	Points
(i) Color	20
(ii) Uniformity of size and symmetry	20
(iii) Absence of defects	30
(iv) Character	30
Total score	100

(b) Definition of flavor and odor.—"Normal flavor and odor" means that the canned peaches are free from objectionable flavors and odors of any kind.

§ 52.2571 Ascertaining the rating for the factors which are scored.

The essential variations within each factor which is scored are so described that the value may be ascertained for each factor and expressed numerically. The numerical range within each factor which is scored is inclusive (for example, "18 to 20 points" means "18, 19, or 20 points").

§ 52.2572 Color.

(a) *"General."* (1) The color of canned clingstone peaches other than canned "spiced" peaches refers to the predominant and characteristic color on the surface of whole units, and the outside surfaces of other units, except the cut surfaces of such units are also considered when adversely affected by discoloration. Units other than whole on which the pit cavity is abnormally discolored are considered under the factor of absence of defects only.

(2) The factor of color for canned "spiced" peaches is not based on any detailed requirement and is not scored but the color shall be normal for canned "spiced" peaches; the other three factors (uniformity of size and symmetry, absence of defects, and character as applicable) are scored and the total is multiplied by 100 and divided by 80, dropping any fractions to determine the total score.

(b) *"A" classification.* Canned clingstone peaches that possess a good color may be given a score of 18 to 20 points. Mixed pieces of irregular sizes and shapes that score 18 to 20 points shall not be graded above U.S. Grade B, regardless of the total score for the product (this is a partial limiting rule). "Good color" means that the peaches possess a bright color ranging from yellowish orange to orange yellow; and that there may be present units which possess "reasonably good color" as follows:

(1) In the style of halves, quarters, slices, or whole, not more than 10 percent, by count, of the units may possess "reasonably good color"; or one unit in a container is permitted to possess "reasonably good color": Provided, That in all containers comprising the sample such units do not exceed an average of 10 percent of the total number of units; and

(2) In the styles of dice or mixed pieces of irregular sizes and shapes, not more than 10 percent, by weight, of the drained peaches may possess "reasonably good color".

(c) *"B" classification.* Canned clingstone peaches that possess a reasonably good color may be given a score of 16 or 17 points. Mixed pieces of irregular sizes and shapes that fall into this classification shall not be graded above U.S. Grade B, regardless of the total score for the product (this is a partial limiting rule). "Reasonably good color" means that the canned clingstone peaches possess a reasonably bright color that may fail to meet minimum color requirements for Grade A but is equal to or better than light orangish-yellow; that the units may possess slight

discoloration due to oxidation, pit pigmentation, or other causes which does not more than slightly affect the appearance or edibility, or both, of the product; and that there may be present units which possess "fairly good color" as follows:

(1) In the style of halves, quarters, slices, or whole, not more than 10 percent, by count, of the units may possess "fairly good color;" or one unit in a container is permitted to possess "fairly good color;" Provided, That in all containers comprising the sample such units do not exceed an average of 10 percent of the total number of units; and

(2) In the style of dice or mixed pieces of irregular sizes and shapes, not more than 10 percent, by weight, of the drained peaches may possess "fairly good color."

(d) *"C," "D", and "C–SP" classification.* Canned clingstone peaches and canned solid-pack clingstone peaches that possess a fairly good color may be given a score of 14 or 15 points. Canned clingstone peaches or canned "solid-pack" clingstone peaches that fall into this classification shall not be graded above U.S. Grade C or U.S. Grade C Solid-Pack, whichever is applicable, regardless of the total score for the product (this is a limiting rule). "Fairly good color" means that the peaches possess a color that may fail to meet minimum color requirements for Grade B, but is equal to or better than greenish-yellow; that the units may possess slight discoloration due to oxidation, pit pigmentation or other causes which do not materially affect the appearance or edibility, or both, of the product; and that the units may possess other color as follows:

(1) In the style of halves, quarters, slices, or whole, not more than 10 percent, by count, of the units may fail to meet the minimum color for Grade C or may be off-color; or one unit in a container is permitted to possess such color; Provided, That in all containers comprising the sample such units do not exceed an average of 10 percent of the total number of units.

(2) In the style of dice or mixed pieces of irregular sizes and shapes, not more than 10 percent, by weight, of the drained peaches may consist of units that fail to meet the minimum color for grade C or may be off-color: Provided, That such units do not materially affect the appearance of the product.

(e) *"SStd" and "SStd-SP" classification.* Canned clingstone peaches and canned "solid-pack" clingstone peaches that fail to meet the requirements of paragraph (d) of this section may be given a score of 0 to 13 points and shall not be graded above Substandard or Substandard Solid-Pack, whichever is applicable, regardless of the total score for the product (this is a limiting rule).

§ 52.2573 Uniformity of size and symmetry.

(a) *General.* The factor of uniformity of size and symmetry for mixed pieces of irregular sizes and shapes of canned clingstone peaches and all applicable styles of canned "solid-pack" clingstone peaches is not based on any detailed requirements and is not scored; the other three factors (color, absence of defects, and character, as applicable) are scored and the total is multiplied by 100 and divided by 80, dropping any fractions to determine the total score.

(b) *Off-suture cuts.* "Off-suture cut" in halved or quartered canned clingstone peaches means a halved or quartered unit which has been cut at a distance from the suture greater than three-eighths inch at the widest measurement from the suture.

(c) *Partially detached or detached piece.* A "partially detached or detached piece" in halved canned clingstone peaches means a unit which has the appearance of a slice resulting from an off-suture cut or from improper cutting and which may or may not be attached to the half from which cut. In determining the applicable allowances in terms of percentage by count, a partially detached piece together with the half to which it is partially attached is considered as one unit or a detached piece with the half from which detached or together with any other half is considered as one unit.

(d) *Partial slice.* A "partial slice" in the style of slices is a unit that has had the semblance of a slice with respect to thickness and shape but is less than three-fourths of an apparent full slice and that does not bear marks of crushing. In determining the allowances in terms of percentage by count, partial slices aggregating the equivalent of an average size slice shall be considered as one unit.

(e) *Sliver.* A "sliver" in the style of slices is a sector that is substantially smaller than the general size of slices or that weighs 3 grams or less.

(f) *Slab.* A "slab" in the style of slices is a portion of a unit which does not conform to the shape of a definite slice due to improper cutting.

(g) *"A" Classification.* Halves, quarters, slices, dice, or whole canned clingstone peaches that are practically uniform in size and symmetry may be given a score of 18 to 20 points. "Practically uniform in size and symmetry" has the following meanings with respect to the following styles of canned clingstone peaches:

(1) *Halves, quarters, and whole.* The units are very symmetrical and the weight of the largest full-size unit does not exceed the weight of the smallest full-size unit by more than 40 percent; the weight of each half is not less than three-fifths oz; the weight of each quarter is not less than three-tenths oz; and not more than 10 percent, by count, of the units in the style of halves or quarters may possess off-suture cuts or partially detached or detached pieces, or any combination thereof. One unit in a container is permitted to possess an off-suture cut or partially detached or detached piece if such unit exceeds the allowance of 10 percent, by count: Provided, That in all containers comprising the sample such units do not exceed an average of 10 percent of the total number of units.

(2) *Slices.* Not more than a total of 5 percent, by count, of the units may be partial slices, slivers, and slabs: Provided, That not more than 2½ percent, by count, are slabs; and excluding partial slices, slivers, and slabs that may be present, the variation is size and symmetry of the other units does not affect more than slightly the appearance of the product.

(3) *Dice.* Not more than 10 percent, by weight, of the drained clingstone peaches may be units that are more than three-fourths inch in their greatest edge dimension or are of such size as to pass through a five-sixteenth inch square opening.

(h) *"B" Classification.* Halves, quarters, slices, dice, or whole canned clingstone peaches that are reasonably uniform in size and symmetry may be given a score of 16 or 17 points. "Reasonably uniform in size and symmetry" has the following meanings with respect to the following styles of canned clingstone peaches.

(1) *Halves, quarters, and whole.* The units are reasonably symmetrical and the weight of the largest full-size unit does not exceed the weight of the smallest full-size unit by more than 60 percent; the weight of each half is not less than three-fifths oz; the weight of each quarter is not less than three-tenths oz; and not more than 20 percent, by count, of the units in the style of halves or quarters may possess off-suture cuts or partially detached or detached pieces, or any combination thereof. One unit in a container is permitted to possess an off-suture cut or partially detached or detached piece if such unit exceeds the allowance of 20 percent, by count: Provided, That in all containers comprising the sample such

units do not exceed an average of 20 percent of the total number of units.

(2) *Slices.* Not more than a total of 10 percent, by count, of the units may be partial slices, slivers, and slabs: Provided, That not more than 5 percent, by count, are slabs; and excluding partial slices, slivers, and slabs that may be present, the variation in size and symmetry of the other unit does not more than materially affect the appearance of the product.

(3) *Dice.* Not more than 15 percent, by weight, of the drained clingstone peaches may be units that are more than three-fourths inch in their greatest edge dimension or are of such size as to pass through a five-sixteenth inch square opening.

(i) *"C" Classification.* Halves, quarters, slices, dice, or whole canned clingstone peaches that are fairly uniform in size and symmetry may be given a score of 14 or 15 points. Canned clingstone peaches that fall into this classification shall not be graded above U.S. Grade B, regardless of the total score for the product (this is a partial limiting rule). "Fairly uniform in size and symmetry" has the following meanings with respect to the following styles of canned clingstone peaches:

(1) *Halves, quarters, and whole.* The units may vary in size, thickness, and symmetry and the weight of the largest full-size unit may be not more than twice the weight of the smallest full-size unit; the weight of each half is not less than three-fifths oz; the weight of each quarter is not less than three-tenths oz; and not more than 40 percent, by count, of the units in the style of halves or quarters may possess off-suture cuts or partially detached or detached pieces, or any combination thereof: Provided, That the presence of such units does not give the appearance of canned peaches of "Mixed Pieces of Irregular Sizes and Shapes" or canned peaches that are "Unevenly Trimmed."

(2) *Slices.* Not more than a total of 20 percent, by count, of the units may be partial slices, slivers, and slabs: Provided, That not more than 10 percent, by count, are slabs; and excluding partial slices, slivers, and slabs that may be present, the balance of slices may vary noticeably in size, thickness and symmetry.

(3) *Dice.* Not more than 20 percent, by weight, of the drained clingstone peaches may be units that are more than three-quarters inch in their greatest edge dimension or are of such size as to pass through a five-sixteenth inch square opening.

(j) *"D" and "SStd" Classification.* Canned clingstone peaches of the applicable styles which fail to meet paragraph (i) of this section may be given a score of 0 to 13 points and shall not be graded above the following stated grade, regardless of the total score for the product (this is a limiting rule):

(1) Halves, quarters, or whole canned clingstone peaches in which the weight of the largest full-size unit is more than twice the weight of the smallest full-size unit shall not be graded above U.S. Grade D and are also "Below Standard in Quality—Mixed Sizes."

(2) Halves of canned clingstone peaches in which the weight of any half is less than three-fifths oz shall not be graded above U.S. Grade D and are also "Below Standard in Quality—Small Halves."

(3) Quarters of canned clingstone peaches in which the weight of any quarter is less than three-tenths oz shall not be graded above U.S. Grade D and are also "Below Standard in Quality—Small Quarters."

(4) Slices and dice canned clingstone peaches shall not be graded above U.S. Grade D.

§ 52.2574 Absence of defects.

(a) *General.* The factor of absence of defects refers to the degree of freedom from harmless extraneous material (such as stems or leaves and portions thereof), from pit material, from units that are crushed or broken for the applicable style, and from any other defects which detract from the appearance or edibility of the product.

(a) *Blemished.* "Blemished" or "blemished units" means units that are blemished with scab, hail injury, discoloration, or other abnormality which affects materially the appearance or edibility, or both, of the unit.

(2) *Crushed or broken.* "Crushed or broken" means that:

(i) A unit in halves, quarters, or whole style of canned clingstone peaches is "crushed" if the unit has definitely lost its normal shape and bears marks of crushing or is otherwise crushed not due to ripeness; and

(ii) A unit in halves, quarters, or whole style of canned clingstone peaches is "broken" if severed into definite parts; halves of canned clingstone peaches that are slightly or partially split from the edge to the pit cavity are not considered broken. Portions equivalent to a full-size unit that has been broken are considered as one unit in determining the percentage by count.

(3) *Pit material.* "Pit material" means any whole pit in all styles other than whole style or any portion of a peach pit, regardless of size, except when whole peach pits or peach kernels are permitted as seasoning ingredients in other than whole style.

(b) *"A" classification.* Halves, quarters, slices, dice, whole, or mixed pieces of irregular sizes and shapes of canned clingstone peaches that are practically free from defects may be given a score of 27 to 30 points. Mixed pieces of irregular sizes and shapes of canned clingstone peaches that score 27 to 30 points shall not be graded above U.S. Grade B regardless of the total score for the product (this is a partial limiting rule). "Practically free from defects" means that the canned clingstone peaches are practically free from pit material, from harmless extraneous material, and from any defects not specifically mentioned that affect the appearance or edibility of the product, and in addition, has the following meanings with respect to the following styles of canned clingstone peaches:

(1) *Halves, quarters; and whole.* Not more than an average of one-eighth square inch of peel for each pound of total contents may be present; not more than 5 percent, by count, of the units may be crushed, or broken; and not more than 5 percent, by count, of the units may be blemished. One unit in a container is permitted to be crushed or broken and one unit in a container is permitted to be blemished if any of such units exceeds the respective allowances of 5 percent by count; Provided, That in all containers comprising the sample such crushed or broken units do not exceed an average of 5 percent of the total number of units and such blemished units do not exceed an average of 5 percent of the total number of units.

(2) *Sliced.* Not more than an average of one-eighth square inch of peel for each pound of total contents may be present; and not more than 3 percent, by count, of the units may be blemished. One unit in a container is permitted to be blemished if such unit exceeds the allowance of 3 percent by count: Provided, That in all containers comprising the sample such blemished units do not exceed an average of 3 percent of the total number of units.

(3) *Dice.* Not more than an average of one-eighth square inch of peel for each pound of total contents may be present; and not more than 3 percent, by weight, of drained clingstone peaches may consist of units that are blemished.

(4) *Mixed pieces of irregular sizes and shapes.* Not more than an average of one-eighth square inch of peel for each pound of total contents may be present; and not more than 1 blemished unit for

each 32 oz of total contents may be present.

(c) *"B" classification.* Halves, quarters, slices, dice, whole, or mixed pieces of irregular sizes and shapes of canned clingstone peaches that are reasonably free from defects may be given a score of 24 to 26 points. Canned clingstone peaches that fall into this classification shall not be graded above U.S. Grade B regardless of the total score for the product (this is a limiting rule). "Reasonably free from defects" means that the canned clingstone peaches are practically free from pit material, are reasonably free from harmless extraneous material and from any defects not specifically mentioned that affect the appearance or edibility of the product, and in addition, has the following meanings with respect to the following styles of canned clingstone peaches:

(1) *Halves, quarters, and whole.* Not more than an average of one-half square inch of peel for each pound of total contents may be present; not more than 5 percent, by count, of the units may be crushed, or broken; and not more than 10 percent, by count, of the units may be blemished. One unit in a container is permitted to be crushed or broken and one unit in a container is permitted to be blemished if any of such units exceed the respective allowances of 5 percent and 10 percent, by count: Provided, That in all containers comprising the sample such crushed or broken units do not exceed an average of 5 percent of the total number of units and such blemished units do not exceed an average of 10 percent of the total number of units.

(2) *Sliced.* Not more than an average on one-half square inch of peel for each pound of total contents may be present; and not more than 6 percent by count, of the units may be blemished. One unit in a single container is permitted to be blemished if such unit exceeds the allowance of 6 percent, by count: Provided, That in all containers comprising the sample such blemished units do not exceed an average of 6 percent of the total number of units.

(3) *Dice.* Not more than an average of one-half square inch of peel for each pound of total contents may be present; and not more than 6 percent, by weight, of drained clingstone peaches may consist of units that are blemished.

(4) *Mixed pieces of irregular sizes and shapes.* Not more than an average of one-half square inch of peel for each pound of total contents may be present; and not more than 1 blemished unit for each pound of total contents may be present.

(d) *"C" classification.* Halves, quarters, slices, dice, whole, or mixed pieces of irregular sizes and shapes of canned clingstone peaches that are fairly free from defects may be given a score of 21 to 23 points. Canned clingstone peaches that fall into this classification shall not be graded above U.S. Grade C regardless of the total score for the product (this is a limiting rule). "Fairly free from defects" means that the canned clingstone peaches are practically free from pit material; are fairly free from harmless extraneous material and from any defects not specifically mentioned that affect the appearance or edibility of the product; and in addition, has the following meanings with respect to the following styles of canned clingstone peaches:

(1) *Halves, quarters, and whole.* Not more than an average of one square inch of peel for each pound of total contents may be present; not more than 5 percent, by count, of the units may be crushed or broken; and not more than 20 percent, by count, of the units may be blemished. One unit in a container is permitted to be crushed or broken and one unit in a container is permitted to be blemished if any of such units exceed the respective allowances of 5 percent and 20 percent, by count: Provided, That in all containers comprising the sample such crushed or broken units do not exceed an average of 5 percent of the total number of units and such blemished units do not exceed an average of 20 percent of the total number of units.

(2) *Slices, dice, and mixed pieces of irregular sizes and shapes.* Not more than an average of one square inch of peel for each pound of total contents may be present; and not more than 20 percent, by count, of the units may be blemished.

(e) *"D" classification.* Canned clingstone peaches of any style which fail to met the requirements of paragraph (d) of this section but which meet the requirements of this paragraph may be given a score of 0 to 20 points and shall not be graded above U.S. Grade D, regardless of the total score for the product (this is a limiting rule). Halves, quarters, or whole canned clingstone peaches that are thereby U.S. Grade D may also be "Below Standard in Quality—Blemished" or "Partly Crushed or Broken" or "Unevenly Trimmed", or combinations thereof. Canned clingstone peaches of U.S. Grade D with respect to "absence of defects" are practically free from pit material, are fairly free from harmless extraneous material and from any defects not specifically mentioned that affect materially the appearance or edibility of the product, and in addition:

(1) Not more than an average of one square inch of peel for each pound of total contents may be present;

(2) In the style of halves, quarters, or whole, any amount of crushed or broken units may be present; and

(3) Not more than 20 percent, by count, of the units may be blemished. One unit in a container is permitted to be blemished if such unit exceeds the allowance of 20 percent, by count: Provided, That in all containers comprising the sample such blemished units do not exceed an average of 20 percent of the total number of units.

(f) *"SStd" classification.* Canned clingstone peaches that fail to meet the applicable requirements of paragraph (e) of this section may be given a score of 0 to 20 points and shall not be graded above the following stated grades, as applicable, regardless of the total score for the product (this is a limiting rule).

(1) Halves, quarters, or whole canned clingstone peaches shall not be graded above Substandard and may also be "Below Standard in Quality" for the applicable reasons:

(i) Not well peeled;

(ii) Partly crushed or broken;

(iii) Unevenly trimmed;

(iv) Blemished.

(2) Slices, dice, or mixed pieces of irregular sizes and shapes of canned clingstone peaches shall not be graded above Substandard and may also be "Below Standard in Quality" for the applicable reasons:

(i) Not well peeled;

(ii) Blemished.

(g) *"C-SP" classification.* Halves, quarters, slices, dice, or mixed pieces of irregular sizes and shapes of canned "solid-pack" clingstone peaches that are fairly free from defects for canned "solid-pack" clingstone peaches may be given a score of 21 to 23 points. Canned "solid-pack" clingstone peaches that fall into this classification shall not be graded above U.S. Grade C Solid-Pack, regardless of the total score for the product (this is a limiting rule). "Fairly free from defects for canned 'solid-pack' clingstone peaches" means that the canned "solid-pack" clingstone peaches are practically free from pit material, are fairly free from harmless extraneous material and from any defects not specifically mentioned that affect the appearance or edibility of the product, and in addition, there may be present:

(1) Not more than an average of one square inch of peel for each pound of total contents; and

(2) Not more than 2 blemished units for each pound of total contents.

(h) *"SStd-SP" classification.* Halves, quarters, slices, dice, or mixed pieces of

irregular sizes and shapes of canned "solid-pack" clingstone peaches that fail to meet the requirements of paragraph (g) of this section may be given a score of 0 to 20 points and shall not be graded above Substandard Solid-Pack, regardless of the total score for the product (this is a limiting rule).

§ 52.2575 Character.

(a) *General.* The factor of character refers to the degree of ripeness, the texture, and tenderness of the product.

(b) *"A" classification.* Halves, quarters, slices, dice, whole, or mixed pieces of irregular sizes and shapes of canned clingstone peaches that possess a good character may be given a score of 27 to 30 points. Mixed pieces of irregular sizes and shapes of canned clingstone peaches that score 27 to 30 points shall not be graded above U.S. Grade B regardless of the total score for the product (this is a partial limiting rule). "Good character" has the following meanings with respect to the various styles of canned clingstone peaches:

(1) *Halves, quarters, slices, and mixed pieces of irregular sizes and shapes.* The units are pliable and possess a tender, fleshy texture typical of mature, well-ripened, properly prepared, and properly processed canned clingstone peaches; the units are intact and possess reasonably well-defined edges; and not more than 10 percent, by count, of the units may possess a "reasonably good character". One unit in a container is permitted to possess a "reasonably good character" if such unit exceeds the allowance of 10 percent, by count: Provided, That the appearance or eating quality, or both, is not more than slightly affected by the character of such unit.

(2) *Dice.* The product generally possesses a texture typical of mature, well-ripened, properly prepared, and properly processed canned clingstone peaches; not more than 3 percent, by weight, of the drained clingstone peaches may be excessively frayed or mushy; and the product is otherwise reasonably free from crushed units.

(3) *Whole.* The units possess a tender texture typical of mature, well-ripened, properly prepared, and properly processed canned clingstone peaches; the units are uniformly intact and firm; and not more than 10 percent, by count, of the units may possess a "reasonably good character".

One unit in a container is permitted to possess a "reasonably good character" if such unit exceeds the allowance of 10 percent, by count: Provided, That the appearance or eating quality, or both, is not more than slightly affected by the character of such unit.

(c) *"B" classification.* Halves, quarters, slices, dice, whole, or mixed pieces of irregular sizes and shapes of canned clingstone peaches that possess a reasonably good character may be given a score of 24 to 26 points. Mixed pieces of irregular sizes and shapes of canned clingstone peaches that fall into this classification shall not be graded above U.S. Grade B, regardless of the total score for the product (this is a partial limiting rule). "Reasonably good character" has the following meanings with respect to the following styles of canned clingstone peaches:

(1) *Halves, quarters, slices, and mixed pieces of irregular sizes and shapes.* The units possess a texture typical of mature, properly ripened, properly prepared, and properly processed canned clingstone peaches; the texture is reasonably fleshy, and the units are reasonably tender or the tenderness may be variable within the unit; the units are reasonably intact with not more than slightly frayed edges and may be slightly firm or slightly soft but are not mushy; and not more than 10 percent, by count, of the units may possess a fairly good character. One unit in a container is permitted to possess such fairly good character if such unit exceeds the allowance of 10 percent, by count: Provided, That the appearance or eating quality, or both, is not affected materially by the character of such unit.

(2) *Dice.* The product generally possesses a texture typical of mature, properly ripened, properly prepared, and properly processed canned clingstone peaches; not more than 5 percent by weight, of the drained clingstone peaches may be excessively frayed or mushy; and the product is otherwise reasonably free from crushed units.

(3) *Whole.* The units possess a texture typical of mature, properly ripened, properly prepared, and properly processed canned clingstone peaches; the units are reasonably tender or the tenderness may be variable within the unit; the units may be slightly firm or slightly soft but are not mushy; and not more than 10 percent by count of the units may possess a fairly good character, except for mushy or "not tender" units. One unit in a container is permitted to possess such fairly good character if such unit exceeds the allowance of 10 percent, by count: Provided, That the appearance or eating quality, or both, is not affected materially by the character of such unit.

(d) *"C" classification.* Halves, quarters, slices, dice, whole, or mixed pieces of irregular sizes and shapes of canned clingstone peaches that possess a fairly good character may be given a score of 21 to 23 points. Canned clingstone peaches that fall into this classification shall not be graded above U.S. Grade C regardless of the total score for the product (this is a limiting rule). "Fairly good character" has the following meanings with respect to the following styles of canned clingstone peaches:

(1) *Halves, quarters, slices, and mixed pieces of irregular sizes and shapes.* The units possess a texture typical of mature, properly prepared, and properly processed canned clingstone peaches which may be variable in fleshiness but the texture is fairly fleshy; the units may be lacking uniformity of tenderness; the units may be frayed but not excessively frayed or may be soft; and not more than 10 percent, by weight, of the drained clingstone peaches may be mushy or units that are so firm as to be "not tender."

(2) *Dice.* The product generally possesses a texture typical of mature, properly prepared, and properly processed canned clingstone peaches; not more than 10 percent, by weight, of the drained clingstone peaches may be excessively frayed or mushy or are so firm as to be "not tender;" and the product is otherwise fairly free from crushed units.

(3) *Whole.* The units possess a texture typical of mature, properly prepared, and properly processed canned clingstone peaches which may be variable; the units may be lacking uniformity of tenderness; the units may be markedly firm or markedly ragged or soft; and not more than 10 percent, by count, of the units may be mushy or so firm as to be "not tender." One unit in a container is permitted to be mushy or "not tender" if such unit exceeds the allowance of 10 percent, by count: Provided, That in all containers comprising the sample, such units do not exceed an average of 10 percent of the total number of units.

(e) *"D" classification.* Canned clingstone peaches of any style that meet the requirements of paragraph (d) of this section with respect to units that are so firm as to be "not tender" but which otherwise possess a noticeably variable texture with not more than 25 percent, by weight, of the drained canned clingstone peaches that consist of mushy fruit may be given a score of 0 to 20 points and shall not be graded above U.S. Grade D, regardless of the total score for the product (this is a limiting rule).

(f) *"SStd" classification.* Canned clingstone peaches of any style that fail to meet the applicable requirements of paragraph (d) or (e) of this section may

be given a score of 0 to 20 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule). Halves, quarters, slices, dice, whole, or mixed pieces of irregular sizes and shapes of canned clingstone peaches that are "not tender" are also "Below Standard in Quality—Not Tender."

(g) *"C-SP" classification.* Halves quarters, slices, dice, or mixed pieces of irregular sizes and shapes of canned "solid-pack" clingstone peaches that possess a fairly good character for canned "solid-pack" clingstone peaches may be given a score of 21 to 23 points. Canned "solid-pack" clingstone peaches that fall into this classification shall not be graded above U.S. Grade C Solid-Pack regardless of the total score for the product (this is a limiting rule). "Fairly good character for canned 'solid-pack' clingstone peaches" means the product generally possesses a texture of properly prepared and properly processed "solid-pack" clingstone peaches which may be variable in tenderness, may be soft, or may consist of fairly firm units.

(h) *"SStd-SP" classification.* Halves, quarters, slices, dice, or mixed pieces of irregular size and shapes of canned "solid-pack" clingstone peaches that fail to meet the requirements of paragraph (g) of this section may be given a score of 0 to 20 points and shall not be graded above Substandard Solid-Pack, regardless of the total score for the product (this is a limiting rule).

4. In Part 52, § 52.2576 is added to read as follows:

§ 52.2576 Ascertaining the grade of a lot.

The grade of a lot of canned clingstone peaches covered by these standards is determined by the procedures set forth in the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products (7 CFR 52.1 to 52.83).

Done at Washington, DC, on: June 26, 1985.

William T. Manley,

Deputy Administrator Marketing Programs.

[FR Doc. 85-15689 Filed 6-28-85; 8:45 am]

BILLING CODE 3410-02-M

Food and Nutrition Service

7 CFR Part 226

Child Care Food Program; Advance Payments in the Child Care Food Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Child Care Food Program (CCFP) regulations by reorganizing and simplifying the current provisions governing the payment of advance funds to institutions. In the proposed rule, three substantive modifications to the advance payment process were outlined and discussed. In this final rule, two of these modifications have been adopted essentially as proposed. First, the final rule requires State agencies to compare advance payments to earnings for each institution on a monthly basis and take appropriate actions to ensure that they do not exceed claims. Secondly, it requires sponsors to disburse all payments, including operating advances to their facilities within five working days of receipt. These changes are designed (1) to help ensure appropriate accountability for program funds at the State and institution levels, and (2) to better implement the intent of program legislation by ensuring that advance funds are provided in a timely manner to those for whom advance payments are intended. The third modification, which would have limited advance payments to the amount of reimbursement earned by an institution for the same month in the previous year, will not be adopted.

EFFECTIVE DATE: This final rule is effective July 31, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Lou Pastura or Mr. James C. O'Donnell, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 509, Alexandria, Virginia 22302, or by telephone at (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Classification

This rulemaking has been reviewed in accordance with Executive Order 12291 and has not been classified as a major rule because it will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices, and will not have a significant economic impact on competition, employment, investment, productivity, innovation or the ability of U.S. enterprises to compete with foreign based enterprises. This rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The Administrator of the Food and Nutrition Service has certified that this rule does not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting or recordkeeping requirements that are included in this rule have been submitted and approved by the Office of Management and Budget under 0584-0055 for use through September 30, 1987. This final rule imposes no change to the burden associated with that clearance.

Background

The Department published a proposed rule on February 14, 1985 (50 FR 6183), which contained certain provisions intended to reorganize and simplify the rules governing the payment of advances to institutions participating in the Child Care Food Program (CCFP). Further, the proposal contained three substantive modifications to the advance payment process as follows. First sponsoring institutions would be required to disburse all payments, including operating advances, to the child care facilities which they sponsor within five working days of receipt; secondly, no advance could exceed the amount of reimbursement earned by the institution for the same month in the previous year; and thirdly, State agencies would be required to compare advances to earnings for each institution on a monthly basis and take appropriate actions to ensure that advances do not exceed claims.

The Department established a 60-day period during which interested parties could submit comments on the proposal for consideration in the development of this final rule. During the comment period 587 comments were received. Three were from advocacy groups; eight from Food and Nutrition Service regional offices and the Department's Office of the Inspector General; 17 from State administering agencies; one from a Congressional office; 437 from institutions and other participants; and 121 from parents and other concerned parties.

A significant number of the commenters (a total of 491 CCFP day care providers, parents with children participating in the CCFP and other interested parties) stated their general opposition to any change in the current advance payment system without providing any comments on any specific provisions in the proposed rule. In addition, the Department believes it noteworthy that 502 of the comments submitted in opposition to the proposed rule were from one State and were in one way or another associated with only a few sponsoring organizations.

In developing the final rule, all comments were taken into consideration. This preamble summarizes and discusses the significant issues raised by the commenters.

1. Limitation on Advances

The Department received 69 comments which addressed the requirement in § 226.10(a) of the proposed rule that the advances issued to an institution for a given month shall not exceed the reimbursement earned by the institution for the same month in the preceding year. Sixty-five were opposed, and four were in favor of the proposed requirement. In addition, 22 comments were received on the proposal to rescind the provision in § 226.10(a) of the current regulations which states that the first advance of each fiscal year to an institution shall approximate the average reimbursement for the previous six-months. Of the comments received, nine were opposed and 13 were in favor.

The first part of the proposed change to § 225.10(a) would require that the advances issued to an institution for a given month not exceed the reimbursement earned by the institution for the same month in the preceding year. An overwhelming majority of those commenting on this provision disapproved of this change. Some of those commenters believed that it would hinder the growth of institutions. Others felt that the proposed change would not adequately reflect current participation levels and, therefore, would restrict an institution's ability to receive an advance payment equal to anticipated earned reimbursement or to expand its operation. These commenters argued that, due to program increases, the advance would not reflect the full level of claims customarily received from an institution (as provided for in section 17(f)(4) of the National School Lunch Act (NSLA)), and/or that the amount of reimbursement received in a previous year would not be reliable indicator of what would be needed for the same month in the current year. They pointed out that advances are intended to alleviate cash flow difficulties and can only do so if advances fluctuate with the changes in program participation. Still other commenters suggested (1) that the State agencies use the "preceding month" or "preceding quarter" instead of "preceding year" for limiting advance issuances or (2) that the State agencies be afforded discretion in determining the amount of the advance using available data such as recent reimbursement levels and projected growth or reduction in operations.

The Department acknowledges the concerns expressed by the commenters that this change may result in advances that do not reflect current participation and reimbursement trends, and in view of the widespread concern, the Department has reconsidered this provision and is rescinding the proposed requirement which limits advances to the amount paid in the same month in the previous year. Nevertheless, the Department continues to believe that the amount of the advance should reflect the full level of valid claims customarily received from the institution to ensure that institutions do not receive excessive advances. The Department believes that this will be accomplished by the full implementation of this final rule by State agencies.

In addition to the above, several commenters suggested that advance payments be totally eliminated and the CCFP be entirely a reimbursement program for services already provided or that they be limited to the first year of operation of each institution. This proposal conflicts with the CCFP statute which requires the State to provide advances to institutions (Section 17(f)(4) of the NSLA, 42 U.S.C. 1766(f)(4)).

Furthermore, some others disapproving of the proposed advance limitation change expressed concern that eliminating the language governing advance payments to new institutions meant that if an institution has not participated in the CCFP in the previous year, that institution would not receive an advance for that particular application month. The Department wants to make it clear that institutions that have not participated in the program in the previous year remain entitled to receive advance payments. If a new institution applies for an advance, the same procedures used for all other institutions would apply (i.e., the institution would receive the amount that the State agency estimates the institution *will* submit in a valid claim). Thus, it is no longer necessary to retain a separate provision to govern advances for new institutions.

With regard to rescinding the six-month reimbursement average as a basis for determining the amount of advances for the first month of the fiscal year, some commenters indicated that they believed the six-month average provision assured institutions of an equitable method of determining advance funds. Others pointed out that because some claiming months are atypical advance payments based on the average reimbursement earned during the previous six months have resulted in excessive advances.

As noted above, in the proposed rule the Department proposed to tie the level of advances to the amount of reimbursement earned during the same month in the previous year. Because this limitation would apply to advances earned throughout the year, the Department determined that it was no longer necessary to retail the regulatory requirement that the first advance of the fiscal year be determined by the average of the institution's earned reimbursement for the prior six months, as adjusted by the State agency to reflect the full amount of reimbursement which the State agency estimates that the institutions will earn. Although the Department has decided not to adopt its proposal to limit advances to the amount of reimbursement earned during the same month in the previous year, the Department does not believe it is necessary to reinstate the six-month guideline.

When advance payments were first introduced into the CCFP, the Department believed that the six-month average was needed as a guideline for determining the amount of initial advances for each fiscal year and as a safeguard to ensure that institutions did not receive excessive advances. Accordingly, the Department included the six-month requirement in a proposed rulemaking on July 3, 1979 (44 FR 39094). However, in the final rule issued on January 22, 1980 (45 FR 4960), the Department modified the advance provisions to allow States to make the first advance of the fiscal year in an amount which approximated the six month average as adjusted by the State agency's estimate of the institution's need. Now that States have had a significant amount of experience in making advances, the Department believes this six-month average guideline is no longer necessary. Furthermore, under this final rule the State agencies must make monthly reconciliations to the advances paid versus reimbursements earned. The Department believes that this requirement will provide an adequate safeguard against excessive advance payments. Finally, removing this requirement from the current regulations will provide more flexibility to States in determining advance payments and thus will ultimately be in the best interest of State agencies and institutions alike. Therefore, the Department has adopted the proposed change to remove the six-month average from the initial advance.

2. Recovery of Excess Advance Payments

The Department received 36 comments addressing the proposed change under which State agencies would be required to conduct monthly comparisions of reimbursement claims to advances and recover any part of the advance which exceeds the amount of reimbursement that the institution is entitled to receive. Sixteen commenters opposed the provisions, and 20 were in favor of the change.

The commenters that disagreed with the proposed provision pointed out that this system would require more staff time and increase the paperwork needed to provide advances to institutions. Others felt, on the other hand, that it would ensure greater fiscal accountability, significantly limit the potential loss of program funds at the State and institution levels, and prevent large overclaims from the build-up of excess advances that may result in either a substantial loss of funds to the institution or in the institution's closure. A number of States indicated that they already conduct monthly or quarterly reconciliations and that they strongly believe the reconciliation is a useful financial management tool. The Department continues to believe that the monthly reconciliation is a reasonable and useful tool for good program management for many of the reasons discussed by supporters of the proposal. Therefore, this final rule includes the monthly comparison provision essentially as proposed.

Among the specific comments on this provision were recommendations that (1) it be clarified in paragraph (a) that advance payment estimates are to be determined by the State agency and not by the individual institution; (2) the word "valid" be included in the first sentence of paragraph (b)(2) to strengthen the provision addressing claims for reimbursement; (3) a distinction be made between the "withholding" and the "denying" of an advance payment to an institution; and (4) withholding of the payment may not be appealed for at least one month. The Department disagrees with the commenter that there is a difference between "withholding" the advance for lack of a "valid" claim and "denying" the advance, which is an appealable action as listed in 226.6(j). If the State agency withholds the advance for the reason listed above, it is in fact denying the advance and this action is appealable since the law stipulates that advances must be made available by the first day of each month. However, the Department believes that several of the above suggested clarifications will help eliminate any ambiguities in §§ 226.10(a) and (b)(2) of the reegulations. Therefore, the Department is modifying the proposed language in paragraph (a) to include in the second sentence after the word "estimate" the works "by the State agency" to emphasize that the State has the authority for making the advance estimates. In addition, in paragraph (b)(2), the word "valid" is inserted between the words "a" and "claim."

3. Disbursement of Advance Payments to Facilities

The Department proposed to amend §§ 226.16(g) and (h) to require sponsors to disburse all payments, including operating advances, to their family day care homes within five working days of receipt. Furthermore, the Department proposed to apply this five day limitation to sponsors of child care centers and outside-school-hours care centers. Previously, sponsors had 15 days in which to disburse advances to centers. Eighty-seven comments were received on the requirement for sponsors of homes. Seventy-six disapproved, and 11 were in favor. Fifteen comments dealt with sponsors of centers, with nine in favor and six opposed.

The commenters opposed to the mandatory pass-through to the homes expressed a number of concerns. Some felt that the proposed change would increase the paperwork of both the State agency and sponsoring organizations. They further maintained that the five-day pass through and the need to reconcile advance payments to homes with reimbursement earned would require an even more complex recordkeeping system and an increased administrative burden which would result in a need for additional administrative funds. This proposed change, they felt, would require sponsors to disburse two checks for each home instead of one, thus offsetting any Federal savings from these cash management efforts. The additional burden would double or triple the paperwork, and many careless errors in this multiple payment arrangement could occur.

Other commenters believed it unwise to make payment to the home until actual costs have been incurred and reported. Furthermore, a number noted that even though there is a close working relationship with the homes, many homes leave the program unexpectedly for various reasons (e.g., sickness, moving, lack of children, family difficulties). Some argued that this method would be an irresponsible use of Federal dollars and would tempt homes to commit fraud by claiming children that were not in attendance in order to receive sufficient reimbursement to cover the advance payment.

Finally, a number of commenters believed an that additional two to three month delay in reimbursement to homes would result if this action is adopted because sponsors would no longer accept advances given the new requirements attached to them. Many of these commenters made the point that, currently, sponsors use the advances te pay the current reimbursement payments to homes.

Despite this opposition to the pass-through requirement as a condition of receipt of an advance payment, the Department continues to assert that the intent of the advance payment provision in the law was to make advances available to participants to meet current expenses. Currently, many sponsoring organizations of homes which receive advances are holding them until the homes submit their claims for reimbursement after the end of the month. The Department acknowledges that implementation of this provision may result in some sponsors having to revise their procedures for making payments to homes. Once the requirement is fully implemented, however, the Department believes that sponsors will be able to utilize it to the benefit of homes, as envisioned by the law. This provision will also extend to sponsors of day care homes the pass-through requirement that has existed for sponsors of centers since the original final rule on advances was published in 1980. Accordingly, this final rule requires that sponsors pass advance payments through to their facilities within five working days of receipt from the State agency.

One commenter suggested that the language be revised to include a provision to allow the sponsor to request advances for and to provide advances to some homes, but not all homes. This commenter further asserted that some sponsors have a central group of homes who have participated in the program for many years and that these particular sponsors may feel comfortable in issuing advances to their homes in this category but not to other homes under its sponsorship. The commenter believed that this option would be beneficial to the homes without creating a substantial burden to the sponsor or the State agency. Moreover, it would provide a more acceptable alternative should the total operating advance be inadequate to pay

each home its full anticipated reimbursement.

The Department believes that sponsors should be allowed to request only a portion of the advance which the State agency estimates the institution to be entitled to and pass it on to their homes in a manner determined by the sponsor to be in the best interest of the program and its homes. Thus, in this final rule, sponsors which request less than full advance payment may disburse the advance to whichever homes it chooses, as long as the entire amount of the advance payment received from the State agency is so disbursed.

In this regard, a sponsor's option to request less than a full advance should be distinguished from the instance in which a sponsor requests a full advance, but that advance is inadequate to provide advances to all homes in the amount of their full anticipated reimbursement. In the proposed rule, a sponsor which requested a full advance, which in fact was inadequate to provide advances to all homes would have been required to prorate the advance among all the homes it sponsored. The Department originally proposed that provision as part of the larger proposal to limit advance payments to the amount of the reimbursement earned by the institution in the same month in the previous year. Because of that limitation, there was a possibility that even if a sponsor requested a full advance, the advance would be insufficient to provide full advances to all homes.

However, as discussed above, that limitation has not been implemented in this final rule. Absent that limitation, it is unlikely that if a sponsor requests a full advance, the advance will be insufficient to cover the full anticipated reimbursement for all the sponsor's homes. Consequently, the Department no longer believes that it is necessary to specify that the sponsor must disburse the advance on a pro rata basis if such a situation should arise. Under the final rule, should the full advance be insufficient, the manner in which the advance is disbursed among the homes is left up to the discretion of the sponsor, as long as the full amount of the advance is disbursed.

With regard to the comments received on the proposed five day limitation on the pass-through of advances to child care centers and outside-school-hours care centers, the majority of commenters supported the provision as proposed. Those opposed, for the most part, expressed concerns similar to those expressed by the opponents of the pass-through to homes. Those in favor agreed with the Department that the advance funds should be made available for use by the centers as quickly as possible and that the relative stability of the CCFP in centers should make this a reasonable provision for sponsors to administer. Therefore, the Department is implementing this provision in the final rule as proposed.

List of Subjects in 7 CFR Part 226

Day care, Food assistance programs, Grant programs—health, Infants and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

PART 226—[AMENDED]

Accordingly, the Department is amending 7 CFR Part 226 as follows:

1. The authority citation for Part 226 continues to read as follows:

Authority: Sections 803, 810 and 820, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758 and 1766); Section 2, Pub. L. 95-627, 92 Stat. 3603 (42 U.S.C. 1766); Section 10, Pub. L. 89-642, 80 Stat. 889 (42 U.S.C. 1779), unless otherwise noted.

§ 226.7 [Amended]

2. Section 226.7(i) is amended by revising the phrase "on a periodic basis" to read "on a monthly basis."

3. Section 226.10, is amended by revising paragraphs (a) and (b) to read as follows:

§ 226.10 Program payment procedures.

(a) By the first day of each month of operation, the State agency shall provide an advance payment to each institution electing to receive such payments, in accordance with § 226.6(b)(10). Advance payments shall equal the full level of claims estimated by the State agency to be submitted in accordance with paragraph (c) of this section, considering prior reimbursement claims and other information such as fluctuations in enrollment. The institution may decline to receive all or any part of the advance.

(b) For each fiscal year, the amount of payment made, including funds advanced to an institution, shall not exceed the amount of valid reimbursement claimed by that institution. To ensure that institutions do not receive excessive advance payments, the State agency shall observe the following procedures:

(1) After three advance payments have been made to an institution, the State agency shall ensure that no subsequent advance is made until the State agency has validated the institution's claim for reimbursement for the third month prior to the month for which the next advance is to be paid.

(2) If the State agency has audit or monitoring evidence of extensive program deficiencies or other reasons to believe that an institution will not be able to submit a valid claim for reimbursement, advance payments shall be withheld until the claim is received or the deficiencies are corrected.

(3) Each month the State agency shall compare incoming claims against advances to ensure that the level of funds authorized under paragraph (a) of this section does not exceed the claims for reimbursement received from the institution. Whenever this process indicates that excessive advances have been authorized, the State agency shall either demand full repayment or adjust subsequent payments, including advances.

(4) If, as a result of year end reconciliation as required by the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015), the State agency determines that reimbursement earned by an institution during a fiscal year is less than the amount paid, including funds advanced to that institution, the State agency shall demand repayment of the outstanding balance or adjust subsequent payments.

* * * * *

4. Section 226.16, is amended by removing the first three sentences of paragraph (g), adding the following four new sentences to the beginning of paragraph (g), and by revising the first sentence of paragraph (h) to read as follows:

§ 226.16 Sponsoring organization provisions.

* * * * *

(g) Each sponsoring organization electing to receive advance payments of program funds for day care homes shall disburse the full amount of such payments within five working days of receipt from the State agency. If the sponsor requests the full operating advance to which it is entitled, the advances to day care homes shall be the full amount which the sponsor expects the home to earn based on the number of meals projected to be served to enrolled children during the period covered by the advance multiplied by the applicable payment rate as specified in § 226.13(c). If a sponsor elects to receive only a part of the operating advance to which it is entitled, or if the full operating advance is insufficient to provide a full advance to each home, the advance shall be disbursed to its homes in a manner and an amount the sponsor deems appropriate. Each sponsor shall disburse any reimbursement payments for food service due to each day care

home within five working days of receipt from the State agency.* * *

(h) Sponsoring organizations shall make payments of program funds to child care centers or outside-school-hours care centers within five working days of receipt from the State agency, on the basis of the management plan approved by the State agency, and may not exceed the Program costs documented at each facility during any fiscal year; except in those States where the State agency has chosen the option to implement a meals times rates payment system.* * *

* * * * *

Dated: June 24, 1985.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 85-15478 Filed 6-28-85; 8:45 am]

BILLING CODE 3410-30-M

Federal Crop Insurance Corporation

7 CFR Part 400

[Doc. No. 2540S]

General Administrative Regulations; Reinsurance Agreement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule, correction.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) published a final rule in the **Federal Register** on Tuesday, June 11, 1985, at 50 FR 24503, issuing a new Subpart J in Chapter IV of Title 7 of the Code of Federal Regulations (CFR), to be known as 7 CFR Part 400—General Administrative Regulations—Subpart J, Reinsurance Agreement. The Subpart was inadvertently published as Subpart J and should have read Subpart I. This notice is published to correct that error.

EFFECTIVE DATE: July 11, 1985.

ADDRESS: Written comments on this correction may be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: FR Doc. 84-14060, appearing at page 24503, is corrected in the following instances:

1. The Subpart title J is redesignated as Subpart I to read as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart I—Reinsurance Agreement.

Authority: Secs. 506, 516, Pub. L. 75-430, 52 stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

Done in Washington, D.C., on June 24, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: June 25, 1985.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 85-15694 Filed 6-28-85; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 979

Melons Grown in South Texas; Suspension of Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This suspends § 979.304 Handling regulation pertaining to melons grown in South Texas for the balance of the 1985 shipping season. The 1985 season is nearly over and the quantity of melons remaining is insufficient to warrant regulation. Packing, inspection and committee overhead costs would likely exceed the benefits of continuing the regulation.

EFFECTIVE DATE: June 25, 1985.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250 (202) 447-5764.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated "nonmajor" rule. Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Marketing Agreement No. 156 and Order No. 979 regulate the handling of melons grown in counties in South Texas. The program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The South Texas Melon Committee, established under the order, is responsible for its local administration.

Section 979.304 *Handling regulation*, as amended (47 FR 13118, 24109; 48 FR 21881; 49 FR 15541; and 50 FR 3797 became effective May 1, 1982, and would have remained in effect until terminated or amended. However, the South Texas Melon Committee, in a telephone vote held on June 21 voted unanimously to recommend suspending the regulation for the balance of the 1985 season which ends June 30, 1985. Excessive rains have curtailed harvesting and shipping operations in the production area. The committee concluded that the season is nearly over and the quantity remaining is insufficient to warrant continuing the regulation.

It is hereby found that continuing § 979.304 *Handling regulation* for the remainder of the season would no longer tend to effectuate the declared policy of the act and should be suspended. It is further found that it is impracticable and contrary to the public interest to provide 60 days for interested persons to file comments, engage in public rulemaking procedure, and that good cause exists for not postponing the effective date of this suspension until 30 days after publication in the **Federal Register** (5 U.S.C. 553) since the regulation is being suspended and regulatory activities imposed on handlers will thereupon cease.

List of Subjects in 7 CFR Part 979

Marketing agreements and orders, Melons, Texas.

PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for Part 979 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended: 7 U.S.C. 601-674.

§ 979.304 [Temporarily suspended]

2. Section 979.304 is hereby suspended for the balance of the 1985 shipping season through June 30, 1985.

Suspension of regulation: The provisions of § 979.304 Handling regulation, as amended (47 FR 13118, 24109; 48 FR 21881; 49 FR 15541; and 50 FR 3797) are hereby suspended for the balance of the 1985 shipping season.

Dated: June 25, 1985, to become effective upon signature.

Thomas R. Clark,

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

[FR Doc. 85-15752 Filed 6-28-85; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 991

[Docket No. F&V AO-357-A-2]

Hops of Domestic Production; Order Terminating Marketing Order 991, as Amended and Amendatory Proceeding

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination order.

SUMMARY: This action terminates the Federal marketing order for domestically produced hops effective December 31, 1985, because the Secretary of Agriculture has determined that the order obstructs and does not tend to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended (act). In addition, this action terminates the amendatory proceeding which began January 11, 1984 (Docket No. F&V AO 357-A-2).

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-5053.

SUPPLEMENTARY INFORMATION: This action is governed by the provisions of section 8c(16) of the act (7 U.S.C. 601-674).

Notice is hereby given of the filing with the Hearing Clerk of this order terminating Marketing Order No. 991, regulating the handling of domestically produced hops and the proceeding to amend the order (49 FR 18862). Copies of this decision may be obtained from Frank M. Grasberger.

Preliminary Statement

Marketing Order No. 991 (7 CFR Part 991) regulating the handling of domestically produced hops, issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and all rules and regulations and supplementary orders heretofore issued thereunder and now effective, are hereby terminated effective December 31, 1985. In view of this action, no further consideration will be given to the pending rulemaking proceeding involving a proposed amendment of the order (49 FR 18862). Therefore, that amendatory proceeding (Docket No. F&V AO 357-A-2) is hereby terminated July 1, 1985.

Background Statement

Marketing Order 991 regulates the handling of hops of domestic production and has been in effect continuously since 1966. The order regulates the handling of domestic hops under the provisions of section 608c(6)(B) of the act.

The order limits the quantity of hops handlers may purchase from or handle on behalf of any and all producers. The objective of the order is to annually adjust supply to market needs through a salable quantity and allotment percentage recommended by the Hop Administrative Committee (HAC) and established by the Secretary. The allotment percentage is applied to each producer's allotment base to determine the producer's annual allotment; i.e., the quantity that handlers may purchase from or handle on behalf of the producer. The salable quantity recommended for the past several years has not accurately reflected market needs but rather has attempted to prevent the allotment percentages from cutting across the contracts producers have with dealers and to keep the price of leased base at reasonable levels. This has resulted in actions by producers that are outside of the order's purpose such as the leasing of allotment base to other producers, and has caused considerable controversy both within and outside the hop industry over certain provisions of the current program.

Moreover, the order restricts entry so that producers who did not receive allotment base when the order was issued in 1966 had to either inherit, purchase, or lease allotment base in order to market hops.

Currently, hops are produced commercially in Washington, Oregon, Idaho, and California. There are about 225 hop producers in the area of production. Most of these are large operators because of the sizeable investment required. Currently, there are no major cooperatives in the hop industry.

While there are 23 handlers (dealers) regulated under the order; seven of these handle about 97 percent of the domestic hops. The largest dealers also buy and sell hops in world markets. Dealers normally purchase hops from producers by contracting for a specific quantity at a given price for delivery three to five years in the future. This arrangement has been the practice long before the order was established.

Since 1966, there has been a shift in production within the entire area of production. Hop acreage in California declined from over 9,000 acres in the early 1950's to less than 150 acres in 1984. During this same period Washington hop acreage expanded from about 14,000 acres to over 24,000 acres. Hop acreage in Oregon and Idaho has remained fairly constant with some periodic fluctuation, but with no significant trends. Total hop acreage in the U.S. is expected to decline over the next several years as newer high alpha acid varieties replace some of the older varieties. Yields per acre in the U.S. have been trending upward from an average of approximately 1,600 pounds in the 1950's to 1,900 pounds in the 1980's. Most other hop producing countries have not increased yields, probably because irrigation is not used to the extent that it is in the U.S.

If this trend of changing to higher alpha varieties and increasing yields continues and beer production remains constant, the acreage required to provide the quantity of hops needed by brewers will decline, necessitating further adjustments by producers in acreage planted to hops.

The order provides for allotment bases which are the foundation for determining the market share allocated to each producer. These allotment bases are based on the quantity of hops producers sold during the years 1962, 1963, 1964, and 1965, with liberal adjustment for extenuating circumstances. The total of all producers' allotment bases is 59,270,000 pounds. There are no limitations on the varieties of hops that can be grown, the location of a producer's hop production (within the four state area of production), the number of acres on which the producer produces hops, or the quantity of hops a producer can produce, except that any hops in excess of a producer's annual allotment become reserve hops. Reserve hops are pooled and released only if market needs warrant such release.

Because of the "base" allotment system, there is a substantial barrier to entry by new producers. The current order provides for allotment bases which are the foundation for determining the market share allocated to each producer. The allotment bases in the current order are still based upon the quantity of hops producers sold during the years 1962-65.

The "bona fide" effort requirement in the order currently prescribes that the right of each producer to retain all or part of his order allotment base depends on his continuing to make a bona fide effort to produce his annual allotment, and failing to do so, his allotment base must be reduced by an amount equivalent to the unproduced portion. The "bona fide" effort requirement has failed in its goal of assuring that allotment holders are genuine producers. Although the order requires a bona fide effort to produce the full allotment, the

requirement has been waived for the last several years.

Entry of new producers has been severely restricted because additional allotment base was not issued. When the order became effective in 1966, a total of 59,270,000 pounds of allotment base was issued to producers who had a sales history during the representative period 1962–65. Since that initial issuance, virtually no additional allotment base has been issued. Instead of issuing additional base, the increased demand has been met by adjusting allotment percentages and salable quantities. In 1980, for example, the need for additional hop marketing was met by increasing the annual allotment percentage to well over 100 percent of the total allotment base for 1981. The same action was also taken subsequent to 1981.

The order currently permits a producer to transfer all or part of an allotment base to another producer by notifying the HAC in writing of the transfer. Transfers of allotment base between producers have been relatively free of restrictions. As a result of the liberal transfer provisions, a secondary market has developed which focuses producer concern more on allotment base trading than on the production and marketing of hops. Since virtually no additional allotment base has been issued, available allotment base has become a scarce commodity commanding a high price. This activity in leasing and transferring allotment base, especially where new hop producers were concerned, has contributed to an overexpansion of hop production and hop producing facilities.

There is a conflict between the order provision permitting only one-year volume regulation and contracting practices in the hop industry. The order provides that the HAC can recommend a volume regulation for only the following marketing year. However, the practice in the industry is for producers and handlers to contract for three to five years. This conflict has created serious problems for the industry and has resulted in the establishment of salable quantities in excess of market needs to allow producers to fulfill their contractual obligations. Since the Act was intended to eliminate such imbalances between supply and demand, the volume regulation recommendation provisions of the order have clearly failed.

The purpose of marketing order programs normally is to provide a stable and orderly market environment which will tend to improve grower returns for the commodity involved. The hop marketing order now in effect has not achieved and maintained this market stability as evidenced by current market conditions.

The market for hops is depressed. Prices in the spot and contract markets are at very low levels and frequently during the past few years have been below the average costs of production. Furthermore, there is little expectation that the prices producers receive for hops will improve over the next few years unless dramatic reductions in world hop production and supplies occur.

Brewers and handlers are overstocked with hops to the extent that they now hold about one and one-half year's brewing needs. This situation is further exacerbated by the lagging production and sales of beer which are not expected to show much improvement over the next few years.

Contracting is practically non-existent. In fact in 1983, 1984, and 1985 many producers were offered incentives, such as extensions in their current contracts, and partial payment of their contracted prices not to deliver hops against those contracts. The only new contracts currently being negotiated are for specific varieties or with a few producers.

All of these market conditions developed while the marketing order was in full operation. However, the order did not function to correct the marketing conditions in a time of declining market demand. Furthermore, the order has not functioned so as to be responsive to changing market conditions and apparently was unable to adjust supply, even with its allotment provisions, to meet actual market needs. For these reasons, the order obstructs and has not effectuated the declared policy of the act.

Therefore, pursuant to Section 8c(16)(A) of the act and § 991.78 of the order it is found that Marketing Order No. 991, regulating the handling of hops of domestic production, issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) and all rules and regulations and supplementary orders heretofore issued thereunder and now effective obstruct or do not tend to effectuate the declared policy of the act. To avoid undue disruption within the hop industry and maintain continuity throughout the end of the 1985 calendar year M.O. 991, and all rules, regulations and supplementary orders, are hereby terminated effective December 31, 1985. Also, this decision terminates the amendatory proceeding initiated in early 1984.

Another document establishing a salable quantity and allotment percentage for the period August 1, 1985 to December 31, 1985, will be issued separately and published in a subsequent issue of the **Federal Register**.

As provided in § 991.79 on and after the effective date hereof, the members of the Hop Administrative Committee shall, for the purpose of liquidating the affairs of the Committee, continue as trustees of all funds and property then in its possession or under its control, including claims for any funds unpaid or property not delivered at the time of such termination. The procedure upon termination of the order is set forth in §§ 991.79 and 991.80. As provided in § 991.80, the provisions thereof are, and shall remain, in effect at and after the effective time hereof.

List of Subjects Affected in 7 CFR Part 991

Marketing agreements.

PART 991—[REMOVED]

Accordingly, 7 CFR Part 991 is removed.

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

Dated: June 26, 1985.

Karen K. Darling,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 85-15748 Filed 6-27-85; 11:03 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1427

[Amdt. 5]

CCC Cotton Loan Program Regulations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to amend the Commodity Credit Corporation (CCC) Cotton Loan Program Regulations governing the 1980 and subsequent crops of cotton concerning the packaging of cotton which is pledged to CCC as collateral for price support loans. The specifications for bale packaging materials used in wrapping cotton for 1985 that were approved and published by the Joint Cotton Industry Bale Packaging Committee (JCIBPC) are acceptable to CCC. Therefore, CCC is incorporating these specifications by reference and will require that 1985-crop cotton pledged to CCC as collateral for price support loan be wrapped to comply with these specifications.

DATE: Effective June 28, 1985. The Director of the Federal Register approved the incorporation by reference of the 1985 specifications effective on June 28, 1985.

ADDRESS: Harold Jamison, Cotton, Grain, and Rice Price Support Division, USDA-ASCS, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Carolyn E. Cozart, Cotton, Grain, and Rice Price Support Division, USDA-ASCS, P.O. Box 2415, Washington, D.C. 20013, (202) 447-7987. The Final Impact Statement describing the options considered in developing the rule that eliminated the publishing in the Federal Register of packaging specifications and the impact of implementing each option is available upon request from the above-named individual.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effect on competition, employment, investment, productivity innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program that this rule applies to are: Commodity Loans and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance.

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

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

A final rule was published in the Federal Register on July 1, 1982, that amended the cotton loan program regulations to provide that CCC would no longer publish in the Federal Register the packaging specifications acceptable to CCC for packaging cotton pledged to CCC for price support loans. Instead, CCC determined that the specifications for cotton bale packaging materials approved and published by the Joint Cotton Industry Bale Packaging Committee (JCIBPC) were acceptable to CCC for packaging cotton pledged to CCC for price support loans and incorporated by reference, in accordance with 1 CFR Part 51, the specifications approved and published by the JCIBPC for 1982-crop cotton.

Since the only purpose of this final rule is to amend the cotton loan program regulations to incorporate by reference the specifications approved and published by the JCIBPC for 1985-crop cotton which are generally available and accepted by the cotton industry, it has been determined that no further public rulemaking is required.

Accordingly, the regulations governing the cotton loan program set forth at 7 CFR 1427.1 through 1427.25 are amended as stated herein in order to incorporate by reference, in accordance with 1 CFR Part 51, the packaging specifications approved and published by the JCIBPC for 1985-crop cotton.

Copies of the specifications published by the JCIBPC will be made available to the public upon request by that Committee and by county ASCS offices.

List of Subjects in 7 CFR Part 1427

Cotton, Loan programs—agriculture, Packaging and containers, Price support programs, Surety bonds, Warehouse.

Accordingly 7 CFR Part 1427 is amended as follows:

PART 1427—[AMENDED]

1. The authority citation for 7 CFR §§ 1427.1-1427.25 continues to read as follows:

Authority: Secs. 4, 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); Secs. 101, 103, 401, 63 Stat. 1051, as amended (7 U.S.C. 1441, 1444, 1421); Sec. 602, 91 Stat. 934 (7 U.S.C. 1444).

2. In § 1427.5, paragraph (l) is revised to read as follows:

§ 1427.5 Eligible cotton.

* * * * *

(l) Each bale must be packaged in materials which meet the specifications adopted and published by the Joint Cotton Industry Bale Packaging Committee (JCIBPC), sponsored by the National Cotton Council of America, for bale coverings and bale ties which are identified and approved by the JCIBPC as experimental packaging material. Heads of bales must be completely covered. Copies of the 1985 Specifications for Cotton Bale Packaging Materials published by the JCIBPC which are incorporated by reference are available to the public upon request at the county ASCS office and at the following address: Joint Cotton Industry Bale Packaging Committee, National Cotton Council of America, P.O. Box 12285, Memphis, Tennessee 38112. Informaion with respect to experimental packaging material may be obtained from JCIBPC.

* * * * *

Signed at Washington, D.C., June 24, 1985.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

FR Doc. 85-15532 Filed 6-28-85; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-CE-28-AD; Amdt. 39-5003]

Airworthiness Directive (AD); Suspension of Amdt. 39-5003; AD 85-03-04; Gulfstream Aerospace Models 112, 112B, 112TC, 112TCA, 114 and 114A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: Following issuance of a Notice of Proposed Rulemaking on October 9, 1984, Amendment 39-5003, Airworthiness Directive (AD) 85-03-04, was issued February 21, 1985, effective March 25, 1985, as corrected March 19, 1985. That AD, which supersedes AD 77-16-09, requires modification of the front seat base structure and relocation of the shoulder strap anchor on Gulfstream Aerospace Models 112 and 114 Series airplanes. This action suspends the effectivity of Amendment 39-5003 to enable the FAA to consider more fully information submitted by a petitioner which raises substantial issues in support of rescission of the amendment. The petition to rescind the AD questions whether the modification imposed by AD 85-03-04 offers a significant improvement over that required by AD 77-16-09.

EFFECTIVE DATE: July 2, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Dragset, Airplane Certification Branch, ASW-150, FAA, Southwest

Region, Post Office Box 1689, Fort Worth, Texas 76101; Telephone (817) 877-2075.

Discussion

The FAA issued Amendment 39-5003, AD 85-03-04, on February 21, 1985 (50 FR 7165) to become effective March 25, 1985, as corrected March 19, 1985 (50 FR 10935). The amendment, which supersedes AD 77-16-09, requires modification of the front seat base structure and relocation of the shoulder strap anchor on Gulfstream Aerospace Models 112 and 114 series airplanes.

The Aircraft Owners and Pilots Association (AOPA) submitted a petition requesting the rescission of Amendment 39-5003, contending that the modification imposed by the AD does not provide a significant improvement over that required by AD 77-16-09. In light of the substantial issues raised in the AOPA petition, the FAA recognizes the need to fully reevaluate its action to verify that the mandatory seat modification in Amendment 39-5003 results in the requisite level of safety for aircraft occupants.

Accordingly, pending disposition of the AOPA petition the FAA has determined that the public interest justifies suspension of the effectivity of Amendment 39-5003. Since Amendment 39-5003 became effective on March 25, 1985, and required compliance within 100 hours time-in-service after its effective date, some operators may already have performed the required airplane modifications. The suspension of Amendment 39-5003 adopted by this rule is not effective as to airplane modifications accomplished pursuant to the AD prior to this action, and any airplanes already modified will continue to conform to the type design requirements in effect under Amendment 39-5003 prior to suspension of its effectivity.

This action is necessary to resolve a substantial safety question in Amendment 39-5003, which could unduly burden the public unless the AD's effectivity is suspended. Accordingly, I find that notice and public procedure hereon are impracticable and contrary to the public interest and that good cause exists for making the adoption of this action effective on less than 30 days notice.

Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89; 49 CFR 1.47

2. Part 39 of the Federal Aviation Regulations is amended, effective July 2, 1985, by suspending the effective date of Amendment 39-5003, published in the **Federal Register** on March 14, 1985 (50 FR 10935) as corrected March 19, 1985 (50 FR 10935).

Issued in Kansas City, Missouri, on June 20, 1985.

Edwin S. Harris,

Acting Director, Central Region.

[FR Doc. 85-15730 Filed 6-28-85; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 85-ASO-11]

Alteration of Transition Area; Campbellsville, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment increases the size of the Campbellsville, Kentucky, transition area to accommodate changes in instrument approach procedures. The Arista radio beacon (RBN), which was previously located on Taylor County Airport, has been relocated to a new site approximately five miles northeast of the airport. This relocation necessitates a change in the instrument approach procedures which serves Runway 23 at Taylor County Airport and requires cancellation of the instrument approach procedures to Runway 05. These changes in procedures permit the revocation of the existing transition area arrival extension established southwest of the airport and requires increasing the size of the northeast arrival extension. The net effect of these changes will be to raise the floor of controlled airspace from 700 to 1,200 feet above the surface in an area southwest of the airport and to lower the floor from 1,200 to 700 feet in a larger area northeast of the airport.

EFFECTIVE DATE: 0901 G.m.t., September 26, 1985.

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

SUPPLEMENTARY INFORMATION:

History

On Tuesday, April 23, 1985 (50 FR 15902), the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by altering the Campbellsville, Kentucky, transition area by revoking the existing arrival extension southwest of the Taylor County Airport and increasing the size of the northeast arrival extension. These alterations will provide the necessary controlled airspace for aircraft executing a revised instrument approach procedure to the airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6A dated January 2, 1985. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the Campbellsville, Kentucky, transition area to accommodate Instrument Flight Rule Operations at Taylor County Airport.

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

economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition Areas.

Adoption of the Amendment

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

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); (14 CFR 11.69); 49 CFR 1.47.

2. By amending § 71.181 as follows:

Campbellsville, KY—[Revised]

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of Taylor County Airport (Lat. 37°21'24" N., Long. 85°18'43" W.); within 3.5 miles each side of the 050° bearing from the Taylor County RBN (Lat. 37°24'27" N., Long. 85°14'04" W.), extending from the 6.5 mile radius area to 11.5 miles northeast of the RBN.

Issued in East Point, Georgia, on June 21, 1985.

Thomas H. Protiva,

Acting Director, Southern Region.

[FR Doc. 85-15732 Filed 6-28-85; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-3155]

The Korman Corp.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires a Trevose, Pa. homebuilder, developer and real estate manager, among other things, to cease representing that it will correct any problems due to faulty materials, workmanship or design, unless the firm corrects the problems within a reasonable time after being informed of the defect by the homeowner. The firm is also barred from failing to perform its warranty obligations within a reasonable period of time and remedy non-warranted problems that the company has represented that it will correct. Should a written warranty be offered in connection with the sale of a home, a notice has to be conspicuously displayed in sales offices advising that a free copy of the warranty is available upon request. All limitations on, disclaimers of, or exclusions from coverage under the written warranty have to be clearly and conspicuously disclosed within both the warranty and each sales contract used by the firm. If homes are covered by a written warranty, the firm has to use a prescribed dispute settlement process to resolve warranty disputes, and provide a written description of that process to each home purchaser. The order additionally requires the company to provide repairs or reimbursements, in accordance with redress procedures set forth in the order, to eligible homeowners who bought their homes since Oct. 1, 1978 and still own those homes; and to maintain specified files for a period of three years.

DATE: Complaint and Order issued June 12, 1984.[1]

FOR FURTHER INFORMATION CONTACT: James K. Leonard, Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., Suite 14371, Chicago, IL 60603. (312) 353-5576.

SUPPLEMENTARY INFORMATION: On Wednesday, April 3, 1985, there was published in the **Federal Register**, 50 FR 13240, a proposed consent agreement with analysis In the Matter of The Korman Corporation, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

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

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.10-1 Availability of merchandise and/or services; § 13.70 Fictitious or misleading guarantees; § 13.175 Quality of product or service; § 13.205 Scientific or other relevant facts; § 13.287 Warranties. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-5 Arbitration; § 13.533-20 Disclosures; § 13.533-45 Maintain records; § 13.533-75 Warranties. Subpart—Delaying or Withholding Corrections, Adjustments or Action Owed: § 13.675 Delaying or withholding corrections, adjustments or action owed. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1647 Guarantees; § 13.1715 Quality; § 13.1740 Scientific or other relevant facts; § 13.1777 Warranties. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1895 Scientific or other relevant facts; § 13.1905-65 Warranties. Subpart—Offering Unfair, Improper, and Deceptive Inducements to Purchase or Deal: § 13.1980 Guarantee, in general; § 13.2063 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Homebuilding, Real estate development, Trade practices.

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

Emily H. Rock,

Secretary.

[FR Doc. 85-15666 Filed 6-28-85; 8:45 am]

BILLING CODE 6750-01-M

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

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 288

[Release Nos. 33-6589-34-22158; 39-996; AFDB-1]

Primary Offerings by the African Development Bank

Correction

In FR Doc. 85-15200 beginning on page 26190 in the issue of Tuesday, June 25, 1985, make the following correction. On page 26192, third column, the eighth and ninth lines from the bottom should have read: "Release No. 33-6589 will not have a significant".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 85-109]

Customs Regulations Amendments Relating to Passengers on Foreign Vessels Taken on Board and Landed in the United States

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: Customs is amending its regulations relating to the transportation of passengers by a foreign vessel between ports or places in the United States either directly or by way of a foreign port. The amendment provides that, with certain exceptions, such transportation is prohibited when passengers are actually embarked at one port or place in the United States and disembarked at another port or place in the United States. This amendment will more accurately reflect the scope and intent of the coastwise trade passenger statute which contains no provision for exceptions based upon the number of hours a vessel is in port, such as is provided in the current regulations. The prohibition will not apply when pasengers are so transported between such ports or places on a voyage touching foreign ports other than nearby foreign ports. The amendment will simplify the administration of the statute for Customs, be of benefit to the economy of certain of the American coastwise ports affected, and in no way erode the statutory protection given to American vessels engaged solely in domestic trade.

EFFECTIVE DATE: July 31, 1985.

FOR FURTHER INFORMATION CONTACT: Edward B. Gable, Jr., Director, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5732).

SUPPLEMENTARY INFORMATION:

Background

Title 46, United States Code, section 289 provides that no foreign vessel shall transport passengers between ports or places in the United States either directly or by way of a foreign port, under a penalty of $200 for each passenger so transported and landed.

Section 4.80a, Customs Regulations (19 CFR 4.80a), provides that a foreign vessel which takes a passenger on board at a port in the United States its territories, or possessions embraced within the coastwise laws ("coastwise port") will be deemed to have landed that passenger in violation of the coastwise laws (46 U.S.C. 289): (1) If the passenger goes ashore, even temporarily, at another coastwise port on a voyage to one or more coastwise ports but touching at a "nearby foreign port or ports" (as defined in § 4.80a(c)), Customs Regulations (19 CFR 4.80a(c)), but at no other foreign port, and (2) if during the course of the voyage the vessel remains in the coastwise port (not including the port of embarkation) for more than 24 hours, without regard to whether the passenger ultimately severs his connection with the vessel at the port which he embarked. The 24-hour rule of § 4.80a(2) does not apply to a trip on which the vessel would at some time touch at a foreign port other than a "nearby foreign port," for example, a port in Europe or in South America.

The essence of the 24-hour rule was originally stated in T.D. 55147(19) of June 3, 1960 (95 Treasury Decisions 297), because it was believed at that time that it was necessary to implement a workable administrative rule of interpretation by which to effectively and efficiently ascertain violations of the coastwise passenger statute, 46 U.S.C. 289.

Customs has been advised that certain American coastwise ports, such as those in Alaska, Florida, and Puerto Rico, are placed in a disadvantageous position in their competition with nearby foreign ports for tourist business due to present § 4.80a(a)(2) and that the net result is to hurt the economy of these American ports by depriving them of revenue. It has been recommended that the 24-hour limit be extended to permit foreign-flag vessels from U.S. ports to be able to land passengers at other U.S. ports for longer periods.

The references in § 4.80a to a 24-hour rule and nearby foreign ports are the result of attempts by Customs to apply an Attorney General's opinion dated February 26, 1910 (28 O.A.G. 204). In that case, a foreign-flag vessel transported 615 passengers between New York and San Francisco. However, the Attorney General stated that since the passengers were so transported on a cruise around the world, the primary object of the passengers was to visit various parts of the world on a pleasure tour and then return home via California, not be transported in domestic commerce, and therefore the transportation was not in violation of 46 U.S.C. 289.

The 1910 Attorney General's opinion was extended to voyages touching at foreign ports other than nearby foreign ports, as defined in § 4.8a(c), Customs Regulations, by T.D. 68–285 (33 FR 16558, November 14, 1968). On the other hand, voyages solely to one or more coastwise ports have always been considered predominantly coastwise in their nature and object and therefore passengers on such a voyage temporarily going ashore at a coastwise port have been deemed to have been disembarked in violation of the statute. An example of such a voyage would be one including only coastwise ports in California and Hawaii.

The terms "embark" and "disembark" are trade words of art which normally mean going on board a vessel for the duration of a specific voyage and leaving a vessel at the conclusion of a specific voyage. In this normal context the words do not contemplate temporary shore leave for any specified number of hours during a voyage. It has been determined that the use of the terms in the amendment will follow the intent of Congress and clarify the scope of the regulations. That the statutory language "so transported and landed" means the final and permanent disembarking is further shown by the following Attorney General Opinions:

1. 28 O.A.G. 204, February 26, 1910, citing a statement by the Chairman of the interested House committee at the time that the legislation relates to "the conveyance of passengers between ports of the United States";

2. 29 O.A.G. 318, February 12, 1912, stating that the words of the statute "imply a transportation beginning at one port or place in the United States and ending at another port therein";

3. 30 O.A.G. 44, February 1, 1913, covering the application of the statute to passengers joining a vessel in a port of the U.S. and "disembarking at the port of New York" and referring to the passengers' "ultimate destination, New York, and landed there"; and

4. 36 O.A.G. 352, August 13, 1930, covering the application of the statute to passengers on a vessel which "would transport them from San Francisco to Honolulu" even though the passengers "later embarked" on another vessel for a foreign country.

To assist Customs in gauging the degree of interest in adjusting the 24-hour rule, and advance notice was published in the **Federal Register** on April 25, 1984 (49 FR 17769), inviting public comment. After consideration of the 193 comments received in response to the advance notice, it was determined to propose a specific amendment to § 4.80a.

Customs published a notice in the **Federal Register** on January 9, 1985 (50 FR 1060), proposing specific amendments and inviting public comments to be submitted by March 11, 1985. Following is a dicussion of the comments received in response to that notice.

Discussion of Comments

As a result of the notice, 176 responses were received from national, state, and local government officials; port authorities; unions; trade associations; vessel operators; individuals; and various miscellaneous sources. Those responding demonstrated overwhelming support for

the proposal, with only 13 negative comments.

Of those opposing the proposal, several state that the present 24-hour rule, and/or the proposed liberalization of that time limit, are contrary to the intent of the Congress, dating back to 1886 when the coastwise passenger statute was enacted.

As stated in the notice, the essence of the 24-hour rule was originally stated in T.D. 55147 (19), June 3, 1960 (95 Treasury Decision 297). Customs is satisfied, after administering the 24-hour rule for a quarter of a century, that it is not contrary to the intent of the statute, which is to reserve for American-flag vessels the transportation of passengers from one U.S port to another. Further, the amendment will not change the present prohibition on the transportation of passengers on foreign vessels solely on voyages between coastwise ports. At present, passengers embarking on a foreign vessel touching nearby foreign ports who go ashore temporarily at a subsequent U.S. port where the vessel remains for more than 24 hours are considered transported in violation of the coastwise laws. In addition to causing administrative problems for Customs, the 24-hour rule hurts the economy of the subsequent U.S. port since the net result is that passenger temporarily going ashore will spend 24 hours or less in the U.S. port and much more time in the nearby foreign ports visited by the vessel. The proposal is limited to providing that on such a voyage, the passengers going ashore will only be in violation of the coastwise laws if they disembark at the subsequent U.S. port, i.e., do not come back on board the vessel and depart with it when it leaves the port.

It is of paramount importance in this area to consider the primary object of passengers in taking a voyage. The Attorney General's opinion of February 26, 1910 (28 O.A.G. 204), cited earlier in this document, is the authority for considering this primary object. The need to confirm the object of a particular voyage, even one which upon first examination may appear to be prohibited by the strict letter of the coastwise passenger statute, was clearly confirmed by the only major federal court decision on the subject in the case of *The Granada*, 35 Supp. 892 (1940). In light of the above-cited authorities, Customs will continue to be alert with an eye to detecting any violations of the passenger coastwise transportation statute.

One commenter states that it is "currently engaged in the design and engineering" of a passenger vessel, that "plans call for the vessel to enter service sometime in 1987," and that the amendment would "jeopardize" its postion. If in fact a U.S.-flag, U.S.-built passenger vessel were to be built after the amendment, under the statute, Customs would continue to prohibit competition by any foreign-flag and/or foreign-built vessel in the transportation of passengers solely between U.S. ports, whether the passengers disembarked or only went ashore temporarily. Further, under the statute, Customs would continue to prohibit competition by any foreign-flag and/or foreign-built vessel in embarking passengers at one U.S. port, touching at a nearby foreign port, and disembarking the passengers at a second U.S. port. We do not believe that permitting foreign-flag foreign-built vessels on voyages touching nearby foreign ports to allow passengers who embarked at U.S. ports to go ashore temporarily at other U.S. ports will jeopardize any U.S.-flag U.S.-built vessels that will be built in the future. First, we believe that a prohibition on such activity by foreign vessels would simply result in either the foreign vessels offering fly and sail packages so that American passengers would embark on foreign vessels in foreign ports or the foreign vessels dropping U.S. ports from their itineraries. The net result would be a great loss for American business at U.S. ports where American passengers now embark on foreign vessels or visit temporarily while a foreign vessel is in port. Second, we believe that if at some future date it was actually shown that U.S.-flag U.S.-built vessels were hurt by the amendment and Customs did not take remedial steps, the Congress would quickly take appropriate action.

One commenter suggests that the language of the amendment, as proposed, be changed to reflect that the regulation also applies to U.S.-flag vessels which are not qualified to engage in the coastwise trade for the reason that they are foreign built. We believe that this suggestion has merit and the amendment has been changed to reflect this point.

One commenter suggests that terms used in the regulation be defined. We agree with this comment and the regulations have been so revised.

Another commenter recommends that the regulations should reflect the Puerto Rico passenger vessel statute enacted on October 30, 1984, as Pub. L. 98–563. We agree with this comment also and have included this point.

Many of the negative comments state that the amendment will hurt the U.S.-flag passenger fleet. To our knowledge there is no regular salt water U.S.-flag passenger fleet that has vessels touching nearby foreign and U.S. ports. Many of the negative comments also state that the amendment will hurt efforts to revitalize the U.S.-flag passenger fleet. If it is ever shown that there are U.S.-flag, U.S.-built vessels capable of successful economic competition with foreign vessels in voyages touching nearby foreign and U.S. ports, and that such U.S.-flag, U.S.-built vessels are in fact hurt by provisions of the Customs Regulations, we will immediately reconsider the regulations.

After consideration of all the comments, we believe that the amendment will simplify the administration of the statute for Customs, will be of benefit to the economy of certain of the American coastwise ports affected, and will in no way erode the statutory protection given to American vessels engaged solely in domestic trade (e.g., all of the many U.S.-flag, U.S.-built passenger vessels operating on the inland waters of the U.S. solely between U.S. points would continue to be protected from competition by foreign vessels). However, as stated above, we do believe that three minor and non-substantive changes should be made, as follows:

1. The terms used should be defined in the regulations to make them more intelligible to those unfamiliar with them.

2. The amendment should specifically cover U.S.-flag vessels not qualified to engage in the coastwise tread as well as foreign-flag vessels.

3. The amendment must refer to the special exemption for vessels transporting passengers between Puerto Rico and other U.S. ports, enacted on October 30, 1984, as Pub. L. 98–563 (98 Stat. 2916); see 46 U.S.C. 289c.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Analysis

Pursuant to the provisions of section 3 of the Regulatory Flexibility Act (Pub. L. 96–353, 5 U.S.C. 301 *et seq.*), it is hereby certified that the regulations set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Imports.

Amendments to the Regulations

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority citation for Part 4, Customs Regulations (19 CFR Part 4), continues to read as follows:

Authority:

5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. 3, 2103;
§ 4.1 also issued under 46 U.S.C. 163;
§ 4.2 also issued under 19 U.S.C. 1433, 1441, 1486;
§ 4.3 also issued under 19 U.S.C. 288, 1434, 1435, 1441, 46 U.S.C. 111;
§ 4.5 also issued under 19 U.S.C. 1141;
§ 4.6 also issued under 19 U.S.C. 1585;
§ 4.7 also issued under 19 U.S.C. 1431, 1439, 1465, 1581(a), 1853, 46 U.S.C. 883a, 883b;
§ 4.7a also issued under 19 U.S.C. 1431, 1432, 1439, 1465, 1498, 1584, 46 U.S.C. 674;
§ 4.8 also issued under 19 U.S.C. 1448, 1486;
§ 4.9 also issued under 19 U.S.C. 1434, 1435, 42 U.S.C. 269, 46 U.S.C. 677;
§ 4.10 also issued under 19 U.S.C. 1448, 1451;
§ 4.12 also issued under 19 U.S.C. 1440, 1584;
§ 4.14 also issued under 19 U.S.C. 1466, 1498;
§ 4.15 also issued under 46 U.S.C. 310;
§ 4.16 also issued under 19 U.S.C. 1435b;
§ 4.20 also issued under 46 U.S.C. 77, 81, 83–83k, 121, 128, 8103;
§ 4.21 also issued under 19 U.S.C. 1441; 46 U.S.C. 121–125, 128, 129, 132, 135;
§ 4.22 also issued under 46 U.S.C. 121, 128, 141;
§ 4.24 also issued under 46 U.S.C. 2108;
§ 4.30 also issued under 19 U.S.C. 288, 1446, 1448, 1450–1454, 1490;
§ 4.31 also issued under 19 U.S.C. 1453, 1586;
§ 4.32 also issued under 19 U.S.C. 1449;
§ 4.35 also issued under 19 U.S.C. 1447;
§ 4.36 also issued under 19 U.S.C. 1431, 1457, 1458; 46 U.S.C. 100;
§ 4.37 also issued under 19 U.S.C. 1448, 1457, 1490;
§ 4.38 also issued under 19 U.S.C. 1448, 1505;
§ 4.39 also issued under 19 U.S.C. 1432, 1446;
§ 4.40 also issued under 19 U.S.C. 1446;
§ 4.50 also issued under 19 U.S.C. 1431;
§ 4.65a also issued under 46 U.S.C. 86–86i, 88–88g;
§ 4.66 also issued under 46 U.S.C. 91;
§ 4.66a also issued under 33 U.S.C. 1321, 46 U.S.C. 91;
§ 4.66b also issued under 33 U.S.C. 407, 1321;
§ 4.68 also issued under 46 U.S.C. 674, 817d, 817e;
§ 4.74 also issued under 46 U.S.C. 91;
§ 4.75 also issued under 46 U.S.C. 91;
§ 4.80 also issued under 46 U.S.C. 13, 251, 289, 319, 802, 808, 883, 883–1;
§ 4.81 also issued under 19 U.S.C. 1433, 1439, 1442, 1443, 1444, 1486; 46 U.S.C. 251, 313, 314, 883;
§ 4.81a also issued under 46 U.S.C. 883;
§ 4.82 also issued under 19 U.S.C. 293, 294; 46 U.S.C. 123;
§ 4.83 also issued under 46 U.S.C. 91, 111, 123;
§ 4.84 also issued under 19 U.S.C. 1433, 1435, 1437; 46 U.S.C. 91, 313, 314, 883–1;
§ 4.85 also issued under 19 U.S.C. 1439, 1442, 1443, 1444, 1623;
§ 4.86 also issued under 19 U.S.C. 1442, 1443, 1444;
§ 4.88 also issued under 19 U.S.C. 1442, 1622, 1623;
§ 4.93 also issued under 19 U.S.C. 1322(a), 46 U.S.C. 883;
§ 4.94 also issued under 19 U.S.C. 1433, 1434, 1435, 1441, 46 U.S.C. 91, 104, 313, 314;
§ 4.98 also issued under 31 U.S.C. 9701;
§ 4.100 also issued under 19 U.S.C. 1706.

2. Section 4.80a is revised to read as follows:

§ 4.80a Coastwise transportation of passengers.

(a) For the purposes of this section, the following terms will have the meaning set forth below:

(1) *Coastwise port* means a port in the U.S., its territories, or possessions embraced within the coastwise laws.

(2) *Nearby foreign port* means any foreign port in North America, Central America, the West Indies (including the Bahama Islands, but not including the Leeward Islands of the Netherlands Antilles, i.e., Aruba, Bonaire, and Curacao). A port in the U.S. Virgin Islands shall be treated as a nearby foreign port.

(3) *Distant foreign port* means any foreign port that is not a nearby port.

(4) *Embark* means a passenger boarding a vessel for the duration of a specific voyage and *disembark* means a passenger leaving a vessel at the conclusion of a specific voyage. The terms *embark* and *disembark* are not applicable to a passenger going ashore temporarily at a coastwise port who reboards the vessel and departs with it on sailing from the port.

(5) *Passenger* has the meaning defined in § 4.50(b).

(b) The applicability of the coastwise law (46 U.S.C. 289) to a vessel not qualified to engage in the coastwise trade (i.e., either a foreign-flag vessel or a U.S.-flag vessel that is foreign-built or at one time has been under foreign-flag) which embarks a passenger at a coastwise port is as follows:

(1) If the passenger is on a voyage solely to one or more coastwise ports and the passenger disembarks or goes ashore temporarily at a coastwise port, there is a violation of the coastwise law.

(2) If the passenger is on a voyage to one or more coastwise ports and a nearby foreign port or ports (but at no other foreign port) and the passenger disembarks at a coastwise port other than the port of embarkation, there is a violation of the coastwise law.

(3) If the passenger is on a voyage to one or more coastwise ports and a distant foreign port or ports (whether or not the voyage includes a nearby foreign port or ports) and the passenger disembarks at a coastwise port, there is no violation of the coastwise law provided the passenger has proceeded with the vessel to a distant foreign port.

(c) An exception to the prohibition in this section is the transportation of passengers between ports in Puerto Rico and other ports in the U.S. on passenger vessels not qualified to engage in the coastwise trade. Such transportation is permitted until there is a finding under 46 U.S.C. 289c that a qualified U.S.-flag passenger vessel is available for such service.

(d) The owner or charterer of a foreign vessel or any other interested person may request from Headquarters, U.S. Customs Service, Attention: Carrier Rulings Branch, an advisory ruling as to whether a contemplated voyage would be considered to be coastwise transportation in violation of 46 U.S.C. 289. Such a request shall be filed in accordance with the provisions of Part 177, Customs Regulations (19 CFR Part 177).

William Von Raab,

Commissioner of Customs.

Approved: June 13, 1985.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 85-15753 Filed 6-28-85; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 80N-0314]

Food Labeling; Declaration of Sodium Content of Foods and Label Claims for Foods on the Basis of Sodium Content; Extension of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; extension of effective date.

SUMMARY: The Food and Drug Administration (FDA) is extending the effective date for compliance with food labeling regulations requiring declaration of sodium content as part of nutrition labeling for all affected

products initially introduced or initially delivered for introduction into interstate commerce. This document extends the effective date from July 1, 1985, until July 1, 1986.

EFFECTIVE DATE: The requirement to include sodium content information in nutrition labeling is effective July 1, 1986.

FOR FURTHER INFORMATION CONTACT: Scott F. Andres, Center for Food Safety and Applied Nutrition (HFF–204), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–245–3117.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 18, 1984 (49 FR 15510) as amended June 28, 1984 (49 FR 26571), FDA published a final regulation amending 21 CFR 101.9(c) to require that the sodium content of foods be included in nutrition labeling information whenever nutrition labeling appears on food labels. The effective date for compliance with this provision of the sodium labeling regulation was July 1, 1985, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after that date.

Subsequent to the publication of the final regulation, FDA received from a national trade organization representing the soft drink industry a petition for reconsideration, as well as a number of requests from other members of the food industry for extensions of the effective date, in order to use up label stocks of slow-moving items which will not be depleted by the July 1, 1985, deadline. Additional information, submitted with these requests indicated that there probably would be an increase in costs to consumers if existing label inventories for slow-moving products could not be used after July 1, 1985. Consequently, FDA reconsidered its previous position and proposed in the **Federal Register** of April 18, 1985 (50 FR 15458) an extension of the effective date for a period of 1 year until July 1, 1986.

Comments responding to the proposed extension were received from trade associations; supermarket chains; food manufacturers and processors, including canners and packagers; food cooperatives and sales organizations; several consumers; a local government representative; a health professional; and a consumer-interest group.

With one exception, comments received from the food industry favored the proposed 1-year extension. These comments indicated that labels of high-volume items were either already in compliance or would be in compliance with the sodium labeling regulations by July 1, 1985, and that labels of slower-moving items would be brought into compliance during the next printing cycles. The majority of these comments included projected cost estimates of losses to industry if large numbers of these nonconforming labels of slower-moving items had to be destroyed on July 1, 1985. Most manufacturers indicated that these costs would ultimately be passed on to consumers. Sales below projected levels coupled with the necessity to order in advance the large minimum quantities of labels required by label companies were cited as major reasons for accumulating large label inventories. Other comments noted problems with printing companies and delays in obtaining analytical data as reasons for not being able to comply with the July 1, 1985, deadline.

A summary of the comments opposing the proposed extension and the agency's responses are as follows:

1. One food manufacturer was concerned that the proposed extension would place its sodium-labeled products at a competitive disadvantage with other products on the same shelf having no sodium labeling. The comment indicated that, because of company efforts to comply with the July 1, 1985, deadline, the labels of nearly 85 percent of the firm's packaged products already contained sodium content information. The comment speculated that competitors' products having no sodium labeling would be perceived by consumers to contain no sodium and suggested that FDA institute a consumer awareness program to inform individuals of this situation.

The agency disagrees with the comment. Although products that are not sodium labeled could be perceived by some consumers to contain no sodium, most of the comments received by FDA in response to the proposed sodium labeling regulation indicated that the opposite is true. Several consumers believed that the regulated industry would not voluntarily disclose sodium content information of labels of products containing substantial amounts of sodium because that information would have a negative impact. In fact, these comments suggested that manufacturers would voluntarily label only those foods that had low sodium contents. Patients on sodium-restricted diets as well as members of the general population who wish to limit their sodium intake said that they preferred those products having sodium content information over those not so labeled. FDA has repeatedly stressed that label information about the amount of sodium in a specific quantity of food will enable the consumer to judge the overall contribution of that particular food in the daily diet and to maintain his or her total daily sodium intake at desired levels.

2. Comments received from several consumers, a local government representative, and a health professional expressed concern about potential adverse health consequences resulting from an extension of the effective date. One of the consumers contended that a delay in sodium labeling might lead to reluctance on the part of the food industry to continue to develop lower sodium products.

The agency does not believe that a 1-year extension of the effective date will have an adverse impact of the health of individuals who are monitoring their daily sodium intake. Data obtained from FDA surveys indicate that there is already a widspered appearance of sodium labeling throughout the food supply. The most recent Food Label and Package Survey (FLAPS) conducted in 1984 revealed that the labels of foods accounting for nearly 40 percent of grocery sales of FDA-regulated packaged-processed foods included quantitative sodium content information. Furthermore, 53 of 58 processed food groups included in the FLAPS survey have some products with quantitative sodium labeling. These figures indicate that even in mid-1984 consumers could make selections from a wide variety of sodium-labeled foods to maintain total daily sodium intake at desired levels. In addition, recent comments submitted by the food industry in support of the proposed extension indicate that many labels not included in the 1984 FLAPS estimates will be in compliance with the sodium labeling regulation by July 1, 1985.

The agency also disagrees that a 1-year delay would preclude further efforts by the food industry to lower the sodium content of processed foods. Although this is a considerably more difficult area in which to obtain meaningful measurements of progress than is sodium labeling, FDA has several indications that industry is gradually making significant reductions in sodium content. For example, a substantial decrease in the tonnage of salt produced for table and food-processing use has been reported; the sodium content of many canned soups has been reduced; and many new sodium-modified products, which offer consumers more choices between conventional and sodium-modified foods, have been and continue to be introduced in to the marketplace. FDA encourages manufacturers to accelerate the development of sodium-modified foods, in order to coordinate product

introduction with required label changes.

The role of the public, however, cannot be underestimate in bringing about reductions of sodium levels of processed foods. If the public actively expresses its concern in this area by purchasing foods with lower sodium content or those that bear sodium labeling, then industry will respond by making more such products available. In any event, the total daily sodium intake from a variety of foods in the individual diet is what is important from a health standpoint. Therefore, even if further introductions of sodium-modified products were delayed, this extension would not have an adverse impact on the health of individuals who are monitoring their daily sodium intake.

3. A comment from a consumer organization contended that the proposal to extend the effective date is inconsistent with FDA representations made to the court in *Center for Science in the Public Interest* v. *Novitch* (Civil No. 83-801 (D.D.C. June 11, 1984)). That case involved a challenge to the agency's denial of a petition requesting mandatory sodium labeling on all FDA-regulated packaged, processed foods. The comment argued further that the proposed extension would undermine the foundation of the court's decision that the agency acted reasonably when it denied that petition. The comment suggested that the case was decided largely on the basis of agency representations that the sodium labeling regulation would become effective on July 1, 1985.

The agency disagrees with the comment's interpretation of the court's decision. The court held (slip op. at 19) that FDA had "carefully considered the Center for Science in the Public Interest's petition and made a rational decision that a voluntary labeling program was the most appropriate course of action at the present time." The court further stated that "The FDA should be given the opportunity to * * * determine if food manufacturers will provide sodium content labeling * * * voluntarily." *Id.* This extension of the effective date does not change the provisions of the final sodium labeling regulation nor the rationale for pursuing this course of action that FDA explained in its final regulation and that the court accepted. Furthermore, in granting this extension, the agency has relied on industry claims that labels of most higher-volume items will be in compliance with the sodium labeling regulation before July 1, 1985. FDA, as stated in the proposal, fully expects manufacturers to bring their labels into compliance as soon as possible but no later than July 1, 1986.

4. One comment suggested that the proposed extension of the effective date was based largely on concerns about increased costs to industry. One comment argued that FDA is being inconsistent with its conclusions in the final regulation on sodium labeling that the period remaining between the promulgation of the final regulation and July 1, 1985, would be sufficient for most manufacturers to exhaust existing inventories of noncomplying labels and to phase in required label changes.

In both the proposed and final regulation, FDA announced that it would consider a number of options for minimizing adverse economic effects. As discussed above, FDA received a large number of requests for extension of time to comply with the final regulation. Although FDA did not fully evaluate each request on its merits, the agency has determined that most labels for which an extension was requested were for items that represent a small fraction of products available in the marketplace. Finally, FDA is relying on manufacturers' assurances that the labels of higher-volume items will be in compliance by July 1, 1985. Therefore, FDA believes that it is appropriate to grant a blanket 1-year extension to July 1, 1986. Again, as stated in paragraph 3, the agency is granting the exemption with the understanding that the food industry will strive to include sodium in nutrition labeling as soon as possible.

5. One comment expressed concern that the proposed extension "sets a dangerous precedent whereby an industry need only inundate the agency with requests for exemptions in order to achieve postponement of a rule it opposes." The comment also contended that the purported administrative burden on FDA was unclear in view of the fact that the agency had already reviewed the extension requests in enough detail to determine that many were warranted.

FDA proposed to extend the effective date of the sodium labeling regulation only after the agency had determined that the objectives of the regulation would still be accomplished and that sodium labeled foods would be available for most food categories and not, as suggested by the comment, because the agency was inundated by requests from industry. Further, the agency would not have proposed a blanket extension nor have previously indicated its willingness to consider individual requests for extensions if it believed that such actions would adversely affect the public health. In addition, FDA has not evaluated the merits of each of the individual requests for extensions as the comment alleges. Because so many requests were submitted, however, the agency has concluded that the time required to review these labels one at a time in order to determine whether each individual extension was justified would adversely affect the allocation of agency resources. The agency therefore decided that an extension to allow manufacturers sufficient time to bring labels of slow-moving items into compliance without destroying existing inventories of noncomplying labels will ease the cost of transition with no adverse impact on the public health objectives of the regulation.

6. One comment expressed the belief that there was no basis for the agency to anticipate additional extension requests because most manufacturers would have already attempted to secure extensions in time to comply with the regulation if the effective date remained unchanged.

FDA disagrees with this comment. The majority of requests documented steps that the manufacturers had taken subsequent to the publication of the final regulation to ensure compliance by July 1, 1985. However, some manufacturers indicated that they were not able to estimate projected losses resulting from destruction of existing inventories of noncomplying labels of slow-moving items until sales data were evaluated for 1984. Manufacturers also indicated that most of these noncomplying labels were ordered before April 1984. Several requests and inquiries from other firms indicated that more labels would be submitted for consideration after additional estimates of potential economic losses had been completed. It is for these reasons that FDA concluded that there is a basis for anticipating additional extension requests and that a blanket 1-year extension is appropriate.

7. One comment argued that the proposed extension is "especially arbitrary" because a less drastic alternative to a blanket extension exists. The comment noted that only 66 companies had requested extensions and that "the products manufactured by these companies represent only a minute portion of the total number of products available in an average grocery store." Furthermore, the comment declared that FDA's apparent concern about manufacturers who cannot deplete existing noncomplying label inventories before July 1, 1985, cannot be used as a basis to justify exempting the overwhelming majority of producers

who can comply with the original effective date. The comment proposed an alternative approach in which FDA would retain the original effective date and would grant extensions only to those companies who have already attested to the fact that their current label inventories cannot be depleted before July 1, 1985. The comment contends that this alternative would not require numerous case-by-case determinations.

The agency believes that the limited extension proposed in this comment could discriminate against those manufacturers who elected to withhold their requests for extension once the proposed extension had been published by the agency in the Federal Register. FDA is aware of several manufacturers of slow-moving items who had only recently completed their estimates of potential economic losses and who decided to forego their formal submissions of written requests after the proposed general extension was published. If a blanket extension had not been proposed, only those submitting written requests and supporting data in response to statements regarding possible alternatives to minimize economic burden contained in the proposed and final regulation would have received consideration by the agency. The limited extension proposed in this comment would not accomplish the objective of minimizing economic impact on small businesses if FDA were to exclude from consideration for an extension those manufacturers who elected to withhold their requests pending final agency action on the proposed blanket extension.

8. One comment suggested that the proposed blanket extension of the effective date would reduce the original projected extent of sodium labeling by at least 35 percent. According to the comment, the blanket extension would thus produce a substantial, rather than a marginal, reduction in the projected availability of sodium-labeled food.

The agency disagrees with the comment. The most recent FLAPS survey, which revealed that quantitative sodium information appears on the lables of foods accounting for nearly 40 percent of grocery sales of FDA-regulated packaged-processed foods, analyzed the labels of products collected in supermarkets between February and July 1984. This estimated figure must be viewed as conservative in light of continuing changes in the marketplace and because the originally announced effective date of the regulation was still 1 year away. New sodium-modified products whose sales potentials were not yet known have entered the marketplace since July 1984 and were not included in the FLAPS survey. This comment also assumes that manufacturers will delay sodium labeling until July 1, 1986. On the contrary, FDA has been assured by manufacturers that this will not be the case. The agency has also announced that it expects labels of slow-moving items to be brought into compliance as soon as possible and no later than July 1, 1986.

FDA again emphasizes that the availability of sodium labeled foods in individual food categories is more significant to the consumer on a sodium-restricted diet than is the extent of sodium labeling determined as a percentage of overall retail grocery sales.

FDA has reviewed the comments received and continues to believe that the most reasonable course to follow is to grant an extension of the effective date for compliance with the mandatory provisions of the sodium labeling regulation until July 1, 1986.

List of Subjects in 21 CFR Part 101

Food labeling, Misbranding, Nutrition labeling, Warning statements.

PART 101—FOOD LABELING

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 403, 701(a), 52 Stat. 1040–1042 as amended, 1047–1048 as amended, 1055 (21 U.S.C. 321(n), 343, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), the effective date for compliance with paragraph (c)(8)(i) of § 101.9 *Nutrition labeling of foods* is extended to July 1, 1986.

Dated: June 26, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–15791 Filed 6–27–85; 11:12 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Office of Revenue Sharing

31 CFR Part 51

Financial Assistance to Local Governments

AGENCY: Office of Revenue Sharing, Treasury.

ACTION: Final rule; correction.

SUMMARY: This document corrects the final rule concerning financial assistance to local governments published in the Federal Register on Thursday, January 24, 1985, at 50 FR 3454.

FOR FURTHER INFORMATION CONTACT: Richard S. Isen, Chief Counsel, Office of Revenue Sharing, or Jacqueline L. Jackson, Attorney Advisor. Telephone: (202) 634–5182.

SUPPLEMENTARY INFORMATION: Accordingly, corrections are made in FR Doc. 85–1524 beginning on page 3454 in the issue of January 24, 1985, as follows:

(1) On page 3464, first column, first line, the word "Review" should read "Revenue."

(2) On page 3487, first column, no. 2 "Local statutes or ordinances. Age limitations on concurring alcoholic beverages or possessing firearms are not covered by the Act so long as these are adopted by an elected general purposes legislative body" should read as follows:

"(2) *State statutes.* Statutes setting age limitations on obtaining a driver's license or fixing age limits for compulsory school attendance are not covered by the Act."

Dated: June 25, 1985.

Richard S. Isen,

Chief Counsel, Office of Revenue Sharing.

[FR Doc. 85–15699 Filed 6–28–85; 8:45 am]

BILLING CODE 4810–28–M

OFFICE OF THE FEDERAL REGISTER

32 CFR Parts 1–39

41 CFR Chs. 1–49

CFR Publication Announcement Relating to Federal Procurement Regulations and Defense Acquisition Regulations

Editorial Note: On September 19, 1983 (48 FR 42103), a joint document issued by the General Services Administration, the Department of Defense and the National Aeronautics and Space Administration, established a new Federal Acquisition Regulation in Title 48 of the Code of Federal Regulations (CFR). The general Federal Acquisition Regulation (FAR) published on that date is codified at Chapter 1 of Title 48. Chapters 2 through 49 of Title 48 were reserved and established for individual agency implementations and supplementations of the FAR. The FAR in Chapter 1 together with the agency regulations in Chapters 2 to 49 comprise the Federal Acquisition Regulations System that went into effect on April 1, 1984.

The FAR system replaced both the Federal Procurement Regulations System (FPRS) for civilian contracts (41 CFR Subtitle A, Chapters 1 to 49) and the Defense Acquisition Regulations (DAR) for defense contracts (32 CFR Chapter 1, Parts 1 to 39). While the new FAR regulations in Title 48 replaced the Title 32 DAR and Title 41 FPR regulations as of April 1, 1984, both the DAR and FPR provisions continue to apply to those contracts which preceded the effective date of the FAR.

The Office of the Federal Register (OFR) normally reissues its CFR revisions of both Title 32 and Title 41 volumes as of July of each year. Because of numerous amendments published to both the DAR and FPR during the July 1, 1983 to July 1, 1984 CFR revision cycle, the Office of the Federal Register issued full text revisions as of July 1, 1984, for each of the CFR volumes containing DAR or FPR regulations.

These 14 CFR volumes are:

Defense Acquisition Regulations
Title 32
- (Part 1–39), volume I
- (Part 1–39), volume II
- (Part 1–39), volume III

Federal Procurement Regulations
Title 41,
- Chapter 1, (Part 1–1 to Part 1–10)
- Chapter 1, (Parts 1–11 to Appendix)—Chapter 2
- Chapter 3 to Chapter 6
- Chapter 7
- Chapter 8
- Chapter 9
- Chapter 10 to 17
- Chapter 18, volume I (Parts 1–5); volume II (Parts 6–19); volume III (Parts 20–52 and Appendix)
- Chapter 19 to Chapter 100

These CFR volumes represent the final codified versions of the former procurement systems which continue to apply to those contracts entered into prior to the adoption of the FAR. Because the former FPR and DAR regulations do not apply to contracts entered into subsequent to the effectiveness of the FAR on April 1, 1984, it is unlikely that there will be any further amendments to these regulations. Since July 1, 1984 there has been only one amendment published in the **Federal Register** which affected the former FPR or DAR regulations. This amendment was not a substantive amendment; it was a clarifying statement to a Labor Department procurement regulation in 41 CFR 29–70.103 (see 49 FR 38108, September 27, 1984).

The FPR and DAR regulations issued in the July 1, 1984 CFR editions are substantively unchanged. The Office of the Federal Register normally does not reissue CFR volumes when there have been no amendments issued to a particular volume during the revision cycle. A cover is usually issued and sent to CFR subscribers indicating that the last edition should be retained. The Superintendent of Documents, Governnment Printing Office continues to sell the "old" edition until supplies are exhausted.

Since the 1984 FPR and DAR regulations were printed in the 14 volumes listed above, OFR will not reprint the full text of these regulations in the July 1, 1985 CFR revisions. Users should retain the 1984 edition of these volumes. The 1985 revision of Titles 32 and 41 will contain only text of those parts not affected by the FAR and a note referring the reader to the 1984 edition for the text of the FPR (41 CFR Chapters 1 to 49) and DAR (32 CFR Parts 1 to 39).

For further information on the publication or editorial content of *Code of Federal Regulations* volumes please contact Robert Jordan or Donna Rickett on 202–523–3419.

BILLING CODE: 1505–02–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DOD 6010.8–R, Amdt. No. 28]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Treatment of Mental Disorders

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule; postponement of effective date.

SUMMARY: Amendment No. 28 to DOD 6010.8–R, published in the **Federal Register** on September 14, 1984 (49 FR 36087) established that any residential treatment center or alcohol rehabilitation facility which had not entered into a participation agreement with the Director, Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), by June 1, 1985, would no longer be considered a CHAMPUS-authorized provider and no benefits would be paid for any services rendered by such facility. This amendment postpones the date for such facilities to enter into participation agreements with OCHAMPUS until October 1, 1985. This extension will provide sufficient time for appropriate decisions to be made regarding the final language of the revised participation agreements.

EFFECTIVE DATE: June 30, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Stan Regensberg, Policy Branch, OCHAMPUS, Aurora, Colorado 80045, telephone (303) 361–3572.

SUPPLEMENTARY INFORMATION: In FR Doc. 77–7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DOD 6010.8–R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. Amendment No. 28 was published in the **Federal Register** on September 14, 1984 (49 FR 36087).

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

PART 199—[AMENDED]

Accordingly, 32 CFR Part 199 is amended to read as follows:

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

§ 199.12 [Amended]

2. In the notes which follow §§ 199.12(b)(4)(v)(*b*) and (b)(4)(viii)(*b*)(*3*)(*vi*), remove the date "June 1, 1985" and add in place thereof the date "October 1, 1985", each time it appears.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 24, 1985.

[FR Doc. 85–15477 Filed 6–28–85; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD8–83–10]

Anchorage Ground, Lower Mississippi River

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a Final Rule on the reduction in size of the Alliance Anchorage, that appeared in the **Federal Register** of Monday, January 14, 1985 (50 FR 1849).

FOR FURTHER INFORMATION CONTACT: LTJG K.D. Christopher, Project Officer, Commander, Eighth Coast Guard District, (mps), 500 Camp Street, New Orleans, LA 70130, Tel: (504) 589–6901.

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. The following corrections are made in Docket No. CGD8-83-10 appearing in the issue of January 14, 1985:

a. On page 1849, column two, the third full paragraph, "110.195(a)(6)" is corrected to read "110.195(a)(9)".

b. On page 1849, column two, the fourth full paragraph, "(6)" is corrected to read "(9)".

c. As corrected section 110.195(a)(9) reads as follows:

§ 110.195 Mississippi River below Baton Rouge, LA, including South and Southwest Passes.

(a) * * *

(9) Alliance Anchorage. An area 2.0 miles in length along the right descending bank of the river, 800 feet wide extending from mile 63.8 to mile 65.8 above Head of Passes.

* * * * *

Dated: June 26, 1985.

W.H. Stewart,

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

[FR Doc. 85-15715 Filed 6-28-85; 8:45 am]

BILLING CODE 4910-14-M

---

33 CFR Part 117

[CGD3 85-26]

Temporary Drawbridge Operation Regulations; Beach Thorofare, NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary regulation.

SUMMARY: The Coast Guard is issuing temporary regulations for the Route 52 (Ninth Street) bridge across Beach Thorofare, a part of the New Jersey Intracoastal Waterway at mile 80.4, in Ocean City, New Jersey. These temporary regulations allow the draw to open on signal on the hour and half hour between 8 a.m. and 10 p.m. on Saturdays, Sundays, and Federal holidays. The current regulations allow this between 11 a.m. and 5 p.m. on Saturdays, Sundays, and Federal holidays from Memorial Day through Labor Day. This is being done to evaluate whether a change of this kind in the regulations will reduce vehicular traffic congestion in the vicinity of the bridge while still providing for the reasonable needs of navigation.

DATES: These temporary regulations become effective on July 4, 1985 and terminate on September 2, 1985. Comments must be received on or before September 17, 1985.

ADDRESSES: Comments should be mailed to Commander (oan-br), Third Coast Guard District, Bldg. 135A, Governors Island, NY 10004. Comments may also be hand delivered to this address. 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.

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

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for these regulations and it is being made effective in less than 30 days after **Federal Register** publication. Following normal rulemaking procedures would be impracticable. Implementation of these temporary regulations is necessary to evaluate their effect during the summer months when both recreational boating traffic and vehicular traffic are at their peak.

Persons affected by or concerned with these temporary regulations are invited to comment on their feasibility and impact on both marine and vehicular traffic, including observed effects (beneficial and detrimental), and any suggestions for changes. Persons submitting comments should include their name and address, identify the bridge and give reasons for support of or opposition to these temporary regulations. If a determination is made to permanently change the regulations, a Notice of Proposed Rulemaking will be published to afford the public further opportunity to comment at that time.

Drafting Information

The drafters of these regulations are Lucas A. Dlhopolsky, project manager, and Mary Ann Arisman, project attorney.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.733(f) is revised to read as follows for the period July 4 through September 2, 1985. Because this is a temporary rule, this revision will not appear in the Code of Federal Regulations.

§ 117.733 New Jersey Intracoastal Waterway.

* * * * *

(f) The draw of the Route 52 (Ninth Street) bridge, across Beach Thorofare, mile 80.4 at Ocean City, shall open on signal; except that, from Memorial Day through Labor Day from 8 a.m. to 10 p.m. on Saturdays, Sundays and Federal holidays, the draw need be opened only on the hour and half hour. Public vessels of the United States, vessels with another vessel in tow, and vessels in distress shall be passed at any time.

* * * * *

Dated: June 24, 1985.

P. A. Yost,

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

[FR Doc. 85-15717 Filed 6-28-85; 8:45 am]

BILLING CODE 4910-14-M

---

33 CFR Parts 150 and 166

[CGD 85-044]

Shipping Safety Fairways

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This final rule incorporates the North of Gulf and South of Gulf Fairways, associated with the Louisiana Offshore Oil Port (LOOP), into the Shipping Safety Fairways section of the Code of Federal Regulations (CFR). The LOOP fairways are currently described in the annex to Part 150, the Deepwater Port Regulations. This rule merely transfers these fairway regulations to Part 166, Shipping Safety Fairways, to maintain organizational consistency and clarity within the CFR.

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Ltjg D. Reese, Project Manager, Office of Navigation, (G-NSR-3), Room 1408, U.S. Coast Guard Headquarters, 2100 2nd Street SW., Washington, DC, 20593, telephone (202) 245-0108, between 8 a.m. and 3:30 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: This rule was not preceded by a Notice of Proposed Rulemaking (NPRM) or public comment period. This rule is purely administrative in nature; therefore, notice and public comment are unnecessary in accord with 5 U.S.C. 553(b)(B). This rule merely transfers the LOOP fairway regulations from Part 150 to Part 166 of the CFR, and involves no substantive changes. Therefore, good cause exists for making these changes effective in less than 30 days after publication.

Drafting Information

The principal persons involved in drafting this rulemaking are: Ltjg D. Reese, Project Manager, Office of Navigation, and Lieutenant Dave Shippert, Project Attorney, Office of Chief Counsel.

Discussion of Regulations

Most of the existing fairways were originally established by the Corps of Engineers (COE) between 1948 and 1968. In 1978, the Ports and Waterways Safety Act (PWSA) (Pub. L. 95–474; 92 Stat. 1473; 33 U.S.C. 1223(c)) gave the Coast Guard the authority to establish vessel routing measures, including fairways. In 1982, the Coast Guard adopted existing shipping safety fairway regulations from the COE and promulgated these in 33 CFR Part 166 (47 FR 20580).

The North of Gulf and South of Gulf Fairways were established during the deepwater port licensing process in 1980 and were included as an annex to the regulations governing the Louisiana Offshore Oil Port at 33 CFR Part 150 (45 FR 85644). A recent port access route study of the LOOP area noted the organizational discrepancy and recommended that the LOOP fairway regulations be included in Part 166 which is designated "Shipping Safety Fairways" (50 FR 9682). This rule implements that recommendation and results in no substantive change to the fairway regulations or descriptions.

Regulatory Evaluation

This final rule is considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 25, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. This rule will have no impact except to enhance the consistency and organization of the regulations within Title 33 of the CFR. This final rule makes no changes to any existing regulation but merely transfers certain rules to a more appropriate section of the code. Since the impact of this final rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects

33 CFR Part 150

Deepwater ports.

33 CFR Part 166

Marine safety, Shipping safety fairways, Anchorage areas.

In consideration of the foregoing, the Coast Guard is amending Parts 150 and 166 of Title 33, Code of Federal Regulations as follows:

PART 150—[REVISED]

1. The authority cite for Part 150 is revised to read as follows:

Authority: 33 U.S.C. 1509 (a)(b); 33 U.S.C. 1231; 49 CFR 1.46.

2. The note following § 150.301 is revised to read as follows:

§ 150.301 Applicability

* * * * *

Note. Appendix A to this part describes the designated boundaries of U.S. deepwater port safety zones. Included within the safety zones are specific areas to be avoided, anchorages, and other ship's routing measures associated with particular safety zones. (Shipping safety fairways associated with deepwater ports are described in Part 166 of this Title.)

3. The heading and paragraphs I and IV of Appendix A to Part 150 are revised to read as follows:

Appendix A—Deepwater Port Safety Zone Boundaries

I. *Purpose.* This appendix contains a general description of the deepwater port safety zone designated and developed during the license application review process for each deepwater port that has been authorized for contruction and operation off the United States coastline. Annexes show, to the nearest second of latitude and longitude, the geographical boundaries of each resultant safety zone. (Shipping safety fairways associated with the Deepwater Ports are descibed in Part 166 of this Title.)

The regulations in Subpart C of this part concerning vessel navigation and activities permitted and prohibited at U.S. deepwater ports apply only in the safety zone areas and adjacent waters and supplement the International Regulations for Preventing Collisions at Sea.

* * * * *

IV. *Modifications.* Safety zone boundaries are subject to modification as experience is gained in U.S. deepwaters port operations. Modifications will be made only after due notification and consideration of the views of interested persons.

4. Annex A to Part 150 is revised to delete paragraph (d) in its entirety.

PART 166—[REVISED]

5. The authority cite for Part 166 is revised to read as follows:

Authority: 33 U.S.C. 1223; 49 CFR 1.46(n)(4).

6. Section 166.200 is amended by adding a new paragraph (d)(52) to read as follows:

§ 166.200 Shipping safety fairways and anchorage areas, Gulf of Mexico.

* * * * *

(d) * * *

(52) Louisiana Offshore Oil Port (LOOP) Shipping Safety Fairway to Safety Zone. (i) North of Gulf Safety Fairway. The two mile wide area enclosed by rhumb lines joining points at:

Latitude	*Longitude*
28°48'36"	89°55'00"
28°48'14"	89°54'17"
28°45'47"	89°54'19"
28°36'06"	89°55'44"
28°18'30"	89°55'15"
28°20'58"	89°53'03"
28°36'09"	89°53'28"
28°49'07"	89°51'30"
28°50'20"	89°53'51"

(ii) South of Gulf Safety Fairway. The two mile wide area enclosed by rhumb lines joining points at:

Latitude	*Longitude*
28°15'20"	89°55'10"
27°46'29"	89°54'23"
27°46'32"	89°52'06"
28°17'48"	89°52'56"

Dated: June 26, 1985.

T.J. Wojnar,

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

[FR Doc. 85–15718 Filed 6–28–85; 8:45 am]

BILLING CODE 4910-14-M

PANAMA CANAL COMMISSION

35 CFR Parts 101, 103, and 121

Paperwork Reduction Act; OMB Approved Collections of Information

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: In accordance with the requirement of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) that agencies publish Office of Management and Budget (OMB) control numbers assigned to their collection of information requirements contained in regulations, the Panama Canal Commission is amending Parts 101, 103, and 121 of Title 35, Code of Federal Regulations to reflect current OMB numbers in the format recommended by the Office of the Federal Register.

EFFECTIVE DATE: June 28, 1985.

ADDRESS: Send comments to Carlos Tellez, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget,

Room 3228, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Barbara Fuller, Assistant to the Secretary for Commission Affairs, Panama Canal Commission, telephone 202-634-6441 or Mr. Thomas C. Duty, Chief, Administrative Services Division, Panama Canal Commission, telephone in Balboa Heights, Republic of Panama, 011-507-52-7757.

SUPPLEMENTARY INFORMATION: 44 U.S.C. Chapter 35 requires Federal agencies to obtain approval from the Office of Management and Budget before collecting information from ten or more members of the public. As evidence of such approval, agencies are required to display an OMB control number on collection of information requirements.

The Panama Canal Commission has received OMB approval, valid through March 31, 1988, for the collection of information requirements contained in Subchapter C of Chapter I, 35 CFR. The OMB Control Number for all collection of information requirements in Subchapter C is 3207-0001.

The OMB Control Number was included in §§ 101.10, 113.4, 113.22, 113.28, 113.29, 113.42, 113.47, 113.50, and 123.4 by publication in the **Federal Register**, on May 10, 1985 (50 FR 19676). An amendment to § 103.8 for the purpose of including the OMB Control Number was published in the **Federal Register** of June 15, 1983 (48 FR 27399), but was never codified into 35 CFR.

We are now incorporating the OMB Control number in 103.8 and the remaining collection of information requirements contained in Subchapter C of Chapter I of 35 CFR, namely, §§ 101.9, 103.6, 103.32, 103.42, and 121.45.

The Commission had determined that this is not a major rule as defined under Section 1(b) of Executive Order 12291, dated February 17, 1981. Furthermore, the Regulatory Flexibility Act is inapplicable since this regulation does not have an impact on small entities (5 U.S.C. 601-612).

List of Subjects in 35 CFR Parts 101, 103, and 121

Panama Canal, Vessels, Documentation, Boarding officers, Order of transit, Draft limitation, Booking system, reporting and record keeping requirements.

Accordingly, Parts 101, 103, and 121 Subchapter C, of Chapter I to Title 35, Code of Federal Regulations, are amended as set forth below.

1. The authority citations for Parts 101, 103 and 121 are revised to read as follows:

Authority: 22 U.S.C. 3811, EO 12215, 45 FR 36043, and 44 U.S.C. 3501.

2. Section 101.9 is amended by adding the OMB clearance language, reading as follows:

§ 101.9 Papers required by the boarding officer.

* * * * *

(Information collection requirements have been approved by the Office of Management and Budget under Control Number 3207-0001)

3. Section 103.6 is amended by adding the OMB clearance language reading as follows:

§ 103.6 Size and draft limitations of vessels.

* * * * *

(Information collection requirements have been approved by the Office of Management and Budget under Control Number 3207-0001)

4. Section 103.8 is amended by adding the OMB clearance language reading as follows:

§ 103.8 Preference in the transit schedule; order of transiting vessels.

* * * * *

(Information collection requirements have been approved by the Office of Management and Budget under Control Number 3207-0001)

5. Section 103.32 is amended by adding the OMB clearance language reading as follows:

§ 103.32 Engine Orders to be recorded.

* * * * *

(Information collection requirements have been approved by the Office of Management and Budget under Control Number 3207-0001)

6. Section 103.42 is amended by adding the OMB clearance language reading as followins:

§ 103.42 Maneuvering Characteristics; data required.

* * * * *

(Information collection requirements have been approved by the Office of Management and Budget under Control Number 3207-0001)

7. Section 121.45 is amended by adding the OMB clearance language reading as follows:

§ 121.45 Drawings of new vessels to be furnished to the Board.

* * * * *

(Information collection requirements have been approved by the Office of Management and Budget under Control Number 3207-0001)

Dated: June 17, 1985.

D.P. McAuliffe,

Administrator.

[FR Doc. 85-15556 Filed 6-28-85; 8:45 am]

BILLING CODE 3640-04-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-6-FRL-2856-3]

Plan for Exxon U.S.A. Baytown Refinery, Baytown, TX

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today approving the Exxon U.S.A. Baytown Refinery Alternative Emission Reduction Plan ("Bubble") as a revision to the Texas State Implementation Plan (SIP). The Bubble uses replacement of leaded gasoline in two storage tanks and light naphtha in a third with relatively nonvolatile lube distillate in lieu of controls on five other fixed roof storage tanks; three in laktane and two in heptane service. The use of a process change to produce emission reduction credits is consistent with EPA's proposed Emissions Trading Policy Statement of April 7, 1982 (47 FR 15076).

DATE: This rule will become effective July 31, 1985.

ADDRESSES: Copies of the SIP revision are available for inspection during normal business hours at the following locations:

Texas Air Control Board, 6330 Hwy 290 East, Austin, Texas 78723
Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460
Environmental Protection Agency, Region 6, Air Branch, 1201 Elm Street, Dallas, Texas 75270
Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Timothy A. Glasco, State Implementation Plan Section, Air Branch, Air & Waste Management Division, EPA Region 6, 1201 Elm Street, Dallas, Texas 75270 (214) 767-1518.

SUPPLEMENTARY INFORMATION: On March 26, 1984 (49 FR 11199), EPA proposed approval for a revision to the Texas SIP for an Alternative Emissions Reduction Plan for the Exxon U.S.A. Baytown Refinery in Baytown, Texas. No comments were received during the comment period for the proposal and EPA today is approving the revision.

Background

At the Baytown Refinery, Exxon has changed the service of two storage tanks containing leaded gasoline and one tank containing light naphtha over to storage

of heavy, relatively nonvolatile lube distillate. The emission reduction credits earned from this service change are being applied in lieu of placing controls on five smaller, fixed roof tanks. Three of the uncontrolled tanks contain laktane (octane), and the remaining two contain heptane. The revised limits for the Exxon Baytown Refinery are as follows:

Source (Tank No.)	Previous RACT emission limits (tons VOC/yr)[1]	New emission limits under the bubble (tons VOC/yr)	Net change in emissions (tons VOC/yr)
90	0.75	3.83	+3.08
91	0.75	3.83	+3.08
92	0.75	3.83	+3.08
98	1.43	11.50	+10.07
99	1.43	11.50	+10.07
715	19.92	0.11	−19.81
720	0.81	0.06	−0.75
1072	12.00	0.08	−11.92
Total	37.84	34.74	−3.10

[1]Emission estimates based on use of emission factors from EPA Publication AP-42, Section 12 Part 4.3 "Storage of Organic Liquids."

Review

The bubble was reviewed against the proposed Emissions Trading Policy published in the Federal Register on April 7, 1982 (47 FR 15076). EPA has reviewed the State's submittal and developed an Evaluation Report.[2] This evaluation report is available for inspection by interested parties during normal business hours at the EPA Region 6 Office and the other address listed above. Briefly, the review is summarized below.

To qualify for approval as an Alternate Emissions Reduction, the reductions must be surplus, enforceable, permanent, and quantifiable. First, the reductions are surplus because credit is only given for emissions reductions beyond the Texas requirements for Reasonably Available Control Technology (RACT).[3] The credits for emission reductions were achieved by a process change and gasoline production cutbacks. Should production be restored EPA has determined that the maximum increase in emissions due to increased throughput to other tanks would be less than 0.1 tons per year.

Second, the limits in the bubble are enforceable because TACB, through a Board Order, has established enforceable emission requirements for each tank. Since the documents will be a part of the Texas SIP, they will be federally enforceable.

Third, upon approval, the new emission limits become a permanent part of the federally enforceable SIP.

Fourth, the company submitted detailed calculations, quantifying all of the emissions involved in the trade.

The Exxon bubble meets all of the criteria for an acceptable bubble as outlined in the April 7, 1982 Federal Register policy statement. Therefore EPA is proposing to approve this alternative emission reduction plan.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Incorporation by reference.

Dated: June 19, 1985.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Title 40, Part 52 of the Code of Federal Regulations is amended to include the following:

Subpart SS—Texas

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642

2. Section 52.2270 is amended by adding paragraph (c)(60) as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(60) The Alternative Emission Control Plan for the Exxon Baytown Refinery in Baytown, Texas was adopted by the Texas Air Control Board on March 18, 1983, in Board Order No. 83–2.

[FR Doc. 85–15577 Filed 6–28–85; 8:45 am]

BILLING CODE 6560–50–M

[2] EPA Review of the Exxon Bubble in October 1983.

[3] EPA approved the ozone attainment demonstration for Harris County, Texas, on June 26, 1985 (50 FR 26359). Harris County is therefore an ozone nonattainment area with an approved demonstration. Under the proposed Emissions Trading Policy Statement and the notice of August 31, 1983 soliciting comment on certain aspects of the policy (48 FR 39580), the proper trading baseline in such areas is the set of requirements in the approved plan. For the facility involved in this trade, the Harris County Plan requires RACT. Therefore, the RACT baseline relied on in this trade is appropriate.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

41 CFR Part 105–63

Removal of Invalid Regulation

AGENCY: National Archives and Records Administration.

ACTION: Final rule.

SUMMARY: This document removes Part 105–63 of Title 41 of the Code of Federal Regulations, which concerns preservation and protection of and access to the Presidential historical materials of the Nixon administration. The regulations appearing in this part were ruled invalid by the District Court in 1983.

EFFECTIVE DATE: December 30, 1983.

FOR FURTHER INFORMATION CONTACT: Gary Brooks, Legal Services Staff, National Archives (NSL), Washington, DC 20408, 202–523–3618.

SUPPLEMENTARY INFORMATION: On December 30, 1983, the U.S. District Court of the District of Columbia ruled that Section 104(b) of the Presidential Recordings and Materials Preservation Act was unconstitutional based upon the *INS* v. *Chadha* decision and that previously promulgated regulations were invalid due to the exercise of the legislative veto on numerous occasions (*Allen et. al.* v. *Carmen et al.*, 578 F. Supp. 951). This rule removes this invalid regulation from Title 41 of the Code of Federal Regulations.

The National Archives and Records Administration published a notice of proposed rulemaking (50 FR 12575; March 29, 1985) to replace these invalid regulations. The final rule is expected to be issued later this summer, and will appear in Title 36, Chapter XII of the Code of Federal Regulations.

List of Subjects in 41 CFR Part 105–63

Archives and records, Nixon historical materials.

For the reasons stated in the preamble, Part 105–63 of Title 41 of the Code of Federal Regulations is removed.

Dated: June 27, 1985.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 85–15778 Filed 6–28–85; 8:45 am]

BILLING CODE 7515–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6664]

Suspension of Community Eligibility of Flood Insurance; Maine et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, 500 C Street, Southwest, FEMA, Room 416, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et. seq.). Accordingly, the communities are suspended on the effective date in the fourth column, so that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable flood plain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the **Federal Register.**

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended.) This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that notice and public procedure under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State and County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
Region I					
Maine: Cumberland	Harpswell, town of	230169B	July 15, 1975, emergency; July 3, 1985, regular; July 3, 1985, suspended.	Nov. 1, 1974 and Oct. 8, 1976	July 3, 1985.
Massachusetts: Bristol	Dartmouth, town of	250051C	Sept. 10, 1971, emergency; Aug. 15, 1977, regular; July 3, 1985, suspended.	Feb. 28, 1975, Aug. 15, 1977, June 1, 1983 and Oct. 1, 1983.	Do.
Essex	Marblehead, town of	250091	Jan. 16, 1974, emergency; July 3, 1985, regular; July 3, 1985, suspended.	Jan. 18, 1976	Do.
Barnstable	Sandwich, town of	250012E	Dec. 29, 1972, emergency; June 18, 1980, regular; July 3, 1985, suspended.	Jan. 14, 1977, Mar. 28, 1978 and June 18, 1980.	Do.
Essex	Swampscott, town of	250105B	Sept. 29, 1972, emergency; Sept. 3, 1976, regular; July 3, 1985, suspended.	May 24, 1974 and Sept. 3, 1976.	Do.
Barnstable	Truro, town of	255222B	Nov. 26, 1971, emergency; Apr. 20, 1973, regular; July 3, 1985 suspended.	Apr. 20, 1973, July 1, 1974 and Dec. 12, 1975.	Do.
Vermont: Bennington	Manchester, town of	500015B	Jan. 28, 1972, emergency; Apr. 3, 1978, regular; July 3, 1985, suspended.	Aug. 2, 1974 and Apr. 3, 1978	Do.

State and County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
Region II					
New York: Ulster	Hurley, town of	360857B	June 20, 1975, emergency; July 3, 1985, regular; July 3, 1985, suspended.	May 31, 1974 and May 26, 1976.	Do.
Region IV					
North Carolina:					
Chowan	Unincorporated areas	370301B	Aug. 25, 1977, emergency; July 3, 1985, regular; July 3, 1985, suspended.	Jan. 27, 1978	Do.
Do.	Edenton, town of	370062C	Nov. 14, 1973, emergency; Sept. 15, 1977, regular; July 3, 1985, suspended.	Feb. 15, 1974, Aug. 6, 1976 and Sept. 15, 1977	Do.
Region VI					
Texas: Brazoria	Lake Jackson, city of	485484D	Sept. 25, 1970, emergency; July 7, 1972, regular; July 3, 1985, suspended	July 7, 1972, July 1, 1974, July 25, 1975 and Mar. 18, 1977.	Do.
Region VII					
Iowa: Black Hawk	Waterloo, city of	190025E	May 7, 1971, emergency; July 3, 1985, regular; July 3, 1985, suspended.	June 28, 1974, Sept. 19, 1975, Sept. 13, 1977, May 6, 1980 and July 5, 1984.	Do.
Missouri:					
Newton	Granby, city of	290603B	Aug. 26, 1975, emergency; Nov. 11, 1975 regular; July 3, 1985, suspended.	Apr. 12, 1974 and Nov. 7, 1975.	Do.
Cass	Peasant Hill, city of	295269B	Apr. 9, 1971, emergency; Apr. 28, 1972, regular; July 3, 1985, suspended.	Sept. 15, 1972, July 1, 1974 and Dec. 26, 1975	Do.
Colorado: Ouray	Unincorporated areas	080136A	July 18, 1975, emergency; July 3, 1985, regular; July 3, 1985, suspended.		Do.
California: Shasta	Redding, city of	060360B	June 18, 1975, emergency; July 3, 1985, regular; July 3, 1985, suspended.	Dec. 20, 1974 and June 21, 1977.	Do.
Region II Minimal Conversions					
New York:					
Columbia	Canaan, town of	361313C	Jan. 27, 1976, emergency; July 3, 1985, regular; July 3, 1985, suspended.	Nov. 1, 1974, May 21, 1976 and July 1, 1977.	Do.
Herkimer	Cold Brook, village of	360296B	Feb. 10, 1976, emergency; July 3, 1985, regular; July 3, 1985, suspended.	Feb. 11, 1977	Do.
Jefferson	LeRay, town of	360941C	June 12, 1975, emergency; July 3, 1985, regular; July 3, 1985, suspended.	June 28, 1974, Dec. 12, 1975 and Oct. 8, 1976.	Do.
Herkimer	Norway, town of	361110B	June 25, 1975, emergency; July 3, 1985, regular; July 3, 1985, suspended.	Nov. 1, 1974 and July 2, 1976	Do.
Jefferson	Rodman, town of	360349B	July 29, 1975, emergency; July 3, 1985, regular; July 3, 1985 suspended.	June 21, 1974 and Dec. 10, 1976.	Do.
Herkimer	Salisbury, town of	360317B	Mar. 16, 1981, emergency; July 3, 1985, regular; July 3, 1985, suspended.	June 7, 1974 and July 16, 1976.	Do.
Lewis	Watson, town of	360377B	May 4, 1976 emergency; July 3, 1985, regular; July 3, 1985, suspended.	Nov. 1, 1974 and July 16, 1976.	Do.
Region III					
Pennsylvania:					
Clarion	Elk, town of	422365A	Feb. 11, 1976, emergency; July 3, 1985, regular; July 3, 1985, suspended.	Jan. 31, 1975	Do.
Clarion	Farmington, township of	422368B	Aug. 21, 1975 emergency; July 3, 1985, regular; July 3, 1985, suspended.	Jan. 17, 1975 and Jan. 25, 1980.	Do.
McKean	Sergeant, township of	422474B	Aug. 5, 1975, emergency; July 3, 1985, regular; July 3, 1985, suspended.	Feb. 14, 1975 and July 4, 1980.	Do.
Crawford	West Fallowfield, township of	422651B	May 23, 1977, emergency; July 3, 1985, regular; July 3, 1985, suspended.	Apr. 21, 1978	Do.

[1] Date certain Federal assistance no longer available in special flood hazard areas.

Code for Reading 4th column:

Emerg.—Emergency
Reg.—Regular
Susp.—Suspension

Issued: June 24, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-15565 Filed 6-28-85; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 64

[Docket No. FEMA 6666]

List of Communities Eligible for the Sale of Flood Insurance; Oklahoma et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATE: The date listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, 500 C Street Southwest, Donohoe Building, Room 416, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map

has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of Eligible Communities.

State and county	Location	Community	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
Oklahoma: Creek	Unincorporated areas	400490	May 6, 1985, emergency	May 19, 1981.
Arkansas: Lonoke	Lonoke, city of	050341A	May 6, 1985, emergency; May 6, 1985 regular	Mar. 26, 1976 and Mar. 15 1982.
Kansas: Cherokee	Unincorporated areas	200044A	May 10, 1985, emergency	May 10, 1977.
New York: Dutchess	Red Hook, village of, Dutchess County	361614—New	May 10, 1985, emergency; May 10, 1985, regular	NSFHAs.
Missouri:				
Dunklin	Unincorporated areas	290122A	May 15, 1985, emergency	Apr. 19, 1983.
Grundy	do	290150A	do	Dec. 1, 1983.
Livingston	do	290614A	do	Dec 15, 1983.
Oregon: Marion	Keizer, City of [1]	410288	Dec. 10, 1971, emergency; Aug. 15, 1979, regular	May 1, 1985.
Michigan: Oakland	Bingham Farms, Village of	260713A	May 15, 1985, emergency; May 15, 1985, regular	Jan. 3, 1985.
Texas: Travis	Lago Vista, City of [2]	481568—New	Jan. 29, 1976, emergency; Apr. 1, 1982, regular	
Minnesota: Pine	Pine City, City of	270346B	Mar. 26, 1975, emergency; Dec. 1, 1981, regular; Dec. 1, 1981, suspended; May 21, 1985, reinstatement.	Jan. 9, 1974 and June. 18, 1976.
Pennsylvania:				
Butler	Cherry, Township of	422342B	Mar. 7, 1977, emergency; May 1, 1985, regular; May 1, 1985, suspended; May 24, 1985, reinstatement.	Jan. 10, 1975 and Jan. 16, 1981.
Butler	Venango, township of	422369A	June 3, 1977, emergency; May 1, 1985, regular; May 1, 1985, suspended; May 24, 1985, reinstatement.	Jan. 24, 1975.
Colorado: Eagle	Avon, town of	080308—New	May 22, 1985, emergency	
Georgia: Carroll	Unincorporated areas	130464	May 28, 1985, emergency	Aug. 11, 1978.
Arizona: Mohave	Bullhead City, city of [3]	040125—Ndew.	May 6, 1974, emergency; Mar. 15, 1982, regular	
West Virginia: Jackson	Unincorporated areas	540063B	Nov. 25, 1975, emergency; May 1, 1985, regular; May 1, 1985, suspended; May 13, 1985, reinstatement.	Jan. 17, 1975 and Oct. 23, 1981.
New York: Cortland	Cincinnatus, city of	360177B	July 7, 1975, emergency; May 15, 1985, regular; May 15, 1985, suspended; May 22, 1985, reinstatement.	Apr. 5, 1974 and July 17, 1978.
Kentucky: Harrison	Unincorporated areas	210329B	May 31, 1985, emergency; May 31, 1985, regular	Aug. 26, 1977 and Nov. 4, 1981.
North Carolina: Haywood	Waynesville town of	370124B	July 2, 1975, emergency; Jan. 6, 1983, regular; Jan. 6, 1983, suspended; May 29, 1985, reinstatement.	Mar. 8, 1974 and Nov. 29, 1974, Aug. 27, 1976, and Jan. 6, 1983.
Region I				
Massachusetts: Barnstable	Harwich, town of	250008C	May 15, 1985, suspension withdrawn	July 19 1974, Oct. 22, 1976 and Sept. 30, 1980.
Region II				
New Jersey: Morris	Mount Olive, township of	340353B	do	Jan. 16, 1974 and Mar. 19, 1976.
Region III				
Maryland: Talbot	Unincorporated areas	240066A	do	Apr. 25, 1975.
Region V				
Ohio: Logan	do	390772C	do	Feb. 3, 1978 and July 13, 1979.
Region VI				
Louisiana: Vermilion Parish	do	220221D	do	May 31, 1977, May 9, 1978 and Oct. 1, 1983.
Region VIII				
Colorado: Jefferson	Golden, city of	080090A	do	Nov. 5, 1976.
Region II Minimal Conversions				
New York:				
Lewis	Denmark, town of	360363B	May 15, 1985, suspension withdrawn	June 28, 1974 and May 28, 1976.

State and county	Location	Community	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
Warren	Hague, town of	360873	do	Nov. 5, 1976, Mar. 10, 1978, Dec. 21, 1979 and Dec. 11, 1981.
Columbia	Hillsdale, town of	361320A	do	Jan. 3, 1975.
Cortland	Marathon, town of	361327B	do	Nov. 29, 1974 and July 2, 1976.
Essex	North Hudson, town of	361391A	do	July 11, 1975.
Cortland	Preble, town of	360165B	do	Feb. 15, 1974 and July 16, 1976.
Tioga	Richford, town of	361216B	do	Dec. 20, 1974 and July 23, 1976.
Essex	Schroon, town of	361158B	do	Do.
Cortland	Scott, town of	361328B	do	Nov 1, 1974 and June 25, 1976.
Do	Solon, town of	361329A	do	Jan. 17, 1975 and July 30, 1976.
Do	Harford, town of	360180	do	June 28, 1974 and May 28, 1976.

[1] City of Keizer is a new community eligible 5-10-85. Was formerly under Marion County, Oregon (#410154).
[2] The City of Lago Vista, (Travis County) is a newly incorporated community eligible 5-23-85 that was participating in the Regular Program as an unincorporated area of Travis County. The City has adopted the County's FIS and FIRM for floodplain management and insurance purposes.
[3] The City of Bullhead City, (Mohave County) is a newly incorporated community eligible 5-28-85 that was participating in the Regular Program as an unincorporated area of Mohave County. The City has adopted the County's Flood Insurance Study and Flood Insurance Rate Map for floodplain management and insurance purposes.

Code for reading 4th Column:

Emerg.—Emergency
Reg.—Regular
Susp.—Suspension
Rein.—Reinstatement

Issued: June 24, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-15566 Filed 6-28-85; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 153

[CGD 81-078]

Safety Rules for Self-Propelled Vessels Carrying Hazardous Liquids

Correction

In FR Doc. 85-9364 beginning on page 21166 in the issue of Wednesday, May 22, 1985, make the following correction:

§ 153.8 [Corrected]

On page 21171, in the table, first column, in the forty-second line, "Dichloropropene" should have read "Dichloropropane".

BILLING CODE 1505-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 504

[APD 2800.12 CHGE13]

General Services Administration Acquisition Regulation; Contract Files

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) Chapter 5, is amended to revise Subpart 504.8, Contract Files, to clarify who is responsible for contract files, to add procedures for transferring contract files from one office to another or from one contracting officer to another, to supplement FAR procedures on closing out contract files, and to supplement FAR coverage on the disposal of contract files. The intended effect is to improve the regulatory coverage and to provide uniform procedures for use by GSA contracting activities.

EFFECTIVE DATE: June 18, 1985.

FOR FURTHER INFORMATION CONTACT: L. Gaye Hirz-Kester, Office of GSA Acquisition Policy and Regulations (VP), (202) 523-4763.

SUPPLEMENTARY INFORMATION:

Background

On April 24, 1985, the General Services Administration published in the **Federal Register** (50 FR 16115) GSAR Notice 5-90 inviting comments from interested parties on these proposed changes to the regulation and provided a 30-day comment period. No public comments were received. Comments received from various elements within GSA were analyzed, reconciled, and incorporated, if applicable, into this final rule.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The General Services Administration certifies that this document 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 has no impact outside the agency. It establishes procedures for transferring files within the agency from one office to another or from one contracting officer to another. Therefore, no regulatory flexibility analysis has been prepared. This rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Part 504

Government procurement.

1. The authority citation for 48 CFR Part 504 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. The table of contents for Part 504 is amended by revising the title of section 504.103 and by adding section 504.804-5 and 504.805 as set forth below:

PART 504—ADMINISTRATIVE MATTERS

Sec.

Subpart 504.1—Contract Execution

504.103 Contract clause.

* * * * *

Subpart 504.8—Contract Files

* * * * *

504.804–5 Detailed procedures for closing out contract files.

504.805 Disposal of contract files.

* * * * *

Authority: 40 U.S.C. 486(c).

3. Section 504.800 is revised to read as follows:

504.800 Scope of subpart.

This subpart prescribes requirements for using a standard contract file format for all contracts, except leases of real property, that exceed the small purchase limitation. The application of this subpart to small purchases is optional.

4. Section 504.802 is revised to read as follows:

504.802 Contract files.

(a) *Standardization of files.* Professionalism in acquisition dictates that contract files be complete and able to stand on their own. To achieve this goal and to facilitate processing and administration of contracts at all levels, contract files are to be organized in a standardized manner throughout the agency. Therefore, all contracts over $25,000 must be supported with an official contract file containing all necessary information and documentation in accordance with the requirements outlined in FAR 4.802 and 4.803. The documents shall be organized in accordance with the standard contract file format in GSAR 504.803.

(b) *Responsibility for contract files.* The contracting officer shall be responsible for the official file. All documents pertaining to the contract shall be forwarded by those initiating them to the contracting officer for inclusion in this file. The contracting officer is also responsible for the accountability of contract files transferred to the records center and for knowing the location of the files as provided by the National Archives and Records Administration.

(c) *Transfer of responsibility for contract files.* (1) When responsibility for a contract is transferred from one contracting officer to another, e.g., transfer of assignments or redelegation of contract administration (intraoffice or interoffice), the contracting officer transferring the files shall prepare a detailed listing by file number and/or name to identify the file(s) to be transferred.

(2) If available, duplicates of the files to be transferred must be retained by the contracting officer until acknowledgement of receipt of the transferred files by the contracting officer is received. However, duplicate files should not be created for the transfer.

(3) The original contracting officer transferring the files shall retain one copy of the listing and send a copy of the listing to the successor contracting officer under a separate mailing as advance notice of the files to be transferred.

(4) The files to be transferred to the successor contracting officer must be sent by certified mail, return receipt requested, when appropriate, or by another method so as to obtain a signature of the successor contracting officer for receipt of the contract files that are transferred. The transferred files must be accompanied by two copies of the listing to the successor contracting officer.

(5) The successor contracting officer, who becomes responsible for the files, shall sign one copy of the listing certifying that he/she has received the files listed and return the signed copy to the contracting officer that transmitted the files.

5. Section 504.803 is amended by revising the introductory text of paragraph (a), paragraphs (a)(12), (13), (14), (18), and (24); deleting paragraph (a)(25) and redesignating paragraphs (a)(26) through (a)(30) as (a)(25) through (a)(29) and revising new paragraphs (a)(25) through (a)(29); revising paragraphs (b) and (c); and deleting paragraph (d) as follows:

504.803 Contents of contract files.

(a) The items listed therein shall be placed in the contract file in reverse order; i.e., item (1) should be placed on the bottom of the file, item (2) on top of item (1), etc.

* * * * *

(12) Cost or pricing data. Where the requirement for submission of cost or pricing data is waived, as provided in FAR 15.804–3, the waiver and documentation supporting the waiver should be filed under this tab.

(13) Field pricing report (see FAR 15.805–5 and GSAR 515.805–5). Where the requirement for a field pricing report of a price proposal is waived, as provided in FAR 15.805–5, the waiver and documentation supporting the waiver should be filed under this tab.

(14) Price or cost analysis report prepared under FAR 15.808. Supporting technical analyses, other than those supporting an audit report, should be filed under this tab. The profit or fee analysis required by FAR Subpart 15.9 should be made a part of the price or cost analysis report. In those cases where an independent Government estimate is prepared, it should also be made a part of the price or cost analysis report.

* * * * *

(18) EEO compliance review.

* * * * *

(24) Contractual action. Subcontracting plans that are incorporated in and made a material part of a contract as required by FAR 19.705–5(a)(5) should be filed under this tab. Where an award is to be accomplished by use of the award portion of the SF 33, or similar forms, the contract document should be included in TAB 23.

* * * * *

(25) Evidence of concurrence for legal sufficiency of the appropriate counsel (if applicable).

(26) Any required approvals—GSA Form 1535, Recommendation for Award (if applicable).

(27) GSA Form 2932, Proposed Substantial Contract Award (if applicable).

(28) Standard Form 99, Notice of Award of Contract, (if applicable).

(29) GSA Form 3439, GDA/FPDS Individual Contract Action Report.

(b) The contract file must be numerically tabbed as required by GSAR 504.803(a). Documents within the tab should be filed chronologically with the most recent document on top. If any of the documents are too voluminous to be placed under the applicable tab, they should be included in a separate file and the tab annotated with the location of the file. All of the items described will not always be needed for each contract action. Unneeded items, therefore, will be self deleting. If a tab is not required for a particular action, it should be omitted from that contract file.

(c) An index of the file tabs should be prepared and placed in the file. Items which do not apply should be so marked and if necessary, a brief explanation included. In order to facilitate the preparation of the index, each service/office may prepare a standard contract file checklist based on the requirements of GSAR 504.803(a) appropriate to that particular service/office. The requirements of a particular service/office may make appropriate the inclusion of sub-headings under a tab or, if deemed necessary, additional items.

6. Sections 504.804–5 and 504.805 are added to read as follows:

504.804-5 Detailed procedures for closing out contract files.

When the statement required by FAR 4.804-5(b) is completed, the administrative contracting officer (ACO) shall forward the statement and the contract files to the cognizant procuring contracting officer (PCO). The ACO shall follow the procedures outlined in GSAR 504.802(c) when transferring the files to the PCO.

504.805 Disposal of contract files.

The contracting officers' accountability for contract files shall terminate at the end of their retention period when the notice of disposal is received from the National Archives and Records Administration, and disposal is approved by the contracting officer's immediate suppervisor with the contracting officer's concurrence.

Dated: June 18, 1985.

Richard H. Hopf, III

Acting Assistant Administrator for Acquisition Policy.

[FR Doc. 85-15692 Filed 6-28-85; 8:45 am]

BILLING CODE 6820-61-M

48 CFR Part 533

[Acquisition Circular AC-85-4]

Protests to the General Accounting Office (GAO)

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary regulation.

SUMMARY: This Acquisition Circular temporarily amends section 533.104 (b) and (c) of the General Services Administration Acquisition Regulation, to implement Federal Acquisition Circular 84-9 which revised the Federal Acquisition Regulation (FAR) to comply with the "stay" and "damages" provisions of the Competition in Contracting Act of 1984 (CICA). The intended effect is to provide guidance to GSA contracting activities pending a revision to the regulation.

EFFECTIVE DATE: June 21, 1985.

Expiration Date: This Acquisition Circular will expire December 21, 1985, unless canceled earlier or extended.

Comment Date: Comments must be submitted on or before August 30, 1985.

ADDRESS: Comments may be submitted to Ida Ustad, 18th & F Streets, NW., Room 4027, Office of GSA Acquisition Policy and Regulations, Washington, D.C., 20405, (202) 523-4754.

FOR FURTHER INFORMATION CONTACT: Ida Ustad, Office of GSA Acquisition Policy and Regulations (VP), (202) 523-4754.

SUPPLEMENTARY INFORMATION: Pursuant to section 22(d) of the Office of Federal Procurement Policy Act, as amended, a determination has been made to waive the requirement for publication of procurement procedures for public comment before the regulation takes effect. The need to comply with the statutory provisions of the CICA regarding "staying" awards or performance and awarding "damages" is an urgent and compelling circumstance that makes advance publication impracticables. The General Services Administration certifies that this document 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 implements the Federal Acquisition Regulations by providing internal agency procedures for making determinations regarding suspending the award or performance of contracts. Accordingly, no regulatory flexibility analysis has been prepared. This rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subjects in 48 CFR Ch. 5

Government procurement.

1. The authority citation for 48 CFR Part 533 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. 48 CFR Part 533 is amended by the following acquisition circular.

June 21, 1985.

General Services Administration Acquisition Regulation Acquisition Circular AC-85-4

To: All contracting activities
Subject: Protests to the General Accounting Office (GAO).

1. *Purpose.* This Acquisition Circular temporarily amends Section 533.104 (b) and (c) of the General Services Administration Acquisition Regulation (GSAR), 48 CFR Ch. 5 (APD 2800.12), to implement FAC 84-9 which revised the Federal Acquisition Regulation (FAR) to comply with the "stay" and "damages" provision of the Competition in Contracting Act of 1984 (CICA).

2. *Background.* FAC 84-8, which initially implemented the CICA protest provisions, did not implement the "stay" provisions in 31 U.S.C. 3553 (c) and (d) and the GAO "damages" provision in 31 U.S.C. 3554(c) based on guidance from the Department of Justice and direction from the Office of Management and Budget (OMB). On June 5, 1985, as a result of a decision in *Ameron, Inc.* v. *U.S. Army Corps of Engineers,* Civil No. 85-1064, May 28, 1985, (D.C.N.J.), the Department of Justice advised the responsible Federal agencies to revise FAC-84-6 to comply with the cited provisions pending further appeal. In the referenced case, the district court issued a permanent injunction requiring the defendants, including Defense Secretary Weinberger, to refrain from applying FAC-84-6 or OMB Bulletin No. 85-8 insofar as they conflict with the "stay" provisions and to secure the issuance of regulations which comply with and implement the statutory provision. The Attorney General has decided that the Government will comply with the "damages" provision during the same period even though compliance with that statutory provision is not required by the permanent injunction. Accordingly, FAC 84-9 revised those portions of FAC 84-6 that were inconsistent with the statute.

3. *Effective date.* June 21, 1985.

4. *Expiration date.* This circular expires 6 months after issuance (December 21, 1985) unless cancelled earlier.

5. *Reference to regulation.* Section 533.104 (b) and (c) of the General Services Administration Acquisition Regulation.

6. *Explanation of change.* Section 533.104 is amended to revise paragraph (b) and (c) to read as follows:

533.104 Protests to GAO.

* * * * *

(b) *Protests before award.* In accordance with FAR 33.104(b), the HCA may determine in writing that urgent and compelling circumstances which significantly affect the interests of the United States will not permit awaiting the decision of GAO and award is likely to occur within 30 calendar days. The written determination and findings (D&F) should be prepared by the contracting officer for the signature of the HCA. The D&F must be concurred in by the Regional Counsel (on regional procurements), and the appropriate Assistant General Counsel. After the D&F is approved, it must be returned to the appropriate Assistant General Counsel who will notify GAO of the Agency's findings and intended action before the award is made.

(c) *Protests after award.* The procedure in paragraph (a) apply to the handling of protests after award. If the protest is received within 10 days after award, contract performance shall be suspended in accordance with FAR 33.104(c) unless the HCA determines in writing that contract performance will be in the best interests of the United States or that urgent and compelling circumstances that significantly affect

the interests of the United States will not permit waiting for the GAO's decision. The written determination and findings (D&F) should be prepared by the contracting officer for signature of the HCA. The D&F must be concurred in by the Regional Counsel (on regional procurements), and the appropriate Assistant General Counsel. After the D&F is approved, it must be returned to the assistant General Counsel who will notify GAO of the agency's findings and intended action before contract performance is authorized.

Richard H. Hopf, III,

Acting Assistant Administrator for Acquisition Policy.

[FR Doc. 85-15693 Filed 6-28-85; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Two Kinds of Northern Flying Squirrel

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for two kinds of northern flying squirrel found in the Appalachian Mountains of North Carolina, Tennessee, Virginia, and West Virginia. Both are evidently very rare and jeopardized by habitat loss, human disturbance, and competition with, and the transfer of a lethal parasite from, the more common southern flying squirrel. This rule implements the protection of the Endangered Species Act of 1973, as amended, for these two kinds of northern flying squirrel.

DATE: The effective date of this rule is July 31, 1985.

ADDRESS: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 N. Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-2771 or FTS 235-2771).

SUPPLEMENTARY INFORMATION:

Background

The so-called flying squirrels do not actually fly, but are capable of extensive and maneuverable gliding by means of a furred, sheetlike membrane along the sides of the body, between the fore and hind limbs. There are 35 species, most of them in the forested parts of Eurasia (Nowak and Paradiso 1983). Only two species occur in North America: the southern flying squirrel (*Glaucomys volans*), found in extreme southeastern Canada, the eastern half of the United States, Mexico, and Central America; and the northern flying squirrel (*Glaucomys sabrinus*), found mainly in Canada, Alaska, and the western and northern parts of the conterminous United States (Hall 1981).

Until well into the 20th century, *G. sabrinus* was not known to occur in the eastern United States to the south of New York. Then Miller (1936) described the subspecies *G. s. fuscus*, based on specimens collected in the Appalachian Mountains of eastern West Virginia, and Handley (1953) described *G. s. coloratus*, from specimens taken in the Appalachians of eastern Tennessee and western North Carolina. Subsequently, *G. s. fuscus* was found also in the southwestern part of Virginia (Handley 1980). For purposes of convenience, *G. s. coloratus* may be referred to as the Carolina northern flying squirrel, and *G. s. fuscus* as the Virginia northern flying squirrel.

According to Handley (1953), seven specimens of *G. s. coloratus* averaged 286 millimeters (11¼ inches) in total length and 134 millimeters (5¼ inches) in tail length, and five specimens of *G. s. fuscus* averaged 266 millimeters (10½ inches) in total length and 115 millimeters (4½ inches) in tail length. The coloration of both subspecies is generally brown above and buffy or orange white below. *G. s. coloratus* is the darker of the two, but both are considerably darker than the subspecies of *G. sabrinus* found farther to the north in the eastern U.S.

There has long been recognition that *G. s. coloratus* and *G. s. fuscus* are rare and that their survival might be in jeopardy. Since their original discovery, only about 30 specimens are known to have been collected, dead or alive, and at only about 8 localities. Recent efforts have failed to find these squirrels at most of these same localities. There are numerous actual or potential problems. Both subspecies may have been declining since the Pleistocene, along with the contraction of suitable boreal forest habitat. They now have relictual distributions in widely scattered areas at high elevations. Their decline has probably been accelerated through clearing of forests and other disturbances by people. They apparently are being displaced in at least some areas by the more adaptable and aggressive southern flying squirrel (*G. volans*). In addition, there is growing evidence that the nematode parasite *Strongyloides*, which is carried without obvious harm by *G. volans*, is being transferred to *G. sabrinus* with lethal effect.

Handley (1980) classified *G. s. fuscus* as "endangered" in Virginia. The West Virginia Department of Natural Resources includes this subspecies in its list of animals of special concern, and refers to it as being of "scientific interest." Weigl (1977) classified *G. s. coloratus* as "threatened" in North Carolina. Kennedy and Harvey (1980) indicated that *G. s. coloratus* is considered to be "deemed in need of special management" by the Tennessee Wildlife Resources Agency and to be of "special concern" by the Tennessee Heritage Program. In a report published by the U.S. Forest Service, Lowman (1975) stated that *G. s. coloratus* and *G. s. fuscus* are "threatened" in Virginia, North Carolina, and Tennessee.

In its Review of Vertebrate Wildlife in the **Federal Register** of December 30, 1982 (48 FR 58454-58460), the U.S. Fish and Wildlife Service placed both subspecies in category 2, meaning that a proposal to list as endangered or threatened was possibly appropriate, but that substantial data were not then available to biologically support such a proposal. Subsequently, the Service received a report from Dr. Donald W. Linzey (1983), who had been contracted more than 3 years earlier to investigate the status of the two flying squirrels. The data in Dr. Linzey's report, along with other new information assembled by the Service, showed that a proposal to list both squirrels as endangered was warranted. Such a proposal was published in the **Federal Register** of November 21, 1984 (49 FR 45880-45884).

Summary of Comments and Recommendations

In the proposed rule of November 21, 1984, and associated notifications, all interested parties were requested to submit information that might contribute to development of a final rule. Appropriate State and Federal agencies, county governments, scientific organizations, and other concerned parties were contacted and requested to comment. Newspaper notices, inviting public comment, were published in the *Asheville Citizen Times* on December 15, 1984, the *Elizabethton Star* on December 14, 1984, the *Elkins Inter-Mountain* on December 19, 1984, the *Virginian* on December 15, 1984, and the *Gatlinburg Mountain Press* on December 17, 1984.

Eight responses were received. The Board of Supervisors of Smyth County, Virginia, indicated that it had no comment. The National Park Service, the Tennessee Department of Conservation, the West Virginia Department of Natural Resources, The Nature Conservancy, Professor Lawrence R. Heaney of the University of Michigan, and Professor J. Edward Gates of the University of Maryland expressed support for the proposal. Professor Gates added that he has been carrying out a limited search for *G. sabrinus* in West Virginia. The effort has not been successful so far, but on November 4, 1984, three *G. volans* were captured in one of the nest boxes that had been installed. This event might possibly contribute to the view that *G. volans* is replacing *G. sabrinus* (see factor "E" in the following section).

The only opposing comment was from the Tennessee Wildlife Resources Agency, which indicated that endangered status is not yet justified for *G. sabrinus* in Tennessee, because adequate documentation has not been found to differentiate the subspecies in that State from those in other parts of the nation. In response, the Service would point out that the subspecies found in Tennessee (*G. s. coloratus*) was formally described in a relatively recent publication by a reputable mammalogist (Handley 1953), that his conclusions have been accepted in the standard comprehensive reference on the systematics of North American mammals (Hall 1981), and that no challenge to this situation is known. The Service therefore considers continued recognition of the subspecific distinction of *G. s. coloratus* to be warranted.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Carolina and Virginia northern flying squirrels should be classified as endangered. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to the Carolina (*Glaucomys sabrinus coloratus*) and Virginia (*G. s. fuscus*) northern flying squirrels are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* According to Professor Peter D. Weigl of Wake Forest University (1977, and pers. comm., March 2, 1984), *G. s. coloratus* and *G. s. fuscus* occur primarily in the ecotone, or vegetation transition zone, between the coniferous and northern hardwood forests. Both forest types are used in the search for food, while the hardwood areas are needed for nesting sites. As these squirrels are adapted to cold, boreal conditions, their range has probably been contracting since the end of the Pleistocene (Ice Age). They now have a relictual distribution, restricted to isolated areas at high elevations, separated by vast stretches of unsuitable habitat. In these last occupied zones, the squirrels and their habitat may be coming under increasing pressure from human disturbance, such as logging and development of skiing and other recreational facilities. Handley (1980) stated that while the range of *G. s. fuscus* had probably already been fragmented prior to the arrival of European settlers, its decline has undoubtedly been accelerated by the clearing of forests during the past 200 years, and that it must be on the verge of extinction in Virginia. Lowman (1975) considered both subspecies to be threatened "due to reduction of habitat by logging and other land use."

Available evidence indicates that *G. s. coloratus* and *G.s. fuscus* are rare and that their historical decline is continuing. The two subspecies are represented by only 28 specimens in museum collections (Linzey 1983; West Virginia Department of Natural Resources, pers. comm., April 25, 1984). A few other individuals have been captured alive and then released. The museum specimens were taken in seven separate areas of North Carolina (Yancey County), Tennessee (Carter and Sevier Counties) Virginia (Smyth County), and West Virginia (Pocahontas and Randolph Counties). Weigl (1977), in a paper prepared for a symposium in 1975, stated that in the previous 10 years the two subspecies had been captured only in two of these areas—the Roan Mountain vicinity of Carter County, Tennessee, and Whitetop Mountain, Smyth County, Virginia. He noted that 8 weeks of trapping in 1965–1966 in the Mount Mitchell area of Yancy County, North Carolina, the type locality of *G. s. coloratus*, had failed to find a single individual. Weigl (pers. comm., March 2, 1984) added that during the past few years he had failed to find *G. s. coloratus* in the Roan Mountain area.

Linzey (1983) reported the results of a 40-month search for *G.s. coloratus* and *G. s. fuscus* throughout their range. During this investigation, he placed 490 nest boxes at 35 sites in Maryland, North Carolina, Tennessee, Virginia, and West Virginia, including six of the seven areas in which the subspecies had been previously collected. The boxes were checked at regular intervals, and any occupants were captured and indentified. Only three individual northern flying squirrels were found in the course of the study. In April 1981, a pair *G. s. coloratus* was caught in the Mount Mitchell area of North Carolina, and in May 1981 an adult female *G. s. fuscus* was taken in an area of Pocahontas County, West Virginia, from which the subspecies was not previously known. All three individuals were marked and released. This investigation thus showed that both subspecies still exist, but that they are very rare and perhaps no longer present in much of their former range.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The subject subspecies are not known to be jeopardized by human utilization. Nonetheless, flying squirrels are highly desirable as pets to some persons, and collecting for such purposes is at least a potential threat to the already rare *G. s. coloratus* and *G. s fuscus*.

C. *Disease or predation.* Weigl (pers. Comm., March 2, 1984) suggested that increasing human recreational use of northern flying squirrel habitat might result in predation on *G. s. coloratus and G. s. fuscus* by pets, especially cats.

D. *The inadequacy of existing regulatory mechanisms.* Not now known to be applicable.

E. *Other natural or manmade factors effecting its continued existence.* According to Handley (1980), logging and other clearing activity has not only reduced the original habitat of the northern flying squirrel (*G. sabrinus*), but resulted in an invasion of this zone by the southern flying squirrel (*G. volans*). Regrowth in cleared areas, if any, tended to be deciduous forest favored by *G. volans*, and hence the way was open for the spread of that species.

Weigl (1978) pointed out that originally there was apparently little overlap between the ranges of the two species, with *G. sabrinus* found in the higher elevations of the applications and *G. volans* in the lower. When *G. volans* began to expand into the habitat of *G. sabrinus*, however, it seems to have successfully competed with and displaced the latter species. Weigl's studies of captive animals have demonstrated that *G. volans* though smaller than *G. sabrinus*, is more

aggressive, more active in territorial defense, and dominant in competition for nests. When the two species meet in an ecotone between coniferous and deciduous forest, *G. volans* would be expected to force *G. sabrinus* out into the purely coniferous zone, which lacks favorable nesting sites, and thus the breeding level of the latter species would be reduced.

In addition to its success in direct confrontations, *G. volans* has evidently employed a more subtle, but deadly, biological mechanism against *G. sabrinus*. Weigl (1975, and pers. comm., March 2, 1984) maintained captive colonies of the two species in adjacent outdoor aviaries. All the *G. sabrinus* weakened and died within three months, and this mortality was associated with heavy infestations of the nematode parasite *Strongyloides*. All the *G. volans* also carried the parasite, but they remained in apparent good health and continued to breed. Subsequently, *Strongyloides* was found in five wild populations of *G. volans* in North Carolina, but never in wild *G. sabrinus*. Experiments in captivity, however, demonstrated that *Strongyloides* could be transferred from *G. volans* to *G. sabrinus*. Apparently, *G. volans* is the natural host of this parasite and has developed an immunity to its ill effects. Under original conditions, with the two squirrel species occupying largely separate ranges, there would have been little interchange. When contact between the two was increased through habitat disruption, *Strongyloides* could spread to *G. sabrinus*, which lacked any immunity, and thus could serve as a powerful competitive weapon for *G. volans*.

Because of its ability to displace *G. sabrinus* by the means described above, *G. volans* seems to have taken over much of the former's range in the Appalachians. Handley (1980) report that in Virginia *G. volans* now occurs at the tops of the highest mountains and occupies the best remnants of habitat that is suitable for *G. sabrinus*. Weigl (pers. comm., March 2, 1984) stated that he has failed to trap *G. sabrinus* at Roan Mountain, Tennessee, during the past few years, but at the same time has found *G. volans* to be more abundant at higher elevations in this area. As noted above, Linzey (1983) captured only three specimens of *G. sabrinus* during 40 months of study, and yet an effort had been made to place the nest boxes in areas that appeared to have habitat suitable for the species, including most of the localities from which it had previously been recorded. In these same nest boxes, Linzey captured at least 29 individual *G. volans*.

The decision to determine endangered status for the Carolina and Virginia nothern flying squirrels was based on an assessment of the best available scientific information and of past, present, and probable future threats to the species. A decision to take no action would exclude the two flying squirrels from needed protection pursuant to the Endangered Species Act. A decision to determine only threatened status would not adequately express the evident rarity and multiplicity of problems of these animals. Critical habitat is not being designated, for the reasons discussed in the following section.

Critical Habitat

Section 4(a)(3) of the Endangered Species Act, as amended, requires that "critical habitat" be designated, "to the maximum extent prudent and determinable," concurrent with the determination that a species is endangered or threatened. The Service finds that designation of critical habitat for the Carolina and Virginia northern flying squirrels is not prudent at this time. Flying squirrels in general are popular as pets (see, for example, Lowery 1974). Although the two subject subspecies are not now known to be collected for this purpose, publication of a precise critical habitat description and map could expose these rare and vulnerable animals to increased disturbance and taking. Moreover, the nest boxes placed during the recent status survey are still present and being used for study. These boxes are readily visible and flying squirrels may be easily trapped therein during their diurnal period of inactivity. Any publicity regarding the location of these boxes should be avoided.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened pursuant to the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition throught listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States, and requires recovery actions. Such actions are initiated by the Service following listing. The protection required of Federal agencies, and prohibitions against taking and harm, are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal in **Federal Register** of June 29, 1983, 48 FR 29990). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. No specific Federal activities that may be affected in this regard, with respect to the listing of the Carolina and Virginia northern flying squirrels, are known at this time. Much of the region that these squirrels may inhabit, however, is within national forest land. Therefore, certain actions by the U.S. Forest Service, such as timber sales, establishment of recreation facilities, and spraying of insecticides, may become subject to consultation.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, transport, or ship any such wildlife that has been illegally taken. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing such permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National

Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** of October 25, 1983 (48 FR 49244).

References

Hall, E.R. 1981. The Mammals of North America. John Wiley & Sons, New York, 2 vols.

Handley, C.O., Jr. 1953. A new flying squirrel from the southern Appalachian Mountains. Proc. Biol. Soc. Washington, 66:191–194.

Handley, C.O., Jr. 1980. Mammals. *In* Linzey, D.W. (ed.), Endangered and threatened plants and animals of Virginia Polytechnic Inst. & State Univ., pp. 483–621.

Kennedy, M.L., and M.J. Harvey. 1980. Mammals. *In* Eagar, D.C., and R.M. Hatcher (eds.), Tennessee's rare wildlife, vol. I: the vertebrates. Tennessee Wildl. Resources Agency, pp. C1–C50.

Linzey, D.W. 1983. Status and distribution of the northern water shrew (*Sorex palustris*) and two subspecies of northern flying squirrel (*Glaucomys sabrinus coloratus* and *Glaucomys sabrinus fuscus*). Final Rept. to U.S. Fish and Wildl. Serv., 42 pp.

Lowery, G.H., Jr. 1974. The Mammals of Louisiana and Its adjacent Waters. Louisiana State Univ. Press, xxiii + 565 pp.

Lowman, G.E. 1975. A survey of endangered, threatened, rare, status undetermined, peripheral, and unique mammals of the southeastern national forests and grasslands. U.S. Dept. Agriculture, Forest Serv., Southern Region, vi + 121 pp.

Miller, G.S., Jr. 1936. A new flying squirrel from West Virginia. Proc. Biol. Soc. Washington, 49:143–144.

Nowak, R.M., and J.L. Paradiso. 1983. Walker's Mammals of the World. Johns Hopkins Univ. Press, Baltimore, 2 vols.

Weigl, P.D. 1975. Parasitism as a possible biological weapon affecting the ranges and interactions of the flying squirrels, *Glaucomys volans* and *Glaucomys sabrinus*. Paper presented at 55th Annual Meeting, Amer. Soc. Mammalogists, Univ. Montana, 6 pp.

Weigl, P.D. 1977. Northern flying squirrel. *In* Cooper, J.E., S.S. Robinson, and J.B. Funderburg (eds.), Endangered and threatened plants and animals of North Carolina, North Carolina State Mus. Nat. Hist., Raleigh, pp. 398–400.

Weigl, P.D. 1978. Resource overlap, interspecific interactions and the distribution of the flying squirrels, *Glaucomys volans* and *G. sabrinus*. Amer. Midl. Nat., 100:83–96.

Author

The primary author of this rule is Ronald M. Nowak, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975 or FTS 235–1975).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by adding the following, in alphabetical order under "MAMMALS," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Mammals:							
*	*	*	*	*	*	*	
Squirrel, Carolina northern flying	*Glaucomys sabrinus coloratus*	U.S.A. (NC, TN)	Entire	E	188	NA	NA
Squirrel, Virginia northern flying	*Glaucomys sabrinus fuscus*	U.S.A. (VA, WV)	do	E	188	NA	NA
*	*	*	*	*	*	*	

Dated: June 13, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–15733 Filed 6–28–85; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 50, No. 126
Monday, July 1, 1985

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Ch. X

[Docket Nos. AO–160–A62–R02, etc.]

Milk in the Middle Atlantic and Other Marketing Areas; Termination of Proceeding on Proposed Amendments to Tentative Marketing Agreements and to Orders

7 CFR Part	Marketing area	AO Nos.
1004	Middle Atlantic	AO–160–A62–R02.
1001	New England	AO–14–A80.
1002	New York-New Jersey	AO–71–A74–R01
1006	Upper Florida	AO–356–A21.
1007	Georgia	AO–366–A23.
1011	Tennessee Valley	AO–251–A26.
1012	Tampa Bay	AO–347–A24.
1013	Southeastern Florida	AO–286–A31.
1030	Chicago Regional	AO–361–A21.
1032	Southern Illinois	AO–313–A32.
1033	Ohio Valley	AO–166–A53.
1036	Eastern Ohio-Western Pennsylvania.	AO–179–A48.
1040	Southern Michigan	AO–225–A36.
1044	Michigan Upper Peninsula	AO–299–A23.
1046	Louisville-Lexington-Evansville.	AO–123–A52.
1049	Indiana	AO–319–A33.
1050	Central Illinois	AO–355–A22.
1064	Greater Kansas City	AO–23–A55.
1065	Nebraska-Western Iowa	AO–86–A42.
1068	Upper Midwest	AO–178–A38.
1075	Black Hills	AO–248–A18.
1076	Eastern South Dakota	AO–260–A28.
1079	Iowa	AO–295–A35.
1093	Alabama-West Florida	AO–386–A2.
1094	New Orleans-Mississippi	AO–103–A43.
1096	Greater Louisiana	AO–257–A31.
1097	Memphis	AO–219–A39.
1098	Nashville	AO–184–A46.
1099	Paducah	AO–183–A38.
1102	Fort Smith	AO–237–A32.
1106	Southwest Plains	AO–210–A44.
1108	Central Arkansas	AO–243–A36.
1120	Lubbock-Plainview	AO–328–A25.
1124	Oregon-Washington	AO–368–A13.
1125	Puget Sound-Inland	AO–226–A30.
1128	Texas	AO–231–A52.
1131	Central Arizona	AO–271–A25.
1132	Texas Panhandle	AO–262–A35.
1134	Western Colorado	AO–301–A18.
1135	Southwestern Idaho-Eastern Oregon.	AO–380–A4.
1136	Great Basin	AO–309–A25.
1137	Eastern Colorado	AO–328–A22.
1138	Rio Grande Valley	AO–335–A30.
1139	Lake Mead	AO–374–A9.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: This action terminates the current proceeding on proposed amendments to provide for a separate classification and price for milk used to produce butter and nonfat dry milk in all 44 Federal milk orders. At the request of producers, a public hearing was held July 25–27, 1984, to consider their proposals. On March 15, 1985, the Department issued its recommendation to deny all proposals. Subsequently, the producers have asked that the proceeding be terminated.

DATE: This withdrawal is effective June 24, 1985.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–4829.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued June 22, 1984; published June 27, 1984 (49 FR 26239).

Notice of Rescheduled Hearing: Issued July 3, 1984; published July 6, 1984 (49 FR 27769).

Recommended Decision: Issued March 15, 1985; published March 20, 1985 (50 FR 11171).

Extension of Time for Filing Exceptions: Issued April 4, 1985; published April 9, 1985 (50 FR 13976).

Statement of Consideration

A public hearing was held to consider proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Middle Atlantic and other marketing areas. The hearing was held, pursuant to the provisions of the Agricutural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), at Alexandria, Virginia, on July 25–27, 1984, pursuant to notices issued June 22, 1984 (49 FR 26239) and July 3, 1984 (49 FR 27769).

The hearing was held at the request of the National Milk Producers Federation (NMPF), to consider proposals which would provide for a separate class and price for milk used to make butter and nonfat dry milk. The proposed price for such milk would be either the Minnesota-Wisconsin (M-W) price for manufacturing grade millk, or a butter-nonfat dry milk formula price; whichever was lower. Such milk now is classified and priced under the orders on the same basis as milk used to make hard cheeses and certain other manufactured dairy products.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, on March 15, 1985 (50 FR 11171), filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision. Interested persons were afforded an opportunity to file written exceptions thereon by April 19, 1985, which date was extended to May 20, 1985 (50 FR 13976).

The Deputy Administrator recommended that the orders should not be amended to provide a separate classification and price for milk used to produce butter and nonfat dry milk. The denial was based in part on the fact that the record lacked adequate information to demonstrate the need for adopting the proposed amendments in the Federal order markets. Further deficiencies of the record also led to the recommended denial of the proposals because key questions could not be answered. Thus, it was concluded that butter and powder plants should not be provided a lower price under certain specified market conditions.

The proponent, NMPF, filed exceptions to the recommended decision, indicating that the Department failed to give proper consideration and weight to the evidence presented on the need for a separate class and price for milk used in the production of butter and powder. Furthermore, NMPF claimed that because the Department failed to rule in a manner which was both timely and favorable to them, inequitable marketing conditions arose during the months of December through February 1984–85 when the M-W price exceeded a price level for milk that reflected market values for butter and powder.

Although NMPF did not ask for a reversal of the recommended decision, they did ask that the proceeding be terminated. In their request for termination, NMPF stated that the April 1, 1985, changes in the support purchase prices for nonfat dry milk and cheese will undoubtedly impact on the comparative economic positions of cheese plants and butter-powder plants; reducing the ability of cheese plants,

especially those making barrel cheese, to pay for milk compared to butter-powder plants. Due to the change in the Price Support Program, NMPF contends that the competitive situation faced by butter-powder has changed since the time of the hearing.

In addition, NMPF expressed the view that a decision that could set precedent should not be made on the basis of a lack of information. They agree with the recommended decision's finding that further information is needed on such items as manufacturing capacity and cooperative operations.

The recommended decision was supported in the comment submitted by the Washington State Dairymen's Federation, which stated that they remain opposed to a separate classification for milk used in butter and powder production. One other supporting comment was received.

On the basis of both the lack of adequate record evidence and the request for termination by the proponents, the proceeding with respect to the July 1984 hearing should be terminated. The NMPF's withdrawal of support for this proceeding means that at this time there is no apparent interest by any party in the establishment of a separate class and price for butter and nonfat dry milk as proposed. Since the recommended decision was to deny the adoption of all proposed amendments, recognition should be given to the proponent's request to halt the proceeding.

Termination Order

In view of the foregoing, it is hereby determined that the aforesaid proceeding with respect to proposed amendments to the tentative marketing agreements and to the orders should be and is hereby terminated.

The authority citation for 7 CFR Chapter X continues to read as follows:

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

Signed at Washington, D.C. on: June 24, 1985.

Alan T. Tracy,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 85–15687 Filed 6–28–85; 8:45 am]

BILLING CODE 3410–02–M

---

7 CFR Part 51

United States Standards for Grades of Greenhouse Cucumbers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action would amend the voluntary U.S. Standards for Grades of Greenhouse Cucumbers. Industry has requested that the standards be amended to bring them in line with current cultural and marketing practices. The Agricultural Marketing Service has the responsibility, in cooperation with industry, to maintain current grade standards.

DATE: Comments must be received on or before July 31, 1985.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2069, South Building, Washington, D.C. 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Mizelle, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–2188.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA Procedures and Executive Order 12291 and has been designated as "nonmajor." It will not result in an annual effect of $100 million or more. There will be no major increase in cost or prices for consumers, individual industries, Federal, State and local government agencies or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601), because it reflects current marketing practices.

The voluntary United States Standards for Grades of Greenhouse Cucumbers became effective in 1934. Cultural and marketing practices have changed to the extent that the current standards no longer provide industry with an up-to-date means of determining quality and negotiating sales. In October of 1983 representatives of the American Greenhouse Vegetable Growers Association (AGVGA) met with officials of the Fresh Products Branch to discuss amending the standards. AGVGA established a Grades and Standards Committee which, in cooperation with program personnel, developed a "Draft" standard incorporating proposed changes which AGVGA distributed to their members for review and comments. Member comments unanimously endorsed the proposed amendment. AGVGA has formally requested that the standards be amended to bring them in line with current cultural and marketing practices.

Accordingly, this proposed amendment would make the following changes and additions:

—Delete maturity requirements from all grades. The current standards require the cucumbers to be sufficiently mature for slicing purposes but not full-grown or ripe. Hybridization has eliminated the need for this requirement.

—Establish a definition for "Injury" by specific defects which would be added to the other requirements of the U.S. Fancy grade.

—"Clean," practically free from dirt or other foreign material, would become the minimum cleanness requirement for all grades. Current U.S. Fancy and U.S. No. 1 grades must be free from "Damage" caused by dirt and U.S. No. 2 free from "Serious Damage."

—U.S. Fancy grade cucumbers would be required to be free from cuts and the U.S. No. 1 and U.S. No. 2 grades be free from unhealed cuts. The current standards require cucumbers to be "free from unhealed cuts" in the U.S. Fancy and U.S. No. 1 grades and the U.S. No. 2 grade free from serious damage by cuts.

—The minimum length, unless otherwise specified, would be not less than 11 inches for all grades. The minimum length in the current standards is 5½ inches for the U.S. Fancy grade and, unless otherwise specified, 5½ inches for the U.S. No. 1 grade.

—The "Standard Pack" section would be redefined to reflect current packing practices.

—Add definitions for "Permanent defects" and "Condition defects."

—The grade standards format would be updated.

List of Subjects in 7 CFR Part 51

Agricultural commodities.

PART 51—[AMENDED]

Accordingly, it is proposed that 7 CFR Part 51 be amended as follows:

1. The authority citation for 7 CFR Part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended, 7 U.S.C. 1622–1624.

2. Subpart—United States Standards for Grades of Greenhouse Cucumbers and the table of contents thereof are revised to read as follows:

Subpart—United States Standards for Grades of Greenhouse Cucumbers

Subpart—United States Standards for Grades of Greenhouse Cucumbers

§51.3855 General.

Compliance with the provisions of these standards shall not excuse failure to comply with provisions of applicable Federal or State laws.

§ 51.3856 Grades.

(a) "U.S. Fancy" consists of cucumbers which meet the following requirements:

(1) Basic requirements:

(i) Clean;

(ii) Well formed;

(iii) Well colored;

(iv) Fresh; and,

(v) Firm.

(2) Free from: Decay, cuts or mechanical injury.

(3) Free from injury by:

(i) Scars;

(ii) Freezing;

(iii) Mosaic or other diseases; and,

(iv) Insects or other means.

(4) Size: Unless otherwise specified, the minimum length shall be not less than 11 inches.

(5) Tolerances: (See § 51.3857)

(b) "U.S. No. 1" consists of cucumbers which meet the following requirements:

(1) Basic requirements:

(i) Clean;

(ii) Fairly well formed;

(iii) Fairly well colored;

(iv) Fresh; and,

(v) Firm.

(2) Free from: Decay and unhealed cuts.

(3) Free from damage by:

(i) Scars;

(ii) Freezing;

(iii) Mosaic or other diseases;

(iv) Insects; and,

(v) Mechanical or other means.

(4) Size: Unless otherwise specified, the minimum length shall be not less than 11 inches.

(5) Tolerances: (See § 51.3857)

(c) "U.S. No. 2" consists of cucumbers which meet the following requirements:

(1) Basic requirements:

(i) Clean;

(ii) Not badly deformed;

(iii) Fairly well colored;

(iv) Fresh; and,

(v) Firm.

(2) Free from: Decay and unhealed cuts.

(3) Free from serious damage by:

(i) Scars;

(ii) Freezing;

(iii) Mosaic or other diseases;

(iv) Insects; and,

(v) Mechanical or other means.

(4) Size: Unless otherwise specified, the minimum length shall be not less than 11 inches.

(5) Tolerances: (See § 51.3857)

§ 51.3857 Tolerances.

In order to allow for variations incident to proper grading and handling in the foregoing grades the following tolerances, by count, shall be permitted in any lot:

(a) *For defects.* Ten percent for cucumbers in any lot which fail to meet the requirements of the specified grade: Provided, that included in this amount not more than 1 percent for decay.

(b) *For off-size.* Five percent for cucumbers in any lot which are below a specified minimum length and 5 percent for cucumbers longer than a specified maximum length.

§ 51.3858 Application of tolerances.

When packed in containers the contents shall be the sample, when in bulk or bulk bins the sample shall consist of at least 25 cucumbers. Individual samples are subject to the following limitations:

(a) For a tolerance of 10 percent or more, individual samples may contain not more than one and one-half times the tolerance specified except that when the lot consists of containers with 18 cucumbers or less, individual containers may contain not more than double the tolerance specified: And provided further, that the average is within the specified lot tolerance.

(b) For a tolerance of less than 10 percent, individual samples may contain not more than double the tolerance specified: Provided, that at least one defective and one off-size cucumber may be permitted in any sample: And provided further, that the average is within the specified lot tolerance.

§ 51.3859 Standard pack.

(a) Each cucumber shall be completely enclosed in a shrink wrapper.

(b) Cucumbers shall be fairly uniform in size and packed fairly tight in layers in containers according to approved and recognized methods.

(1) Fairly uniform in size means that not more than 10 percent, by count, of the cucumbers in any containers shall vary more than 2 inches in length.

(2) In order to allow for variations incident to proper packing, not more than 10 percent, by count, of the containers in any lot may fail to meet these requirements.

§ 51.3860 Definitions.

(a) "Clean" means practically free from dirt or other foreign material.

(b) "Fresh" means bright, not wilted, yellow or exhibiting other symptoms of aging.

(c) "Well formed" means that the shape shall be fairly straight and not more than slightly tapered at one or both ends.

(d) "Fairly well formed" means not materially curved, constricted, or pointed at one or both ends, or otherwise materially misshapen.

(e) "Badly deformed" means badly curved, beaked, bottlenecked, constricted, or otherwise so badly misshapen that the appearance is seriously affected.

(f) "Well colored" means a characteristic green color over practically the entire surface.

(g) "Fairly well colored" means a characteristic green color over two-thirds or more of the surface except for areas affected by foliage shading.

(h) "Injury" means any defect described in § 51.3863 or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which slightly detracts from the appearance, or the edible or marketing quality.

(i) "Damage" means any defect described in § 51.3863 or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance, or the edible or marketing quality.

(j) "Serious damage" means any defect described in § 51.3863 or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance, or the edible or marketing quality.

§ 51.3861 Permanent defects.

"Permanent defects" means defects which are not subject to change during

shipping or storage; including, but not limited to factors of shape, scars, or growth cracks and cuts which are so located as to indicate that they occurred prior to packing.

§ 51.3862 Condition defects.

"Condition defects" means defects which may develop or change during shipment or storage; including, but not limited to decay, soft or yellowing and bruises which are so located as to indicate that they occurred after packing.

§ 51.3863 Classification of Defects.

Defects	Injury [1]	Damage [1]	Serious Damage [1]
Bruises	When any indentation is more than 1/16 inch (1.6mm) in depth or exceeds an area of a circle ½ inch (12.7mm) in diameter.	When any indentation is more than ⅛ inch (3.2mm) in depth or exceeds an area of a circle ¾ inch (19.1mm) in diameter.	When any indentation is more than ¼ inch (6.4mm) in depth or exceeds an area of a circle 1 inch (25.4mm) in diameter.
Insects	When feeding injury is evident or any insect is present.	When feeding injury materially detracts from appearance or any insect is present.	When feeding injury seriously detracts from appearance or any insect is present.
Scars	When not smooth, or not light colored, and aggregating more than the area of a circle ⅜ inch (9.5mm) in diameter; or smooth and light colored and aggregating more than the area of a circle ¾ inch (19.1mm) in diameter.	When not smooth, or not light colored, and aggregating more than the area of a circle ½ inch (12.7mm) in diameter; or smooth and light colored and aggregating more than the area of a circle 1½ inch (38.1mm) in diameter.	When dark or slightly rough or barklike scars aggregate more than a circle ¾ inch (19.1mm) in diameter; or smooth and light colored and aggregating more than the area of a circle 2 inches (50.8mm) in diameter.

[1] Defect classifications are based on a cucumber 11 inches in length. Correspondingly larger areas are permitted on longer cucumbers and smaller areas on shorter cucumbers.

Done in Washington, D.C. on: June 26, 1985.

William T. Manley,
Deputy Administrator, Marketing Programs.

[FR Doc. 85-15688 Filed 6-28-85; 8:45 am]
BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Modification of General Design Criterion 4 Requirements for Protection Against Dynamic Effects of Postulated Pipe Ruptures

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its regulations that require the protection of structures, systems and components important to safety against dynamic effects of postulated large pipe ruptures. Specifically, the proposed amendments would modify General Design Criterion 4 (GDC 4) to allow demonstration of piping integrity by analyses to serve as a basis for excluding consideration of dynamic effects associated with certain pipe ruptures. These analyses constitute what commonly is referred to as the "leak-before-break" concept. The modification will permit the selective removal of pipe whip restraints and jet impingement shields from operating plants, plants under construction and future plant designs, but will not impact other design requirements such as emergency core cooling system (ECCS) performance and containment design.

DATE: Comment period expires September 2, 1985. Comments received after this date will be considered if it is practical to do so, but assurance of consideration can only be given to comments received on or before this date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

Deliver comments to: Room 1121, 1717 H Street, NW., Washington, D.C. between 8:15 a.m. and 5:00 p.m. weekdays.

Copies of the regulatory analysis, documents reference in this notice and comments received may be examined at: the NRC Public Document Room at 1717 H Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: John A. O'Brien, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 443-7854.

SUPPLEMENTARY INFORMATION:

Table of Contents

Background

Recent investigations using both deterministic and probabilistic analyses have demonstrated that for the specific case of the main primary loops of pressurized water reactors, double-ended guillotine or longitudinal ruptures are extremely unlikely. Attempts are currently underway to learn if these findings are applicable to other high energy piping systems, including piping in boiling water reactors.

These deterministic and probabilistic analyses depend on advanced fracture mechanics techniques, and include investigations of potential indirect failure mechanisms which could lead to pipe rupture. The objective of this approach (hereafter referred to as leak-before-break) is to demonstrate by analysis that the detection of small flaws, either by inservice inspection or by leakage monitoring systems, is assured long before the flows can grow to critical or unstable sizes and lead to large break areas such as the double-ended guillotine pipe rupture.

General Design Criterion 4 (GDC 4), Appendix A, 10 CFR Part 50, states: "Criterion 4—Environmental and missile design bases. Structures, systems, and components important to safety shall be designed to accommodate the effects of and to be compatible with the environmental conditions associated with normal operation, maintenance, testing, and postulated accidents, *including loss-of-coolant accidents.* These structures, systems, and components shall be appropriately protected against *dynamic effects, including the effects of missiles, pipe whipping, and discharging fluids, that may result from equipment failures and from events and conditions outside the nuclear power unit."* (emphasis added)

The "Definitions and Explanations" section of Appendix A defines a "loss of coolant accident" as follows: "Loss of coolant accidents. Loss of coolant accidents mean those postulated accidents that result from the loss of reactor coolant at a rate in excess of the capability of the reactor coolant makeup system from breaks in the reactor coolant pressure boundary, *up to and including a break equivalent in size to the double-ended rupture of the largest pipe of the reactor coolant system.*"(emphasis added)

GDC 4 and the definition of a "loss of coolant accident" taken together have been conservatively appled to require all nuclear power reactor to employ massive pipe whip restraints and jet impingement shields to mitigate the dynamic effects of a postulated guillotine rupture in the largest pipes of the reactor coolant system. It can now be shown that these protective devices actually degrade overall safety because they reduce the effectiveness of inservice inspection, and because of difficulties and potential errors in installation or reinstallation, that could actually increase the likelihood of pipe rupture. The past serveral years have witnessed the development and experimental validation of analysis methods described above to demonstrate piping integrity in specific situations. This concept is fundamental in deciding whether or not guillotine pipe ruptures should be considered in formulating regulatory requirements.

The need and urgency for addressing the issue stem from the widespread acceptance of the analysis results and the research findings pertaining to pipe rupture coupled with increasing confidence in its applicability. Prior to the fast few years, there was no sound technical basis for excluding certain pipe ruptures from the design basis. Now it is clear that it is possible to defend the exclusion of pressurized water reactor (PWR) primary loop double-ended guillotine pipe ruptures, and that the scope may be extened to other piping, including piping in boiling water reactors. Rulemaking action will promote investigations to determine which other situations will permit the removal of pipe whip restraints and jet impingement shields. Acceptance criteria for generally applying these results pertaining to leak-before-break have been published by the NRC staff in "Report of the U.S. Nuclear Regulatory Commission Piping Review Committee", NUREG–1061, Volume 3, and are being proposed by the American Nuclear Society in ANS–58.2 entitled "Design Basis for Protection of Light Water Nuclear Power Plants Against Effects of Postulated Pipe Rupture."

In summary, the requirements of GDC 4 as applied in the context of the definition of LOCA have led to a situation where protective devices have been added to nuclear power plants to forestall events which are now regarded as extremely unlikely. These protective devices reduce safety and increase worker radiation exposures. A need exists to allow exclusion from compliance with GDC 4 requirements of certain pipe ruptures when supported by acceptable analyses:

Regulatory History

In 1975, the NRC staff was informed of newly defined asymmetric blowdown loads that result by postulating rapid-opening double-ended ruptures of PWR primary piping at the most adverse location in the piping system, that is, inside the reactor cavity. This problem was later designated as Unresolved Safety Issue A–2 (USI A–2). In June of 1976, the staff requested that the owners of operating PWRs evaluate their primary systems for these asymmetric loads. In response, owner groups submitted probabilistic studies and proposals for augmented inservice inspection. In a letter to the owners of all operating PWRs in January 1978, the staff concluded that the existing data base was not sufficient to support the findings of the probability studies and that inservice inspection alone was not an acceptable resolution.

As a consequence, plant analyses for asymmetric loads were submitted for review during 1980. It became clear after reviewing these analyses that some plants might require extensive modifications. In parallel with the preparation of the plant analyses, Westinghouse undertook a deterministic fracture mechanics evaluation to demonstrate that an assumed double-ended rupture is not a credible design basis event for PWR primary piping. These efforts eventually led to the submission of two reports: "Mechanistic Fracture Evaluation of Reactor Coolant Pipe Containing a Postulated Circumferential Throughwall Crack," WCAP 9558, Rev. 2., May 1981, and "Tensile and Toughness Properties of Primary Piping Weld Metal For Use In Mechanistic Fracture Evaluation," WCAP 9787, May 1981.

Also during 1981, the nine volumes of NUREG/CR–2189 entitled "Probability of Pipe Fracture in the Primary Coolant Loop of a PWR Plant" were published by Lawrence Livermore National Laboratory under contract to the Office of Nuclear Regulatory Research. Using different methodologies, both the Westinghouse and Lawrence Livermore National Laboratory studies supported the conclusion that double-ended pipe ruptures in PWR primary loop piping are extremely low-probability events. The staff reviewed the Westinghouse and Lawrence Livermore National Laboratory documents and accepted the findings presented therein. In the process of resolving USI A–2, both the Westinghouse and Livermore studies were presented to the Advisory Committee on Reactor Safeguards (ACRS) to obtain its concurrence on the staff's evaluation of the results. In a June 14, 1983 letter to the NRC Executive Director for Operations, the ACRS stated:

> We believe it is now appropriate and fitting to apply [fracture mechanics] to the analysis of Task Action Plan A–2 (USI A–2) dealing with the treatment of Asymmetric Blowdown Loads on Reactor Primary Coolant Systems. Fracture mechanics analysis clearly indicates that in PWR primary piping a substantial range of stable crack sizes exists between those which give detectable leaks, and the much larger size that results in a sudden failure. That is, there is no known mechanism in PWR primary piping material for developing a large break without going through an extended period during which the crack would leak copiously.
>
> However, any relaxation of requirements to cope with double-ended guillotine break should be preceded by rigorous reexamination of the integrity of heavy component supports under all design conditions.

NRC's "Committee to Review Generic Requirements" (CRGR) has the responsibility to review and recommend to the Executive Director for Operations approval or disapproval of requirements to be imposed by the staff on power reactors. Because the application of leak-before-break technology in lieu of postulated large pipe ruptures is at variance with current NRC regulations, the proposed staff actions regarding USI A–2 were presented to the CRGR.

The CRGR views on the leak-before-break concept were reported in the minutes of CRGR meeting number 47, dated October 14, 1983, as indicated below:

> The CRGR observed that the staff findings concerning leak before break have broad implications that go beyond resolution of the A–2 issue affecting 13 (sic) PWR licensees. These findings and the technical justifications in support of the findings could extend to other break locations and to assumptions previously made for piping loops and components of the reactor coolant systems, for piping connected to the coolant system and perhaps to the piping of other systems in the plant. This broader applicability of the leak-before-break criteria could have potentially large positive benefits

in terms of the degree to which unneeded and potentially counter-productive hardware (e.g., piping restraints, jet imingment barriers etc.) continues to be required in plant construction. In this regard, the CRGR was advised by staff that the leak-before-break criteria could be more broadly extended to apply to the large size piping and components in the PWR reactor coolant system.

Generic letter 84–04, dated February 1, 1984, entitled "Safety Evaluation of Westinghouse Topical Reports Dealing With Elimination of Postulated Pipe Breaks In PWR Primary Main Loops" allowed licensees to request exemptions from the requirements of GDC 4 with respect to asymmetric blowdown loads resulting from discrete breaks in the primary main coolant loop (USI A–2). This use of exemptions, however, is limited and indicates a need to address the issue in rulemaking. This rulemaking is being initiated to permit this new approach to piping behavior and to obtain public comment on the proposed course of action.

Scope of Rulemaking

The direct dynamic effects of pipe rupture are missile generation, pipe whipping, pipe break reaction forces and discharging fluids. The influence of discharging fluids includes jet impingement forces, decompression waves within the intact portion of the piping system and pressurization in cavities, subcompartments and compartments.

There are two reasons for the decision to treat only dynamic effects in this rulemaking as opposed to other related requirements which could be interpreted to involve postulated pipe ruptures. First, loss-of-coolant accidents that place requirements on safety systems and structures include breaches in the reactor coolant pressure boundary other than the double-ended pipe rupture. Second, studies completed to date indicate that the only adverse safety implications associated with postulating pipe rupture are those resulting from consideration of the dynamic effects associated with pipe rupture. The placement of pipe whip restraints and jet impingement shields degrades plant safety, reduces the accessibility for and effectiveness of inservice inspection, increases inservice inspection radiation dosages and adversely affects construction and maintenance economics. Thus, significant safety benefits accrue when more realistic assumptions are made concerning the dynamic effects associated with postulated pipe ruptures. Current design margins in the primary loop heavy component supports are to be maintained. Existing heavy component supports designed for the dynamic effects of pipe rupture and seismic events are not affected. New plants will be designed with supports which have margins comparable and equivalent to those margins now present.

Proposed Rule

The language of the proposed amendment to the rule specified "conditions consistent with the design basis for piping." The design basis for the piping includes the Code of Federal Regulations, that is, applicable general design criteria, applicable sections of NUREG–0800 (Standard Review Plan), applicable Regulatory Guides and applicable industry standards (Section III of the ASME Boiler and Pressure Vessel Code). The proposed rules consists of added text at the end of GDC 4 which permits the use of analyses to exclude dynamic effects of certain pipe ruptures.

The amendment would permit the demonstration of piping integrity by analyses such as a fracture mechanism evaluation including the effects of fatigue and, if relevant, stress corrosion, in additon to an investigation of potential indirect failure mechanisms which could lead to pipe rupture.

Modification of the licensed configuration of operating plants by the removal of pipe whip restraints and jet impingement shields involves an unreviewed safety question under 10 CFR 50.59. Licensees of operating plants desiring to make modifications beyond the scope of this amendment will be required to submit a license amendment for NRC approval in accordance with revised General Design Criterion 4. The license amendment shall also include provisions for an augmented leakage detection system or other license conditons developed during the rulemaking action.

Similarly, applicants for an operating license seeking design modifications beyond those approved in Generic Letter 84–04 will be required to submit an amendment to the application for NRC approval in accordance with 10 CFR 50.35(c). The amendment to the application shall also include provisions for any license conditions developed during the rulemaking action.

The supporting safety analysis must demonstrate from the results of a fracture mechanics analysis that a substantial range of stable pipe crack sizes exist for an extended period which provide detectable leaks, and that he fluid systems piping will not rupture under these conditions consistent with the design basis for the piping.

It is estimated that this rulemaking action will reduce total occupational radiation exposure by amounts measured in tens of thousands of man-rem and that total cost savings will exeed $100 million.

Future Rulemaking

The amendment proposed below is limited to the primary coolant loop piping in pressurized water reactors. It is therefore equivalent in scope to the staff actions taken in Generic Letter 84–04 regarding USI A–2 and to the exemptions to GDC 4 which were authorized in that connection. The Commission will, in the near future, propose a broader amendment to GDC 4 which would allow application of the new technical approach outlined above to all reactor piping in all reactor types providing adequate technical justification can be supplied for each new application.

Availability of Documents

1. Copies of NUREG/CR–106, Volume 3, may be purchased by calling (202) 275–2060 or (202) 275–2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, D.C., 20013–7082, or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

2. ANS–58.2, "Design Basis for Protection of Light Water Nuclear Power Plants Against Effects of Postulated Pipe Rupture," is available from The American Nuclear Society, 555 North Kensington Avenue, La Grange Park, Illinois 60525.

3. A nonproprietary version of the Westinghouse report, "Mechanistic Fracture Evaluation of Reactor Coolant Piping Containing a Postulated Circumferential Throughwall Crack," WCAP 9558, Rev. 2, May 1981, is available n the NRC Public Document Room, 1717 H Street NW, Washington, D.C.

4. A nonproprietary version of the Westinghouse report, "Tensile nd Toughness Properties of Primary Piping Weld Metal For Use In Mechanistic Fracture Evaluation," WCAP 9787, May 1981, is available in the NRC Public Document Room.

5. Copies of NUREG/CR–21189, Volumes 1–9, may be purchased by calling (202) 275–2060 or (202) 275–2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, D.C. 20013–7082, or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

6. ACRS Letter to William J. Dircks, NRC Executive Director of Operations, dated June 14, 1983, dealing with fracture mechanics, is available in the NRC Public Document Room.

7. Minutes of CRGR Meeting Number 47, dated October 14, 1983, are available in the NRC Public Document Room.

8. Generic Letter 84-04, dated February 1, 1984, is available in the NRC Public Document Room.

Finding of No Significant Environmental Impact

The Commission has determined under the National Environment Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. Although certain plant hardware may not be reinstalled after removal for inspections, this will not alter the environmental impact of the licensed activities. It is anticipated that removed hardware would be stored at the plant site to be available for any potential future needs. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 1717 H Street, NW, Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available from John A. O'Brien, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 443-7854.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150-0011.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW, Washington, DC. Single copies of the analysis may be obtained from John A. O'Brien, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 443-7854.

Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definitions of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sections 50.57(d), 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2071, 2073 (42 U.S.C. 2133, 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100—50.102 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10(a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10(b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In Appendix A to Part 50, General Design Criterion 4 is revised to read as follows:

Appendix A—General Design Criterion for Nuclear Power Plants

* * * * *

Criteria

I. Overall Requirements

* * * * *

Criterion 4—Environmental and missile design bases. Structures, systems, and components important to safety shall be designed to accommodate the effects of and to be compatible with the environmental conditions associated with normal operation, maintenance, testing, and postulated accidents, including loss-of-coolant accidents. These structures, systems, and components shall be appropriately protected against dynamic effects, including the effects of missiles, pipe whipping, and discharging fluids, that may result from equipment failures and from events and conditions outside the nuclear power units. *However, the dynamic effects associated with postulated pipe ruptures of primary coolant loop piping in pressurized water reactors may be excluded from the design basis when analyses demonstrate the probability of rupturing such piping is extremely low under design basis conditions.*

* * * * *

Dated at Washington, D.C., this 25th day of June 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85-15756 Filed 6-28-85; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-54-AD]

Airworthiness Directives; Airbus Industrie Model A300 B2 and B4 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require inspections for cracks in the flange and in certain fastener holes in fuselage frame 47 and modification and repairs, as necessary, on Airbus Industrie Model A300 B2 and B4 series airplanes. There have been reports of cracks in these locations and if these cracks are not detected and repaired,

the potential exists for rapid decompression of the airplane.

DATES: Comments must be received on or before August 16, 1985.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–54–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Aerospace Engineer, Standardization Branch, ANM–113; telephone (206) 431–2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–54–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The French Civil Aviation Authority (DGAC) has issued two Consigne de Navigabilité which mandate compliance with Airbus Industrie (AI) Service Bulletins A300–53–194 and A300–53A193. These service bulletins prescribe inspections, and corrective actions, as necessary of the following in-service difficulties:

A. Cracks have been reported in fastener hole A of fuslage frame 47 on airplanes which had accumulated between 7,000 and 17,000 landings. Inspection of the Model A330 fatigue specimen revealed that a crack had developed in fastener hole B of fuselage frame 47. This crack developed to 35,500 simulated landings. AI Service Bulletin A300–53–194 prescribes eddy current inspection of fastener holes A and B and modification and repairs, as necessary.

B. During routine maintenance, cracks were discovered in the inboard flange of fuselage frame 47 (LH and RH). Some of these cracks had a length of more than 5 inches and were found on airplanes that had accumulated between 10,500 and 12,100 landings. In some instances the origin of the cracks was stress corrosion, but in others the origin was fatigue related. However, the propagation of the cracks was, in all cases, due to fatigue. AI Service Bulletin A300–53A193 prescribes inspection for cracks of frame 47, and repair, as necessary.

This airplane model is manufactured in France and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require the corrective actions mentioned above.

It is estimated that 34 U.S. registered airplanes would be affected by this AD, that it would take approximately 40 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $54,400.

For these reasons the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Airbus Industrie Model A300 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 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 11.85; and 49 CFR 1.47.

2. By adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 B2 and B4 series airplanes, serial numbers as listed in each applicable service bulletin, certificated in any category. To prevent propagation of cracks in fuselage frame 47, accomplish the following within ninety (90) days after the effective date of this AD, or upon reaching the threshold number of landings indicated in each paragraph below, whichever occurs later, unless already accomplished:

A. Prior to the accumulation of 6,000 landings, inspect by eddy current fastener holes A and B of frame 47, LH and RH, in accordance with the accomplishment instructions of Airbus Industrie (AI) Service Bulletin A300–53–194, Revision 1, dated November 12, 1984:

(1) If no cracks are found in the fastener holes, proceed with a cold expansion and install "bull nose" light interference fasteners in holes A, B, C, and D, LH and RH, in accordance with the service bulletin instructions within the next 1,000 landings.

(2) If a crack is found in the bore of fastener hole A, determine the crack depth and proceed as follows, in accordance with the service bulletin:

(i) If crack depth is less than 1 mm, repair prior to the next 1,000 landings after detection of the crack.

(ii) If crack depth is greater than or equal to 1 mm, perform a more precise eddy current check to determine crack length (equal to the precise depth measurement). Then, if the crack depth is between 1 mm and 3 mm, repair within 1,000 landings after crack detection and if the crack depth is between 3 mm and 6 mm repair within 500 landings after crack detection. If the crack depth is greater than or equal to 6 mm, inspect visually or with a dye penetrant. If the crack can be

detected visually, repair before further flight, but if it cannot be detected visually, repair within the next 50 landings after detection.

(3) If cracks are detected in the bore of fastener hole B, repair in accordance with the service bulletin as follows:

(i) Depth of crack less than or equal to 0.40 mm: repair within the 1,000 landings following crack detection.

(ii) Depth of crack greater than 0.40 mm: repair before further flight.

B. Visually inspect for cracks in fuselage frame 47 in accordance with Airbus Industrie Service Bulletin A300-53A193, dated March 14, 1984.

For B2 series airplanes, this inspection must be accomplished prior to the accumulation of 5,000 landings or within the next 300 landings after the date of this AD, whichever occurs later.

For B4 series airplanes, this inspection must be accomplished prior to the accumulation of 8,000 landings or within the next 300 landings after the effective date of this AD, whichever occurs later.

(1) If no cracks are detected, no further action is required.

(2) If a crack is detected, proceed as follows:

(i) If crack length is 7 mm or less, repeat the above inspection at intervals not to exceed 300 landings;

(ii) If crack length is greater then 7 mm, repair before further flight in accordance with the service bulletin instructions.

(3) Repair of cracks in accordance with the service bulletin instructions constitutes terminating action for the inspection requirements of this paragraph.

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

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

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 17, 1985.

Leroy A. Keith,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-15662 Filed 6-28-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-NM-55-AD]

Airworthiness Directives; McDonnell Douglas Model DC-8-70 Series Aircraft, With an Auxiliary Power Unit (APU) Installed

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) that would require modification of the auxiliary power unit (APU) installed on DC-8-70 series aircraft. This action is prompted by an incident in which the exhaust door shut inadvertently, causing a blowout of the exhaust duct. As a result, exhaust gas discharged into the cargo compartment and caused wiring and structural damage. This action is necessary to minimize the potential of APU exhaust duct failure and resultant wiring and structural damage.

DATE: Comments must be received on or before August 12, 1985.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-55-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Roy A. McKinnon, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2835.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-55-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Of twelve (12) APU's in service on the DC-8-70 series aircraft, one has experienced a failure of the exhaust door and discharge of the gas into the cargo compartment, resulting in wiring and structural damage. The sequence of events is believed to have been as follows: The exhaust door drift toward the closed position was caused by stray voltage, and as the door reached the half-closed position, it was fully closed by the exhaust blast. The sudden over-pressurization of the APU module caused the exhaust duct to separate and allowed the gas to enter the cargo compartment. The gas flow impinged on an area in which wiring was located and damaged both the wiring and the structure. As the door was closed, the drive shaft was twisted about 45 degrees.

McDonnell Douglas Corporation has issued DC-8-70 Service Bulletin (S/B) 49-2 dated May 9, 1985, which defines removal modification, inspection, and reinstallation procedures necessary to avoid the potential problem of stray voltage inadvertently driving the door towards the closed position during APU operation.

Since this condition is likely to exist or develop on other airplanes of the same type design, an airworthiness directive (AD) is being proposed which would require compliance with McDonnell Douglas DC-8-70 Service Bulletin 49-2, dated May 9, 1985, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

It is estimated that 8 airplanes of U.S. registry would be affected by this AD, that it would take approximately 18.5

manhours per APU to accomplish the required actions, and that the average labor cost would be $40 per manhour. There is no charge for the kits and the APU modifications. Based on these figures, the total cost impact of this AD to U.S. operators would be $5,920.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291, and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DC-8-70 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 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 11.85; and 49 CFR 1.47.

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-8-70 series airplanes, equipped with Auxiliary Power Units. Compliance is required as indicated.

To preclude potential APU exhaust door failures and resulting wiring and structural damage, accomplish the following, unless already accomplished:

A. Within six (6) months after the effective date of this AD, complete the modifications defined in McDonnell Douglas DC-8-70 Service Bulletin 49-2, dated May 9, 1985, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region. The modifications involve removal of the APU; modification of the APU module and control boxes; revision of the APU control system sensing and firex control wiring; replacement of three generator phase circuit breakers; and the APU control and fuel supply circuit breakers; inspection of the wire routing; and reinstallation of the APU.

B. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washingon, on June 11, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-15663 Filed 6-28-85; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 85-NM-56-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9 and C-9 (Military) Series Airplanes, Fuselage Numbers 1 Through 1165

AGENCY: Federal Aviation Adminstration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) that would require the inspection of all generator power feeder cables on all McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes and modification of the power feeder cable installation to preclude premature chafing on all McDonnell Douglas Model DC-9-81 and DC-9-82 series airplanes. This action is prompted by a report of an APU generator feeder cable electrically shorting to the airplane structure and causing smoke to enter the cabin area. This proposed AD is required to aid in the elimination of a potential ignition source for fire.

DATE: Comments must be received on or before August 12, 1985.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-56-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Alan T. Shinseki, Aerospace Engineer, Systems & Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2831.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-56-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

One DC-9-82 operator reported smoke being emitted from the floor area during ground maintenance caused by an APU generator feeder cable shorting to the seat track. Evidence of insulation chafing due to similarly misrouted

generator power feeder cables was found by inspection of other in-service DC–9–81 and DC9–82 airplanes. Four other cases of chafed generator power feeder cables resulting in shorting to the airplane structure have been reported by U.S. operators.

The manufacturer conducted an inspection of its DC–9–81/82 production line which revealed numerous generator power feeder cable routing discrepancies that may contribute to premature cable insulation wear. An inspection of selected in-service airplanes of prior McDonnell Douglas DC–9 models was also conducted. It was concluded that while some maintenance related discrepancies were found, no abnormal wear conditions existed.

The manufacturer has issued McDonnell Douglas DC–9 Service Bulletin 24–78, which provides the prescribed maintenance procedures for all DC–9 and C–9 model airplanes and the modification instructions to correct the generator power feeder cable installation on McDonnell Douglas Model DC–9–81/–82 series airplanes.

This AD proposes a one-time inspection of the generator power feeder cables on all McDonnell Douglas Model DC–9 and C–9 (Military) series airplanes and modification of the generator power feeder cable installation on McDonnell Douglas DC–9–81/–82 model airplanes.

It is estimated that 669 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 40 to 92 manhours, per airplane to accomplish the required actions, and the average labor costs would be $40 per manhour. The actual costs of modification parts for McDonnell Douglas Model DC–9–81 and DC–9–82 series airplanes are estimated to be $250 per airplane. Based on these figures, the total cost impact of this AD on the U.S. fleet is estimated to be $1,738,970.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291, and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any McDonnel Douglas Model DC–9 and C–9 (Military) series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action in contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 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 11.85; and 49 CFR 1.47

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to all McDonnell Douglas Model DC–9 and C–9 (Military) series airplanes, fuselage numbers 1 through 1165, certificated in all categories. Compliance required as indicated, unless previously accomplished.

To eliminate a potential fire ignition source from the generator power feeder cable installation, accomplish the following:

A. Within 12 months after the effective date of this airworthiness directive (AD), for all McDonnell Douglas Model DC–9 and C–9 (Military) series airplanes, inspect and repair, as necessary, power feeder cable installation in accordance with the Accomplishment Instructions of McDonnell Douglas DC–9 Service Bulletin 24–78, dated April 9, 1985, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Within 12 months after the effective date of this airworthiness directive (AD), modify the power feeder cable installation on all McDonell Douglas Model DC–9–81 and DC–9–82 series airplanes in accordance with the Accomplishment Instructions of McDonnell Douglas DC–9 Service Bulletin 24–78, dated April 9, 1985, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Alternates means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operative airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on June 11, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85–15661 Filed 6–28–85; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 85–ASO–8]

Proposed Alteration of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend and establish several Federal Airways in south Georgia and north Florida to enhance the flow of air traffic in this area.

DATE: Comments must be received on or before August 15, 1985.

ADDRESSES: Send comments on the proposed in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 85–ASO–8, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Robert G. Burns, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis

supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-ASO-8." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposed contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend VOR Federal Airways V-5, V-51, V-154, V-295, V-321, V-362, V-537 and V-579 and establish new V-578. These airway amendments and establishment will enhance the flow of air traffic in south Georgia and north Florida by eliminating bends in airways and establishing a new direct airway. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

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

List of Subjects in 14 CFR Part 71

VOR Federal airways, Aviation safety.

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.123 is amended as follows:

V-5—[Amended]

By removing the words "From Dublin, GA, via Athens, GA" and substituting the words "From Wiregrass, AL; Albany, GA; Vienna, GA; Dublin, GA; Athens, GA"

V-51—[Amended]

By removing the words "INT Alma 342° and Dublin, GA, 167° radials."

V-154—[Amended]

By removing the words "INT of Dublin 122° and Savannah, GA, 279° radials; to Savannah." and substituting the words "to Savannah, GA."

V-295—[Amended]

By removing the words "to Tallahassee, FL" and substituting the words "Tallahassee, FL; to Eufaula, AL"

V-321—[Amended]

By removing the words "From Albany, GA, via" and substituting the words "From Marianna, FL; via Albany, GA;"

V-362—[Amended]

By removing the words "From Alma, GA, via INT Alma 311° and Vienna, GA, 123° radials; Vienna" and by substituting the words "From Brunswick, GA; via Alma, GA; Vienna, GA"

V-537—[Amended]

By removing the words "Greenville, FL" and substituting the words "Greenville, FL; Moultrie, GA; to Macon, GA"

V-579—[Amended]

By removing the words "to Cross City, FL" and substituting the words "Cross City, FL; Valdosta, GA; Tift Myers, GA; to Vienna, GA"

V-578—[Amended]

From Albany, GA; Tift Myers, GA; to Alma, GA.

Issued in Washington, D.C., on June 21, 1985.

John Watterson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-15660 Filed 6-28-85; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Parts 71 and 75

[Airspace Docket No. 85-ASO-6]

Proposed Alteration of VOR Federal Airways and Jet Routes; Fort Myers, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend various Federal Airways and Jet Routes in southern Florida. The Fort Myers, FL, Very High Frequency Omni-Directional Radio Range Tactical Air Navigational Aid (VORTAC) is being relocated and renamed the Lee County, FL, VORTAC.

DATE: Comments must be received on or before August 15, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 85-ASO-6, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Robert G. Burns, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation

Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85–ASO–6." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Afairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposals

The FAA is considering amendments to § 71.123 § 75.100 of Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to amend the alignment and descriptions of various VOR Federal Airways and Jet Routes in the vicinity of Fort Myers, FL, VORTAC. Due to commercial encroachment and possible loss of land lease, the Fort Myers, FL, VORTAC is being relocated to an on-airport site (lat. 26°31'49" N., long. 81°46'37" W.) and is being renamed the Lee County, FL, VORTAC. Sections 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

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

List of Subjects in 14 CFR Parts 71 and 75

VOR Federal airways and jet routes. Aviation safety.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. § 71.123. is amended as follows:

V–7—[Amended]

By removing the words "via Fort Myers, FL;" and substituting the words "via Lee County, FL;"

V–35—[Amended]

By revoving the words "and Fort Myers, Fl, 137° radials; Fort Myers;" and substituting the words "and Lee County, FL, 137°T(136°M) radials; Lee County;

V–157—[Amended]

By removing the words "The airspace at and above 7,000 feet MSL which lies within the Lake Placid MOA is excluded during the time the Lake Placid MOA is activated."

V–225—[Amended]

By removing the words "Fort Myers, FL;" and substituting the words "Lee County, FL;"

V–441—[Amended]

By removing the words "Lakeland, FL, 080° radials" and substituting the words "Lakeland, FL, 083°T(082°M) radials"

V–521—[Amended]

By removing the words "Fort Myers, FL, 101° radials; Fort Myers; INT Fort Myers 022°" and substituting the words "Lee County, FL, 098°T(097°M) radials; Lee County; INT Lee County 013°T(012°M)"

V–539—[Amended]

By removing the words "Fort Myers, FL, 163°T(162°M) radials; to Fort Myers" and substituting the words "Lee County, FL, 166°T(165°M) radials; to Lee County"

V–579—[Amended]

By removing the words "From Ft. Myers, FL, via INT Ft. Myers 311°" and substituting the words "From Lee County, FL, via INT Lee County 312°T(311°M)"

PART 75—[AMENDED]

3. The authority citation for Part 75 is revised to read as follows:

Authority: 49 U.S.C. 1348(a) 1354(a), 1510; Executive order 10854; 49 U.S.C. 106(g) Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

4. Section 75.100 is amended as follows:

J–41—[Amended]

By removing the words "From Key West, FL, via INT of Key West 358° and St. Petersburg, FL 151° radials; St. Petersburg" substituting the words "From Key West, Fl, via Lee County, FL, St. Petersburg, FL"

J–75—[Amended]

By removing the words "Fort Myers, Fl; INT Fort Myers 345°" and substituting the words "Lee County, FL; INT Lee County 343°T(342°M)"

Issued in Washington, D.C., on June 21, 1985.

John Watterson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85–15659 Filed 6–28–85; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201, 211, 514, and 559

[Docket No. 83N-0076]

Approval of Bulk New Animal Drug Substances for Use by Licensed Veterinarians

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the animal drug regulations to establish criteria and procedures for approval of new animal drug applications (NADA's) for bulk new animal drug substances for use by or on the prescription of licensed veterinarians. Veterinarians will be able to obtain approved bulk new animal drug substances for compounding drugs for use in their private professional practices, and pharmacists will be able to compound such substances on the prescription of a veterinarian.

DATE: Comments by September 30, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Frank G. Pugliese, Center for Veterinary Medicine (HFV-101), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4313.

SUPPLEMENTARY INFORMATION: .

Introduction

The Federal Food, Drug, and Cosmetic Act (the act) requires that new animal drugs (i.e., drugs that are intended for use in animals and that are not generally recognized by qualified experts as safe and effective for their intended use) be approved by FDA prior to distribution. FDA regulations preclude the distribution of bulk new animal drug substances intended for veterinary purposes, except for use in the preparation of approved drug products (finished dosage form drugs) by the sponsor of the NADA for the drug product. An "animal drug substance" is an active ingredient that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease or to affect the structure or any function of an animal's body. Under this proposed rule "new animal drug substance" is an animal drug substance that, when used in the preparation of a drug product intended for animal use, causes the drug product to be a new animal drug. Under this proposed rule a "bulk new animal drug substance" is defined as a new animal drug substance intended for use by a veterinarian or pharmacist in compounding a finished dosage form new animal drug.

Some veterinarians and drug distributors have in the past asked FDA to permit distribution of bulk new animal drug substances to veterinarians for compounding and use in the veterinarians' practices. Neither the drug substance nor the finished dosage form would be subject of an approval. The requests have been made because some veterinarians prefer not to purchase approved drugs in finished dosage form, which can be more expensive. FDA has consistently refused to sanction such a practice, based on its view that the act does not authorize the practice, and has taken regulatory action to prevent distribution of unapproved bulk new animal drug substances to veterinarians. As a result, some view FDA as interfering with the practice of veterinary medicine. Also, some argue that the substances are not new animal drugs and, therefore, are not required to have FDA approval.

On September 11, 1981, the Presidential Task Force on Regulatory Relief requested that FDA reevaluate its bulk new animal drug substance policy and the restrictions it places on use of bulk pharmaceuticals by veterinarians. The Task Force asked the agency to determine whether there is a continuing need for the current statutory requirements and, if not, to recommend remedial legislative action. In response to this request and to continuing requests from bulk new animal drug substance suppliers and veterinarians, FDA's Center for Veterinary Medicine (CVM) formed a Bulk Drug Task Force, comprised of agency staff members representing a variety of disciplines. The Director of CVM asked the Task Force to review CVM's policy, explore alternatives, and recommend a course of action. The Task Force submitted its report on February 4, 1982. Availability of the CVM Task Force report was announced in the **Federal Register** of July 29, 1983 (48 FR 34512).

The CVM Task Force Report

The CVM Task Force concluded that the language as well as the purpose of the act supported the existing FDA policy. To accomplish its goal of protecting the public health, Congress provided for premarketing approval of drugs. The act requires that all new animal drugs undergo premarketing approval to assure that they are safe, effective, properly labeled, and manufactured under high standards of quality before commercial distribution. The act does not provide an exemption from the premarketing approval requirements for bulk new animal drug substances that are to be used or dispensed by veterinarians.

The Task Force strongly opposed any amendment to the act that would permit the unrestricted sale of such substances to veterinarians. The Task Force was concerned that the distribution of bulk new animal drug substances for use in unapproved finished dosage form products could compromise the safety and wholesomeness of food products from treated animals and thus jeopardize the health of the consumer. Sanctioning such distribution could also undermine the new animal drug approval system, because sponsors of approved drugs would be at a competitive disadvantage. This would decrease incentive to conduct research (e.g., target animal safety, effectiveness, human food safety) and develop new products, thereby discouraging sponsors from seeking approval for their products.

Permitting the marketing of bulk new animal substances for use in unapproved finished dosage forms might also cause the proliferation of foreign sources of drug substances over which FDA is able to exercise only limited control. It could result in the distribution and use of bulk new animal drug substances that are not manufactured under current good manufacturing practice (CGMP). Moreover, although the unapproved finished dosage form drugs compounded from such substances may be similar to approved drug products, they may differ in bioavailability (i.e., the amount of the drug substance that reaches the site of pharmacological action), and therefore may be unsafe or ineffective. In addition, adverse drug reactions would most likely not be reported because unapproved drugs are not subject to the reporting requirements of the act.

Based on these concerns, the CVM Task Force concluded that continued refusal to sanction distribution to veterinarians of unapproved bulk new animal drug substances intended for use in animals is necessary. Nevertheless, because of the continued interest of some veterinarians in the use of bulk new animal drug substances, and because of its belief that veterinarians are qualified to compound certain drugs into finished dosage form, the Task Force recommended the development and implementation of a premarket approval procedures for bulk new animal drug substances. Such substances would be approved if an

applicant demonstrated that the substances could be compounded by practitioners into finished dosage drugs of acceptable quality and if the finished dosage forms, as they would be formulated by practitioners, had themselves been shown to be safe and effective for one or more specific conditions or indications. The Task Force recommended that the agency develop procedures and criteria for submission and approval of NADA's for such products.

After careful review of the CVM Task Force report, the agency has concluded that it agrees with the Task Force findings. The agency believes that provisions should be made for the approval of NADA's for bulk new animal drug substances for compounding by veterinarians for use in their practices. The agency believes that the compounding of such products could also be done by pharmacists, so that veterinarians will have the option of compounding their own drugs, or having pharmacists compound such drugs on their prescription.

The existing NADA approval regulations are not structured to facilitate approval of applications for bulk new animal drug substances that are to be formulated into finished form by practitioners or pharmacists. Moreover, approval of such applications may have a significant impact on the public, veterinarians, pharmacists, and the drug industry. Therefore, FDA is proposing a new regulation, and is also proposing conforming modifications to existing regulations.

When it published the notice of availability of its Task Force report in July 1983, the agency reaffirmed its position that unapproved bulk drugs for veterinary use may not be sold except to sponsors of approved new animal drug applications. The agency will continue to recommend regulatory action in appropriate cases, notwithstanding the pendency of this proposal.

Legal Considerations

The agency's position is that a bulk new animal drug substances requires approval prior to use, even if that use is by a veterinarian. As noted above, some have challenged that position. The legal basis supporting the agency's view is as follows:

A substance intended for use in a finished dosage form drug is itself a drug, even if it is considered to be a component. See section 201(g)(1)(D) of the Act (21 U.S.C. 321(g)(1)(D)), which states that an article intended for use as a component of any of the articles specified in section 201(g)(1) (A), (B), or (C) of the act is a drug. As a result, even if the substances that are subject of this notice are regarded as components, they are subject to the adulteration and misbranding provisions of the act.

Thus, if a bulk drug substance is labeled for veterinary medical uses, and the substance is not generally recognized as safe and effective for those uses, it is a new animal drug substance, as well as a new animal drug within the meaning of section 201(w) of the act. Unless it is subject of an approved application, it is unsafe as provided in section 512 of the act (21 U.S.C. 360b) and is, therefore, adulterated under section 501(a)(5) of the act (21 U.S.C. 351(a)(5)).

Section 201(w) of the act defines "new animal drug," in the case of noncertifiable drugs, by reference to the conditions of use prescribed, recommended, or suggested in the labeling of a drug. (A certifiable antibiotic intended for animal use is, *per se*, a new animal drug without reference to its labeling.) Some persons who have marketed bulk new animal drug substances to veterinarians have contended that if such substances are not labeled for specific indications they do not fall within the definition of "new animal drug" or "new animal drug substance" and, therefore, can be legally marketed because they are not adulterated. FDA believes that such drugs, nevertheless, meet the statutory definition of "new animal drug." If, for example, they are labeled for "veterinary use" or "for animal use" their labeling suggests that they are intended for use for any and all veterinary medical indications when formulated into finished dosage forms. Because the finished dosage forms could not be generally recognized as safe and effective for all such indications, the drug substances are new animal substances. See, e.g., *United States* v. *Articles of Drug * * * Sulfachlorpyridazine Acid * * * Dexamethazone USP * * *,* Civil No. F 74–155 (E.D. Cal. 1977). Moreover, such substances are new animal drug substances even if they do not bear labeling, where their intended use is in a finished dosage form drug that is a new animal drug as shown in its labeling. See, e.g., *United States* v. *An Article of Drug, Etc., * * * Ethinamide-INH,* No. 67C288 (E.D.N.Y., August 19, 1967).

Even if the substances are not "new animal drug substances," they must bear adequate directions for use, as required by section 502(f)(1) of the act and as shown below. Otherwise they are misbranded. (If they bear such directions, and the drug is not generally recognized as safe and effective for the uses indicated, the drug is a new animal drug.) Sections 502(f) and 503(a) of the act (21 U.S.C. 352(f) and 353(a)) provide for exemption from the statutory "adequate directions" requirement. FDA regulations in Subpart D of 21 CFR Part 201 provide for exemption from the "adequate directions for use" requirements for bulk drug substances, but only under certain circumstances not applicable in this instance. The agency has not provided exemptions from the "adequate directions for use" requirement for bulk new animal drug substances that are distributed to veterinarians for use in finished dosage forms that are never subject of an approved NADA.

Moreover, the agency believes that such exemptions are not authorized by the statute for the following reasons. The act does not provide for an exemption from the "adequate directions for use" requirements for bulk drug substances that are to be distributed to veterinarians or other practitioners. Nor does it provide for exemption from the adulteration provision of section 501(a)(5) of the act. It is clear that Congress contemplated the special needs of practitioners when it enacted the statute. For instance, section 501(g)(2) of the act (21 U.S.C. 360(g)(2)) exempts practitioners from registration under certain circumstances, and section 503(b) of the act (21 U.S.C. 353(b)) exempts human prescription drugs from the labeling requirement for "adequate directions for use" when dispensed by a pharmacist. Congress made no special provision in the act for the use of unapproved bulk drug substances by practitioners, however.

Further support for FDA's view comes from section 512(a) of the act, which, in conjunction with sections 501(a) and 301, prohibit the use or intended use of an approved new animal drug in a manner that is inconsistent with the conditions of the approved application. The statute does not exclude use by veterinarians from this prohibition. The section 512(a) requirement that an approved new animal drug not be used inconsistently with its approved labeling is strong evidence of Congress' intention that veterinarians' use of drugs in their practices should not be entirely unlimited. It supports the agency's position that its requirement for approval of bulk new animal drug substances for use by veterinarians does not constitute an unlawful interference with the practice of medicine. "The fact that the practice of medicine is an area traditionally regulated by the states does not invalidate those provisions of the [Federal Food, Drug, and Cosmetic

Act] which may at times impinge on some aspects of doctor's practice." *Pharmaceutical Manufacturers Association* v. *FDA*, 484 F. Supp. 1179, 1188 (D. Del. 1977), *aff'd* 634 F.2d 106 (3d Cir. 1980). The right to practice one's profession is not without permissible limitation. *Pharmaceutical Society of the State of New York, Inc.* v. *Lefkowitz*, 454 F. Supp. 1175, 1181 (S.D.N.Y. 1978). The act was not intended to regulate the practice of medicine; however, it was obviously intended to control the availability of drugs for prescription or use by practitioners. *United States* v. *Evers*, 453 F. Supp. 1141 (M.D. Ala. 1978), *aff'd on other grounds*, 643 F.2d 1043 (5th Cir. 1981). FDA can regulate the use of new animal drugs regardless of the professional status of the person who causes the violation. *United States* v. *Articles of Drug* * * * *Sulfachlorpyridazine Acid* * * * *Dexamethazone USP* * * *, Civil No. F 74–155 (E.D. Cal. 1977). See also *American Medical Assoc.* v. *Mathews*, 429 F. Supp. 1179, 1201–1203 (N.D. Ill. 1977).

Summary of the Proposal

The agency proposes to amend its regulations to set forth criteria and procedures for the approval of NADA's for bulk new animal drug substances that are to be compounded into finished dosage form by or on the prescription of licensed veterinarians for use in their professional practices. Applications for such products will be required to meet the general premarketing approval requirements of the act. That is, the applicant will have to show through submission of data that the finished dosage form drugs, as they are to be compounded by veterinarians or pharmacists, will be safe and effective for one or more veterinary medical indications. The tests to be submitted will be those required for new animal drugs under section 512 of the act.

The applicant also will have to provide adequate labeling for the bulk new animal drug substance. The labeling will be required to bear adequate directions for prescription use, including directions for compounding the finished dosage form drug, and the following statement: "Caution: Federal law restricts this drug substance to compounding and use by or on the prescription of a licensed veterinarian." The applicant will also have to provide evidence to show that the bulk new animal drug substance will be manufactured, and the finished dosage form can be compounded, under the standards of quality required by the act. Also, the manufacturer of the approved bulk new animal drug substance will be subject to CGMP regulations, to the requirement of registration as a drug manufacturer, and to the "record and reports" provision of the act.

In view of the foregoing requirements, the agency anticipates that such NADA's will be submitted by persons who manufacture the bulk new animal drug substance, or who supply it to veterinarians or pharmacists.

Approval of this type of NADA will be limited to those drugs that, in the agency's judgment, can be formulated into safe and effective finished dosage form drugs by or on the prescription of licensed veterinarians. The drugs most suitable for bulk new animal drug substance NADA's may, at the present time, be those that are the therapeutic equivalents of the drugs that were reviewed and found effective by the National Academy of Sciences/National Research Council (NAS/NRC) in the Drug Effectiveness Study Implementation (DESI) following passage of the 1962 drug effectiveness amendments to the act. Under present regulations, applications for such drugs ordinarily are abbreviated, in that they ordinarily meet the safety and effectiveness requirements of the act if they contain only bioequivalence data and, in some instances, tissue residue depletion data.

The agency will, however, consider accepting applications for bulk new animal drug substances in all the circumstances under which full NADA's are currently filed. Also, under the proposed procedure, sponsors of existing NADA's could file supplements to provide for the marketing of bulk new animal drug substance counterparts of currently approved finished dosage forms. Regardless of the type of application (e.g., full NADA, abbreviated NADA for therapeutic equivalent of an approved NAS/NRC-reviewed drug, or supplemental NADA), the applicant will be required to provide assurance that pharmacists and veterinarians possess or can readily obtain the expertise and equipment necessary for compounding the finished dosage form.

The proposal is not intended to restrict the approval of veterinary drugs for which adequate directions for lay use can be written for over-the-counter (OTC) sale in large packages. FDA has approved such new animal drugs in the past (e.g., for water soluble drugs to be added to drinking water). Such drugs do not require further compounding by skilled professionals and will continue to be approved by FDA for OTC use. Similarly, FDA will continue to approve for prescription use finished dosage form new animal drugs in large containers, where appropriate. Therefore, it should be clear that this proposal, which is to establish a mechanism for approving NADA's for substances that require compounding for use, is not intended to authorize the shipment in large containers to veterinarians of unapproved finished dosage form drugs (those that do not require compounding or similar manipulation before use). Such drugs must be approved under provision of the existing regulations.

The agency has approved prescription veterinary drugs that require certain manipulation by veterinarians (e.g., addition of water to a lyophilized powder to prepare an injectable solution). Such drugs are ordinarily packaged in individual dosage quantities and are considered to be finished dosage forms at the time of manufacture by the NADA sponsor. An example of the type of substance the agency expects to consider for approval under the proposal (based on the interest expressed in the past by veterinarians) is a drug substance in powder form, shipped in bulk packages. The veterinarian would add water, place it in small dosage-size bottles closed by rubber stoppers and, autoclave the solution, for future injectable use. Such activity by a veterinarian (or pharmacist) is considered by the agency to be "compounding," which is defined for purposes of this program as any mixing of a drug substance by a veterinarian (or by a pharmacist following a veterinarian's prescription) in preparing a finished dosage form, other than that traditionally done with respect to the dispensing or administration of a finished dosage form. Because the distinction between a "drug substance" and a "finished dosage form" cannot be defined precisely, the agency will encourage potential sponsors to consult with CVM for a determination as to whether a particular article is a finished dosage form (subject to approval through submission of a conventional NADA) or a drug substance subject to approval as a bulk new animal drug substance.

Veterinarians who use or prescribe approved bulk new animal drug substances solely within the course of their professional practices will be exempt from the registration requirements in Part 207, from the CGMP provision of the statute (section 501(a)(2)(B) (21 U.S.C. 351(a)(2)(B))), and from the records and reports requirements in § 510.300 that are applicable to NADA sponsors. However, veterinarians will be advised to follow

carefully the compounding instructions in the approved labeling when making the finished dosage form drug to assure its safety and effectiveness. Veterinarians will also be encouraged to observe carefully animals being treated with finished dosage form drugs compounded from bulk new animal drug substances, and to report any unexpected result to the distributor of the bulk new animal drug substance named in the labeling or to the NADA sponsor. Veterinarians who compound finished dosage form drugs for distribution or use outside their professional practices, even if they use approved bulk new animal drug substances, are drug manufacturers. Thus, they are subject to regulatory action unless they are registered as manufacturers, are in compliance with the CGMP regulations, and are the sponsors of approved NADA's.

Pharmacists who compound finished dosage form drugs from approved bulk new animal drug substances solely within the course of their professional practices upon the basis of a veterinarian's prescription will be exempt from the registration requirements of section 510 of the act and 21 CFR Part 207, from the CGMP regulations (although they are subject to the CGMP provisions of the statute), and from the records and reports requirements in § 510.300. However, they will be advised to follow carefully the compounding instructions, and will be subject to the same kinds of regulatory action as veterinarians if their activities are outside the scope of their professional practices.

Approved bulk new animal drug substances will be exempt from the adequate directions for use requirements of section 502(f)(1) of the act if they are in conformance with the veterinary prescription drug exempting regulation (21 CFR 201.105). Finished dosage form drugs made from bulk new animal drug substances will be exempt under 21 CFR 201.110 from the adequate directions for use requirements of section 502(f)(1) of the act when dispensed by a licensed veterinarian, or by a pharmacist on the prescription of a licensed veterinarian, provided that the drugs meet the requirements of that regulation, i.e., that they bear labeling with the name and address of the veterinarian, the directions for use, and any cautionary statements contained in the prescription.

Discussion of the Proposal

The proposal would establish a new Part 559. The new part would provide for approval of applications for bulk new animal drug substances for further compounding by or on the prescription of licensed veterinarians for use in their professional practices. The new part will consist of Subpart A, containing general provisions, and Subpart B, which will list specific bulk drug substances when they are approved, as required by section 512(i) of the act.

Subpart A contains new § 559.4 *Approval of new animal drug applications for bulk new animal drug substances for use by licensed veterinarians.* This section defines "new animal drug substances" and "bulk new animal drug substances," the latter being the pharmacologically active substances that will be eligible for approval. The section also states that FDA may approve NADA's for such drug substances, identifies the data and information requirements for NADA approval, and specifies the responsibilities of the sponsor of the NADA and the manufacturer of the bulk new animal drug substance.

1. Proposed § 559.4(a) defines "new animal drug substance" as a drug substance that, when used in the preparation of a finished dosage form drug, causes that drug to be a new animal drug, and "bulk new animal drug substance" as a new animal drug substance for use in the compounding of a finished dosage form new animal drug.

2. Proposed § 559.4(b) states that FDA will approve NADA's for bulk new animal drug substances if they are for further compounding by or on the prescription of a licensed veterinarian and are for use solely in the veterinarian's practice.

3. Proposed § 559.4(c) states that applications for approval of bulk new animal drug substances must meet the requirements of § 514.1 *Applications* (21 CFR 514.1) except as modified by paragraph (c).

a. Proposed § 559.4(c)(1) would require compliance with § 514.1(b)(3) *Labeling*, except (b)(3)(ii), which pertains to nonprescription drugs. Proposed § 559.4(c)(1) would require the labeling of bulk new animal substances to bear complete compounding instructions for the pharmacist or veterinarian who is to prepare the finished drug. Section 514.1(b)(3)(iii) currently requires that prescription veterinary drugs bear information adequate to permit veterinarians to use the new animal drugs safely and for the purposes for which they are intended, including those purposes for which they are to be advertised or represented. These requirements are particularized in § 201.105. The labeling for new animal drug substances therefore must bear all such information, including directions for compounding.

The proposal would modify § 201.105 to require that the labeling for the bulk new animal drug substances bear the following statement: "Caution: Federal law restricts this drug substance to compounding and use by or on the prescription of a licensed veterinarian." Bulk new animal drug substances covered by this proposal will be restricted to prescription use because their safe and effective use requires, among other things, knowledge of drug compounding, drug interactions, pharmacology, and toxicology. Therefore, adequate directions for lay use cannot be written.

The proposed prescription legend for approved bulk new animal drug substances would differ slightly from the legend required for other veterinary prescription drugs. That legend states: "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian" (21 CFR 201.105). (Section 201.105 requires that a veterinary drug for which adequate directions for lay use cannot be written be sold only to or on the "prescription or other order" of a licensed veterinarian). The difference between the legends is explained by the fact that the agency interprets the word "prescription" to apply only to the practitioner's direction to a pharmacist. Some States permit authorized persons other than pharmacists to dispense restricted veterinary drugs on a veterinarian's order. The agency has not attempted to preempt such practices; hence, it has referred to use on the "order" of a veterinarian (a prescription being one type of order). However, the agency has concluded that, if the safety and effectiveness requirements of the act are to be met, approved bulk new animal drug substances may be compounded and dispensed only by a registered pharmacist or a licensed veterinarian. To maintain consistency in the definition of terms, therefore, the agency proposes to use only the term "prescription" in the legend for an approved bulk new animal drug substance. The agency considers the two prescription legends to be equivalent in all other aspects.

b. Proposed § 559.4(c)(2) would provide for the submission to FDA prior to aproval of samples of the bulk new animal drug substance as well as samples of the finished dosage form prepared by following the compounding instructions in the labeling. This provision will meet the requirements of the act for samples (section 512(b)(5)).

c. Proposed § 559.4(c)(3) would require compliance with § 514.1(b)(5)

Manufacturing methods, facilities, and controls, as modified by § 559.4(c)(3). FDA has, in § 514.1(b)(5), particularized the provisions of section 512(b)(4) of the act. Proposed § 559.4(c)(3) states that the specific requirements of § 514.1(b)(5) will apply only to the manufacture of the bulk new animal drug substance, and not to the compounding of the finished product by the veterinarian or pharmacist, provided that the applicant submits information to show that the finished dosage form can be prepared properly.

Section 512(b)(4) of the act requires applicants to submit "a full description of the methods used in, and the facilities used for, the manufacture, processing, and packing" of the drugs they intend to market. Essentially, this section requires evidence that the applicant can comply with CGMP requirements of the act when manufacturing commences.

The general requirements of section 512(b)(4) of the act apply to finished dosage forms. Thus, the sponsor of any NADA must describe the "methods used in, and the facilities and controls used for, the manufacture, processing, and packing" of the finished dosage form.

It will be impracticable, however, for the sponsor of an NADA for a bulk new animal drug substance to provide, for the finished dosage form, much of the information prescribed by § 514.1(b)(5). Therefore, proposed § 559.4(c)(3), along with the compounding directions required by proposed § 559.4(c)(1) and the requirement for samples under § 559.4(c)(2), would provide alternative criteria for meeting the statutory requirements. The applicant would have the burden of showing that veterinarians and pharmacists have or can readily obtain the knowledge, skills, and equipment necessary to compound safe and effective finished dosage form drugs by following the instructions in the labeling for the bulk new animal drug substances. Thus, the requirements in proposed § 559.4(c)(3) would limit the kinds of bulk substances that may be approved for use by or on the prescription of licensed veterinarians, because preparation of some finished dosage forms may require special education, equipment, or facilities that are not likely to be possessed by or available to most pharmacists or veterinarians.

The agency believes that the requirements of section 512(b)(4) of the act will be satisfied through a description of the methods, facilities, and controls that the pharmacist or veterinarian will be expected to have and use. FDA will not approve the application unless it is persuaded, by evidence submitted by the sponsor, that veterinarians and pharmacists possess or can readily obtain the equipment and training required to prepare the finished dosage form. Moreover, the legality of the proposal is supported by the fact that the act contemplates that the manufacture or compounding of drugs will be done by practitioners. For instance, section 510(g)(2) of the act exempts from registration practitioners who "manufacture, prepare, propagate, compound, or process drugs" for use only in their practices. For such an activity to take place, practitioners must be able to procure the raw or intermediate materials that will make up the finished product.

d. Proposed §559.4(c)(4) would require compliance with § 514.1(b)(8) *Evidence to establish safety and effectiveness.* This includes evidence to establish the safety and effectiveness of the bulk new animal drug substance, based on data from tests using the finished dosage form. Such information is necessary to satisfy the requirements of section 512(b)(1) of the act. Applicants for approval of bulk new animal drug substances for which the finished dosage form has a counterpart drug that was approved prior to 1962 and that was reviewed by NAS/BRC and found to be effective will ordinarily be able to meet the safety and effectiveness requirements by (1) demonstrating, where necessary, that the finished dosage form products compounded from the bulk new animal drug substances are bioequivalent to the approved counterpart drug and (2) submitting tissue residue depletion studies, in the case of drugs for use in food-producing animals, as needed.

4. Proposed § 559.4(d) would require the sponsor of the NADA to comply with the records and reports requirements of § 510.300 *Records and reports concerning experience with new animal drugs for which an approved application is in effect.* Section 512(1) of the act requires the sponsor of any new animal drug approved to section 512(b) of the act to establish and maintain records and make reports on experience and other data or information obtained on the drug as prescribed by regulation. In § 510.300, FDA prescribes the records and reports obligations necessary to comply with the statutory requirements. Information required to be reported includes, among other things, reports of adverse reactions and product defects. Paragraph (d) of the new section makes clear that the applicant will have an obligation to comply with the "records and reports" requirement with respect to the finished dosage form as well as the bulk new animal drug substance.

5. Proposed § 559.4(e) would require those who manufacture or otherwise prepare bulk new animal drug substances within the scope of section 510(a)(1) of the act to register in accordance with Part 207.

Section 510 of the act requires all persons who own or operate establishments engaged in "the manufacture, preparation, propagation, compounding, or processing" of drugs to register, unless exempted under section 510(g). This includes, as provided by section 510(a)(1) of the act, "repackaging or otherwise changing the container, wrapper, or labeling of any drug package * * * in furtherance of the distribution of the drug * * * from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer or user." The term "manufacturing or processing" includes "manipulation, sampling, testing, or control procedures applied to the final product or to any part of the process" (21 CFR 207.3(a)(8)). Because bulk new animal drug substances are drugs, those who process such substances in the manner described in section 510 of the act must register.

However, section 510(g) of the act exempts from registration pharmacies and licensed practitioners who are acting within the scope of their professional practices. Therefore, paragraph (e) of the new section provides that licensed veterinarians who compound finished dosage form drugs from approved bulk new animal drug substances for use in their practices and registered pharmacists who compound finished dosage form drugs from approved bulk new animal drug substances on the prescription of a licensed veterinarian will not be required to register with the FDA as long as they comply with the applicable requirements of section 510(g) of the act.

6. Proposed § 559.4(f) would require those who manufacture, process, pack, or hold bulk new animal drug substances to comply with CGMP's as required in Parts 210 and 211.

Under section 501(a)(2)(B) of the act, a drug is deemed to be adulterated if the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with the CGMP requirements. This is to assure that the drug meets the requirements of the act as to safety and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess.

FDA has adopted detailed CGMP regulations (21 CFR Parts 210 and 211)

that implement the provisions of the statute. However, the existing GCMP regulations apply only to the manufacture of "drug products," a term which is ordinarily defined to include only finished dosage from drugs (21 CFR 210.3(b)(4) and 211.1(a)). Because components of drugs are drugs, FDA has considered the manufacture of bulk active ingredients to be subject to the general requirements of section 501 (a)(2)(B) of the act, and has used the standards set forth in the CGMP regulations as guidelines during inspections of manufacturers of bulk drug components.

The agency has concluded that the binding requirements of the CGMP regulations should be applied to the manufacture, processing, packing, or holding of the bulk new animal drug substances.

The application of the CGMP regulations to bulk new animal drug substances is especially appropriate because the compounding of the final dosage form by the veterinarian or pharmacist will not be subject to the CGMP regulations. The agency has interpreted the statutory CGMP provision as not applying to medical practitioners, including veterinarians. Although the agency believes that pharmacists are subject to the statutory provision, it has not adopted CGMP regulations for pharmacists, and has not applied the existing CGMP regulations for pharmacists, and has not applied the existing CGMP regulations to pharmacists who are acting within the scope of their authorized practices. The agency believes, nevertheless, that the proposed NADA's for bulk new animal drug substances are authorized by the statute, even though it does not intend to apply the CGMP regulations to authorized compounding. The basis for its conclusion is described in the following paragraphs.

The basic purpose of section 501(a)(2)(B) of the act is to assure that the finished dosage foun is safe and meets appropriate standards. The proposal will require those who manufacture, process, pack, or hold the bulk new animal drug substance to comply with applicable portions of the CGMP regulations in the preparation of the bulk new animal drug substances itself. As stated above, the agency will not approve the application unless it believes that veterinarians and pharmacists are capable of compounding the finished dosage form correctly. If experience demonstrates that practitioners or pharmacists are unable consistently to compound a particular bulk new animal drug substance into a safe and effective finished dosage form, the NADA approval could be withdrawn under provision of section 512(e) of the act. That section provides for withdrawal of approval if, among other things, new information or experience shows that the drug is unsafe, not shown to be safe, or lacks substantial evidence of effectiveness under the approved "conditions of use." The approved conditions of use include a requirement that the conditions of use be "reasonably certain to be followed in practice" (section 512(d)(2)(D) of the act.

If, however, the problem centers around one or more individual practitioners and not specific NADA's, the statute permits regulatory action against the individual veterinarians. Section 512(a)(1) of the act states that "A new animal drug shall, with respect to any particular use or intended use * * * be deemed unsafe * * * unless * * * (B) such drug * * * conform to such approved application." If the veterinarian does not compound the drug in accordance with the directions provided by the manufacturer and, therefore, the finished formulation does not meet expected quality standards, it is not a drug that conforms to the approved application. It is therefore adulterated under section 501(a)(5) of the act. The drug is subject to seizure, and the veterinarian is subject to injunction or prosecution. As noted above, action could be taken against individual pharmacists under the general provision of section 501(a)(2)(B) of the act.

7. The agency proposes to make conforming amendments in certain regulations. The proposal would:

a. Amend the veterinary prescription drug regulation, § 201.105 *Veterinary Drugs* to exempt approved bulk new animal drug substances from the requirement of bearing adequate directions for use (section 502(f)(1) of the act). Section 201.105 would apply when the bulk new animal drug substance is shipped by the NADA sponsor to a pharmacist or veterinarian.

b. Amend § 201.110 *Retail exemption for veterinary drugs* so that it will refer to the prescription legend that will be used with approved bulk new animal drug substances.

c. Amend § 201.122 *Drugs for processing, repacking, or manufacturing* so that its applicability to raw materials being shipped to the sponsor of an NADA for a bulk new animal drug substance would be clear. The proposal would also change that regulation to conform its contents in all respects to the agency's interpretation as to new animal drug substances. The agency has concluded that § 201.150 *Drugs: processing, labeling, or repacking* as currently in effect would apply to the shipment of unapproved bulk new animal drug substances without change.

d. Amend § 211.1 *Scope* to include within the scope of the CGMP regulations the manufacture of bulk new animal drug substances that are subject to new Part 559 (see paragraph 6 above).

e. Amend § 514.1 *Applications* to add new paragraph (f). Proposed paragraph (f) states that NADA's for bulk new animal drug substances are subject to the requirements of § 514.1 as modified by new § 559.4.

Environmental Impact

The agency has determined pursuant to 21 CFR 25.24(a)(8) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

The agency has assessed the economic impact of this proposal and has concluded that it is not a major rule as defined in Executive Order 12291. The agency believes that fewer than 10 companies will be affected, and most will already hold approved NADA's for the finished form of the drug they wish to supply in bulk. In these cases, firms will incur an estimated cost of $3,100 for each bulk supplement to an approved NADA. The typical firm is not expected to submit more than 10 supplements because fewer than 20 drugs are now being sold to veterinarians in bulk form. Additional firms that do not currently market these drugs in finished form may also elect to supply bulk drugs to veterinarians. These firms would incur costs of approximately $50,000 for an abbreviated NADA for each bulk drug. However, the agency expects fewer than three new entrants because of the limited size of this market, and the presence of established manufacturers of these products. Thus, the total costs of this rule to all affected companies are expected to be less than $1 million. Because of the limited impact of this rule, the agency certifies, in accordance with the Regulatory Flexibility Act, that this proposed rule, if implemented, will not impose a significant economic impact on a substantial number of small entities.

A threshold assessment supporting these conclusions is available for review

in the Dockets Management Branch (address above).

Paperwork Reduction Act of 1980

Section 559.4(c) of this proposed rule contains collection of information requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these collection of information requirements. Other organizations and individuals desiring to submit comments on the collection of information requirements should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, Rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Bruce Artim.

Paragraphs (d), (e), and (f) of § 559.4 cross-reference regulations in Title 21 of the Code of Federal Regulations that contain collection of information requirements that have been approved by OMB as follows:

Section 559.4(d) references § 510.300 *Records and reports concerning experience with new animal drugs* (OMB control number 0910–0019);

Section 559.4(e) references Part 207—Registration of Producers and Listing of Drugs in Commercial Distribution (OMB control number 0910–0045); and

Section 559.4(f) references Part 211—Current Good Manufacturing Practice for Finished Pharmaceuticals (OMB control number 0910–0139).

List of Subjects

21 CFR Part 201

Drugs, Labeling.

21 CFR Part 211

Drugs, Manufacturing, Labeling, Laboratories, Packaging and containers, Warehouses.

21 CFR Part 514

Administrative practice and procedure, Animal drugs.

21 CFR Part 559

Bulk new animal drug substances.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that Chapter I of Title 21 of the Code of Federal Regulations be amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR Part 201 continues to read as follows:

Authority: Sec. 701, 52 Stat. 1055–1056 as amended (21 U.S.C. 371), unless otherwise noted: 21 CFR 5.10, 5.11.

§ 201.105 [Amended]

2. In § 201.105 *Veterinary drugs* as follows:

a. In paragraph (a)(1) by inserting at the end of the paragraph immediately before the semicolon and "or" the following: "; except that the term "other order" shall not apply in the case of a bulk new animal drug substance meeting the requirements of Part 559 of this chapter".

b. In paragraph (b)(1) by inserting at the end of the paragraph immediately before the semicolon and "and" the following: "; except in the case of a bulk new animal drug substance meeting the requirements of Part 559 of this chapter, the label shall bear the statement: Caution: Federal law restricts this drug substance to compounding and use by or on the prescription of a license veterinarian".

c. In paragraph (c)(1) by inserting at the end of the paragraph immediately before the semicolon and "and" the following: "; except in the case of a bulk new animal drug substance meeting the requirements of Part 559 of this chapter, the foregoing information shall appear on labeling on or within the package in which the substance is delivered to the practitioner or pharmacist".

§ 201.110 [Amended]

3. In § 201.110 *Retail exemption for veterinary drugs* by revising the phrase "upon a prescription or other order" to read "upon a prescription or other order (upon a prescription, in the case of a bulk new animal drug substance meeting the requirements of Part 559 of this chapter)".

4. By revising § 201.122 to read as follows:

§ 201.122 Drugs for processing, repacking, or manufacturing.

A drug in a bulk package (except tablets, capsules, or other dosage unit forms) intended for processing, repacking, or use in the manufacture of another drug shall be exempt from section 502(f)(1) of the act if its label bears the statement"Caution: For manufacturing, processing, or repacking"; and , if in substantially all dosage forms in which it may be dispensed it is subject to section 503(b)(1) of the act, the statement "Caution: Federal law prohibits dispensing without prescription", or if in substantially all dosage forms in which it may be dispensed it is subject to § 201.105, the statement "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian." Drugs described in the preceding sentence shall include drug substances intended for use in the preparation of bulk new animal drug substances as that term is defined in § 559.4(a)(2) of this chapter; the label for such drug substances shall bear the statement "Caution: Federal law restricts this drug substance to compounding and use by or on the prescription of a licensed veterinarian". This exemption and the exemption under § 201.120 may be claimed for the same article. But the exemption shall not apply to a substance intended for a use in manufacture, processing, or repacking which causes the finished article to be a new drug or new animal drug, unless:

(a) an approved new drug application or new animal drug application held by the person preparing the dosage form or drug for dispensing covers the production and delivery to him or her of such substance, or in the case of a bulk new animal drug sustance subject to Part 559 of this chapter, an approved new animal drug application held by the person preparing the bulk new animal drug substance covers the preparation and delivery to him or her of such substance;

(b) If no application is approved with respect to such new drug, new animal drug or bulk new animal drug substance the label statement "Caution: For manufacturing, processing, or repacking" is immediately supplemented by the words "in the preparation of a new drug or new animal drug limited by Federal law to investigational use", and the delivery is made for use only in the manufacture of such new drug or new animal drug limited to investigational use as provided in § 312.1 or § 511.1 of this chapter; or

(c) A new drug application or new animal drug application covering the use of the drug substance in the production and marketing of a finished drug product (or bulk new animal drug substance in the case of an application submitted under provision of Part 559 of this chapter) has been submitted but not yet approved or disapproved, the bulk drug is not exported, and the finished drug product (bulk new animal drug substance, in the case of an application submitted under provision of Part 559 of this chapter) is not further distributed after it is manufactured until after the new drug application or new animal drug application is approved.

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

5. The authority citation for 21 CFR Part 211 continues to read as follows:

Authority: Secs. 501, 701, 52 Stat. 1049–1050 as amended, 1055–1056 as amended (21 U.S.C. 351, 371); 21 CFR 5.10, 5.11.

6. Part 211 is amended in § 211.1 by revising paragraph (a) to read as follows:

§ 211.1 Scope.

(a) The regulations in this part contain the minimum current good manufacturing practices for preparation of drug products for administration to humans or animals and for the preparation of approved bulk new animal drug substances subject to Part 559 of this chapter. All portions of this part shall be applicable to bulk new animal drug substances regardless of the terms used (e.g. "drug product," "drug," "components").

* * * * *

PART 514—NEW ANIMAL DRUG APPLICATIONS

7. The authority citation for 21 CFR Part 514 continues to read as follows:

Authority: Secs. 512(i), (n), 701(a), 52 Stat. 1055, 82 Stat. 343–351 (21 U.S.C. 360b(i), (n), 371(a)); 21 CFR 5.10, 5.11.

8. Part 541 is amended in § 514.1 by adding new paragraph (f) to read as follows:

§ 514.1 Applications.

* * * * *

(f) Applications for approval of bulk new animal drug substances for further compounding by or on the prescription of licensed veterinarians into finished dosage form drugs for use solely in their professional practice are subject to the requirements of this section as modified by § 559.4 of this chapter. Except as modified by § 559.4 of this chapter, all portions of this part shall be applicable to bulk new animal drug substances regardless of the terms used (e.g. "drug product," "drug," "dosage form," "drug substance," "components").

PART 599—BULK NEW ANIMAL DRUGS FOR USE BY LICENSED VETERINARIANS

D. By adding new Part 599 to read as follows:

Subpart A—General Provisions

Sec.

599.4 Approval of new animal drug applications for bulk new animal drug substances for compounding and use by or on the prescription of licensed veterinarians.

Subpart B—Approved Bulk New Animal Drugs [Reserved]

Authority: Secs. 301, 501, 502, 503, 510, 512, 701(a), 52 Stat. 1050–1051 as amended, 1055, 76 Stat. 794–795 as amended, 82 Stat. 343–351; 21 U.S.C. 331, 351, 352, 353, 360, 360b, 371(a).

Subpart A—General Provisions

§ 559.4 Approval of new animal drug applications for bulk new animal drug substances for compounding and use by or on the prescription of licensed veterinarians.

(a)(1) A "new animal drug substance" is a drug substance that, when used in the manufacture, processing, or packing of a finished dosage form animal drug, causes that drug to be a new animal drug.

(2) A "bulk new animal drug substance" is a new animal drug substance intended for use in the compounding of a finished dosage form new animal drug by a veterinarian or pharmacist.

(b) The Food and Drug Administration will approve new animal drug applications for bulk new animal drug substances for further compounding into finished dosage form new animal drugs for use by or on the prescription of a licensed veterinarian. Such products are to be used or prescribed for use solely within the veterinarian's professional practice.

(c) Applications for approval of bulk new animal drug substances must meet the requirements of § 514.1 of this chapter as modified by this paragraph. Where information on "dosage form(s)" is required in § 514.1 of this chapter, the applicant shall submit information on each dosage form into which the bulk new animal drug substance is to be compounded.

(1) Labeling shall include that required by § 514.1(b)(3) of this chapter, excluding § 514.1(b)(3)(ii). In addition, it shall include complete instructions for the compounding of the finished dosage form new animal drug. This shall include, but not be limited to, the methods, facilities and equipment, materials, and controls to be used in the compounding of the finished dosage form new animal drug.

(2) Samples that may be requested by the Center for Veterinary Medicine under provision of § 514.1(b)(6) of this chapter shall include samples of either the bulk new animal drug substance, the finished dosage form new animal drug prepared following the directions in the labeling, or both.

(3) The data and other information for manufacturing methods, facilities, and controls required by § 514.1(b)(5) of this chapter must be provided for the bulk new animal drug substance as it is to be prepared, packaged, and distributed by or for the NADA sponsor. The information specified in § 514.1(b)(5) is not required for the new animal drug product (finished dosage form) that is to be compounded by the pharmacist or veterinarian provided that the applicant submits data and information to establish:

(i) That the finished dosage form new animal drug can be compounded from the bulk new animal drug substance; and,

(ii) That any special requirements (e.g., knowledge, equipment, facilities) necessary for compounding the bulk new animal drug substance into a finished dosage form new animal drug are possessed by or readily available to pharmacists and veterinarians.

(4) The applicant must submit evidence as required by § 514.1(b)(8) of this chapter to establish the safety and effectiveness of the bulk new animal drug substance. This evidence must include data from tests conducted with the finished dosage form new animal drug, prepared from the bulk new animal drug substance using the directions for compounding to be included in the labeling of the bulk new animal drug substance. Such data must establish that the finished dosage form new animal drug is safe and effective for the proposed use or uses.

(d) The sponsor of any new animal drug application approval granted under this part shall comply with the requirements of § 514.300 of this chapter regarding records and reports for the bulk new animal drug substance as well as for finished dosage form new animal drugs made from the bulk new animal drug substance.

(e) The owner or operator of any drug establishment engaged in the manufacture, preparation, propagation, compounding, or processing of any bulk new animal drug substance approved under this part must register as provided in Part 207 of this chapter, except that licensed veterinarians who compound finished dosage form new animal drugs from bulk new animal drug substances for use in their professional practices, and registered pharmacists who compound finished dosage form new animal drugs from approved bulk new animal drug substances on the prescription of a licensed veterinarian, are not required to register as long as they comply with the applicable requirements of section 510(g) of the act.

(f) The manufacture, processing, packing, and holding of any bulk new animal drug substance approved under this part shall comply with current good manufacturing practice as provided in Parts 210 and 211 of this chapter, except that licensed veterinarians who compound finished dosage form new animal drugs from approved bulk new

animal drug substances for use in their professional practices, and registered pharmacists who compound finished dosage form drugs from approved bulk new animal drug substances on the prescription of a licensed veterinarian are not required to comply with Parts 210 and 211 as long as they are operating within the scope of their respective practices.

Subpart B—Approved Bulk New Animal Drugs [Reserved]

Interested persons may, on or before September 30, 1985, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 6, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 85-15674 Filed 6-28-85; 8:45 am]

BILLING CODE 4160-01-M

---

21 CFR Part 1002

[Docket No. 82N-0273]

Review of Records and Reports Regulations for Radiation Emitting Electronic Products; Availability of Report

AGENCY: Food and Drug Administration.

ACTION: Availability of report.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for public review and comment of a report prepared by FDA's Center for Devices and Radiological Health (CDRH) entitled "Report of the CDRH Task Force for Retrospective Review of the Recordkeeping and Reporting Requirements of 21 CFR 1002." The report discusses the findings and recommendations of a CDRH task force which reviewed the recordkeeping and reporting requirements imposed upon manufacturers, dealers, and distributors of radiation-emitting electronic products. The report is being made available for public comment to provide the agency with further views to be considered for future proposed rulemaking.

DATE: Comments by August 30, 1985.

ADDRESSES: Comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Single copies of the report may be obtained by submitting a written request to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Melvyn Altman, Center for Devices and Radiological Health (HFS-83), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3426.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 14, 1981 (46 FR 36333), FDA published a notice announcing a systematic review of its rules and asked the public to comment on those FDA regulations that are most burdensome. The purpose of the review is to identify regulations that impose significant cost burdens and, for such rules, to explore alternative measures for protecting the public health. This retrospective review is required by the Regulatory Flexibility Act (Pub. L. 96-354) and by Executive Order 12291.

As a result of a systematic assessment of public comments in response to the July 14, 1981 notice and of available information, FDA published a notice in the **Federal Register** of July 2, 1982 (47 FR 29004) that identified Part 1002 (21 CFR Part 1002) as one of the rules selected as its highest initial review priorities.

Subsequently, in the **Federal Register** of November 16, 1982 (47 FR 51706), FDA published a notice inviting interested persons to submit comments, data, and information to assist FDA in assessing the benefit, economic cost, and need for revision of the regulations in Part 1002. In addition, CDRH convened an internal task force to review the regulations, analyze any comments received, and prepare recommendations for further FDA action. To conduct its review, the task force (1) interviewed many FDA supervisory and staff people and independently solicited from them comments, data, and information; (2) analyzed the comments, data, and information received in response to the notices of July 14, 1981, July 2, 1982, and November 16, 1982; (3) investigated societal benefits and economic costs (including the agency's costs) of the regulations and any feasible alternatives; (4) prepared cost impact analyses with regard to the Regulatory Flexibility Act and Executive Order 12291; and (5) prepared the subject report summarizing recommendations for FDA action.

Organization of the Report

Section 1 of the report, "Introduction and Background," briefly discusses why the retrospective review was done; outlines the portions of the Radiation Control for Health and Safety Act of 1968 (Pub. L. 90-602, 42 U.S.C. 263b et seq.) and associated regulations that are relevant to records and reports required for electronic products; and summarizes the criteria that the task force used to review the regulations.

Sections 2 through 4 generally follow the order of the subparts of Part 1002 (Subparts A through G). Within each section is a summary of relevant public comments, FDA staff comments, and the task force's discussion, conclusions, and recommendations.

Section 5 is an analysis of the economic impact that the current regulations impose on industry and the Government, and the estimated impact that the recommended changes to the regulations would have on industry.

The report is on file under the docket number appearing in brackets in the heading of this document and is available for public examination in the Dockets Management Branch (address above). Requests for single copies of the report should be submitted in writing to the contact person identified above.

Interested persons may, on or before August 30, 1985, submit to the Dockets Management Branch written comments on this report. Two copies of any comments should be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Comments received will be considered for future proposed rulemaking.

Dated: June 21, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-15673 Filed 6-28-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Public Comment Procedures and Opportunity for Public Hearing on Proposed Modifications to the Illinois Permanent Regulatory Program Under the Surface Mining Control and Reclamation Act of 1977

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 a program amendment submitted by Illinois as an amendment to the State's permanent regulatory program (hereinafter referred to as the Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendments submitted consist of proposed rules to Illinois' regulations to implement and administer the Agricultural Land Productivity Formula for determining the success of crop production on reclaimed prime farmland and other cropland areas. The proposed amendments are also intended to make Illinois' rules concerning revegetation consistent with the revised Federal regulations published in 48 FR 40140, September 2, 1983.

This notice sets forth the times and locations that the Illinois program and proposed amendments will be 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 from the public not received by 4:30 p.m. July 31, 1985 will not necessarily be considered in the decision on whether the proposed amendments should be approved and incorporated into the Illinois regulatory program. A public hearing on the proposed amendment has been scheduled for July 26, 1985. Any person interested in speaking at the hearing should contact Mr. James F. Fulton, at the address or telephone number listed below by July 16, 1985. If no person has contacted Mr. Fulton by that date to express an interest in the hearing, the hearing will be canceled. If only one person requests an 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. in the Springfield Field Office, 600 E. Monroe Street, Springfield, Illinois 62701.

Written comments and requests for an opportunity to speak at the hearing should be directed to Mr. James F. Fulton, Field Office Director, Springfield Field Office, Office of Surface Mining, 600 E. Monroe Street, Springfield, Illinois 62701; Telephone: (217) 492–4495.

Copies of the Illinois 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 Springfield Field Office listed above, OSM Headquarters Office, and the Office of the State regulatory authority listed below, during normal working hours Monday through Friday, excluding holidays. Each requester may receive, free of charge, one single copy of the proposed amendment by contacting OSM's Springfield Field Office.

Office of Surface Mining, Room 5124, 1100 "L" Street, NW., Washington, D.C. 20240

Department of Mines and Minerals, Land Reclamation Division, 227 South 7th Street, Springfield, Illinois 62706.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Fulton, Director, Springfield Field Office, Office of Surface Mining, 600 E. Monroe Street, Springfield, Illinois 62701; Telephone: (217) 492–4495.

SUPPLEMENTARY INFORMATION:

I. Background

The Illinois program was conditionally approved by the Secretary of the Interior on June 1, 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 Illinois program, can be found in the June 1, 1982 **Federal Register** (47 FR 23858).

II. Submission of Revisions

By letter dated May 30, 1985, Illinois submitted program amendments to implement and administer the Agricultural Land Productivity Formula for determining the success of crop production on reclaimed prime farmland and other cropland areas (1816.116 and Appendix A). Other proposed revegetation amendments (1816.111–1816.117) are being proposed to make the rules consistent with Federal regulations.

The general requirements for revegetation have been amended as have timing, mulching and other soil stabilizing practices, standards for success, and tree and shrub stocking for forest land. Illinois proposes to repeal rules on use of introduced species and grazing. These were areas identified by OSM as being inconsistent with Federal regulations. The amendments are proposed to make Illinois' revegation regulations consistent with Federal standards.

30 CFR 816.116 requires that the standards used to judge revegetation success be part of the approved program. Illinois has submitted its method for determining revegetation success as Appendix A of the proposed amendments.

The full text of the proposed amendments submitted by Illinois is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendment is no less effective than the Federal regulations. If approved, the amendments will become part of the Illinois program.

III. 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, for this action OSM is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require 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 established 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 913

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

Dated: June 25, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

[FR Doc. 85-15744 Filed 6-28-85; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7-84-29]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL, GA, SC

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering changing regulations governing the drawbridges across the Atlantic Intracoastal Waterway (AICW) from Little River, South Carolina to Miami, Florida to provide for "on demand" openings for certain large vessels during authorized closed periods. This proposal is being made because of concern for the safety of both these vessels and the bridges and to provide for consistency in the operation of drawbridges across the AICW within the Seventh Coast Guard District. Additional changes deleting weather related exemptions at certain bridges and standardizing terminology to identify holidays as federal holidays are proposed.

DATE: Comments should be received on or before August 15, 1985.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 SW. 1st Avenue, Miami, Florida 33130. The comments and other materials reference in this notice will be available for inspection and copying at 51 SW 1st Avenue, Room 816, Miami, Florida. Normal office hours are 7:30 a.m. to 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, Bridge Administration Specialist, (305) 350-4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments.

Persons submitting comments should include their names and addresses, identify this proposal, and give reasons for concurrence with or 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, Seventh Coast Guard District, will evaluate all communications received, and determine a course of final actions on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander Ken Gray, project attorney.

Discussion of Proposed Regulations

On October 31, 1984 the Commander, Seventh Coast Guard District published a notice of proposed rulemaking (49 FR 43715) soliciting comments on a rule that would require all drawbridges across the AICW to open on demand for "regularly scheduled cruise vessels" during authorized closed periods. This was intended to establish consistency in the operating regulations for these bridges and provide for the safe transit of large cruise vessels. Based on comments received on the proposed rule we have determined that it is the size of the vessel and not the nature of its employment that should be paramount in the proposed exception. Gross tonnage is a readily available measure of a vessel's bulk. Because the large cruise vessels which inspired the original proposal exceed 90 gross tons; this figure was selected as the cut-off for exempted vessels. Smaller vessels would be expected to be more maneuverable. This 90 gross ton criteria eliminates the need to define the term "regularly scheduled cruise vessels."

Specific regulations applicable to certain bridges when storm warnings are in effect would be revoked in the interest of uniformity and because vessels encountering storm conditions in certain situations can be considered "vessels in distress" eligible for on demand passage through a drawbridge during authorized closed periods.

The existing regulations variously address holidays, federal holidays and state holidays. The proposed regulations label all holidays as federal holidays in order to eliminate possible confusion.

Certain bridges contained in this proposal are currently the subject of other rulemaking which would establish or revise specific operating regulations. Those changes are being addressed independently of this proposal and are included herein solely in the interest of completeness. Minor editorial changes have been proposed throughout these regulations to improve readability.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the proposal is primarily a change of form, not of substance. Regulations now in effect at 10 of the 41 bridges affected by this proposal provide for on demand draw opening for regularly scheduled cruise vessels, regardless of size. The proposed regulation would remove this privilege from smaller cruise vessels at these 10 bridges but extend it to large vessels, regardless of employment, at all 41 bridges. Smaller cruise vessels can safely adjust their schedules to arrive at drawbridges at appropriate opening times. Since the economic impact of this proposal is expected to be minimal the Coast Guard certifies that if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows: 33 U.S.C. 499, 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. In Part 117, §§ 117.261, 117.353, and 117.911 are proposed to be revised as follows:

* * * * *

Florida

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Miami.

(a) *Exempt Vessels.* This term means public vessels of the United States, tugs with tows, vessels over 90 gross tons, and vessels in distress.

(b) *McCormick Bridge, mile 747.5 at Jacksonville Beach.* The draw shall open on signal; except that, during April, May, October, and November, from 7 a.m. to 8:30 a.m. and 4:30 p.m. to 6 p.m. Monday

through Friday except federal holidays, the draw need open only on the hour and half-hour. During April, May, October, and November, from 12 noon to 6 p.m. Saturdays, Sundays, and federal holidays, the draw need open only on the hour and half-hour. Exempt vessels shall be passed at any time.

(c) [Reserved]

(d) *Bridge of Lions (SR A1A) bridge, mile 777.9 at St. Augustine.* The draw shall open on signal; except that, from 7 a.m. to 6 p.m. the draw need open only on the hour and half-hour; however, the draw need not open at 8 a.m., 12 noon, and 5 p.m. Monday through Friday except federal holidays. From 7 a.m. to 6 p.m. on Saturdays, Sundays and federal holidays the draw need only open on the hour and half-hour. Exempt vessels shall be passed at any time.

(e) *Seabreeze Boulevard bridge, mile 829.1 at Daytona Beach.* The draw shall open on signal; except that, from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. Monday through Saturday except federal holidays, the draw need open only at 8 a.m. and 5 p.m. Exempt vessels shall be passed at any time.

(f) *Memorial bridge, mile 830.6 at Daytona Beach.* The draw shall open on signal; except that, from 7:45 a.m. to 8:45 a.m. and 4:45 p.m. to 5:45 p.m. Monday through Saturday except federal holidays, the draw need open only at 8:15 a.m. and 5:15 p.m. Exempt vessels shall be passed at any time.

(g) *SR A1A bridge, mile 835.5 at Port Orange.* The draw shall open on signal; except that, from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. Monday through Saturday except federal holidays, the draw need open only at 8 a.m. and 5 p.m. Exempt vessels shall be passed at any time.

(h) [Reserved]

(i) *Harris Saxon bridge, mile 846.5 at New Smyrna Beach.* The draw shall open on signal; except that, from March 15 through October 15 on Saturdays, Sundays, and federal holidays from 3 p.m. to 6 p.m., the draw need open only on the hour and half-hour. Exempt vessels shall be passed at any time.

(j) *NASA railroad bridge, mile 876.6 near Jay Jay.* The draw shall be operated as follows:

(1) The bridge is not constantly tended.

(2) The draw is normally in the fully open position, displaying flashing green lights to indicate that vessels may pass.

(3) When a train approaches the bridge, the lights go to flashing red and a horn sounds four blasts, pauses, and then repeats four blasts. After an eight minute delay, the draw lowers and locks, providing the scanning equipment reveals nothing under the draw. The draw remains down for a period of eight minutes or while the approach track circuit is occupied.

(4) After the train has cleared, the draw opens and the lights return to flashing green.

(k) *SR402 bridge, mile 878.9 at Titusville.* The draw shall open on signal; except that, from 6:45 a.m. to 7:45 a.m. and 4:15 p.m. to 5:45 p.m. Monday through Friday, the draw need not open. Exempt vessels shall be passed at any time.

(l) *John F. Kennedy Space Center (SR405) bridge, mile 885.0 at Addison Point.* The draw shall open on signal; except that, from 6:45 a.m. to 8 a.m. and 4:15 p.m. to 5:45 p.m. Monday through Friday, the draw need not open. Exempt vessels shall be passed at any time.

(m) *SR518 bridge, mile 914.4 at Eau Gallie.* The draw shall open on signal; except that, from 6:45 a.m. to 8:15 a.m. and 4:15 p.m. to 5:45 p.m. Monday through Friday except federal holidays, the draw need open only at 8:15 a.m. and 4:15 p.m. From 8:15 a.m. to 4:15 p.m. Monday through Friday except federal holidays, the draw need open only on the quarter-hour and three-quarter hour. Exempt vessels shall be passed at any time.

(n) *Merrill Barber (SR60) bridge, mile 951.9 at Vero Beach.* The draw shall open on signal; except that, from 7:45 a.m. to 9 a.m., 12 noon to 1:15 p.m., and 4 p.m. to to 5:15 p.m., Monday through Friday, except federal holidays, the draw need open only at 8:30 a.m., 12:30 p.m. and 4:30 p.m. From December 1 thorugh April 30, from 7 a.m. to 6 p.m., Monday through Friday except federal holidays and as provided above, the draw need only open on the hour, quarter-hour and half-hour and three-quarter hour. Exempt vessels shall be passed at any time.

(o) [Reserved]

(p) [Reserved]

(q) *Indiantown Road (SR706) bridge, mile 1006.2 at Jupiter.* The draw shall open on signal; except that, from November 1, through April 30, from 7 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. Exempt vessels shall be passed at any time.

(r) [Reserved]

(s) *PGA Boulevard bridge, mile 1012.6.* The draw shall open on signal; except that from, 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m., Monday through Friday except federal holidays, the draw need open only on the quarter-hour and three-quarter hour.

On Saturdays, Sundays, and federal holidays from 8 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. Exempt vessels shall be passed at any time.

(t) *Parker (US1) bridge, mile 1013.7.* The draw shall open on signal; except that from 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m. Monday through Friday except federal holidays, the draw need open only on the hour and half-hour. On Saturdays, Sundays, and federal holidays from 8 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. Exempt vessels shall be passed at any time.

(u) *Flagler Memorial (SR A1A) bridge, mile 1021.9 at Palm Beach.* The draw shall open on signal; except that, from November 1 to May 31, Monday through Friday except federal holidays, from 8 a.m. to 9:30 a.m. and from 4 p.m. to 5:45 p.m., the draw need open only at 8:30 a.m. and 4:45 p.m.. From 9:30 a.m. to 4 p.m., the draw need open only on the hour and half-hour. Exempt vessels shall be passed at any time.

(v) *Royal Park (SR704) bridge, mile 1022.6 at Palm Beach.* The draw shall open on signal; except that, from November 1 to May 31, Monday through Friday except federal holidays, from 8 a.m. to 9:30 a.m. and from 3:30 p.m. to 5:45 p.m., the draw need open only at 8:45 a.m., 4:15 p.m., and and 5 p.m.. From 9:30 a.m. to 3:30 p.m., the draw need open only on the hour and quarter-hour and three-quarter hour. Exempt vessels shall be passed at any time.

(w) *Southern Boulevard (SR700/80) bridge, mile 1024.7 at Palm Beach.* The draw shall open on signal; except that, from November 1 to May 31, Monday through Friday except federal holidays, from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6:30 p.m., the draw need open only at 8:15 a.m. and 5:30 p.m. Exempt vessels shall be passed at any time.

(x) [Reserved]

(y) *Lantana Avenue bridge, mile 1031.0 at Lantana.* The draw shall open on signal; except that, from December 1, to April 30, on Saturdays, Sundays, and federal holidays, from 10 a.m. to 6 p.m., the bridge need open only on the hour, quarter-hour half-hour, and three-quarter hour. Exempt vessels shall be passed at any time.

(z) [Reserved]

(aa) *Atlantic Avenue (SR806) bridge, mile 1039.6 at Delray Beach.* The draw shall open on signal; except that, from November 1 to May 31 from 10 a.m. to 6 p.m. Monday through Friday, the draw need open only on the hour and half-hour. Exempt vessels shall be passed at any time.

(bb) *SR810 bridge, mile 1050.0 at Deerfield Beach.* The draw shall open on signal; except that, from November 1

to May 31 from 11 a.m. to 5 p.m. on Saturdays, Sundays and federal holidays, the draw need not open only on the hour and quarter-hour and three-quarter hour. Exempt vessels shall be passed at any time.

(cc) *N.E. 14th Street bridge, mile 1055.0 at Pompano.* The draw shall open on signal; except that, from 7 a.m. to 6 p.m., the draw need open only on the quarter-hour and three-quarter hour. Exempt vessels shall be passed at any time.

(dd) *Atlantic Boulevard (SR8140 bridge, mile 1056.0 at Pompano.* The draw shall open on signal; except that, from 7 a.m. to 6 p.m., the draw need open only on the hour and half-hour. Exempt vessels shall be passed at any time.

(ee) *Commercial Boulevard bridge, mile 1059.0 at Lauderdale-by-the-Sea.* The draw shall open on signal; except that, from November 1 to May 15 from 12 noon to 6 p.m., Monday through Saturday, and from 9 a.m. to 6 p.m. on Sundays, the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour. Exempt vessels shall be passed at any time.

(ff) *Oakland Park Boulevard bridge, mile 1060.5 at Ft. Lauderdale.* The draw shall open on signal; except that, from November 15 through May 15 from 7 a.m. to to 6 p.m., Monday through Friday except federal holidays, the draw need open only on the hour, 20 minutes past the hour, and 40 minutes past the hour, and from 10 a.m. to 6 p.m. on Saturdays, Sundays and federal holidays, the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour. Exempt vessels shall be passed at any time.

(gg) *Sunrise Boulevard (SR838) bridge, mile 1062.6 at Fort Lauderdale.* The draw shall open on signal; except that, from November 15 through May 15 and year-round through November 14, 1986 from 7:15 a.m. to 6:15 p.m.,the draw need open only on the quarter-hour and three quarter hour. Exempt vessels shall be passed at any time.

(hh) *Brooks Memorial (S.E. 17th Street) bridge, mile 1065.9 at Fort Lauderdale.* The draw shall open on signal; except that, from 7 a.m. to 7 p.m., the draw need not be reopened for a period of 15 minutes after each closure. The owner of or agency controlling the bridge shall display on both sides of the bridge a time clock which is acceptable to the District Commander and which indicates to approaching vessels the number of minutes remaining before the draw is available for opening. Exempt vessels shall be passed at any time.

(ii) [Reserved]

(jj) *Hollywood Beach Boulevard (SR820) bridge, mile 1072.2 at Hollywood.* The draw shall open on signal; except that, from November 15 through May 15 from 10 a.m. to 6 p.m., the draw need open only on the hour and half-hour. From May 16 through November 14 on Saturdays, Sundays, and federal holidays, from 9 a.m. to 7 p.m., the draw need open only on the hour and half-hour. Exempt vessels shall be passed at any time.

(kk) *Hallandale Beach Boulevard (SR824) bridge, mile 1074.0 at Hallandale.* The draw shall open on signal; except that, from 7:15 a.m. to 6:15 p.m., the draw need open only on the quarter-hour and three-quarter hour. Exempt vessels shall be passed at any time.

(ll) *N.E. 163rd Street (SR826) bridge, mile 1078.0 at Sunny Isles.* The draw shall open on signal; except that, from 7 a.m. to 6 p.m., on Monday through Friday except federal holidays, and from 10 a.m. to 6 p.m. on Saturdays, Sundays, and federal holidays, the draw need open only on the quarter-hour and three-quarter hour. Exempt vessels shall be passed at any time.

(mm) *Broad Causeway bridge, mile 1081.4 at Bay Harbor Islands.* The draw shall open on signal; except that, from 8 a.m. to 6 p.m., the draw need open only on the quarter-hour and three-quarter hour. Exempt vessels shall be passed at any time.

(nn) *West Span of the Venetian Causeway, mile 1088.6 at Miami.* The draw shall open on signal; except that, from November 1 through April 30, Monday through Friday except federal holidays, from 7 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m., the draw need be opened only on the hour and half-hour. Exempt vessels shall be passed at any time.

(oo) *MacArthur Causeway bridge, mile 1088.8 at Miami.* The draw shall open on signal; except that, from November 1 through April 30 from 7 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m., the draw need open only on the hour and half-hour. Exempt vessels shall be passed at any time.

(pp) *Dodge Island bridges, mile 1089.4 at Miami.* The draws shall open on signal; except that, from 7:15 a.m. to 5:45 p.m. Monday through Saturday except federal holidays, the draws need open only on the quarter-hour and three quarter hour. Exempt vessels shall be passed at any time.

(qq) *Rickenbacker Causeway bridge, mile 1091.6 at Miami.* The draw shall open on signal; except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m. Monday through Friday except federal holidays, and 11 a.m. to 6 p.m. Saturdays, Sundays, and federal holidays, the draw need open only on the hour and half-hour. Exempt vessels shall be passed at any time.

* * * * *

§ 117.353 Atlantic Intracoastal Waterway, Savannah River to St. Marys River.

(a) *Exempt Vessels.* This term means public vessels of the United States, tugs with tows, vessels over 90 gross tons, and vessels in distress.

(b) *Causton Bluff (SR26) bridge across the Wilmington River, mile 579.9 near Causton Bluff.* The draw shall open on signal except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m. Monday through Friday except federal holidays, the draw need open only at 8:10 a.m. and 5:20 p.m. Exempt vessels shall be passed at any time.

(c) *Memorial (US80) Bridge across the Wilmington River, mile 582.8 at Thunderbolt.* The draw shall open on signal; except that, from 7:45 a.m. to 9:15 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday except federal holidays, the draw need open only at 8:30 a.m. and 5:45 p.m. From May 15 to September 15 from 12 noon to 1:30 p.m. and 4 p.m. to 6 p.m. on Sundays, and federal holidays the draw need open only on the hour and half-hour. Exempt vessels shall be passed at any time.

(d) *Torras Causeway bridge across the Frederica River, mile 675.5 at Simons Island.* The draw shall open on signal; except that, from 7:30 a.m. to 9:30 a.m. and 4:30 p.m. to 6:30 p.m. Monday through Friday except federal holidays, the draw need open only on the hour and half hour. Exempt vessels shall be passed at any time.

* * * * *

South Carolina

§ 117.911 Atlantic Intracoastal Waterway, Little River to Savannah River.

(a) *Exempt Vessels.* This term means public vessels of the United States, tugs with tows, vessels over 90 gross tons, and vessels in distress.

(b) *Socastee (SR544) bridge, mile 371 at Socastee.* The draw shall open on signal except that from April 1 through June 30 and October 1 through November 30 from 7 a.m. to 10 a.m. and 2 p.m. to 6 p.m., Monday through Friday except federal holidays, the draw need open only on the hour and half-hour. From May 1 through June 30 and October 1 through October 31 from 10 a.m. to 2 p.m., Saturdays, Sundays and federal holidays, the draw need open only on the hour and half-hour. Exempt vessels shall be passed at any time.

(c) *Ben Sawyer (SR703) bridge across Sullivan's Island Narrows, mile 462.2 between Sullivan's Island and Mount Pleasant.* The draw shall open on signal, except that the draw need not open from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. Monday through Friday except federal holidays. On Saturdays, Sundays, and federal holidays, from 2 p.m. to 6 p.m., the draw need open only on the hour and half-hour. Exempt vessels shall be passed at any time.

(d) *SR171/700 bridge across Wappoo Creek, mile 470.8 at Charleston.* The draw shall open on signal, except that the draw need not open from 6:30 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. Monday through Friday except federal holidays. On Saturdays, Sundays, and federal holidays, from 2 p.m. to 6 p.m., the draw need open only on the hour and half-hour. Exempt vessels shall be passed at any time.

(e) *Lady's Island bridge across the Beaufort River, mile 536.0 at Beaufort.* The draw shall open on signal, except that, from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. Monday through Saturday except federal holidays, the draw need open only on the hour. Exempt vessels shall be passed at any time.

* * * * *

Dated: June 17, 1985.

A. R. Larzelere,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 85-15708 Filed 6-28-85; 8:45 am]

BILLING CODE 4910-14-M

---

33 CFR Part 117

[CGD8-85-11]

Drawbridge Operation Regulations; Schooner Bayou Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change to the regulation governing the operation of the swing span bridge over Schooner Bayou Canal, mile 4.0 from White Lake, on LA82 at Little Prairie Ridge, Vermilion Parish, Louisiana. The change would require that at least four hours advance notice be given for an opening of the draw between 10 p.m. and 6 a.m. Outside these hours, the bridge would continue to open on signal. Presently, the draw is required to open on signal at all times. This proposal is being made because of the infrequent requests to open the draw during the proposed advance notice period. This action should relieve the bridge owner of the burden of having a person constantly available at the bridge to open the draw from 10 p.m. to 6 a.m., while still providing for the reasonable needs of navigation.

DATE: Comments must be received on or before August 15, 1985.

ADDRESS: Comments should be mailed to Commander (obr), Eighth Coast Guard District, 500 Camp Street, New Orleans, Louisiana 70130. The comments and other materials referenced in this notice will be available for inspection and copying in Room 1115 at this address. Normal office hours are between 8:00 a.m. and 3:30 p.m., Monday through Friday except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: Interested parties are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in light of comments received.

Drafting Information

The drafters of this notice are Perry Haynes, project officer, and Steve Crawford, project attorney.

Discussion of Proposed Regulation

Vertical clearance of the bridge in the closed position is 6.0 feet above high water and 9.0 feet above low water, at the pivot pier, and a foot higher at the rest pier. Navigation through the bridge consists of oil industry related boats, shrimp/fish boats, and recreational craft. Data submitted by the LDOTD show that this traffic through the bridge is infrequent during the proposed advance notice period, as follows:

(1) In 1984, between 10 p.m. and 6 a.m., the proposed advance notice period, there were 302 bridge openings—an average of 25.2 openings per month or an average of five openings every six days. In 1983, for the same time period, there were 219 openings—an average of 18.3 openings per month or an average of three openings every five days.

(2) The total number of openings in 1984, 1983, 1982, 1981, 1980, 1979, and 1978 were: 1994, 1209, 1542, 2234, 2485, 2021, and 2329, respectively.

Considering the few openings involved, the Coast Guard feels that the current on site attendance at the bridge between 10 p.m. and 6 a.m. is not warranted and that the bridge can be placed on a four hours advance notice for an opening during that period. This will provide relief to the bridge owner, while still providing for the reasonable needs of navigation.

The advance notice for opening the draw would be given by placing a collect call at any time to the LDOTD District Office at Lafayette, Louisiana, telephone (318) 233-7404. From afloat, this contact may be made by radiotelephone through a public coast station.

The LDOTD recognizes that there may be an unusual occasion to open the bridge on less than four hours notice for an emergency or to operate the bridge on demand for an isolated but temporary surge in waterway traffic, and has committed to doing so if such an event should occur.

Economic Assessment and Certification

This proposed regulation is 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. The basis for this conclusion is that few vessels pass this bridge during the proposed advance notice period of 10 p.m. to 6 a.m., as evidenced by the combined 1983 and 1984 bridge opening statistics which show that the bridge averaged two openings every three days. These vessels can reasonably give four hours advance notice for a bridge opening between 10 p.m. and 6 a.m. by placing a collect call to the bridge owner at any time. Mariners requiring the bridge openings are mainly repeat users and scheduling their arrival at the bridge at the appointed time during the advance notice period should involve little or no additional expense to them. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499, and 49 CFR 1.46(c)(5) and 33 CFR 1.05–1(g).

2. Section 117.494 is added to read as follows:

§ 117.494 Schooner Bayou Canal.

The draw of the S82 bridge, mile 4.0 from White Lake at Little Prairie Ridge, shall open on signal, except that, from 10 p.m. to 6 a.m. the draw shall open on signal if at least four hours notice is given. The draw shall open on less than four hours notice for an emergency and shall open on signal should a temporary surge in waterway traffic occur.

Dated: June 19, 1985.

W.H. Stewart,

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

[FR Doc. 85–15716 Filed 6–28–85; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 50459-5059]

Revision of Patent Fees

Correction

In FR Doc. 85–15156 beginning on page 25896 in the issue of Friday, June 21, 1985, make the following corrections:

1. On page 25897, in the first column, in the second complete paragraph, in the eighth line from the end of the paragraph, "of" should read "or".

2. On the same page, in the second column, in the next to last line of the first complete paragraph, "cost of" should read "cost to".

3. On page 25898, in the first column, under the heading *Section 1.26 Refunds.*, in the first line "1.25" should read "1.26".

4. On the same page, in the next to last line of the first column, "cost of" should read "cost to".

5. On page 25900, in the first column, in the last line of § 1.19(a)(2), the brackets around "$8.00" should be removed.

6. On the same page, in the second column, in the last line of § 1.19(h), the arrow preceding "$10.00" should be removed.

7. On page 25901, in the first column, in the last line of § 1.21(a)(3), the brackets around "$25.00" should be removed.

8. On the same page in the second column, in the last line of § 1.21(g), the brackets around "$0.20" should be removed.

9. On the same page and in the same column, in the next to last line of § 1.21(i), "of" should read "or".

10. On the same page, in the third column, in the last line of § 1.21(k), the brackets around "actual cost" should be removed.

11. On page 25902, in the second column, in the next to last line of § 1.445(a)(3), brackets should be added around the reference to footnote 1.

12. On the same page, in the third column, brackets should be added around footnote 1 which follows § 1.445(a)(6).

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2856-4]

Approval and Promulgation of Implementation Plans; Michigan

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to approve a revision to the Michigan State Implementation Plan (SIP) for sulfur dioxide (SO^2) as it applies to the Consumer Power Company) (CPC) J.H. Campbell plant in Ottawa County, Michigan. The plant is located in an area classified as attainment for the National Ambient Air Quality Standards (NAAQS) for SO_2.

Consent Order No. 12–1984 for the J.H. Campbell plant allows the plant's Units 1 and 2 to emit SO_2 at an allowable rate of 4.88 to 4.68 lbs/MMBTU on a daily basis for a 3-year (1985–1987) period. The Consent Order represents a reduction from the previous (1980–1984) 6.6 lbs SO_2-MMBTU allowable emission rate but is higher than the underlying 1.66 lbs SO_2/MMBTU emission limit in the Michigan SIP. An acceptable attainment demonstration was provided which shows that the proposed limits will protect the SO_2 NAAQS and the Prevention of Significant Deterioration (PSD) increments.

DATE: USEPA must receive comments on or before July 31, 1985.

ADDRESSES: Written comments should be sent to: (Please submit an original and five copies, if possible): Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Toni Lesser, (312) 886–6037.

Copies of the State's submittal and USEPA's evaluation are available for inspection during normal business hours at (It is recommended that you telephone Ms. Toni Lesser, at (312) 886–6037, before visiting the Region V office):

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

Michigan Department of Natural Resources, Air Quality Division, State Secondary Government Complex, General Office Building, 7150 Harris Drive, Lansing, Michigan 48821.

SUPPLEMENTARY INFORMATION: On May 31, 1972 (37 FR 10842), USEPA approved Michigan's Rule 336.49 imposing statewide emission limitations for control of SO_2 emissions from power plants. On January 17, 1980, Michigan revised and recodified R336.49 and R336.1401; these revisions were not substantive. Rule 336.1401 contains emissions limits and compliance dates identical to those in R336.49.

On May 6, 1980 (45 FR 29795), USEPA approved R336.1401. Rule 336.1401 contains a 1 percent sulfur content in fuel limitation for large coal-burning power plants, with compliance date of July 1, 1978. Under this rule, a source could obtain an exception from meeting the SO_2 limit up until January 1, 1980, if certain specified conditions were met. After January 1, 1980, a source could apply to the Michigan Air Pollution Control Commission (MAPCC) for a compliance date extension, pursuant to State regulations. However, any such extensions must be submitted to USEPA as a revision to the federally approved SIP.

On December 24, 1980 (45 FR 85004), USEPA approved a 5-year compliance date extension from Michigan's Rule 336.1401 for the CPC's J.H. Campbell plant (Consent Order No. 5–1979). The J.H. Campbell plant is located in Port Sheldon Township, Ottawa County, Michigan, approximately 1 kilometer east of Lake Michigan. Ottawa County is located in Air Quality Control Region

122 which was designated as an attainment area for SO_2 on October 5, 1978 (45 FR 45993). Consent Order No. 5–1979 contained provisions that SO_2 emissions from the J.H. Campbell Plant Units 1 and 2 were not to exceed 6.6 lbs/MMBTU on a daily basis (or 3.05 percent sulfur in coal on an annual average basis) between January 1, 1980, and December 31, 1984.

In a State hearing held on November 29, 1983, the MAPCC denied CPC's request for an additional 5 year compliance date extension (January 1, 1985, to December 31, 1989).

On June 18, 1984, the MAPCC approved a new request by CPC for an additional 3 year compliance date extension (January 1, 1985–December 31, 1987) at J.H. Campbell Units 1 and 2. On October 1, 1984, MDNR submitted the Stipulation for Entry of Consent Order and Final Order, SIP No. 12–1984, between the CPC and the MAPCC as a revision to Michigan's SO_2 SIP. The key provisions of the Order are summarized below:

- J.H. Campbell Units 1 and 2 must be in compliance with the 1 percent sulfur fuel in R336.1401 prior to January 1, 1988.
- SO_2 emission limitations:

	Daily (lbs/MMBTU)	Quarterly (percent sulfur fuel)
1985	4.88	2.6
1986	4.78	2.5
1987	4.66	2.4

- CPC must enter into contracts for low sulfur coal (1,200,000 tons) by January 1, 1985.
- CPC must operate several SO_2 ambient monitors and a stack gas emission monitor.

Consent Order No. 12–1984 requires a reduction from the 6.6 lbs/MMBTU limit allowed in 1984 to a 4.88 lbs/MMBTU limit in 1986. In support of the SIP revision, MDNR submitted the CPC application, MDNR staff reports and MDNR analyses of the CPC application.

USEPA's technical support document of November 30, 1984, provides a detailed discussion of USEPA's review of air quality modeling analysis and PSD applicability.

The analyses are consistent with USEPA's modeling guidelines and indicate that the revised SO_2 emission limitations for the J.H. Cambell Plant will not cause or contribute to a violation of the SO_2 in Michigan or any other State.

Because the CPC J.H. Campbell plant is located in an area designated as attainment for the SO_2 NAAQS and the proposed SIP revision constitutes a relaxation of the Michigan SO_2 SIP, the PDS regulations (August 7, 1980, 45 FR 52676) may be applicable. Relaxations must be reviewed for PSD increment consumption, if the PSD baseline date has been triggered by the filing of a complete PSD application within the area in which the J.H. Campbell plant is located in or has a 1 $\mu g/m^3$ impact. Because the baseline date was triggered in 1980 for Ottawa County, a PSD increment consumption analysis is necessary for the J.H. Campbell revision. It is noted, however, that the proposed emission limitations are lower than the historical actual emission rates from this plant; and, therefore, the revision will result in a decrease in actual emissions from the plant. Consequently, the proposed revision expands rather than consumes the available PSD increment in this area.

USEPA has reviewed the State of Michigan's request for a 3-year SO_2 compliance date extension from R336.1401 for the CPC J.H. Campbell plant. USEPA is today proposing approval of this revision. This revision represents a reduction from the 1980–1984, 6.6 lbs/MMBTU allowable emission rate, but is higher than the 1.66 lbs/MMBUT allowable rate in the underlying Michigan SO_2 SIP. The Consent Order between Michigan and CPC requires compliance with R336.1401 prior to January 1, 1988. An acceptable attainment demonstration was provided which shows that the proposed limits will protect the SO_2 NAAQS and PSD increments.

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

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities because it affects only one source. In addition, this action imposes no additional requirements on the source.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

This notice is issued under authority of section 110 of the Clean Air Act, as amended (42 U.S.C. 7410).

Dated: Febuary 25, 1985.

Alan Levin,

Acting Regional Administrator.

[FR Doc. 85–15572 Filed 6–28–85; 8:45 am]

BILLING CODE 6560-50-M

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte No. 334 (Sub-6)]

Review of Car Hire Charges; Extension of Time

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments to advance notice of proposed rulemaking.

SUMMARY: At 50 FR 16724, April 29, 1985, the Commission opened this proceeding to undertake a broad review of the regulation of railroad car-hire charges (except car-hire charges for boxcars). That notice established due dates of June 28 and August 27, 1985, respectively, for the filing of initial and reply comments. In response to requests, this notice extends those dates by 60 days.

DATES: Initial comments are due by August 27, 1985; reply comments are due by October 28, 1985.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: An advance notice of proposed rulemaking published April 29, 1985 (50 FR 16724) established due dates of June 28 and August 27, 1985, respectively, for the filing of initial and reply comments in this proceeding. By a joint petition filed June 11, 1985, the American Short Line Railroad Association, BRAE Corporation, and Itel Rail Corporation (petitioners) seek 60-day extensions of time for filing those comments. In reply, the Consolidated Rail Corporation has requested a 90-day extension. Petitioners join in that request, but the Railway Progress Institute supports only the petitioners original 60-day request. In addition, the railroad subsidiaries of CSX Corporation have also requested a 90-day extension.

Because of the complex issues, a 60-day extension is warranted. The longer extension requests are not warranted, because this is a longstanding issue in the railroad industry, because an additional 60 days is ample time to adequately prepare, and because the railroads have addressed the same issues recently in similar proceedings.

Decided: June 24, 1985.

By the Commission, Reese H. Taylor, Jr., Chairman.

James H. Bayne,

Secretary.

[FR Doc. 85–15745 Filed 6–28–85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Adminstration

49 CFR Part 571

[Docket No. 85-07; Notice 2]

Federal Motor Vehicle Safety Standards; Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Extension of comment period.

SUMMARY: This notice extends the comment period on a notice of proposed rulemaking published May 14, 1985, regrading the timing of air brakes on vehicles used in combinations. The comment period was scheduled to close on June 28, 1985. NHTSA received five petitions asking that the comment period be extended to allow commenters more time to analyze the available data on the effects of various actuation and release times on the braking performance of vehicles operated in combinations. NHTSA has concluded that the commenters would benefit from additional time to review NHTSA data that has recently been made available. The agency also concludes that testing scheduled by the petitioners would provide useful data on brake performance which NHTSA should have the opportunity to consider before proceeding with this rulemaking. Accordingly, the comment period is extended until December 30, 1985.

DATE: The comment period for Docket No. 85-07; Notice 1 is extended so that it closes December 30, 1985.

ADDRESS: Comments should refer to Docket No. 85-07 and be submitted to: docket Section, Room 5109, NHTSA, 400 Seventh Street SW., Washington, D.C. 20590 (Docket Hours are 8:00 am to 4:00 pm Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. James Clements, Office of Vehicle Safety Standards, HNTSA, 400 Seventh Street SW., Washington, D.C. (202-426-1714).

SUPPLEMENTARY INFORMATION: NHTSA published a notice of proposed rulemaking regarding the actuation and release timing for air brakes on combination vehicles at 50 FR 20113, May 14, 1985. The comment period for the proposal was scheduled to close June 28, 1985.

NHTSA received five petitions asking that the comment period be extended. The Motor Vehicle Manufacturers Association (MVMA) petitioned for an extension to November 12, 1985, to permit an analysis of the test data submited to the docket by NHTSA and to schedule and conduct tests of vehicle and brake system configurations that were not part of the NHTSA test program. The American Trucking Association (ATA) petitioned for a six-month extension to allow time to incorporate the proposed procedures into a testing program that will form the basis for more comprehensive comments. The Truck Trailer Manufacturers Association asked for 60 days to permit the completion of their tests and the sharing of information at their Engineering Committee meeting in August. General Motors and the Ford Motor Company each requested a six-month extension to permit the completion of their respective testing programs.

NHTSA has carefully considered these comments. In the agency's view, the new testing proposed by the petitioners might well yield significant new data on brake compatibility. To give the agency the opportunity to examine this data, and to allow the interested public more time to analyze the data which are currently available, NHTSA has decided to extend the comment period for this rulemaking for the six months requested by the majority of the petitioners. The new closing date for comments is December 30, 1985.

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 150.

Issued on June 26, 1985.

William A. Boehly,

Acting Associate Administrator for Rulemoking.

[FR Doc. 85-15709 Filed 6-26-85; 12:54 pm]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 50, No. 128
Monday, July 1, 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.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Meat Import Limitations; Third Quarterly Estimate

Public Law 88–482, enacted August 22, 1964, as amended by Pub. L. 96–177 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of cattle, sheep except lamb, and goats (TSUS 106.10, 106.22, and 106.25), and certain prepared or preserved beef and veal products (TSUS 107.55, 107.61, and 107.62), which may be imported into the United States in any calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles provided for in TSUS 106.10, 106.22, 106.25, 107.55 and 107.62 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1985 by subsection 2(c) as adjusted under subsection 2(d) of the Act.

As published on December 27, 1984 (49 FR 50215), the estimated aggregate quantity of meat articles prescribed by subsection 2(c), as adjusted by subsection 2(d) of the Act, for calendar year 1985 is 1,199 million pounds.

In accordance with the requirements of the Act, I have determined that the third quarterly estimate for 1985 of the aggregate quantity of meat articles which would, in the absence of limitations under the Act, be imported during calendar year 1985 is 1,180 million pounds.

Done at Washington, D.C., this 27th day of June, 1985.

John R. Block,

Secretary.

[FR Doc. 85–15795 Filed 6–27–85; 11:49 am]

BILLING CODE 3410–10–M

Federal Grain Inspection Service

Designation Renewal of Grain Inspection, Inc. (ND) and Kankakee Grain Inspection Bureau, Inc. (IL)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Grain Inspection, Inc. (Jamestown), and Kankakee Grain Inspection Bureau, Inc. (Kankakee), as official agencies responsible for providing official servcies under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: August 1, 1985.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS announced that Jamestown's and Kankakee's designations terminate on July 31, 1985, and requested applications for official agency designation to provide official services within each specified geographic area in the February 1, 1985, **Federal Register** (50 FR 4716). Applications were to be postmarked by March 4, 1985. Jamestown and Kankakee were the only applicants, each applying for designation renewal.

FGIS announced the applicant names and requested comments on same in the March 1, 1985, **Federal Register** (50 FR 12841). Comments were to be postmarked by May 16, 1985; none were received.

FGIS evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act, and in accordance with section 7(f)(1)(B), determined that Jamestown and Kankakee are able to provide official services in the respective geographic areas for which FGIS is renewing their designations, effective August 1, 1985, and terminating July 31, 1988. Jamestown and Kankakee will provide official inspection services in their respective specified geographic areas, which are the entire areas previously described in the February 1, **Federal Register**.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may contact the Regulatory Branch, specified in the address section of this notice, to obtain a list of an agency's specified service points. Interested persons also may obtain a list of the specified service points by contacting the agency at the following address:

Grain Inspection, Inc., 217 4th Avenue, NW., P.O. Box 1652, Jamestown, ND 58401

Kankakee Grain Inspection Bureau, Inc., 550 North Fifth Avenue, P.O. Box 102, Kankakee, IL 60901

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: June 24, 1985.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 85–15612 Filed 6–28–85; 8:45 am]

BILLING CODE 3410–EN–M

Request for Comments on Designation Applicants in the Geographic Areas Currently Assigned to Los Angeles Grain Inspection Service, Inc. (CA) and Peoria Grain Inspection Service, Inc. (IL)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic areas currently assigned to Los Angeles Grain Inspection Service, Inc. (Los Angeles).

and Peoria Grain Inspection, Service, Inc. (Peoria).

DATE: Comments to be postmarked on or before August 15, 1985.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Management Branch, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS requested applications for official agency designation to provide official services within specified geographic areas in the April 1, 1985, **Federal Register** (50 FR 18542). Applications were to be postmarked by May 31, 1985. Los Angeles Grain Inspection Service, Inc., and Peoria Grain Inspection Service, Inc., were the only applicants, each applying for designation renewal in the areas currently assigned to those agencies.

This notice provides interested persons the opportunity to present their comments concerning the designation applicants. All comments must be submitted to the Information Resources Management Branch, Resources Management Division, specified in the address section of this notice.

Comments and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

(Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C 71 *et seq.*))

Dated: June 24, 1985.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 85-15613 Filed 6-28-85; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Provide Official Services in the Geographic Areas Currently Assigned to Minnesota Department of Agriculture (MN) and Mississippi Department of Agriculture and Commerce (MS)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties, including the agencies currently designated, interested in being designated as the official agency to provide official services in the geographic area currently assigned to each specified agency. The official agencies are the Minnesota Department of Agriculture and the Mississippi Department of Agriculture and Commerce.

DATE: Applications to be postmarked on or before July 31, 1985.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of FGIS is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

The Minnesota Department of Agriculture (Minnesota), 316 Grain Exchange Building, Minneapolis, MN 55415, and the Mississippi Department of Agriculture and Commerce (Mississippi), P.O. Box 1609, Jackson, MS 39205, were each designated under the Act as an official agency to provide inspection and weighing functions on January 1, 1983.

Each official agency's designation terminates on December 31, 1985. Section 7(g)(1) of the Act states, generally, that official agencies' designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Minnesota, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the entire State of Minnesota, except those export port locations within the State.

The geographic area presently assigned to Mississippi, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the entire State of Mississippi, except those export port locations within the State.

Interested parties, including Minnesota and Mississippi, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic areas, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning January 1, 1986, and ending December 31, 1988. Parties wishing to apply for designation should contact the Regulatory Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C 71 *et seq.*))

Dated: June 24, 1985.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 85-15614 Filed 6-28-85; 8:45 am]

BILLING CODE 3410-EN-M

Designation Renewal of A.V. Tischer and Son, Inc. (IA)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of A.V Tischer and

Son, Inc. (Tischer), as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: July 1, 1985.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS announced that Tischer's designation terminates on June 30, 1985, and requested applications for official agency designation to provide official services within a specified geographic area in the January 2, 1985, issue of the **Federal Register** (50 FR 135). Applications were to be postmarked by February 4, 1985. Tischer was the only applicant for the designation and applied for designation renewal.

FGIS announced the applicant name and requested comments on same in the March 1, 1985, issue of the **Federal Register** (50 FR 8351). Comments were to be postmarked by April 15, 1985; nine comments were received regarding Tischer's designation renewal.

The comments focused upon Tischer's grading accuracy; the need for a public hearing on Tischer's designation renewal; and permitting grain firms to obtain official services with any designated agency of their choice.

Specifically, the comments questioned the grading accuracy for official inspection services performed by Tischer. Pursuant to section 5(b) of the Act and § 800.215 of the regulations, FGIS supervises the official inspection and weighing activities of licensed persons employed by designated agencies, including Tischer. For over the past year, FGIS has increased its supervision of Tischer, based upon questions raised by grain firms as to Tischer's grading accuracy. This action arose out of an April 18, 1984, FGIS meeting with approximately 50 grain firms. Based upon results of this increased level of supervision and all available information, FGIS has determined that Tischer has been and is presently well within the prescribed grade tolerances and compares favorably with all agencies in the official inspection system.

Pursuant to section 7(g) of the Act and § 800.196 of the regulations, agencies' designations terminate not later than triennially. FGIS has implemented a three-step procedure in which notices of designation termination and request for applicants; request for comments regarding applicants; and designation renewal are published in the **Federal Register**. While the Act specifies hearings for certain purposes such as a revocation or suspension of a designation, the Act does not provide for a hearing for the designation process including renewals. In any event, interested persons are afforded the opportunity to present comments regarding applicants. As such, a hearing would not be appropriate.

Section 7(f)(2) of the Act provides that only one official agency shall be operative at one time for any geographic area. Further, section 7(f)(3) provides that except as authorized by the Administrator no official agency may inspect an officially drawn sample from a lot of grain unless such lot of grain is physically located within the geographic area assigned to the agency at the time such sample is drawn. Section 7A of the Act provides for similar limitations with respect to Class X and Class Y weighing, as appropriate. These provisions of the Act were drafted, in part, to prevent "grade shopping" by applicants for official services, while at the same time maintaining the integrity and viability of the nation's inspection and weighing program. Accordingly, grain firms are not permitted to obtain official services from any designated agency of their choice.

FGIS evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act, and in accordance with section 7(f)(1)(B), determined that Tischer is able to provide official services in the geographic area for which FGIS is renewing its designation. Effective July 1, 1985, and terminating June 30, 1988, Tischer will provide official inspection services and Class X or Class Y weighing services in its specified geographic area, which is the entire area previously described in the January 2 **Federal Register** issue.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified services points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may contact the Regulatory Branch, specified in the address section of this notice, to obtain a list of an agency's specified service points. Interested persons also may obtain a list of the specified service points by contacting the agency at the following address:

A.V. Tischer and Son, Inc., 137 10th Street, NW., P.O. Box 339, Fort Dodge, IA 50501

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: June 25, 1985.

Neile E. Porter,

Acting Director, Compliance Division.

[FR Doc. 85–15615 Filed 6–28–85; 8:45 am]

BILLING CODE 3410-EN-M

Food and Nutrition Service

Cash in Lieu of Commodities; Value of Donated Commodities for School Year 1985

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces that, since the value of agricultural commodities and other foods provided meets the level of assistance authorized under the National School Lunch Act, there will be no shortfall cash payments to States for the National School Lunch Program for 1985 school year. The Secretary of Agriculture has determined that the annually programmed level of assistance was met in food donations by June 30, 1985.

FOR FURTHER INFORMATION CONTACT: Beverly King, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302.

SUPPLEMENTARY INFORMATION:

Classification

This action, which implements a mandatory provision of section 6(b) of the National School Lunch Act, has been reviewed under Executive Order 12291 and Secretary's Memorandum 1512–1 and has been classified as "nonmajor." It meets none of the three criteria in the Executive Order; the action will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs, and will not have a significant impact on competition, employment, productivity,

innovation, or the ability of U.S. enterprises to compete.

The action has also been reviewed with regard to the requirements of Pub. L. 96-354, the Regulatory Flexibility Act of 1980. Robert E. Leard, Administrator, Food and Nutrition Service has determined that it will not have a significant economic impact on a substantial number of small entities. The primary purpose of the action is to notify States that the amount of foods donated will meet the programmed level for the school year 1985; therefore, no payment of cash in lieu of donated foods will be necessary.

Section 6(b) of the National School Lunch Act (the Act), as amended (7 U.S.C. 1755) and the regulations governing cash in lieu of donated foods (7 CFR Part 240) require the Secretary of Agriculture by May 15 of each school year to estimate the value of agricultural commodities and other foods that will be delivered to States during that school year. Under the food distribution regulations (7 CFR Part 250), these foods are used by schools participating in the National School Lunch Program. If the estimated value is less than the total level of commodity assistance authorized under Section 6(e) of the Act, the Secretary is required by June 15 of that school year to pay to each State administering agency funds equal to the difference between the value of programmed deliveries and the total level of authorized assistance for each State.

For school year 1985 the adjusted minimum national average value of donated foods or payment of cash in lieu thereof per lunch has been established under section 6(e) at 12.0 cents per lunch (49 FR 32776). In accordance with this requirement, a national entitlement of $452,993,782 in commodities was established for school year 1985. The Secretary has determined that at least that amount was available for delivery nationally by June 30, 1985, to meet the mandated level of assistance.

Notice is hereby given, therefore, that no shortfall cash payments will be made for the school year ending June 30, 1985.

This notice contains no reporting or recordkeeping provision necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance No. 10.550)

Dated: June 25, 1985.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 85-15751 Filed 6-28-85; 8:45 am]

BILLING CODE 3410-30-M

Foreign Agricultural Service

Import Limitation; Country of Origin Quota Adjustment

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of country of origin adjustment for certain condensed milk from Denmark.

SUMMARY: Presidential Proclamation 4708 issued December 11, 1979, amended Headnote 3(a) of Part 3 of the Appendix to the Tariff Schedules of the United States to permit the Secretary of Agriculture to make country of origin adjustments for unlicensed quotas that will not be filled by the country of origin listed opposite the quota. This notice implements such an adjustment will respect to the quota quantity assigned to Demark for condensed milk in airtight containers.

EFFECTIVE DATE: July 5, 1985.

FOR FURTHER INFORMATION CONTACT: Phillip J. Christie, Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Foreign Agricultural Service, Room 6616 South Building, Department of Agriculture, Washington, D.C. 20250 or telephone at (202) 447-5270.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Executive Order 12291 and Secretary's Memorandum 1512-1 and has been determined to be "nonmajor" since it will not have any of the significant effects specified in those documents. Furthermore, to the extent, if any, that the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) apply to this notice, the Administrator, Foreign Agricultural Service, hereby certifies that this notice will not have a significant economic impact on a substantial number of small entities. The adjustment of the country of origin from which the quota item specified herein may be entered does not affect the ability of importers to import this quota item, but only expands the number of countries from which the item may be imported. Also, since this action is being taken in recognition of changes in the market which have already occurred, this action will not cause any new economic impact.

An assessment of the impact of this rule on the environment was made and, based on this evaluation, this action is not a major federal action and will have no foreseeable significant effects on the quality of the human environment. Consequently, no environmental impact statement is necessary for this proposed rule.

Part 3 of the Appendix to the Tariff Schedules of the United States (TSUS) sets forth import limitations imposed on certain dairy products, including certain condensed milk. Headnote 3(a)(iii) of that Appendix allows for reallocating the quota amount of a dairy article listed in that Appendix among the countries of origin specified for a given article if it is determined that the quota amount assigned to a particular country is not likely to be entered from that country within a given calendar year. I hereby determine that it is not likely that the amount of condensed milk specified in TSUS Item 949.90 for Denmark will be entered from that country during calendar year 1985.

Notice is hereby given that the 1985 unused quota quantity for condensed milk specified in TSUS Item 949.90 for Denmark may be imported from Canada, Denmark, the Netherlands and Australia for the remainder of the 1985 quota year.

This quota quantity for TSUS Item 949.90 will revert to the original supplying country on January 1, 1986.

Issued at Washington, D.C., this 17th day of June 1985.

Richard A. Smith,

Administrator.

[FR Doc. 85-15714 Filed 6-28-85; 8:45 am]

BILLING CODE 3410-10-M

Forest Service

National Environmental Policy Act; Revised Implementation Procedures

Correction

In FR Doc. 85-15017 beginning on page 26078 in the issue of Monday, June 24, 1985, make the following correction:

On page 26086, in the first column, the material beginning "Appendix II" and continuing through the paragraph which precedes the heading "Chapter 10—Scoping" should have appeared on page 26082 in the second column between the fourth line and the heading *"02—OBJECTIVES"*.

BILLING CODE 1505-02-M

DEPARTMENT OF COMMERCE

International Trade Administration

Articles of Quota Cheese; Quarterly Determination and Listing of Foreign Government Subsidies

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Publication of quarterly update of foreign government subsidies on articles of quota cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared a quarterly update to its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: July 5, 1985.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Richard W. Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Department of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese.

In the current quarter the Department has determined that the subsidy amounts have changed for each of the countries for which subsidies were identified in our April 1, 1985, quarterly update to our annual subsidy list. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Deputy Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230.

This determination and notice are in accordance with section 702(a) of the TAA (19 U.S.C. 1202 note).

Dated: June 26, 1985.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

APPENDIX.—QUOTA CHEESE SUBSIDY PROGRAMS

Country	Program(s)	Gross [1] subsidy (cents per pound)	Net [2] subsidy (cents per pound)
Belgium	European Community (EC) Restitution Payments	4.0	4.0
Canada	Export Assistance on Certain Cheeses	25.5	25.5
Denmark	EC Restitution Payments	0	0
Finland	Export Subsidy	24.7	24.7
	Indirect Subsidies	14.3	14.3
		39.0	39.0
France	EC Restitution Payments	0	0
Ireland	EC Restitution Payments	5.6	5.6
Italy	EC Restitution Payments	17.2	17.2
Luxembourg	EC Restitution Payments	4.0	4.0
Netherlands	EC Restitution Payments	0	0
Norway	Indirect (Milk) Subsidy	13.5	13.5
	Consumer Subsidy	29.9	29.9
		43.4	43.4
Switzerland	Deficiency Payments	55.3	55.3
U.K.	EC Restitution Payments	0	0
W. Germany	EC Restitution Payments	0	0

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1267(6).

[FR Doc. 85–15755 Filed 6–28–85; 8:45 am]
BILLING CODE 3510–DS–M

[A–307–401]

Certain Welded Circular Carbon Steel Pipes and Tubes From Venezuela; Postponement of Final Antidumping Duty Determination

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that the Department of Commerce (the Department) has received a request from the respondent in this investigation to postpone the final determination, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A). Based on this request, we are postponing our final antidumping duty determination as to whether sales of certain welded circular carbon steel pipes and tubes from Venezuela have occurred at less than fair value until not later than October 16, 1985.

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Karen L. Sackett, Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington D.C. 20230; telephone (202) 377–3003.

SUPPLEMENTARY INFORMATION: On January 7, 1985, we announced the initiation of an antidumping duty investigation to determine certain welded circular carbon steel pipes and tubes from Venezuela, are being, or are likely to be, sold in the United States at less than fair value (50 FR 1614). We issued our preliminary affirmative determination on May 28, 1985 (50 FR 23343). That notice stated that we would issue a final determination by August 12, 1985. On June 10, 1985, counsel for respondent requested that we extend the period for the final determination until not later than the 135th day after publication of our preliminary determination in accordance with section 735(a)(2)(A) of the Act. If exporters who account for a significant proportion of exports of the subject merchandise request an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, we grant the request and postpone our final determination until not later than October 16, 1985.

This notice is published pursuant to section 735(d) of the Act.

Scope of Investigation

The product under investigation is small diameter circular welded carbon steep pipe and tube with an outside diameter of .375 inch or more but not over 16 inches, of any wall thickness, currently classifiable in the Tariff

Schedules of the United States Annotated under items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

June 25, 1985.

[FR Doc. 85-15754 Filed 6-28-85; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce

ACTION: Notice of Issuance of an Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to Henny Penny Corporation, (("HPC"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing the Act are found at 15 CFR part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.5(b), which requires the Secretary of Commerce to publish in the **Federal Register** a summary of each certificate issued. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

Products: Commercial foodservice equipment, including accessories and spare parts.

Services: Export sales and marketing services to assist individual clients in the export of commercial foodservice equipment. Such services include: (1) Identifying and establishing export sales distribution contacts; (2) establishing export distribution and sales networks; (3) providing guidance on export sales distribution coordination, the establishment of exclusive distributorships, export marketing strategies, technical service coordination, qualification of equipment for use in export markets, advertising, and export credit; and (4) providing a full range of training procedures for export department functions.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. HPC may enter into individual agreements with clients, whereby HPC agrees to provide such clients with Services in Export Trade; and the clients agree (a) not to obtain such Services from any person or company other than HPC, and/or (b) to export Products in Export Trade only through distributors approved by HPC. In such agreements, HPC and its clients also may agree that in the event that the client sells its Products for the Export Markets other than through the distributors approved by HPC, the client will pay a commission to HPC. These agreements may include provisions requiring each client to provide HPC with monthly export sales reports.

2. For its own account, HPC may enter into exclusive agreements with distributors for the Export Markets, wherein (a) HPC agrees to deal in any portion of the Export Markets only through such distributors and/or (b) the distributors agree not to represent HPC's competitors for the Export Markets, unless authorized by HPC. Such agreements may include price and territorial restrictions for the Export Markets.

3. On behalf of its Member, HPC may develop and arrange for exclusive agreements between its Member and any distributor(s) for the Export Markets, wherein (a) the Member agrees to deal in any specified territories in the Export Markets only through such distributors and/or (b) the distributors agree not to represent the Member's competitors for the Export Markets, unless authorized by the Member. Such agreements, established by HPC for its Member, may include price and territorial restrictions for the Export Markets.

Member

Lincoln Manufacturing Company, Inc. of Fort Wayne, Indiana is a "Member" on this certificate within the meaning of § 325.2(1) of the Regulations.

A copy of each certificate is available for inspection and copying in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

Dated: June 25, 1985.

James V. Lacy,

Director, Office of Export Trading Company Affairs.

[FR Doc. 85-15679 Filed 6-28-85; 8:45 am]

BILLING CODE 3510-DR-M

[C-122-404]

Final Affirmative Countervailing Duty Determination; Live Swine and Fresh, Chilled and Frozen Pork Products from Canada

Correction

In FR Doc. 85-14400 beginning on page 25097 in the issue of Monday, June 17, 1985 in the tenth line of the "**SUMMARY**" paragraph the figure "$0.25523" should read, "$0.05523".

BILLING CODE 1505-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amending the Import Restraint Limits for Certain Cotton, Wool, and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia

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 July 1, 1985. For further information contact Jane Corwin, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Governments of the United States and Malaysia have exchanged notes extending their Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement, effected by exchange of notes dated December 5, 1980 and February 27, 1981, as amended, for eight months beginning on January 1, 1985 and

extending through August 31, 1985. The agreement, as amended and extended, establishes specific limits for Categories 331, 333/334/335, 341, 345, 338/339, 340, 347/348, 445/446, 604 and 638/639, among others, exported during the eight-month period which began on January 1, 1985 and extends through August 31, 1985. The agreement, as amended and extended, also contains a consultation mechanism for categories not subject to specific limits for which levels may be established during the agreement period. The letter published below cancels and supersedes the directive of June 4, 1985 and establishes eight-month limits for the foregoing categories. The limits have not been adjusted to account for any imports exported after December 31, 1984. As the data become available, such charges will be made.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), 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).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 27, 1985.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This letter cancels and supersedes the directive of June 4, 1985 from the Chairman of the Committee for the Implementation of Textile Agreements which established six-month limits for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in Malaysia and exported during the six-month period which began on January 1, 1985.

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement, effected by exchange of notes dated December 5, 1980 and February 27, 1981, as amended and extended, between the Governments of the United States and Malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 1, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Malaysia and exported during the eight-month period which began on January 1, 1985 and extends through August 31, 1985, in excess of the indicated restraint limits:

Category	8-mo restraint limit [1]
331	409,253 dozen pairs.
333/334/335	53,485 dozen of which not more than 26,743 dozen shall be in Cat. 333; not more than 26,743 dozen shall be in Cat. 334 and not more than 26,743 dozen shall be in Cat. 335.
338/339	312,675 dozen of which not more than 124,818 dozen shall be in Cat. 339.
340	217,961 dozen.
341	154,392 dozen.
345	44,651 dozen.
347/348	123,264 dozen of which not more than 64,416 dozen shall be in Cat. 348.
445/446	16,874 dozen.
604	883,843 pounds.
638/639	128,845 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1984.

In carrying out this directive, entries of cotton, wool, and man-made fiber textiles and textile products in the foregoing categories, produced or manufactured in Malaysia, which have been exported to the United States during the period which began on January 1, 1984 and extended through December 31, 1984, shall, to the extent of any unfilled balances, be charged against the restraint limits established for such goods during those periods. In the event the limits so established have been exhausted by previous entries, such goods shall be subject to the limits set forth in this letter.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of December 6, 1980 and February 27, 1981, as amended and extended, between the Governments of the United States and Malaysia which provide, in part, that: (1) specific limits or sublimits may be exceeded by not more than five percent, if a corresponding reduction is made in one or more other specific limits in the same group during the same agreement year; (2) specific limits may be adjusted for carryover; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement, referred to above, will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709, as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-15811 Filed 6-28-85; 8:45 am]

BILLING CODE 3510-DR-M

Controlling Imports of Certain Wool Apparel Products Produced or Manufactured in Uruguay

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 July 1, 1985. For further information contact William Boyd, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The bilateral agreement, effected by exchange of notes dated January 23, 1984, as amended, between the Governments of the United States and Uruguay establishes specific restraint limits of 19,865 dozen for men's and boys' wool coats in Category 434, 40,501 dozen for wool coats in Category 435, and 6,019 dozen for women's, girls', and infants' wool suits in Category 444, produced or manufactured in Uruguay and exported during the agreement year beginning on July 1, 1985 and extending through June 30, 1986. The letter which follows this notice directs the Commissioner of Customs to prohibit entry for consumption and withdrawal from warehouse for consumption of wool textile products in Categories 434, 435 and 444, produced or manufactured in Uruguay and exported during the year beginning on July 1, 1985, in excess of the designated restraint limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983

(48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 27, 1985.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended, on December 15, 1977 and December 22, 1981; pursuant to the bilateral agreement effected by exchange of notes dated January 23, 1984, as amended, between the Governments of the United States and Uruguay; and in accordance with the provisions in Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 1, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Categories 434, 435 and 444, produced or manufactured in Uruguay and exported during the twelve-month period beginning on July 1, 1985 and extending through June 30, 1986, in excess of the following restraint limits:

Category	12-mo restraint limit
434	19,865 dozen.
435	40,501 dozen.
444	6,019 dozen.

In carrying out this directive entries of wool textile products in Categories 435 and 444, produced our manufactured in Uruguay, which have been exported on and after July 1, 1984 and extending through June 30, 1985 shall, to the extent of any unfilled balances, be charged to the limits established for such goods during that twelve-month period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this directive.

This limit is subject to adjustment in the future according to the provisions of the bilateral agreement, as amended, which provide, in part, that: (1) the specific limits may be adjusted for carryover and carryforward and (2) administrative arrangements or adjustments may be made to resolve minor problems arising the implementation of the agreement.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 12, 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).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile agreements has determined that this actions falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-15809 Filed 6-28-85; 8:45 am]

BILLING CODE 3510-DR-M

Limits for Certain and Cotton Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

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 July 1, 1985. For further information contact Jane Corwin, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On July 2, August 30, October 29, November 2, December 20 and December 28, 1984 and February 1, 1985 letters to the U.S. Customs Service were published in the **Federal Register** (49 FR 27194, 34391, 43484, 44119, 49492, 50433 and 50 FR 4732), which established import restraint limits for cotton and man-made fiber textile products in Categories 315, 320 pt (only TSUSA numbers 320.—, 321.—, 322.—, 326.—, 327.—, and 328.— with statistical suffixes 21, 22, 24, 31, 38, 49, 57, 74, 80 and 98), 331, 334, 338, 339, 341 and 631 pt. (only TSUSA numbers 704.3215, 704.8525, 704.8550, and 704.9000), produced or manufactured in Indonesia and exported during the following periods:

Category	Period
315	July 1, 1984 to June 30, 1985.
320 pt.	July 31, 1984 to June 30, 1985.
331	July 1, 1984 to June 30, 1985.
334	September 28, 1984 to June 30, 1985.
338	December 31, 1984 to June 30, 1985.
339	July 1, 1984 to June 30, 1985.
341	July 1, 1984 to June 30, 1985.
631 pt.	September 17, 1984 to June 30, 1985.

These levels are all filled.

On December 14, 1984 a further notice was published in the **Federal Register** (49 FR 49879) announcing that, as of January 1, 1985, the Committee for the Implementation of Textile Agreements, in order to prevent market disruption, would direct the U.S. Customs Service, as appropriate, to permit entry into the United States for consumption, or withdrawal from warehouse for consumption, of such goods which were exported during a prior restraint period in excess of the restraint limit established for that period at a prescribed rate per month during each of the first five months of the following period. CITA has decided, in the case of imports in Categories 315, 320 pt. 331, 334 338, 339, 341 and 631 pt. to direct Customs to permit entry in the specified amounts during each of the five thirty day periods stipulated in the letter to the Commissioner of Customs which follows this notice. However, because of the amount of the overshipment in Category 320 pt., entered during the previous period, this level will not reopen until the second the second thirty-day period.

A description of the textile categories in terms of TSUSA numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 27, 1985.

Commissisoner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreements, effected by exchange of notes dated October 13 and November 9, 1982, as amended, between the Governments of the United States and the Republic of Indonesia, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed, effective on July 1, 1985, to permit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories produced or

manufactured in Indonesia and exported during the specified periods noted below which were in excess of the limits established for those periods.

Category	Amount to be entered per 30-day period	Previous restraint period
315	2,404,942 square yards	July 1, 1984 to June 30, 1985.
320 pt. [1]	647,486 square yards	July 31, 1984 to June 30, 1985.
331	63,322 dozen pairs	July 1, 1984 to June 30, 1985.
334	4,800 dozen	September 28,338 1984 to June 30, 1985.
338	44,346 dozen	December 31, 1984 to June 30, 1985.
339	48,000 dozen	July 1, 1984 to June 30, 1985.
341	72,000 dozen	July 1, 1985 to June 30, 1985.
631 pt.[2]	25,319 dozen pairs	September 17, 1984 to June 30, 1985.

[1] In Category 320, only TSUSA numbers 320.—, 321.—, 322.—, 326.—, 327.—, and 328.—with statistical suffixes 21, 22, 24, 31, 38, 49, 57, 74, 80 and 98.
[2] In Category 631 pt., only TSUSA numbers 704.3215, 704.8525, 704.8550, and 704.9000.

The thirty-day periods shall be as follows:

July 1, 1985 to July 30, 1985
July 31, 1985 to August 29, 1985
August 30, 1985 to September 28, 1985
September 29, 1985 to October 28, 1985
October 29, 1985 to November 27, 1985

A description of the textile categories in terms of TSUSA numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (48 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 47782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textitle Agreements has determined that these fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-15808 Filed 6-28-8:45 am]

BILLING CODE 3510-DR-M

Import Limits for Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Colombia

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 July 1, 1985. For further information contact William Boyd, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement effected by exchange of notes dated July 1, and August 11, 1982, as amended, between the Governments of the United States and Colombia establishes specific limits for cotton, wool and man-made fiber textile products in Categories 363, 433, 435, 442, 443, 444, 448, and 641 produced or manufactured in Colombia and exported during the twelve-month period which begins on July 1, 1985 and extends through June 30, 1986. It also provides consultation levels for other categories, such as Categories 320, 369 and 644, which are not subject to specific limits and which may be adjusted during the agreement year. Accordingly, a letter from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs is published below which directs that entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton, wool and man-made fiber textile products in the foregoing categories be limited to the designated twelve-month restraint levels.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (43 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 23, 1984 (49 FR 26622), July 16, 1984 (49 FR 23754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 27, 1985

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 1 and August 11, 1982, as amended, between the Governments of the United States and Colombia; and in accordance with the provisions in Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 1, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the indicated categories, produced or manufactured in Colombia and exported during the twelve-month period beginning on July 1, 1985 and extending through June 30, 1986, in excess of the following restraint limits:

Categories	12-mo restraint limit
320	7,000,000 yards.
363	4,007,150 numbers.
369	217,391 pounds.
433	7,141 dozen.
435	5,668 dozen.
442	8,161 dozen.
443	12,108 dozen.
444	4,476 dozen.
448	7,141 dozen.
641	199,399 dozen.
644	27,778 dozen.

In carrying out this directive, entries of textile products in the foregoing categories, produced or manufactured in Colombia, which have been exported to the United States during the twelve-month period beginning on July 1, 1984 and extending through June 30, 1985 shall, to the extent of any unfilled balances, be charged against the levels established for such goods during that twelve-month period. In the event that the levels established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement as amended, between the Governments of the United States and Colombia, which provide, in part, that: (1) within the applicable group limits of the agreement, specific limits may be exceeded by designated percentages; (2) these same limits may also be increased for carryover and carryforward up to 11 percent of the applicable category limits; (3) certain consultation levels may be increased within in the applicable group limits upon agreement between the two Governments; and (4) administrative arrangements or adjustments may be made to resolve minor problems

arising in the implementation of the agreement. Any appropriate adjustment under the provisions of the bilateral agreement, referred to above, will be made to you by letter.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-15810 Filed 6-28-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Software; Meeting Change

ACTION: Change in place of Advisory Committee meeting.

SUMMARY: The meeting place for the Defense Science Board Task Force on Software scheduled for 8 July 1985 in the Pentagon, Washington, D.C. as published in the **Federal Register** (Vol. 50, No. 111, Monday, June 10, 1985, FR Doc. 85-13852) has been changed to the MITRE Corporation, 1820 Dolley Madison Boulevard, McLean, Virginia. In all other respects the original notice remains unchanged.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

June 26, 1985.

[FR Doc. 85-15734 Filed 6-28-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

June 25, 1985.

The USAF Scientific Advisory Board's Ad Hoc Committee on High Power Microwave Systems will meet at the Pentagon, Washington, DC on July 26, 1985.

The purpose of the meetings will be to review information on weaponization concepts and updates on program structuring. The meeting will convene from 8:30 a.m. to 4:30 p.m.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) 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. 85-15697 Filed 6-28-85; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

June 21, 1985.

The USAF Scientific Advisory Board Ad Hoc Committee on Options for Attack of Strategic Relocatable Targets will meet in the Pentagon on July 29-30-31, 1985 from 8:30 a.m. to 4:00 p.m. each day. The purpose of the meeting will be to review findings to date on existing and programmed systems which may be effectively applied to attack of mobile ballistic missiles and to write the committee's final draft report.

The meeting will be closed to the public in accordance with section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof.

For further information contact the Scientific Advisory Board Secretariat at (202) 697-4811.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-15698 Filed 6-28-85; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers, Department of the Army

Notice of OMB Circular A-76 Cost Comparison Studies

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice of OMB circular A-76 cost studies.

SUMMARY: The U.S. Army Corps of Engineers intends to conduct OMB Circular A-76 cost comparison studies of its various functions nation-wide. This listing includes studies of pure civil works-funded activities only. Studies of activities funded entirely or in part by Department of Defense will be published separately by the Department of the Army. The studies listed below are expected to be completed within the next twelve months. Contracts may or may not result from the cost comparison studies.

ADDRESS: USACE, DAEN-RMM-C, Washington, D.C. 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Gary W. Lloyd at (202) 272-0044.

SUPPLEMENTARY INFORMATION: The cost comparison study process is rigorous and time consuming. The actual length of time required to complete a study depends upon the size and complexity of the function under study. Specific invitations for bid or requests for proposal will be announced in the Commerce Business Daily (CBD) as each study reaches the solicitation stage. No consolidated bidders list is being maintained since solicitations will be processed by contracting offices throughout approximately 29 Corps of Engineers' field operating activities:

Location	Function
Districts:	
Vicksburg	Fac/Grounds/Util Maint, study start, 01-10-84.
New Orleans	ADP Data Trans/Entry, study start, 12-05-83.
Do	ADP Oper & Maint of Equip, study start, 04-02-84.
Do	ADP Oper & Maint of Equip, study start, 04-02-84.
Do	Oper & Maint of Locks, study start, 07-09-83.
Do	Word Processing, study start, 08-01-84.
Do	Admin Tel/Teletype, study start, 10-01-83.
Memphis	Oper & Maint Hx Pump Plant, study start, 05-15-84.
Do	Oper & Maint GB Pump Plant, study start, 06-30-84.
Do	Oper & Main #17 Pump Plant, study start, 07-12-83.
Kansas City	VARIOUS: Motor Pool/Vehicle Maint, Radio Elec Repair, study start 02-01-85.
New York	Admin Support Services, study start, 07-01-85.
Do	FAc/Grounds/Util Maint, study start, 08-04-83.
Philadelphia	VARIOUS: Fac/Grounds/Util Maint. Warehse & Stock Handling. study start 05-31-85.
Do	VARIOUS: Fac/Grounds/Util Maint. Motor Pool/Veisicle Maint. study start 05-31-85.
Do	VARIOUS: Audiovisual. Mail & File. Printing & Repro. Work Processing Ctr. study start 06-31-85.
Buffalo	Admin Support Services, study start, 04-01-85.
Chicago	Admin Support Services, study start, 03-06-85.
Do	Printing & Repro, study start, 03-06-85.
Detroit	Admin Support Services, study start, 07-01-85.
Do	Grnds Main/Snow Rem/Custod, study start, 12-12-84.
Rock Island	Audiovisual, study start, 03-15-85.
St. Paul	Mail & File, study start, 04-01-85.
Portland	Data Transcript/Keypunch, study start, 05-30-85.
Do	Audiovisual, study start, 10-01-84.
Do	Mail & File study start, 06-15-85.
Seattle	Warehousing/Stock Handling, study start, 08-01-85.
Do	LWSC Visitor Center, study start, 07-15-85.
Walla Walla	Recreation Area Oper, study start, 02-01-85.
Do	Habitate Area Mgmt, study start, 06-15-85.

Location	Function
Do	Audiovisual, study start, 06-15-85.
Do	Mail & File/Messenger, study start, 08-15-85.
Do	Fac/Grounds/Util Maint, study start, 08-15-85.
Do	Microfilming, study start, 09-01-83.
Nashville	Audiovisual, study start, 11-16-83.
Huntington	Audiovisual, study start, 08-19-85.
Do	Mail & File, study start, 08-19-85.
Nashville	Word Processing Ctr, study start, 10-17-83.
Louisville	Floating Plant Oper, study start, 07-01-85.
Do	Exterior Painting, study start, 07-01-85.
Do	Compliance Inspection, study start, 06-29-85.
Huntington	Word Processing Ctr, study start, 10-17-83.
Pittsburgh	Word Processing Ctr, study start, 07-01-83.
Do	Recreation Area Oper, study start, 07-01-85.
Do	Recreation Area Oper, study start, 07-01-85.
Mobile	Fac/Grounds/Util Maint, study start, 07-01-85.
Wilmington	Drift/Debris Removal, study start, 07-08-85.
Savannah	Mail & File, study start, 07-01-85.
Jacksonville	Oper/Maint Lock/Dam/Bridge, study start, 07-05-85.
Mobile	Fac/Grounds/Util Maint, study start, 07-01-85.
Albuquerque	Motor Pool/Vehicle Maint, study start, 11-18-85.
Little Rock	Word Processing, study start, 05-01-85.
Do	Communication/Elect Sys, study start, 09-15-84.
Tulsa	VARIOUS: Fac/Grounds/Util Maint. Motor Pool/Vehicle Maint. study start, 80-20-85.
Division: New England	Admin Support Services, study start, 04-01-85.

Terence Connell,

Colonel, Corps of Engineers, Director of Resource Management.

[FR Doc. 85-15455 Filed 6-28-85; 8:45 am]

BILLING CODE 3710-09-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Special Needs Program; Application Preparation Workshop for New Non-Renewable Development Grants

SUMMARY: The Assistant Secretary for Postsecondary Education will conduct a one day Application Preparation Workshop to assist prospective applicants to develop applications for non-renewable development grants under the Special Needs Program.

DATE: July 8, 1985.

ADDRESS: The location for the workshop is as follows: GSA Auditorium, Regional Office Building #3, 7th and D Streets SW., Washington, D.C. 20202; Contact Person: Dr. Elwood L. Bland, (202) 245-9077.

SUPPLEMENTARY INFORMATION: An Application Notice for new grants in fiscal year 1985 under the Special Needs Program was published in the **Federal Register** on June 12, 1985 (50 FR 24673-24675). The deadline date for the receipt of applications is August 1, 1985. Under this announced competition, it is estimated that approximately $15,000,000 will be available for new awards. In accordance with section 347 of the Higher Education Act of 1965, as amended, priority in the selection of grantees may be given to historically Black and two-year institutions to satisfy statutory set-aside requirements.

The July 8, 1985 workshop will consist of a one-day session which will include a review of requirements for filing applications, the purposes of the Special Needs Program, allowable and non-allowable costs, and the application review process. Time will be provided for questions and answers. The workshop will begin with registration at 8:30 a.m., and presentations are scheduled from 9:00 a.m. to 4:00 p.m. The Department will not charge a registration fee for attendance at the workshop.

(Catalog of Federal and Domestic Assistance # 84.31B—Special Needs Program)

Dated: June 26, 1985.

C. Ronald Kimberling,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 85-15737 Filed 6-28-85; 8:45 am]

BILLING CODE 4000-01-M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before July 31, 1985.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426-7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: June 26, 1985.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Education Research and Improvement

Type of Review Requested: New
Title: A Study of Local Implementation of Chapter 1 of the Education Consolidation and Improvement Act
Agency Form Number: G50-9P
Frequency: Non-recurring
Affected Public: State or local governments
Reporting Burden: Responses: 2,250; Burden Hours: 2,250
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The information will provide nationally representative data on the way districts implement Chapter 1 of the Education Consolidation and Improvement Act (ECIA) for use by Congress in its 1987 reauthorization hearings on ECIA of 1981. This study will collect information from local government officials, especially those involved with the Chapter 1 program at the district level.

Type of Review Requested: Extension
Title: Common Core of Data (CCD) 1985-86, 1986-87
Agency Form Number: ED 2442, 2443, 2443-1, 2444, 2445, 2446 and 2447
Frequency: Annually

Affected Public: State or local governments
Reporting Burden: Responses: 57; Burden Hours: 19,549
Recordkeeping Burden: Recordkeeping: 0; Burden Hours: 0

Abstract: These data provide information about student enrollment, teachers, and related finances by source and function. Data are used to create sampling frames, allocate Federal funds under Chapter 1 of the Education Consolidation Improvement Act, and carry out studies mandated by the National Center for Education Statistics.

Office of Postsecondary Education

Type of Review Requested: New
Title: Performance Report for the Special Services for Disadvantaged Students Program
Agency Form Number: ED 1231
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden: Responses: 663; Burden Hours: 1,989
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: Special Services grantees are required to submit annual performance reports. The reports are used to evaluate project accomplishments and to collect impact data for budget submissions and congressional hearings.

Type of Review Requested: New
Title: National Graduate Fellows Program
Agency Form Number: E40-7P
Frequency: Annually
Affected Public: Individuals or households; State or local governments; Businesses or other for-profit; Non-profit institutions
Reporting Burden: Responses: 7,000; Burden Hours: 21,000
Recordkeeping Burden: Recordkeepers: 30; Burden Hours: 60

Abstract: The National Graduate Fellows Program application is utilized to obtain information to screen roughly 7,000 graduate students for 450 merit based fellowships.

Type of Review Requested: Extension
Title: Application for the Veteran's Cost-of-Instruction Payments Program (VCIP)
Agency Form Number: ED 269
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden: Responses: 800; Burden Hours: 800
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: Section 420 of the Higher Education Act of 1965, as amended, authorizes payments to institutions of higher education based on veteran student enrollments. The Veteran's Cost-of-Instruction Payments Program application obtains the necessary data to verify eligibility and calculate awards.

Office of Planning, Budget and Evaluation

Type of Review Requested: New
Title: Assessment of the State Operated Programs for Handicapped Children under Chapter 1 of the Education Consolidation and Improvement Act of 1981
Agency Form Number: P75-4P
Frequency: One time
Affected Public: State or local governments
Reporting Burden: Responses: 138; Burden Hours: 138
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: This study will provide information on the operation of the State operated programs for the handicapped children under Chapter 1 of the Education Consolidation and Improvement Act of 1981. Data will be collected from special education administrators at State and local educational agencies and State-operated/State-supported agencies.

[FR Doc. 85-15738 Filed 6-28-85; 8:45 am]
BILLING CODE 4000-01-M

Office of Bilingual Education and Minority Languages Affairs

Bilingual Education: State Educational Agency Program; Applications

AGENCY: Department of Education.

ACTION: Application Notice for new awards under the Bilingual Education: State Educational Agency Program for Fiscal Year 1985.

SUMMARY: Applications are invited for new projects under the Bilingual Education: State Educational Agency Program.

Authority for this program is contained in section 732 of Title VII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 98-511.

(20 U.S.C. 3242)

State educational agencies (SEAs) are eligible for assistance under the State Educational Agency Program.

The purpose of the awards is to provide financial assistance through grants to State educational agencies (SEAs) to collect, aggregate, analyze, and report data and information on the States population of limited English proficient persons, and the educational services provided or available to those persons. The program further provides for additional services in support of programs of bilingual education funded in their States.

Closing date for transmittal of applications: Applications for new awards must be mailed or hand delivered on or before August 1, 1985.

Applications delivered by mail: Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: CFDA No. 84.003R, 400 Maryland Avenue, S.W., Washington, DC. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on the method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building #3, 7th and D Streets, S.W., Washington, DC.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:00 p.m. (Washington, DC. time) daily, except Saturdays, Sundays, and Federal holidays.

Applications that are hand-delivered will not be accepted by the Application Control Center after 4:00 p.m. on the closing date.

Program information: The State Educational Agency Program provides financial assistance to SEAs to collect, aggregate, analyze, and publish data on the limited English proficient persons in their States and the educational services provided or available to those persons.

In addition to these required activities, SEAs may propose additional activities designed to improve the effectiveness of programs of bilingual education in their States, such as those assisted under Title VII. Applications will be approved for a period of one year.

Intergovernmental review: This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthed federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why these views will not be accommodated; and
- Revokes OMB Circular A-95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following is the current list of States that have established a process, designated a single point of contact, and selected this program for review:

States

Alabama	New Hampshire
Arizona	New Jersey
Arkansas	New Mexico
California	North Carolina
Colorado	North Dakota
Connecticut	Ohio
Delaware	Oklahoma
Florida	Oregon
Georgia	Pennsylvania
Hawaii	Rhode Island
Illinois	South Carolina
Indiana	South Dakota
Iowa	Tennessee
Kansas	Texas
kentucky	Utah
Louisiana	Vermont
Maine	Virginia
Maryland	Washington
Massachusetts	West Virginia
Michigan	Wisconsin
Mississippi	Wyoming
Minnesota	Virgin Islands
Missouri	District of Columbia
Montana	Puerto Rico
Nebraska	Northern Mariana
Nevada	Islands

Immediately upon receipt of this notice, applicants that are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States that have not established a process or chosen this program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

All comments from State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered by September 1, 1985 to the following address:

The Secretary, U.S. Department of Education, Room 4181 (CFDA No. 84.003R), 400 Maryland Avenue SW., Washington, D.C. 20202.

Proof of mailing will be determined on the same basis as applications.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

Application forms: Application forms and program information packages are expected to be available by July 2, 1985.

These may be obtained by writing to Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421 Reporters Building), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance under this program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 50 pages.

The Secretary further urges that applicants not submit information that is not requested.

(Approved by the Office of Management and Budget under control number 1885-0508)

Available funds: It is expected that approximately $5,000,000 will be available for this program for Fiscal Year 1985.

An award to an SEA shall not be less than $50,000 nor greater than 5 percent of the aggregate of the amounts paid under the Basic Projects Program and the Demonstration Projects Program previously authorized under section 721 of Title VII, as amended by Pub. L. 95-561 and 34 CFR Parts 501 and 502 (1984).

These estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Applicable regulations: Regulations applicable to this program include the following:

(1) The regulations governing the State Educational Agency Program proposed to be codified in 34 CFR Part 548. (Applications are being accepted based on the notice of proposed rulemaking for the State Educational Agency Program which was published in the **Federal Register** on May 28, 1985 (50 FR 21766). If the Secretary makes changes in the final regulations, the Secretary may extend the closing date to allow applicants to amend or resubmit their applications.

(2) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), except for § 75.217(a)(3) and (c)-(e) (relating to review of applications), Part 77 (Definitions That Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs nd Activities).

Further information: For further information contact Luis A. Catarineau, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 421, Reporters Building), Washington, D.C. 20202. Telephone: (202) 245-2922.

(20 U.S.C. 3242)

Dated: June 26, 1985.

(Catalog of Federal Domestic Assistance Nubmer 84.003, Bilingual Education)

Carol Pendás Whitten,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 85-15736 Filed 6-28-85; 8:45 am]

BILLING CODE 4000-01-M

Office of Educational Research and Improvement

Library Career Training Program Applications for New Awards

AGENCY: Department of Education.

ACTION: Application Notice for New Awards Under Library Career Training Program for Fiscal Year 1986.

SUMMARY: Applications are invited for new projects under the Library Career Training Program.

Authority for this program is contained in sections 201 and 222 of the Higher Education Act of 1965, as amended by the Education Amendments of 1980. (20 U.S.C. 1021 *et seq.*)

The purpose of these grants is to assist in training persons in librarianship.

Institutions of higher education or a library agency or organization are eligible to apply.

Closing date for transmittal of applications: Applications for new awards must be mailed or hand delivered or or before September 16, 1985.

Applications delivered by mail: Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: (CFDA No. 84.036), 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) A mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:00 p.m. (Washington, D.C., time) daily, except Saturdays, Sundays, and Federal holidays. Applications that are hand delivered will not be accepted by the Application Control Center after 4:00 p.m. on the closing date.

Program information: Evaluation criteria and eligibility requirements for the Library Career Training program appear in the Code of Federal Regulations at 34 CFR Part 776. The Fiscal Year 1986 grant program will be governed by the provisions of the final regulations on March 5, 1982, in the **Federal Register** (47 FR 9786).

Pursuant to 34 CFR 776.34(c), applications for grants will be evaluated independently according to academic levels, i.e., associate, bachelor's, master's, post-masters, and doctorate. The Secretary expects the Congress to limit the use of any apprpriations for fellowship projects only, based on similar limitations made annually since Fiscal Year 1981. The Secretary will not consider applications for institute or traineeship projects.

Application forms: Application forms and program information packages are expected to be available by July 26, 1985. These may be obtained by writing to Library Education, Research, and Resources Branch, U.S. Department of Education, 400 Maryland Avenue, SW., Room 613, Brown Building, Washington, D.C. 20202-1630.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance under this program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 25 pages.

The Secretary further urges that applicants not submit information that is not requested.

(The application form is approved by the Office of Management and Budget under control number 1850-0022, Exp. Date 10/86.)

Available funds: The Department of Education has not requested funds for the Library Career Training program for Fiscal Year 1986. However, applications are invited to allow for sufficient time to evaluate applications and complete processing prior to the end of the fiscal year in the event that funds are approrpriated for the program. In Fiscal year 1985, 38 grants were awarded totaling $635,000 which provided fellowships to 72 individuals. In Fiscal Year 1985, $455,000 was awarded for fellowships at the master's level, $48,000 at the post-master's level, and $132,000 at the doctural level. If funds are appropriated for the program in Fiscal Year 1986, the Secretary will reserve funds for fellowships.

These estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Applicable regulations: The following regulations apply to this program:

(a) The regulations governing the Library Career Training Program 34 CFR Part 776.

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78.

Further Information: For further information contact Mr. Frank A. Stevens or Mrs. Yvonne Carter, Library Education, Research, and Resources Branch, U.S. Department of Education, 400 Maryland Avenue, SW., Room 613, Brown Building, Washington, D.C. 20202-1630. Telephone: (202) 254-5090.

(20 U.S.C. 1021, *et seq.*)

(Catalog of Federal Domestic Assistance No. 84.036, Library Career Training Program)

Dated: June 26, 1985.

Emerson J. Elliott,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 85-15700 Filed 6-28-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $29,673.56 obtained as a result of a consent order which the DOE entered into with Naphsol Refining Company, a reseller-retailer of petroleum products located in Muskegon, Michigan. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0134.

FOR FURTHER INFORMATION CONTACT: Douglas Friedman, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $29,673.56 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Naphsol Refining Company. The funds were provided to the DOE by Naphsol to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of refined petroleum products during the period November 1, 1973, through March 31, 1975.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to firms and individuals who purchased motor gasoline, No. 1 fuel oil, or No. 2 fuel oil from Naphsol. In order to obtain a refund, a claimant will be required to submit a schedule of its monthly purchases from Naphsol and to demonstrate that it was injured by Naphsol's pricing practices. Applicants must submit specific documentation regarding the date, place, and volume of product purchased, whether the increased costs were absorbed by the claimant or passed through to other purchasers, and the extent of any injury alleged to have been suffered. An applicant claiming $5,000 or less, however, will be required to document only its purchase volumes.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in these proceedings will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: June 21, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

June 21, 1985.

Name of Firm: Naphsol Refining Co.
Date of Filing: October 13, 1983.
Case Number: HEF-0134.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Naphsol Refining Company (Naphsol).

I. Background

Naphsol is a "reseller-retainer" of refined petroleum products as that term was defined in 10 CFR 212.31 and is located in Muskegon, Michigan. A DOE audit of Naphsol's records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. The audit alleged that between November 1, 1973, and March 31, 1975, Naphsol committed possible pricing violations amounting to $185,274.48 with respect to its sales of No. 1 fuel oil, No. 2 fuel oil, and motor gasoline.

In order to settle all claims and disputes between Naphsol and the DOE regarding the firm's sales of motor gasoline, No. 1 fuel oil, and No. 2 fuel oil during the period covered by the audit, Naphsol and the DOE entered into a consent order on August 31, 1981. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. Additionally, the consent order states that Naphsol does not admit that it violated the regulations.

Under the terms of the consent order, Naphsol was required to deposit $29,673.56 into an interest bearing escrow account for ultimate distribution by the DOE. Naphsol remitted this sum on September 4, 1982.[1]

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

Our experience with Subpart V cases leads us to believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will accept claims from identifiable

[1] As of May 31, 1985, the Naphsol escrow account contained $43,392.00, including accrued interest.

purchasers of refined petroleum products who may have been injured by Naphsol's pricing practices during the period November 1, 1973, through March 31, 1975. If any funds remain after all meritorious first-stage claims have been paid, they may be distributed in a second-stage proceeding. *See e.g., Office of Special Counsel,* 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identifiable Purchasers

In the first stage of the Naphsol refund proceeding, we propose to distribute the funds currently in escrow to claimants who demonstrate that they were injured by Naphsol's alleged overcharges. As we have done in many prior refund cases, we propose to adopt certain presumptions, which will be used to help determine the level of a purchaser's injury.

The use of presumptions in refund cases is specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. First, we plan to adopt a presumption that the alleged overcharges were dispersed evenly in all sales of products made during the consent order period. In the past, we have referred to a refund process that uses this presumption as a volumetric system. Second, we propose to adopt a presumption of injury with respect to small claims. Third, we plan to adopt a presumption that spot purchasers were not injured by the alleged overcharges. Finally, we are making a proposed finding that end users of Naphsol products were injured by Naphsol's pricing practices.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges by a consent order firm were spread equally over all gallons of product marketed by that firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. This presumption is rebuttable, however. A claimant which believes that it occurred a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.,* 12 DOE ¶ 85,054 (1984), and cases cited therein at 88,164.

Under the volumetric system we plan to adopt, a claimant will be eligible to receive a refund equal to the number of gallons purchased from Naphsol times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $.0005036 per gallon.[2] In addition, successful claimants will receive a proportionate share of the accrued interest.

The second presumption we plan to use is that claimants seeking small refunds were injured by Naphsol's pricing practices. There are a variety of reasons for adopting this presumption. *See, e.g., Uban Oil Co.,* 9 DOE ¶ 82,541 (1982). Firms which will be eligible for refunds were in the chain of distribution where the alleged overcharges occurred and therefore bore some impact of the alleged overcharges, at least initially. In order to support a specific claim of injury, a firm would have to compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive. With small claims, the cost to the firm of gathering the necessary information and the cost to OHA of analyzing it could exceed the expected refund. Failure to allow simplified procedures could therefore deprive injured parties of the opportunity to receive a refund. This presumption eliminates the need for a claimant to submit and OHA to analyze detailed proof of what happened downstream of the initial impact.

Under the small-claims presumption, a claimant who is a reseller or retailer will not be rquired to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Other refund decisions have expressed this threshold in terms of either purchase volumes or refund dollar amounts. In *Texas Oil & Gas Corp.,* 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would more readily facilitate disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. This case merits the same approach. Several factors determine the value of the threshold below which a claimant is not required to submit any further evidence of injury beyond volumes purchased. One of these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low and the early months of the consent order period are many years past, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp., Office of Special Counsel,* 11 DOE ¶ 85,226 (1984) (*Conoco*) and cases cited therein.

A reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of methods by which a firm can make such a showing, a firm is generally required to demonstrate that it maintained a "bank" of unrecovered costs, in order to show that it did not pass the alleged overcharges through to its own customers, and to show that market conditions would not permit it to pass through those increased costs. [3]

If a reseller or retailer made only spot purchases, we propose that it should not receive a refund since it is unlikely to have been injured. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own coustomers.

Vickers, 8 DOE at 85,396–97. We believe the same rationale holds true in the present case. Therefore, we propose that firms which made only spot purchases from Naphsol not receive refunds unless they present evidence which rebuts the spot purchaser presumption and establishes the extent to which they were injured as a result of their purchases of No. 1 furl oil, No. 2 fuel oil,

[2] This figure is derived by dividing the $29,673.56 settlement amount by the 58,927,333 gallons of products sold by Naphsol during the consent order period.

[3] Rsellers or retailers who claim a refund in excess of $5,000 but who cannot establiah that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000 in order to avoid having to prove their injury. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 COE P 85,029 at 88,125 (1982) (ADA).

or motor gasoline from Naphsol during the consent order period.

As noted above, we are making a proposed finding that end users were injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period. They were therefore not required to base their pricing decisions on cost increases or to keep records which would show whether they passed through cost increases. Because of this, an analysis of the impact of the alleged overcharges on the final prices of goods and services which were not covered by the petroleum price regulations would be beyond the scope of a special refund proceeding. *See Office of Enforcement,* 10 DOE ¶ 85,072 (1983) *(PVM); see also Texas Oil & Gas Corp.,* 12 DOE at 88,209, and cases cited therein.[4]

In addition, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to demonstrate that they absorbed the alleged overcharges. In the case of regulated firms, *e.g.,* public utilities, any overcharges incurred as a result of Naphsol's alleged violations of the DOE regulations would routinely be passed through to the utilities' customers. Similarly, any refunds received by such firms would be reflected in the rates they were allowed to charge their customers. Refunds to agricultural cooperatives would likewise directly influence the prices charged to their member customers. Consequently, we propose adding such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See, e.g., Office of Special Counsel,* 9 DOE ¶ 82,539 (1982) (*Tenneco*), and *Office of Speical Counsel,* 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Instead, those firms should provide with their application a full explanation of the manner in which refunds would be passed through to their customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.,* 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

B. Applications for Refund

Any purchaser claiming a portion of the consent order funds should file an Application for Refund pursuant to 10 CFR 205.283. In its application, a claimant must include a schedule, broken down by product, of its monthly purchases from Naphsol. Applicants should also provide all relevant information necessary to support their claim in accordance with the presumptions stated above. A claimant must also state whether it has previously received a refund, from any source, with respect to the alleged overcharges underlying these proceedings. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in DOE enforcement or private, Section 210 actions. If these actions have been concluded the applicant should finish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

C. Distribution of Remaining Consent Order Funds

In the event that money remains after all meritorious claims have been satisified, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It is therefore ordered that:

The refund amount remitted to the Department of Energy By Naphsol Refining Company pursuant to the consent order executed on August 31, 1981, will be distributed in accordance with the foregoing decision.

[FR Doc. 85-15705 Filed 6-28-85; 8:45 am]

BILLING CODE 6450-01-M

[4] If a firm is both a spot purchaser and an end user, it will be treated as an end user and will not be rquired to make any showing of injury beyond that required of other end users.

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $3,500,000.00 (plus accrued interest) obtained as the result of a consent order between the DOE and the True Companies. The funds will be distributed to refund applicants who purchased propane, butane, natural gasoline, natural gas liquid products, #1 fuel, #2 fuel, crude oil, and/or motor gasoline from The True Companies during the Consent Order period (August 19, 1973 through January 28, 1981).

DATE AND ADDRESS: Comments must be filed in duplicate by July 31, 1985 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should display conspicuously a reference to Case Number HEF-0557.

FOR FURTHER INFORMATION CONTACT: Thomas Wieker, Deputy Director, or Irene Bleiweiss, Attorney, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252-2400.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures and standards that the DOE has tentatively formulated to distribute moneys obtained from The True Companies (True). True entered into a Consent Order to settle possible pricing violations with respect to its sales of petroleum products during the period from August 19, 1973 and January 28, 1981. Under the terms of the Consent Order, True has remitted $3,500,000.00 which is being held in an interest-bearing escrow account pending determination of its proper distribution.

The DOE has tentatively decided to allocate one-third of the consent order moneys to crude oil claims and two-

thirds of the moneys to non-crude oil claims. Crude oil claims will be evaluated by standards established in prior DOE cases. The DOE proposes that the portion of the Consent Order fund allocated to non-crude oil claims be distributed in a two stage refund proceeding. The first stage will attempt to refund moneys to customers who can document their purchases of True products. The Proposed Decision and Order provides that the funds will be distributed to successful claimants based on the number of gallons of product which they purchased and the extent to which they can prove that they were injured by the alleged overcharges. After meritorious claims are paid in the first stage, second-stage refund procedures may become necessary to distribute any remaining funds.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claim is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1:00 p.m. to 5:00 p.m., Monday through Friday, except Federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: June 21, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

Name of Case: The True Companies.
Date of Filing: December 7, 1984.
Case Number: HEF-0557.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. *See* 10 CFR Part 205, Subpart V. Such procedures enable the DOE to refund monies to those injured by alleged violations of the DOE pricing regulations.

On December 7, 1984, the ERA requested that the OHA formulate and implement procedures to distribute funds which it received pursuant to a consent order with The True Companies (True).[1]

This Proposed Decision concerns the distribution of that consent order fund.

I. Background

During the consent order period (August 19, 1973 through January 28, 1981) True produced, extracted, resold, and marketed petroleum products including crude oil, propane, butane, natural gasoline, and natural gas liquids. The True Consent Order also covers No. 2 fuel, No. 1 fuel, and motor gasoline although, according to True, the Companies did not sell these products and the products were included in the Consent Order solely to eliminate the potential for any further enforcement actions against True. Telephone Conversation between Irene Bleiweiss, OHA Staff Attorney, and Jack Blomstrom, Attorney for True (May 30, 1985). The Mandatory Petroleum Price Regulations, 10 CFR Part 212, governed the maximum prices that could lawfully be charged for all of the products covered by the Consent Order.

On August 6, 1981, the ERA issued a Proposed Remedial Order (PRO) to True Oil Company alleging that, from September 1, 1973 through October 31, 1978, True Oil Company charged more for propane, butane, and natural gasoline than it was permitted to by law. True Oil Company sold these products via transfer to an affiliated marketing company. The marketing affiliate was called Reserve Oil Purchasing Company until November 1973, and Black Hills Oil Marketers until November 1977, when it became True Oil Purchasing Company (TOPCO).

In order to settle the claims made in the PRO and any other claims which might have arisen from True's activities between August 19, 1973 and January 28, 1981, True and the DOE entered into a Consent Order on July 28, 1983. 48 FR 55768 (July 28, 1983). Pursuant to the Consent Order, True refunded the sum of $3,500,000.00 to the DOE.

II. Jurisdiction and Authority to Fashion Refund Procedures

The general guidelines which the OHA may use to formulate and implement a plan to distribute funds received as the result of a consent order are set forth in 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable readily to identify the persons who may have been injured as a result fo alleged or adjudicated violations or to ascertain the amount of each person's injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). We have considered the ERA petition to implement a Subpart V proceeding with respect to the True Consent Order fund and have determined that it is appropriate to establish such a proceeding.

III. Proposed Refund Procedures

The True Consent Order covers crude oil as well as other petroleum products. Since the DOE regulations treat such products differently, in cases where both types of products are involved, we have divided consent order funds into separate pools of refund monies. *E.g., Seminole Refining, Inc.*, 12 DOE ¶ 85,188 (1985). Although True sold more crude oil than other covered products during the consent order period, the company estimates that only one-third of the alleged overcharges are attributable to crude oil. Telephone Conversation between Irene Bleiweiss, OHA Staff Attorney, and Jack Blomstrom, Attorney for True (June 7, 1985). Our review of the record indicates that this estimate is reasonable. Therefore, we propose to divide the consent order fund as follows: one-third of the fund ($1,166,666.70) will be available to claims based on crude oil and two-thirds of the fund ($2,333,333.30) will be available to purchasers of other True products.

A. Crude Oil

All refund applications involving crude oil will be considered based on the standards enunciated in the cases of *A. Johnson & Co.*, 12 DOE ¶ 85,102 (1984) (*Johnson*); *Office of Enforcement*, 9 DOE ¶ 82,521 (1982) (*Alkek*); and *Office of Enforcement*, 9 DOE ¶ 82,553 (1982) (*Adams*). These cases discussed in

[1] "The True Companies" (True) is the name used in the Consent Order and in this Decision and Order to refer to six individuals (H.A. True, Jr., Jean D. True, Tamma T. Hatten, H.A. True III, Diemer D. True, and David L. True) doing business as the following companies: True Oil Company; True Drilling Company; Eighty-Eight Oil Company; Equitable Purchasing Company; Smokey Oil Company; True Oil Purchasing Company, now a defunct corporation; Black Hills Oil Marketers, Inc., now a defunct corporation; Black Hills Trucking, Inc.; Reserve Oil Purchasing Company, now a defunct corporation; Toolpushers Supply Company; Reserve Oil Field Supply Company; Belle Fourche Pipeline Company; True Land and Royalty Company, now a defunct corporation; and Cambria Oil Company. Five of these companies (Toolpushers Supply Company, True Drilling Company, True Land and Royalty Company, Belle Fourche Pipeline Company, and Black Hills Trucking, Inc.) were engaged solely in non-regulated activities such as drilling and transportation. Telephone Conversation between Irene Bleiweiss, OHA Staff Attorney, and Jack Blomstrom, Attorney for True (May 30, 1985).

detail the considerations involved in evaluation of refund claims involving crude oil.

Claims for refunds from the crude oil refund pool can be based on two theories. First, a firm may claim that it was charged prices in excess of the applicable ceiling prices in its purchase of True crude oil during the consent order period. Second, an applicant may base its refund claim on its participation in the Entitlements Program.

All claimants whose claims are based on their purchases of crude oil from True must file refund applications in order to be eligible to receive refunds. Such applications should be based on the standards enunciated in the *Johnson, Alkek* and *Adams* cases. Any claimants whose interests in this case are based solely on participation in the Entitlements Program, will not have to file a refund application in this case if they have filed a similar application in another OHA case. Such persons will be deemed to have filed a similar application in this proceeding. This approach will simplify and expedite our consideration of these entitlements claims.

B. Other Products

Based on our experience with Subpart V cases, we believe that the distribution of the non-crude oil pool of consent order moneys should take place in two stages. The first stage will attempt to refund moneys to those who purchased True products during the consent order period. Such purchasers must file claims and document their purchases in order to be eligible for a portion of the consent order fund. In addition, purchasers will be required to prove that they did not pass the overcharges on to their own customers.

After meritorious claims are paid in the first stage, a second stage may become necessary to distribute any remaining funds. *See generally Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). We will not determine second stage refund procedures at this time because such procedures will necessarily depend on the size of the fund remaining after first stage procedures are completed.

1. Refunds to Identifiable Purchasers

During the first stage of the refund process, we propose that the True consent order fund be distributed to claimants who satisfactorily demonstrate that they were injured by True's alleged overcharges. The audit file which provided the basis for the PRO issued to True Oil Company, identifies a number of customers who purchased that firm's propane, butane, and natural gasoline and who therefore might have been injured by the alleged overcharges. The names of these customers and the products and volumes which they purchased are set forth in the Appendix to this Proposed Decision and Order. However, since the customers identified in the Appendix are not the only customers who might have been injured by the prices which True charged, we will establish a claims procedure in which we will accept applications from the customers identified in the Appendix and any other parties who can demonstrate that they were injured by True's alleged overcharges.

All claimants will have to file an application in order to receive a refund. Applicants not specifically named in the Appendix will be required to provide all relevant information necessary to establish a claim, including documentation of the date, place, price and volume of the product(s) purchased. However, a customer named in the Appendix may utilize an alternative means to qualify for a refund if it is unable to fully document its application. Under this alternative means, an identified customer must: (1) Explain why documentation of its purchase volumes is not available or would be expensive or difficult to obtain; (2) certify that it was a purchaser of True products during the relevant period (see Appendix for dates); (3) certify that the specified purchase volume in the Appendix appears reasonably accurate; and (4) limit its claims to the volumes and products set forth in the Appendix. *See Marion Corp.*, 12 DOE ¶ 85,013 (1984).

All applicants, with three exceptions discussed later in this Proposed Decision, will be required to show the extent to which they have been injured by the alleged overcharges. To the extent that any individual or firm can establish injury, it will be eligible for a share of the consent order fund. While there are a variety of ways in which a showing of injury may be made, a reseller will generally be required to demonstrate that during the period covered by the Consent Order, it had "banks" of unrecovered product costs which were at least equal to the amount of the refund claimed, and that it did not pass these costs through to its own customers. A reseller might establish that it absorbed the alleged overcharges by showing, for example, that market conditions would not permit it to increase its prices to pass additional costs through to its own customers. *Office of Enforcement*, 10 DOE ¶ 85,056 (1983); *Office of Enforcement*, 10 DOE ¶ 85,029 (1982). If a reseller of True products passed the alleged overcharges through to its own customers, then these indirect customers will be entitled to a refund if they themselves can prove injury. Therefore, we will permit customers who indirectly purchased True products as well as those who purchased directly from True to file applications for refunds.

In this case we will adopt three presumptions of injury which have been used in many previous special refund cases. First we will presume that end-users or ultimate consumers of True products whose businesses are unrelated to the petroleum industry were injured by the alleged overcharges. Second, we will not require a showing of injury from agricultural cooperatives that passed the alleged overcharges on to their end-user members, provided that the cooperatives comply with standards set forth later in this Decision. Finally, we will presume that applicants wo are claiming small refunds were injured by the alleged overcharges. These presumptions will permit claimants to apply for refunds without incurring disproportionate expenses and will enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

We will not require end-users or ultimate consumers whose businesses are unrelated to the petroleum industry to show injury. *See Texas Oil & Gas Corp.*, as DOE ¶85,069 at 88,209 (1984). Customers in this group might include, for example, businesses and individuals who purchased propane for heating purposes. The fuel costs of such end-users are only one, indistinguishable component of their prices for goods and services. Unlike regulated firms in the petroleum industry, other businesses were not subject to price controls during the consent order period and were not required to keep records. Thus, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum products and services would be beyond the scope of a refund proceeding. *Id.* Therefore, such end-users who document their purchase volumes of True products during the consent order period will be found to have made a sufficient showing of injury. On the other hand, refund applicants who were subject to the DOE regulatory program will be required to provide a detailed demonstration that they were injured, with the exception of those making small claims.

We recognize that making a showing of injury may be too complicated and burdensome for resellers who purchased relatively small amounts of True products. For example, such firms may

have limited accounting and data-retrieval capabilities and may therefore be unable to produce the records necessary to prove the existence of banks of unrecovered costs, or that they did not pass on the alleged overcharges to their own customers. We also are concerned that the cost to the applicant and to the government of compiling and analyzing information sufficient to make a detailed showing of injury not exceed the amount of the refund to be gained. In the past we have adopted a small claims procedure to assure that the costs of filing and processing a refund application do not exceed the benefits. *See, e.g., Aztex Energy Co.*, 12 DOE ¶ 85,15 (1984); *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,014 (1984). We will adopt such a procedure in this case. Therefore, any applicant claiming a refund of $5,000.00 or less need not make a detailed showing of injury in order to be eligible to receive a refund.

Agricultural cooperatives will not be required to show that they did not pass increased costs through to their customers. By its very nature, an agricultural cooperative would routinely pass through any overcharges to its member customers. Similarly, any refunds received by an agricultural cooperative would influence the prices charged to member customers. Therefore, we have held that agricultural cooperatives are not required to prove injury. *E.g., APCO Oil Corp.*, 12 DOE ¶ 85,144 (1985). Instead, an agricultural cooperative's refund application should explain fully the manner in which refunds will be passed through to its customers and how its members will be advised of the cooperative's receipt of the refund money. Sales by cooperatives to non-members, however, will be treated the same as sales by any other resellers.

We also propose to establish a rebuttable presumption that firms which made only spot purchases of True products have suffered no injury. Spot purchasers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot purchases of True's product at increased prices unless they were able to pass through the full amount of the alleged overcharges to their own customers. *See Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396–97 (1981). Accordingly, in order to overcome the rebuttable presumption that they were not injured, spot purchasers should submit additional evidence to establish that they were unable to recover the prices they paid for True products.

2. Calculation of Refund Amounts

We propose to use a volumetric method to divide the consent order fund among applicants who demonstrate that they are eligible to receive refunds. This method presumes that the alleged overcharges were spread equally over all the gallons of products which True sold. We have calculated a volumetric refund amount by dividing the consent order amount by the approximate number of gallons which True sold during the period covered by the Consent Order. Successful claimants will receive refunds based on their eligible purchase volumes multiplied by the volumetric refund amount, plus accrued interest.

We have tentatively set the True volumetric refund amount at $0.0409 per gallon. We derived this figure by dividing the consent order pool available for products other than crude oil ($2,333,333.30) by an estimate of the number of gallons of products which True sold during the consent order period (49,769,328). The audit file did not account for the entire consent order period. It did, however, contain monthly gallonage data for True's marketing affiliate's sales of propane (61 months), butane (18 months), and natural gasoline (9 months). We used this information to compute the average monthly gallonage of propane, butane, and natural gasoline which True Oil Company's marketing affiliate sold. We then multiplied this figure by the number of months in the consent order period to obtain our estimate of total gallons sold.

Since a consent order is necessarily the result of compromise, the volumetric refund amount derived from that consent order settlement is also a compromise. The volumetric refund amount does not purport to refund the exact amount that a customer may have been overcharged. Rather, it is a method by which a customer can receive an appropriate proportion of the consent order fund. We recognize that a particular purchaser could have suffered a disproportionate share of the injury. Therefore, any purchaser may file a refund application based on a claim that his share of the alleged overcharges was greater than the *pro rata* amount determined by the volumetric presumption. We also recognize that, if we recive refund applications based on total gallonages which exceed our estimate or if we receive applications based on purchases of fuel oil or motor gasoline, it may become necessary to adjust the per gallon refund amount downward.

As in previous cases, we will establish a minimum refund amount of $15.00 for first-stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefit of restitution in those situations. *See, e.g. Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

Before distributing any portion of the consent order fund, we intend to publicize the distribution process, to solicit comments on the proposed refund procedures and to provide an opportunity for any affected party to file a claim. Comments regarding the tentative distribution process set forth in this Proposed Order should be filed with the Office of Hearings and Appeals within 30 days of publication of this Proposed Decision and Order in the **Federal Register.** Applications for refunds should not be filed at this time. Detailed procedures for filing applications for refunds will be provided in a final Decision and Order.

It Is Therefore Ordered That:

The $3,500,000.00 refund amount obtained from The True Companies pursuant to the Consent Order entered into with the Department of Energy on July 28, 1983 will be distributed in accordance with the foregoing Decision.

APPENDIX.—IDENTIFIED CUSTOMERS OF TRUE OIL COMPANY'S MARKETING AFFILIATE: RESERVE OIL PURCHASING COMPANY, BLACK HILLS OIL MARKETINGS, TRUE OIL PURCHASING COMPANY

Customer name	Gallons purchased
Propane: Sept. 1, 1973 to Oct. 31, 1978	
A&V Gas	72,626
Alden Oil Co	81,535
Amoco Production	57,182
Arrow Gas	158,233
Black Thunder	166,674
Butane Power & Equipment	328,995
Cal-Gas Co	479,915
Cal Liquid Gas Co.	1,588,045
Cenex	13,047,765
Davis Oil	2,550
Dix-O-Gas	236,712
Empire Gas	1,741,357
Gary Operating	277,137
H.S. Sowards	17,272
Huntsmen Oil	65,951
Kerr-McGee	23,571
Little America	41,012
McCulloch Gas	119,753
Murphy Oil Co	410
N.C. Paving Co	142,377
Jenny Paton	150
Paving Corp	30,440
Petrolane Intermountain	415,387
Polar Gas	74,003
Rocky Mountain Natural Gas	306,664
T&T Gas Products	209,196
Tooke Engineering	158,381
Townsend Co./Bill Townsend	18,085
Uan Gas, Inc	35,507
V-1 Oil Co	2,720,897
W&S	8,836
Westland Oil Co	9,001
Butane: December 1973 to October 1978	
Amoco Oil	60,315

APPENDIX.—IDENTIFIED CUSTOMERS OF TRUE OIL COMPANY'S MARKETING AFFILIATE: RESERVE OIL PURCHASING COMPANY, BLACK HILLS OIL MARKETINGS, TRUE OIL PURCHASING COMPANY—Continued

Customer name	Gallons purchased
Farmers Union	1,100,037
Pasco	44,123
Solar Petroleum	809,546
Texaco	205,306
Natural Gasoline: January 1974 to September 1974	
Conex	37,684
Farmers Union	508,455
Tesoro Petroleum Co	56,173

[FR Doc. 85-15706 Filed 6-28-85; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-140064; TSH-FRL 2858-2]

Access to Confidential Business Information by Congress

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The House Committee on Energy and Commerce has asked EPA for information relevant to a bill now pending before the Committee. Part of the information which the Committee has specifically requested is information which was submitted to EPA under the Toxic Substances Control Act (TSCA). Some of the responsive information which will be given to the Committee has been claimed confidential by its submitters.

DATE: This confidential business information will be provided to the Committee no sooner than July 11, 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 Wasington, D.C.: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: In a June 10, 1985, letter to the EPA Administrator, the Chairman of the House Committee on Energy and Commerce requested that the Agency provide information relevant to specific provisions of a bill, H.R. 2576, "The Toxic Release Control Act of 1985," which is currently pending before the Committee. Section 102 of that bill contains an inventory of 85 chemical substances which Congress would find to be "hazardous substances that may be released into the air." The Committee has specifically asked EPA for a listing of manufacturers, processors, and manufacturing/processing sites for each of the 85 substances. To satisfy this request, the Agency will provide the Committee with relevant information on the substances and their manufacturers, importers, and processors which EPA has received under section 5, 8, and 12 of TSCA. Some of the information requested by the Committee has been claimed confidential by the submitters of the information..

Under section 14(e) of TSCA and 40 CFR 2.306(h), EPA is required to provide TSCA confidential business information to a Congressional committee in response to a written request by its chairman.

This **Federal Register** notice is being published to provide notification to all manufacturers, importers, and processors who have submitted the information described above to EPA under TSCA and have claimed it confidential that the Agency will permit the House Committee on Energy and Commerce to have access to that TSCA information.

EPA will inform the Committee of the confidential status of the information in question, of the security procedures EPA follows to protect the information, and of the provisions of section 14 of TSCA, which set criminal penalties for unlawful disclosure of confidential business information.

The Committee has not indicated where it will review the TSCA confidential business information.

Dated: June 27, 1985.

Marcia Williams,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85-15839 Filed 6-28-85; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 85-197; FCC 85-320]

Bell Operating Companies; Declaratory Ruling; Memorandum Opinion and Order

In the matter of declaratory ruling on the application of section 2(b)(2) of the Communications Act of 1934 to Bell Operating Companies.

Adopted: June 14, 1985.

Released: June 20, 1985

By the Commission.

I. Introduction and Discussion

1. The Communications Act of 1934 grants this Commission plenary authority over interstate and foreign communications. 47 U.S.C. 151, 152(a). Section 2(b)(2) of that Act, 47 U.S.C. 152(b)(2), creates a limited exception to our power to regulate persons that provide interstate or foreign communication services as common carriers. That subsection exempts some of those carriers from some of the provisions of the Communications Act. Carriers that are entitled to claim the section 2(b)(2) exemption are known as "connecting carriers." Section 2(b)(2) provides in pertinent part:

> . . . nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to . . . any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carriers . . . except that sections 201 through 205 of this Act, both inclusive, shall, except as otherwise provided therein, apply (to such a carrier).

2. Neither the American Telephone & Telegraph Company ("AT&T") nor any of its carrier subsidiaries were classified as "connecting carriers" prior to the divestiture that was ordered in *United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983) (MFJ). The plan of reorganization that implemented the divestiture decree does not appear to change the status of any of the divested Bell Operating Companies ("BOCs") and no divested BOC has asserted that it has acquired connecting company status. Nevertheless, some state public utility commissions have asserted in judicial proceedings that the divested BOCs did acquire connecting company status at the time of the divestiture.[1] More recently the Wisconsin Public Service ("Wisconsin Commission") asserted in a proceeding to represcribe depreciation rates for Wisconsin Bell, Inc. ("Wisconsin Bell") and other telephone companies that this Commission cannot prescribe depreciation rates for Wisconsin Bell because Wisconsin Bell became a connecting carrier at the time of

[1] For example, in petitions for a writ of certiorari to review the Court of Appeals decision in *National Ass'n of Regulatory Utility Com'rs v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 105 S. Ct. 1224, 1225 (1985), the Michigan Public Service Commission, the State of Michigan, the Public Service Commission of Wisconsin and the New York State Department of Public Service raised arguments based on the alleged 2(b)(2) status of the BOCs.

divestiture.[3] Although the Wisconsin Commission did not present evidence or argument in that depreciation proceeding that would contradict our belief that this Commission has power to prescribe depreciation rates for all divested BOCs including Wisconsin Bell, we stated that "we plan to initiate a proceding in the near future to resolve outstanding factual and legal issues which have arisen in several contests."[4] We are adopting this Order in order to establish a structure for that proceeding.[5]

3. Inasmuch as the determination of connecting carrier status is likely to involve factual determinations with respect to the operations and relationships of a particular carrier, declaratory ruling proceedings should be used to remove any uncertainty with respect to the status of the BOCs. We believe that state commissions with common carrier regulatory jurisdiction over a BOC have standing to seek a declaratory ruling with respect to the status of that BOC because their regulatory powers might indirectly be affected by a BOC's status under section 2(b)(2). We will accordingly treat the Wisconsin Commission filing of September 14, 1984, as a petition for declaratory ruling with respect to the status of Wisconsin Bell. Although the contents of that filing are not sufficient to establish the factual predicate for a claim that Wisconsin Bell has acquired connecting carrier status, we will afford the Wisconsin Commission sixty (60) days from the date on which this order is released to complete its filing.

4. It seems likely that any decision we may reach with regard to the Wisconsin petition will have an impact upon all the BOCs, as well as upon the states in which they operate. Therefore, to the extent that any state or BOC believes that a BOC has acquired 2(b)(2) status, we encourage it to take advantage of this sixty day period by filing a petition for declaratory ruling. We are establishing this docket in order to consider all of the petitions jointly.[6] This will promote regulatory efficiency by enabling us to resolve in one proceeding all outstanding uncertainties regarding the BOCs and section 2(b)(2). Following the close of this sixty day period, however, we will look with disfavor upon petitions for declaratory rulings on this question.

5. At the close of the sixty day period, we will allow interested parties thirty (30) days to comment upon the pleadings. Replies will be due fifteen (15) days later.

6. Carriers or state commissions that choose to file such petitions should note that this Commission determined shortly after the Communications Act was adopted that any telephone company claiming connecting carrier status has the burden of establishing that it is covered by the exemption. We said at that time: "The principle is well settled that when a legislative act is passed, conferring jurisdiction over the things enumerated therein and providing an exemption under certain specified conditions, the burden is not upon the agency to show that its jurisdiction extends to any individual, but is on the party claiming exemption to show that the Act does not apply to him." *Intra State Telephone Company*, 3 FCC 172 (1935). The case law supports this conclusion. *Rochester Telephone Corp. v. United States*, 23 F.Supp 634, 636 (1938), *aff'd*, 307 U.S. 1925 (1939).

7. We believe this conclusion is still valid. Accordingly, we will proceed on the assumption that none of the BOCs has acquired 2(b)(2) status unless and until a BOC or state commission establishes that the status of some BOC has changed. Such an approach seems particularly appropriate inasmuch as the *MFJ* was not intended to disturb the jurisdictional allocation established by the 1934 Act;[7] a cursory examination of the LATA boundaries established pursuant to the *MFJ* reveals that it is unlikely that any BOC is providing interstate communication in a manner that falls within the scope of the 2(b)(2) exemption;[8] and, the legislative history indicates that Congress did not intend to create an exemption that would be applicable to carriers of the size and nature of the BOCs.[9]

8. Moreover, common control relationships are also likely to preclude a finding that most BOCs have connecting carrier status. It seems evident that the requirement that a connecting carrier be "engaged in interstate or foreign communication solely through physical connection with the facilities of another [unaffiliated] carrier" would exclude any carrier that connects directly with a line of an affiliated carrier to provide interstate communication. The use of the word "solely" also appears to exclude a carrier that participates in the same interstate communication even if the affiliated carriers do not connect directly with each other. Such an interpretation would exclude almost all of the BOCs.[10] Although holding company subsidiaries that could be described as establishing indirect connections with an affiliated subsidiary in other states have sometimes been classified as connecting carriers,[11] it is now our tentative view that Congress intended to create a more limited exemption. We hereby afford affected persons an opportunity to brief that question before we make any final determination.[12]

9. A state commission seeking a declaratory ruling will, of course, assume the same burden that a carrier would be required to meet if it asserted a 2(b)(2) exemption claim for itself. That burden includes establishing the factual predicate for any claim that a carrier's operations fit all of the requirements for a section 2(b)(2) exemption.[13]

---

[3] See Letter to Kenneth Moran, FCC Common Carrier bureau, from Wisconsin Commission, dated September 14, 1984.

[4] *Prescription of Revised Percentages of Depreciation*, FCC 84-621, released December 19, 1984, at para. 12, *petition for review pending, Public Service Commission of Wisconsin v. FCC*, No. 85-1258, 7th Cir., petition filed February 19, 1985.

[5] Certain regional Bell holding companies have argued that they are not common carriers and therefore are not subject to this Commission's jurisdiction. We have not yet found it necessary to address these arguments and we do not do so here. *See Capitalization Plans for Furnishing of Customer Premises Equipment and Enhanced Services*, FCC 85-28, (released Feb. 4, 1985) at para. 17, petition for review pending, *US West v. FCC*, 7th Cir., No. 85-1425 (filed March 18, 1985); but see *GTE-Telenet*, 70 FCC 2d 2249 (1979).

[6] Any state or BOC that chooses to file a petition for declaratory ruling in response to this Order should include the docket number in its filing.

[7] *See, e.g.*, United States Department of Justice, *Response to Public Comments on Proposed Modification of Final Judgment*, 47 FR 23331-32 (1982).

[8] See especially the criteria set forth in *Classification of Telephone Companies*, 3 FCC 37 (1935).

[9] *See, e.g.*, 78 Cong. Rec. 8846 (1934) (remarks of Senator Clark) (section 2(b)(2) intended to exempt small carriers, "family enterprises")

[10] For example, when a caller places an interstate call from Philadelphia to Baltimore, it must use the facilities of three carriers: Bell Telephone of Pennsylvania, AT&T or another interexchange carrier, and C&P Telephone of Maryland. The two BOCs involved in handling that interstate call are under the common control of Bell Atlantic, a regional holding company created by the divestiture of AT&T. The BOCs in this example would not appear to be engaged in interstate communication solely through physical connection with the facilities of an unaffiliated carrier. Each BOC that is affiliated with another BOC handles hundreds of such calls each day.

[11] *See, e.g.*, Barron County Telephone Company, 5 F.C.C. 33, 35-36 (1937).

[12] Persons other than petitioners who wish to discuss this question may file at the time comments in response to declaratory ruling petitions are filed.

[13] We assume that a state commission has or can readily obtain any necessary information with respect to the facilities or operations of a BOC that is subject to its jurisdiction if this is not the case, a state commission may, of course, seek an appropriate discovery order from this Commission.

11. Ordering Clauses

10. Therefore, it is Ordered, pursuant to sections 1, 2, 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 152, 154(i), 154(j), and section 1.2 of the Commission's rules, 47 CFR section 1.2, that the Wisconsin Public Service Commission be given sixty (60) days from the date on which this order is released to make factual and legal demonstrations regarding the application of section 2(b)(2) of the Act, 47 U.S.C. 152(b)(2), to the Wisconsin Bell Telephone Company.

11. It is further ordered, that any Bell Operating Company wishing to claim 2(b)(2) status, and any state with common carrier jurisdiction over a Bell Operating Company that wishes to claim such company has acquired 2(b)(2) status, be given sixty (60) days from the date on which this order is released to petition for a declaratory ruling and make the factual and legal demonstrations needed to establish such a claim.

12. It is Further Ordered, that any interested person may file comments upon any petition for declaratory ruling filed in connection with this proceeding within thirty (30) days after the close of the sixty (60) day period established herein for filing such petitions. Replies will be due fifteen (15) days after close of the comment period.

13. It is Further Ordered, that the Secretary shall cause copies of this order to be served upon the Wisconsin Public Service Commission, each of the Bell Operating Companies, including the Cincinnati Bell Telephone Company and the Southern New England Bell Telephone Company, and the public service commissions of the District of Columbia and of each state except Alaska and Hawaii.

14. It is Further Ordered That the Secretary shall cause a copy of this Order to be published in the **Federal Register.**

Wiliam J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-15739 Filed 6-28-85; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 85-201; File No. 50076; CM-P-74 et al.]

Digital Paging Systems, Inc., et al.; Memorandum Opinion and Order for Construction Permits

In re applications of CC Docket No. 85-201:

Digital Paging Systems, Inc..	File No. 50076-CM-P-74.
Private Networks, Inc.	File No. 50176-CM-P-74.
M.C.C.A. Service Corporation.	File No. 50205-CM-P-74.
Multipoint Information Systems, Inc..	File No. 50208-CM-P-74.
Multi-Communications Services, Inc..	File No. 50210-CM-P-74.

For Construction Permits in the Multipoint Distribution Service for a new station on Channel 2, at Atlanta, Georgia.

Adopted: June 17, 1985.

Released: June 21, 1985.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 2 at Atlanta, Georgia. The applications are therefore mutually exclusive and require comparative consideration. These applications have been amended as result of informal requests by the Commission's staff for additional information. There were no petitions to deny filed.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, That Digital Paging Systems, Inc., Private Networks, Inc., M.C.C.A. Service Corporation, Multipoint Information Systems, Inc., Multi-Communications Services, Inc. and the Chief of Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, That parties desiring to participate herein shall file their notices of appearances in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. It is further ordered, That any authorization granted to Digital Paging Systems, a wholly-owned subsidiary of Graphic Scanning Corporation, as a result of the comparative hearing shall be conditioned as follows:

(a) Without prejudice to, reexamination and reconsideration of that company's qualifications to hold an MDS license following a decision in the hearing designated in *A.S.D. ANSWERING Service, Inc., et al.*, FCC 82-391, released August 24, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

7. The Secretary shall cause a copy of this Order to be published in the Federal **Register.**

James R. Keegan,

Chief, Domestic Facilities Division Common Carrier Bureau.

[FR Doc. 85-15741 Filed 6-28-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Private Networks, Inc. (PNI) filed a petition to designate an additional issue for hearing. In its petition, PNI requested comparative credit for its minority ownership in 25 of the 26 markets, including Atlanta, Georgia, where it filed mutually exclusive Channel 2 applications. Minority ownership is not a factor the Commission has found to be relevant in comparative hearings for single channel MDS stations. *See* Frank K. Spain, 77 F.C.C. 2d 20 (1980). Accordingly, we are hereby dismissing the petition.

[Common Carrier Docket No. 85-202; File Nos. 1743 CF-P-85 through 1757 CF-P-85]

TeleSTAR, Inc., for Authority To Construct New Common Carrier Point-to-Point Microwave Radio Stations; Apparent Liability and Order Designating Applications for Hearing

Adopted: June 18, 1985.

Released: June 21, 1985.

By the Common Carrier Bureau.

1. Before the Bureau are the applications of TeleSTAR, Inc. for

authority to construct 15 common carrier microwave radio stations that will form a microwave transmission system between Salt Lake City, Utah and Denver, Colorado. A petition to dismiss has been filed by Western Tele-Communications, Inc. (Western), and informal protests have been filed by Western, Mountain Bell, Inc., and MCI Telecommunications Corp. For the reasons set forth below, we conclude that the petition and protests raise substantial and material questions of fact, and designate the issues raised for hearing.

Background

2. TeleSTAR filed its applications on January 23, 1985, along with a request for expedited processing. Subsequently, the Commission received a letter dated January 31, 1985 from Western. In that letter Western stated that TeleSTAR had virtually completed construction of five of the stations, including such features as buildings, towers, antennas and waveguides. The letter was accompanied by photographs, dated January 25, 1985, allegedly showing construction at the five sites. Western requested that the applications be dismissed for premature construction, and that the Commission investigate the facts and circumstances surrounding the construction. By letter dated February 11, 1985, Mountain Bell concurred with Western's request for an investigation, claiming that such premature construction jeopardized the fequency coordination process by decreasing the flexibility necessary for engineering settlements of potential interference problems.

3. In a responsive pleading filed on February 11, 1985, TeleSTAR admitted that construction had in fact occurred at 13 of the 15 sites, but claimed that no electrical work had been done ad no radio transmitters installed. TeleSTAR denied willfully constructing in violation of the rules, describing its belief at the time that Commission authority in the form of a construction permit was required only at the point that radio transmitters or other electrical equipment would be installed, and that the relevant rules, including § 21.3(b), are ambiguous on this point.

4. In a subsequent letter dated February 21, 1985, Western repeated its request for a full inquiry into the matter. On March 8, 1985, Western filed a Petition to Dismiss the applications on the basis that the premature construction demonstrated that TeleSTAR was not technically and otherwise qualified to be a Commission licensee, and that it lacked candor by failing to mention in its applications that the facilities were already constructed. Western also reiterated its request for an inquiry, and asked that any construction permits that may be awarded be conditioned upon appropriate Commission sanctions. TeleSTAR filed an opposition, repeating its previous denial of willfulness and further claiming that a recent revision of section 319(a) of the Communications Act indicated Congressional intent to avoid imposing sanctions. In its Reply Western contended that the recent revision to section 319(a) was editorial in nature, effecting no substantive change in the statute.[1]

5. By letter dated May 9, 1985, MCI Telecommunications Corp. informally objected to TeleSTAR's construction. MCI essentially reiterated the arguments advanced by Western and Mountain Bell, emphasizing the adverse effect of premature construction upon the frequency coordination process. TeleSTAR responded by letter dated May 14, 1985, referring to its previous pleadings to answer MCI's objections.

Discussion

6. Section 319(a) of the Communications Act provides that "[n]o license shall be issued under the authority of this Act for the operation of any station unless a permit for its construction has been granted by the Commission." 47 U.S.C. 319(a). Section 21.3(b) of the Commission's rules contains the same provision, and also states that "[n]o construction or modification of a station may be commenced without a construction permit, a modified construction permit, or other authority issued by the Commission for the exact construction or modification to be undertaken * * * ." 47 CFR 21.3(b).

7. There are several reasons behind this proscription of premature construction.[2] The process of applying for a construction permit provides the Commission with information on the location and nature of proposed facilities, enabling the Commission to ensure compliance with concerns such as Federal Aviation Administration antenna tower regulations and environmental regulations.[3] More importantly, our requirement that applicants complete their frequency coordination process prior to construction would be undermined if construction could be permitted prior to applying for and receiving Commission authorization; applicants who had constructed would not have the flexibility to consider many engineering adjustments that could otherwise solve frequency coordination problems.[4]

8. TeleSTAR has admitted to engaging in construction at 13 of 15 sites. The admitted construction ranges in extent. At six sites, including those described by Western, the transmitter housings, towers, antennas, and waveguides have been constructed. At two sites the transmitter housings, towers, and antennas have been built; at two others the transmitter housings and towers have been completed. At one site only the transmitter housing has been constructed, and miscellaneous minor construction has occurred at two others. At the remaining two sites, TeleSTAR submits that no construction whatsoever has occurred.[5]

9. TeleSTAR claims that the Commission's rules are ambiguous, relying both on the text of § 21.3 as well as a number of cases which it claims place a complex gloss on the regulations. TeleSTAR's argument is not persuasive. TeleSTAR admits in its pleadings that the construction violates Commission rules;[6] this admission is

---

[1] On April 3, 1985, TeleSTAR filed a request for special temporary authority to finish construction of the stations and to begin operating them. Because of our decision to investigate whether unlawful construction has already taken place, we will not authorize any further constuction. Accordingly, the request for the STA will be denied.

[2] If facilities are constructed prior to authorization, the fact that facilities have been built could be used to pressure the Commission in its decision to grant permits or licenses. *WJIV, Inc.* v. *FCC*, 231 F.2d 725 (D.C. Cir. 1956).

[3] *See, e.g.*, 47 CFR 17.4 (review of antenna structures regarding possible air navigation hazard); *id.* § 1.1301–1319 (procedures implementing the National Environmental Policy Act of 1969). In addition, an applicant seeking to locate a radio station in one of the quiet zones (restricted to minimize harmful impact on radio astronomy or other facilities sensitive to frequency interference) must follow the procedures set forth in § 21.113 of the rules prior to construction.

[4] The Commission has emphasized the importance of construction permits in assuring efficient frequency use in its recent rulemaking involving Public Land Mobile Radio Services. *See* Revision and Update of Part 22 of the Public Mobile Services Rules, 95 F.C.C.2d 769, 773 (1983). In addition to coordinating with other carriers, in certain instances an applicant proposing a station within a certain distance of the Canadian or Mexican borders may have to have the proposal coordinated with the respective government. *See* Agreement Between United States of America and Canada Concerning Coordination and Use of Radio Frequencies Above 30 Mc/s, TIAS No. 5205 (1962), *revised in part*, TIAS No. 5833 (1965); *see generally* The Radio Regulations (Geneva 1979) (containing provisions governing certain coordination procedures applicable to coutries including Mexico).

[5] This construction summary is drawn from TeleSTAR's Response Pleading of February 11, at page 6, erratum. The miscellaneous construction involved the installing of a building mount at one site and the installation of a roof jack at another.

[6] Opposition of TeleSTAR, at 11, 28; Responsive Pleading of February 11, at 8.

inconsistent with an argument that the rules are ambiguous. More fundamentally, even in light of the Commission's past interpretations, the level of ambiguity asserted by TeleSTAR would not involve the type of construction which it seeks to justify. It is true that in certain cases the Commission has found construction to be *de minimis*, and exacted no penalty.[7] In addition, the Commission will not consider premature the construction of facilities that have a legitimate alternative purpose.[8] Finally, activities necessary to determine whether a site is adequate, such as test borings, are not construction but rather a matter of prudence in the selection of a suitable site.[9]

10. However, such situations are markedly distinguishable from the construction which TeleSTAR has accomplished. The company has constructed eleven transmitter housings, ten towers, eight antennas, and six waveguides. Obviously the amount and kind of construction is inconsistent with the language of § 21.3.

11. With regard to the text of the rules, TeleSTAR argues that the term "radio station" in § 21.3 is vague, pointing to the definition of the term in § 21.2 of the rules. That definition reads:

Radio Station. A separate transmitter or a group of transmitters under simultaneous common control, including the accessory equipment required for carrying on a radiocommunication service.

"Radiocommunication" is defined in the same section as "any telecommunications by means of Hertzian waves." TeleSTAR argues that these definitions could lead a person reasonably to believe that the station construction referred to § 21.3 "only includes transmitters and related electrical equipment," and that towers, while convenient, are not necessary to the propagation of such waves and the carrying on of such a service.[10] Even assuming, *arguendo*, that one accepts such a narrow reading of the three rules,[11] the argument TeleSTAR makes is still not persuasive in this case. TeleSTAR admits to constructing eight antennas and six waveguides; TeleSTAR argument that antennas and waveguides are not "required for carrying on a radiocommunication service" by means of Hertzian waves is simply not credible. Thus, even if the Bureau accepts the premises of TeleSTAR's argument, TeleSTAR's construction goes beyond the range of any arguable ambiguity.[12]

12. With regard to TeleSTAR's argument that the recent amendments to section 319(a) of the Act indicate a Congressional intent to abandon Commission sanctions, we note that prior to 1982, section 319(a) read:

No license shall be issued under the authority of this Act for the operation of any station *the construction of which is begun or is continued after this Act takes effect*, unless a permit for its construction has been granted by the Commission.

47 U.S.C. 319(a) (emphasis added). The italicized language was deleted in 1982, in an editorial revision of the Act.[13] As the Commission has noted previously, this revision was housekeeping in nature, effecting no substantive change in the statute.[14]

13. We conclude that there are substantial and material questions of fact concerning the circumstances surrounding the construction by TeleSTAR and its subsequent application to the Commission. We note first that there is a substantial question concerning whether TeleSTAR has made material misrepresentations or demonstrated a lack of candor in its dealings with the Commission. TeleSTAR admits that its principals were familiar with the Part 21 rules, including § 21.3.[15] It contends that these principals honestly but mistakenly believed that the construction in question was permissible, yet as pointed out above that argument is not persuasive. If in fact the construction was undertaken with knowledge that such construction might well or would in fact violate the Commission's rules, then TeleSTAR would have lacked candor or misrepresented this fact to the Commission in the pleadings; in addition, TeleSTAR would have lacked candor when it filed its applications for construction permits without informing the Commission that some of the facilities had in fact already been substantially constructed. We therefore designate the issues of misrepresentation and candor for hearing.[16]

14. Should no finding be made that TeleSTAR lacked candor or made material misrepresentations to the Commission, and no findings be made that the construction was completed

---

[7] *See, e.g.*, Harriscope, Inc., 15 Rad. Reg. (P&F) 332 (1957); *see also* Jefferson Radio Corp., 29 F.C.C.2d 873 (1960). TeleSTAR admits that its construction is not *de minimis*. Responsive Pleading of February 11, at 18.

[8] Spectrum Communications, Inc., 40 F.C.C.2d 467, 468–69 (1973); Cherry & Webb Broadcasting Co., 22 F.C.C. 1082, 1124–27 (1956) (Initial Hearing Decision), *aff'd*, 22 F.C.C.2d 1080 (1957); *cf.* WAVV Communications, Inc., 48 F.C.C.2d 1113 (1974). For example, the construction of a tower proposed to be used for CARS is not premature if that tower is also to be used for an authorized cable headend system. Premature Construction in the CAR Service, 39 Rad. Reg. 2d (P&F) 1515 (1977) (Pub. Notice); *see* Spectrum Communications, Inc., 40 F.C.C.2d at 468–69. TeleSTAR does not contend that its construction fits within this category. Responsive Pleading of February 11, at 18.

[9] Clarification of Test Borings as Premature Construction, 13 F.C.C.2d 979 (1968).

[10] Opposition of TeleSTAR, at 27.

[11] Of course, we do not concede this interpretation; as noted even TeleSTAR itself now admits that its construction violates § 21.3.

[12] The bureau also notes that the policies behind § 21.3 could be frustrated by the construction in the present case. The restriction against premature construction prevents pressure from being exerted to influence the Commission's licensing decisions. As Western correctly points out, TeleSTAR in its opposition argues that application of sanctions in the present case would be uneconomical, would "delay the introduction of services," and would "only serve to increase the service costs unnecessarily." Opposition of TeleSTAR at i, 40. In addition, the Commission in this instance had no opportunity to review compliance with Part 17 of the rules prior to construction. Finally, construction of this type could jeopardize the frequency coordination process, as Mountain Bell suggests, by eliminating the flexibility of carriers such as TeleSTAR to solve interference problems which may be encountered.

[13] At that time, section 319(d) was also amended to give the Commission the authority to discontinue the construction permit requirement for certain classes of stations. The Commission has announced, however that it will continue to require construction permits for, *inter alia*, common carrier radio stations. *See* Public Notice, 52 Rad. Reg. 2d (P&F) 808 (1982).

[14] *See, e.g.*, King County Broadcasters, 55 Rad. Reg. 2d (P&F) 1591 (1984). Although the Commission took no action against the construction in the King County case, that decision involved a broadcast applicant and focused almost exclusively on whether as a matter of law the Commission must require the dismantling of a preconstructed facility. In the instant case, involving a common carrier applicant, the problems created by premature construction would be extremely serious. As the Commission has noted with regard to the Public Land Mobile Services, due to frequency coorindation "the current requirement that applicants obtain authorization prior to construction guarantees efficient spectrum allocation and utilization * * *." Revision and Update of Part 22 of the Public Mobile Servs. Rules, 95 F.C.C.2d 769, 773 (1983). Therefore, it is essential that we strictly enforce the construction permit requirement for common carrier services.

[15] The applications include under Item 35 a certification by Walter N. Stewart, president of the company, that he was familiar with the Part 21 rules and that the engineering information presented in the applications was *complete* and accurate. In addition, TeleSTAR admits in its opposition that "Mr. Stewart must have read § 21.3" in light of his certification. Opposition of TeleSTAR at 26.

[16] The hearing should explore all relevant aspects of the construction and the applications. For example, TeleSTAR in its application to the Bureau of Land Management for authority for certain facilities on federal land, filed with the Bureau of Land Management on May 11, 1984, stated that "a parent company will complete all constructions including the power lines." However, TeleSTAR fails to list any parent company on its Form 430 filed with this Commission. Resolution of this possible inconsistency could be relevant both to the issues of TeleSTAR's candor as well as to the identity of the actual entity involved in the construction.

with knowledge that such construction was in probable violation of § 21.3, there still remains the question of whether a forfeiture would be appropriate pursuant to section 503 of the Act and § 1.80 of the Commission's rules.[17] These questions will be designated along with the other issues, for consideration by hearing. Based on the evidence and the admissions discussed above, we conclude that TeleSTAR has apparently violated § 21.3 of the Commission's rules, 47 CFR 21.3, by constructing radio stations without a construction permit or other authorization.[18] Section 503(b) of the Act specifies that "[e]ach day of a continuing violation shall constitute a separate offense."

Ordering Clause

15. Accordingly, it is ordered that the petition of Western, and the objections of Mountain Bell and MCI, are granted to the extent consistent with the foregoing opinion, and denied in all other respects.

16. It is further ordered that the applications of TelsSTAR for the common carrier microwave facilities in the instant case are designated for hearing in accordance with section 309(e) of the Communications Act, as amended, 47 U.S.C. 309(e), upon the following issues:

(1) To determine the facts and circumstances surrounding the construction by TeleSTAR of the facilities for which it has applied for construction authority;

(2) To determine, in light of the evidence adduced above,

(a) Whether TeleSTAR constructed the aforementioned facilities in violation of § 21.3 of the Commission's rules, 47 CFR 21.3, and whether such construction was effectuated with the knowledge that the construction was in violation of § 21.3;

(b) Whether TeleSTAR has exhibited a lack of candor or intentionally misrepresented material facts to the Commission;

(c) Whether TeleSTAR is qualified to be a Commission licensee;

(d) Whether a grant of TeleSTAR's applications would serve the public interest, convenience and necessity;

(e) Whether, in light of the determination of Issue (2)(d), an Order of Forfeiture should be issued pursuant to Section 503 of the Act, 47 U.S.C. 503, and § 1.80 of the Commission's Rules, 47 CFR 1.80, in the amount of $5,000.00 or whatever lesser amount is determined to be appropriate.

17. It is further ordered that TeleSTAR shall have the responsibility to adduce evidence on the issues set forth above, and that the burden of proof on the conclusory issues set forth above shall be placed on TeleSTAR.[19]

18. It is further ordered that TeleSTAR, Western Mountain Bell, MCI, and the Chief, Common Carrier Bureau, are made parties to this proceeding.

19. It is further ordered that the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent order.

20. It is further ordered that all designated parties shall file written notices of appearance, pursuant to § 1.221 of the Rules, 47 CFR 1.221, within 20 days of the release date of this Order.

21. It is further ordered that other parties desiring to participate in the hearing, including parties with applications mutually exclusive with the instant applicant and who wish to participate in this proceeding, shall file a petition to intervene, pursuant to § 1.221 of the Rules, within 30 days of the publication of this Order in the **Federal Register.**

22. It is further ordered that the application of TeleSTAR for special temporary authority is hereby denied without prejudice, and the request for expedited processing is also denied.

23. It is further ordered that the Secretary shall cause a copy of this Order to be published in the **Federal Register.**

Albert Halprin,

Chief, Common Carrier Bureau.

[FR Doc. 85-15740 Filed 6-28-85; 8:45 am]

BILLING CODE 6712-01-M

[17] These issues, standing alone, could possibly be resolved without the need for a hearing. However, since we are designating these applications on the candor question, we will include an investigation of whether licensing the facilities already constructed, with or without a forfeiture, would further the public interest given the extent and nature of the construction and the level of competition in the provision of these services in this specific situation. *See* 47 U.S.C. 503(b)(3)(A) (Commission has the discretion to determine forfeitures by hearing procedure).

[18] This conclusion constitutes our initial assessment under 47 U.S.C. 503(b)(2) and 503(b)(3)(A). A forfeiture liability may properly be assessed against a person who is not a Commission licensee without a citation and the opportunity for a personal interview, if the person is "engaging in activities for which a license, permit, certificate, or other authorization is required." 47 U.S.C. 503(b)(5). We also note that the forfeiture analysis in this order is expressly premised upon TeleSTAR's representation in its Form 430 that it holds or has applied for no other licenses, and is affiliated with no other licensees, permittees, or other parties holding Commission authorizations.

[19] Where an applicant, against whom charges of misconduct have been raised, has within its peculiar knowledge the facts regarding the alleged misconduct, the applicant will have the burdens of production and proof on such issues. *See generally* Granbury Communications Co., 68 F.C.C.2d 966, 969 (1978); Miami Broadcasting Crop., 11 F.C.C.2d 920, 923 (Rev. Bd. 1968).

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following tranactions were granted early termination of the waiting period provided by law ans the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective
(1) 85-0590—Talley Industries, Inc.'s proposed acquisition of voting securities of Groman Corp. (Grover Hermann Foundation, UPE).	June 5, 1985.
(2) 85-0594—The Dow Chemical Co.'s proposed acquisition of assets of the Upjohn Co. plus acquisition of voting securities of Admiral Equipment Co. (The Upjohn Co., UPE).	June 5, 1985.
(3) 85-0618—Linebeck Corp.'s proposed acquisition of assets of American Bridge Division of United States Steel Corp. and voting securities of two U.S. Steel Subsidiaries, American Bridge International, Inc. and American Bridge Engineering of Illinois, Inc. (United States Steel Corp., UPE).	June 5, 1985.
(4) 85-0622—MKDG II's proposed acquisition of assets of Aspen Skiing Co..	June 5, 1985.
(5) 85-0628—The News Corp. Ltd.'s proposed acquisition of assets of Aspen Skiing Co..	June 5, 1985.
(6) 85-0630—Nesbitt, Thompson, Inc.'s proposed acquisition of assets of Fahnestock & Co.	June 5, 1985.
(7) 85-0643—Williams Resources, Inc.'s proposed acquisition of assets of Williams Co.	June 6, 1985.
(8) 85-0180—Xerox Corp.'s proposed acquisition of assets of and voting securities of Savin Corporation (Canada Development Corp., UPE).	June 7, 1985.

Transaction	Waiting period terminated effective
(9) 85-0584—Davis Oil Co.'s proposed acquisition of assets of NWT Natural Resources Co. (Northwest Industries, Inc., UPE).	June 7, 1985.
(10) 85-0631—Price Communications Corp.'s proposed acquisition of assets of WSC Associates, L.P.	June 7, 1985.
(11) 85-0636—Great Lakes Chemical Corp.'s proposed acquisition of voting securities of Purex Pool Products, Inc. (Purex Industries, Inc., UPE).	June 7, 1985.
(12) 85-0637—McKesson Corp.'s proposed acquisition of voting securities of S-P Drug Co., Inc.	June 7, 1985.
(13) 85-0642—McKesson Corp.'s proposed acquisition of voting securities of S-P Drug Co., Inc.	June 7, 1985.
(14) 85-0649—Coast R.V., Inc.'s proposed acquisition of voting securities of CP Products Corp. and United Sales & Warehouse of Texas, Inc. (Coachmen Industries, Inc., UPE).	June 7, 1985.
(15) 85-0656—DeKalb AgResearch, Inc.'s proposed acquisition of voting securities of Nicor Resources, Ltd. (Nicor, Inc., UPE).	June 7, 1985.
(16) 85-0557—Louis J. Roussel's proposed acquisition of voting securities of National Savings Life Insurance Co. (Western Preferred Corp., UPE).	June 10, 1985.
(17) 85-0640—Siemens Aktiengesellschaft's proposed acquisition of voting securities of Tel-Plus Communications, Inc. (Telecom Plus International, UPE).	June 10, 1985.
(18) 85-0648—Robert S. Jepson, Jr.'s proposed acquisition of assets of of Hill Refrigeration Division (Emhart Corp., UPE).	June 10, 1985.
(19) 85-0604—Werner K. Rey's proposed acquisition of voting securities of Meridian Leasing Corp. (Harvey Kinzelberg, UPE).	June 11, 1985.
(20) 85-0641—Henry Crown & Co.'s proposed acquisition of Champion's Federal Envelope (Champion International, UPE).	June 11, 1985.
(21) 85-0664—Barrick Resources's proposed acquisition of voting securities of Getty Gold Mine (Texaco, Inc., UPE).	June 11, 1985.
(22) 85-0614—AmeriHealth, Inc.'s proposed acquisition of assets of Hospital Corp. of America.	June 12, 1985.
(23) 85-0627—Reynolds Metals Co.'s proposed acquisition of assets of the Metals Goods Division (Alcan Aluminium Ltd., UPE).	June 12, 1985.
(24) 85-0677—Butler Manufacturing Co. of voting securities of National Architectural Products Corp. (REK Corp., UPE).	June 12, 1985.
(25) 85-0507—Abbott Laboratories' proposed acquisition of Shaw Associates (Robert Francis Shaw, M.D., UPE).	June 13, 1985.
(26) 85-0512—Abbott Laboratories' proposed acquisition of voting securities of OXIMETRIC, Inc.	June 13, 1985.
(27) 85-0619—Reliance Capital Group, L.P.'s proposed acquisition of assets of Station KBSC Channel 52 (Oak Industries, UPE).	June 13, 1985.
(28) 85-0650—Southmark Corp.'s proposed acquisition of J.M. Peters Co., Inc. (James M. Peters, UPE).	June 13, 1985.
(29) 85-0672—Fanstael, Inc.'s (T.M. Evans, UPE) proposed acquisition of voting securities of Custom Technologies Corporation (Beatrice Cos., Inc., UPE).	June 13, 1985.
(30) 85-0674—Johnstown American Cos. of voting securities of Consolidated Capital Equities Corp. (John Lie-Nielsen, UPE).	June 13, 1985.
(31) 85-0675—John Lie-Nielson's proposed acquisition of assets of Johnstown Management Co.	June 13, 1985.
(32) 85-0678—Lonnie A. Pilgrim's proposed acquisition of assets of Pluss-TexPoultry, JM&S and PT Poultry Growers, Inc. (Sam Pluss, UPE).	June 13, 1985.
(33) 85-0679—Lonnie A. Pilgrim's proposed acquisition of assets of Pluss-TexPoultry, JM&S and PT Poultry Growers, Inc. (James H. Pluss, UPE).	June 13, 1985.
(34) 85-0603—Inspiration Resources Corp.'s proposed acquisition of Marline Petroleum Corp. (Marline Oil Corp., UPE).	June 13, 1985.
(35) 85-0685—Wetterau, Inc.'s proposed acquisition of voting securities of the Creasey Co., Inc.	June 14, 1985.

Sandra M. Peay, Legal Technician, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85-15667 Filed 6-28-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cardiovascular and Renal Drugs Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending an advisory committee meeting notice of the Cardiovascular and Renal Drugs Advisory Committee to reflect a correction in the agenda. The announcement of the Cardiovascular and Renal Drugs Advisory Committee meeting, which was published in the **Federal Register** of June 20, 1985 (50 FR 25628), is revised to read as follows:

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. July 25 and 26, 9 a.m., Auditorium, Lister Hill Center, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, July 25, 9 a.m. to 10 a.m.; open committee discussion, July 25, 10 a.m. to 5 p.m.; July 26, 9 a.m. to 5 p.m.; Joan C. Standaert, Center for Drugs and Biologics (HFN-110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4730.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in cardiovascular and renal disorders.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss NDA 18-981, Encainide (Enkaid) for use as an anti-arrhythmic agent, Bristol-Myers Co.; NDA 19-151, Propafenone (Rhythmonorm), for use as an anti-arrhythmic agent, Knoll Pharmaceutical Co.; Draft guidelines for study of anti-arrhythmic agents.

Dated: June 25, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-15670 Filed 6-28-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85N-0185]

Chloramphenicol Oral Solution; Opportunity for Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is proposing to withdraw approval of new animal drug applications for chloramphenicol oral solution for animal use. This action is based on new information that the labeled directions for use have not been followed in practice and are not likely to be followed in the future. The drug has been used widely for treatment of food-producing animals, a use for which the drug is specifically contraindicated. Residues of the drug, which have been found in food products, can cause serious human blood disorders including aplastic anemia. Unless the approvals are withdrawn, the misuse in food-producing animals is likely to continue.

DATES: A written appearance requesting a hearing by July 31, 1985; data and analysis on which the request for hearing relies by August 30, 1985.

ADDRESS: Written appearance, data, and analysis to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip J. Frappaolo, Center for Veterinary Medicine (HFV-240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4940.

SUPPLEMENTARY INFORMATION:

Introduction

The Director of FDA's Center for Veterinary Medicine is providing an opportunity for hearing on a proposal to

withdraw approval of the new animal drug applications (NADA's) for chloramphenicol oral solution for animal use, and to revoke the animal drug regulation reflecting approval of the NADA's (21 CFR 555.110c). This action is based upon new information which demonstrates that the products have not been used, and are not reasonably likely to be used, under the conditions of use upon which the applications were approved. Accordingly, the drugs are deemed unsafe under section 512(e)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(e)(1)).

Section 512(e)(1)(A) of the act provides authority to withdraw approval of a new animal drug application if experience or scientific data show that the drug is unsafe. Section 512(e)(1)(B) of the act provides authority to withdraw approval if new evidence shows that the drug is not shown to be safe for use under the conditions of use upon the basis of which the application was approved. Section 512(d)(2)(D) states that in determining whether a drug is safe for use under the conditions prescribed, recommended, or suggested in the labeling, the agency shall consider, among other factors, whether those conditions of use are reasonably certain to be followed in practice. Accordingly, where labeled indications for use of an approved new animal drug have not been followed, and are not reasonably likely to be followed in practice, the drug is deemed by statute to be unsafe and therefore its approval is subject to withdrawal.

Affected NADA's

The NADA's for chloramphenicol oral solution known to the Director and affected by this notice are:

Firm	NADA No.	Date approved
John D. Copanos & Co., Inc., Baltimore, MD 21225	65-364	9/07/73
Pfizer, Inc., 235 East 42d St., New York, NY 10017	65-464	7/29/76
Philips Roxanne, Inc., 2621 North Belt Highway, St. Joseph, MO 64502	65-477	12/27/77
Michael Gordon, P.O. Box 8091, San Francisco, CA 94118	65-484	8/15/80
Medico Industries, Inc. (a Tech-America Co.), Elkan Estates, P.O. Box 338, Elwood, KS 66024	65-487	4/10/81

The approval of NADA 55-003 for chloramphenicol oral solution, held by International Multifoods, Inc., was voluntarily withdrawn in response to a letter from the Director (see 49 FR 37059; September 21, 1984). The Director requested that all sponsors of chloramphenicol oral solutions voluntarily withdraw approval of their products based on evidence of misuse and a human health hazard resulting from that misuse.

The approved NADA's listed in 21 CFR 555.110c provide for manufacture and marketing of products containing 100 or 250 milligrams of chloramphenicol per milliliter in a propylene glycol solution. The NADA's provide for manufacture and sale of the drug in 16-ounce (pint), 8-ounce, 200-milliliter, 4-ounce, and 100-mililiter sizes. The drug is also approved for animal use in capsule, tablet, oral suspension, and injectable forms. These dosage forms are not affected by this notice.

Chloramphenicol oral solutions are approved and labeled for treating dogs for bacterial pulmonary infections, urinary tract infections, enteritis, and infections associated with canine distemper that are caused by organisms susceptible to chloramphenicol. The approval regulation (21 CFR 555.110c) requires the labels to bear a statement that "this product is not to be used in animals which are raised for food production." The regulation also restricts the drug to use by or on the order of a licensed veterinarian. In addition, the approved NADA's require the labeling to bear the statement "due to its bitter taste, the drug should be administered by stomach tube whenever practical."

Summary

Available data and information establish that most of the chloramphenicol oral solution distributed in recent years has been used to treat food-producing animals, usually by injection or infusion. The data and information were derived from investigations and surveys conducted by FDA, drug residue sampling carried out by the U.S. Department of Agriculture (USDA), antibiotic marketing and certification reports, data on drug sales to large animal practitioners, and other sources.

Chloramphenicol causes fatal blood dyscrasias, such as aplastic anemia, as well as other serious disease conditions in humans. The effect of the drug in causing aplastic anemia appears not to be dose dependent. USDA residue sampling reports and other sources establish that use of chloramphenicol oral solution in food-producing animals has resulted in drug residues in human food. The residue levels are greater than certain therapeutic doses associated with blood dyscrasias in man. Thus, chloramphenicol could have serious adverse effects in humans.

The withdrawal of approval of chloramphenicol oral solution would have little or no effect on canine practitioners and dog owners. The drug is approved for use in dogs in other dosage forms that are more conveniently administered. Based on the available evidence, the Director has concluded that use of chloramphenicol oral solution in food-producing animals, rather than dogs, is likely to continue if approval is not withdrawn.

Toxicity of the Drug

Chloramphenicol, a broad-spectrum antibiotic originally produced by *Streptomyces venezuelae*, was specifically recognized by Congress in 1949 when it provided for certification of the drug through amendment of section 507 of the act (21 U.S.C. 357). Use of chloramphenicol in human medicine for treatment of many bacterial and certain viral and rickettsial infections began about the same time. However, studies and reports linking chloramphenicol to blood dyscrasias such as aplastic anemia have led to a severe curtailment of the use of chloramphenicol in human medicine. Today its use in human medicine is recommended only when other antimicrobial agents are ineffective, and then only in hospitalized and carefully monitored patients.

Aplastic anemia has a 70 percent fatality rate within 5 years of exposure (Ref. 1). The risk of fatal aplastic anemia following exposure to chloramphenicol has been estimated as being between 1 in 21,000 and 1 in 36,000, a risk 13 times higher than the risk of aplastic anemia without exposure to the drug (Ref. 1). Significantly, the effect is not dose dependent (Ref. 2). The effect has been reported following exposure to extremely low levels of chloramphenicol, as, for example, in the use of medicated eye drops (Ref. 3).

Chloramphenicol has other serious toxic effects, believed to be dose related. These include, but are not limited to, bone marrow suppression (Ref. 4); "gray syndrome," an often fatal condition characterized by circulatory collapse that has been observed in infants and is believed to affect others who have defective capacity for conjugating and excreting chloramphenicol (Ref. 2); and anorexia, depression, and behavioral modifications such as lethargy and loss of recent memory (Ref. 4). The drug has also been shown to be a teratogen in rats (Ref. 5). In addition, available literature suggests that bone marrow depression and aplastic anemia due to use of chloramphenicol is associated with subsequent development of leukemia in humans (Ref. 5).

The Director is especially concerned about the possibilty of chloramphenicol residues occurring in the edible products

of food-producing animals in view of the fact that the occurrence of aplastic anemia in humans does not appear to be dose related. Research studies show that residues of the drug occur in edible tissues and in milk from treated animals (Refs. 6, 7, and 8). The information, however, is limited by the absence of information on metabolites (there is evidence that the aplastic anemia caused by chloramphenicol is due to metabolites and not the parent substance (Ref. 9)); by the short period of time over which depletion was measured (6 to 8 hours); and by a lack of sensitivity of the assay. The most sensitive assay used in these studies could detect 1 part per million (ppm) of chloramphenicol.

As documented below, USDA has found residues of chloramphenicol in edible products. However, the analytical methods that are available for measuring chloramphenicol residues in tissues are limited to detecting and measuring only the parent (or administered) compound. The Director is aware that residues will consist not only of the parent compound, but also of an array of metabolites that have resulted from chemical transformation of the parent drug by the animal, and that the harm to humans may be caused by the metabolites. Therefore, the Director concludes that use of chloramphenicol in food-producing animals causes a risk to human health. Any such risk is unacceptable.

Evidence of Misuse

A. Introduction

The use or intended use of an approved new animal drug in a manner that is inconsistent with the conditions of its approval causes the drug to be unsafe and thereby adulterated under sections 512(a)(1)(B) and 501(a)(5) of the act (21 U.S.C. 360b(a)(1)(B) and 351(a)(5)). In addition, misuse of an approved new animal drug provides grounds for withdrawal of approval. The Director has, in the past, exercised his regulatory discretion through a policy permitting "extra-label" use of approved animal drugs in certain circumstances. Until recently, the policy permitted extra-label use of drugs in food-producing animals unless residues occurred in edible products. Because of evidence of increasing misuse of chloramphenicol and other drugs, the Director has revised the policy to provide that extra-label use of drugs in food-producing animals is permitted only in very limited instances. The policy is stated in Compliance Policy Guide 7125.06 (see 49 FR 20915, May 17, 1984; and 49 FR 45930, November 21, 1984).

Further, the policy guide states that use of chloramphenicol in food-producing animals is not permitted under any circumstances. The Director has categorically excluded extra-label use of chloramphenicol in food animals because of the extreme human toxicity of the drug, because of new evidence establishing that residues of the drug occur in human food derived from animals administered the drug, and because of new evidence of extensive use of the drug in food-producing animals.

The sections below document evidence available to the Director establishing that chloramphenicol oral solution has been used widely in the treatment of food animals, and that such use is likely to continue. The information below describes some of the reasons why chloramphenicol became a significant drug in the therapy of food-producing animals.

Chloramphenicol has been shown through in vitro studies to be effective against a wide variety of pathogens that are of significant concern in veterinary medicine. These pathogens include staphylococci, streptococci, salmonellae, pasteurellae, *Escherichia coli*, *Bordetella*, *Haemophilus*, chlamydiae, and rickettsiae (Refs. 10 and 11). Pharmacokinetic research has established what are purported to be effective therapeutic concentrations of the drug in body fluids and tissues (Ref. 10). Research has shown that these drug concentrations are maintained for a sufficient time after administration to permit practical dosage schedules for a number of food animal species (Refs. 10 and 11). Moreover, scientific authorities contend that therapeutic dosages have not resulted in toxic reactions in the treated animals. In view of the foregoing information, the drug has been thought to be useful in food-producing animals (Refs. 10, 11, 12, and 14).

Although few adequate and well-controlled clinical studies have been reported in the scientific literature, the evidence of in vitro susceptibility and pharmacokinetic research have tended to establish a theoretical basis for clinical use of chloramphenicol in food-producing animals. Some scientists believe that occurrence of bacterial resistance to chloramphenicol is low at the suggested dosages. Therefore, the drug has been viewed as a viable alternative to other drugs (such as tetracycline and penicillin) against which resistance has developed (Refs. 10 and 12). In addition, the cost of the chloramphenicol oral solution has been relatively low, making its use economically feasible (Ref. 15).

Widespread veterinary use of the drug in food-producing animals has been generally acknowledged in the scientific literature (Refs. 10, 14, and 16). The scientific literature contains reports of use of chloramphenicol in treatment of a variety of clinical conditions in food-producing animals. These have included, but have not been limited to, enteritis (diarrhea) in cattle and swine caused by *Salmonella* and *Escherichia coli* (Ref. 11), mastitis in dairy cattle (Ref. 13), and bovine respiratory disease complex (Ref. 15). In fact, chloramphenicol has been said to be "most often the preferred drug against *Salmonella* and *Escherichia coli* infections of the gastrointestinal tract" (Ref. 10). Excerpts or summaries of scientific literature have been presented during meetings of veterinarians and animal producers, and have appeared in extension service publications, popular magazines, and other publications directed toward practicing veterinarians and animal producers.

Although evidence suggests that chloramphenicol has been administered to food-producing animals in the United States for a number of years, that evidence also suggests that widespread use did not develop until the past decade and, in particular, during the past several years (Ref. 16 and marketing data described below). Reports of increasing frequency of use, along with USDA's finding for the first time of chloramphenicol residues in human food, has caused FDA to investigate the extent of the drug's use in food-producing animals. Subsections B. and C., below, summarize the results of FDA investigations as well as evidence from other sources.

Information available shows that the chloramphenicol product used in food-producing animals has primarily been the oral solution, generally administered by injection. As the usual route of administration despite suggestions in the literature that injectable use of the oral solution is inadvisable (Ref. 12). The Director believes that injectable use of the oral solution occurs for several reasons: the oral solution is less expensive than the product approved for parenteral administration; oral administration is ineffective in ruminants because the rumen microflora destroy the drug; and the oral solution is difficult to administer orally in all species because of its bitter taste.

B. Direct Evidence of Misuse

USDA residue sampling has provided evidence that chloramphenicol has been

used in food-producing animals, and that such use has resulted in residues in food. Since 1981, USDA has tested for chloramphenicol residues in its residue monitoring and surveillance programs. Between 1981 and 1984, chloramphenicol residues were found in 20 carcasses in amounts ranging from 20 parts per billion (ppb) to 773 ppm. Eighteen of the 20 carcasses were from veal calves; the remaining 2 were from a heifer and a dairy cow. No chloramphenicol was found in other species. FDA followup investigations of a number of these incidents has confirmed the use of chloramphenicol by the producers whose animals were found to have residues of the drug.

Eleven of the residues were found in 3,889 carcasses tested in 1981, 1982, and 1983 in the USDA random sampling (monitoring) program. Under that program, the carcasses of a number of animals of different species and age classes are tested on a random basis each year for chloramphenicol. The percentage of carcasses in which residues have been found is, therefore, small. However, because of the limits of the methodology that has been available to USDA, the Director believes that the actual occurrence of residues is likely to be more frequent. The method of analysis that has been available for use is an electron-capture gas-liquid chromatographic method developed by Jackson, Allen, and Wiseman of FDA and modified by Simpson, Ali, and Raivera-Mendez of USDA. The method of analysis is limited to detection of parent chloramphenicol only and does not detect its metabolites. It has a sensitivity limit of 10 ppb. Moreover, with few exceptions, samples taken during the 1981–1983 period were of muscle. The Director believes that residues are more likely to be found in liver and kidney.

Based on the residue data obtained by USDA and the increasing frequency of reports of illegal use of chloramphenicol, FDA has conducted a number of inspections during the past several years. These inspections have revealed extensive use of chloramphenicol oral solution in food-producing animals.

The agency has found evidence of such unapproved use or intended use of chloramphenicol in nearly 100 inspections of animal producers, veterinarians, and retail distributors in 1982–1984. In nearly all instances, the investigators found the oral solution. In most instances, the drug was in 16-ounce (pint) bottles, although a few 8-ounce bottles were found. The investigators documented the presence of drugs covered by each of the NADA's listed above. The drugs had been administered, or were intended to be administered, to dairy and beef cattle and calves (including feedlot cattle and calves, and lactating dairy cows), and to young and mature swine. The drug was described as being used to treat salmonellosis in pigs and calves; coliform infections in calves; calf and baby pig scours; mastitis in dairy cattle; "toxic cow syndrome"; pneumonia, shipping fever, and other respiratory problems in calves; *Haemophilus* infections in calves; *Pasteurella hemolytica* infections in cattle; and as a disease prevention measure in newborn calves as well as calves entering the feedlot.

In several instances, investigators established the shipment of hundreds of 1-pint bottles to individual farms and feedlots over periods ranging from several months to several years. In one example, inspection of a drug distributor established that the firm shipped 2,400 1-pint bottles of chloramphenicol oral solution to 1 feedlot during a 3-month period. In another example illustrating the extent of food animal use, a veterinarian stated that he and every other veterinarian in his state (Washington) had used chloramphenicol in food animals for years. He reported that the veterinarians in that State commonly used the drug to treat mastitis in dairy cattle and pneumonia in young calves.

A 1982 FDA survey provided additional evidence of widespread use of chloramphenicol in food animals. In this survey, a followup to a 1980 survey of diethylstilbestrol (DES) use, FDA investigators were directed also to look for chloramphenicol. The survey covered veterinary supply stores, distributors, medicated feed mills, feedlots, and other suppliers. Of 103 establishments surveyed, 9 supplied chloramphenicol for use in food animals, and 15 used the drug in food animals. Eleven firms used, and six firms supplied, chloramphenicol to treat cattle. Three other firms used or supplied chloramphenicol to treat swine. Finally, two firms used, and two firms supplied, chloramphenicol for food animals whose species was not specified in the reports. In almost all instances, the chloramphenicol used was the oral solution, supplied in 16-ounce bottles. Thus, the Director concludes that the product being misused was the oral solution covered by this notice.

C. Other Evidence of Misuse

Market data compiled by IMS America Ltd. establish that distribution of chloramphenicol oral solution was to large animal veterinarians, that is, those treating farm animals and horses. For instance, the 1981 estimated sales to large animal practitioners of 16-ounce bottles of chloramphenicol oral solution was $2.5 million, compared to $23,000 for small animal practitioners (Ref. 17).

Additionally, a survey of over 100 food animal veterinarians, i.e., those who devoted 50 percent or more of their practices to large animals, revealed that approximately 95 percent had used chloramphenicol in their practices (Ref. 16).

The Director notes that equine practitioners are included in the category "large animal veterinarians." However, use of chloramphenicol as an antibiotic in horses is limited by the drug's short half-life in that species (Ref. 10) and the fact that the horse population is not large enough to account for a significant portion of the quantities that have been distributed to large animal veterinarians.

According to data submitted to FDA by sponsors as required by 21 CFR 510.300, the amount of chloramphenicol oral liquid marketed in recent years was equivalent to:

1978: 4,300 kilograms of chloramphenicol.
1980: 20,300 kilograms of chloramphenicol.
1982: 28,400 kilograms of chloramphenicol.

According to data available from the agency's antibiotic certification program for fiscal year 1981 (the last full year for which such data are available because batch certification has since been discontinued), the following amounts of chloramphenicol for veterinary use were certified:

Oral solution: 28,987 kilograms.
Injectable solution: 81 kilograms.
Tablets: 3,156 kilograms.
Capsules: 26,747 kilograms.

If most or all of the chloramphenicol approved for animal use were actually used in dogs, then the predominant dosage forms sold should be those that can be administered in the most practical manner. However, the data presented above demonstrate that this is not the case. It is necessary to administer the oral solution by stomach tube because the bitterness of the product effectively prevents direct oral administration. Administration of a drug three or four times each day by injection, or in the form of capsules or tablets, is much more practical than stomach tubing a dog three or four times a day. Although use of the oral solution for injection in large animals appears to be common, it is unlikely that much of

the oral solution is used in dogs by the parenteral route.

D. Likelihood of Misuse in the Future

The Director believes that use of chloramphenicol oral solution has declined in recent months as a result of public information programs and regulatory initiatives. For example, most persons who were interviewed in the inspections described above stated that they had, or would, discontinue use of the drug in food animals.

However, the Director believes that if the approvals are not withdrawn, the directions for use (i.e., only in dogs) are not reasonably likely to be followed in practice. First, there is evidence that some individuals and firms inspected by FDA would not have discontinued the use without the inspections. Further, the inspections FDA conducted most likely covered only a small fraction of those who have used the drug in food-producing animals. Second, the Director believes that only an extremely small amount of the chloramphenicol oral solution sold in recent years has been used in small animal practice. Evidence described above supports this conclusion. This is due to the drug's lack of palatability, the difficulty of stomach tube administration, and the availability of other, more practical dosage forms. Small quantities might be used when a stomach tube is already in place, e.g., when the animal has a broken jaw. In that case, however, either the suspension or the injection would suffice. Because of its bitter taste, the drug is used occasionally for an unlabeled use, to deter small animals from licking bandages. There are alternative means of accomplishing that purpose.

Therefore, canine practitioners and dog owners would not be adversely affected if chloramphenicol oral solutions were no longer available. The other currently available dosage forms (capsules, tablets, oral suspension, and injection) will meet contemplated needs for chloramphenicol in canine practice. Chloramphenicol oral solutions do not provide unique benefits for use in dogs compared to the other available dosage forms. In fact, because of its characteristics, the oral solution is potentially more hazardous to administer to the patient than other available dosage forms.

Thus, the Director concludes that if approval of the chloramphenicol oral solutions is continued, virtually all of the drug sold will be used in food animals. The Director's conclusions are supported unanimously by the views of several small animal practitioners and small animal clinicians associated with veterinary colleges. Their opinions were elicited in an informal survey. Summaries of their comments are included in the record of this proceeding.

Environmental/Economic Impact

FDA has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The agency's finding of no significant impact and the evidence supporting this finding, contained in an environmental assessment (pursuant to 21 CFR 25.31, proposed December 11, 1979; 44 FR 71742), may be seen in the Dockets Management Branch, Food and Drug Administration (address above), between 9 a.m. and 4 p.m., Monday through Friday.

An economic assessment indicates that only an extremely small amount of the chloramphenicol oral solution sold in recent years is used in small animal practice due to the difficulty of administration and availability of more practical dosage forms. The estimated annual sales of chloramphenicol oral solution is about $3 million, of which only about 1 percent is used as approved and labeled for small animals. The remainder of the sales are believed by the agency to be used for large animals, an unapproved use. Therefore, the approved and labeled use by canine practitioners and dog owners will not be adversely affected (economically) if chloramphenicol oral solution were no longer available (the need being met by other currently available dosage forms, e.g., capsules, tablets, oral suspension, and injection).

References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Calderwood, S.B., and R.C. Moellering, Jr., "Common Adverse Effects of Antibacterial Agents on Major Organ Systems," *Surgical Clinics of North America*, 60:65–81, 1980.

2. Feder, H.M., Jr., C. Osier, and E. G. Maderazo, "Chloramphenicol: A Review of Its Use in Clinical Practice," *Review of Infectious Diseases*, 3:479–491, 1981.

3. Fraunfelder, F.T., G.C. Bagby, Jr., and D. J. Kelly, "Fatal Aplastic Anemia Following Topical Administration of Ophthalmic Chloramphenicol," *American Journal of Ophthalmology*, 93:356–360, 1982.

4. Clark, C.H., "Metabolic Effects and Toxicities of Chloramphenicol," *Modern Veterinary Practice*, pp. 663–668, 1978.

5. IARC Monographs on the Evaluation of Carcinogenic Risk of Chemicals to Man, Vol. 10, Some Naturally Occurring Substances, pp. 85–98, International Agency for Research on Cancer, Lyon, 1976.

6. Appelgren, L.E., B. Eberhardson, K. Martin, and P. Slanina, "The Distribution and Fate of 14C–Chloramphenicol in the Newborn Pig," *Acta Pharmacology et Toxicology*, 51:345–350, 1982.

7. Haaland, M.A., J.E., Manspeaker, and T.W. Moreland, "Antibiotic Residues in Milk After Intrauterine Infusion," *Veterinary Medicine*, pp. 382–386, 1984.

8. Sisodia, C.S., V.S., Gupta, R.H. Dunlop, and O.M. Radostits, "Chloramphenicol Concentrations in Blood and Milk of Cows Following Parenteral Administration," *Canadian Veterinary Journal*, 14:217–220, 1973.

9. Krishna, G., I. Aykac, and D. Siegel, "Recent Studies on the Mechanisms of Chloramphenicol Activation Responsible for Aplastic Anemia," *in* "Safety Problems Related to Chloramphenicol and Thiamphenicol Therapy," Eds. Y. Najean, et al., Raven Press, New York, pp. 5–16, 1981.

10. Sisodia, C.S., "Pharmacotherapeutics of Chloramphenicol in Veterinary Medicine," *Journal of the American Veterinary Medical Association*, 176:1069–1071, 1980.

11. Clark, C.H., "Clinical Uses of Chloramphenicol," *Modern Veterinary Practice*, 889–894, 1978.

12. Knight, A.P., "Chloramphenicol Therapy in Large Animals," *Journal of the American Veterinary Medical Association*, 178:309–310, 1981.

13. Clark, C.H., "Chloramphenicol Dosage," *Modern Veterinary Practice*, 749–754, 1978.

14. Mercer, H.D., "The Comparative Pharmacology of Chloramphenicol," *Journal of the American Veterinary Medical Association*, 176:923–924, 1980.

15. Hjerpe, C.A., "The Bovine Respiratory Disease Complex," *Current Veterinary Therapy—Food Animal Practice*, W. B. Saunders, pp. 708–722, 1981.

16. Tindall, B., "After Chloramphenicol," *Animal Nutrition and Health*, pp. 34–39 (separate comments by J. Herrick, p. 37), July–August 1984.

17. IMS America Ltd., U.S. Pharmaceutical Market Animal and Poultry (Fourth Quarter 1981).

Notice of Opportunity for Hearing

Therefore, notice is given to the sponsors listed above, and to all other interested persons, that the Director of the Center for Veterinary Medicine proposes, under section 512(e) of the act, to withdraw approval of those NADA's for chloramphenicol oral solution cited above. This action is based on section 512(e)(1)(A) and (B) of the act in that new information not available at the time that the applications were approved evaluated together with information available at that time shows that the product is not safe for use under

the apparent conditions of its use. Upon finalization of the withdrawal of approvals of the applications identified above, the corresponding regulation shall be revoked as provided in section 512(i) of the act (21 U.S.C. 360b(i)) (21 CFR 555.110c).

In accordance with provisions of section 512 of the act (21 U.S.C. 360b) and regulations promulgated under it (21 CFR Part 514) and under authority delegated to him by 21 CFR 5.84, the Director hereby provides an opportunity for hearing to show why approval of the new animal drug applications listed above, and all supplements thereto, should not be withdrawn. Any hearing would be subject to the provisions of 21 CFR Part 12.

Copies of the documents cited in this notice have been placed on file with the Dockets Management Branch and are available for examination. Because certain documents concern ongoing FDA investigations, examination, copying, and distribution of those documents will be restricted in accordance with applicable regulations.

If an applicant decides to seek a hearing, the applicant shall file (1) on or before (July 31, 1985) a written notice of appearance and request for a hearing, and (2) on or before (August 30, 1985) the data, information, and analyses relied on to justify a hearing, as specified in 21 CFR 514.200.

Any other interested person may also submit comments on this notice. Procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 514.200.

The failure of the applicant to file timely written appearance and request for hearing as required by 21 CFR 514.200 constitutes an election by the applicant not to make use of the opportunity for a hearing. The Director will summarily enter a final order withdrawing approval of the application.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that there is no genuine and substantial issue of fact that precludes the withdrawal of approval of the application(s), or that the request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions, and denying a hearing.

All submissions under this notice shall be filed in four copies. All submissions under this notice, except for data and information prohibited from public disclosure under section 301(j) of the act (21 U.S.C. 331(j)) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b)) and under authority delegated to the Director of the Center for Veterinary Medicine (21 CFR 5.84).

Dated: June 25, 1985.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 85–15869 Filed 6–28–85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85N–0286]

International Drug Scheduling; Convention on Psychotropic Substances; Barbiturate-Type Sedative and/or Hypnotic Drug Substances

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting interested persons to submit data or comments concerning abuse potential, actual abuse, and medical usefulness and trafficking of 31 barbiturate-type sedative and/or hypnotic drug substances. This information will be considered in preparing a response from the United States to the World Health Organization (WHO) regarding abuse liability, actual abuse, and trafficking of these drugs. WHO will use this information to consider whether to recommend that certain international restrictions be placed on these drugs. This notice requesting information is required by law.

DATE: Comments by July 30, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: I. David Wolfson, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The United States is a party to the 1971 Convention on Psychotropic Substances. Article 2 of the Convention on Psychotropic Substances provides that if WHO has information about a substance which in its opinion may require international control or change in such control, it shall so notify the Secretary-General of the United Nations and provide the Secretary-General with information in support of its opinion. The Controlled Substances Act (CSA) (21 U.S.C. 801 et seq.) provides that when WHO notifies the United States under Article 2 of the Convention on Psychotropic Substances that WHO has information that may justify adding a drug or other substance to one of the schedules of the Convention, transferring a drug or substance from one schedule to another, or deleting it from the schedules, the Secretary of State must transmit the notice to the Secretary of Health and Human Services. The Secretary must then publish the notice in the **Federal Register** and provide opportunity for interested persons to submit comments to assist the Department of Health and Human Services (DHHS) in preparing scientific and medical evaluations about the drug or substance.

The agency has been provided with an advance copy of the WHO notification and has included it in this **Federal Register** notice. The authenticated copy of the WHO notification will be placed on display in the Dockets Management Branch when it is received. The notice requests the United States to submit data concerning the abuse potential, actual abuse, and medical usefulness of 31 barbiturate-type sedative and/or hypnotic drug substances. The contents of the notice follows:

United Nations

Vienna International Centre

The Secretary-General of the United Nations has the honour to draw attention to a request from the Director-General of the World Health Organization for assistance in obtaining data on the following thirty-one substances:

1. Allobarbital
2. Alphenal: 5-allyl-5-phenylbarbituric acid
3. Aprobarbital
4. Benzobarbital (also known as benzobarbitone)
5. Butalbital
6. Butallylonal: 5-(2-bromoallyl)-5-(1-methylpropyl)-barbituric acid
7. Buthalital Sodium
8. Butobarbital: 5-butyl-5-ethylbarbituric acid
9. Cyclopentobarbital: 5-(-1-cyclopenten-2-yl)-5-allylbarbituric acid
10. Difebarbamate
11. Febarbamate
12. Heptabarbital (also known as heptabarb)
13. Hexethal: 5-hexyl-5-ethylbarbituric acid

14. Hexobarbital
15. Mephebarbital (also known as heptobarbital)
16. Metharbital
17. Methitural
18. Methohexital
19. Nealbarbital
20. Prazitone
21. Probarbital sodium
22. Propallylonal: 5-(2-bromoallyl)-5-isopropylbarbituric acid
23. Proxibarbal
24. Secbutabarbital (also known as secbutobarbital)
25. Talbutal
26. Thialbarbital
27. Thiamylal sodium: Sodium 5-allyl-5-(1-methylbutyl)-2-thiobarbiturate
28. Thiobutabarbital: 5-(1-methylpropyl)-5-ethyl-2-thiobarbituric acid
29. Thiopental Sodium
30. Vinbarbital
31. Vinylbital

The WHO twenty-third Expert Committee on Drug Dependence, to be convened from 21 to 26 April 1986, will examine the thirty-one substances listed above to determine if any proposals should be made concerning their possible control under the provisions of the Convention on Psychotropic Substances. In this connection, it would be appreciated if the Government would submit data on any of the thirty-one substances. It would greatly assist the Secretary-General if such data were submitted on a substance-by-substance basis following the outline contained in the questionnaire attached to the present note as an annex.

In view of the fact that a report must be prepared for WHO on this subject, it would be appreciated if the information could be transmitted to the Secretary-General by 30 August 1985. Replies should be addressed to the attention of the Director of the Division of Narcotic Drugs, Vienna International Centre, P.O. Box 500, A-1400 Vienna, Austria.

May 15, 1985.

UNITED NATIONS DIVISION OF NARCOTIC DRUGS, Vienna International Centre, A-1400 Vienna, Austria.

Questionnaire for data collection for use by the World Health Organization and the Commission on Narcotic Drugs of the Economic and Social Council

Substance reported on ———

1. Availability of the substance (registered, marketed, dispensed, etc.).

2. National control measures applied to the substance as compared to measures applied to narcotic drugs or psychotropic substances (e.g. prescription requirements, licensing of manufacture and distribution, control of import and export, etc.).

3. Extent of abuse of the substance.

4. Degree of seriousness of the public health and social problems [1] associated with abuse of the substance.

5. Number of seizures of the substance in the illicit traffic during the previous three years and the quantities involved.

6. Identification of the substance as of local or foreign manufacture and indication of any commercial markings.

7. Existence of clandestine laboratories manufacturing the substance.

Therefore, as required by section 201(d)(2)(A) of the CSA (21 U.S.C. 811(d)(2)(A)), FDA on behalf of DHHS invites interested persons to submit data or comments regarding the named 31 drugs.

Of the 31 drug substances listed in the WHO notice, only 19 have a marketing history in the United States. The available data indicate that 16 of the drug substances are currently available in the United States. All 16 substances are controlled under the CSA. They include:

Allobarbital	Methohexital
Alphenal	Probarbital
Aprobarbital	Sodium Thiobutabarbital
Butalbital	Talbutal
Butobarbital	Thialbarbital
Cyclopentobarbital	Thiamylal Sodium
Hexobarbital	Thiopental Sodium
Metharbital	Vinbarbital

Of these drug substances, all are controlled in Schedule III of the CSA except for methohexital which is found in Schedule IV.

Data and information received in response to this notice will be used to prepare supplemental scientific and medical information on these drugs in addition to that previously provided by the United States to WHO. (A copy of that information is on file in the Dockets Management Branch under this docket.) DHHS will forward that information to WHO, through the Secretary of State, for WHO's consideration in deciding whether to recommend international control of any of these drugs. Such control could limit, among other things, the manufacture and distribution (import/export) of these drugs and could impose certain recordkeeping requirements on them.

Upon receipt of the information, DHHS will not make any recommendations to WHO regarding whether any of these drugs should be subjected to international controls. Rather, DHHS will defer such consideration until WHO has made official recommendations to the Commission on Narcotic Drugs, which are expected to be made in 1986. Any DHHS position regarding international control of these drugs will be preceded by another **Federal Register** notice soliciting public comment as required by 21 U.S.C. 811(d)(2)(B).

Interested persons may, on or before July 30, 1985, submit to the Dockets Management Branch (address above) written comments regarding this action. This short comment period is necessary to assure that DHHS may, in a timely fashion, provide the requested comments and data. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should provide data and/or information in the format described in the WHO questionnaire for data collection found above. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 25, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-15671 Filed 6-28-85; 8:45am]

BILLING CODE 4160-01-M

[1] Examples of public health and social problems are acute intoxication, accidents, work absenteeism, mortality, behavior problems, criminality, etc. For a thorough examination of the question please refer to the WHO publication entitled "Assessment of Public Health and Social Problems Associated with the Use of Psychotropic Drugs" [No. 656 in the WHO Technical Report Series] and Chapter 7 of the WHO publication entitled "Guidelines for the Control of Narcotic and Psychotropic Substances."

Office of Human Development Services

Program Announcement No. HDS-85.2; Administration for Children, Youth and Families Child Abuse and Neglect Research, Demonstration and Service Improvement Projects

AGENCY: Office of Human Development Services (HDS), HHS.

ACTION: Amendment of announcement of availability of funds and request for applications under the HDS Discretionary Grants Program.

SUMMARY: This document amends Program Announcement No. HDS-85.2 published in the **Federal Register** on Friday, June 21, 1985 (50 FR 25860) to extend the due date for receipt of applications to August 12, 1985.

FOR FURTHER INFORMATION CONTACT: Roland Sneed (202) 245-2840.

SUPPLEMENTARTY INFORMATION: On June 21, 1985, the Administation for Children, Youth and Families (ACYF) published an announcement of the availability of approximately $2 million for new grants relating to the prevention, identification, treatment and remediation of child abuse and neglect, including child sexual abuse. The closing date for receipt of applications under that announcement was July 22, 1985.

ACYF has determined that, in view of the complex nature of the subject areas to be addressed, an extension of the due date for receipt of applications is warranted in order to afford potential

applicants sufficient time to develop worthwhile proposls.

Therefore, ACYF is extending the due date for receipt of applications to August 12, 1985. Applications must be submitted in accordance with the requirements set forth in the June 21, 1985 announcement.

Waiver of the Executive Order 12372 Requirement for a 60-day Comment Period for the States' Single points of Contact (SPOC).

ACYF must award grants under this announcement by September 30, 1985. In view of this, a waiver has been granted of the provisions of Executive Order 12372 which require that the States' Single Points of Contact (SPOC) be afforded 60 days from the closing date for receipt of applications in which to review and submit comments to HDS on applications from their State.

Therefore, in order for their comments to be considered during the review process, SPOCS comments must be received by HDS by September 13, 1985.

(Catalog of Federal Domestic Assistance Program, Number: 13.628, Child Abuse and Neglect Prevention and Treatment.)

Dated: June 25, 1985.

Joseph Mottola,

Acting Commissioner, Administration for Children, Youth and Families.

Approved: June 26, 1985.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

[FR Doc. 85-15743 Filed 6-28-85; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Utah 51475]

Salt Lake District; Realty Action for Lands in Tooele County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: This is a Notice of a competitive sale of 60.06 acres of public land in Tooele County, in accordance with existing law.

DATE: The date of the sale is September 11, 1985.

ADDRESS: Comments concerning the sale will be accepted for a period of 45 days from the date of this notice by the: District Manager, Salt Lake District, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah 84119.

FOR FURTHER INFORMATION CONTACT: Nancy Bloyer, Pony Express Realty Specialist, (801) 524-6792.

SUPPLEMENTARY INFORMATION: The following described public land has been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713) or FLPMA:

Legal description	Acreage	Appraised value of tract
T.6S., R.7W., SLB&M		
Section 3:		
Tract 1—Lots 6, 17	5.02	$2,500
Tract 2—Lots 7, 16	5.02	2,500
Tract 3—Lots 8, 15	5.02	2,000
Tract 4—Lots 9, 10	5.01	2,500
Tract 5—Lots 11, 12	5.00	2,500
Tract 6—Lots 13, 14	5.01	3,000
Tract 7—Lots 22, 23	5.00	3,500
Tract 8—Lots 21, 24	5.01	2,000
Tract 9—Lots 30, 31	4.99	3,500
Tract 10—Lots 29, 32	4.99	2,500
Tract 11—Lots 35, 36	4.99	4,000
Tract 12—Lots 33, 34	5.00	3,000

The subject public lands are interspersed with private lands and as such are difficult to manage. Also, the lands have the potential for rural residential development and would fulfill a need for additional home sites in the small community of Terra. This objective could not be achieved on other lands, nor do the public lands have more important public values than for community expansion.

The sale is consistent with the Bureau of Land Management's planning system and with Tooele County planning and zoning.

The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action.

Terms and conditions applicable to the sale are:

1. The sale of these lands is subject to all valid existing rights.

2. Patents issued will be subject to a right-of-way reservation in each tract 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).

3. Patents issued will be subject to a right-of-way reservation for each tract not to exceed 33 feet along tract boundaries for road and public utility corridors.

4. All minerals are reserved to the United States together with the right to prospect for, mine, and remove the minerals.

5. Tooele County will issue only one building permit per tract, including those tracts that are split into two parcels by Highway 199.

There is no culinary water system in Terra. Present residents receive their water from private wells.

Special precautions may be required by the Tooele Conty Zoning Office to insure soil stability of building locations.

The sale will be conducted by competitive sealed bid with no oral bidding. Bids may be made by a principal or duly qualified agent. Qualified bidders include: Citizens of the United States 18 years of age or over; a corporation subject to the laws of any state or of the United States; a state, state instrumentality or political subdivision authorized to hold property; and any entities legally capable of holding lands or interests therein under the laws of the state within the lands to be conveyed are located. Entities include but are not limited to associations, partnerships, and other legal entities.

All bids must conform to the following conditions:

1. All bids must be delivered to the Salt Lake District, Bureau of Land Management at the above address before the sale date, September 11, 1985.

2. Each bid must be contained in a sealed envelope, one bid per envelope. The envelope must be clearly identified as a sealed bid and must display the tract number to which it applies as follows: "Bid for Public Sale, Serial U-51475, Tract ———, Tooele County."

3. Each bid must identify the name and address of the bidder and, if applicable, his or her agent's name and address.

4. Each bid must identify the tract number and the amount of the bid and must include all the lands in a tract. No bid will be accepted for less than the appraised fair market value of a tract.

5. A certified check, money order, bank draft or cashier's check made payable to the Bureau of Land Management for not less than 20 percent of the amount of the bid must be included with the bid.

6. Each bid must include a statement certifying that the bidder is a U.S. citizen, or that a business is under the legal jurisdiction of a U.S. state.

7. The bid must be signed and dated by the bidder.

All bids will be opened on the sale date of September 11, 1985, at 1:00 p.m. at the BLM Salt Lake District Office Conference Room, 2370 South 2300 West, Salt Lake City, Utah. The highest bid over fair market value establishes the sale price and the apparent high bidder for each tract. If two or more envelopes are received containing valid bids of the same amount, the determination of which is to be

considered the high bid will be by drawing. The apparent high bidder will be notified of such by certified mail. No preference right will be given to adjoining landowners.

The apparent high bidder must submit the remainder of his or her bid within 180 days of the sale. If the remainder of the bid price has not been received within 180 days from the apparent high bidder, the deposit will be forfeited and disposed of as other receipts of sale. The tract will then be offered for sale to the next highest bidder in succession until the tract is sold. If a tract remains unsold, it will be offered for sale by sealed bid anytime after the original sale. The sealed bids will be opened at 7:45 a.m. on the first Monday of every month. This will continue until all parcels are sold or until the appraisal is no longer valid. All bids will be returned, accepted or rejected within 30 days of the sale date. Patents will be issued by mail.

The authorized officer may reject the highest qualified bid and release the bidder from his obligation and withdraw the tract for sale, if he determined that consummation of the sale would be inconsistent with the provisions of any existing law, or collusive or other activities have hindered or restrained free and open bidding, or consummation of the sale would encourage or promote speculation in public lands.

Detailed information concerning the sale including the planning documents and environmental assessment is available for review at the above address. 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 Department of the Interior.

Lynn F. Williams,

Acting District Manager.

[FR Doc. 85-15664 Filed 6-28-85; 8:45 am]

BILLING CODE 4310-DQ-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-262)]

Burlington Northern Railway Co.—Abandonment—in Park County, MT

The Commission has issued a certificate authorizing Burlington Northern Railroad Company to abandon its 22.96-mile rail line between Mission (milepost 0.02) and Wilsall (milepost 22.98) in Park County, MT. The abandonment certificate will become effective 30 days after this publication unless 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 bold face on 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 Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 85-15747 Filed 6-28-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-33 (Sub-No. 34X); Docket No. AB-37 (Sub-No. 18X)]

Union Pacific Railroad Co.—Discontinuance of Trackage Rights Exemption— In Idaho County, ID; and Oregon-Washington Railroad & Navigation Co.—Discontinuance of Trackage Rights Exemption—In Idaho County, ID

The Union Pacific Railroad Company (UP) and Oregon-Washington Railroad & Navigation Company (OWR&N) have filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuance of Service and Trackage Rights.* Applicants seek to discontinue trackage rights over a line of railroad owned by the Burlington Northern Railroad Company (BN) and operated by the Camas Prairies Railroad Company (CP), extending from milepost 61.0 near Kooskia to milepost 62.9 near Stites, a distance of 1.9 miles in Idaho County, ID.[1]

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line, and (2) that no formal compliant filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the discontinuance of trackage rights shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen,* 360 I.C.C. 91 (1979).

The exemption will be effective July 31, 1985, (unless stayed pending reconsideration). Petitions to stay must be filed by July 10, 1985, and petition for reconsideration, including environmental, energy, and public use concerns, must be filed by July 22, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, 1416 Dodge St., Omaha, NE 68179.

If the notice of exemption contains fales or misleading information, use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: June 24, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-15746 Filed 6-28-85; 8:45 am]

BILLING CODE 7035-01-M

[1] Previously, BN and CP filed a notice of exemption under these rules for discontinuance of service by CP and abandonment by BN over the line involved in this proceeding. *See* Docket Nos. AB-6 (Sub-No. 256X), *Burlington Northern R.R. Co.—Abandonment Exemption—in Idaho County, ID,* and AB-236 (Sub-No. 2X), *Camas Prairie R.R. Co.—Discontinuance of Service Exemption—In Idaho County, ID* (not printed), served June 11, 1985.

DEPARTMENT OF JUSTICE

Lodging of Amended Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 5, 1985, a proposed consent decree in *United States v. Ranger Fuel Corporation,* Civil No. 83-5273 was lodged with the United States District Court for the Southern District of West Virginia. The proposed decree imposes an up-front civil penalty of forty thousand ($40,000), and requires immediate compliance with the permit limitations for outfalls 001-011 with stipulated penalties for non-compliance. The decree also establishes a construction schedule for treatment facilities at outfall 012 requiring compliance with the permit limitations by October 15, 1985, the imposition of

interim limitations until that date and stipulated penalties for failure to comply with the interim and final limitations at outfall 012.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Ranger Fuel Corporation*, D.J. Ref. 90-5-1-1-1984.

The proposed consent decree may be examined at the Office of the United States Attorney, Room 4106, Federal Building, 500 Quarrier Street, Charleston, West Virginia 25301, and at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA. 19107, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Ave., NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the proposed consent decree, refer to the case, proposed decree, and D.J. reference number and enclose a check in the amount of $2.50 ($0.10/page reproduction charge) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-15696 Filed 6-28-85; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

United States of America v. Calmar Incorporation and Realex Corporation; Proposed Consent Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed consent decree and competitive impact statement have been filed with the United States District for the District of New Jersey in the case of *United States v. Calmar Incorporated and Realex Corporation*, Civil Action No. 84-5271 (DRD).

The complaint, which was filed on December 20, 1984, alleged that the acquisition of Realex Corporation by Calmar Incorporated would substantially lessen competition in the manufacture and sale of regular sprayers and regular dispensers in the United States in violation of section 7 of the Clayton Act, 15 U.S.C. 18. On January 30, 1985, following an evidentiary hearing, the District Court denied the Government's Motion for Preliminary Injunction to prevent the acquisition until a trial on the merits could be held.

The proposed judgement would require Calmar for ten years to notify the government prior to any future acquisition or merger involving a manufacturer of regular sprayers or regular dispensers for sale in the United States. The proposed judgment prohibits consummation of any such transaction for eight years without prior permission of the Department of Justice or the Court. The proposed judgment also provides that Calmar shall license certain specified patents obtained from Realex on a non-exclusive basis and upon reasonable and non-discriminatory terms and conditions.

Public comment on the proposed judgment is invited for a period of 60 days from the date of this notice. Comments should be addressed to Alan L. Marx, Chief, General Litigation Section, Antitrust Division, United States Department of Justice, Washington, D.C. 20530. All comments will be filed with the Court and published in the Federal Register.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

Stipulation

In the United States District Court for the District of New Jersey; United States of America, Plaintiff, v. Calmar Incorporated and Realex Corporation, Defendants.

Civil Action No. 84-5271 (DRD).

Filed: June 19, 1985.

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16) and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the defendants and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

For the plaintiff: Charles F. Rule,
Acting Assistant Attorney General;
Roger B. Andewelt,
Alan L. Marx,
Attorneys, Department of Justice.

Seymour H. Dussman,
Frank Seales, Jr.,
Richard S. Nicholson,
Thomas L. Allen,
Attorneys, Department of Justice, Antitrust Division, Washington, D.C. 20530, (202) 724-6327.

For the defendants:
Alan J. Weinschel,
Weil, Gotshal & Manges, 767 Fifth Avenue, New York, New York 10153.

Final Judgment

Plaintiff, United States of America, having filed its Complaint herein on December 20, 1984, and plaintiff's Motion for Preliminary Injunction having come on to be heard on January 21, 1985 before this Court, and the Court having considered papers in support of said motion and in opposition thereto, and having considered the evidence presented during the course of an evidentiary hearing on January 21-25, 1985, and the Court having made and filed its findings of fact and conclusions of law on January 30, 1985, and having denied plaintiff's Motion for Preliminary Injunction in an Opinion dated January 30, 1985, and the parties hereto, by their attorneys, having consented to the entry of this Final Judgment without further proceedings and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue;

Now, therefore, upon consent of the parties hereto, it is hereby,

Ordered, adjudged and decreed as follows:

I.

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against defendants under section 7 of the Clayton Act (15 U.S.C. 18).

II.

As used in this Final Judgment:

A. "Calmar" means Calmar Incorporated, a Delaware corporation with its principal offices in Watchung, New Jersey.

B. "Realex" means Realex Corporation, a former Missouri corporation with its principal offices in

Kansas City, Missouri, which has been acquired by Calmar.

C. "Regular Sprayer" means a plastic mechanical pump device which sits on the top of a container, that when operated (by vertically depressing the head of the pump mechanism) dispenses from the container greater than one-half cubic centimeter of liquid in the form of a spray.

D. "Regular Dispenser" means a plastic mechanical pump device which sits on the top of a container, that when operated (by vertically depressing the head of the pump mechanism) dispenses from the container up to three cubic centimeters of liquid in the form of a stream.

E. "Person" means any individual, partnership, firm, corporation, association or other business or legal entity.

The definitions in this section expressly exclude from their meaning high viscosity mechanical pump devices used for dispensing toothpaste.

III.

This Final Judgment applies to Calmar, and to its officers, directors, managers, agents, employees, subsidiaries, successors and assigns, and to all other persons acting in concert or participation with such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV.

A. Calmar shall require, as a condition of the sale or other disposition of all, or substantially all, of its assets, that the acquiring party agree to be bound by the provisions of this Final Judgment and that such agreement be filed with plaintiff and the Court.

B. Calmar shall provide written notice to the plaintiff no later than thirty days subsequent to the effective date of any action whereby Calmar (1) changes its name, (2) liquidates or otherwise ceases operations, (3) declares bankruptcy, or (4) is acquired by, or becomes a subsidiary of, another firm.

V.

A. Calmar is hereby enjoined and restrained (i) for a period of eight years from the entry of this Final Judgment from purchasing, consolidating with, merging with, or acquiring control of, by acquisition of its securities or its assets, any person who has been engaged in the manufacture of regular sprayers or regular dispensers for sale within the United States within one year preceding the date of the proposed transaction, without the prior written consent of the Department of Justice or of the Court, and (ii) for an additional period of two years from purchasing, consolidating with, merging with, or acquiring control of, by acquisition of its securities or its assets, any person who has been engaged in the manufacture of regular sprayers or regular dispensers for sale within the United States within one year preceding the date of the proposed transaction, unless Calmar shall first give sixty (60) days advance written notice of any such proposed transaction to the Department of Justice.

B. Calmar is hereby enjoined and restrained for a period of five years from the entry of this Final Judgment from refusing to license any of the patents issued to or applied for by Realex listed in Appendix A to this Final Judgment on a non-exclusive basis and upon reasonable and non-discriminatory terms and conditions.

VI.

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Calmar made to its principal office, be permitted:

(1) Access during office hours of Calmar to inspect and copy all books, ledgers; accounts, correspondence, memoranda, and other records and documents in the possession or under the control or Calmar, which may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of Calmar and without restraint or interference from it, to interview officers, employees and agents of Calmar, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to Calmar's principal office, Calmar shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Calmar to plaintiff, Calmar represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Calmar marks each pertinent page of such material, "subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give ten days notice to Calmar prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Calmar is not a party.

VII.

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the amendment or modification of any of its provisions, for the enforcement of compliance with it, or for the punishment of violations of it.

VIII.

This Final Judgment shall be in effect for a period of ten years following its date of entry.

IX.

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge

Competitive Impact Statement

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), the United States files this Competitive Impact Statement, relating to the proposed Final Judgment submitted for entry in this case.

I. Nature and Purpose of the Proceeding

On December 20, 1984, the United States filed a civil antitrust suit alleging that the acquisition of Realex Corporation by Calmar Incorporated would violate Section 7 of the Clayton Act, 15 U.S.C. 18. Calmar manufactures regular sprayers, regular dispensers, other dispensing devices, plastic bottles, plastic closures, and other molded plastic packaging components at its plants in City of Industry, California, and Washington Court House, Ohio. It had net sales of approximately $62 million in 1983. Realex manufactures

regular sprayers, regular dispensers, other dispensing devices, plastic closures, and other molded plastic packaging components at its plant in Lee's Summit, Missouri. Realex is also engaged in various other businesses. It had net sales of approximately $25 million for the year ended October 31, 1983.

The complaint alleged that the acquisition of Realex by Calmar would eliminate actual and potential competition in the manufacture and sale of regular sprayers and regular dispensers, increase concentration in the regular sprayer and regular dispenser markets, and substantially lessen competition in the regular sprayer and regular dispenser markets. The complaint asked that the Court adjudge the proposed acquisition a violation of section 7 of the Clayton Act and issue preliminary and permanent injunctions preventing the acquisition.

The District Court held an evidentiary hearing on the Government's Motion for Preliminary Injunction from January 21 to January 25, 1985. On January 30, 1985, the Court issued an opinion denying the motion and entered its findings of fact and conclusions of law. The Government decided not to appeal the denial of its Motion for Preliminary Injunction. On or about February 11, 1985, Calmar acquired Realex. Shortly thereafter, the parties commenced negotiations to reach a settlement of the case.

Accompanying this Competitive Impact Statement are a proposed Final Judgment and Stipulation. Under the Stipulation, the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act. Entry of the proposed Final Judgment will terminate the action. The Court will retain jurisdiction to interpret, modify, or enforce compliance with the provisions of the proposed Final Judgment.

II. The Nature of the Alleged Violations

Regular sprayers and regular dispensers are plastic mechanical pump devices which sit on the top of containers. They are operated by vertically depressing the head of the pump mechanism. A regular sprayer dispenses from the container more than one-half cubic centimeter of liquid in the form of a spray. A regular dispenser dispenses from the container up to three cubic centimeters of liquid in the form of a stream. Regular sprayers and regular dispensers are made from injection-molded plastic parts, metal springs, and metal or plastic balls.

Regular sprayers and regular dispensers are sold to manufacturers and packagers of consumer products, who incorporate them into the packages in which their products are sold. Regular sprayers are generally placed on containers of liquids that are most conveniently applied in the form of a thick, heavy spray, such as household cleaners, window cleaners, hair sets and conditions, automotive care products, and plant care products. Regular dispensers are generally placed on containers of viscous liquid products, such as hand and body lotion and liquid soap.

The manufacture and sale of regular sprayers in the United States is a highly concentrated industry. Prior to the acquisition of Realex by Calmar, there were three domestic manufacturers and sellers of regular sprayers. Calmar was by far the largest, with approximately 60 percent of the market. Realex was the second largest, with an approximately 23 percent market share. The HHI (the Herfindahl-Hirschman Index, a measure of market concentration calculated by squaring the market share of each firm in the market and then summing the resulting numbers) was approximately 4,400. The acquisition of Realex by Calmar increased the HHI by more than 2,700, to over 7,100.

The manufacture and sale of regular dispensers in the United States is also a highly concentrated industry. Prior to the acquisition of Realex, there were four domestic manufacturers and sellers of regular dispensers (plus one large user of regular dispensers that manufactured dispensers only for its own use under license from Realex). Calmar was by far the largest, with approximately 58 percent of the market. Realex was the second largest, with an approximate 21 percent market share. The HHI was approximatley 4,000. The acquisition of Realex by Calmar increased the HHI by more than 2,400, to over 6,400.

In its January 30, 1985, opinion, the Court concluded that "the relevant [product] market includes regular sprayers, regular dispensers, fine mist sprayers, large dispensers and trigger sprayers." In the market defined by the Court, Calmar's market share was approximately 41 percent and Realex's was approximately 9 percent. The pre-merger HHI was approximately 2,300. The acquisition increased the HHI by more than 700, to over 3,000. Thus, the Court recognized that "the merger will result in a degree of concentration which establishes prima facie that it is likely to cause a substantial lessening of competition." However, relying upon *United States v. Waste Management, Inc.*, 743 F.2d 976 (2d Cir. 1984), the Court then concluded that "even after the proposed merger the ease of entry into the market would prevent any supplier from exercising market power." Therefore, in the Court's view, the merger was unlikely to violate section 7.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment provides that for a period of eight years Calmar shall not merge with or acquire any entity which has been engaged in the manufacture of regular sprayers or regular dispensers for sale within the United States within one year prior to the proposed transaction, without first obtaining the permission of the Department of Justice or the Court. For an additional two years Calmar shall not merge with or acquire any such entity without giving sixty days advance written notice of the proposed transaction to the Department of Justice. The proposed Final Judgment also provides that for a period of five years Calmar shall license certain patents obtained from Realex on a non-exclusive basis and upon reasonable and non-discriminatory terms and conditions. These patents are listed in Appendix A to the Final Judgment.

IV. Competitive Effect of the Proposed Final Judgment

Both the regular sprayer and the regular dispenser markets are relatively small. Total sales of regular sprayers in the United States in 1984 amounted to approximately 200 million units worth about $25 million. Tolal sales of regular dispensers in 1984 were nearly 130 million units worth $16 million. Firms not currently selling regular sprayers or regular dispensers in the United States, including foreign manufacturers, could become a factor in these markets with assets and sales that, compared to other industries, are not large.

Acquistions having a significant adverse effect on competition in these markets can therefore involve dollar amounts that do not require reporting under the premerger reporting program created by section 7A of the Clayton Act, 15 U.S.C. 18(a). The proposed Final Judgment eliminates the possibility that Calmar could make such acquisitions without prior notice to the government for the next ten years.

One large user of regular dispensers manufactures its requirements under a patent license obtained from Realex. Availability of a non-exclusive patent license upon reasonable and non-discriminatory terms and conditions may assist others to enter the market, either for sale to third parties or to manufacture for their own use. The

proposed Final Judgment requires Calmar to make available such licenses for the patents specified in Appendix A to the Judgment.

V. Remedies Available to Private Parties

Entry of the proposed Final Judgment will have no effect on the rights of persons who may have been injured by the alleged violation. Private plaintiffs may sue for any remedy they deem appropriate. However, pursuant to section 5(a) of the Clayton Act, 15 U.S.C. 16(a), this judgment may not be used as prima facie evidence in private litigation.

VI. Procedures Available for Modification of the Proposed Final Judgment

For a period of 60 days following the filing of the proposed Final Judgment and its publication in newspapers and the **Federal Register**, interested persons may submit written comments to Alan L. Marx, Chief, General Litigation Section, Antitrust Division, United States Department of Justice, Washington, D.C. 20530. These comments and the government's response will be filed with the Court and published in the **Federal Register**. The government will carefully consider all comments to determine if there is any reason for withdrawing its consent to the proposed judgment, which it may do at any time before the decree is entered by the Court. The Court will retain jurisdiction over the judgment following its entry so as to permit any of the parties to apply for orders modifying or enforcing the decree.

VII. Alternatives To the Proposed Final Judgment

The primary alternative considered was litigating the case on the merits in order to obtain divestiture of Realex. A trial on the merits, together with possible appeals, could have required the expenditure of substantial time and resources without any certainty of ultimate success. Even if the government prevailed on the merits, it is not certain that Realex would eventually be restored as a viable independent competitor in the manufacture and sale of regular sprayers and regular dispensers. Therefore, we concluded that the proposed Final Judgment was the best alternative available to the government at the current time.

The government also considered requiring advance approval or notification of proposed mergers or acquisitions by Calmar of entities manufacutring or selling other types of dispensing devices. However, neither the complaint nor the government's evidence at the preliminary injunction hearing alleged that the acquisition of Realex had any competitive impact on the manufacture or sale of dispensing devices other than regular sprayers and regular dispensers. The goverment remains free to bring actions under the antitrust laws if Calmar attempts to acquire an entity engaged in activities not subject to the proposed Final Judgment if the effect of such an acquisition may be substantially to lessen competition.

VII. Determinative Documents and Materials

There are not materials or documents that the United States considered determinative in formulating the proposed Final Judgment. Accordingly, none are being filed with this Competitive Impact Statement.

Respectively submitted,

Seymour H. Dussman,
Frank Seales, Jr.,
Richard S. Nicholson,
Thomas L. Allen,
Attorneys for the United States, United States Department of Justice, Antitrust Divisions, Washington, D.C., 20530, (202) 724-6327.

[FR Doc. 85-15562 Filed 6-28-85; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-85-5-M]

American Minerals, Inc.; Petition for Modification of Application of Mandatory Safety Standard

American Minerals, Inc., Route 1, Box 47, Rosiclare, Illinois 62982 has filed a petition to modify the application of 30 CFR 56.9-88 (roll-over protective structures) to its Camden Plant (I.D. No. 28-00968) located in Camden County, New Jersey. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the mine's front-end loaders be equipped with roll-over protective structures (ROPS).

2. The front-end loaders are used only inside the building, which has low head room and a flat concrete floor surface. The distance from the floor to the average roof truss is twelve feet.

3. Petitioner states that if ROPS were installed there would not be enough room to operate these machines. Changing the roof truss is not possible due to the construction of the building.

4. As an alternate method, petitioner proposes to operate the equipment with the use of seat belts, governed controls and trained operators, in lieu of using ROPS. Petitioner further states there are no gulleys or steep ramps which could cause the equipment to turn over.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203: All comments must be postmarked or received in that office on or before July 31, 1985. Copies of the petition are available for inspection at that address.

Dated: June 25, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-15729 Filed 6-28-85; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-85-31-C]

Barnes & Tucker Co.; Petition for Modification of Application of Mandatory Safety Standard

Barnes & Tucker Company, 1912 Chestnut Avenue, Barnesboro, Pennsylvania 15714 has filed a petition to modify the application of 30 CFR 75.1100-3 (condition and examination of firefighting equipment) to its Lancashire No. 24-D Mine (I.D. No. 36-00835) located in Indiana County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all firefighting equipment be maintained in a usable and operative condition.

2. Petitioner states that due to extremely cold weather conditions during the winter months, the waterline used for the deluge system for fire protection along the "W" belt drive freezes and is inoperative.

3. As an alternate method, petitioner proposes that:

a. A dry waterline deluge system will be installed at the head end of the "W" belt drive for fire protection. This dry waterline deluge system will be pressurized by a signal from the fire

sensors to an automatic actuator valve installed in the waterline. A manual bypass valve will also be installed in the system to allow the waterline for the deluge system to be pressurized if desired.

b. All persons in the vicinity of the "W" belt drive will be instructed as to the operation of the dry pipe system and an ample supply of water will be available for the dry pipe system.

4. Petitioner states that the proposed alternate method will provide the same measure of protection for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 31, 1985. Copies of the petition are available for inspection at that address.

Dated: June 25, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-15721 Filed 6-28-85; 8:45 am]

BILLING CODE 4510-43

[Docket No. M-85-41-C]

Barnes & Tucker Co.; Petition for Modification of Application of Mandatory Safety Standard

Barnes & Tucker Company, 1912 Chestnut Avenue, Barnesboro, Pennsylvania 15714 has filed a petition to modify the application of 30 CFR 75.1100-3 (condition and examination of firefighting equipment) to its Lancashire No. 24-B Mine (I.D. No. 36-00837) located in Indiana County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all firefighting equipment be maintained in a usable and operative condition.

2. Due to extremely cold weather during the winter months, the waterline used for fire protection along the slope belt freezes and is inoperative.

3. As an alternate method, petitioner proposes to install a dry waterline along the slope belt for fire protection equipped with an automatic actuating valve. This valve will be connected to the automatic fire sensors installed and maintained as required by the appropriate standards. When activated, the automatic fire sensors will send a signal to the actuator valve, causing the waterline to be pressurized with water. A manual bypass valve will also be installed to allow pressurization if desired. All persons in the vicinity of the slope will be instructed as to the operation of this system.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 31, 1985. Copies of the petition are available for inspection at that address.

Dated: June 25, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-15723 Filed 6-28-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-37-C]

Canon Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Canon Coal Company, c/o Thorp, Reed & Armstrong, One Riverfront Center, Pittsburgh, Pennsylvania 15222 has filed a petition to modify the application of 30 CFR 75.1303 (permissible explosives, detonators, blasting devices and shot-firing units; stemming boreholes) to its Pitt Gas Mine (I.D. No. 36-06478) located in Greene County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that explosives be used within 48 hours after being taken underground.

2. As an alternate method, petitioner proposes to store explosives in underground magazines for a period of time not to exceed their shelf lives. The underground magazines will be of substantial construction with no metal exposed on the inside, and located in a dry, well rock-dusted and well-ventilated area at least 25 feet from roadways and power wires.

3. Petitioner states that the proposed alternate method will allow rehabilitation work of fall areas to begin quickly and will eliminate the additional hauling and handling of explosives required by surface storage.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 31, 1985. Copies of the petition are available for inspection at that address.

Dated: June 25, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-15725 Filed 6-28-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-28-C]

Cross Mountain Coal, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Cross Mountain Coal, Inc., P.O. Box 547, Lake City, Tennessee 37769 has filed a petition to modify the application of 30 CFR 77.1605(k) (berms or guards) to its No. 1 Mine (I.D. No. 40-02684) and its No. 2 Mine (I.D. No. 40-02859), both located in Campbell County, Tennessee. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that berms or guards be provided on the outer bank of elevated roadways.

2. Petitioner states that application of the standard will result in a diminution of safety to the miners affected because berms confine water runoff to the road surface which washes away the surfacing materials, resulting in a dangerous road surface. The berms also hamper the removal of snow and ice with a motor grader.

3. As an alternate method, petitioner proposes to:

a. Make daily inspections of all coal-hauling vehicles. Any defects detected

will be corrected before the vehicle is put into service;

b. A specific traffic system and rules will be developed for the roads. These rules will be posted throughout the mine area, on the bulletin boards, and will become a part of the training and retraining programs;

c. All haulage vehicles will have original manufacturer's brakes and an emergency braking system; and

d. All equipment operators will be trained in the use of haulage equipment and safety of the vehicles on haulage roads.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 31, 1985. Copies of the petition are available for inspection at that address.

Dated: June 25, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-15727 Filed 6-28-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-33-C]

Eastern Associated Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Eastern Associated Coal Corporation, One PPG Place, Pittsburgh, Pennsylvania 15222 has filed a petition to modify the application of 30 CFR 75.300 (mechanical ventilation—main fans) to its Harris No. 2 Mine (I.D. No. 46-01270) located in Boone County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all coal mines be ventilate by mechanical ventilation equipment installed and operated as approved by an authorized representative of the Secretary.

2. Petitioner states that the tunnel was driven through the Campbell Creek seam, which is a nongassy coal seam. Although adequately supported, areas of the top around each end of the tunnel have fallen out up to distances of 30 feet. There is only 100 to 150 feet of cover in the tunnel area because it is on the point of a mountain. The tunnel consists of a single entry with no additional working, and is ventilated by natural ventilation.

3. Petitioner states that installation of mechanical ventilation would require substantial construction work in areas where the top has fallen out and cover is limited. Such work would unnecessarily expose miners to hazardous conditions.

4. As an alternate method, petitioner proposes to continue its present system of natural ventilation for the tunnel.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Person interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 31, 1985. Copies of the petition are available for inspection at the address.

Dated: June 25, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-15726 Filed 6-28-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-25-C]

Green River Terminal, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Green River Terminal, Inc., P.O. Box 696, Sebree, Kentucky 42455 has filed a petition to modify the application of 30 CFR 77.1605(k) (berms or guards) to its Green River Terminal (I.D. No. 15-15035) located in Webster County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that berms or guards be provided on the outer bank of elevated roadways.

2. No trucks carrying crushed coal will be operated on the elevated roadways.

3. The use of berms would create problems with drainage and vegetation, lessening the stability of the haul road fill.

4. As an alternate method, petitioner proposes to post and enforce a 5 MPH speed limit on all elevated roadways.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on on before July 31, 1985. Copies of the petition are available for inspection at that address.

Dated: June 25, 1985.

Patricia W. Silvey,

Director, Office of Standards Regulations and Variances.

[FR Doc. 85-15728 Filed 6-28-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-39-C]

The New River Co.; Petition for Modification of Application of Mandatory Safety Standard

The New River Company, Drawer 711, Mount Hope, West Virginia 25880 has filed a petition to modify the application of 30 CFR 75.1100-2(b) (quantity and location of firefighting equipment) to its Skelton Mine (I. D. No. 46-01500) located in Raleigh County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that water lines be installed parallel to the entire length of belt conveyors.

2. Petitioner states that during the winter months, the water line is constantly threatened by freezing and bursting.

3. As an alternate method, petitioner proposes to use a dry pipe firefighting system with hose outlets at 300-foot intervals with specified conditions as outlined in the petition.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or

received in that office on or before July 31, 1985. Copies of the petition are available for inspection at that address.

Dated: June 25, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-15724 Filed 6-28-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-17-C]

Renegade Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Renegade Coal Company, 44 N. Crescent St., Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its No. 1 Slope (I.D. No. 36-07528) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine.

2. The mine has no history of ignition, explosion, or mine fires, or harmful quantities of carbon dioxide and other noxious or poisonous gases.

3. Mine dust sampling programs have revealed extremely low concentrations fo respirable dust.

4. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners. High velocities and large quantities cause extremely uncomfortable damp and cold conditions in the already uncomfortable, wet mines.

5. As an alternate method, petitioner proposes that:

a. The minimum quantity of air reaching each working face will be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set or developing entries will be 5,000 cubic feet per minute; and

c. The intake end of a pillar line will be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that the proposed alternate method will at all times provide the same measure of protection for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Adminstration, Room 627, 4015 Wilson Boulevard, Arlington, Virgina 22203. All comments must be postmarked or received in that office on or before July 31, 1985. Copies of the petition are available for inspection at that address.

Dated: June 25, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-15720 Filed 6-28-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-4-M]

Texasgulf Chemicals Co.; Petition for Modification of Application of Mandatory Safety Standard

Texasgulf Chemicals Company, P.O. Box 100, Granger, Wyoming 82934 has filed a petition to modify the application of 30 CFR 57.21-46 (crosscut intervals) to its Trona Operations (I.D. No. 48-00639) located in Sweetwater County, Wyoming. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that crosscuts be made at intervals not in excess of 100 feet between entries and between rooms.

2. The trona ore mined is incombustible and is used in fire extinguishers. Methane does not emanate from the ore mined, but does come in minute amounts from floor rock. Present auxiliary ventilation capacity is in excess of requirements and can provide for mining distances greater than presently mined.

3. Floor heave is a severe problem, causing much damage to stoppings in place. This floor movement buckles stoppings, resulting in loss of seal and leakage of air to the return airway.

4. As an alternate method, petitioner proposes that crosscuts be made at intervals not in excess of 250 feet between entries and between rooms in lieu of 100 feet as required by the standard. The 250-foot distance will reduce the number of stoppings between intake and return by half, greatly reducing air loss by leakage and improving ventilation to the face area where miners are working.

5. Petitioner states that the proposed alternate method will provide the same measure of protection to the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 31, 1985. Copies of the petition are available for inspection at the address.

Dated: June 25, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Viariances.

[FR Doc. 85-15722 Filed 6-28-85; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee on Mechanical Engineering and Applied Mechanics; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee on Mechanical Engineering and Applied Mechanics (MEAM).

Date, Time & Place: July 17 and 18, 1985—9:00 a.m.-5:00 p.m. each day, Board Room, Room 540.

Type of meeting: Open.

Contact Person: Dr. John A. Weese, Division Director, Mechanics, Structures, and Materials Engineering (MSME), Room 1110, National Science Foundation, Washington, D.C. 20550 (202) 357-9542.

Summary/minutes: May be obtained from Mrs. Delores Wade, Division of Mechanics, Structures, and Materials Engineering (MSME), Room 1110, National Science Foundation, Washington, D.C. 20550, (202) 357-9542.

Purpose of committee: To provide direction for Mechanics, Structures, and Materials Engineering Research.

Agenda

Wednesday, July 17—Open—9:00 A.M.-5:00 P.M.

9:00-10:30—Call to Order and Discussion of Directorate Activities
10:30-12:00—Status of MSME Division MSME Staff
12:00-1:30—LUNCH
1:30-3:30—Descriptions of the MSME Programs
3:30-5:00—Discussion of the Role of the MSME Advisory Committee
5:00—Recess for the day

Thursday, July 18—Open—9:00 A.M.–5:00 P.M.

9:30–10:30—Development of Plan for the MSME Advisory Committee
10:30–12:00—Discussion with MSME Staff
12:00–1:30—LUNCH
1:30–5:00—Committee Members Assignments, Preparation of Meeting Report, Closing Remarks
5:00—Adjourn

M. **Rebecca Winkler,**

Committee Management Office.

[FR Doc. 85–15707 Filed 6–28–85; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Governors' Designees Receiving Advance Notification of Transportation of Nuclear Waste

On January 6, 1982, the Nuclear Regulatory Commission (NRC) published in the **Federal Register**, as final, certain amendments to 10 CFR Parts 71 and 73 (effective July 6, 1982), which require advance notification to Governors or their designees concerning transportation of certain shipments of nuclear waste and spent fuel. The advance notification covered in Part 73 is for spent nuclear reactor fuel shipments and the notification for Part 71 is for large quantity shipments of radioactive waste (and of spent nuclear reactor fuel not covered under the final amendment to 10 CFR Part 73).

The following list updates the names, addresses and telephone numbers of those individuals in each State who are responsible for receiving information on nuclear waste shipments. The list will be published annually in the **Federal Register** on or about June 30, to reflect any changes in information.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS

States	Part 71	Part 73
Alabama	Col. Byron Prescott, Director, Alabama Department of Public Safety, P.O. Box 1511, Montgomery, AL 36192-0501, (205) 261–4378.	Same.
Alaska	Mr. Bill Ross, Commissioner, Alaska Department of Environmental Conservation, Pouch O, Juneau, AK 99811, (907) 465–2600.	Same.
Arizona	Charles F. Tedford, Director, Arizona Radiation Regulatory Agency, 925 South 52nd Street, Suite 2, Temple, AZ 85281, (602) 255–4845. After hours: (602) 998–4662.	Same.
Arkansas	E.F. Wilson, Director, Radiation Control and Emergency Management Programs, Arkansas Department of Health, 4815 West Markham Street, Little Rock, AR 72201, (501) 661–2301. After hours: (501) 661–2136 or 661–2000.	Same.
California	L.M. Short, Chief, California Highway Patrol, P.O. Box 898, Sacramento, CA 95804 (916) 445–6211	Same.
Colorado	Captain Lonnie J. Westphal, Officer in Charge, Staff Services Branch, Colorado State Patrol, 1325 South Colorado Boulevard, Building 7008, Denver, CO 80222, (303) 691–8107. After hours: (303) 757–9422.	Same.
Connecticut	The Honorable Stanley J. Pac, Commissioner, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106, (203) 566–2110.	Same.
Delaware	Edward J. Steiner, Secretary, Department of Public Safety, Highway Administration Building, P.O. Box 818, Dover, DE 19903, (302) 736–4321.	Same.
Florida	Harlan Keaton, Public Health Physicist Manager, Office of Radiation Control, Department of Health and Rehabilitative Services, P.O. Box 15490, Orlando, FL 32858, (305) 299–0580.	Same.
Georgia	Ken M. Copeland, Director of the Office of Permits and Enforcement, Georgia Department of Transportation, 940 Virginia Avenue, Hapeville, GA 30354, (404) 656–5435.	Same.
Hawaii	Melvin K. Koizumi, Deputy Director for Environmental Health, Department of Health, P.O. Box 3378, Honolulu, HI 96813, (808) 548–4139.	Same.
Idaho	Robert D. Funderburg, Manager, Radiation Control Section, Department of Health and Welfare, Division of Environment, 450 West State, 5th Floor, Statehouse, Boise, ID 83720, (208) 334–4107. After hours: (208) 362–5260.	Same.
Illinois	Dr. Terry Lash, Director, Illinois Department of Nuclear Safety, 1035 Outer Park Drive, 5th Floor, Springfield, IL 62704, (217) 546–8100.	Same.
Indiana	John T. Shettle, Superintendent, Indiana State Police, 301 State Office Building, 100 North Senate Avenue, Indianapolis, IN 46204, (317) 232–8248 (24 hours).	Same.
Iowa	John D. Crandall, Director, Office of Disaster Services, Hoover State Office Building, Des Moines, IA 50319, (515) 281–3231.	Same.
Kansas	Leon H. Mannell, P.E. Administrator, Radiological Systems, The Adjutant General's Department, Division of Emergency Preparedness, P.O. Box C–300, Topeka, KS 66601, (913) 233–9253, Ext. 321.	Same.
Kentucky	Donald R. Hughes, Sr., Supervisor, Radiation Control Department for Health Services, 275 East Main Street, Frankfort, KY 40621, (502) 564–3700.	Same.
Louisiana	Col. Wiley D. McCormick, Head, Louisiana State Police, 265 South Foster Drive, P.O. Box 66614, Baton Rouge, LA 70896, (504) 925–6117.	Same.
Maine	Chief of the State Police Maine Department of Public Safety, Statehouse—Station No. 42, Augusta, ME 04333, (207) 289–2155.	Same.
Maryland	Lt. Colonel Frank Mazzone, Chief, Field Operations Bureau, Maryland State Police, 1201 Reisterstown Road, Pikesville, MD 21208, (301) 486–3101.	Same.
Massachusetts	Robert M. Hallisey, Director, Radiation Control Program, Massachusetts Department of Public Health, 150 Tremont Street, 7th Floor, Boston, MA 02111, (617) 727–6214.	Same.
Michigan	James E. Cox, Captain, Commanding Officer, Operations Division, Michigan Department of State Police, 714 South Harrison Road, East Lansing, MI 48823 (517) 337–6100.	Same.
Minnesota	Deidre M.A. Krause, Operations Officer, Minnesota Division of Emergency Services, B5 State Capitol, St. Paul, MN 55155, (612) 296–0453. After hours: (612) 778–0800.	Same.
Mississippi	James E. Maher, Director, Mississippi Emergency Management Agency, P.O. Box 4501, Fondren Station, Jackson, MS 39216, (601) 352–9100.	Same.
Missouri	Richard D. Ross, Director, State Emergency Management Agency, 1717 Industrial Drive, P.O. Box 116, Jefferson City, MO 65102, (314) 751–2321. After hours: (314) 751–2748.	Same.
Montana	Mr. Larry Lloyd, Chief, Occupational Health Bureau, Department of Health and Environmental Sciences, Room A113, Cogswell Building, Helena, MT 59620, (406) 444–3671.	Mr. George DeWolf, Administrator, Disaster and Emergency Services Division, 1100 North Last Chance Gulch, Helena, MT 59601, (406) 444–6111.
Nebraska	Col. Elmer J. Kohmetscher, Superintendent, Nebraska State Patrol, P.O. Box 94907, State House, Lincoln, NE 68509, (402) 471–2406 or (402) 471–4545.	Same.
Nevada	John Vaden, Supervisor, Radiological Health Section, Bureau of Regulatory Health Services, Nevada Division of Health, 505 East King Street, Room 202, Carson City, NV 89710, (702) 885–5394.	Same.
New Hampshire	Lt. Paul Richardson, Supervisor, Communications Section, Division of State Police, New Hampshire Department of Safety, James H. Hayes Building, Hazen Drive, Concord, NH 03301, (603) 271–3636.	Same.
New Jersey	Frank Cosolito, Special Assistant, Division of Environmental Quality, Room 1109, CN–027, Trenton, NJ 08625, (609) 984–1503.	Same.
New Mexico	Ken Hargis, Chief, Radiation Protection Bureau, Health and Environment Department, P.O. Box 968, Santa Fe, NM 87504–0968, (505) 984–0020, ext. 279. After hours: (505) 471–0121.	Same.
New York	Donald A. Devito, Director, State Emergency Management Office, Division of Military and Naval Affairs, Public Security Building, State Campus, Albany, NY 12226, (518) 457–2222.	Same.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

States	Part 71	Part 73
North Carolina	Lt. Walter K. Chapman, Operations Officer, North Carolina Highway Patrol Headquarters, P.O. Box 27687, Raleigh, NC 27611, (919) 733-4030. After hours: (919) 733-3861.	Same.
North Dakota	Dana K. Mount, Director, Division of Environmental Engineering, North Dakota State Department of Health, 1200 Missouri Avenue, Room 304, Box 5520, Bismarck, ND 58502-5520, (701) 224-2348. After hours: 1-800-472-2121.	Same.
Ohio	James R. Williams, Chief of Staff, Disaster Services Agency, 2825 Granville Road, Worthington, OH 43085, (614) 889-7157.	Same.
Oklahoma	The Honorable Paul W. Rood, Jr., Commissioner of Public Safety, Oklahoma Department of Public Safety, 3600 North Eastern Avenue, Oklahoma City, OK 73111, (405) 424-4011.	Same.
Oregon	William T. Dixon, Administrator Siting and Regulation, Oregon Department of Energy, 102 Labor and Industries Building, Salem, OR 97310, (503) 378-6469.	Same.
Pennsylvania	George M. Johnson, Director, Repsonse and Recovery, Pennsylvania Emergency Management Agency, P.O. Box 3321, Harrisburg, PA 17105 (717) 783-8150. After hours: (717) 783-8150.	Same.
Rhode Island	William A. Maloney, Associate Administrator Motor Carriers, Division of Public Utilities and Carriers, 100 Orange Street, Providence, RI 02903, (401) 277-3500.	Same.
South Carolina	Heyward G. Shealy, Chief, Bureau of Radiological Health, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201, (803) 758-7806. After hours: (803) 758-5531.	Same.
South Dakota	Robert D. Gunderson, Division Director, Emergency and Disaster Services, Capitol Building, Basement, Pierre, SD 57501, (605) 773-3231.	Same.
Tennessee	John White, Assistant Deputy Director, Tennessee Emergency Management Agency, State Emergency Operations Center, 3041 Sidco Drive, Nashville, TN 37204, (615) 252-3300. After hours: 1-800-258-3300.	Same.
Texas	Dr. Robert Bernstein, Commissiner, Texas Department of Health, Bureau of Radiological Health, 1100 West 49th Street, Austin, TX 78756, (512) 458-7375.	Col. James B. Adams, Director, Texas Department of Public Safety, 5805 North Lamar Austin, TX 78752, (512) 465-2000.
Utah	Larry F. Anderson, Director, Bureau of Radiation Control, State Office Building, Room 3253, P.O. Box 45500, Salt Lake City, UT 84145-0500 (801) 533-6734.	Same.
Vermont	Patrick J. Garahan, Secretary, Vermont Agency of Transportation, 133 State Street, Montpelier, VT 05602, (802) 828-2657.	Same.
Virginia	Michael M. Cline, Deputy Director, Operations Division, Department of Emergency Services, Commonwealth of Virginia, 310 Turner Road, Richmond, WA 23225, (804) 323-2300.	Same.
Washington	Curtis P. Eschels, Chairman, Energy Facility Site Evaluation Council, Mail Stop PY-11, Olympia, VA 98504, (206) 459-6490.	Same.
West Virginia	Colonel W.F. Donohoe, Superintendent, Department of Public Safety, 725 Jefferson Road, South Charleston, WV 25309, (304) 746-2111.	Same.
Wisconsin	Carol Z. Hemenbach, Administrator, State of Wisconsin/Division of Emergency Government, 4802 Sheboygan Aveune, Room 99A, P.O. Box 7865, Madison, WI 53707, (608) 266-3232.	Same.
Wyoming	Julius E. Hass, Jr., Chief, Radiological Health Services, Department of Health and Social Services, Hathaway Building, Cheyenne, WY 82002 (307) 777-7956.	Same.
District of Columbia	Herbert T. Wood, Ph.D., Senior Public Health Advisor, Department of Consumer and Regulatory Affairs, Room 1014, 614 H Street, NW., Washington, DC 20001, (202) 727-7190. After hours: (202) 529-3349.	Same.
Puerto Rico	Santos Rohena, Jr., Chairman, Environmental Quality Board, P.O. Box 11488, Santurce, PR 00910, (809) 722-1175 or (809) 725-5140.	Same.
Guam	James B. Branch, Administrator, Guam Environmental Protection Agency, P.O. Box 2999, Agana, Guam 96910, (671) 646-7579.	Same.
Trust Territory of the Pacific Islands	R. Kent Harvey, Attorney general, Trust Territory of the Pacific Islands, Saipan, CM 96950, Saipan 9325 or 9364.	Same.
Virgin Islands	Hon. Juan Luis, Governor, Government House Charlotte Amalie, St. Thomas, Virgin Islands 00801, (809) 774-0001.	Same.
American Samoa	Hon. Peter Coleman, Governor of American Samoa, Territorial Capitol, Pago Pago, American Samoa 96799, 633-4116.	Same.
Commonwealth of the Northern Mariana Islands.	Nicolas M. Leon Guerrero, Director, Department of Natural Resources, Commonwealth of Northern Mariana Islands Government, Saipan, CM 96950, No. 9830 or No. 9834.	Same.

Questions regarding this matter should be directed to Mindy Landau at (301) 492-9880.

Dated at Bethesda, Maryland this 14th day of June, 1985.

For the Nuclear Regulatory Commission.

G. Wayne Kerr,

Director, Office of State Programs.

June 1985.

[FR Doc. 85-15757 Filed 6-28-85; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 632-6817.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on May 28, 1985 (50 FR 21674). Individual authorities established or revoked under Schedules A, B, or C between May 1, 1985 and May 31, 1985 appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

No Schedule A exceptions were established or revoked during May.

Schedule B

No Schedule B exceptions were established or revoked during May.

Schedule C

The following exceptions are established:

Department of Agriculture

One Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs. Effective May 3, 1985.

One Private Secretary to the Chief, Soil Conservation Service. Effective May 8, 1985.

One Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs. Effective May 13, 1985.

One Administrator (Human Nutrition Information Service) to the Assistant Secretary for Food and Consumer Services. Effective May 15, 1985.

One Confidential Assistant (Director, Legislative Affairs and Public Information Staff) to the Administrator, Farmers Home Administration. Effective May 15, 1985.

One Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs. Effective May 15, 1985.

One Confidential Assistant to the Deputy Secretary. Effective May 15, 1985.

One Private Secretary to the Executive Assistant to the Secretary. Effective May 15, 1985.

One Confidential Assistant to the Executive Assistant to the Secretary. Effective May 21, 1985.

One Confidential Assistant to the Under Secretary for Small Community and Rural Development. Effective May 21, 1985.

Department of Commerce

One Confidential Assistant to the Deputy Assistant Secretary for Capital Goods and International Construction, International Trade Administration. Effective May 7, 1985.

One Confidential Assistant to the Director, Minority Business Development Agency. Effective May 7, 1985.

One Confidential Assistant to the Director, Minority Business Development Agency. Effective May 10, 1985.

One Confidential Assistant to the Associate Administrator, National Oceanic and Atmospheric Administration. Effective May 23, 1985.

One Private Secretary and Confidential Assistant (Typing) to the Associate Administrator, National Oceanic and Atmoshperic Administration. Effective May 23, 1985.

Department of Defense

One Private Secretary to the Principal Deputy Assistant Secretary of Defense (Public Affairs). Effective May 7, 1985.

One Private Secretary to the Senior Judge, U.S. Court of Military Appeals. Effective May 7, 1985.

One Assistant for European Security Negotiations to the Deputy Assistant Secretary of Defense (Negotiations Policy). Effective May 21, 1985.

Department of Education

One Deputy Director, Office of Bilingual Education and Minority Languages Affairs to the Director, Office of Bilingual Education and Minority Languages Affairs. Effective May 16, 1985.

One Executive Secretary to the Chief of Staff/Counselor to the Secretary. Effective May 16, 1985.

Department of Energy

One Deputy Assistant Secretary for House Liaison to the Assistant Secretary for Congressional, Intergovernmental and Public Affairs. Effective May 7, 1985.

One Director of Public Liaison to the Director of Communications, Office of the Assistant Secretary for Congressional, Intergovernmental and Public Affairs. Effective May 7, 1985.

Two Staff Assistants to the Special Assistant to the Secretary. Effective May 7, 1985.

One Director, Office of Domestic Issues to the Principal Deputy Assistant Secretary for Congressional, Intergovernmental and Public Affairs. Effective May 9, 1985.

One Legislative Affairs Specialist to the Principal Deputy Assistant Secretary for Congressional, Intergovernmental and Public Affairs. Effective May 9, 1985.

One Secretary (Confidential Assistant) to the Administrator, Economic Regulatory Administration. Effective May 13, 1985.

One Special Assistant to the Deputy Assistant Secretary for Breeder Reactor Programs, Office of Assistant Secretary for Nuclear Energy. Effective May 23, 1985.

One Director, Press Services Division to the Director, Office of Communications. Effective May 28, 1985.

One Staff Assistant to the Assistant Secretary for Congressional, Intergovernmental and Public Affairs. Effective May 28, 1985.

One Staff Assistant to the Director, Office of Minority Economic Impact. Effective May 28, 1985.

One Staff Assistant to the Director, Office of Energy Research. Effective May 30, 1985.

Department of Health and Human Services

One Staff Assistant to the Deputy Assistant Secretary for Legislation (Human Services), Office of Secretary. Effective May 7, 1985.

One Special Assistant for Special Groups to the Director, Office of Civil Rights. Effective May 13, 1985.

One Executive Assistant to the Director, Office of Child Support Enforcement. Effective May 24, 1985.

One Confidential Assistant to the Executive Assistant to the Secretary. Effective May 28, 1985.

Department of Housing and Urban Development

One Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations. Effective May 7, 1985.

One Intergovernmental Relations Officer to the Deputy Under Secretary for Intergovernmental Relations. Effective May 7, 1985.

One Special Assistant to the Assistant Secretary for Community Planning and Development. Effective May 8, 1985.

One Special Assistant to the Regional Administrator/Regional Housing Commissioner, Hartford, Connecticut. Effective May 8, 1985.

One Special Assistant to the Deputy Assistant Secretary for Program Development, Office of the Assistant Secretary for Community Planning and Development. Effective May 9, 1985.

One Executive Assistant to the Regional Administrator/Regional Housing Commissions, Dallas, Texas. Effective May 10, 1985.

One Special Assistant to the Assistant Secretary for Community Planning and Development. Effective May 14, 1985.

One Confidential Assistant to the Under Secretary. Effective May 20, 1985.

One Confidential Assistant to the Assistant Secretary for Community Planning and Development. Effective May 28, 1985.

One Assistant to the Secretary for Special Programs. Effective May 24, 1985.

One Executive Director, Federal Council on Aging to the Assistant Secretary for Human Development Services. Effective May 28, 1985.

Department of Interior

One Confidential Assistant to the Special Assistant (Field Representative), Secretary's Field Coordination Office, Sacramento, California. Effective May 7, 1985.

Two Special Assistants to the Director of Policy Analysis, Office of the Assistant Secretary for Policy, Budget and Administration. Effective May 7, 1985.

One Special Assistant to the Director of Policy Analysis, Office of the Assistant Secretary for Policy, Budget and Administration. Effective May 13, 1985.

One Special Assistant to the Director, Bureau of Land Management, Sacramento, California. Effective May 21, 1985.

Department of Justice

One Staff Assistant to the Assistant Attorney General, Office of Legal Policy. Effective May 7, 1985.

One Confidential Assistant to the Special Assistant to the Attorney General for Cabinet Affairs. Effective May 13, 1985.

One Special Assistant (Public Relations) to the Director, Office of

Regulatory and Legislative Affairs, Civil Division. Effective May 13, 1985.

One Confidential Assistant to the Attorney General. Effective May 15, 1985.

One Associate Director of Public Affairs to the Director of Public Affairs. Effective May 24, 1985.

Department of Labor

One Assistant to the Deputy Under Secretary for Legislative Affairs. Effective May 13, 1985.

One Executive Assistant to the Chief of Staff, Office of the Secretary. Effective May 31, 1985.

One Staff Assistant to the Chief of Staff, Office of the Secretary. Effective May 31, 1985.

Department of State

One Secretary (Typist) to the Ambassador and U.S. Negotiator on Strategic Nuclear Arms. Effective May 21, 1985.

One Staff Assistant to the Ambassador on Space and Defensive Arms and Head of the U.S. Delegation to Geneva. Effective May 21, 1985.

One Staff Assistant to the Ambassador and U.S. Negotiator on Strategic Nuclear Arms. Effective May 23, 1985.

Department of Transportation

One Congressional Liaison Specialist to the Director of Congressional Affairs, Office of the Assistant Secretary for Governmental Affairs. Effective May 7, 1985.

One Special Assistant to the Deputy Secretary. Effective May 20, 1985.

One Confidential Assistant to the Chief of Staff. Effective May 21, 1985.

One Marketing Assistant to the Administrator, Saint Lawrence Seaway Development Corporation. Effective May 23, 1985.

One Special Assistant to the Director, Office of Public and Consumer Affairs, National Highway Traffic Safety Administration. Effective May 24, 1985.

One Special Assistant to the General Counsel. Effective May 24, 1985.

Department of Treasury

One Confidential Secretary to the Deputy Treasurer of the United States. Effective May 13, 1985.

One Congressional Liaison Specialist to the Commissioner, U.S. Customs Service. Effective May 23, 1985.

One Staff Assistant to the General Counsel. Effective May 24, 1985.

Architectural and Transportation Barriers Compliance Board

One Executive Assistant to the Chairman. Effective May 9, 1985.

Commission on Civil Rights

One Confidential Assistant to the Assistant Staff Director for Programs and Policy. Effective May 7, 1985.

Equal Employment Opportunity Commission

One Confidential Assistant to the Chairman. Effective May 7, 1985.

Federal Communications Commission

One Legislative Affairs Officer to the Director, Office of Congressional and Public Affairs. Effective May 9, 1985.

Federal Labor Relations Authority

One Special Assistant to the General Counsel. Effective May 21, 1985.

International Trade Commission

One Staff Assistant (Legal) to a Commissioner. Effective May 13, 1985.

National Endowment for the Humonities

One Congressional Liaison Officer to the Director, Institute of Museum Services. Effective May 7, 1985.

National Labor Relations Board

One Confidential Assistant to a Board Member. Effective May 8, 1985.

National Transportation Safety Board

One Special Assistant to the Chairman. Effective May 7, 1985.

Office of Management and Budget

One Public Affairs Specialist to the Assistant Director of Public Affairs. Effective May 7, 1985.

One Secretary to the Director. Effective May 10, 1985.

Small Business Administration

One Confidential Assistant to the Director, Office of Women's Business Ownership. Effective May 7, 1985.

One Special Assistant to the Associate Deputy Administrator for Management and Administration. Effective May 7, 1985.

One Special Assistant to the Director, Office of Women's Business Ownership. Effective May 13, 1985.

One Special Assistant to the Associate Administrator for Management Assistance. Effective May 22, 1985.

One Assistant Administrator for Public Communications to the Administrator, Office of Public Communications. Effective May 30, 1985.

United States Government Printing Office

One Confidential Assistant to the Director of Legislative and Public Affairs. Effective May 28, 1985.

One Staff Assistant to the Public Printer. Effective May 28, 1985.

United States Tax Court

One Secretary (Confidential Assistant) to a Judge. Effective May 23 1985.

Veterans Administration

One Confidential Assistant to the Administrator. Effective May 7, 1985.

One Confidential Assistant to the Associate Deputy Administrator for Public and Consumer Affairs. Effective May 7, 1985.

One Confidential Assistant to the Associate Deputy Administrator for Congressional and Intergovernmental Affairs. Effective May 24, 1985.

Loretta Cornelius,

Acting Director, U.S. Office of Personnel Management.

[FR Doc. 85-15704 Filed 6-28-85; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-22168; File No. S7-27-85]

Securities Processing

AGENCY: Securities and Exchange Commission.

ACTION: Notice of Availability of Division of Market Regulation's Report, "Progress and Prospects: Depository Immobilization of Securities and Use of Book-Entry Systems"; Request for Comment.

SUMMARY: A draft staff report on the Commission's Securities Immobilization Workshops held in February and March 1985 is available for public comment.

DATE: Public comment on the draft report is invited until September 1, 1985. Comments should be addressed to the Secretary of the Commission, Securities and Exchange Commission, 450 Fifty Street, NW., Washington, D.C. 20549, and should refer to File No. S7-27-85.

FOR FURTHER INFORMATION CONTACT: Elliott Cowan (202) 272-2418 or Joseph M. Furey (202) 272-2416, Mail Stop 5-1, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the report will be mailed upon request.

SUPPLEMENTARY INFORMATION: At the Securities Immobilization Workshops, representatives from the securities issuance and processing communities discussed ways to expand the use of central depositories to immobilize securities certificates and reviewed recent developments involving book-entry recordkeeping systems. The report summarizes the Workshops and

contains recommendations for an industry program to accelerate the immobilization of securities certificates.

John Wheeler,

Secretary.

June 25, 1985.

[FR Doc. 85-15749 Filed 6-28-85; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

Musikahn Corp.; Order of Suspension of Trading

June 26, 1985.

It appearing to the Securities and Exchange Commission that there is a lack of adequate current information concerning the affairs of Musikahn Corp. with respect to, among other things, the company's financial condition, the closing of retail stores and a recent loan obtained by the company.

Therefore, it is ordered, pursuant to section 12(k) of the Exchange Act of 1934, that trading in Musikahn Corp., over-the-counter or otherwise is suspended, for the period from 9:30 a.m. on June 26, 1985 through midnight (EDT) on July 5, 1985.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85-15750 Filed 6-28-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of Action Subject to Intergovernmental Review Under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to fund for the first time an additional Small Business Development Center (SBDC) in Puerto Rico during fiscal year 1985. Currently, there are 40 SBDC's in existence. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to the proposal developer for the SBDC to be funded. This publication is being made to provide the State single point of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed funding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

DATE: Comments will be accepted through August 30, 1985.

ADDRESS: Comments should be addressed to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Same as above.

Notice of Action Subject to Intergovernmental Review

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, specifically section 135.4, SBA is publishing this notice to provide public awareness of the pending application for funding of the proposed Small Business Development Center (SBDC). Also, published herewith is an annotated program announcement describing the SBDC program in detail.

The proposed SBDC will be funded at the earliest practicable date following the 60-day comment period. However, no funding will occur unless all comments have been considered. Relevant information identifying this SBDC and providing the mailing address of the proposed developer is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to the affected State single point of contact which has been established under the Executive Order.

The State single point of contact and other interested local entities are expected to advise the relevant proposal developer of their comments regarding the proposed funding in writing as soon as possible. Copies of such written comments must also be furnished to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416. Comments will be accepted by the relevant proposal developer and SBA for a period of two months (60 days) from the date of publication of this notice. The proposed developer will make every effort to accommodate these comments during the 60-day period. If the comments cannot be accommodated by the proposed developer, SBA will, prior to funding the proposed SBDC, either attain accommodation of any comments or furnish an explanation to the commenter of why accommodation cannot be attained prior to funding the SBDC.

Description of the SBDC Program

The Small Business Development Center Program is a major management assistance delivery program of the U.S. Small Business Administration. SBDC's are authorized under section 21 of the Small Business Act (15 U.S.C. 648). SBDC's operate pursuant to the provisions of section 21, a Notice of Award (Cooperative Agreement) issued by SBA, and a Program Announcement. The Program represents a partnership between SBA and the State-endorsed organization receiving Federal assistance for its operation. SBDC's operate on the basis of a State plan which provides small business assistance throughout the State. As a condition to any financial award made to an applicant, an additional amount equal to the amount of assistance provided by SBA must be provided to the SBDC from sources other than the Federal Government.

Purpose and Scope

The SBDC Program has been designed to meet the specialized and complex management and technical assistance needs of the small business community. SBDC's focus on providing indepth quality assistance to small businesses in all areas which promote growth, expansion, innovation, increased productivity and management improvement. SBDC's act in an advocacy role to promote local small business interests. SBDC's concentrate on developing the unique resources of the university system, the private sector, and State and local governments to provide services to the small business community which are not available elsewhere. SBDC's coordinate with other SBA programs of management assistance and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the State academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources; and

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDC's are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In States where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a single full-time Director. SBDC's must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDC's provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDC's emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agribusiness, computer application, business law information, and referral [any legal services beyond basic legal information and referral require the endorsement of the State Bar Association), exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDC's should emphasize the provision of training in specialized areas other than basis small business management subjects. SBDC's should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by status or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas is provided to the State small busines community through the State SBDC network. As a condition of this agreement, the SBDC must perform but not be limited to the following activities:

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small businesses that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

(a) Lead SBDC's shall operate on a 40-hour week basis, or during normal State business hours, with National holidays or State holidays as applicable excluded.

(b) SBDC subcenters shall be operated on a full-time basis. The lead SBDC shall ensure that staffing is adequate to meet the needs of the small business community.

(c) All counseling assistance offered through the Small Business Development Center network shall be provided at no cost to the client.

Address of Proposed SBDC and Proposal Developer: Mr. Ramachandra K. Asundi, Professor, University of Puerto Rico, College of Business, Mayaguez, Puerto Rico 00708, (809) 834-4040.

Dated: June 21, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-15684 Filed 6-28-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/01-0035]

Lincoln Capital Corp.; License Surrender

Notice is hereby given that Lincoln Capital Corporation, 41 East 42nd Street, New York, New York 10017, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Lincoln Capital Corporation was licensed by the Small Business Administration on April 23, 1962.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on May 29, 1985, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 14, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-15681 Filed 6-28-85; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 05/05-0202]

M & I Ventures Corp.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing Small Business Investment Companies [13 CFR 107.102 (1985)] under the name of M & I Ventures Corporation, 770 North Water Street, Milwaukee, Wisconsin 53202 for a license to operate as a small business investment company (SBIC) under the

provisions of the Small Business Investment Act of 1958 (Act), as amended (15 U.S.C. 661 et seq.).

The Applicant will begin operations with private capital of $3,000,000.

The Officers, directors and sole shareholder of the Applicant are as follows:

John T. Byrnes, 10411 West Hillside Avenue, Wauwatosa, Wisconsin 53222—President, Director

Daniel P. Howell, 33556 S. Indiana, Milwaukee, Wisconsin 53207—Vice President

Michael A. Hatfield, 4913 N. Bartlett Avenue, Whitefish Bay, Wisconsin 53217—Secretary

J. A. Puelicher, 9080 North Range Line Road, Milwaukee, Wisconsin 53217—Director

James B. Wigdale, 6424 North Lake Drive, Milwaukee, Wisconsin 53217—Director

M & I Capital Markets Group, 770 North Water Street, Milwaukee, Wisconsin 53202—Sole Shareholder

M & I Capital Markets Group is a wholly owned subsidiary of Marshall & Ilsley Corporation, a bank holding company.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L St., NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Milwaukee, Wisconsin.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: June 20, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-15682 Filed 6-28-85; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Phoenix, Arizona, will hold a public meeting at 10:00 a.m. on July 17, 1985, at the Phoenix Metropolitan Chamber of Commerce, 34 W. Monroe Street, Suite 900, Phoenix, Arizona to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Walter Fronstin, District Director, U.S. Small Business Administration, 2005 North Centeral Avenue, Phoenix, Arizona 85004, (602) 261-2206.

June 21, 1985.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 85-15683 Filed 6-28-85; 8:45 am]

BILLING CODE 8025-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Advisory Committee for Trade Negotiations; Meeting and Determination of Closing of Meeting

The meeting of the Advisory Committee for Trade Negotiations (the Advisory Committee) to be held Thursday, July 18, 1985, from 2:00 p.m. to 5:00 p.m. in Washington DC., will involve a review and discussion of the current issues involving the trade policy of the United States. Pursuant to section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

More detailed information can be obtained by contacting Phyllis O. Bonanno, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, DC 20526.

Michael B. Smith,

Acting United States Trade Representative.

[FR Doc. 85-15678 Filed 6-28-85; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[AC No. 120-42]

Advisory Circular—Extended Range Operations With Two-Engine Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of Advisory Circular.

SUMMARY: This notice announces the Federal Aviation Administration's establishment of criteria to permit extended range overwater opertions (as well as extended range operations over uninhabited land areas) of certain two-engine airplanes and provides notice of availability of Advisory Circular (AC) 120-42, which specifies detailed and comprehensive safety criteria to ensure that such operations meet the high level of safety commensurate with air carrier operations. These criteria are applicable to two-engine transport category airplanes operated by air carriers holding operating authority under 14 CFR Part 121. AC 120-42 specifies detailed technical criteria in the following areas which are required to provide the necessary high level of safety:

1. Type design approval methods for two-engine airplanes intended for use in extended range operations.

2. In-service experience considerations to demonstrate that the necessary level of propulsion system reliability has been achieved in-service, and that the applicant has obtained sufficient maintenance and operational familiarity with the particular airplane.

3. Operational approval methods to substantiate the operator's ability to safely conduct and support extended range operations with two-engine airplanes.

4. The methods to be used by a newly established Propulsion System Reliability Assessment Board during evaluation of the suitability of a particular airplane/engine combination for use in extended range operations.

DATE: The effective date of Advisory Circular (AC) 120-42 is June 6, 1985.

ADDRESS: A copy of the advisory circular may be obtained by contacting: U.S. Department of Transportation, Subsequent Distribution Section, M-494.3, 400 7th Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Further information may be obtained by contacting Mr. Jerald M. Davis, Flight Technical Programs Branch, Air Transportation Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; Telepone (202) 426-8452.

SUPPLEMENTARY INFORMATION:

Background

On February 6, 1985, the Federal Aviation Administration (FAA) announced its proposed plans and invited public comments on the draft advisory circular (AC), which specified detailed and comprehensive safety criteria that would have to be met to

ensure that extended range operations with two-engine airplanes met the high level of safety commensurate with air carrier operations. Comments were requested to be received on or before March 8, 1985.

Extensive comments were received in response to this request and the comments, in general, supported the criteria proposed by FAA for evaluating and approving extended range operations with two-engine airplanes. These comments indicated that the overall concepts in the AC were technically and operationally sound. Furthermore, the vast majority of the comments were of a very detailed, technical, and operational nature and were related to refining the special safety criteria to ensure that extended range operations with two-engine airplanes provide a level of safety equal to that required of three- and four-engine airplanes currently flying these routes. Comments were received from five aircraft manufacturers, three engine manufacturers, one association of manufacturers, three airline pilot associations, two air transport associations, two airlines, two national aviation authorities, one international airline passenger association, and one private individual. One of the national aviation authorities commenting indicated that it had already developed similar and fully compatible special safety criteria and planned to publish these criteria in the near future.

After a careful and thorough review of the public comments received, the FAA has determined that the proposed concepts are teachnically and operationally sound and that the special safety criteria included in AC 120-42 will ensure that extended range operations with two-engine airplanes that meet these criteria, provide a level of safety equal to that required of three- and four-engine airplanes currently flying these routes. Furthermore, the introduction of the airframe systems and engine technology necessary to meet these special safety criteria will result in a much safer operation in domestic, as well as oceanic service, than the turbojet airplanes designed 20 to 30 years ago, which would be replaced by these new airplanes, could provide.

This AC is responsive to industry requests for timely guidance on type design and operational approvals for two-engine airplanes for use in extended range operations. This AC also implements the work of the International Civil Aviation Organization's Extended Range Operations (ETOPS) Study Group, which the U.S. actively participated in and supported.

Outline and Examples of Advisory Circular 120-42 Criteria

Under AC 120-42, in order for an operator to obtain approval for extended range operations with two-engine airplanes, the operator would have to show that each of the systems of the particular airplane-engine combination is designed to fail-safe criteria, in which single failures of systems are considered to occur regardless of probability and multiple failure must be considered if likely, and that the systems can be continuously maintained and operated to achieve the highest level of safety during the intended operation. To achieve compliance, the type design of the particular airplane initially would have to be shown to be sufficiently reliable for extended range operations. Type design approval would involve detailed and extensive showings that the airframe, propulsion, auxiliary power unit, hydraulic, electrical, pressurization and fire protection systems abroad the airplane meet special redundancy requirements and other standards of airworthiness that take into consideration the possibility that the airplane may have to be flown for an extended period of time with only one operative engine. For example, the airplane would be required to have multiple sources of electrical power for instruments and would have to be capable of safe flight after the complete loss of any two hydraulic systems and any engine. As another example, cargo compartment fire protection systems would have to be capable of suppression or extinguishing in-flight fires considering the extra time that might be needed to reach an airport.

In addition to obtaining type design approval for the airplane for extended range operations, the operator of the airplane would have to show that an adequate level of in-service propulsion system reliability can be achieved by the world fleet and by the particular operator for the airplane-engine combination type for which extended range operational authority is requested. This will necessitate a review, statistical analysis, and engineering assessment of in-service reliability, including the review of data on engine shutdowns, unscheduled removals and dispatch delays. In general, 250,000 engine hours of world fleet service and 12 months of operations by the particular operator would have to be accumulated with the particular airplance-engine combination before an airplane-engine reliability determination could be made.

If type design approval is obtained and if it is found that the in-service experience with a particular airplane-engine configuration is adequate, the operator would have to show that its operating procedures and dispatch rules ensure that its operations will be conducted safely. First, the operator's continuous airworthiness maintenance program would have to be evaluated to ensure that it is adequate. For example, the program would have to incorporate procedures to preclude extended range operations with any two-engine airplane that had an engine or other primary system failure on a previous flight, unless appropriate corrective action had been taken. Periodic reporting of current engine reliability and notification of changed maintenance procedures prior to implementation would also be necessary.

The operator would also have to use adequate radio and navigation equipment for the routes to be flown. In addition, fuel supplies would have to be shown to be adequate, for each flight. In establishing the necessary fuel supplies, a critical fuel scenario would be considered, involving a simultaneous failure of the pressurization system (forcing low-level, high-fuel-burn flight) and of an engine, at the critical point in time of the flight based on the time needed to reach a suitable alternate airport.

In addition, the operator would have to revise its Operations Manual to include special procedures for single engine operations. Also, its crewmember training and evaluation programs would have to be upgraded to cover the procedures for extended range operations. To ensure that the operator's overall procedures are adequate and that it is capable of conducting extended range operations, the operator would have to conduct a validation flight, witnessed by the FAA.

The above discussion only outlines the requirements that would have to be met for the approval of extended range operations with two-engine aircraft and presents several examples of those requirements. The advisory circular includes considerably more detailed and comprehensive engineering and operational criteria which would have to met before approval would be granted.

Issued in Washington, DC, on June 25, 1985.

[FR Doc. 85-15657 Filed 6-28-85; 8:45 am]
BILLING CODE 4910-13-M

Air Traffic Procedures Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) Air Traffic Procedures Advisory Committee (ATPAC) to be held from July 23, at 9 a.m., through July 26, 1985, at 4 p.m., at FAA Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, Missouri.

The agenda for this meeting is as follows: A continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of minutes.
2. Discussion of agenda items.
3. Discussion of urgent priority items.
4. Report from Executive Director.
5. Old Business.
6. New Business.
7. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public, but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify, not later than July 19, 1985, Mr. Walter H. Mitchell, Executive Director, ATPAC, Air Traffic, Acting ATO–300, 800 Independence Avenue, SW., Washington, DC, 20591, telephone (202) 426–3725. Information may be obtained from the same source.

The next quarterly meeting of the FAA ATPAC is planned to be held from October 21 through October 24, 1985, in Washington, DC.

Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on June 25, 1985.

Walter H. Mitchell,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 85–15656 Filed 6–28–85; 8:45 am]

BILLING CODE 4910–13–M

Life Preservers; Request for Comments on Draft Technical Standard Order (TSO)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments on draft technical standard order (TSO).

SUMMARY: The draft TSO–C13e prescribes the minimum performance standards that life preservers must meet in order to be identified with the TSO marking "TSO–C13e." The TSO–C13e essentially is identical to current TSO–C13d except for the changes described as follows: (1) Paragraph (d) is revised to withdraw authorization to identify or mark life preservers under any preceeding TSO, effective 2 years after the effective date of TSO–C13e. (2) Paragraph 4.1.2 of Appendix 1 is revised to allow use of one or more separate gastight flotation chambers. (3) Paragraph 4.1.11 is revised to require more stringent life preserver retention and donning characteristics. (4) A new donning test is specified in paragraph 5.9. (5) A new paragraph 4.1.12.6 is added to require that a properly donned life preserver not form a trough which wold significantly direct wave action into the wearer's face. (6) Paragraph 4.1.13 is revised to require an automatically activated survivor locator light. (7) Paragraph 4.1.14 is revised to require a stowage package for the life preserver.

DATE: Comments must identify the TSO file number and be received on or before October 1, 1985.

ADDRESS: Send all comments on the draft technical standard order to:

Federal Aviation Administration, Policy and Procedures Branch, AWS–110, Aircraft Engineering Division, Office of Airworthiness—File No. TSO–C13e, 800 Independence Avenue, SW., Washington, DC. 20591

Or deliver comments to:

Room 335, 800 Independence Avenue, SW., Washington, DC. 20591

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Policy and Procedures Branch, AWS–110, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC. 20591 Telephone (202) 426–8395.

Comments received on the draft technical standard order may be inspected, before and after the closing date for comments, at Room 335, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC. 20591, between 8:30 a.m. and 5:00 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they may desire. Communications should identify the TSO file number and be submitted to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

How to Obtain Copies

A copy of the proposed draft TSO may be obtained by contacting the person under "For Further Information Contact." Federal Test Method Standard No. 191A may be examined at any FAA aircraft certification office, and may be obtained (or purchased) from the General Services Administration, Business Service Center, Region 3, 7th and D Streets, SW., Washington, DC. 20407.

Issued in Washington, DC, on June 24, 1985.

Thomas E. McSweeny,

Manager, Aircraft Engineering Division.

[FR Doc. 85–15658 Filed 6–28–85; 8:45 am]

BILLING CODE 4910–13–M

Radio Technical Commission for Aeronautics (RTCA), Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Executive Committee to be held on July 19, 1985, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washingon, D.C., commencing at 9:00 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Opening Remarks; (2) Approval of Minutes of Meeting Held on May 17, 1985; (3) Chairman's Report on RTCA Administration and Activities; (4) Special Committee Activities Report for May and June 1985; (5) Report of the RTCA Fiscal and Management Sub-Committee; (6) Consideration of Resolution to Amend the RTCA Constitution and Bylaws; (7) Consideration of Proposals to Establish New Special Committees; and (8) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C., 20005, (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on June 24, 1985.

Karl F. Bierach,

Designated Officer.

[FR Doc. 85-15731 Filed 6-28-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Secret Service

Appointment of Performance Review Board (PRB) Members

This notice announces the appointment of members of Senior Executive Service Performance Review Boards in accordance with 5 U.S.C. 4314(c)(4) for the rating period beginning July 1, 1984, and ending June 30, 1985. Each PRB will be composed of at least three of the Senior Executive Service members listed below.

Name and Title

William R. Barton—Deputy Director, U.S. Secret Service
Joseph R. Carlon—Assistant Director, Protective Research (USSS)
Edward J. Pollard—Assistant Director, Protective Operations (USSS)
Gerald W. Bechtle—Assistant Director, Inspection (USSS)
Larry B. Sheafe—Assistant Director, Investigations (USSS)
Stephen E. Garmon—Assistant Director, Administration (USSS)
Robert R. Snow—Assistant to the Director, Public Affairs (USSS)
Robert L. DeProspero—Assistant to the Director, Training (USSS)
Edward P. Walsh—Deputy Assistant Director, Protective Research (USSS)
William R. Hoskyn—Deputy Assistant Director, Protective Operations (USSS)
Don A. Edwards—Deputy Assistant Director, Protective Operations (USSS)
Paul A. Buskirk—Deputy Assistant Director, Protective Operations (USSS)
Kevin R. Houlihan—Deputy Assistant Director, Investigations (USSS)
John J. Kelleher—Chief Counsel, U.S. Secret Service

For further information contract: Wesley Bishop, Chief, Personnel Division, Room 912, 1800 G Street, NW., Washington, D.C. 20223, Telephone No. 202-535-5800.

John R. Simpson,

Director.

[FR Doc. 85-15695 Filed 6-28-85; 8:45 am]

BILLING CODE 4810-42-M

VETERANS ADMINISTRATION

Veterans Administration Wage Committee; Meetings

The Veterans Administration, in accordance with Pub. L. 92-463, gives notice that meetings of the Veterans Administration Wage Committee will be held on:

Thursday, July 18, 1985, at 2:30 p.m.
Thursday, August 1, 1985, at 2:30 p.m.
Thursday, August 15, 1985, at 2:30 p.m.
Thursday, August 29, 1985, at 2:30 p.m.
Thursday, September 12, 1985, at 2:30 p.m.
Thursday, September 26, 1985, at 2:30 p.m.

The meetings will be held in Room 304, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Veterans Administration and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Pub. L. 92-463, as amended by Pub. L. 94-409, and as cited in 5 U.S.C. 552b(c)(2) and (4).

However, members of the public are invited to submit material in writing to the Chairman for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairman, Veterans Administration Wage Committee, Room 1175, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: June 24, 1985.

By direction of the Administrator.

Donald W. Jones,

Associate Deputy Administrator for Public and Consumer Affairs.

[FR Doc. 85-19686 Filed 6-28-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 126
Monday, July 1, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

POSTAL SERVICE

(Board of Governors)

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold meetings at 9:30 a.m. on Monday, July 8, 1985, in Washington, D.C., and at 8:30 a.m. on Wednesday, July 10, 1985, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, D.C. As indicated in the following paragraph, the July 8 meeting is closed to public observation. The July 10 meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meetings should be addressed to the Secretary of the Board, David F. Harris, at (202) 245-3734.

At its meeting on June 4, 1985, the Board voted in accordance with the provisions of the Government in the Sunshine Act to close to public observation its meeting scheduled for July 8. (See 50 FR 24872, June 13, 1985.)

The meeting will involve a discussion of personnel matters.

AGENDA

Monday Session

July 8, 1985—9:30 a.m. (Closed)

1. Discussion of Personnel Matters.

Wednesday Session

July 10, 1985—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, June 3–4, 1985.
2. Remarks of the Postmaster General.

(In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the Members of miscellaneous current developments concerning the Postal Service. Nothing that requires a decision by the Board is brought up under this item.)

3. Consideration of Postal Rate Commission recommended decision in Docket No. MC84-2, "Mail Classification Schedule, E-COM Service."

(The Governors will consider the Postal Rate Commission's recommended decision of December 21, 1984, and Order No. 613 of June 26, 1985.)

4. Consideration of proposed filing with the Postal Rate Commission for mail classification change.

(The Board will consider a proposed change to the Domestic Mail Classification Schedule regarding forwarding of mail by commercial mail receiving agents.)

5. Report on Operations Group.

(James V. Jellison, Senior Assistant Postmaster General, Operations Group, will report on the Operations Group.)

6. Review of Public and Employee Communications Programs.

(Mary J. Layton, Assistant Postmaster General, Public and Employee Communications Department, will report on communications and public affairs.)

7. Briefing on Safety Program.

(Darnley M. Howard, Director, Office of Safety & Health, will report on the safety program.)

8. Briefing on the National Address Change Program.

(Robert G. Krause, Director, Office of Address Information & Management, will report on the national address change program.)

9. Consideration of amendment to the Bylaws of the Board of Governors.

(Miss Peters will present a proposed change to the Board's Bylaws regarding funding Research and Development projects.)

10. Consideration of Extension of Service Contract.

(Mr. Schiller will propose exercising an option to extend an existing contract for professional support services.)

11. Capital Investments:

a. Automation Program—Phase II.

b. Redding, California—General Mail Facility.

12. Consideration of the Tentative Agenda for the August 5–6, 1985, meeting of the Board of Governors in Anchorage, Alaska.

David F. Harris,

Secretary.

[FR Doc. 85-15822 Filed 6-27-85; 2:45 pm]

BILLING CODE 7710-12-M

federal register

Monday
July 1, 1985

Part II

Department of the Treasury

Financial Management Service

Circular 570; 1985 Revision; Surety Companies Acceptable on Federal Bonds; Notice

4810-35
4-00236

DEPARTMENT OF THE TREASURY

FINANCIAL MANAGEMENT SERVICE

(Dept. Circular 570; 1985 Rev.)

COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE SURETIES ON FEDERAL BONDS AND AS ACCEPTABLE REINSURING COMPANIES

Effective: July 1, 1985

This Circular is published annually, as of July 1, solely for the information of Federal bond-approving officers and persons required to give bonds to the United States. Copies of this Circular and other information pertinent to Federal sureties may be obtained from: Surety Bond Branch, Financial Management Service, Department of the Treasury, Washington, DC 20226. Telephone: (202) 634-2319. Interim changes are published in the FEDERAL REGISTER as they occur (See Note a/).

The following companies have complied with the law and the regulations of the Treasury Department and are acceptable as sureties and reinsurers on Federal bonds (under Sections 9304 to 9308 of Title 31 of the United States Code), to the extent of and with respect to the localities indicated, except as indicated in Footnote 2.

W. E. Douglas
Commissioner
Financial Management
Service

IMPORTANT INFORMATION IS CONTAINED IN THE NOTES AT THE END OF THIS CIRCULAR. PLEASE READ THE NOTES CAREFULLY.

AID Insurance Company (Mutual). BUSINESS ADDRESS: 701 Fifth Avenue, Des Moines, IA 50309. UNDERWRITING LIMITATION b/: $10,629,000. SURETY LICENSES c/: AZ, AR, CA, CO, DC, ID, IL, IN, IA, KS, MN, MD, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa. FEDERAL PROCESS AGENTS d/.

Accredited Surety and Casualty Company, Inc. BUSINESS ADDRESS: 918 South Orange Avenue, Orlando, FL 32806. UNDERWRITING LIMITATION b/: $254,000. SURETY LICENSES c/: AL, FL, GA, IN, LA, MS, VA. INCORPORATED IN: Florida. FEDERAL PROCESS AGENTS d/.

The Aetna Casualty and Surety Company. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. UNDERWRITING LIMITATION b/: $108,715,000. SURETY LICENSES c/: All. INCORPORATED IN: Connecticut. FEDERAL PROCESS AGENTS d/.

Aetna Casualty and Surety Company of Illinois. BUSINESS ADDRESS: 1020 - 31st Street, Downers Grove, IL 60515. UNDERWRITING LIMITATION b/: $23,844,000. SURETY LICENSES c/: All except GU, ME, NH, NC, PR, VI. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

Aetna Life and Casualty Company. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. UNDERWRITING LIMITATION b/: $217,044,000. SURETY LICENSES c/: CT, DC. INCORPORATED IN: Connecticut. FEDERAL PROCESS AGENTS d/.

Aetna Reinsurance Company. BUSINESS ADDRESS: One Franklin Plaza, Philadelphia, PA 19102. UNDERWRITING LIMITATION b/: $3,450,000. SURETY LICENSES c/: AL, CA, DE, GA, HI, IN, IA, KS, LA, MS, NJ, NY, OK, TX, UT. INCORPORATED IN: Delaware. FEDERAL PROCESS AGENTS d/.

Affiliated FM Insurance Company. BUSINESS ADDRESS: Allendale Park, P.O. Box 7500, Johnston, RI 02919. UNDERWRITING LIMITATION b/: $2,874,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: Rhode Island. FEDERAL PROCESS AGENTS d/.

Alaska Pacific Assurance Company. BUSINESS ADDRESS: 4040 "B" Street, Anchorage, AK 99503. UNDERWRITING LIMITATION b/: $2,046,000. SURETY LICENSES c/: AK, CA, ID, MS, OR, SD. INCORPORATED IN: Alaska. FEDERAL PROCESS AGENTS d/.

Allegheny Mutual Casualty Company. BUSINESS ADDRESS: 485 Chestnut Street, Meadville, PA 16335. UNDERWRITING LIMITATION b/: $275,000. SURETY LICENSES c/: DC, FL, IL, IN, LA, MD, MI, NJ, OH, OK, PA, TN, TX, WI. INCORPORATED IN: Pennsylvania. FEDERAL PROCESS AGENTS d/.

Allendale Mutual Insurance Company. 2* BUSINESS ADDRESS: Post Office Box 7500, Johnston, RI 02919. UNDERWRITING LIMITATION b/: $21,527,000. SURETY LICENSES c/: All except DE, GU, KS, LA, PR. INCORPORATED IN: Rhode Island. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

Allianz Insurance Company. BUSINESS ADDRESS: Post Office Box 54897, Terminal Annex, Los Angeles, CA 90054. UNDERWRITING LIMITATION b/: $3,522,000. SURETY LICENSES c/: All except GU, OK. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Allstate Insurance Company. BUSINESS ADDRESS: Allstate Plaza, Northbrook, IL 60062. UNDERWRITING LIMITATION b/: $328,150,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

American Agricultural Insurance Company. BUSINESS ADDRESS: 225 Touhy Avenue, Park Ridge, IL 60068. UNDERWRITING LIMITATION b/: $6,781,000. SURETY LICENSES c/: AZ, CO, FL, GA, ID, IL, IN, IA, KS, MA, MD, NM, NY, NC, ND, OR, PA, SC, TX, UT, VA, WA, WI. (Reinsurance only in KS, MA, NY.) INCORPORATED IN: Indiana. FEDERAL PROCESS AGENTS d/.

American Automobile Insurance Company. BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. UNDERWRITING LIMITATION b/: $5,615,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: Missouri. FEDERAL PROCESS AGENTS d/.

AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA. BUSINESS ADDRESS: 11222 Quail Roost Dr., Miami, FL 33157. UNDERWRITING LIMITATION b/: $1,843,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: Florida. FEDERAL PROCESS AGENTS d/.

American Bonding Company. BUSINESS ADDRESS: 8601 Beverly Boulevard, Los Angeles, CA 90048. UNDERWRITING LIMITATION b/: $331,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, DC, HI, ID, IA, KS, MD, MT, NE, NV, NM, OK, OR, TX, UT, WA. INCORPORATED IN: Nebraska. FEDERAL PROCESS AGENTS d/.

American Casualty Company of Reading, Pennsylvania. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $5,052,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Pennsylvania. FEDERAL PROCESS AGENTS d/.

AMERICAN CENTENNIAL INSURANCE COMPANY. BUSINESS ADDRESS: 400 Beneficial Center, Peapack, NJ 07977. UNDERWRITING LIMITATION b/: $2,322,000. SURETY LICENSES c/: All except GU, ME, PR, WY. INCORPORATED IN: Delaware. FEDERAL PROCESS AGENTS d/.

American Credit Indemnity Company. BUSINESS ADDRESS: 300 St. Paul Place, Baltimore, MD 21202. UNDERWRITING LIMITATION b/: $5,749,000. SURETY LICENSES c/: All except GU, HI, PR, VI, WY. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

American Economy Insurance Company. BUSINESS ADDRESS: 500 North Meridian Street, Indianapolis, IN 46207. UNDERWRITING LIMITATION b/: $8,283,000. SURETY LICENSES c/: All except CT, GU, ME, NJ, PR, VI. (Reinsurance only in NH.) INCORPORATED IN: Indiana. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

American Employers' Insurance Company. BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. UNDERWRITING LIMITATION b/: $4,051,000. SURETY LICENSES c/: All except GU, PR. INCORPORATED IN: Massachusetts. FEDERAL PROCESS AGENTS d/.

AMERICAN-EUROPEAN REINSURANCE CORPORATION. BUSINESS ADDRESS: 280 Park Avenue, New York, NY 10017. UNDERWRITING LIMITATION b/: $794,000. SURETY LICENSES c/: AK, CO, DE, DC, MI, NE, NY. INCORPORATED IN: Delaware. FEDERAL PROCESS AGENTS d/.

American Fidelity Company. BUSINESS ADDRESS: Post Office Box 960, Manchester, NH 03105. UNDERWRITING LIMITATION b/: $789,000. SURETY LICENSES c/: AK, CT, DC, IA, ME, MD, MA, MS, NE, NH, ND, OK, RI, SD, UT, VT, WV. INCORPORATED IN: Vermont. FEDERAL PROCESS AGENTS d/.

American Fire and Casualty Company. 2* BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. UNDERWRITING LIMITATION b/: $3,509,000. SURETY LICENSES c/: AL, AR, CO, DC, FL, GA, KS, KY, LA, MD, MS, MO, NC, OK, SC, TN, TX, VA. INCORPORATED IN: Florida. FEDERAL PROCESS AGENTS d/.

American General Fire and Casualty Company. BUSINESS ADDRESS: Post Office Box 1502, Houston, TX 77001. UNDERWRITING LIMITATION b/: $2,651,000. SURETY LICENSES c/: AR, LA, NM, OK, TX. INCORPORATED IN: Texas. FEDERAL PROCESS AGENTS d/.

American Guarantee and Liability Insurance Company. BUSINESS ADDRESS: 231 North Martingale Road, Schaumburg, IL 60196. UNDERWRITING LIMITATION b/: $2,040,000. SURETY LICENSES c/: All except GU, HI, PR, VI. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

American Indemnity Company. BUSINESS ADDRESS: Post Office Box 1259, Galveston, TX 77553. UNDERWRITING LIMITATION b/: $2,878,000. SURETY LICENSES c/: AL, AZ, CA, CO, DC, FL, GA, IL, IN, IA, KS, KY, LA, MS, MO, MT, NE, NM, NC, OH, OK, SC, TN, TX, WI, WY. INCORPORATED IN: Texas. FEDERAL PROCESS AGENTS d/.

AMERICAN INDEPENDENT REINSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 3802, 3001 Summer Street, Stamford, CT 06905. UNDERWRITING LIMITATION b/: $2,733,000. SURETY LICENSES c/: AK, CT, DC, IN, IA, ME, MD, MN, MT, NE, NV, NM, NY, ND, TX, UT. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

The American Insurance Company. BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. UNDERWRITING LIMITATION b/: $19,474,000. SURETY LICENSES c/: All except VI. INCORPORATED IN: New Jersey. FEDERAL PROCESS AGENTS d/.

American Manufacturers Mutual Insurance Company. BUSINESS ADDRESS: Long Grove, IL 60049. UNDERWRITING LIMITATION b/: $9,747,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

American Motorists Insurance Company. BUSINESS ADDRESS: Long Grove, IL 60049. UNDERWRITING LIMITATION b/: $17,887,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

American Mutual Liability Insurance Company. BUSINESS ADDRESS: Wakefield, MA 01880. UNDERWRITING LIMITATION b/: $5,247,000. SURETY LICENSES c/: All except GU, HI, PR, VI. INCORPORATED IN: Massachusetts. FEDERAL PROCESS AGENTS d/.

American National Fire Insurance Company. BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. UNDERWRITING LIMITATION b/: $739,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

American Re-Insurance Company. BUSINESS ADDRESS: One Liberty Plaza, 91 Liberty Street, New York, NY 10006. UNDERWRITING LIMITATION b/: $29,054,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Delaware. FEDERAL PROCESS AGENTS d/.

American Southern Insurance Company. BUSINESS ADDRESS: Post Office Box 7369, Station C, Atlanta, GA 30357. UNDERWRITING LIMITATION b/: $583,000. SURETY LICENSES c/: AL, FL, GA, SC. INCORPORATED IN: Georgia. FEDERAL PROCESS AGENTS d/.

American States Insurance Company. BUSINESS ADDRESS: 500 North Meridian Street, Indianapolis, IN 46207. UNDERWRITING LIMITATION b/: $24,537,000. SURETY LICENSES c/: All except CT, GU, ME, NY, PR, VI. (Reinsurance only in NH.) INCORPORATED IN: Indiana. FEDERAL PROCESS AGENTS d/.

American Surety and Casualty Company. BUSINESS ADDRESS: Post Office Box 52326, Jacksonville, FL 32201. UNDERWRITING LIMITATION b/: $243,000. SURETY LICENSES c/ : FL. INCORPORATED IN: Florida. FEDERAL PROCESS AGENTS d/.

Amwest Surety Insurance Company. BUSINESS ADDRESS: P.O. Box 4500, Woodland Hills, CA 91365. UNDERWRITING LIMITATION b/: $274,000. SURETY LICENSES c/: AK, AZ, CA, CO, FL, ID, MT, NV, NM, OR, TX, WA. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Antilles Insurance Company. 2* BUSINESS ADDRESS: Post Office Box 3507, Old San Juan, Puerto Rico 00904. UNDERWRITING LIMITATION b/: $771,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico. FEDERAL PROCESS AGENTS d/.

ANVIL INSURANCE COMPANY. BUSINESS ADDRESS: 18021 Cowan Street, Irvine, CA 92714. UNDERWRITING LIMITATION b/: $523,000. SURETY LICENSES c/: AZ, CA, ID, MT, NV, NM, OR, TX, UT, WA, WY. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Argonaut Insurance Company. BUSINESS ADDRESS: 250 Middlefield Road, Menlo Park, CA 94025. UNDERWRITING LIMITATION b/: $9,826,000. SURETY LICENSES c/: All except ME, PR, VI. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

Arkwright-Boston Manufacturers Mutual Insurance Company.2* BUSINESS ADDRESS: 225 Wyman Street, Waltham, MA 02154. UNDERWRITING LIMITATION b/: $29,940,000. SURETY LICENSES c/: CA, CO, CT, DC, IL, IN, IA, KS, KY, MD, MA, MI, MN, MO, NE, NV, NH, NJ, NM, NY, NC, OH, RI, UT, VT, WA, WY. INCORPORATED IN: Massachusetts. FEDERAL PROCESS AGENTS d/.

Associated Indemnity Corporation. BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. UNDERWRITING LIMITATION b/: $3,786,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Atlantic Insurance Company. BUSINESS ADDRESS: Post Office Box 1771, Dallas, TX 75221. UNDERWRITING LIMITATION b/: $780,000. SURETY LICENSES c/: All except CT, DE, GU, HI, ID, IA, LA, ME, MA, NE, NH, NJ, NY, ND, PR, RI, VT, VA, VI, WA, WI, WY. INCORPORATED IN: Texas. FEDERAL PROCESS AGENTS d/.

Atlantic Mutual Insurance Company. BUSINESS ADDRESS: Atlantic Building, 45 Wall Street, New York, NY 10005. UNDERWRITING LIMITATION b/: $10,592,000. SURETY LICENSES c/: All except AL, GU, HI, VI. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

The Automobile Insurance Company of Hartford, Connecticut. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. UNDERWRITING LIMITATION b/: $2,618,000. SURETY LICENSES c/: All except AL, DE, GU. INCORPORATED IN: Connecticut. FEDERAL PROCESS AGENTS d/.

Auto-Owners Insurance Company.2* BUSINESS ADDRESS: Post Office Box 30660, Lansing, MI 48909. UNDERWRITING LIMITATION b/: $28,695,000. SURETY LICENSES c/: AL, AZ, CA, FL, GA, IL, IN, IA, MI, MN, MO, NE, NC, ND, OH, SC, SD, TN, TX, UT, WI. INCORPORATED IN: Michigan. FEDERAL PROCESS AGENTS d/.

Balboa Insurance Company. BUSINESS ADDRESS: Post Office Box 1770, Newport Beach, CA 92663. UNDERWRITING LIMITATION b/: $5,054,000. SURETY LICENSES c/: All except LA, PR. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Bankers Multiple Line Insurance Company. BUSINESS ADDRESS: 4810 North Kenneth Avenue, Chicago, IL 60630. UNDERWRITING LIMITATION b/: $3,175,000. SURETY LICENSES c/: All except DE, GU, HI, ME, PR. INCORPORATED IN: Iowa. FEDERAL PROCESS AGENTS d/.

Binford Insurance Company. BUSINESS ADDRESS: 1501 Woodfield Road, Suite 204S, Schaumburg, IL 60195. UNDERWRITING LIMITATION b/: $71,000. SURETY LICENSES c/: NM. INCORPORATED IN: New Mexico. FEDERAL PROCESS AGENTS d/.

BOND SAFEGUARD INSURANCE COMPANY. BUSINESS ADDRESS: 1010 Lake Street, Oak Park, IL 60301. UNDERWRITING LIMITATION b/: $88,000. SURETY LICENSES c/: IL. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

Boston Old Colony Insurance Company.2* BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $1,763,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: Massachusetts. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

The Buckeye Union Insurance Company.2* BUSINESS ADDRESS: Post Office Box 1499, Columbus, OH 43216. UNDERWRITING LIMITATION b/: $20,114,000. SURETY LICENSES c/: DC, FL, IL, IN, KY, MI, MD, NY, OH, PA, VA, WV. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/.

CNA CASUALTY OF PUERTO RICO. BUSINESS ADDRESS: GPO Box SA, San Juan, Puerto Rico 00936. UNDERWRITING LIMITATION b/: $1,001,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico. FEDERAL PROCESS AGENTS d/.

The Camden Fire Insurance Association. BUSINESS ADDRESS: 436 Walnut Street, Philadelphia, PA 19105-1109. UNDERWRITING LIMITATION b/: $18,090,000. SURETY LICENSES c/: All except AL, AK, AR, DE, GA, GU, HI, ID, LA, ME, MS, MT, NE, NH, OR, PR, SC, SD, TN, TX, VT, VI, WA, WY. INCORPORATED IN: New Jersey. FEDERAL PROCESS AGENTS d/.

Capitol Indemnity Corporation. BUSINESS ADDRESS: P.O. Box 5900, Madison, WI 53705. UNDERWRITING LIMITATION b/: $367,000. SURETY LICENSES c/: AZ, FL, ID, IL, IN, IA, LA, MI, MN, MO, MT, NM, ND, OK, SD, TX, WI, WY. INCORPORATED IN: Wisconsin. FEDERAL PROCESS AGENTS d/.

Centennial Insurance Company. BUSINESS ADDRESS: Atlantic Building, 45 Wall Street, New York, NY 10005. UNDERWRITING LIMITATION b/: $3,280,000. SURETY LICENSES c/: All except AL, GU, VI. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

Central Mutual Insurance Company. BUSINESS ADDRESS: 800 South Washington Street, Van Wert, OH 45891. UNDERWRITING LIMITATION b/: $2,594,000. SURETY LICENSES c/: All except AR, GU, HI, ND, OR, PR, SD, VI, WI. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/.

THE CENTRAL NATIONAL INSURANCE COMPANY OF OMAHA. BUSINESS ADDRESS: 105 South 17th St., Omaha, NE 68102. UNDERWRITING LIMITATION b/: $7,755,000. SURETY LICENSES c/: All except GU, HI, NY, VI. INCORPORATED IN: Nebraska. FEDERAL PROCESS AGENTS d/.

Century Indemnity Company. BUSINESS ADDRESS: 1600 Arch Street, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $766,000. SURETY LICENSES c/: All except DE, GU, HI, OR, PR, VI. INCORPORATED IN: Connecticut. FEDERAL PROCESS AGENTS d/.

CENTURY SURETY COMPANY. BUSINESS ADDRESS: 1889 Fountain Square Court, Columbus, OH 43224. UNDERWRITING LIMITATION b/: $326,000. SURETY LICENSES c/: IN, OH, WV. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/.

The Charter Oak Fire Insurance Company. BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183. UNDERWRITING LIMITATION b/: $2,935,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Connecticut. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

CIGNA INSURANCE COMPANY. BUSINESS ADDRESS: 1600 Arch Street, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $7,463,000. SURETY LICENSES c/: All except GU, HI, LA, VI. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

The Cincinnati Insurance Company. BUSINESS ADDRESS: Post Office Box 145496, Cincinnati, OH 45214. UNDERWRITING LIMITATION b/: $20,149,000. SURETY LICENSES c/: All except CA, CT, GU, HI, LA, ME, MA, NH, NJ, PR, RI, SD, VT, VI. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/.

Colonial Surety Company. 2* BUSINESS ADDRESS: 9 Parkway Center, Borough of Greentree, Pittsburgh, PA 15220. UNDERWRITING LIMITATION b/: $409,000. SURETY LICENSES c/: DE, NJ, PA. INCORPORATED IN: Pennsylvania. FEDERAL PROCESS AGENTS d/.

Commercial Insurance Company of Newark, New Jersey. 2* BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $4,750,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: New Jersey. FEDERAL PROCESS AGENTS d/.

Commercial Union Insurance Company. BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. UNDERWRITING LIMITATION b/: $14,629,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: Massachusetts. FEDERAL PROCESS AGENTS d/.

The Connecticut Indemnity Company. BUSINESS ADDRESS: Post Office Box 420, Hartford, CT 06141. UNDERWRITING LIMITATION b/: $1,607,000. SURETY LICENSES c/: All except PR. INCORPORATED IN: Connecticut. FEDERAL PROCESS AGENTS d/.

Consolidated Insurance Company. BUSINESS ADDRESS: 115 North Pennsylvania Street, Indianapolis, IN 46204. UNDERWRITING LIMITATION b/: $756,000. SURETY LICENSES c/: FL, ID, IL, IN, IA, KY, MI, OH, OR, TN, WA, WI. INCORPORATED IN: Indiana.

Continental Casualty Company. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $106,222,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

The Continental Insurance Company. 2* BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $14,095,000. SURETY LICENSES c/: All. INCORPORATED IN: New Hampshire. FEDERAL PROCESS AGENTS d/.

Continental Reinsurance Corporation. 2* BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $4,093,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, DC, FL, HI, ID, IL, IN, IA, MI, MT, NV, NJ, NM, NY, NC, OK, OR, TX, UT, VA, WA. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Continental Surety and Fidelity Insurance Company. BUSINESS ADDRESS: Post Office Box 730, Littleton, CO 80160. UNDERWRITING LIMITATION b/: $124,000. SURETY LICENSES c/: AK, CO, MT, NM, UT. INCORPORATED IN: Colorado. FEDERAL PROCESS AGENTS d/.

Continental Western Insurance Company.2* BUSINESS ADDRESS: Post Office Box 1594, Des Moines, IA 50306. UNDERWRITING LIMITATION b/: $2,252,000. SURETY LICENSES c/: AZ, AR, CO, DC, ID, IL, IN, IA, KS, KY, ME, MI, MN, MO, MT, NE, NV, NM, ND, OK, SD, TN, TX, UT, WI, WY. INCORPORATED IN: Iowa. FEDERAL PROCESS AGENTS d/.

Contractor's Bonding and Insurance Company. BUSINESS ADDRESS: 1213 Valley Street, Seattle, WA 98109. UNDERWRITING LIMITATION b/: $346,000. SURETY LICENSES c/: AK, AZ, ID, MT, NV, NM, OR, SC, UT, VA, WA. INCORPORATED IN: Washington. FEDERAL PROCESS AGENTS d/.

Cooperativa de Seguros Multiples de Puerto Rico. BUSINESS ADDRESS: G.P.O. Box 3846, San Juan, Puerto Rico 00936. UNDERWRITING LIMITATION b/: $2,570,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico. FEDERAL PROCESS AGENTS d/.

Cornhusker Casualty Company. BUSINESS ADDRESS: 9140 West Dodge Road, Omaha, NE 68114. UNDERWRITING LIMITATION b/: $5,310,000. SURETY LICENSES c/: CO, IA, KS, NE, SD, WY. INCORPORATED IN: Nebraska. FEDERAL PROCESS AGENTS d/.

CORONET INSURANCE COMPANY. BUSINESS ADDRESS: 3500 West Peterson Avenue, Chicago, IL 60659. UNDERWRITING LIMITATION b/: $1,103,000. SURETY LICENSES c/: FL, GA, IL, TX. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

Cotton States Mutual Insurance Company. BUSINESS ADDRESS: Post Office Box 105303, Atlanta, GA 30348. UNDERWRITING LIMITATION b/: $1,674,000. SURETY LICENSES c/: AL, FL, GA, NC, SC, TN. INCORPORATED IN: Georgia. FEDERAL PROCESS AGENTS d/.

Covenant Mutual Insurance Company. BUSINESS ADDRESS: P.O. Box 300, Hartford, CT 06101. UNDERWRITING LIMITATION b/: $270,000. SURETY LICENSES c/: AL, AZ, CA, CO, CT, FL, ID, ME, MA, MS, MD, NH, NJ, NY, OR, PA, VT, WA. INCORPORATED IN: Connecticut. FEDERAL PROCESS AGENTS d/.

Cumis Insurance Society, Inc. BUSINESS ADDRESS: Post Office Box 1084, Madison, WI 53701. UNDERWRITING LIMITATION b/: $3,750,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Wisconsin. FEDERAL PROCESS AGENTS d/.

DELTA CASUALTY COMPANY. BUSINESS ADDRESS: 4711 North Clark Street, Chicago, IL 60640. UNDERWRITING LIMITATION b/: $492,000. SURETY LICENSES c/: IL, IA. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

Dependable Insurance Company, Inc. BUSINESS ADDRESS: Post Office Box 19030, Jacksonville, FL 32245-9030. UNDERWRITING LIMITATION b/: $1,731,000. SURETY LICENSES c/: All except GU, ME, NH, VI. INCORPORATED IN: Florida. FEDERAL PROCESS AGENTS d/.

DEVELOPERS INSURANCE COMPANY. BUSINESS ADDRESS: 333 Wilshire Avenue, Anaheim, CA 92801. UNDERWRITING LIMITATION b/: $263,000. SURETY LICENSES c/: CA, NV. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

Empire Fire and Marine Insurance Company. BUSINESS ADDRESS: 1624 Douglas Street, Omaha, NE 68102. UNDERWRITING LIMITATION b/: $1,140,000. SURETY LICENSES c/: All except CT, DE, DC, GU, LA, MA, NJ, NY, OR, PR, RI, TN, VI, WV. INCORPORATED IN: Nebraska. FEDERAL PROCESS AGENTS d/.

The Employers' Fire Insurance Company. BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. UNDERWRITING LIMITATION b/: $1,812,000. SURETY LICENSES c/: All except GU, PR. INCORPORATED IN: Massachusetts. FEDERAL PROCESS AGENTS d/.

EMPLOYERS INSURANCE OF WAUSAU A Mutual Company. BUSINESS ADDRESS: 2000 Westwood Drive, Wausau, WI 54401. UNDERWRITING LIMITATION b/: $10,262,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: Wisconsin. FEDERAL PROCESS AGENTS d/.

Employers Mutual Casualty Company. BUSINESS ADDRESS: Post Office Box 712, Des Moines, IA 50303-0712. UNDERWRITING LIMITATION b/: $9,366,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: Iowa. FEDERAL PROCESS AGENTS d/.

Employers Reinsurance Corporation. BUSINESS ADDRESS: 5200 Metcalf, Post Office Box 2991, Overland Park, KS 66201. UNDERWRITING LIMITATION b/: $43,971,000. SURETY LICENSES c/: All except GU, HI, PR, VI. INCORPORATED IN: Missouri. FEDERAL PROCESS AGENTS d/.

ENNIA REINSURANCE COMPANY OF AMERICA. BUSINESS ADDRESS: 127 John Street, New York, NY 10038. UNDERWRITING LIMITATION b/: $1,740,000. SURETY LICENSES c/: AR, GA, ID, IL, IN, IA, KS, LA, MS, NY, OK, TX. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

Erie Insurance Company. BUSINESS ADDRESS: 100 Erie Insurance Place, Erie, PA 16530. UNDERWRITING LIMITATION b/: $464,000. SURETY LICENSES c/: DC, IN, KY, MD, OH, PA, VA, WV. INCORPORATED IN: Pennsylvania. FEDERAL PROCESS AGENTS d/.

EVANSTON INSURANCE COMPANY. BUSINESS ADDRESS: Shand Morahan Plaza, Evanston, IL 60201. UNDERWRITING LIMITATION b/: $3,939,000. SURETY LICENSES c/: DC, IL. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

FAIRMONT INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 7750, 4111 West Alameda Avenue, Burbank, CA 91510-7750. UNDERWRITING LIMITATION b/: $2,137,000. SURETY LICENSES c/: All except AL, GA, GU, HI, IL, KS, ME, MA, MN, MO, NH, NJ, OH, OK, PA, PR, RI, SD, TN, VT, VA, VI. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Farmers Alliance Mutual Insurance Company. BUSINESS ADDRESS: 1122 North Main Street, McPherson, KS 67460. UNDERWRITING LIMITATION b/: $1,639,000. SURETY LICENSES c/: AZ, CA, CO, ID, IN, IA, KS, MN, MO, MT, NE, NM, NY, ND, OK, OR, SD, TX, WA. INCORPORATED IN: Kansas. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

Farmland Mutual Insurance Company. BUSINESS ADDRESS: 1963 Bell Avenue, Des Moines, IA 50315. UNDERWRITING LIMITATION b/: $2,015,000. SURETY LICENSES c/: AR, CO, IL, IN, IA, KS, KY, MN, MO, NE, NV, ND, OH, OK, SD, TX, WI, WY. INCORPORATED IN: Iowa. FEDERAL PROCESS AGENTS d/.

FAR WEST INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 4500, Woodland Hills, CA 91365. UNDERWRITING LIMITATION b/: $108,000. SURETY LICENSES c/: CA. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Federal Insurance Company. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $40,929,000. SURETY LICENSES c/: All. INCORPORATED IN: New Jersey. FEDERAL PROCESS AGENTS d/.

FEDERATED MUTUAL INSURANCE COMPANY. BUSINESS ADDRESS: 129 East Broadway, Owatonna, MN 55060. UNDERWRITING LIMITATION b/: $20,911,000. SURETY LICENSES c/: All except AK, DE, GU, HI, ME, NH, PR, VI. INCORPORATED IN: Minnesota. FEDERAL PROCESS AGENTS d/.

The Fidelity and Casualty Company of New York. 2* BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $10,160,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: New Hampshire. FEDERAL PROCESS AGENTS d/.

Fidelity and Deposit Company. BUSINESS ADDRESS: Charles and Lexington Streets, Baltimore, MD 21203. UNDERWRITING LIMITATION b/: $294,000. SURETY LICENSES c/: MD, TX. INCORPORATED IN: Maryland. FEDERAL PROCESS AGENTS d/.

Fidelity and Deposit Company of Maryland. BUSINESS ADDRESS: Charles and Lexington Streets, Baltimore, MD 21203. UNDERWRITING LIMITATION b/: $13,738,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: Maryland. FEDERAL PROCESS AGENTS d/.

Fireman's Fund Insurance Company. BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. UNDERWRITING LIMITATION b/: $75,181,000. SURETY LICENSES c/: All. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Firemen's Insurance Company of Newark, New Jersey 2*. BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $28,573,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: New Jersey. FEDERAL PROCESS AGENTS d/.

First California Property and Casualty Insurance Company. BUSINESS ADDRESS: 23621 Park Sorrento, Suite 101, Calabasas, CA 91302. UNDERWRITING LIMITATION b/: $193,000. SURETY LICENSES: CA. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

First Financial Insurance Company. BUSINESS ADDRESS: 401-417 Fayette Avenue, Springfield, IL 62704. UNDERWRITING LIMITATION b/: $452,000. SURETY LICENSES c/: AK, AZ, AR, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NV, NM, ND, OH, OK, OR, SC, SD, TN, TX, UT, VA, WA, WV, WI. (Includes bail bonds in IN.) INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

First Insurance Company of Hawaii, Ltd. BUSINESS ADDRESS: Post Office Box 2866, Honolulu, HI 96803. UNDERWRITING LIMITATION b/: $1,587,000. SURETY LICENSES c/: GU, HI. INCORPORATED IN: Hawaii. FEDERAL PROCESS AGENTS d/.

First National Insurance Company of America. BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. UNDERWRITING LIMITATION b/: $2,930,000. SURETY LICENSES c/: All except GU, HI, ME, NH, PR, VT, VI. INCORPORATED IN: Washington. FEDERAL PROCESS AGENTS d/.

Foremost Insurance Company. BUSINESS ADDRESS: 5800 Foremost Drive, SE, P.O. Box 2450, Grand Rapids, MI 49501. UNDERWRITING LIMITATION b/: $11,926,000. SURETY LICENSES c/: All except DE, DC, GU, HI, PR, RI, VI. INCORPORATED IN: Michigan. FEDERAL PROCESS AGENTS d/.

Fremont Indemnity Company. BUSINESS ADDRESS: 1709 West Eighth Street, Los Angeles, CA 90017. UNDERWRITING LIMITATION b/: $8,619,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, NE, NV, NJ, NM, ND, OH, OK, OR, PA, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Fritz Insurance Company. BUSINESS ADDRESS: 1501 Woodfield Road, Suite 204S, Schaumburg, IL 60195. UNDERWRITING LIMITATION b/: $68,000. SURETY LICENSES c/: NM. INCORPORATED IN: New Mexico. FEDERAL PROCESS AGENTS d/.

General Accident Insurance Company of America. BUSINESS ADDRESS: 436 Walnut Street, Philadelphia, PA 19105-1109. UNDERWRITING LIMITATION b/: $49,994,000. SURETY LICENSES c/: All except AL, AR, GU, ME, ND, SC, VI. INCORPORATED IN: Pennsylvania. FEDERAL PROCESS AGENTS d/.

GENERAL CASUALTY COMPANY OF WISCONSIN. BUSINESS ADDRESS: One General Drive, Sun Prairie, WI 53596. UNDERWRITING LIMITATION b/: $3,044,000. SURETY LICENSES c/: IL, IN, IA, KS, MN, MO, NE, ND, SD, WI. INCORPORATED IN: Wisconsin. FEDERAL PROCESS AGENTS d/.

General Insurance Company of America. BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. UNDERWRITING LIMITATION b/: $14,470,000. SURETY LICENSES c/: All. INCORPORATED IN: Washington. FEDERAL PROCESS AGENTS d/.

General Reinsurance Corporation. 2* BUSINESS ADDRESS: 695 East Main Street, P.O. Box 10350, Stamford, CT 06904-2350. UNDERWRITING LIMITATION b/: $55,724,000. SURETY LICENSES c/: All except GU, HI, PR, VI. INCORPORATED IN: Delaware. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

The Glens Falls Insurance Company. 2* BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $1,885,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Delaware. FEDERAL PROCESS AGENTS d/.

Global Surety & Insurance Co. BUSINESS ADDRESS: 160 Kiewit Plaza, Omaha, NE 68131. UNDERWRITING LIMITATION b/: $1,120,000. SURETY LICENSES c/: AZ, CA, CO, MT, NE, SD. INCORPORATED IN: Nebraska. FEDERAL PROCESS AGENTS d/.

Globe Indemnity Company. BUSINESS ADDRESS: 150 William Street, New York, NY 10038. UNDERWRITING LIMITATION b/: $8,436,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: Delaware. FEDERAL PROCESS AGENTS d/.

Grain Dealers Mutual Insurance Company. BUSINESS ADDRESS: Post Office Box 1747, Indianapolis, IN 46206. UNDERWRITING LIMITATION b/: $2,574,000. SURETY LICENSES c/: All except AL, AK, CT, DE, DC, FL, GU, ID, ME, MD, MA, MT, NH, NJ, NY, ND, PA, PR, RI, UT, VT, VI, WV. INCORPORATED IN: Indiana. FEDERAL PROCESS AGENTS d/.

GRAMERCY INSURANCE COMPANY. 2* BUSINESS ADDRESS: Post Office Box 53256, Houston, TX 77052. UNDERWRITING LIMITATION b/: $229,000. SURETY LICENCES c/: DE, MD, TX. INCORPORATED IN: Texas. FEDERAL PROCESS AGENTS d/.

Granite State Insurance Company. BUSINESS ADDRESS: Post Office Box 960, Manchester, NH 03107. UNDERWRITING LIMITATION b/: $746,000. SURETY LICENSES c/: All except CT, DE, GU, HI. INCORPORATED IN: New Hampshire. FEDERAL PROCESS AGENTS d/.

Great American Insurance Company. BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. UNDERWRITING LIMITATION b/: $33,925,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/.

Great Northern Insurance Company. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $1,102,000. SURETY LICENSES c/: All except AL, AR, CA, CT, DE, GU, ID, NC, PR, TN, VI, WV. INCORPORATED IN: Minnesota. FEDERAL PROCESS AGENTS d/.

Greater New York Mutual Insurance Company. 2* BUSINESS ADDRESS: 215 Lexington Avenue, New York, NY 10016. UNDERWRITING LIMITATION b/: $6,926,000. SURETY LICENSES c/: All except AK, AR, GU, HI, LA, OR, VI. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

Gulf Insurance Company. BUSINESS ADDRESS: Post Office Box 1771, Dallas, TX 75221. UNDERWRITING LIMITATION b/: $9,724,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: Missouri. FEDERAL PROCESS AGENTS d/.

The Hamilton Mutual Insurance Company of Cincinnati, Ohio. BUSINESS ADDRESS: 1520 Madison Road, Cincinnati, OH 45206. UNDERWRITING LIMITATION b/: $366,000. SURETY LICENSES c/: IN, KY, MI, OH. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

The Hanover Insurance Company. BUSINESS ADDRESS: 440 Lincoln Street, Worcester, MA 01605. UNDERWRITING LIMITATION b/: $20,854,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: New Hampshire. FEDERAL PROCESS AGENTS d/.

HARCO NATIONAL INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 94309, Schaumburg, IL 60194. UNDERWRITING LIMITATION b/: $1,613,000. SURETY LICENSES c/: All except GU, HI, PR, VI. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

Harleysville Mutual Insurance Company. BUSINESS ADDRESS: 355 Maple Avenue, Harleysville, PA 19438. UNDERWRITING LIMITATION b/: $11,094,000. SURETY LICENSES c/: CA, CO, DE, DC, GA IL, IN, IA, KS, MD, MI, MS, MO, NJ, NM, NC, OH, OK, PA, SC, TN, TX, UT, VA, WV, WI. INCORPORATED IN: Pennsylvania. FEDERAL PROCESS AGENTS d/.

Hartford Accident and Indemnity Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $85,705,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Connecticut. FEDERAL PROCESS AGENTS d/.

Hartford Casualty Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $7,233,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: New Jersey. FEDERAL PROCESS AGENTS d/.

Hartford Fire Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $79,720,000. SURETY LICENSES c/: All except VI. INCORPORATED IN: Connecticut. FEDERAL PROCESS AGENTS d/.

Hartford Insurance Company of Alabama. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $967,000. SURETY LICENSES c/: AL, OK, PA. INCORPORATED IN: Alabama. FEDERAL PROCESS AGENTS d/.

Hartford Insurance Company of Illinois. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $3,012,000. SURETY LICENSES c/: IL, PA. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

Hartford Insurance Company of the Midwest. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $1,018,000. SURETY LICENSES c/: AK, AR, CT, DC, FL, GA, ID, IN, IA, KS, LA, MD, MI, MT, NE, NM, NY, ND, OR, PA, SC, TX, UT, VA, WV, WI. INCORPORATED IN: Indiana. FEDERAL PROCESS AGENTS d/.

Hartford Insurance Company of the Southeast. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $912,000. SURETY LICENSES c/: FL, GA, LA, PA. INCORPORATED IN: Florida. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

THE HAWAIIAN INSURANCE & GUARANTY COMPANY, LIMITED. BUSINESS ADDRESS: P.O. Box 2255, 1001 Bishop Street, Pacific Tower, Honolulu, HI 96804. UNDERWRITING LIMITATION b/: $1,449,000. SURETY LICENSES c/: AK, AR, CA, HI, ID, NV, OR, WA. INCORPORATED IN: Hawaii. FEDERAL PROCESS AGENTS d/.

Hawkeye-Security Insurance Company. BUSINESS ADDRESS: 1017 Walnut Street, Des Moines, IA 50307. UNDERWRITING LIMITATION b/: $1,614,000. SURETY LICENSES c/: AZ, CO, DC, ID, IL, IN, IA, KS, MD, MI, MN, MO, MT, NE, NV, NM, OH, SD, TX, UT, VA, WI, WY. INCORPORATED IN: Iowa. FEDERAL PROCESS AGENTS d/.

Highlands Insurance Company. BUSINESS ADDRESS: 600 Jefferson Street, Houston, TX 77002. UNDERWRITING LIMITATION b/: $20,337,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Texas. FEDERAL PROCESS AGENTS. d/.

Highlands Underwriters Insurance Company. BUSINESS ADDRESS: 600 Jefferson Street, Houston, TX 77002. UNDERWRITING LIMITATION b/: $1,440,000. SURETY LICENSES c/: AL, AZ, AR, CA, FL, GA, LA, MS, NM, OK, TX. INCORPORATED IN: Texas. FEDERAL PROCESS AGENTS d/.

The Home Indemnity Company. BUSINESS ADDRESS: 59 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $5,879,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: New Hampshire. FEDERAL PROCESS AGENTS d/.

The Home Insurance Company. BUSINESS ADDRESS: 59 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $29,171,000. SURETY LICENSES c/: All except VI. INCORPORATED IN: New Hampshire. FEDERAL PROCESS AGENTS d/.

Houston General Insurance Company. BUSINESS ADDRESS: Post Office Box 2932, Fort Worth, TX 76113-2932. UNDERWRITING LIMITATION b/: $1,266,000. SURETY LICENSES c/: All except CT, GU, HI, ME, MA, MN, NE, NH, NJ, PA, PR, RI, VT, VI, WV, WI. INCORPORATED IN: Texas. FEDERAL PROCESS AGENTS d/.

Hudson Insurance Company. BUSINESS ADDRESS: 280 Park Avenue, New York, NY 10017. UNDERWRITING LIMITATION b/: $829,000. SURETY LICENSES c/: CA, CO, DE, IA, NH, NY. INCORPORATED IN: Delaware. FEDERAL PROCESS AGENTS d/.

IGF Insurance Company. BUSINESS ADDRESS: 2882 - 106th Street, Des Moines, IA 50322. UNDERWRITING LIMITATION b/: $354,000. SURETY LICENSES c/: AR, CO, IL, IA, KS, MN, MO, MT, NE, ND, OK, SD, WI. INCORPORATED IN: Iowa. FEDERAL PROCESS AGENTS d/.

INA Reinsurance Company. BUSINESS ADDRESS: One Franklin Plaza, Philadelphia, PA 19102. UNDERWRITING LIMITATION b/: $13,131,000. SURETY LICENSES c/: All except GU, ME, VI. INCORPORATED IN: Delaware. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

ITT Lyndon Property Insurance Company. BUSINESS ADDRESS: 12555 Manchester Road, St. Louis, MO 63131. UNDERWRITING LIMITATION b/: $2,559,000. SURETY LICENSES c/: All except AK, GU, HI, ME, NH, NJ, NY, PR, WY. INCORPORATED IN: Missouri. FEDERAL PROCESS AGENTS d/.

Illinois National Insurance Co. BUSINESS ADDRESS: 133 South 4th Street, Springfield, IL 62700. UNDERWRITING LIMITATION b/: $1,430,000. SURETY LICENSES c/: AK, IL, IN, IA, KY, MD, MO, MT, NE, NH, NM, NY, ND, OH, SD, TX, UT, VT, WV. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

IMPERIAL CASUALTY AND INDEMNITY COMPANY. BUSINESS ADDRESS: 306 South 15th Street, Omaha, NE 68102. UNDERWRITING LIMITATION b/: $1,794,000. SURETY LICENSES c/: All except AL, GU, HI, NY, NC, UT, VT, VI. INCORPORATED IN: Nebraska. FEDERAL PROCESS AGENTS d/.

Indemnity Company of California. BUSINESS ADDRESS: 333 Wilshire Avenue, Anaheim, CA 92801. UNDERWRITING LIMITATION b/: $421,000. SURETY LICENSES c/: CA. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Indemnity Insurance Company of North America. BUSINESS ADDRESS: 1600 Arch Street, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $10,279,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

Indiana Insurance Company. BUSINESS ADDRESS: 115 North Pennsylvania Street, Indianapolis, IN 46204. UNDERWRITING LIMITATION b/: $4,387,000. SURETY LICENSES c/: FL, ID, IL, IN, IA, KY, MI, OH, OR, TN, WA, WI. INCORPORATED IN: Indiana. FEDERAL PROCESS AGENTS d/.

Indiana Lumbermens Mutual Insurance Company.2* BUSINESS ADDRESS: Post Office Box 68600, Indianapolis, IN 46268. UNDERWRITING LIMITATION b/: $555,000. SURETY LICENSES c/: All except AK, GU, HI, ME, MA, NH, NJ, NY, PR, RI, VT, VI, WY. INCORPORATED IN: Indiana. FEDERAL PROCESS AGENTS d/.

Industrial Indemnity Company. BUSINESS ADDRESS: Post Office Box 7468, San Francisco, CA 94120. UNDERWRITING LIMITATION b/: $11,685,000. SURETY LICENSES c/: All except PR, VI, WV. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Industrial Indemnity Company of the Northwest. BUSINESS ADDRESS: 2121 4th Avenue, Suite 1500, Seattle, WA 98121. UNDERWRITING LIMITATION b/: $423,000. SURETY LICENSES c/: AK, AZ, CA, DC, HI, ID, MT, NV, OR, UT, WA. INCORPORATED IN: Washington. FEDERAL PROCESS AGENTS d/.

Inland Insurance Company. BUSINESS ADDRESS: Post Office Box 80468, Lincoln, NE 68501. UNDERWRITING LIMITATION b/: $1,523,000. SURETY LICENSES c/: AZ, CO, IA, KS, MN, MT, NE, ND, OK, SD, WY. INCORPORATED IN: Nebraska. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

Insurance Company of North America. BUSINESS ADDRESS: 1600 Arch Street, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $58,617,000. SURETY LICENSES c/: All. INCORPORATED IN: Pennsylvania. FEDERAL PROCESS AGENTS d/.

Insurance Company of the Pacific Coast. BUSINESS ADDRESS: Post Office Box 1771, Dallas, TX 75221. UNDERWRITING LIMITATION b/: $455,000. SURETY LICENSES c/: CA. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Insurance Company of the West. BUSINESS ADDRESS: Post Office Box 81063, San Diego, CA 92138. UNDERWRITING LIMITATION b/: $2,926,000. SURETY LICENSES c/: AZ, CA, NV, NM, OK, OR, WA. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Integon Indemnity Corporation. BUSINESS ADDRESS: Post Office Box 3199, Winston-Salem, NC 27152. UNDERWRITING LIMITATION b/: $637,000. SURETY LICENSES c/: AL, AK, AZ, AR, FL, GA, ID, IN, IA, KS, KY, LA, MS, MD, NE, NV, NM, NC, OH, OK, OR, SC, TN, TX, UT, VA, WA, WV. INCORPORATED IN: North Carolina. FEDERAL PROCESS AGENTS d/.

Integrity Insurance Company. BUSINESS ADDRESS: Mack Centre Drive - 5th Floor, Paramus, NJ 07652. UNDERWRITING LIMITATION b/: $2,625,000. SURETY LICENSES c/: All except CT, GU, PR, VI. INCORPORATED IN: New Jersey. FEDERAL PROCESS AGENTS d/.

Integrity Mutual Insurance Company. BUSINESS ADDRESS: Post Office Box 539, Appleton, WI 54912. UNDERWRITING LIMITATION b/: $178,000. SURETY LICENSES c/: DC, MN, WI. INCORPORATED IN: Wisconsin. FEDERAL PROCESS AGENTS d/.

International Cargo and Surety Insurance Company. BUSINESS ADDRESS: 1501 Woodfield Road, Suite 204S, Schaumburg, IL 60195. UNDERWRITING LIMITATION b/: $89,000. SURETY LICENSES c/: NM. INCORPORATED IN: New Mexico. FEDERAL PROCESS AGENTS d/.

International Fidelity Insurance Company. BUSINESS ADDRESS: 24 Commerce Street, Suite 333, Newark, NJ 07102. UNDERWRITING LIMITATION b/: $416,000. SURETY LICENSES c/: All except AL, CA, CT, GU, HI, KS, KY, ME, NE, NH, RI, VT, VI, WV, WI. INCORPORATED IN: New Jersey. FEDERAL PROCESS AGENTS d/.

International Insurance Company. BUSINESS ADDRESS: Crum & Forster, 305 Madison Ave., CN-1932, Morristown, NJ 07960-1932. UNDERWRITING LIMITATION b/: $3,173,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

International Service Insurance Company. BUSINESS ADDRESS: Post Office Box 1040, Fort Worth, TX 76101. UNDERWRITING LIMITATION b/: $1,085,000. SURETY LICENSES c/: AK, CA, NE, NM, TX. INCORPORATED IN: Texas. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

Investors Insurance Company of America. BUSINESS ADDRESS: 145 No. Franklin Turnpike, Ramsey, NJ 07446. UNDERWRITING LIMITATION b/: $1,636,000. SURETY LICENSES c/: FL, GA, NJ, NY. INCORPORATED IN: New Jersey. FEDERAL PROCESS AGENTS d/.

Iowa National Mutual Insurance Company. BUSINESS ADDRESS: 500 Second Avenue, S.E., Cedar Rapids, IA 52406. UNDERWRITING LIMITATION b/: $3,110,000. SURETY LICENSES c/: All except AK, CT, DE, DC, GU, HI, KS, LA, ME, MD, MA, MS, NV, NH, NJ, OR, PR, RI, VT, VI, WV. INCORPORATED IN: Iowa. FEDERAL PROCESS AGENTS d/.

John Deere Insurance Company.2* BUSINESS ADDRESS: 34th Avenue and 80th Street, Moline, IL 61265. UNDERWRITING LIMITATION b/: $7,079,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

The Kansas Bankers Surety Company. BUSINESS ADDRESS: Post Office Box 1654, Topeka, KS 66601. UNDERWRITING LIMITATION b/: $345,000. SURETY LICENSES c/: DC, KS, MO, NE, WI. INCORPORATED IN: Kansas. FEDERAL PROCESS AGENTS d/.

Kansas City Fire and Marine Insurance Company.2* BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $879,000. SURETY LICENSES c/: All except PR, VI. INCORPORATED IN: Missouri. FEDERAL PROCESS AGENTS d/.

Lawyers Surety Corporation. BUSINESS ADDRESS: 1221 River Bend Drive, Dallas, TX 75247. UNDERWRITING LIMITATION b/: $389,000. SURETY LICENSES c/: AL, AR, CA, FL, GA, IL, KY, MS, NC, OK, SC, TN, TX. INCORPORATED IN: Texas. FEDERAL PROCESS AGENTS d/.

Liberty Mutual Insurance Company. BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. UNDERWRITING LIMITATION b/: $136,209,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Massachusetts. FEDERAL PROCESS AGENTS d/.

Lumbermens Mutual Casualty Company. BUSINESS ADDRESS: Long Grove, IL 60049. UNDERWRITING LIMITATION b/: $94,490,000. SURETY LICENSES c/: All except GU, KS, PR, VI. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

Maine Bonding and Casualty Company. BUSINESS ADDRESS: Post Office Box 448, Portland, ME 04112. UNDERWRITING LIMITATION b/: $951,000. SURETY LICENSES c/: ME, MA, NH, RI, VT. INCORPORATED IN: Maine. FEDERAL PROCESS AGENTS d/.

Maryland Casualty Company. BUSINESS ADDRESS: Post Office Box 1228, Baltimore, MD 21203. UNDERWRITING LIMITATION b/: $39,767,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: Maryland. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

Massachusetts Bay Insurance Company. BUSINESS ADDRESS: 440 Lincoln Street, Worcester, MA 01605. UNDERWRITING LIMITATION b/: $731,000. SURETY LICENSES c/: All except AK, AR, DE, GU, HI, ID, MT, NV, NM, ND, OR, PR, SD, UT, VI, WV, WY. INCORPORATED IN: Massachusetts. FEDERAL PROCESS AGENTS d/.

Mead Reinsurance Corporation. BUSINESS ADDRESS: 6 North Main Street, Dayton, OH 45402. UNDERWRITING LIMITATION b/: $1,860,000. SURETY LICENSES c/: All except CT, GU, HI, ME, MA, MD, NH, PR, RI, SD, VI, WY. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/ (KS, VT - Reinsurance only.)

The Mercantile and General Reinsurance Company of America. BUSINESS ADDRESS: 310 Madison Avenue - CN1930, Morristown, NJ 07960. UNDERWRITING LIMITATION b/: $1,566,000. SURETY LICENSES c/: All except AL, AK, AZ, GU, HI, ME, MN, MO, MT, NM, NC, ND, OR, RI, SD, VA, VI, WA.
INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

Merchants Bonding Company (Mutual). BUSINESS ADDRESS: 2100 Grand Avenue, Des Moines, IA 50312. UNDERWRITING LIMITATION b/: $410,000. SURETY LICENSES c/: AZ, CA, IA, KS, NE, OK, TX. INCORPORATED IN: Iowa. FEDERAL PROCESS AGENTS d/.

Meritplan Insurance Company. BUSINESS ADDRESS: Post Office Box 1770, Newport Beach, CA 92663. UNDERWRITING LIMITATION b/: $838,000. SURETY LICENSES c/: AL, AZ, CA, CO, DE, FL, HI, IN, IA, LA, MI, MN, MS, MT, NE, NV, NM, NY, NC, OH, OK, OR, SC, TX, UT, WA, WI. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Michigan Millers Mutual Insurance Company. BUSINESS ADDRESS: Post Office Box 30060, Lansing, MI 48909. UNDERWRITING LIMITATION b/: $5,152,000. SURETY LICENSES c/: AZ, AR, CA, CO, DC, FL, IN, KS, KY, MI, MO, NE, NJ, NY, NC, OH, OK, PA, TX, VA, WA. INCORPORATED IN: Michigan. FEDERAL PROCESS AGENTS d/.

Michigan Mutual Insurance Company. BUSINESS ADDRESS: 28 West Adams Avenue, Detroit, MI 48226. UNDERWRITING LIMITATION b/: $12,058,000. SURETY LICENSES c/: All except DE, GU, HI, OR, PR, VI. (DC Fidelity only.) INCORPORATED IN: Michigan. FEDERAL PROCESS AGENTS d/.

Mid-Century Insurance Company. BUSINESS ADDRESS: Post Office Box 2478, Terminal Annex, Los Angeles, CA 90051. UNDERWRITING LIMITATION b/: $2,638,000. SURETY LICENSES c/: AZ, AR, CA, CO, FL, GA, ID, IL, IA, KS, MO, MI, MO, MT, NE, NV, NM, ND, OH, OK, OR, SD, TX, WA. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

MID-CONTINENT CASUALTY COMPANY. BUSINESS ADDRESS: Post Office Box 1409, Tulsa, OK 74101. UNDERWRITING LIMITATION b/: $3,674,000. SURETY LICENSES c/: AL, AZ, AR, CO, FL, IN, IA, KS, MN, MS, MO, MT, NE, NM, ND, OK, OR, SD, TN, TX, UT, WA, WY. INCORPORATED IN: Oklahoma. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

The Millers Mutual Fire Insurance Company of Texas. BUSINESS ADDRESS: Post Office Box 2269, Fort Worth, TX 76113. UNDERWRITING LIMITATION b/: $3,669,000. SURETY LICENSES c/: AR, CA, CO, DC, ID, IL, IN, IA, LA, MS, MO, MT, NE, NJ, NM, OK, OR, PA, TX, WA, WI, WY. INCORPORATED IN: Texas. FEDERAL PROCESS AGENTS d/.

Millers' Mutual Insurance Association of Illinois. BUSINESS ADDRESS: 111 East Fourth Street, Alton, IL 62002. UNDERWRITING LIMITATION b/: $3,530,000. SURETY LICENSES c/: AL, AR, CO, DC, GA, IL, IN, IA, KS, LA, MN, MS, MO, NC, OK, SD, TN, WI. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

Millers National Insurance Company. 2*. BUSINESS ADDRESS: 29 North Wacker Drive, Chicago, IL 60606. UNDERWRITING LIMITATION b/: $254,000. SURETY LICENSES c/: All except AK, CO, CT, DE, GU, HI, LA, ME, MS, NV, NH, PA, PR, RI, VT, VI, WA. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

Minnesota Trust Company of Austin. BUSINESS ADDRESS: 107 West Oakland Avenue, Post Office Box 463, Austin, MN. 55912. UNDERWRITING LIMITATION b/: $106,000. SURETY LICENSES c/: MN, MT, ND. INCORPORATED IN: Minnesota. FEDERAL PROCESS AGENTS d/.

Morrison Assurance Company, Inc. 2*. BUSINESS ADDRESS: 5109 South Lois Avenue, Tampa, FL 33681. UNDERWRITING LIMITATION b/: $808,000. SURETY LICENSES c/: AL, AZ, AR, FL, GA, KY, LA, MS, MO, MT, NM, ND, OK, SC, TN, TX, UT, WV. INCORPORATED IN: Florida. FEDERAL PROCESS AGENTS d/.

MOTORS INSURANCE CORPORATION. BUSINESS ADDRESS: 3044 West Grand Boulevard, Detroit, MI 48202. UNDERWRITING LIMITATION b/: $43,643,000. SURETY LICENSES c/: All except AZ, AR, CA, CO, CT, GU, HI, KS, LA, MA, MO, MT, NE, NH, OH, OR, PA, PR, TN, UT, VA, VI, WI. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

Munich American Reinsurance Company. BUSINESS ADDRESS: 560 Lexington Avenue, New York, NY 10022. UNDERWRITING LIMITATION b/: $5,600,000. SURETY LICENSES c/: AR, CA, CO, CT, DE, DC, FL, GA, HI, IL, IN, IA, KS, LA, MI, NH, NY, OH, OK, PA, SC, TX, VT, VA. (CT, KS, NH, OK, VT. Reinsurance only) INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

National American Insurance Company of New York. BUSINESS ADDRESS: 1515 S. 75th Street, P.O. Box 3800, Omaha, NE 68103. UNDERWRITING LIMITATION b/: $1,538,000. SURETY LICENSES c/: All except DE, GU, HI, MO, NM, PR, VI, WY. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

National Automobile and Casualty Insurance Company. BUSINESS ADDRESS: Post Office Box 7040, Pasadena, CA 91109. UNDERWRITING LIMITATION b/: $571,000. SURETY LICENSES c/: AK, AZ, CA, NV, WA. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

National-Ben Franklin Insurance Company of Illinois. 2*, 3*. BUSINESS ADDRESS: 200 South Wacker Drive, Chicago, IL 60606. UNDERWRITING LIMITATION b/: $9,534,000. SURETY LICENSES c/: DC, IL, IN, IA, KY, MN, NY, NC, ND, WI. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

National Excess Insurance Company. BUSINESS ADDRESS: 24422 Avenida de la Carlota, Laguna Hills, CA 92653. UNDERWRITING LIMITATION b/: $599,000. SURETY LICENSES c/: All except CT, FL, GA, GU, HI, KY, ME, MA, MD, NV, NH, NJ, NY, PA, PR, RI, VT, VI, WV, WY. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

National Fire Insurance Company of Hartford. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $7,851,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Connecticut. FEDERAL PROCESS AGENTS d/.

National Grange Mutual Insurance Company. BUSINESS ADDRESS: 55 West Street, Keene, NH 03431. UNDERWRITING LIMITATION b/: $3,515,000. SURETY LICENSES c/: CT, DE, DC, ME, MD, MA, NH, NY, OH, PA, RI, SC, TN, VT, VA, WV, WI. INCORPORATED IN: New Hampshire. FEDERAL PROCESS AGENTS d/.

National Indemnity Company. BUSINESS ADDRESS: 3024 Harney Street, Omaha, NE 68131. UNDERWRITING LIMITATION b/: $52,510,000. SURETY LICENSES c/: All except AL, GU, HI, MA, NJ, NY, PR, VI. INCORPORATED IN: Nebraska. FEDERAL PROCESS AGENTS d/.

THE NATIONAL MUTUAL INSURANCE COMPANY. BUSINESS ADDRESS: One Insurance Square, Celina, OH 45822. UNDERWRITING LIMITATION b/: $300,000. SURETY LICENSES c/: DC, IL, IN, KY, MI, OH, PA, TN, WV. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/.

The National Reinsurance Corporation. BUSINESS ADDRESS: 777 Long Ridge Road, Post Office Box 10167, Stamford, CT 06904-2167. UNDERWRITING LIMITATION b/: $5,070,000. SURETY LICENSES c/: All except AL, CT, FL, GA, GU, LA, ME, MS, MO, NC, OR, SC, SD, TN, WA, WV. INCORPORATED IN: Delaware. FEDERAL PROCESS AGENTS d/.

National Surety Corporation. BUSINESS ADDRESS: 200 West Monroe Street, Chicago, IL 60606. UNDERWRITING LIMITATION b/: $7,011,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

Nationwide Mutual Insurance Company. BUSINESS ADDRESS: One Nationwide Plaza, Columbus, OH 43216. UNDERWRITING LIMITATION b/: $136,769,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/.

The Netherlands Insurance Company. BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. UNDERWRITING LIMITATION b/: $799,000. SURETY LICENSES c/: AZ, CA, DC, ID, IN, IA, ME, MD, MA, MI, NV, NH, NJ, NY, NC, OH, RI, SC, UT, VT, VA, WA, WI. INCORPORATED IN: New Hampshire. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

New Hampshire Insurance Company. BUSINESS ADDRESS: Post Office Box 960, Manchester, NH 03107. UNDERWRITING LIMITATION b/: $20,252,000. SURETY LICENSES c/: All. INCORPORATED IN: New Hampshire. FEDERAL PROCESS AGENTS d/.

New South Insurance Company. BUSINESS ADDRESS: Post Office Box 3199, Winston-Salem, NC 27152. UNDERWRITING LIMITATION b/: $578,000. SURETY LICENSES c/: IN, LA, MS, NV, NC, OR, TX, VA, WA, WV. INCORPORATED IN: North Carolina. FEDERAL PROCESS AGENTS d/.

New York Underwriters Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $7,190,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

Newark Insurance Company. BUSINESS ADDRESS: 150 William Street, New York, NY 10038. UNDERWRITING LIMITATION b/: $1,066,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: New Jersey. FEDERAL PROCESS AGENTS d/.

North American Reinsurance Corporation. 2* BUSINESS ADDRESS: 100 East 46th Street, New York, NY 10017. UNDERWRITING LIMITATION b/: $10,467,000. SURETY LICENSES c/: All except GU, VI, WY. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

North American Specialty Insurance Company. 4* BUSINESS ADDRESS: 5 Warren Street, Concord, NH 03301 UNDERWRITING LIMITATION b/: $531,000. SURETY LICENSES c/. All except AL, CA, GU, HI, KS, MD, MA, MS, OK, OR, PR, SD, VI. INCORPORATED IN: New Hamphsire. FEDERAL PROCESS AGENTS d/.

The North River Insurance Company. BUSINESS ADDRESS: Crum & Forster, 305 Madison Ave., CN-1932, Morristown, NJ 07960-1932. UNDERWRITING LIMITATION b/: $11,087,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: New Jersey. FEDERAL PROCESS AGENTS d/.

North Star Reinsurance Corporation. BUSINESS ADDRESS: Ten Stamford Forum, P.O. Box 10009, Stamford, CT 06904. UNDERWRITING LIMITATION b/: $4,327,000. SURETY LICENSES c/: All except CO, GU, HI, ME, MN, NC, ND, SC, VT, VI, WY. INCORPORATED IN: Delaware. FEDERAL PROCESS AGENTS d/.

Northbrook Property and Casualty Insurance Company. BUSINESS ADDRESS: Allstate Plaza, Northbrook, IL 60062. UNDERWRITING LIMITATION b/: $3,315,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

The Northern Assurance Company of America. BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. UNDERWRITING LIMITATION b/: $5,488,000. SURETY LICENSES c/: All except GU, PR. INCORPORATED IN: Massachusetts. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

Northwestern National Casualty Company. BUSINESS ADDRESS: Post Office Box 2070, Milwaukee, WI 53201. UNDERWRITING LIMITATION b/: $572,000. SURETY LICENSES c/: All except AK, CT, GU, HI, ME, MA, NV, NJ, NH, NY, PR, VT, VI. INCORPORATED IN: Wisconsin. FEDERAL PROCESS AGENTS d/.

Northwestern National Insurance Company of Milwaukee, Wisconsin. 2* BUSINESS ADDRESS: Post Office Box 2070, Milwaukee, WI 53201. UNDERWRITING LIMITATION b/: $2,823,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Wisconsin. FEDERAL PROCESS AGENTS d/.

Northwestern National Surety Company. BUSINESS ADDRESS: P.O. Box 2070 Milwaukee, WI 53201. UNDERWRITING LIMITATION b/: $1,482,000. SURETY LICENSES c/: IL, OR, WI. INCORPORATED IN: Wisconsin. FEDERAL PROCESS AGENTS d/.

NORTHWESTERN PACIFIC INDEMNITY COMPANY. BUSINESS ADDRESS: Crown Plaza, Suite 1000, 1500 SW First Avenue, Portland, OR 97201-5852. UNDERWRITING LIMITATION b/: $1,227,000. SURETY LICENSES c/: CA, OK, OR, TX, WA. INCORPORATED IN: Oregon. FEDERAL PROCESS AGENTS d/.

Oceanic Insurance and Surety Company. BUSINESS ADDRESS: 1501 Woodfield Road, Suite 204S, Schaumburg, IL 60195. UNDERWRITING LIMITATION b/: $61,000. SURETY LICENSES c/: NM. INCORPORATED IN: New Mexico. FEDERAL PROCESS AGENTS d/.

The Ohio Casualty Insurance Company.2* BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. UNDERWRITING LIMITATION b/: $34,176,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/.

Ohio Farmers Insurance Company. BUSINESS ADDRESS: Westfield Center, OH 44251. UNDERWRITING LIMITATION b/: $12,492,000. SURETY LICENSES c/: All except AK, CT, GU, HI, KS, PR, VI. (Restricted to existing business only in NH.) INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/.

Oklahoma Surety Company. BUSINESS ADDRESS: Post Office Box 1409, Tulsa, OK 74101. UNDERWRITING LIMITATION b/: $350,000. SURETY LICENSES c/: KS, OK, TX. INCORPORATED IN: Oklahoma. FEDERAL PROCESS AGENTS d/.

Old Republic Insurance Company. 2* BUSINESS ADDRESS: Post Office Box 789, Greensburg, PA 15601. UNDERWRITING LIMITATION b/: $15,109,000. SURETY LICENSES c/: All except PR, VI. INCORPORATED IN: Pennsylvania. FEDERAL PROCESS AGENTS d/.

The Omaha Indemnity Company. BUSINESS ADDRESS: 3201 Farnam Street, Omaha, NE 68131. UNDERWRITING LIMITATION b/: $734,000. SURETY LICENSES c/: All except GU, LA, NH, NJ, PR, VI. INCORPORATED IN: Wisconsin. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

Oregon Automobile Insurance Company. BUSINESS ADDRESS: Post Office Box 74, Portland, OR 97207. UNDERWRITING LIMITATION b/: $1,117,000. SURETY LICENSES c/: ID, NV, OR, UT, WA. INCORPORATED IN: Oregon. FEDERAL PROCESS AGENTS d/.

Pacific Employers Insurance Company. BUSINESS ADDRESS: 1600 Arch Street, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $4,926,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Pacific Indemnity Company. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $5,910,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Pacific Insurance Company, Limited. BUSINESS ADDRESS: Post Office Box 1140, Honolulu, HI 96807. UNDERWRITING LIMITATION b/: $3,393,000. SURETY LICENSES c/: HI. INCORPORATED IN: Hawaii. FEDERAL PROCESS AGENTS d/.

Peerless Insurance Company. BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. UNDERWRITING LIMITATION b/: $4,360,000. SURETY LICENSES c/: All except GU, HI, NJ, PR, VI. INCORPORATED IN: New Hampshire. FEDERAL PROCESS AGENTS d/.

Pekin Insurance Company. BUSINESS ADDRESS: 2505 Court Street, Pekin, IL 61558. UNDERWRITING LIMITATION b/: $1,081,000. SURETY LICENSES c/: IL, IN, IA, WI. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

Pennsylvania Manufacturers' Association Insurance Company.2* BUSINESS ADDRESS: 925 Chestnut Street, Philadelphia, PA 19107. UNDERWRITING LIMITATION b/: $15,015,000. SURETY LICENSES c/: All except AL, AR, CT, GU, HI, KS, ME, MN, ND, OR, PR, VI, WY. INCORPORATED IN: Pennsylvania. FEDERAL PROCESS AGENTS d/.

Pennsylvania Millers Mutual Insurance Company. BUSINESS ADDRESS: 15 Public Square, P.O. Box-P, Wilkes-Barre, PA 18773-0016. UNDERWRITING LIMITATION b/: $2,553,000. SURETY LICENSES c/: AR, CT, DC, FL, GA, ID, IN, KS, KY, ME, MD, MA, MS, MO, NH, NJ, NY, NC, ND, PA, RI, SC, TN, VT, VA. INCORPORATED IN: Pennsylvania. FEDERAL PROCESS AGENTS d/.

Pennsylvania National Mutual Casualty Insurance Company. BUSINESS ADDRESS: 1900 Derry Street, Harrisburg, PA 17105. UNDERWRITING LIMITATION b/: $5,726,000. SURETY LICENSES c/: All except CA, CT, GU, HI, NV, NH, ND, PR, VI, WY. INCORPORATED IN: Pennsylvania. FEDERAL PROCESS AGENTS d/.

The Personal Service Insurance Co. BUSINESS ADDRESS: P.O. Box 1226, Columbus, OH 43216. UNDERWRITING LIMITATION b/: $1,031,000. SURETY LICENSES c/: IN, OH. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

Phoenix Assurance Company of New York. 2*. BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $3,641,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: New Hampshire. FEDERAL PROCESS AGENTS d/.

The Phoenix Insurance Company. BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183. UNDERWRITING LIMITATION b/: $24,425,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: Connecticut. FEDERAL PROCESS AGENTS d/.

PLANET INSURANCE COMPANY. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $559,000. SURETY LICENSES c/: All except PR, VI. INCORPORATED IN: Wisconsin. FEDERAL PROCESS AGENTS d/.

Progressive Casualty Insurance Company. BUSINESS ADDRESS: 6300 Wilson Mills Road, Mayfield Village, OH 44143. UNDERWRITING LIMITATION b/: $11,619,000 SURETY LICENSES c/: All except AZ, CT, DE, DC, GU, HI, IL, KS, LA, MD, NE, NH, NY, PA, PR, SC, TX, UT, VA, VI, WV, WI. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/.

The Progressive Mutual Insurance Company. BUSINESS ADDRESS: 6300 Wilson Mills Road, Mayfield Village, OH 44143. UNDERWRITING LIMITATION b/: $685,000. SURETY LICENSES c/: DC, NJ, OH. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/.

Protective Insurance Company. BUSINESS ADDRESS: 3100 North Meridian Street, Indianapolis, IN 46208. UNDERWRITING LIMITATION b/: $2,671,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: Indiana. FEDERAL PROCESS AGENTS d/.

Prudential Reinsurance Company. BUSINESS ADDRESS: 100 Mulberry Street, Newark, NJ 07102. UNDERWRITING LIMITATION b/: $17,032,000. SURETY LICENSES c/: All except GU, NV, NC, WV, WY. INCORPORATED IN: Delaware. FEDERAL PROCESS AGENTS d/.

Public Service Mutual Insurance Company. BUSINESS ADDRESS: 393 Seventh Avenue, New York, NY 10001. UNDERWRITING LIMITATION b/: $3,827,000. SURETY LICENSES c/: AZ, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, ME, MD, MA, MI, MN, MS, NH, NJ, NY, NC, OH, OR, PA, RI, SC, VT, VA, WV, WI. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

Puerto Rican-American Insurance Company. BUSINESS ADDRESS: Post Office Box S-112, San Juan, Puerto Rico 00902. UNDERWRITING LIMITATION b/: $4,098,000. SURETY LICENSES c/: PR, VI. INCORPORATED IN: Puerto Rico. FEDERAL PROCESS AGENTS d/.

Ranger Insurance Company. BUSINESS ADDRESS: Post Office Box 2807, Houston, TX 77252-2807. UNDERWRITING LIMITATION b/: $2,931,000. SURETY LICENSES c/: All except CT, GU, VI. INCORPORATED IN: Delaware. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

Regent Insurance Company. BUSINESS ADDRESS: One General Drive, Sun Prairie, WI 53596. UNDERWRITING LIMITATION b/: $2,247,000. SURETY LICENSES c/: IL, IN, IA, KS, MN, MO, NE, ND, SD, WI. INCORPORATED IN: Wisconsin. FEDERAL PROCESS AGENTS d/.

The Reinsurance Corporation of New York. BUSINESS ADDRESS: 99 John Street, New York, NY 10038. UNDERWRITING LIMITATION b/: $2,337,000. SURETY LICENSES c/: All except GU, HI, PR, VI. (Co-surety only in FL, MA, VA.) INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

Reliance Insurance Company. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $39,210,000. SURETY LICENSES c/: All. INCORPORATED IN: Pennsylvania. FEDERAL PROCESS AGENTS d/.

Reliance Insurance Company of New York. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $761,000. SURETY LICENSES c/: NY. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

Republic-Franklin Insurance Company. BUSINESS ADDRESS: Post Office Box 1438, Columbus, OH 43216. UNDERWRITING LIMITATION b/: $576,000. SURETY LICENSES c/: IN, MI, OH. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/.

REPUBLIC INSURANCE COMPANY. BUSINESS ADDRESS: Post Office Box 660560, Dallas, TX 75266-0560. UNDERWRITING LIMITATION b/: $10,129,000. SURETY LICENSES c/: All except AL, FL, GU, HI, ME, MA, MT, NH, ND, RI, SD, VT, VI. INCORPORATED IN: Delaware. FEDERAL PROCESS AGENTS d/.

Republic Western Insurance Company.2* BUSINESS ADDRESS: 2721 North Central Avenue, Phoenix, AZ 85004. UNDERWRITING LIMITATION b/: $3,239,000. SURETY LICENSES c/: All except CT, GU, HI, LA, ME, NH, PR, VI, WY. INCORPORATED IN: Arizona. FEDERAL PROCESS AGENTS d/.

Rockwood Insurance Company. 2* BUSINESS ADDRESS: 654 Main Street, Rockwood, PA 15557. UNDERWRITING LIMITATION b/: $1,726,000. SURETY LICENSES c/: All except CA, CT, DC, GU, HI, IL, KY, ME, MA, MI, MN, NH, NJ, NY, NC, OH, PR, RI, TN, VT, VI, WI. INCORPORATED IN: Pennsylvania. FEDERAL PROCESS AGENTS d/.

Royal Indemnity Company. BUSINESS ADDRESS: 150 William Street, New York, NY 10038. UNDERWRITING LIMITATION b/: $3,029,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: Delaware. FEDERAL PROCESS AGENTS d/.

Royal Insurance Company of America. BUSINESS ADDRESS: 150 William Street, New York, NY 10038. UNDERWRITING LIMITATION b/: $10,328,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

SAFECO Insurance Company of America.2* BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. UNDERWRITING LIMITATION b/: $17,361,000. SURETY LICENSES c/: All except PR, VT, VI. INCORPORATED IN: Washington. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

SAFECO Insurance Company of Illinois. BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. UNDERWRITING LIMITATION b/: $2,826,000. SURETY LICENSES c/: AZ, CO, IL, MD, MA, MN, NE, NM, OR, TN, TX, UT, WI. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

SAFECO National Insurance Company. BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. UNDERWRITING LIMITATION b/: $1,884,000. SURETY LICENSES c/: MO, NY. INCORPORATED IN: Missouri. FEDERAL PROCESS AGENTS d/.

St. Paul Fire and Marine Insurance Company. BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. UNDERWRITING LIMITATION b/: $79,466,000. SURETY LICENSES c/: All. INCORPORATED IN: Minnesota. FEDERAL PROCESS AGENTS d/.

St. Paul Mercury Insurance Company. BUSINESSS ADDRESS: 385 Washington Street, St. Paul, MN 55102. UNDERWRITING LIMITATION b/: $2,307,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: Minnesota. FEDERAL PROCESS AGENTS d/.

Seaboard Surety Company. BUSINESS ADDRESS: 90 William Street, New York, NY 10038. UNDERWRITING LIMITATION b/: $5,230,000. SURETY LICENSES c/: All. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

Security Insurance Company of Hartford. BUSINESS ADDRESS: Post Office Box 420, Hartford, CT 06141. UNDERWRITING LIMITATION b/: $7,506,000. SURETY LICENSES c/: All except MA, NJ, PR. INCORPORATED IN: Connecticut. FEDERAL PROCESS AGENTS d/.

Security National Insurance Company. BUSINESS ADDRESS: Post Office Box 225028, Dallas, TX 75265. UNDERWRITING LIMITATION b/: $670,000. SURETY LICENSES c/: AL, AR, CA, CO, IL, IN, KS, KY, NM, OH, OK, TX, WA, WI, WY. INCORPORATED IN: Texas. FEDERAL PROCESS AGENTS d/.

Select Insurance Company. BUSINESS ADDRESS: Post Office Box 1771, Dallas, TX 75221. UNDERWRITING LIMITATION b/: $1,278,000. SURETY LICENSES c/: All except CT, GU, HI, LA, ME, MA, NH, NJ, NY, ND, PA, PR, RI, UT, VI. INCORPORATED IN: Texas. FEDERAL PROCESS AGENTS d/.

Selected Risks Insurance Company. BUSINESS ADDRESS: Wantage Avenue, Branchville, NJ 07890. UNDERWRITING LIMITATION b/: $11,881,000. SURETY LICENSES c/: AL, DE, DC, FL, GA, MD, MS, NJ, NC, PA, SC, TX, VA. INCORPORATED IN: New Jersey. FEDERAL PROCESS AGENTS d/.

SENTINEL INSURANCE COMPANY, LTD. BUSINESS ADDRESS: Post Office Box 1140, Honolulu, HI 96807. UNDERWRITING LIMITATION b/: $814,000. SURETY LICENSES c/: HI. INCORPORATED IN: Hawaii. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

Sentry Indemnity Company. BUSINESS ADDRESS: 1800 North Point Drive, Stevens Point, WI 54481. UNDERWRITING LIMITATION b/: $1,047,000. SURETY LICENSES c/: All except AK, CT, DE, DC, GU, HI, ME, MA, MI, NE, NH, NJ, NY, PA, PR, RI, VT, VA, VI, WV. INCORPORATED IN: Wisconsin. FEDERAL PROCESS AGENTS d/.

Sentry Insurance a Mutual Company. BUSINESS ADDRESS: 1800 North Point Drive, Stevens Point, WI 54481. UNDERWRITING LIMITATION b/: $6,342,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Wisconsin. FEDERAL PROCESS AGENTS d/.

Skandia America Reinsurance Corporation: BUSINESS ADDRESS: 280 Park Avenue, New York, NY 10017. UNDERWRITING LIMITATION b/: $3,967,000. SURETY LICENSES c/: All except AL, CT, GU, HI, ID, KY, ME, MN, NM, NC, ND, OR, PR, RI, SD, TN, VI, WY. INCORPORATED IN: Delaware. FEDERAL PROCESS AGENTS d/.

South Carolina Insurance Company. BUSINESS ADDRESS: Post Office Box #1, Columbia, SC 29202. UNDERWRITING LIMITATION b/: $5,730,000. SURETY LICENSES c/: All except GU, HI, ME, NH, PR, RI, VT, VI. INCORPORATED IN: South Carolina. FEDERAL PROCESS AGENTS d/.

SOUTHEASTERN CASUALTY AND INDEMNITY INSURANCE COMPANY, INC. BUSINESS ADDRESS: 1620 W. Oakland Park Blvd., Suite 200, Ft. Lauderdale, FL 33311. UNDERWRITING LIMITATION b/: $328,000. SURETY LICENSES c/: FL, LA. INCORPORATED IN: Florida. FEDERAL PROCESS AGENTS d/.

The Standard Fire Insurance Company. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. UNDERWRITING LIMITATION b/: $8,912,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: Connecticut. FEDERAL PROCESS AGENTS d/.

State Automobile Mutual Insurance Company. BUSINESS ADDRESS: 518 East Broad Street, Columbus, OH 43216. UNDERWRITING LIMITATION b/: $13,331,000. SURETY LICENSES c/: AL, AR, FL, GA, IN, KY, MD, MI, MS, MO, NC, OH, PA, SC, TN, WV. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/.

State Farm Fire and Casualty Company. BUSINESS ADDRESS: 112 East Washington Street, Bloomington, IL 61701. UNDERWRITING LIMITATION b/: $137,979,000. SURETY LICENSES c/: All except GU, PR, VT. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

State Surety Company. BUSINESS ADDRESS: P. O. Box 1976, Des Moines, IA. 50306. UNDERWRITING LIMITATION b/: $375,000. SURETY LICENSES c/: AZ, CO, DC, IL, IA, KS, MN, MO, MT, NE, ND, OK, SC, WI, WY. INCORPORATED IN: Iowa. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

Surety Company of the Pacific. 2* BUSINESS ADDRESS: Post Office Box 2105, Santa Monica, CA 90406. UNDERWRITING LIMITATION b/: $244,000. SURETY LICENSES c/: CA. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

TEXAS PACIFIC INDEMNITY COMPANY. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $384,000. SURETY LICENSES c/: AR, TX. INCORPORATED IN: Texas. FEDERAL PROCESS AGENTS d/.

Transamerica Insurance Company. BUSINESS ADDRESS: 1150 South Olive Street, Los Angeles, CA 90015. UNDERWRITING LIMITATION b/: $13,329,000. SURETY LICENSES c/: All except PR, VI. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Transamerica Insurance Company of Michigan. BUSINESS ADDRESS: 1150 South Olive Street, Los Angeles, CA 90015. UNDERWRITING LIMITATION b/: $11,729,000. SURETY LICENSES c/: AR, IL, IN, IA, KS, MI, MN, OH, SD. INCORPORATED IN: Michigan. FEDERAL PROCESS AGENTS d/.

Transamerica Premier Insurance Company. BUSINESS ADDRESS: 600 Montgomery Street, San Francisco, CA 94111. UNDERWRITING LIMITATION: $3,217,000. SURETY LICENSES c/: All except AK, CT, HI, IN, MA, NE, NH, NY, OH, PR, SD, VI, WV. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Transcontinental Insurance Company. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $4,498,000. SURETY LICENSES c/: All except GU, HI, VI. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

Transport Indemnity Company. BUSINESS ADDRESS: 3670 Wilshire Boulevard, Los Angeles, CA 90010. UNDERWRITING LIMITATION b/: $2,084,000. SURETY LICENSES c/: AZ, CO, ID, IN, KS, MO, MT, NE, NM, OH, OK, OR, SD, TX, WY. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Transportation Insurance Company. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $2,116,000. SURETY LICENSES c/: All except GU, PR, VI, WV. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

The Travelers Indemnity Company. BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183. UNDERWRITING LIMITATION b/: $58,528,000. SURETY LICENSES c/: All. INCORPORATED IN: Connecticut. FEDERAL PROCESS AGENTS d/.

THE TRAVELERS INDEMNITY COMPANY OF AMERICA. BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183. UNDERWRITING LIMITATION b/: $2,120,000. SURETY LICENSES c/: All except AR, FL, GU, KS, MA, OR, VI. INCORPORATED IN: Georgia. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

The Travelers Indemnity Company of Illinois. BUSINESS ADDRESS: 200 West Madison Street, Chicago, IL 60606. UNDERWRITING LIMITATION b/: $854,000. SURETY LICENSES c/: All except AR, CT, DE, GU, KS, LA, MA, NH, NJ, NC, OR, PA, PR, VI, WV, WI, WY. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

The Travelers Indemnity Company of Rhode Island. BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183. UNDERWRITING LIMITATION b/: $14,144,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: Rhode Island. FEDERAL PROCESS AGENTS d/.

Trinity Universal Insurance Company. BUSINESS ADDRESS: Post Office Box 225028, Dallas, TX 75265. UNDERWRITING LIMITATION b/: $42,046,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, GA, ID, IL, IN, IA, KS, KY, LA, MI, MS, MO, NE, NM, OH, OK, OR, TX, WA, WI, WY. INCORPORATED IN: Texas. FEDERAL PROCESS AGENTS d/.

Trinity Universal Insurance Company of Kansas, Inc. BUSINESS ADDRESS: 2000 Ross Avenue, Dallas, TX 75201. UNDERWRITING LIMITATION b/: $422,000. SURETY LICENSES c/: AL, AZ, CO, KS, KY, LA, NE, OH, OK, TX. INCORPORATED IN: Kansas. FEDERAL PROCESS AGENTS d/.

Tri-State Insurance Company. BUSINESS ADDRESS: Post Office Box 3269, Tulsa, OK 74102. UNDERWRITING LIMITATION b/: $1,820,000. SURETY LICENSES c/: AL, AZ, AR, CO, FL, GA, ID, IL, IN, IA, KS, KY, LA, MN, MS, MO, MT, NE, NM, ND, OK, SD, TN, TX, UT, WA, WY. INCORPORATED IN: Oklahoma. FEDERAL PROCESS AGENTS d/.

Tri-State Insurance Company of Minnesota. BUSINESS ADDRESS: One Roundwind Road, Luverne, MN 56156. UNDERWRITING LIMITATION b/: $728,000. SURETY LICENSES c/: IA, MN, NE, ND, SD, WI. INCORPORATED IN: Minnesota. FEDERAL PROCESS AGENTS d/.

Twin City Fire Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $3,947,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: Minnesota. FEDERAL PROCESS AGENTS d/.

ULICO CASUALTY COMPANY. BUSINESS ADDRESS: 111 Massachusetts Avenue, NW, Washington, DC 20001. UNDERWRITING LIMITATION b/: $726,000. SURETY LICENSES c/: All except AL, CA, CT, GU, IL, IN, LA, ME, MA, NH, NY, NC, PR, RI, VI, WI, WY. INCORPORATED IN: Delaware. FEDERAL PROCESS AGENTS d/.

Unigard Security Insurance Company. 1*, 2* BUSINESS ADDRESS: 1215 Fourth Avenue, Seattle, WA 98161. UNDERWRITING LIMITATION b/: $6,061,000. SURETY LICENSES c/: All except CT, GA, GU, NH, NJ, PR, VI. INCORPORATED IN: Washington. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

Union Insurance Company. BUSINESS ADDRESS: P.O. Box 80439, Lincoln, NE 68501. UNDERWRITING LIMITATION b/: $2,170,000. SURETY LICENSES c/: CO, IA, KS, MN, MO, ND, OK, SD, TX, WY. INCORPORATED IN: Nebraska. FEDERAL PROCESS AGENTS d/.

United Fire & Casualty Company. BUSINESS ADDRESS: Post Office Box 4909, Cedar Rapids, IA 52407. UNDERWRITING LIMITATION b/: $1,583,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, ID, IL, IN, IA, KS, LA, MN, MS, MO, MT, NE, NJ, NM, NY, ND, OH, OK, OR, SC, SD, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa. FEDERAL PROCESS AGENTS d/.

UNITED NATIONAL INSURANCE COMPANY. BUSINESS ADDRESS: 1737 Chestnut Street, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $2,958,000. SURETY LICENSES c/: PA. INCORPORATED IN: Pennsylvania. FEDERAL PROCESS AGENTS d/.

United Pacific Insurance Company. BUSINESS ADDRESS: 33405 Eighth Avenue South, C-3000, Federal Way, WA 98003. UNDERWRITING LIMITATION b/: $4,767,000. SURETY LICENSES c/: All. INCORPORATED IN: Washington. FEDERAL PROCESS AGENTS d/.

United Pacific Insurance Company of New York. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $1,147,000. SURETY LICENSES c/: NY. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

United States Fidelity and Guaranty Company. BUSINESS ADDRESS: 100 Light Street, Post Office Box 1138, Baltimore, MD 21203. UNDERWRITING LIMITATION b/: $65,259,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: Maryland. FEDERAL PROCESS AGENTS d/.

United States Fire Insurance Company. BUSINESS ADDRESS: Crum & Forster, 305 Madison Ave., CN-1932, Morristown, NJ 07960-1932. UNDERWRITING LIMITATION b/: $23,185,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

UNIVERSAL INSURANCE COMPANY. BUSINESS ADDRESS: G.P.O. Box 71338, San Juan, Puerto Rico 00936. UNDERWRITING LIMITATION b/: $1,741,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico. FEDERAL PROCESS AGENTS d/.

Universal of Omaha Casualty Insurance Company. BUSINESS ADDRESS: 11225 Davenport Street, Suite 105, Omaha, NE 68154. UNDERWRITING LIMITATION b/: $124,000. SURETY LICENSES c/: NE. INCORPORATED IN: Nebraska. FEDERAL PROCESS AGENTS d/.

Universal Security Insurance Company. BUSINESS ADDRESS: 5454 West Fargo Avenue, Skokie, IL 60077. UNDERWRITING LIMITATION b/: $628,000. SURETY LICENSES c/: AL, AR, CO, FL, GA, IL, IN, IA, KY, LA, MS, MO, NV, NC, OH, OR, TN, WA, WI INCORPORATED IN: Tennessee. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

Universal Surety Company. BUSINESS ADDRESS: Post Office Box 80468, Lincoln, NE 68501. UNDERWRITING LIMITATION b/: $796,000. SURETY LICENSES c/: AZ, CO, ID, IL, IA, KS, MI, MN, MO, MT, NE, NM, ND, OH, OK, OR, SD, UT, WA, WI, WY. INCORPORATED IN: Nebraska. FEDERAL PROCESS AGENTS d/.

UNIVERSAL UNDERWRITERS INSURANCE COMPANY. BUSINESS ADDRESS: 5115 Oak Street, Kansas City, MO 64112. UNDERWRITING LIMITATION b/: $10,149,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: Missouri. FEDERAL PROCESS AGENTS d/.

Utica Mutual Insurance Company. BUSINESS ADDRESS: Post Office Box 530, Utica, NY 13503. UNDERWRITING LIMITATION b/: $5,906,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

Valley Forge Insurance Company. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $3,490,000. SURETY LICENSES c/: All except AK, GU, HI, PR, VI. INCORPORATED IN: Pennsylvania. FEDERAL PROCESS AGENTS d/.

Vigilant Insurance Company. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $6,764,000. SURETY LICENSES c/: All except PR. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

VOYAGER GUARANTY INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 2918, Jacksonville, FL 32203. UNDERWRITING LIMITATION b/: $388,000. SURETY LICENSES c/: AL, FL, LA, MD, MS, SC, TN, VA. INCORPORATED IN: Florida. FEDERAL PROCESS AGENTS d/.

Washington International Insurance Company. BUSINESS ADDRESS: 1900 East Golf Road, Schaumburg, IL 60195. UNDERWRITING LIMITATION b/: $381,000. SURETY LICENSES c/: AZ, CA, FL, IL, MD, MA, MO, NY, TX, WA. INCORPORATED IN: Arizona. FEDERAL PROCESS AGENTS d/.

West American Insurance Company. 2* BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. UNDERWRITING LIMITATION b/: $32,066,000. SURETY LICENSES c/: All except AK, CT, GU, HI, ME, MA, MT, NH, PR, RI, VT, VI, WV. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Westchester Fire Insurance Company. BUSINESS ADDRESS: Crum & Forster, 305 Madison Avenue, CN-1932, Morristown, NJ 07960-1932. UNDERWRITING LIMITATION b/: $13,462,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

The Western Casualty and Surety Company. BUSINESS ADDRESS: 14 East First Street, Fort Scott, KS 66701. UNDERWRITING LIMITATION b/: $12,939,000. SURETY LICENSES c/: All except CT, GU, HI, ME, MA, NH, NY, PR, RI, VT, VA, VI. INCORPORATED IN: Kansas. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

The Western Fire Insurance Company. BUSINESS ADDRESS: 14 East First Street, Fort Scott, KS 66701. UNDERWRITING LIMITATION b/: $10,762,000. SURETY LICENSES c/: All except AL, CT, DE, DC, GA, GU, HI, IN, LA, ME, MA, NH, NJ, PR, RI, SC, VT, VI. INCORPORATED IN: Kansas. FEDERAL PROCESS AGENTS d/.

Western Surety Company. BUSINESS ADDRESS: 101 South Phillips Avenue, Sioux Falls, SD 57192. UNDERWRITING LIMITATION b/: $2,411,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: South Dakota. FEDERAL PROCESS AGENTS d/.

Westfield Insurance Company. BUSINESS ADDRESS: Westfield Center, OH 44251. UNDERWRITING LIMITATION b/: $5,926,000. SURETY LICENSES c/: All except AK, CT, FL, GU, HI, ME, PR, VI. (Existing business only in NH.) INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/.

Westfield National Insurance Company. BUSINESS ADDRESS: Westfield Center, OH 44251. UNDERWRITING LIMITATION b/: $1,802,000. SURETY LICENSES c/: IA, OH. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/.

COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE REINSURING COMPANIES UNDER SECTION 223.3(b) of TREASURY CIRCULAR NO. 297, REVISED SEPTEMBER 1, 1978 (See Note (e))

Alliance Assurance Company, U.S. Branch. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $3,312,000. FEDERAL PROCESS AGENTS: DC.

Frankona Reinsurance Company, U.S. Branch. BUSINESS ADDRESS: 2440 Pershing Road, Suite #200, P.O. Box 1069, Kansas City, MO 64141. UNDERWRITING LIMITATION b/: $1,040,000. FEDERAL PROCESS AGENTS: DC.

The London Assurance, U.S. Branch. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $4,404,000. FEDERAL PROCESS AGENTS: DC.

Munich Reinsurance Company, U.S. Branch. BUSINESS ADDRESS: 560 Lexington Avenue, New York, NY 10022. UNDERWRITING LIMITATION b/: $5,899,000. FEDERAL PROCESS AGENTS: DC.

The Sea Insurance Company, Limited, U.S. Branch. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $2,185,000. FEDERAL PROCESS AGENTS: DC.

Sun Insurance Office, Limited, U.S. Branch. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $3,058,000. FEDERAL PROCESS AGENTS: DC.

Swiss Reinsurance Company, U.S. Branch. BUSINESS ADDRESS: 100 East 46th Street, New York, NY 10017. UNDERWRITING LIMITATION b/: $15,301,000. FEDERAL PROCESS AGENTS: DC.

The Tokio Marine and Fire Insurance Company, Limited, U.S. Branch. BUSINESS ADDRESS: 55 Water Street, New York, NY 10041. UNDERWRITING LIMITATION b/: $4,829,000. FEDERAL PROCESS AGENTS: DC.

Trans Pacific Insurance Company, U.S. Branch. BUSINESS ADDRESS: 55 Water Street, New York, NY 10041. UNDERWRITING LIMITATION b/: $516,000. FEDERAL PROCESS AGENTS: DC.

"Winterthur" Swiss Insurance Company, U.S. Branch. BUSINESS ADDRESS: One World Trade Center, Suite 8911, New York, NY 10048. UNDERWRITING LIMITATION b/: $5,512,000. FEDERAL PROCESS AGENTS: DC.

Zurich Insurance Company, U.S. Branch. BUSINESS ADDRESS: 231 North Martingale Road, Schaumburg, IL 60196. UNDERWRITING LIMITATION b/: $12,970,000. FEDERAL PROCESS AGENTS: DC.

FOOTNOTES

1* Uniguard Mutual Insurance Company demutualized and changed its name to Uniguard Security Insurance Company. (See Federal Register of April 22, 1985, pg. 15806.)

2* License information is not current. Confirmation regarding whether a company is licensed for surety in a particular state may be obtained from that State's Department of Insurance.

3* National-Ben Franklin Insurance Company of Michigan merged into National-Ben Franklin Insurance Company of Illinois, effective December 31, 1984. National-Ben Franklin Insurance Company of Michigan was summarily liquidated.

4* Delta America Insurance Company changed its name to North American Specialty Company, effective March 26, 1985.

NOTES

(a) All Certificates of Authority expire June 30, and are renewable July 1, annually. Companies holding Certificates of Authority as acceptable sureties on Federal bonds are also acceptable as reinsuring companies.

(b) Treasury requirements do not limit the penal sum of bonds which surety companies may execute. The net retention, however, cannot exceed the Underwriting Limitation, and Excess Risks must be protected by co-insurance, reinsurance, or other methods in accordance with Treasury Circular 297, Revised September 1, 1978 (31 CFR Section 223.10, Section 223.11). When Excess Risks on bonds in favor of the United States are protected by reinsurance, such reinsurance is to be effected by use of a Treasury reinsurance form to be filed with the bond or within 45 days thereafter. Risks in excess of the limit fixed herein must be reported for the quarter in which they are executed. In protecting such excess, the limitation in force on the date of the execution of the risk will govern absolutely.

(c) A surety company must be licensed in the State or other area in which it executes (signs) a bond, but need not be licensed in the State or other area in which the principal resides or where the contract is to be performed (28 Op. Atty. Gen. 127, Dec. 24, 1909; 31 CFR Section 223.5(b)). The term "other area" includes the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

A company may act as a direct writer or reinsurer in the states listed, unless otherwise noted.

(d) FEDERAL PROCESS AGENTS: Treasury approved surety companies are required to appoint Federal process agents in accord with 31 U.S.C. 9306 and 31 CFR 224 in the following districts: Where the principal resides; where the obligation is to be performed; and in the District of Columbia where the bond is returnable or filed. No process agent is required in the state or other area wherein the company is incorporated (31 CFR Section 224.2). The name and address of a particular surety's process agent in a particular Federal Judicial District may be obtained from the Clerk of the U.S. District Court in that district. (The appointment documents are on file with the clerks.) (NOTE: A surety company's underwriting agent who furnishes its bonds may or may not be its authorized process agent.)

SERVICE OF PROCESS: Process should be served on the Federal process agent appointed by a surety in a judicial district, except where the appointment of such agent is pending or during the absence of such agent from the district. Only in the event an agent has not been duly appointed, or the appointment is pending, or the agent is absent from the district, should process be served directly on the Clerk of the court pursuant to the provisions of 31 U.S.C. 9306.

Title 31, Section 9306 of the U.S. Code provides that in the absence of any agent of a company, service of process may be made upon the Clerk of the court within the district where suit is brought, with like effect as upon an agent appointed by the company. The officer serving process upon the Clerk should immediately transmit a copy of the summons by mail to the corporate secretary of the company (at the business address shown in Treasury Circular 570), and state such fact in his return. A judgement, decree, or order of a court entered or made after service of process will be as valid and binding on the company as if served with process in said district.

(e) Companies holding Certificates of Authority as acceptable reinsuring companies are acceptable only as reinsuring companies on Federal bonds.

[FR Doc. 85-14795 Filed 6-28-85; 8:45 am]
BILLING CODE 4810-35-C

federal register

Monday
July 1, 1985

Part III

General Services Administration

41 CFR Ch. 201

Implementation of Public Laws 98-369 and 98-577 Regarding Competition in the Acquisition of Information Resources and Codification of Temporary Regulations; Final Rule

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201-1, 201-2, 201-8, 201-11, 201-16, 201-20, 201-21, 201-23, 201-24, 201-26, 201-30, 201-31, 201-32, 201-38, 201-39, and 201-40

[FIRMR Amdt. 4]

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

AGENCY: Office of Information Resources Management, GSA.

ACTION: Final rule..

SUMMARY: This regulation codifies the implementation 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) regarding 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) Temporary Regulation 11 (50 FR 13319, April 4, 1985). Other changes are made in provisions that are affected by that statutory implementation issuance. This regulation also codifies all FIRMR temporary regulations existing when FIRMR integrated text was published (50 FR 4322, January 30, 1985). The intent is to appropriately amend the FIRMR to accomplish the new statutory objectives and requirements, based on public review and comments.

EFFECTIVE DATE: August 30, 1985, but may be observed earlier.

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 provisions of FIRMR Temp. Reg. 11 (50 FR 13319, April 4, 1985) (modified by consideration of comments received) are codified by this amendment. The changes are explained in the following paragraphs (2), (3), and (4). Paragraph (2) sets forth, consecutively section by section, explanations of implementations of Pub. L. 98-369 and 98-577. Paragraph (3) sets forth explanations of other changes being made in sections that are affected by paragraph (2) actions. Paragraph (4) sets forth "pen and ink" changes, primarily in terminology, necessary for consistency in implementation of the above referenced statutes.

(2) The following sections are changed to implement Pub. L. 98-369 and 98-577.

a. Section 201-1.102, Authority, is amended to cite Pub. L. 98-369 and Pub. L. 98-577.

b. Section 201-1.102-2, Other related authorities, 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.

c. Section 201-1.502, Solicitation of agency and public views, is amended to implement Pub. L. 98-577.

d. Section 201-2.001, Definitions, is amended (i) to add definitions for "Compatibility limited requirement," (modified as a result of comment) "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 (3)d.)

e. Section 201-11.001, The full and open competition objective (modified as a result of comment to address schedules in paragraph (c)) is added.

f. Section 201-11.001-1, Application of FAR provisions, is revised (including changes as a result of comment) to specifically reference implementation of Pub. L. 98-369 in the Federal Acquisition Regulation (48 CFR Ch. 1).

g. Section 201-11.002, Other than full and open competition, and § 201-11.002-1, Use and documentation of specific make and model specifications, are revised (including changes as a result of comment) to change the captions 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. As the result of comment, paragraph (b) of § 201-11.002-1 (appearing in Temp. Reg. 11 as § 201-30.013-2) has been revised (and paragraph (c) deleted) to require not only submission of certified data (required by Temp. Reg. 11), but also justifications and approvals in accordance with FAR 6.303 and 6.304 when a specific make and model specification is used to describe a requirement, notwithstanding the existence of more than one responsible source.

h. Section 201-11.003, Agency responsibilities, is amended (including changes as a result of comment) 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.

i. 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.

j. Section 201-23.103, Procurement and contracting authority, is amended to specifically reference Part 201-11, Competition, provisions.

k. Section 201-23.104, Blanket regulatory delegations of procurement authority, is amended where necessary (in the various subsections) (including a clarification in § 201-23.104-5 as a result of comment) 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 (3)e.)

l. Section 201-23.106, Specific acquisition delegation of procurement authority, is amended (including changes to paragraphs (a)(11) and (b)(4) of § 201-23.106-1 and paragraph (b)(5)(ii)(G) of § 201-23.106-2) to adjust provisions (in the two subsections) regarding documentation and submission requirements, particularly where the type of specification selection and sole source requirements available from only one responsible source are discussed. Similar action is taken in § 201-39.006-4, Data, facsimile, and record telecommunications services submissions.

m. 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.

n. Section 201-24.207, Solicitations for compatibility limited requirements, is amended (including clarification as a result of comment) 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 (including changes in paragraph (b) as a result of comment) and moved to new § 201-30.009-3, Establishing compatibility limited requirements.

o. 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; and 201–38.012, Use of functional telecommunication system specifications, reflecting the pre-solicitation nature of the activity. Section 201–30.013–2 (appearing in Temp Reg. 11) has been revised and moved to § 201–11.002–1. (See paragraph (2)g.)

p. 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. (See paragraph (8).)

q. Section 201–30.008, Determination of system/item life, is amended (including clarification in paragraph (d) as a result of comment) to require consideration of subsequent procurements when establishing system/item lives when the requirement is available from only one responsible source.

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

s. Section 201–32.206, Use of GSA nonmandatory ADP schedule contracts, and § 201–40.008, Use of GSA nonmandatory telecommunications schedule contracts, are amended (including changes to paragraphs (a)(2), (d), (f)(2)(v)(F), and (g)(2)(iii)(C) to § 201–32.206, and changes to paragraph (c)(2)(iii)(C), and the addition of (b)(2)(v)(E) to § 201–40.008 as a result of comment) to adjust the competitive procedures to conform to the intent of Pub. L. 98–369 and in paragraphs (a)(2) of each provision to apply (i) the FAR provisions regarding only one responsible source and (ii) the use of specific make and model specifications provisions in § 201–11.002–1 to the schedule procedures. (See also paragraphs (3)g., h., and i.)

t. Section 201–32.303, Use of GSA Teleprocessing Services Program (TSP), is amended in paragraph (a)(1) to apply (i) the FAR provisions regarding only one responsible source and (ii) the use of specific make and model specifications provisions in § 201–11.002–1 to the schedule procedures.

u. Section 201–32.303–3, Procedures for acquiring TSP services, is amended (including changes to paragraph (d) as a result of comment) to state that the lowest overall cost alternative must be met when using abbreviated procedures.

(3) The following sections are changed for reasons other than statutory implementations.

a. Section 201–1.103, Applicability, is amended to clarify that the FIRMR applies to the use of GSA nonmandatory schedules for the acquisition of communications equipment under Federal Supply Classification Group 58 not defined as telecommunications equipment.

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

c. 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.

d. 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" and to delete the definition of "Comparative cost analysis." (See also paragraph (4).)

e. 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 (2)k.)

f. Section 201–24.208 is amended by adding a sentence to paragraph (a) that appears in the definition of "lowest overall cost."

g. Section 201–24.210 is amended (including changes to clarify the intent of paragraph (b) as a result of comment) to require that an agency conduct a new market survey before exercising a renewal option on a system life selection, awarded on an availability from only one responsible source basis, and if an alternate source exists, prepare an acquisition plan to initiate a subsequent competitive procurement.

h. Sections 201–32.206 and 201–40.008 are also amended to reflect a March 1, 1985, determination by the Administrator of GSA made pursuant to Pub. Law 98–577 (after consultations with the Administrator for Federal Procurement Policy and the Administrator of the Small Business Administration) 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 telecommunications schedule contracts. (The effect of this determination is explained in FIRMR Bulletin 13, Suplement 1, April 3, 1985.) 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 telecommunications schedule contracts. (See also paragraph (2)s.)

i. 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 telecommunications schedule program, in response to complaints received by GSA regarding some agencies' practices. (See also paragraphs (2)s. and (3)g.)

j. 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 paragraphs (2)s., (3)h., and (3)i.)

k. 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 (2)s., (3)h., (3)i., and (3)j.)

l. 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 making a terminology change in paragraph (b).

(4) The following sections are changed to provide terminology changes required by statutory implementation.

a. 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.

b. 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.

c. 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 requirement.

(5) The provisions of FIRMR Temp. Regs. 1 (Supp. 1), 2 (Supp. 1), 4, 5, 6, 7, 8, and 9 (50 FR 4400, January 30, 1985) are also codified by this amendment. These temporary regulations and Temporary Regulation 11 are canceled and superseded.

(6) Paragraph introductions to the individual sections in this issuance are annotated where applicable to indicate the specific reissued FIRMR temporary regulation in which the provision being codified first appeared. In § 201–26.204(b)(2), changed from Temp. Reg. 8, the organizational title of the ADP unit contact is required (not the name as previously required).

(7) Notice of proposed rulemaking regarding this amendment was published in the **Federal Register** (50 FR 10252, March 14, 1985). Temporary Regulation 11 (50 FR 13319), April 4, 1985) extended the comments due date to April 30, 1985. Comment due dates for the other temporary regulations being codified have expired. All comments received have been considered for this issuance.

(8) Notice of proposed rulemaking regarding performance validation (paragraphs (d)(10) and (d)(11) of § 201–30.007) was published in the **Federal Register** (50 FR 7356, February 22, 1985) and implemented in this amendment. Other portions of that proposal were published as Amendment 2 to the FIRMR. (See also paragraph (2)p.)

(9) 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 Governmentwide 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.

PART 201–1—[AMENDED]

Chapter 201 of Title 41 of the Code of Federal Regulations is amended as set forth below.

1. The authority citation for Part 201–1 continues to read as follows:

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

2. 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.

3. 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 Sec. 6(h) (41 U.S.C. 405(h)) regarding authority relationships, Sec. 16(3) (41 U.S.C. 414) regarding agency responsibilities, Sec. 18 (41 U.S.C. 416) regarding procurement notices, and Sec. 22 (41 U.S.C. 418b) regarding publication of proposed regulations.

* * * * *

4. 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", (ii) adding a new paragraph (c)(5) regarding the scope of GSA schedule contracts, and (iii) removing the period and adding at the end of the note following paragraph (g) the words "(see § 201–23.104–6).", as follows:

§ 201–1.103 Applicability.

* * * * *

(b) * * *

(3) When the very subject matter of a contract is for something other than the contracting for ADP resources, agencies shall not require their Government contractors to apply the policies and procedures in the FIRMR even though commercially available ADP resources ae used in contract performance. However, if it is operationally feasible to sever the ADP resources requirements from the overall requirement, they shall be severed and contracted for in accordancee with the FIRMR if this action will promote economy, efficiency, and full and open competition.

* * * * *

(c) * * *

(5) The FIRMR applies to the use of GSA nonmandatory schedules for the acquisition of communications equipment under Federal Supply Classification Group 58 not defined as telecommunications equipment.

* * * * *

(g) * * *

Note.—The FIRMR includes a blanket delegation of procurement authority for agencies to procure (non-personal) commercial ADP support services (see § 201–23.104–6).

5. 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.

6. 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. Class deviations may be authorized only by the Administrator of General Services. Individual deviations may also be authorized by the GSA Assistant Administrator for Information Resources Management, or the officials designated by the Assistant Administrator for this purpose.

7. 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 views.

(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 significant change to the FIRMR.

(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, provisions 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]

1. The authority citation for Part 201-2 continues to read as follows:

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

2. Section 201-2.001 is amended by adding (alphabetically) definitions to read as follows:

§ 201-2.001 Definitions.

* * * * *

"ADP equipment system" means an operational or managerial entity of general purpose ADPE components containing at least one separate identifiable central processing unit and such other components as input/output devices and storage units.

* * * * *

"ADP resource" means (1) automatic data processing equipment (ADPE), software, firmware, or related supplies as defined in § 201-2.001, (2) ADP management, technical, or operations personnel, or (3) a contracted commercial ADP service or ADP support service.

"ADP resource system" means a combination of ADP resource elements organized to perform specific or types of specific ADP requirements. ADP equipment systems and systems using commercial ADP services are included.

* * * * *

"ADP sharing" means the provision of available ADP resources to users by an organization with no primary responsibility for supporting those users.

* * * * *

"ADP unit" means any organizational element of the Federal Government which:

(a) Uses or plan to use ADPE;

(b) Uses or plans to use commercial ADP services;

(c) Has organizational components which perform ADP management, development, programming, selection, or implementing functions; or

(d) Has Government contractors, including educational institutions and other not-for-profit contractors or organizations, who operate ADP equipment in the performance of work under cost reimbursement-type contracts or subcontracts when: (1) equipment is leased and the total cost of leasing is to be reimbursed under one or more cost reimbursement-type contracts; (2) equipment is purchased by the contractor for the account of the Government or title will pass to the Government; (3) equipment is furnished to the contractor by the Government; or (4) equipment is installed in Government-owned, contractor-operated facilities.

* * * * *

"Analog computer" means a computer that operates on continuous data as distinguished from discrete data. It translates physical conditions such as flow, temperature, pressure, angular position, or voltage into related mechanical quantities and uses mechanical or electrical equivalent circuits as an analog for the physical phenomenon being investigated.

* * * * *

"Automatic data processing equipment (ADPE)" means general purpose, commercially available, mass-produced automatic data processing devices; i.e., components and the equipment systems configured from them together with commercially available software packages that are provided and are not priced separately, and all documentation and manuals relating thereto, regardless of use, size, capacity, or price, that are designed to be applied to the solution or processing of a variety of problems or applications and are not specially designed (as opposed to configured) for any specific application.

(a) Included are:

(1) Main-frame, mini, and micro digital, analog, or hybrid computers;

(2) Auxiliary or accessorial equipment, such as plotters, tape cleaners, tape testers, data conversion equipment, source data automation recording equipment (optical character recognition devices, computer input/output microfilm and other data acquisition devices), or computer performance evaluation equipment; etc., designed for use with digital, analog, or hybrid computer equipment, either cable or modem connected, wire connected, or stand-alone, and whether selected or acquired with a computer or separately;

(3) Punched card accounting machines that can be used in conjunction with or independently of digital, analog, or hybrid computers;

(4) Devices used to control and transfer data and/or instructions to and from a central processing unit (CPU), including data transmission terminals, batch terminals, display terminals, modems, sensors, multiplexors, and concentrators;

(5) Storage devices that are designed to be cable connected for use on line in which data can be inserted, retained, and retrieved for later use;

(6) General purpose mini or microcomputers used as control mechanisms where computer technology is essential in controlling, monitoring, measuring, and directing processes, devices, instruments, or other equipment (see also §§ 201-24.202 and 201-24.203); and

(7) Equipment used in office automation applications that is designed to be controlled by a general purpose data processing language primarily to be applied through the internal execution of a series of instructions, not limited to specific key stroke functions, and designed to process a variety of applications.

(b) Excluded are:

(1) ADPE systems and components specially designed (as opposed to configured) and produced to perform computational, data manipulation, or control functions, but which have no general purpose applicability;

(2) ADPE that is modified at the time of production to the extent that:

(i) It no longer has a commercial ADP market; or

(ii) It cannot be used to process a variety of applications; or

(iii) It can be used only as an integral part of a non-ADP system.

* * * * *

"Compatibility limited requirement" means a statement of ADP equipment or service requirements expressed in terms that require the items to be compatible with the existing software or ADP equipment.

* * * * *

"Data processing facility" means the personnel, hardware, software, and physical facilities of an organizational

entity whose primary function is the operation of one or more computers. A data processing facility includes:

(a) The personnel who operate computers; develop and maintain software; provide user liaison and training; schedule jobs and computer time; prepare and control input data; control, reproduce, and distribute output data; maintain tape and disk libraries; provide security; maintenance, and custodial services; and manage or provide administrative support to other personnel engaged in these activities.

(b) The owned, rented, or leased computer and telecommunications hardware including central processing units; associated peripheral equipment such as control or switching units, disk drives, tape drives, drum storage, printers, card readers, and consoles; data entry equipment; data reproduction, decollation, booking, and binding equipment; and telecommunications equipment used for the transfer of data between remote sites and the facilities including telecommunications control units, terminals, modems and dedicated phone lines.

(c) The general purpose software including operating system software, utilities, sort, merge, language processors, access methods, data base processors, and other similar multiuser software.

(d) The physical facilities including computer rooms; tape and disk libraries, stockrooms and warehouse space; office space; physical fixtures such as desks, chairs, storage, and file cabinets; general office telephones; and general office duplicating equipment, calculators, typewriters, and similar office machines.

* * * * *

"Data processing facility subject to OMB Circular A–121" means all data processing facilities operated by, or on behalf of, an executive agency that provide service to more than one user, operate one or more general management computers, and exceed $100,000 per year for the full cost of operation.

* * * * *

"Digital computer" means a computer that operates on a discrete data by performing arithmetic and logic processes on these data.

* * * * *

"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))

* * * * *

"Full cost for purposes of OMB Circular A–121" means all significant expenses incurred in the operation of a data processing facility. The following cost elements are included:

(a) Personnel—including salaries, overtime, and fringe benefits (both funded and unfunded) of civilian and military personnel; training; and travel.

(c) Equipment—including depreciation for owned capitalized equipment, rental cost, leased costs, and direct expenses for non-capitalized equipment.

(c) Software—including depreciation for capitalized costs of developing, converting, or acquiring software; rental costs for software; and direct expenses for non-capitalized acquisition of software.

(d) Supplies—including office supplies, data processing materials, and miscellaneous expenses.

(e) Contracted services—including technical and consulting services, equipment maintenance, data entry support, operations support, maintenance of multipurpose and operating system software and telecommunications network services.

(f) Space occupancy—including rental and depreciation of buildings, general office furniture, and equipment, building maintenance; heating, air conditioning, and other utilities expenses; telephone charges; and building security and custodial services.

(g) Intra-agency services and overhead—including the costs of normal agency support services, either billed or allocated.

(h) Interagency services—including the costs of services provided by other agencies and departments, whether reimbursed or estimated.

* * * * *

"Functional telecommunication system specifications" means: (a) The delineation of the requirements that the system is intended to satisfy and (b) the assumptions and facts underlying the requirements. The actual specification depends on the type of system to be procured; e.g., voice system, data system, or data service.

* * * * *

"General management computer for purposes of OMB Circular A–121" means a digital computer which is used for any purpose other than as a part of a process control, combat weapon, space, or mobile system.

* * * * *

"Hybrid computer" means a computer for data processing using both analog representation and discrete representation of data.

* * * * *

"Information processing resource" means general purpose ADPE as defined in § 201–2.001, special purpose equipment that is excluded under paragraphs (b)(1) of the definition of ADPE, and the software terms defined in § 201–2.001. (An example of special purpose equipment is "office information system equipment" that is designated as Federal Supply Class (FSC) 7435 in ADP nonmandatory schedule contracts.)

* * * * *

"Lowest overall cost" means the least expenditure of funds over the system/item life, price and other factors considered. Lowest overall costs shall include purchase price, lease or rental prices, or service prices of the contract actions involved, other factors, and other identifiable and quantifiable costs that are directly related to the acquisition and use of the system/item: e.g., personnel, maintenance and operation, site preparation, energy consumption, installation, conversion, system start-up, contractor support, and the present value discount factor (see also § 201–24.208). The quantifiable cost of conducting the contracting action and other administrative costs directly related to the acquisition process are included.

"Lowest overall cost for purposes of telecommunication acquisition" means the least expenditure of funds over the systems or items life, price and other factors considered. Lowest overall costs shall include, but shall not be limited to, such elements as personnel, purchase price or rentals, maintenance, site preparation and installation, programing, and training.

* * * * *

"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.

* * * * *

"User" means an organizational or programmatic entity which receives service from a data processing facility. A user may be either internal or external to the agency or agency organization responsible for the facility.

* * * * *

§ 201-2.001 [Amended]

3. Section 201-2.001 is amended further (see paragraph 2, 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;" 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]

1. The authority citation for 41 CFR Part 201-8 continues to read as follows:

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

§ 201-8.101-3 [Amended]

2. 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."

3. Section 201-8.105-20 is amended by adding the text appearing in Temp Reg. 2, Supp. 1. As revised, the section reads as follows:

§ 201-8.105-20 FIPS PUB 60-2, Input/Output (I/O) Channel Interface.

(a) FIPS PUB 60-2 defines the functional, electrical and mechanical interface specifications for connecting computer peripheral equipment as a part of automatic data processing (ADP) systems. This standard, with a companion standard for power control (FIPS PUB 61-1), defines the hardware characteristics for the I/O channel interface. Three related standards specify how the interface is to be used when connecting particular classes of peripheral devices. They are FIPS PUB 62, Operational Specifications for Magnetic Tape Subsystems; FIPS PUB 63-1, Operational Specifications for Variable Block Rotating Mass Storage Subsystems; and FIPS PUB 97, Operational Specifications for Fixed Block, Rotating Mass Storage Subsystems.

(b) FIPS PUB 60-2 is applicable to the acquisition of all ADP systems and peripheral subsystems acquired by the Federal Government except minicomputer, microcomputer, and other small-scale systems that are specifically excluded by the National Bureau of Standards (NBS). The standard contains applicability, implementation, and waiver provisions. A list of currently excluded systems and the current criteria for excluding them is developed, maintained, and periodically distributed to Federal agencies by NBS and is available from NBS upon request.

(c) The correct operation of interfaces required to conform to FIPS PUB 60-2 must be verified by NBS before the acceptance of all applicable ADP equipment. A list of equipment having verified interfaces is maintained and periodically distributed to Federal agencies by NBS upon request. It identifies each interface verified and the conditions under which it was verified.

(d) The standard terminology for use in requirements documents, including solicitations, is:

Applicability of FIPS PUB 60-2 (Input/Output (I/O) Channel Interface) (May 84 FIRMR)

Unless otherwise excluded as specified in FIPS PUB 60-2 or unless a waiver is granted following the waiver procedures specified in FIPS PUB 60-2, ADP systems and peripheral subsystems that may result from this solicitation, must conform to FIPS PUB 60-2 for the connection of computers to those general classes of peripheral subsystems (such as magnetic tape or disk subsystems) for which operational specifications have been issued and are in effect. The correct operation of these system's conforming interfaces must be verified before the acceptance of all applicable ADP equipment. Arrangements for verification may be made according to procedures issued by the National Bureau of Standards. These procedures may be obtained by writing the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, Attention: Verification of I/O Channel Interface Standards. The Government may, at its options, apply instrumentation and test equipment at any interface required to conform with FIPS PUB 60-2 before the acceptance of these ADP systems to ensure conformance with FIPS PUB 60-2.

(End of requirement statement)

(e) Verification procedures regarding FIPS PUBS 60-2 and 63-1 were published on December 11, 1979 (44 FR 71445). A verification procedure checklist was also published on February 27, 1980 (45 FR 12862). Questions may be directed to the Center for Computer Systems Engineering, Institute for Computer Sciences and Technology, NBS, Gaithersburg, MD 20899.

4. Section 201-8.105-23 is amended by adding the text appearing in Temp. Reg. 2, Supp. 1. As revised, the section reads as follows:

§ 201-8.105-23 FIPS PUB 63-1, Operational Specifications for Variable Block, Rotating Mass Storage Subsystems.

(a) FIPS PUB 63-1 defines the peripheral device dependent operational interface specifications for connecting variable block, rotating mass storage subsystems, such as magnetic disk equipment, to ADP systems. It is to be used with FIPS PUB 60-2, I/O Channel Interface, and FIPS PUB 61-1, Channel Level Power Control Interface. FIPS PUBS 60-2, and 61-1, plus this standard, provide for full plug-to-plug interchangeability of variable block, rotating mass storage equipment as a part of ADP systems. FIPS PUB 63-1 applies to the acquisition of variable block magnetic disk equipment if use of FIPS PUB 60-2 and 61-1 is required. If waivers apply to a solicitation, the requirements document shall so state.

(b) NBS must verify the correct operation of interfaces required to conform to FIPS PUB 63-1 before the applicable ADP equipment can be accepted. NBS establishes, maintains, and distributes to Federal agencies a list of equipment with verified interfaces; it is also magnetic disk equipment if use of FIPS PUB 60-2 and 61-1 is required. If waivers apply to a solicitation, the requirements document shall so state.

(b) NBS must verify the correct operation of interfaces required to conform to FIPS PUB 63-1 before the applicable ADP equipment can be accepted. NBS establishes, maintains, and distributes to Federal agencies a list of equipment with verified interfaces; it is also available from NBS upon request. The list identifies each interface verified and the conditions of verification. The solicitation document shall require offerors to state the status of verification for those interfaces for which conformance is required.

(c) An alternative to FIPS PUB 63-1 is FIPS PUB 97, Operational Specifications

for Fixed Block, Rotating Mass Storage Subsystems. If either standard is used, the other is not required. Additional operational specifications are available from NBS in a report titled, "Additional Operational Specifications for Variable Block, Rotating Mass Storage Devices (FIPS PUB 63-1 SUP)," which provides track format definition and specifies the sense information format and content for particular classes of variable block, rotating mass storage devices. Whenever FIPS PUB 63-1 is specified, conformance to the supplemental device dependent characteristics contained in the above mentioned NBS report also may be required at the option of the procuring agency.

(d) When an agency determines that the nature of the requirement is such that conformance to the supplemental device dependent characteristics contained in the report is required, the requirements provision in paragraph (e) of this section shall be included in the requirements document, including solicitation. However, if an agency determines that it is not essential to require conformance to the supplemental device dependent characteristics contained in the report, the requirements provision in paragraph (f) of this section shall be included in the document.

(e) The standard terminology when supplemental device characteristics are required is, as follows:

Applicability of FIPS PUB 63-1 (Interface: ADP Systems/Variable Block, Rotating Mass Storage Subsystems With Conformance to Supplemental Device Dependent Characteristics) (May 84 FIRMR)

Unless otherwise excluded as specified in FIPS PUB 63-1 by reference to FIPS PUBS 60-2 and 61-1 or unless a waiver is granted following the waiver procedures specified in FIPS PUB 63-1, ADP systems and variable block, rotating mass storage subsystems that may result from this solicitation must conform to FIPS PUB 63-1. In addition, conformance to the specifications for Class(es) [Insert class(es)] as contained in the NBS report entitled "Additional Operational Specifications for Variable Block Rotating Mass Storage Devices" is required. The correct operation of all interfaces, whose conformance to FIPS PUB 63-1 and the above designated class(es) is required, must be verified before the acceptance of all applicable ADP equipment in accordance with FIRMR § 201-8.105-23(b). Arrangements for verification may be obtained by writing the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, Attention: Verification of Operational Specifications for Rotating Mass Storage Subsystems. The Government may, at its options, apply instrumentation and test equipment at any interface required to conform to FIPS PUB 63-1 before the acceptance of these ADP systems to ensure conformance with FIPS PUB 63-1. Waivers applicable to the requirements of this solicitation are identified elsewhere in this solicitation document.

(End of requirement statement)

(f) The standard terminology when supplementary device characteristics are not required is, as follows:

Applicability of FIPS PUB 63-1 (Interface: ADP Systems/Variable Block, Rotating Mass Storage Subsystems Without Supplementary Device Dependent Characteristics) (May 84 FIRMR)

Unless otherwise excluded as specified in FIPS PUB 63-1 by reference to FIPS PUB 60-2 and 61-1 or unless a waiver is granted following the waiver procedures specified in FIPS PUB 63-1, ADP systems and variable block, rotating mass storage subsystems that may result from this solicitation must conform to FIPS PUB 63-1. The correct operation of all interfaces, whose conformance to FIPS PUB 63-1 is required, must be verified before the acceptance of all applicable ADP equipment in accordance with FIRMR § 201-8.105-23(b). Arrangements for verification may be obtained by writing the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, Attention: Verification of Operational Specifications for Rotating Mass Storage Subsystems. The Government may, at its option, apply instrumentation and test equipment at any interface required to conform to FIPS PUB 63-1 before the acceptance of these ADP systems to ensure conformance with FIPS PUB 63-1. Waivers applicable to the requirements of this solicitation are identified elsewhere in this solicitation document.

(End of requirement statement)

5. Section 201-8.105-34 is amended by adding the text appearing in Temp. Reg. 2, Supp 1. As revised, the section reads as follows:

§ 201-8.105-34 FIPS PUB 97, Operational Specifications for Fixed Block, Rotating Mass Storage Subsystems.

(a) FIPS PUB 97 defines the peripheral device dependent operational interface specifications for connecting fixed block, rotating mass storage subsystems, such as magnetic disk equipment, to ADP systems. It is to be used with FIPS PUB 60-2, I/O Channel Interface, and FIPS PUB 61-1, Channel Level Power Control Interface. FIPS PUBS 60-2 and 61-1 plus this standard, provide for full plug-to-plug interchangeability of fixed block, rotating mass storage equipment as a part of ADP systems. FIPS PUB 97 applies to the acquisition of fixed block magnetic disk equipment if FIPS PUBS 60-2 and 61-1 are required. If waivers apply to a solicitation, the requirements document shall so state.

(b) NBS must verify the correct operation of interfaces required to conform to FIPS PUB 97 before the applicable ADP equipment can be accepted. NBS establishes, maintains, and distributes to Federal agencies a list of equipment with verified interfaces; it is also available from NBS upon request. The list identifies each interface verified and the conditions of verification. The solicitation document shall require offerors to state the status of verification for those interfaces for which conformance is required.

(c) An alternative to FIPS PUB 97 is FIPS PUB 63-1, Operational Specifications for Variable Block, Rotating Mass Storage Subsystems. If either standard is used, the other is not required.

(d) The standard terminology for use in requirements documents, including solicitations, is:

Applicability of FIPS PUB 97 (Interface: ADP Systems/Fixed Block, Rotating Mass Storage Subsystems) (May 84 FIRMR)

Unless otherwise excluded as specified in FIPS PUB 97 by reference to FIPS PUBS 60-2 and 61-1 or unless a waiver is granted, following the waiver procedures specified in FIPS PUB 97, ADP systems and fixed block, rotating mass storage subsystems that may result from this solicitation must conform to FIPS PUB 97. The correct operation of all interfaces whose conformance to FIPS 97 is required must be verified before the acceptance of all applicable ADP equipment. Arrangements for verification may be made according to procedures issued by NBS. These procedures may be obtained by writing the Director, Institute of Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, Attention: Verification of Operational Specifications for Rotating Mass Storage Subsystems. The Government may, at its option, apply instrumentation and test equipment at any interface required to conform to FIPS PUB 97 before the acceptance of these ADP systems to ensure conformance with FIPS PUB 97. Waivers applicable to the requirements of this solicitation are identified elsewhere in this solicitation document.

(End of requirement statement)

6. Section 201-8.106-6 is amended by adding the text appearing in Temp. Reg. 2, Supp. 1. As revised, the section reads as follows:

§ 201-8.106-6 FIPS PUB 98, Message Format for Computer Based Message Systems.

(a) FIPS PUB 98 provides for the separation of information so that a computer based message system (CBMS) can locate and operate on that information. The intent of the standard is to aid information interchange among CBMSs by permitting users of different CBMSs to transmit messages to each other.

(b) The standard applies to the acquisition and use of CBMS and services in networked systems.

(c) The standard does not apply to single-processor, stand-alone systems that are not interconnected with any other CBMS or to systems established strictly for the purpose of supporting research in computer science or communications. However, conformity with FIPS PUB 98 is recommended if it is likely that the system will be connected to another central processing unit or to a CBMS interconnected with an existing network.

(d) Implementation dates: (1) All requirements documents for CBMS in-house development initiated on or after March 1, 1984 shall implement the standard.

(2) All solicitation documents released on or after March 1, 1985 for computer based message equipment or services shall implement the standard.

(e) The standard terminology for use in requirements documents, including solicitation is:

Applicability of FIPS PUB 98 (Computer Based Message Systems and Services) (May 84 FIRMR)

All computer based message systems and services in networked systems offered as a result of the requirements of which this is a part shall comply with FIPS PUB 98 unless the requirements document specifies elsewhere that the services are provided by or are systems whose sole purpose is to support research in computer science or communications.

(End of requirement statement)

7. Section 201–8.113–7 is amended by adding the text appearing in Temp. Reg. 2, Supp. 1. As revised, the section reads as follows:

§ 201–8.113–7 FIPS PUB 100/FED–STD 1041, Interface between data terminal equipment (DTE) and data circuit-terminating equipment (DCE) for operation with packet-switched data communication networks.

(a) FIPS PUB 100/FED–STD 1041 adopts a subset of the International Telegraph and Telephone Consultative Committee (CCITT) Recommendation X.25 for operating in the packet mode on public data networks. The technical specifications of this standard shall be employed in designing, developing, and acquiring Federal ADP equipment, telecommunications equipment, or services using public packet-switched data communication networks whenever an interface based on CCITT Recommendation X.25 is required.

(b) NBS has established a testing service to evaluate equipment and services for conformance to this joint standard. This service will assist Federal agencies who wish to follow the options specified in the standard and limit acquisition to equipment that has been verified for conformance to the joint standard. Further information may be obtained from the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, DC 20234, Attention: X.25 Verification.

(c) The standard terminology to be used in requirements documents, including solicitations, is:

Applicability of FIPS PUB 100/FED–STD 1041 (Public Packet-Switched Data Communications Network Interface) (MAY 84 FIRMR)

All applicable ADP and telecommunications equipment or services using public packet switched data communication networks which require an interface based on CCITT Recommendation X.25 must comply with the requirements specified in FIPS PUB 100/FED–STD 1041.

(End of requirement statement)

PART 201–11—[AMENDED]

1. The table of contents of Part 201–11 is amended by revising the entries for §§ 201–11.001, 201–11.001–1, 201–11.002, 201–11.002–1, and 201–11.003 (Note.—The entries for §§ 201–11.002–2, 201–11.003–1, and 201–11.003–2 are removed.); and the authority citation for the part continues to read as follows:

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

2. 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 telecommunications requirements is to obtain full and open competition through the use of competitive procedures (including the GSA information resources multiple award schedule program) which permit all responsible sources (see FAR Subpart 9.1) 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 of satisfying the Government's needs.

(c) Use of GSA information resources multiple award schedules (issued under the procedures established by the Administrator of General Services consistent with 41 U.S.C. 259(b)(3)(A)) is a competitive procedure if ordering offices follow applicable FIRMR procedures (see particularly §§ 201–32.206, 201–32.303, and 201–40.008).

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

§ 201–11.001–1 Application of FAR provisions.

FAR Part 6 prescribes general 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. Those general provisions are applicable to the acquisition of ADP and telecommunications resources, in addition to the provisions set forth in this Part 201–11. (Note.—Subpart 201–1.6 sets forth the relationship between FAR and FIRMR contracting rules.)

4. 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 telecommunications requirement, the procurement action must be justified and approved in accordance with Part 201–23, Part 201–39, 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 as the basis for this justification.

(b) *Only one responsible 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 this requirement (see FAR 6.303-1(b)).

5. Section 201-11.002-1 (appearing in Temp. Reg. 11 as § 201-30.013-2) is revised to read as follows:

§ 201-11.002-1 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 can satisfy the needs of the Government.

(b) The use of a specific make and model specification is considered to be other than full and open competition and must be certified, justified, and approved in accordance with FAR 6.303 and 6.304, notwithstanding the existence of more than one responsible source.

(1) The justification in all cases must address why no other type of supplies or services will satisfy the agency's needs and the practical factors which preclude the development of a less restrictive specification.

(2) The provisions of this paragraph (b) of § 201-11.002-1 shall not apply when (i) an order is placed against a GSA information resources multiple award schedule contract and (ii) the technical and requirements personnel describe the requirements with a specification type of higher precedence use than a specific make and model specification (for example, see § 201-30.013), notwithstanding the fact that when the order is placed, it cites a specific make and model.

§ 201-11.002-2 [Removed]

6. Section 201-11.002-2 is removed.

7. 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 actions become 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 both have the responsibility for ensuring that this basic procurement objective is met. This responsibility extends to fostering competitive conditions for subsequent procurements.

(c) Agencies must consider their systems life and contract expiration dates when planning for future information resources requirements activities. Agency plans for follow-on procurements should allow sufficient time for completion of the acquisition process, including any required 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 201-1.003-2 [Removed]

8. Sections 201-11.003-1 and 201-11.003-2 are removed.

PART 201-16—[AMENDED]

1. The table of contents of Part 201-16 is amended by revising the entry for § 201-16.001; and the authority citation for the part continues to read as follows:

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

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

2. 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 specific and blanket delegations of procurement authority to agencies.

3. Section 201-16.002 is amended by adding paragraph (c) appearing in Temp. Reg. 7 and paragraph (d) appearing in Temp. Reg. 8.

The revised paragraphs read as follows:

§ 201-16.002 Planning requirements.

* * * * *

(c) The plan should be used by agencies to manage their sharing and reutilization programs. Planning short- and long-range procurement strategies is essential to avoid the continued use of costly, outmoded computers or other obstacles to more effective, efficient, and economical ADP.

(d) Agency planning requirements should be promulgated in the agency directives system and should communicate to agency managers the goals, managerial approach, policies, procedures, and responsibilities of specific officials or offices for information resources management. The plan should address installed as well as new systems, procedures for post-installation review of new systems, and procedures for the periodic audit of information systems. Agencies are encouraged to consider GSA programs that are available to assist agencies in applying information processing resources to agency needs.

PART 201-20—[AMENDED]

1. The authority citation for Part 201-20 continues to read as follows:

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

2. Section 201-20.006 is amended by adding the text appearing in Temp. Reg. 7. As revised, the section reads as follows:

§ 201-20.006 Sharing and reutilization.

Sharing installed ADPE and its operating system software shall be considered as a means of meeting the ADP requirements of the user (see Part 201-31 and OMB Circular A-121). Excess ADPE shall also be considered a source of supply (see Part 201-33). Sharing Government-owned common-use application software should be considered prior to development of new programs (see Part 201-31). Additional ADP capacity shall be acquired only if an agency has made reasonable efforts to determine that existing resources will not economically and efficiently meet the requirements. However, continued use of costly outmoded computers should be avoided.

PART 201-21—[AMENDED]

1. The authority citation for Part 201-21 continues to read as follows:

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

§ 201-21.011 [Amended]

2. 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." and by redesignating paragraph (c) to read paragraph (3) of paragraph (b).

PART 201-23—[AMENDED]

1. The table of contents of Part 201-23 is amended by adding an entry for § 201-23.104-7; and the authority citation for the part continues to read as follows:

201-23.104-7 ADP equipment systems.

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

2. Section 201-23.102 is amended by adding the text appearing in Temp. Reg. 6. As revised, the section reads as follows:

§ 201-23.102 Responsibility for conduct and accountability of acquisitions made under delegation of contracting authority from GSA.

(a) The provisions of Pub. L. 96-511 (the Paperwork Reduction Act of 1980) direct each executive agency head to designate a senior official (officials in DOD) reporting to the agency head to be responsible for implementing the Act. This designated senior official is assigned responsibility for the conduct of and accountability for any acquisitions made under a delegation of authority under section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) (see 44 U.S.C. 3506(c)(4)).

(b) The designated senior official in each agency shall advise GSA in writing of the position title and organizational identity of those officials who have been authorized to submit agency procurement requests to GSA (see also §§ 201-23.106 and 201-23.112).

(c) The designated senior official shall keep the listings current. (A change of incumbent in an unchanged position and organizational assignment does not require notification.) Listings shall be submitted to GSA (KMA), Washington, DC 20405.

3. Section 201-23.103 is amended by adding paragraphs (a) and (b) appearing in Temp. Reg. 6 and revising paragraph (b). The revised paragraphs read as follows:

§ 201-23.103 Procurement and contracting authority.

(a)(1) To allow for the orderly implementation of a program for the economical and efficient acquisition of ADP resources, agencies are authorized to acquire by contracting for these items—

(i) In accordance with the blanket delegation provisions of § 201-23.104,

(ii) When a specific agency delegation has been provided by GSA in accordance with the provisions of § 201-23.105, or

(iii) When a specific acquisition delegation has been provided by GSA in accordance with the provisions of §§ 201-23.106 and 201-23.107.

(2) Requirements shall not be fragmented in order to circumvent established delegation of procurement authority thresholds.

(b)(1) Agencies shall comply with the applicable provisions of the FIRMR before initiating procurement action on a requirement.

(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.

* * * * *

4. Section 201-23.104-1 is amended by adding the text appearing in Temp. Reg. 6 and revising paragraphs (c)(1) and (c)(2). As revised, the section reads as follows:

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

Except as indicated in § 201-23.201 regarding potential use of the ADP fund, Part 201-31 regarding sharing, and Part 201-33 regarding the use of excess ADPE, agencies may procure ADPE without prior approval of GSA when either paragraphs (a), (b), or (c) applies.

(a) The procurement is to be made by placing a purchase/delivery order against an applicable GSA requirements-type contract.

(b) The procurement is to be made by placing a purchase/delivery order against a GSA schedule contract provided that the following three conditions are met:

(1) The order is within the maximum order limitation (MOL) of the applicable contract;

(2) The total purchase price (even though the item(s) are to be rented or leased) of the item(s) covered by the order does not exceed $300,000;

(3) The requirements set forth in § 201-32.206 on the use of GSA schedule contracts are met.

(c) The procurement is to be made by solicitation procedures other than use of GSA requirements-type or schedule contracts and the value of the procurement (including evaluated optional features) does not exceed:

(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.

5. Section 201-23.104-2 is amended by adding the text appearing in Temp. Reg. 6 and revising paragraphs (c)(1) and (c)(2). As revised, the section reads as follows:

§ 201-23.104-2 Software.

Except for software available through the Federal Software Exchange Center as covered by § 201-31.014 and software provided with and not separately priced from the ADPE, agencies may procure commercially available software without prior approval of GSA when either (a), (b), or (c) applies.

(a) The procurement is to be made by placing a purchase/delivery order against an applicable GSA requirements-type contract.

(b) The procurement is to be made by placing a purchase/delivery order under the terms and conditions of an applicable GSA schedule contract (see § 201-32.206).

(c) The procurement (regardless of method or time period) is to be made by solicitation procedures other than use of GSA requirements-type or schedule contracts and the value of the procurement (including evaluated optional features) does not exceed:

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

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

6. Section 201-23.104-3 is amended by adding the text appearing in Temp. Reg. 6 and revising paragraphs (b)(1) and (b)(2). As revised, the section reads as follows:

§ 201-23.104-3 Maintenance services.

Agencies may procure maintenance services without prior approval of GSA when either paragraph (a) or (b) of this § 201-23.104-3 applies.

(a) The procurement is to be made by placing a purchase/delivery order under the terms and conditions of an applicable GSA schedule contract (see § 201-32.206).

(b) The procurement is to be made by solicitation procedures other than use of GSA requirements-type or schedule contracts and the monthly charges do not exceed:

(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.

7. Section 201-23.104-5 is amended by adding paragraphs (a) and (b) appearing in Temp. Reg. 6 and paragraph (d) appearing in Temp. Reg. 1, Supp. 1 and

by revising paragraphs (a)(1) and (a)(2). The revised paragraphs read as follows:

§ 201-23.104-5 Commercial ADP services.

(a) Agencies shall use GSA's Teleprocessing Services Program in accordance with the applicability provisions set forth in § 201-32.303-1. Agencies may procure commercial ADP services without prior approval of GSA when the monthly charges (including evaluated optional features) do not exceed:

(1) Except as provided in paragraph (a)(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 or requirements using specific make and model specifications.

(b) Agencies shall comply with the requirements regarding the sharing or use of existing Federal ADP resources and the use of GSA sources of supply before initiating procurement action under authority of this § 201-23.104-5.

* * * * *

(d) Contract awards under the basic agreement shall be based on blanket or individual delegations of procurement authority. The resulting contract award amount and scope will redefine and limit the applicable authorization from that estimated in the agency procurement request submission or estimate, except as provided in this paragraph (d). The contract "Engineering Changes" provision is designed to accommodate changes to requirements (including equipment and software specifications) to meet changed or increased data processing requirements, to increase economy or efficiency, to improve performance or productivity, or to save energy. Any changes implemented shall be within the scope and systems life of the contract. Increased requirements up to 25 percent of those specified in the contract (including contractually specified options) shall be deemed to be requirements within the scope of this paragraph (d), provided the requirements are elected to be implemented by the contracting officer under the "Engineering Changes" provision. Other requirements shall be treated as new requirements requiring authorization for contracting under this § 201-23.104-5 (see also § 201-32.303(e)).

8. A new section 201-23.104-7 (appearing in Temp. Reg. 11) is added to read 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 price or charges for either the equipment (including attendant maintenance costs for rentals), 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.

9. Section 201-23.105 is amended by adding the text appearing in Temp. Reg. 6. As revised, the section reads as follows:

§ 201-23.105 Specific agency or agency component blanket delegation of procurement authority.

Specific changes in thresholds or conditions regarding the exercise of procurement authority by a particular agency or component thereof may be authorized by the GSA Assistant Administrator for Information Resources Management (K). The changes will be in writing, will cite this § 201-23.105, will state effectivity and scope of applicability, and will be directed to the designated senior official of the applicable agency.

10. Section 201-23.106 is amended by adding the text appearing in Temp. Reg. 5. As revised, the section reads as follows:

§ 201-23.106 Specific acquisition delegation of procurement authority.

(a) If an agency determines that the conditions of the contemplated procurement are not covered by the blanket delegation of procurement authority provisions of §§ 201-23.104 or 201-23.105, or if the conditions of the contemplated procurement change during the procurement process so that those provisions become inapplicable, two copies of the agency procurement request (APR) and other applicable documents shall be forwarded to the General Services Administration (KMA), Washington, DC 20405. The APR shall be signed by an official who has been authorized to initiate the acquisition action and shall identify the position title and organizational identity of the official who has been authorized to conduct the procurement. GSA will process only those submissions signed by authorized officials and identified by position title and organizational identity who appear on the submitted listing (see § 201-23.102(b)). Other submissions will be returned without action to the submitting office for resubmission by an authorized agency official. In addition, the APR shall contain the name and telephone number of an individual within the agency who shall act as the point of contact for GSA. The APR shall include, as applicable, information set forth in §§ 201-23.106-1 or 201-23.106-2.

(b) Any Federal agency may elect (or continue, if an election has been made) to use the alternate APR submission requirements as set forth in § 201-23.106-2 when submitting ADP equipment or service procurement requests to GSA. This procedure is an alternative to the APR submission provisions of § 201-23.106-1.

(c) The agency designated senior official shall advise GSA (KMA), Washington, DC 20405, when the alternate APR submission procedure will be used by the agency. Agency notifications already submitted (under F-126 procedures) will be assumed to continue (as modified by this Temp. Reg. 5) unless GSA is notified to the contrary.

(d) GSA encourages agencies to establish early planning coordination with GSA's agency planning and authorization officials (KMA). Often potential delays and problem areas can be identified and remedied in advance of the formal APR submission.

(e) When required, the information submitted by an agency may be made available to Government oversight activities.

11. Section 201-23.106-1 is amended by (i) revising paragraphs (a)(11), (a)(17), (b)(13)(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 the certified data supporting any use of a specific make and model specification as required by § 201-11.002-1; and, if applicable, the certified data supporting of contemplated requirement available from only one responsible source (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 §§ 201–30.007 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 certified data supporting any use of a specific make and model specification as required by § 201–11.002–1; and if applicable the certified data supporting a contemplated requirement available from only one responsible source (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.

* * * * *

12. Section 201–23.106–2 is amended by adding the text appearing in Temp. Reg. 5, revising paragraphs (b)(3)(i) and (b)(5), and by adding paragraph (b)(3)(iv). As revised, the section reads as follows:

§ 201–23.106–2 Alternate APR submission requirements.

(a) Agencies may elect to use the alternate APR submission procedure set forth in this § 201–23.106–2 when submitting ADP equipment or service requests to GSA. However, because the procedure offers agencies broader procurement autonomy than otherwise provided in § 201–23.106–1, it places greater emphasis on the responsibilities of agency officials to ensure that current regulatory provisions are followed before acquisitions take place. In establishing internal procedures, agencies should strive to (i) designate executive level officials to initiate and accept accountability for acquisition actions under this regulation's alternate APR submission procedure and (ii) provide for an independent review to validate agency compliance with regulations.

(b) Alternate APR submission requirements for agency request for ADP equipment or services are as follows:

(1) *Agency Information:* Provide agency name, address, and location where equipment will be installed or services will be performed. Provide names and telephone numbers of appropriate technical and contracting officials. Identify the position title and organization identity of the official authorized to conduct the acquisition (see § 201–23.106(a)).

(2) *Project Title and Description:* (i) Provide the project title and a brief but specific description of the primary agency program(s) that the ADP equipment or service will support.

(ii) Provide a brief but specific description of the current major system components (including ADPE configuration) or services supporting the program(s).

(iii) Provide a brief but specific description of the major system components or services to be acquired during the systems life of the requirement. This should reflect resources required for system expansion (i.e., anticipated augmentations, upgrades, and other system modifications) during the systems life if such requirements will be included in the solicitation document as evaluated options. The delegation resulting from this submission will be limited to resources described herein.

(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.

(ii) Identify by fiscal year quarter the following planned milestones: Release of solicitation document and contract award.

(iii) If the request involves a pilot or prototype, the strategy for the follow-on implementation phase must be described.

(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.

(4) *Estimated Contract Life and Cost:* The estimated contract cost of the acquisition (not the overall system life cost) shall be identified by type of request for the contract life and shall include all anticipated optional quantities, services, and periods. Detailed cost breakdowns may be included when necessary to describe clearly the estimated costs. The estimated contract cost (for all years) should correspond to the planned contract life. The delegation of authority resulting from this submission will be limited to quantities and years described herein.

Type of request	Estimated contract cost	Contract life
—ADPE system or item	_____	_____
—ADPE system replacement/augmentation	_____	_____
—Proprietary software	_____	_____
—Equipment maintenance	_____	_____
—ADP services acquired under TSP/BA	_____	_____
—ADP services acquired under TSP/MAS	_____	_____
—ADP services acquired under TSP exception	_____	_____
—ADP services outside TSP scope	_____	_____

(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)	_____

Documentation	Date
(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) Certified data to support a contemplated requirement using a specific make and model specification (see § 201-11.002-1).	
(H) Description of those planned actions necessary to foster competition for subsequent procurements (see § 201-30.012).	

(6) *Agency remarks:* Provide additional information deemed necessary concerning any of the above items or special conditions associated with this procurement; e.g., required building contruction/modification by GSA.

(7) *Agency/GSA references:* Provide references to previous GSA authorizations (including previous GSA case numbers), meetings, telephone discussions, etc.

(8) *Agency authorized signature, position title, organizational identity, date.*

Note.—GSA will process only those agency submissions signed by an authorized official (see § 201-23.106(a)). The official's position title and organizational identity must be provided.

13. Section 201-23.107 is amended by adding paragraphs (d) and (e) appearing in Temp. Reg. 5. The revised paragraphs read as follows:

§ 201-23.107 GSA action on agency APR submissions.

* * * * *

(d) When an agency selects the alternate APR submission procedure under § 201-23.106-2(a), GSA will promptly review and take appropriate action on the APR. When necessary, GSA will conduct a more in-depth review before issuing a DPA under the alternate APR submission procedure. In some instances, this may require the submission of additional information.

(e) GSA will conduct periodic reviews of current and past agency acquisition actions as it deems appropriate. These periodic reviews will (i) verify agency compliance with regulations and DPA conditions or limitations, (ii) assess GSA procurement policies and directions given to agencies, and (iii) assess the agency's planning and control mechanisms regarding the use of the delegated authority to accomplish economical and efficient acquisition, use, and management of ADP resources. GSA will take appropriate actions when findings indicate failures to comply with regulations or conditions or limitations of individual DPA's or unauthorized deviations to regulations. Actions may include voiding a DPA before award and withdrawing an agency's authority to use the alternate APR submission procedure.

14. 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;

* * * * *

15. 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 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.

16. Section 201-23.112-1 is amended by adding the text appearing in Temp. Reg. 5. As revised, the section reads as follows:

§ 201-23.112-1 Agency responsibility.

When acting under a GSA delegation of procurement authority under Subpart 201-23.1, the agency designated senior official is responsible for compliance with applicable procurement policies, regulations, and, in particular, Parts 201-24 and 201-32 and, if applicable, the specific terms of the delegation (see § 201-23.107).

17. Section 201-23.112-2 is amended by adding the text appearing in Temp. Reg. 5. As revised, the section reads as follows:

§ 201-23.112-2 GSA review of agency acquisition actions.

GSA reserves the right to review agency actions supporting any acquisition authorized under this Subpart 201-23.1. Documentation relative to agency actions made under the regulations issued under section 111 and other provisions of the Federal Property and Administrative Services Act of 1949, as amended, shall be made available for review upon request of GSA officials. (Documentation should be retained in agency files for such periods as required by applicable law or regulation.)

18. Section 201-23.501 is amended by adding the text appearing in Temp. Reg. 4. As revised, the section reads as follows:

§ 201-23.501 Use of multi-year contracting authority for small telecommunication systems.

(a) In order to provide for the economical and efficient acquisition of small telecommunications systems, executive agencies are authorized under 40 U.S.C. 481(a)(3) to enter into multi-year contracting arrangements subject to the following conditions.

(1) Each agency electing to exercise the delegation shall establish management and control procedures coordinated by the agency designated senior official for information resources management activities and agency senior procurement executive.

(2) The authority may be used for requirements only within the 50 States.

(3) The telephone systems must be at locations where requirements can be satisfied by systems smaller than those described in § 201–39.002–1 (generally, less than 25 lines or 50 telephones).

(4) The system life shall not exceed 5 years.

(5) The system life cost shall not exceed $25,000.

(6) The authority shall not be used where GSA consolidated local telephone service is available.

(b) The blanket delegation is to the agency head and may be redelegated. GSA reserves the right to review an agency's exercise of this delegated authority. The GSA Assistant Administrator for Information Resources Management may change the conditions regarding the exercise of the authority by a particular agency or component thereof, including withdrawal of the authority. (Any changes will be in writing, will cite this § 201–23.501, will state the effective date and scope of the change, and will be directed to the designated senior official of the applicable agency.)

PART 201–24—[AMENDED]

1. The table of contents of Part 201–24 is amended by revising the entries for §§ 201–24.207, 201–24.211, 201–24.212, and 21–24.304; and the authority citation for the part continues to read as follows:

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

2. Section 201–24.104 is amended by adding the text appearing in Temp. Reg. 1, Supp. 1. As revised, the section reads 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 schedules procedures shall be followed (see §§ 201–32.206, 201–32.303, and 201–40.008).

3. 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 the 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]

4. 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]

5. 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."

6. 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. In solicitations for the replacement of a computer system(s), offers for non-compatible equipment may be excluded only if the agency determines that the risk of a conversion failure requires the exclusion (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.

7. Section 201–24.208 is amended by revising the introductory text of paragraph (a) and by adding paragraph (c) appearing in Temp. Reg. 8. The revised paragraphs read as follows:

§ 201–24.208 Evaluation of acquisition alternatives.

(a) Except as provided in paragraph (c) of this § 201–24.208, a comparative cost analysis shall be made to determine the method of acquisition that represents the lowest overall cost alternative over the system/item life. However, the administrative costs of conducting an analysis to determine the lowest overall cost alternative shall be commensurate with the cost or price of the item being acquired and with the benefits expected to be derived from conducting the analysis. The alternatives that must be considered will vary, depending on the system/item being acquired and the requirement of the initial user. As a minimum, all of the following alternatives that will meet the user's needs shall be considered.

* * * * *

(c) When an agency determines that a purchase alternative is likely to be the most advantageous method of acquisition for a system/item with an anticipated purchase price of $25,000 or less pursuant to analysis under paragraph (b) of § 201–30.007 and paragraph (c) of § 201–30.008, the analysis required by paragraph (a) of this § 201–24.208 is not required. See also § 201–24.216.)

8. Section 201–24.210 is revised to read as follows:

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

(a) Before exercising any 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 fctors considered.

(b) Before exercising a renewal option on a system life selection awarded on an availability from only one responsible source basis, the agency shall conduct a new market survey on a timely basis to determine the availability of alternate sources of supply. If the survey indicated that an alternative source of supply exists, the agency shall prepare an acquisition plan (see FAR Part 7) showing the major milestones for satisfying the requirement on a full and open competition basis for the earliest practicable acquisition.

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

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

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

10. Section 201-24.216 is amended by adding the text appearing in Temp Reg. 6. As revised, the section reads as follows:

§ 201-24.216 Award criteria for low cost ADP equipment acquisitions.

Agencies may acquire ADPE on the basis of lowest offered purchase price when all of the following conditions are met:

(a) The purchase price of each system or item of equipment (including associated software) being acquired does not exceed $25,000;

(b) The total purchase price of all of the equipment and software being acquired under the procurement is $300,000 or less;

(c) The requirements are not fragmented to circumvent the thresholds in paragraphs (a) and (b) of this § 201-24.216;

(d) The purchase method is likely to be the lowest overall cost acquisition alternative (see §§ 201-24.208 and 201-30.008); and

(e) The agency determines, based on the requirements analysis, determination of system/item life, and analysis of alternatives, that award based on lowest offered purchase price is consistent with the lowest overall cost policy objective. (See §§ 201-30.007, 201-30.008, and 201-30.009.)

§ 201-24.304 [Removed and Reserved]

11. Section 201-24.304 is removed and reserved.

12. Section 201-24.305 is amended by adding the text appearing in Temp. Reg. 4. As revised, the section reads as follows:

§ 201-24.305 Comparative cost analysis.

When adjusting the system life cost to the present value of money, the present value is computed by using the discount rate prescribed by OMB Circular A-94 or a higher rate as determined by the procuring agency. The higher rate, if used, is to reflect the agency's desired rate of return to assure the optimal allocation of its limited funds.

PART 201-26—[AMENDED]

1. The authority citation for Part 201-26 continues to read as follows:

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

2. Subpart 201-26.2 is amended by adding the text of §§ 201-26.200, 201-26.201, 201-26.202, 201-26.203, 201-26.204, 201-26.205, and 201-26.206 appearing in Temp. Reg. 8. As revised, the sections read as follows:

§ 201-26.200 Scope of subpart.

This subpart sets forth the policy and criteria for the maintenance of an Automatic Data Processing Equipment Data System (ADPE/DS) by Federal agencies.

§ 201-26.201 Effect on other directives.

This subpart supersedes the reporting requirements under the ADP Management Information System (ADP/MIS) established by Office of Management and Budget (OMB) Circular A-83, October 5, 1971, superseded by Federal Management Circular 74-2, February 25, 1974, superseded by FPMR Amendment F-31, June 1978, superseded by FPMR Temp. Reg. F-500, August 30, 1983.

§ 201-26.202 Policy intent.

This subpart establishes the requirement for developing, operating, and maintaining an ADPE/DS for ADP equipment systems to assist the Office of Management and Budget (OMB), the General Services Administration (GSA), and other Federal agencies in carrying out their management responsibilities for the most effective and efficient use of ADPE. Agencies may supplement the data system to provide for their individual needs.

§ 201-26.203 Applicability.

(a) *Applicability.* The provisions of this subpart are applicable to all Federal agencies (as defined in § 201-2.001) having organizations (referred to herein as ADP units as defined in § 201-2.001) that use ADP equipment systems.

(b) *Exemptions:* The following are exempt from the reporting requirements of this subpart:

(1) Punched card machines, modems, and terminals;

(2) Analog computer systems even though a part of a hybrid system (The digital equipment system portion of the hybrid computer system is not exempt.);

(3) ADP equipment systems that are both integral to a combat weapon or space system and built or modified to special Government design;

(4) Totally Government-owned ADP equipment systems when the aggregate purchase price does not exceed $50,000;

(5) ADP equipment systems that are partially Government-owned and partially leased, when the total purchase price of the Government-owned components does not exceed $50,000, and the total lease charges for the leased components do not exceed $1,667 per month; and

(6) Leased ADP equipment systems when the monthly lease charges for the total configuration do not exceed $1,667.

§ 201-26.204 Policies and procedures.

(a) *Objective.* The ADPE/DS will provide inventory data on applicable ADPE that will:

(1) Facilitate the management of ADPE resources by Federal agencies;

(2) Facilitate the identification and replacement of obsolescent ADPE;

(3) Assist OMB, GSA, Office of Personnel Management, and the Department of Commerce in carrying out their specific Governmentwide responsibilities relating to ADP as delineated in OMB Circular A-71, Subject: "Responsibilities for the Administration and Management of Automatic Data Processing Activities"; and

(4) Provide for future development of additional data subsystems that may become a part of the ADPE/DS or may be separate elements in an overall ADP management information system. This future development, as the need arises, would be under the direction of GSA's Office of Information Resources Management with participation of involved agencies.

(b) *ADPE/DS structure.* The ADPE/DS will be composed of the major data elements listed below. Elements 1 through 6 are the System record—Level I; elements 7 through 13 are the Component record—Level II.

(1) Agency and subagency code (4 position code) as specified by Federal Information Processing Standard Publication 95 which identifies the agency and the subagency;

(2) Agency ADP unit code (4 position code) used to uniquely identify the ADP unit within the subagency (will automatically generate the full address of the ADP unit as well as the organizational title (abbreviated to no more than 25 positions) and telephone number for the contract at the ADP unit);

(3) System identification (2 position code assigned for each installed ADPE system at an ADP unit), and manufacturer's code (3) position code assigned to each manufacturer), and the system designation number as established by the manufacturer (seven position code);

(4) Acquisition date (4 position code) showing year and month of original acquisition in the Federal inventory;

(5) Fiscal year of expiration of planned system life (2 position code) (See § 201-30.008 and definition of system/item life in § 201-2.001);

(6) Fiscal year of next planned major replacement upgrade or augmentation (2 position code) with associated year of expiration of extended (if any) system life (2 position code);

(7) Agency ADP Unit Code—Repeat of (1) and (2) above;

(8) Component class (2 position code) represented in each system;

(9) Component ownership code (1 position code)—either (i) agency owned, (ii) straight lease, (iii) lease with option to purchase (LWOP), (iv) special lease plans, e.g., lease to ownership plan (LTOP), lease with title transfer plan, installment purchase plan (IPP), or alternate payment plan (APP), or (v) ADP Fund leased;

(10) Component designation by manufacturer/type/model (11 position code);

(11) Quantity of components in each ownership code (3 position code);

(12) Component cost in reported system—Most recent purchase price in hundreds of dollars (6 position code) and/or most recent monthly rental price in hundreds of dollars including maintenance (4 position code);

(13) Utilization percentage (2 position code) average for each ADP Fund leased item.

Note.—The system composition and cost will be calculated from the component data.

§ 201-26.205 Responsibilities.

(a) The Office of Information Resources Management, GSA is responsible for:

(1) Developing and issuing the necessary reporting procedures for carrying out the provisions of this subpart relating to ADPE/DS;

(2) Establishing the equipment inventory on a perpetual basis;

(3) Maintaining subsystems that may be part of the data base;

(4) Responding to requests from agencies and others for data from the data base; and

(5) Developing and/or participating in the development of reporting subsystems.

(b) Federal agencies are responsible for:

(1) Developing internal implementing instructions to carry out the objectives of this subpart;

(2) Furnishing the necessary data on an accurate and timely basis to comply with this subpart;

(3) Ensuring the use of these data to improve management practices; and

(4) Recommending such changes, additions, or deletions to the ADPE/DS as they deem necessary to improve the effectiveness of the system.

§ 201-26.206 Reporting requirements.

(a) *Initial reporting.* During the last week of September 1983, GSA (KHEE) will convert the current ADP/MIS data base to the new ADPE/DS data base. Hard copy will be provided to each of the Government agencies for verification and annotation of the new data elements. Verified and annotated copy shall be completed and returned to GSA within forty-five days of its receipt.

(b) *Regular reporting.* Agency updates to the data base shall be submitted thereafter at the end of each calendar quarter. Agency data shall be forwarded, in accordance with the instructions contained in a GSA Handbook that will supplement this subpart, addressed to: General Services Administration (KHEE), Washington, DC 20405.

(c) *Special reporting.* GSA reserves the right to require Government agencies to submit special reports as to the quantities, kinds, and locations of computers acquired below the dollar thresholds stated in § 201-26.203(b) (4), (5), and (6) during a particular period with the reporting details and format to be specified at the time of call. At least 60 calendar days will be provided for agencies to respond. Submissions will not be required more often than once per year.

(d) *Consolidation.* Agencies may provide both regular and special reports on either a centralized or decentralized basis.

(e) *Reports control.* This report has been cleared in accordance with FPMR 101-11.11 and assigned interagency report control number 0312-GSA-QU.

PART 201-30—[AMENDED]

1. The table of contents of Part 201-30 is amended by adding entries for §§ 201-30.009-3 and 201-30.013-1; revising the entry for 201-30.013; and the authority citation for the part continues to read as follows:

201-30.009-3 Establishing compatibility limited requirements.
201-30.013 Specifications.
201-30.013-1 Use of functional specifications.

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

2. Section 201-30.007 is amended by adding the text appearing in Temp. Reg. 8 and by (i) adding a sentence to paragraph (a), (ii) redesignating paragraph (c) as paragraph (d), (iii) adding a new paragraph (c), and (iv) adding new subparagraphs (9), (10), and (11) to new paragraph (d). As revised, the section reads 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.

(b) Agencies may find it more cost effective to conduct requirements analyses based on aggregated requirements. Requirements may be aggregated on either organizational or functional bases. Aggregated requirements analysis may be used where the applications and work environments of the individual requirements are homogeneous and where adequate workload measures and performance indicators are available. Individual requirements analyses are required when this is not the case.

(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 § 201-11.002 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 § 201-11.002-1.

(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 telecommunications support;

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

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

(v) Output needs and associated telecommunications 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.

(10) The risks over the systems life of adverse impact on agency missions by acquiring insufficient ADPE capacity versus the extra costs of acquiring excessive ADPE capacity.

(11) The appropriate performance and capability validation techniques that should be employed in the acquisition.

3. Section 201-30.007-1 amended by adding the text appearing in Temp. Reg. 8. As revised, the section reads as follows:

§ 201-30.007-1 Records management factors.

Agencies shall consider the following records management factors when performing a requirements analysis or designing an information system:

(a) Does the system design protect against the accidental destruction of records?

(b) Is there a records disposition schedule for the records being created by the equipment or system?

(c) Does the equipment or system use forms and, if so, have they been produced in accordance with the agency forms management program?

(d) Does the equipment or system produce reports subject to the agency reports control program?

4. Section 201-30.008 is amended by adding paragraph (c) appearing in Temp. Reg. 8 and paragraph (d). The revised paragraph (c) and added paragraph (d) read as follows:

§ 201-30.008 Determination of system/item life.

* * * * *

(c) The determination of a system/item life is optional for a system/item with a purchase price of $25,000 or less when there is a reasonable certainty that purchase will be the most advantageous method of acquisition. However, if lease or rental plans are to be solicited, the determination of a system/item life is necessary to conduct a meaningful lease/purchase evaluation.

(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 justification for other than full and open competition shall be used to manage and plan for full and open competition in any subsequent procurement. Agency information resources managers and contracting officers both have responsibility for management and planning actions necessary to foster full and open competitive conditions for subsequent procurements. When applicable, an acquisition plan (see FAR Part 7) showing the major milestones for completing a follow-on full and open competitive procurement shall be prepared.

5. Section 201-30.009 is amended by adding the text appearing in Temp. Reg. 8. As revised, the section reads as follows:

§ 201-30.009 Analysis of alternatives for satisfying a requirement.

(a) A comparative cost analysis shall be performed for each identified requirement or when planning (see § 201-16.002) indicates the possible existence of obsolescent ADPE; i.e., equipment becoming outmoded or out of date, thereby reducing productivity. The purpose of the analysis is to determine which alternative will meet the user's needs at the lowest overall cost over the system/item life. Except as provided in paragraph (c) of this section, the alternatives to be considered shall include, but are not limited to the following:

(1) Use of non-ADP resources to satisfy the requirement.

(2) Use of existing ADP facilities (e.g., Federal Data Processing Centers) and resources on a shared basis. OMB Circular A-121 requires executive agencies to establish a management control procedure to determine which existing data processing facility will be used to support major new applications (see Part 201-31).

(3) Use of commercial ADP services.

(4) Redesign of application programs, using Federal or ANSI standard language to the maximum practicable extent.

(5) Revision of production schedule or job stream and matching work elements to resource systems to improve productivity.

(6) Addition or change in working shifts to increase capacity.

(7) Augmentation of installed ADPE by adding additional components to increase data processing capacity.

(8) Upgrading selected system components, such as adding additional selector channels, memory, faster tape or disk units, etc., in order to improve throughput capability.

(9) Replacing installed ADP system with a compatible system that will handle the workload.

(10) Competitive replacement of the installed ADP system through use of functional specifications.

(b) [Reserved]

(c) [Reserved]

6. Section 201-30.009-1 is amended by adding the text appearing in Temp. Reg. 8. As revised, the section reads as follows:

§ 201-30.009-1 Analysis of low value acquisitions.

When the anticipated value of the procurement is $50,000 or less, the comparative cost analysis may be limited to an analysis that demonstrates that the benefits of acquiring the proposed system/item will outweigh the costs. However, requirements shall not be fragmented to circumvent this threshold. (For example, if the total cost of the various components of a system exceed $50,000, they may not be acquired individually to avoid a comprehensive comparative cost analysis.)

7. Section 201-30.009-3 (appearing in Temp. Reg. 11) 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 § 201-11.002-1).

(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 or with ADPE shall be—

(1) Supported by a software conversion study, if required (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 § 201-30.009-3.

(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 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) under § 201-23.106-1 for an augmentation or replacement acquisition when the use of specifications incorporating compatibility limited requirements is contemplated.

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

§ 201-30.012 [Amended]

8. Section 201-30.012 is amended by (i) removing from the introductory text 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]

9. 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."

10. Section 201-30.013 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 § 201-11.002-1).

11. Section 201-30.013-1 (appearing in Temp. Reg. 11) 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 elements of performance when necessary to reflect the user's needs.

PART 201-31—[AMENDED]

1. The authority citation for Part 201-31 continues to read as follows:

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

2. Sections 201-31.002 through 201-31.006 are amended by adding the text appearing in Temp. Reg. 7. As revised, the sections read as follows:

§ 201-31.002 ADP sharing considerations.

(a) *General.* The growth of ADP in the Government has increased sharing opportunities. Sharing these resources may be the most economical and efficient means to satisfy an ADP requirement, but is seldom a substitute for fundamental ADP capabilities needed by an agency. However, several factors tend to diminish the realization of the economic and efficiency potentials in sharing. These factors

include increasing complexities of setting up on another data processing facility [even when the facility has the same versions of the same software], better and cheaper micro and mini computer alternatives, availability of GSA's Teleprocessing Services Program for commercial ADP services, entry of many new time sharing vendors into the Government marketplace, and requirements for security and Privacy Act safeguards. Some data processing facilities, e.g., Federal Data Processing Centers, have a primary mission responsibility of providing ADP services and ADP support services. These facilities are generally characterized by good documentation, a wide range of software, a user assistance staff, and full cost accounting. These services may not be readily available to prospective users if the facility is not routinely sharing its resources.

(b) *Requirement considerations.* Sharing may present a viable alternative for agencies who (1) need greater capacity, (2) want to evaluate expensive software or equipment configurations before acquisition (3) have insufficient ADP requirements to justify a separate facility. Applications such as financial management, statistics, engineering, and mathematics are often good sharing candidates. Applications such as command and control systems; intelligence and law enforcement systems, and systems with special security requirements are often not good sharing candidates.

(c) *Facility considerations.* The workload orientation of a facility may severely limit its potential for sharing. This can be true for facilities (1) which have acute privacy or security implications (e.g., certain IRS, VA, Defense, or SSA facilities), (2) which have special opportunities for fraud (e.g., funds transfer and treasury check disbursing systems), (3) which are dedicated to a single function (e.g., military logistics or weather), and (4) which have been reviewed and determined to be obsolescent.

(d) *Sharing as resource justification.* As provided in OMB Circular A-121, sharing arrangements can be used by the agency providing services in justifications to OMB for resource requests and allocations only in such cases where exceptional circumstances preclude the user agency from using alternative sources. However, the unfunded portion of planned reimbursements arising from equipment and software depreciation may be used for the replacement and augmentation of ADP capital assets provided such usage is in accordance with A-121 provisions.

§ 201-31.003 Governmentwide ADP sharing.

(a) Federal agencies shall be responsible for determining whether their ADP requirements can be efficiently and economically satisfied by using existing resources. OMB Circular A-121, subject: Cost Accounting Cost Recovery and Interagency Sharing, dated September 16, 1880, specifically paragraph 4f, applies.

(b) Federal agencies shall be responsible for determining to what extent their ADP resource systems will be made available to users (see also OMB Circular A-121, paragraph 4a).

(c) Agencies seeking sharing facilities will identify and deal directly with those facilities. Since sharing is a viable alternative for only a portion of ADP requirements (see § 201-31.002), agency procedures for making these determinations shall be oriented toward potential sources of sharing support rather than an exhaustive review of all Federal facilities.

(d) Management officials of agencies who have an interest in sharing their facilities should participate in informal interagency sharing groups. These groups should exchange information concerning the minimum capabilities of their facilities in order to identify their salient characteristics to the potential user, e.g., documentation, user assistance, capabilities, prices, duration, bumping or termination terms.

(e) GSA will facilitate use of existing resources by issuing bulletins from time to time containing information concerning sharing opportunities. GSA will assist in the search for sharing opportunities as needed in time of national emergency or public exigency. Upon request to the parties concerned, GSA will arbitrate disputes concerning prices and services between agencies. Requests may be directed to General Services Administration (KMA), Washington, DC 20405.

(f) GSA will foster the establishment of Federal Data Processing Centers where opportunities and needs for economical and efficient service exist (see § 201-31.010-1).

§ 201-31.004 ADP sharing procedures.

(a) A Federal agency shall not initiate the process of selecting and acquiring ADP resources unless it first makes reasonable efforts to determine that the required ADP capability cannot be met economically and efficiently by using existing ADP resources on a shared, reimbursable basis.

(b) When it is determined that existing resources are capable of meeting an agency's requirement, the agency shall consider this alternative as part of the analysis (see § 201-30.009).

(c) Federal agencies shall first attempt to satisfy their ADP requirements by selectively screening resources of other ADP units in their agency and in other agencies. If the result of screening "targets of opportunity" is unsuccessful, the basis for this determination shall be documented.

(d) Federal agencies are required to include a statement relative to this screening procedure when submitting agency procurement requests (see § 201-23.106).

(e) Sharing of excess data processing capacity by Executive agencies with users from other agencies shall be consistent with the provisions of OMB Circular A-121.

§ 201-31.005 ADP sharing exceptions and exemptions.

(a) Agencies should try to share their ADP resources. However, agencies need not share a system if it does not lend itself to sharing because of the uniqueness of a particular program or mission, or because of the design of the system (see § 201-31.002).

(b) In addition, the following ADP resources are exempt from the requirements for sharing:

(1) ADPE built or modified to special Government design specifications which has no general purpose applicability and is integral to a weapons or space system;

(2) Analog computers; and

(3) ADPE maintenance services.

§ 201-31.006 Reporting of sharing and services obtained from a commercial source.

(a) *Sharing.* (1) ADP sharing (as defined in § 201-2.001) accomplished by data processing facilities (as defined in § 201-2.001) shall be reported by each facility if the total dollar amount charged by a facility to users (as defined in § 201-2.001) other than those which the facility has primary responsibility for supporting exceeds $100,000 during a fiscal year.

(2) Reports of sharing shall be submitted on GSA Form 2068A to the General Services Administration (KHE), Washington, DC 20405, not later than 60 days (November 30) after the close of the fiscal year. Federal agencies may elect to submit reports on a centralized basis at any organization level desired. Each agency shall advise GSA (KHE) of the procedures it will follow:

(b) *Services obtained from a commercial source.* (1) ADP services and ADP support services (as defined in § 201-2.001) shall be reported by each

user (as defined in § 201–2.001) on a call basis specified by GSA (KM), Washington, DC 20405.

(2) Reports of ADP services and ADP support services, to the extent specified in each call, shall be submitted on GSA Form 2068A or other format as requested, to the GSA address specified. At least 60 days will be provided for agencies to respond. Submissions will not be required more often than once per year. Agencies may provide the reports on a centralized basis at any organizational level desired.

(c) *Reports Control.* Intergency reports control number 1106–GSA–AN (currently assigned expiration date: March 31, 1985) has been assigned to this reporting requirement.

3. Sections 201–31.010–1 and 201–31.010–2 are amended by adding the text appearing in Temp. Reg. 7. As revised, the sections read as follows:

§ 201–31.010–1 General.

An FDPC may be established if feasibility studies indicate that one is needed. GSA-operated FDPCs are financed by the ADP Fund. FDPCs operated by other agencies under a delegation of authority may be, but are not necessarily, financed by the ADP Fund. In either instance, the FDPC and the requesting agency will arrange mutually satisfactory means, consistent with OMB Circular A–121, for reimbursing the FDPC for services rendered.

§ 201–31.010–2 Services available from FDPCs.

FDPCs provide many ADP services and ADP support services. GSA, through informational bulletins, will announce the availability of specific services and associated costs.

4. Section 201–31.010–3 is amended by adding paragraph (a) appearing in Temp. Reg. 7. The revised paragraph reads as follows:

§ 201–31.010–3 Point of contact.

(a) Agencies that require any FDPC services that have not been provided through the procedures set forth in § 201–31.004 should contact General Services Administration (KMA), Washington, DC 20405 or the appropriate FDPC.

* * * * *

PART 201–32—[AMENDED]

1. The table of contents of Part 201–32 is amended by revising the entry for 201–32.206; and the authority citation for the part continues to read as follows:

201–32.206 Use of GSA nonmandatory ADP schedule contracts.

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

§ 201–32.102 [Amended]

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

§ 201–32.106 [Amended]

3. Section 201–32.106 is amended by inserting in the introductory text the words "full and open" between the words "that" and "competition" and removing the words "to the maximum practicable extent" and by removing the citation "§ 201–32.207–1(f)" in paragraph (a) and inserting the citation "§ 201–32.206(f)" in its place.

4. 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 nonmandatory ADP schedule contracts.

(a) *General.* (1) An order placed against a GSA nonmandatory ADP schedule contract (FSC Group 70) 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 GSA nonmandatory ADP schedule contract is placed under competitive procedures when (i) the ordering agency follows the procedures of this § 201–32.206 (but see § 201–11.002–1 where technical and requirements personnel use a specific make and model specification) and (ii) the order provides the lowest overall cost alternative to meet the needs of the Government. However, the use of a GSA nonmandatory ADP schedule contract for requirements available from only one responsible source shall be certified, justified, and approved in accordance with FAR 6.303 and 6.304. If responsible alternative sources are available (see FAR Part 7 for market survey procedures), the availability of items under a GSA nonmandatory ADP schedule contract shall not 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 a GSA nonmandatory 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 a GSA nonmandatory 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 a GSA nonmandatory 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 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 a GSA nonmandatory 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 of lease or installed ADPE and software.* A GSA nonmandatory 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.* A GSA nonmandatory ADP schedule contract may be used for the conversion from lease to purchase of installed ADPE. However, before issuing an order to purchase previously leased ADPE with a net order price for the conversion exceeding $300,000, a specific DPA under § 201–23.104 shall be obtained if the results of the CBD synopsis indicate 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 a GSA nonmandatory ADP schedule contract for software and maintenance services provided that the order does not exceed any applicable contract MOL.

(2) A GSA nonmandatory 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 GSA 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 total value of any order exceeds $5,000. 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 will be fully 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 requirement (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 converting from lease to purchase of installed ADPE, the amount of the net order price for the conversion.

(3) Publication of contract award information in the CBD is not required when an order is placed against a GSA nonmandatory 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 full consideration of the responses received in response to the CBD notice, the contracting officer must decide whether ordering from a GSA 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 schedule contract; or

(iii) Document the procurement file with an analysis that indicates that ordering from a GSA nonmandatory ADP 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 that provides the lowest overall cost alternative 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. The procurement file shall be documented to reflect the action taken.

(h) *Lowest overall cost alternative order not at lowest price.* If items are to be acquired under a GSA nonmandatory ADP schedule contract at other than the lowest delivered price available for identical or similar items under any GSA nonmandatory 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 machine or systems, especially at isolated use points will produce savings over the system/item life which are greater than the difference in order prices.

§ 201–32.208 [Amended]

5. Section 201–32.208 is amended by removing from the last sentence the citation "101–26.502" and inserting in its place the citation "101–26.509."

6. Section 201–32.302–2 is amended by adding paragraph (a) of the clause appearing in Temp. Reg. 1, Supp. 1. The revised paragraph reads as follows:

§ 201–32.302–2 Access to contractor facilities and records—privacy safeguards inspection.

* * * * *

(a) The Government shall be afforded full, free, and uninhibited access to all facilities and installations, and to all technical capabilities and operations, and to all documentation, records, and data bases for the purpose of carrying out a program of inspection to ensure continued efficacy and efficiency of safeguards against threats and hazards to data security, integrity, and confidentiality.

* * * * *

7. Section 201–32.303 is amended by adding paragraphs (a) and (e) appearing in Temp. Reg. 1, Supp. 1. The revised paragraphs read as follows:

§ 201–32.303 Use of the GSA teleprocessing services program (TSP).

* * * * *

(a) *The multiple award schedule (MAS).* (1) GSA periodically establishes a TSP multiple award schedule under which it negotiates contracts which include firm rates for services from the participating firms. An order against a TSP MAS contract is placed under competitive procedures when (i) the ordering agency follows the procedures of this § 201–32.303 (but see § 201–11.002–1 where technical and requirements personnel use a specific make and model specification) and (ii) the order provides the lowest overall cost alternative to meet the needs of the Government. However, the use of the MAS for requirements available from only one responsible source shall be certified, justified, and approved in accordance with FAR 6.303 and 6.304.

(2) These schedule contracts are made available for efficient agency acquisition. The MAS provides for incremental discounts based on each firm's total MAS dollar volume of services delivered Governmentwide. However, for evaluation purposes, individual selections under the MAS will be based on an assumed "zero volume" for each contractor. Agencies will apply the volume discount for each contractor according to the agency's estimated monthly use of the requirement being evaluated. The MAS defines the terms and conditions under which a purchase order placed by an agency will be performed by the contractor selected by that agency. The MAS terms and conditions can be modified only by GSA. Under the provisions of the MSA, a participating firm may modify its service offerings through a MAS modification procedure.

(3) Agencies shall initiate the procedures described in the Teleprocessing Services Program Handbook by notifying TSP MAS firms of their requirements and planned source selection. For all selections under the MAS, an agency has the option of not allocating time for receipt, processing, and distribution of modifications and price reductions, provided it has determined that the procedure will result in the lowest overall cost alternative to meet the needs of the Government and provided the letter of inquiry states that this procedure is applicable. (See § 201–32.303–3(d) which also does not permit modifications.) If an agency chooses to disallow modifications, it must document the procurement file to show why disallowing modifications is more advantageous than allowing modifications, e.g., immediate need of service outweighs the potential for lower pricing. The agency shall make the source selection in accordance with the terms of the MAS and shall evaluate, select a source, and issue a line item, time and resources-used, ceiling-price purchase order. The MAS shall not be used for a dedicated teleprocessing system (see § 201–2.001 for definition) requirement; however, portions of a system such as on-line storage and communication ports may be reserved for exclusive use by a single user or group of users. Dedicated system alternatives should not be confused with dedicated use ADPE or software as provided in § 201–24.209.

* * * * *

(e) *Agency management of TSP services.* (1) Agency management is responsible for controlling costs and taking appropriate action when expenditures for services exceed the estimates and contract ceiling amounts. An essential element in controlling costs is the establishment of procedures to account for and allocate all costs of data processing to the end users according to the services received. Principles for these procedures are set forth in GAO Accounting Pamphlet Number 4 and OMB Circular A–121.

(2) Since the use of TSP services under many TSP basic agreement contracts has substantially exceeded the estimated use and in many instances has resulted in ureasonable and excessive charges compared to the original evaluation, Federal agencies should monitor these contracts on a monthly basis. If the actual use based on expenditures exceeds the projected use by more than 25 percent for two or more consecutive months, a report should be submitted to the requiring official, with a copy to the designated senior official for the agency under the Paperwork Reduction Act. The requiring official should investigate the increased use to determine its cause(s) and develop a plan to correct the situation. Depending upon the extent of the increase, including expected duration, and whether appropriate management action will reduce the use to an acceptable level, it may be necessary for the agency to recompute its requirements. Similar procedures should be implemented for monitoring costs from purchase orders placed under the MAS.

(3) Good agency management of TSP services starts with good planning and the commitment to follow through. Maintaining current requirement specifications, workload estimates, and program packages needed for benchmarking will add flexibility to the ability to locate, respond to, and correct program deficiencies (see also § 201–23.104–5(d)).

8. Section 201–32.303–2 is amended by adding paragraphs (b), (c)(2), (c)(3), and (d) appearing in Temp. Reg. 1, Supp. 1. The revised paragraphs read as follows:

§ 201–32.303–2 Scope of the TSP.

* * * * *

(b) *Excluded TSP services.* Exclusively local batch processing services are excluded.

(c) * * *

(2) Technical assistance/analyst services (TA/AS). Includes limited design and development tasks and technical assistance on the use of vendor-provided software packages. Such service shall be used only when optimizing existing application systems, provided such services are incidental to the teleprocessing services being procured and the cost of the TA/AS does not exceed 10 percent or $100,000 (whichever is less) of the total requirement per year (see also § 201-32.303-2(d);

(3) Use of the TSP firm's premium (extra charge) software packages related to a teleprocessing requirement;

* * * * *

(d) *Limitations on TA/AS.* Technical assistance/analyst services (TA/AS) (paragraph (c)(2) of this section) have TSP acquisition dollar limitations that are reflected in both the MAS and BA. Procurement of TA/AS services that exceed the established limitations or that are for purposes other than those stated in paragraph (c)(2) above should be on a full and open competition basis (see also § 201-32.304). The dollar limitation of each teleprocessing requirement is 10 percent of the total value of the requirement per fiscal year, not to exceed $100,000 per year. The requiring agency shall obtain authorization from the GSA TSP contracting officer before placing a purchase order under the MAS or awarding a contract under the BA that includes requirements that are estimated to exceed the above limitations.

* * * * *

9. Section 201-32.303-3 is amended by adding paragraphs (b)(3), (b)(4), (c), and (d) appearing in Temp. Reg. 1, Supp. 1 and revising paragraph (d). The revised paragraphs read as follows:

§ 201-32.303-3 Procedures for acquiring TSP Services.

* * * * *

(b) * * *

(3) Benchmarks are required for TSP requirements that exceed $500,000 per year unless the procuring agency determines that analytical techniques such as paper/technical evaluations will provide the accuracy needed for cost evaluation. The complexity of a benchmark or an analytical technique should be scaled to the value and complexity of the associated procurement. Benchmarks or analytical techniques may be used for annual requirements between $100,000 and $500,000. In this dollar range, minimal benchmarks (functional and/or scenario tests using vendor application software packages, etc.) should be used to the maximum practicable extent. The use of benchmarks for requirements under $100,000 annually is not normally cost effective; however, a minimal benchmark may be used if an agency determines that a benchmark is needed as a reasonable basis for cost validation. The agency's benchmark package for requirements over $500,000 annually shall be available to offerors at least 45 calendar days before benchmark performance. However, if the agency is procuring services to fulfill an urgent requirement, a shorter availability period may be specified. The selection of the benchmark workload is critical to the source selection because it will exercise the contractor's billing algorithm, a significant factor in cost determination.

(4) For selections under the MAS, prices, rates, and discounts applied in the calculation of the system life cost shall conform to the terms of the schedule agreement. Related ADP support service costs for selections under the MAS, except for conversion services and system design and programming, shall be derived directly from the price list.

* * * * *

(c) *Low cost procurement.* When the system life estimated cost does not exceed $25,000, the MAS method provides a simplified procedure that agencies may use for selecting teleprocessing services. Requirements shall not be fragmented in order to circumvent normal TSP procedures.

(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]

1. The table of contents of Part 201-38 is amended by revising the entries for §§ 201-38.010, 201-38.012, and 201-38.014-1; and the authority citation for the part continues to read as follows:

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

2. Section 201-38.010 is amended by revising the section heading and adding the text appearing in Temp. Reg. 9. As revised, the section reads as follows:

§ 201-38.010 Analysis of data communications requirements.

Agencies should develop a plan that will ensure adequate service before they lease or purchase any intercity communication facilities. Agency plans and associated actions should be based on the findings of a determination of need and requirements analysis, and a comparative cost analysis.

(a) *Determination of need and requirements analysis.* The acquisition of new or additional telecommunications capabilities shall be based on program needs that flow from mission requirements. These needs may be expressed in the form of deficiencies in existing capabilities, new or changed mission requirements, or opportunities for increased economy and efficiency. In any event, the needs shall be supported by a requirements analysis commensurate with the size and complexity of the need.

(b) *Analysis of alternatives.* A comparative cost analysis shall be performed for each requirement to determine which alternative will meet the user's needs at the lowest overall cost, price and other factors considered, over the system/service life.

(c) *Common use systems.* Agencies shall consider use of available consolidated services. GSA and the Defense Communications Agency (DCA) provide economical communications services to Federal agencies by obtaining resources in bulk quantities from commercial carriers. Economy of scale discounts are available under the DCA's Multiplex service and GSA's Consolidated DATACOM Network, the Federal Telecommunications System (FTS), and through the value added network (VAN) billing program.

§ 201-38.011 [Amended]

3. Section 201-38.011 is amended by removing the word "and" and inserting in its place "of" in the last sentence in paragraph (c).

4. Section 201–38.012 (appearing in Temp. Reg. 11) is added to read as follows:

§ 201–38.012 Use of functional telecommunications system specifications.

(a) Functional telecommunications system specifications shall be used where possible. Agency telecommunications 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 telecommunications solicitations.

5. Sections 201–38.014–1, 201–38.014–2, and 201–38.014–3 are amended by adding the text appearing in Temp. Reg. 4. As revised, the sections read as follows:

§ 201–38.014–1 Submission of requirements to GSA.

Agency telecommunications requirements shall be submitted to the General Services Administration (GSA) in accordance with procedures outlined in § 201–39.006 unless the agency requirement is exempt under those provisions. If the agency requirement is exempt under § 201–1.103 or if GSA determines that service, efficiency and the least overall cost to the Government is best achieved through direct agency action, the agency will be authorized to contract to satisfy the requirement and shall follow the procedures specified in §§ 201–11.003–1, 201–11.003–2, and 201–24.304. Costs and other factors that will be considered include all costs of service delivery, administrative and engineering support activities, and service requirements associated with items such as national security, emergency preparedness, connectivity, management and control. Service shall include the satisfaction of national security, emergency preparedness, connectivity, management and control in addition to basic service delivery.

§ 201–38.014–2 GSA actions.

(a) GSA will assess the efficiency, service, and cost of using the Federal Telecommunications System (FTS) and other common user services or systems. If GSA determines that it is in the best interest of the Government to use common user systems, GSA will make the necessary arrangements. GSA will document the file to show the basis for the determination, with primary emphasis on cost considerations. GSA also may elect to provide telecommunications on behalf of the agency where it determines that this action is economical and in the interest of the Government.

(b) If an agency submits a request to GSA to use an alternative to the FTS for some or all of its voice long distance needs, GSA will assess the efficiency, service, and cost of the proposal. GSA will consider the proposal's total costs to the Government, compared to the total costs to the Government in meeting the agency's needs using (1) the FTS, (2) the lowest cost commercial offerings on the public network, or (3) other alternatives, as applicable. GSA will make a determination for a preferred option within the time periods as specified in §§ 201–39.007.1 and 201–39.007.2, as applicable.

§ 201–38.014–3 Review of proposed determinations by the Office of Management and Budget.

(a) In the absence of mutual agreement between GSA and the agency concerned, proposed GSA determinations with respect to a specific agency long distance voice telecommunications requirement submission to GSA shall be subject to review and decision by OMB. When these matters are submitted to OMB for resolution, the submitting agency (GSA or the agency concerned) shall submit copies of the submission and all relevant data and information to the other party.

(b) The Administrator of General Services has authorized the Office of Management and Budget (OMB) to review and decide, based on economy, efficiency or service, the manner in which agency requirements referred to in paragraph (a) of this § 201–38.014–3 shall be satisfied.

6. Section 201–38.017 is amended by adding the text appearing in Temp. Reg. 4. As revised, the section reads as follows:

§ 201–38.017 GSA provided service through the FTS.

When GSA provides local telephone and/or intercity telephone services to Federal agencies, GSA will assume the responsibility of meeting all agency requirements. Agencies shall notify GSA of any changes desired at these locations through the use of Standard Form (SF) 145. The SF 145 is generally sent to the local GSA supervisor at the serving location. (See Part 201–41.)

PART 201–39—[AMENDED]

1. The authority citation for Part 201–39 continues to read as follows:

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

2. Section 201–39.002–3 is amended by adding the text appearing in Temp. Reg. 9. As revised, the section reads as follows:

§ 201–39.002–3 Data, facsimile, and records telecommunications services.

(a) These services are installation, replacement, relocation, removal, or use of intercity network data, facsimile, and record telecommunications services or facilities that exceed $50,000 in annual lease or purchase cost. Data, facsimile, and record transmission channels or equipment, either electrically, electronically, or acoustically coupled and multiplexing facilities, regardless of transmission speed are included.

(b) Local data, facsimile, or record telecommunications requirements are not included.

(c) Requirements where dedicated access to the FTS intercity voice network or to FTS local service systems are included, regardless of cost.

3. Section 201–39.006–1 is amended by revising paragraph (a) and adding a chart for the end of the section, as follows:

§ 201–39.006–1 Local telephone service submissions.

(a) Requests for local telephone service shall include appropriate information as set forth in the chart entitled "Required Information for Changes in Telephone Service." The chart appears at the end of this § 201–39.006–1.

* * * * *

REQUIRED INFORMATION FOR CHANGES IN TELEPHONE SERVICES

[Chart referenced in § 201–39.006–1(a)]

If—	Submit—
1. Making any submission that is a major local service change as described at § 201–39.002–1.	1. The agency's name and address (including street, city, state, and ZIP code).

REQUIRED INFORMATION FOR CHANGES IN TELEPHONE SERVICES—Continued

[Chart referenced in § 201-39.006-1(a)]

If—	Submit—
2. Installing/changing, etc., a PBX/Centrex or similar system.	2. The name and telephone number of the person to contact. 3. A brief statement describing the particular request; e.g., "This is a 200 main station addition to an existing PBX." 4. As appropriate, a copy of a recent month's itemized equipment statement and actual cost, including mileage charges, number of operating positions, consoles, Central Office (C.O.) circuits, tielines, L.D. circuits, FTS circuits, main and extension stations, power plant, off-premise mileage, and other pertinent details. 1. The make/model or equivalent of the present system.
3. Changing an ACD system	2. The type of ownership (lease or purchase) and estimated annual cost. 3. System life projection. 4. Annual maintenance and repair cost. 5. Telephone operator cost, number of persons, and annual salaries. 6. OPX mileage and cost for each OPX location served. 7. Space requirements. 8. Total termination liability and expiration date. 9. Main station capacity. 10. Number of stations installed, main and extension. 11. Number and type of circuits and monthly cost of: C.O., tielines, WATS, FTS, other. 12. Number and type of attendant positions. 13. Proposed system functional characteristics. 1. Number of positions, trunks, or circuits by type, for supervisory consoles. 2. The name of the geographical area to be served. 3. Statement (Yes or No) indicating that the monitoring, service observing, or listening-in features of the ACD will be removed or disabled at the time of installation. If "No", agencies must certify that the provisions of § 201-6-2 have been met.
4. Adding or revising tielines between PBX or like systems	1. Number of calls per day and percent of calls during busy hour. 2. Monthly cost for tieline and terminal equipment. 3. Nonrecurring cost.
5. Adding or changing FTS intercity or inter-exchange service.	1. Estimate the daily number of intercity calls by destination. 2. Provide information described at § 201-39.006-3 as appropriate.

4. Section 201-39.006-4 is amended by adding the text appearing in Temp. Reg. 9, by revising paragraphs (c)(3)(i) and (c)(5), and by adding paragraph (c)(3)(iii). As revised, the section reads as follows:

§ 201-39.006-4 Data, facsimile, and record telecommunications services submissions.

(a) Agencies requiring intercity data, record, of facsimile transmission network services or facilities that exceed $50,000 in annual lease or purchase cost (major changes and new installations as described in § 201-39.002-3) shall submit an Agency Telecommunications Request (ATR) to the General Services Administration (KMAS), Washington, DC 20405. The ATR shall include the information as set forth in paragraph (c) of this § 201-39.006-4. Local data, record, or facsimile telecommunications requirements do not require GSA review and approval.

(b) Public Law 96-511 (the Paperwork Reduction Act of 1980) directs each executive agency head to designate a senior official (officials in DOD) reporting to the agency head to be responsible for implementing the Act. This designated senior official in each agency shall advise GSA in writing of the position, title, and organization identity of those officials who have been authorized to submit ATRs to GSA. The designated senior official shall keep the listing current. (A change of incumbent in an unchanged position and organizational assignment does not require notification.) Listings shall be submitted to the General Services Administration (KMAS), Washington, DC 20405.

(c) Agency telecommunications request (ATR) submissions for intercity data transmission facilities or services required by paragraph (a) of this § 201-39.006-4 shall be prepared as follows:

(1) *Agency Information:* Provide agency name, address, and names and telephone numbers of appropriate agency technical and contracting points of contact.

(2) *Project Title and Description:* (i) Provide the project title and a brief but specific description of the primary agency program(s) that the required telecommunications resources will support.

(ii) Provide a brief but specific description of the current intercity data telecommunications transmission facilities (including major systems components) and services currently supporting the program(s).

(iii) Provide a brief but specific description of the intercity data telecommunications transmission facilities (including major systems components) and services requirements to be acquired. Include a network diagram, if appropriate, or such other pertinent information agencies may wish to present that will enable GSA to understand the requirement. This description should reflect resources required for system expansion (i.e., anticipated augmentation and other major system modifications) during the system life if such requirements will be included in the solicitation document as evaluated options.

(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.

(ii) Identify by fiscal year quarter the planned milestone dates for

(A) release of solicitation document and

(B) contract award.

(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.

(4) *Estimated Contract Life and Cost:* Identify the estimated contract cost of the acquisition (not the overall systems life cost) for the contract life. Include all anticipated optional quantities, services, and periods. Detailed cost breakdowns may be included when necessary to describe clearly the estimated costs. The estimated contract cost (for all years) should correspond to the planned contract life.

Note.—The GSA approval resulting from the submission will be limited to quantities and years described herein.

(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 supporting any use of a specific make and model specification as required by § 201–11.002–1; and certified data supporting a contemplated requirement available from only one responsible source (see § 201–11.002(b)).

(6) *Agency/GSA references:* Provide references to previous GSA FPMR approvals (including previous GSA case number), meetings, telephone discussions, etc.

(7) *Agency authorized signature, position title, organizational identity, date:* Provide these data.

Note.—GSA will process only those agency submissions signed by an authorized official. See paragraph (b) of this § 201–39.006–4.

5. Section 201–39.006–5 is amended by adding the text appearing in Temp. Reg. 9. As revised, the section reads as follows:

§ 201–39.006–5 GSA common user data communication system submissions.

Agencies that plan to use GSA common user data communication systems shall provide the following information only when dedicated network access is required:

(a) A list of all network dedicated locations;

(b) An estimate of the peak transmission rate to and from each dedicated location in bits per second (bps), characters per second (cps), or facsimile pages per minute; and

(c) A description of the network conditioning, security, accuracy, and error detection required.

6. Section 201–39.007–3 is amended by adding the text appearing in Temp. Reg. 9. As revised, the section reads as follows:

§ 201–39.007–3 Action on data telecommunication service submissions.

GSA will normally base its review only on the information provided in the ATR submission under § 201–39.006–4. However, when necessary, GSA will conduct a more in-depth review before approving an ATR. In some instances, this may require the submission of additional information. In this regard, GSA reserves the right to review agency actions implementing any requirements described in § 201–39.002–3. Documentation shall be made available for review upon request of GSA officials. (Documentation should be retained in agency files for such periods as required by applicable law or regulation.)

PART 201–40—[AMENDED]

1. The table of contents of Part 201–40 is amended by revising the entry for § 201–40.008; and the authority citation for the part continues to read as follows:

201–40.008 Use of GSA nonmandatory telecommunications schedule contracts.

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

2. Section 201–40.002–1 is amended by adding the text appearing in Temp. Reg. 4. As revised, the section reads as follows:

§ 201–40.002–1 GSA acquisition of agency systems.

The following provisions apply when GSA performs a system acquisition on behalf of an agency.

(a) *Agency responsibilities.* The requiring agency shall—

(1) Prepare the documentation using criteria discussed in § 201–40.007;

(2) Prepare or assist GSA in the preparation of the technical portion of the solicitation document;

(3) Provide technical and contracting personnel, as required, to be members of the procurement team;

(4) Prepare or assist GSA in the preparation of the selection plan and submit it to the contracting officer prior to the issuance of the solicitation documents;

(5) Assist GSA in the technical evaluation of proposals;

(6) Provide GSA with copies of all correspondence between the agency and offerors;

(7) Assist GSA in performing the economic evaluation of proposals;

(8) Assist in writing any determination of findings, or provide a justification to support the contracting procedure when necessary;

(9) Provide GSA with administrative information; e.g., financial data (paying office, fund citation, etc.), contract distribution list, and name of agency contracting officer;

(10) Participate in the negotiation;

(11) Assist GSA in debriefing offerors, if necessary;

(12) Place the delivery order, if applicable, and

(13) Administer the contract when it is transferred to the agency.

(b) *GSA responsibilities.* As necessary for the specific acquisition, GSA will—

(1) Form the procurement team, including technical, contracting, and economic analysis personnel. If the agency does not have qualified technical personnel, GSA will prepare the technical portion of the solicitation document;

(2) Prepare the solicitation document;

(3) Act as the point of contact between the Government and offerors, including the execution or approval of all correspondence between the Government and any offerors, receiving proposals from offerors, and providing copies of all offers to the agency;

(4) Perform the economic evaluation of proposals;

(5) Participate in the technical evaluation of proposals;

(6) Perform evaluations, including attendance at demonstrations, to determine the technical capability of the items offered;

(7) Conduct negotiations, as necessary, notify offerors when proposals are unacceptable, and prepare determinations and findings, as necessary;

(8) Ensure that the agency is informed of all procurement activities, including the reporting of results of negotiations and providing draft copies of the contract to the agency;

(9) Award and distribute the contract, including the transmission of all pertinent documents to the successor contracting officer appointed by the agency; and

(10) Debrief offerors, as necessary.

3. Sections 201–40.006, 201–40.007, and 201–40.007–1 are amended by adding the text appearing in Temp. Reg. 4. As revised, the sections read as follows:

§ 201–40.006 Evaluation of acquisition alternatives.

The method of contracting for telecommunications requirements shall be determined after consideration of the relative merits of the alternative methods available; i.e., purchase, lease, or lease-with-option-to-purchase. A comparative cost analysis of the alternative methods shall be performed to determine which method provides the

Government with the lowest overall cost over the total systems life (see also § 201–24.305). Particular attention in the cost analysis should be given to two-tier pricing mechanisms where recovery of facilities and equipment capital investment is treated in a different manner than the labor intensive elements of the price.

§ 201–40.007 Solicitations.

(a) Agencies shall prepare solicitations in accordance with applicable FAR provisions and this § 201–40.007. Upon request, GSA will provide assistance in developing solicitation packages and will help agencies in the solicitation process. Section 201–40.002–1 provides guidelines for agencies when GSA performs the contracting on behalf of an agency.

(b) The solicitation shall identify all evaluation factors that are to be considered. It shall include mandatory requirements and, where applicable, evaluated optional features. If evaluated optional features (see § 201–2.001 for definition) are included, relative weights (expressed in dollar values, points, or any other reasonable indicators that describe the relative importance) shall be assigned to these features.

(c) To assist agency personnel in reviewing proposals, the contracting office shall prepare a selection plan prior to issuing the solicitation.

§ 201–40.007–1 Use of GSA model solicitation for PBX systems

GSA has developed a model solicitation package for PBX systems that is available to agencies upon request from General Services Administration (KET), Washington, DC 20405.

4. Section 201–40.008 is amended by adding the text appearing in Temp. Reg. 4. As revised, the section reads as follows:

§ 201–40.008 Use of GSA nonmandatory telecommunications schedule contracts.

(a) *General.* (1) An order placed against a GSA nonmandatory telecommunications schedule contract (FSC Group 58) 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 GSA nonmandatory telecommunications schedule contract is placed under competitive procedures when (i) the ordering agency follows the procedures of this § 201–40.008 (but see § 201–11.002–1 where technical and requirements personnel use a specific make and model specification) and (ii) the order provides the lowest overall cost alternative to meet the needs of the Government. However, the use of a GSA nonmandatory telecommunications schedule contract for requirements available from only one responsible source shall be certified, justified, and approved in accordance with FAR 6.303 and 6.304. If responsible alternative sources are available (see FAR Part 7 for market survey procedures), the availability of items under a GSA nonmandatory telecommunications schedule contract shall not 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 requirements (e.g., a requirement for "only new" equipment or unique features) shall not be used unless specifically justified.

(3) Suitable equipment of services must be considered whether or not it is on a GSA nonmandatory telecommunications schedule contract. The lowest overall cost alternative shall be sought. When using a GSA nonmandatory telecommunications 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 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 conrtractor for suitable items; or

(iii) The agency requirement cannot be satisfied reasonably by any telecommunications 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 telecommunications schedule contract.

(5) An order under a GSA nonmandatory telecommunications schedule contract shall not exceed any applicable contract maximum order limitation (MOL).

(b) *Synopsis requirements.* (1) The intent to place an order against a GSA nonmandatory telecommunications 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 total 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 Public Law 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 will be fully 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 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;

(D) Any restrictive requirements that have been justified;

(E) When converting from lease to purchase of installed telecommunications equipment, the amount of the net order price for the conversion.

(3) Publication of contract award information in the CBD is not required when an order is placed against a GSA nonmandatory telecommunications 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 full consideration of the responses received in response to the CBD notice, the contracting officer must decide whether ordering from a GSA nonmandatory telecommunications 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 schedule contract; or

(iii) Document the procurement file with an analysis that indicates that ordering from a GSA nonmandatory telecommunications 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 that provides the lowest overall cost alternative 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. The procurement file shall be documented to reflect the action taken.

(d) *Lowest overall cost alternative order not at lowest price.* If items are to be acquired under a GSA nonmandatory telecommunications schedule contract at other than the lowest delivered price available for identical or similar items under any GSA nonmandatory telecommunications 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 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/item life which are greater than the difference in order prices.

Appendix A—[Amended]

1. Appendix A to Chapter 201 is amended by removing Temp. Regs. 1 (Supp. 1), 2 (Supp. 1), 4, 5, 6, 7, 8, 9, and 11.

Dated: June 25, 1985.

Dwight Ink,

Acting Administrator of General Services.

[FR Doc. 85-15685 Filed 6-28-85; 8:45 am]

BILLING CODE 6820-25-M

federal register

Monday
July 1, 1985

Part IV

Environmental Protection Agency

40 CFR Part 600

Fuel Economy Test Procedures; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 600

[AMS-FRL-2839-5B]

Fuel Economy Test Procedures; CAFE Adjustments To Compensate for Changes in 1975 Test Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule grants Corporate Average Fuel Economy (CAFE) adjustments to compensate for the effects of past test procedure changes. The CAFE adjustments are calculated for each manufacturer to directly compensate for the CAFE impact each manufacturer experienced as a result of the test procedure changes. Additionally, this rule grants fuel economy adjustments to compensate for the effects of test procedure changes on fuel economy results used for the purpose of assessing Gas Guzzler Taxes on 1981 and later model types. This rule also establishes the procedures which the Agency will follow in providing notice and opportunity for public participation in determining CAFE and gas guzzler adjustments for any future test changes. Finally, revised test vehicle mileage accumulation limits are established by this rule to maintain the stringency of the CAFE standards in future model years.

DATE: This final rule is effective July 31, 1985.

ADDRESS: Copies of material relevant to this rulemaking are contained in public docket no. A–83–44 at the U.S. Environmental Protection Agency, West Tower Lobby, Gallery I, 401 M Street, SW., Washington, D.C. 20460. The docket may be inspected between 8 a.m. and 4 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph P. Whitehead, Certification Policy and Support Branch, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, (313) 668–4403.

SUPPLEMENTARY INFORMATION:

I. Background

The Energy Policy and Conservation Act (EPCA) requires that manufacturers' average fuel economies for passenger automobiles meet minimum standards in the 1978 and later model years, 15 U.S.C. 2001 *et seq.* These standards are the Corporate Average Fuel Economy (CAFE) standards. Since the stringency of the standards is a function of the test used to determine compliance, section 503(d) of EPCA specifies that EPA should determine each manufacturer's CAFE value using the test procedures and practices that EPA had used for the 1975 model year, or procedures which would yield "comparable results." Any change to the test procedures used by EPA for the 1975 model year which would necessarily result in a systematically lower average fuel economy than that measured by the 1975 model year procedures would increase the stringency of the CAFE standards. Conversely, any change that would necessarily result in a higher average fuel economy than that measured by the 1975 model year procedures would decrease the stringency of the CAFE standards. In either case, since EPA is not authorized to change the stringency of the CAFE standards through test procedure changes, a CAFE adjustment may be warranted.

After 1975, EPA made several test procedure changes to improve the ability of the test to predict actual fuel economy improvements to keep up with technological advances and to minimize test-to-test variability. In January 1982, the United States Court of Appeals for the Sixth Circuit ordered EPA to initiate rulemaking proceedings concerning procedures for establishing CAFE adjustment values. EPA responded by issuing a Notice of Proposed Rulemaking (NPRM) (48 FR 56526) on December 21, 1983, which proposed to apply an industry-wide CAFE adjustment of 0.2 miles per gallon (mpg) for passenger automobiles of 1980 and later model years to account for the effects of past changes in test procedures.

EPA also proposed that whenever new test procedure changes are implemented, EPA would determine whether CAFE adjustments are warranted by assessing all test changes and their industry-wide impact on CAFE results, and adjust CAFE results for any significant CAFE penalty imposed on a representative fleet. A "significant CAFE penalty" was defined as any change or group of changes that has at least a tenth of an mpg effect on CAFE results.

Since the Energy Tax Act of 1978 which imposes the "gas guzzler tax" also mandates use of EPA's 1975 model year test procedures or procedures yielding comparable results (26 U.S.C. 4064(c)(1), EPA additionally proposed a 0.2 mpg increase to the model type combined fuel economy for purposes of assessing the taxes on 1981 and later model types.

On December 7, 1984, EPA issued a supplement (49 FR 48024) to the December 21, 1983 NPRM. The supplemental NPRM proposed additional CAFE adjustments to compensate for test procedure changes which EPA had not considered previously. Industry-wide CAFE adjustments for the 1980 and later model years were proposed to account for the effects of changes in test fuel properties. Also, an industry-wide CAFE adjustment of 0.4 mpg was proposed for the 1981 model year to compensate for fuel efficient oils improvements which were not reflected in the fuel economy tests for that model year.

The intent of these proposals was to provide a CAFE adjustment in those circumstances where a systematic change in the test results, and thus in the stringency of the CAFE standards, would necessarily result from adoption of a revised procedure. However, consistent with past rulemakings and policy statements by EPA, no CAFE credit was proposed for procedure changes whose effect was to limit a manufacturer's ability to gain increases in its measured CAFE without increasing actual fuel economy by taking advantage of flexibilities that had existed in the 1975 test procedure. Closing such loopholes in fact yielded "comparable results" and thus maintained the stringency of the CAFE standards, since the fuel economy estimates on which Congress based the CAFE standards were generated before manufacturers had the incentive to use the flexibilities in the 1975 procedures. Similarly, no CAFE *debit* was proposed for changes which improved the ability of the test procedures to detect real fuel economy gains. Such test changes appropriately benefited those manufacturers which adopted fuel economy-improving design innovations, as Congress intended in establishing the CAFE standards.

For a comprehensive description of the background relating to this rulemaking, please refer to the preambles of the December 21, 1983 NPRM and the December 7, 1984 supplemental NPRM. In addition, a detailed discussion of the issues pertaining to this rulemaking is contained in the Summary and Analysis of Comments which is available in the public docket.

II. General Description of the Final Rule

The rules promulgated here today have the following provisions:

A. CAFE adjustment equations are established and made applicable to 1980 and later model years passenger automobile CAFE's to account for test procedure changes which involved

distance measurement, inertia weight categories, dynamometer controllers, laboratory humidity, exhaust gas samplers, test fuel properties and energy efficient oils. The equations provide CAFE adjustments by model year on a manufacturer-specific basis. The results of EPA's calculation of CAFE adjustments applying to specific manufacturers for the 1980 through 1984 model years are shown in Appendix A to this preamble. The adjustments were calculated and applied to each manufacturer's unadjusted CAFE prior to rounding to the nearest 0.1 mpg. (EPA calculated CAFE adjustments and revisions only for manufacturers whose CAFE's for past model years have been confirmed; revised CAFE's will be calculated for other manufacturers once their past CAFE's are confirmed.)

B. This rule defers final action on light truck CAFE adjustments; therefore, no light truck CAFE adjustments are granted by this rule. Light truck CAFE adjustments are addressed in a notice of proposed rulemaking appearing elsewhere in this issue of the Federal Register.

C. For the purpose of assessing the gas guzzler tax for 1980 and later model years, the CAFE adjustment equations are also made applicable to model type combined fuel economy values to account for past test procedure changes' effect on fuel economy test results.

D. All fuel economy test results used for passenger automobile CAFE calculations shall be adjusted to the approximate fuel economy test results at 4,000 miles if the test vehicle has accumulated more than 6,200 miles. This requirement will be effective beginning with the 1987 model year.

E. Regulations are adopted for calculating 1985 and later model year CAFE adjustments for the procedure changes addressed in the rulemaking. The methodology adopted is consistent with that used for calculating the 1980 through 1984 adjustments.

F. Regulations are also established for determining the CAFE effect of future test procedure changes. The procedure being adopted will consider each test procedure change and provide appropriate CAFE adjustments.

III. Discussion of Issues and Comments

The Summary and Analysis of Comments, as placed in the public docket, presents detailed explanations of the issues, summaries of the public comments, analyses of the comments, and recommendations. Following is an abbreviated discussion of the issues and EPA's decisions.

A. Inertia Test Weight Change

During dynamometer testing for emissions and fuel economy, the inertia effects of vehicle operation are simulated by setting the dynamometer mass loading to simulate the vehicle's weight. This is accomplished by engaging a series of flywheels. The weight simulation is not continuous: Rather, it is approximated by the increments available in these flywheels. Due to this approximation, many vehicles are tested at weight settings which are higher or lower than their actual weights. In 1975, these inertia weight increments were 250 lbs. up through 3,000 lbs., and 500 lbs. for inertia weight settings from 3,000 to 5,000 lbs. Except as explained below, vehicle weights were divided at the middle of these increments to determine at which inertia setting testing would be conducted. For example, the "3,500 lb." weight category included all vehicles which weighed from 3,251 lbs. to 3,750 lbs. Consequently, a vehicle in a class above 3,000 lbs. could be tested at an inertia weight setting as much as 250 lbs. higher or 250 lbs. lower than its actual weight.

Beginning with the 1980 model year, the test weight increments were halved or in some cases quartered, to improve the accuracy of inertia weight simulation. Now, for example, a vehicle in the 3,000 to 4,000 lb. weight range will be tested at a simulated weight setting no more than 62 lbs. higher or 62 lbs. lower than its actual weight. Since the inertia weight required to be accelerated and decelerated during driving can affect emissions and fuel economy, this reduction in inertia weight increments reduces the potential bias in emission and fuel economy test results due to inexact weight simulation. Additionally, the smaller increments make it easier for manufacturers to gain credit for vehicle weight reduction. Whereas prior to the 1980 model year, a manufacturer might have had to remove as much as 500 lbs. from a vehicle in the very popular 3,000 to 4,000 lb. weight range before it was tested at the next lower inertia weight setting, a weight reduction of no more than 125 lbs. assures testing at a lower test weight setting under the revised regulations.

In the December 1983 NPRM, EPA proposed an industry-wide credit for this change to smaller inertia weight increments. The goal of adopting the smaller increments was to improve the accuracy and minimize the potential bias that could result from testing vehicles at a simulated weight either too high or too low in comparison to actual vehicle weights. EPA did not expect that the change would either systematically increase or decrease fuel economy compared to the 1975 test procedures, and thus anticipated no effect on CAFE standard stringency. In fact, prior to implementing the change, EPA reviewed available data and determined that for the 1975 model year, vehicle weights were spread fairly uniformly across the inertia weight classes (42 FR 45642, September 12, 1977). Thus, when these classes were approximately halved to determine the new weight increments, no significant industry-wide impact was anticipated.

However, in preparing the CAFE adjustment NPRM, EPA carefully analyzed the current test weights compared to the old test weights. As first indicated by Ford, EPA determined that there was a slight increase in average test weight for one range of vehicle weights as a result of the change in inertia weight categories. The increase was caused by the elimination of the 1975 test procedures' discontinuity in weight simulation at 3,000 lbs. (i.e., the dynamometer had been adjustable in 250 lb. increments up to 3,000 lbs. but in 500 lb. increments above 3,000 lbs.). Under the old procedure, vehicles in the other inertia weight categories were tested at a weight which was the mid-point of the weight range in the category. (For example, vehicles in the weight category ranging from 3,251 to 3,750 lbs. were tested at 3,500 lbs.) In the 3,000 lb. inertia weight category, however, the vehicles ranged from 2,876 lbs. to 3,250 lbs., but were tested at 3,000 lbs. instead of 3,062 lbs., the mid-point. For this category only, the test weight simulated weights as much as 250 lbs. higher but only 125 lbs. lower than actual vehicle weight. Consequently, for a uniform distribution of vehicles across the 3,000 lb. category, the test weight was 62 lbs. lower than the average of the vehicle weights represented. In short, the 1975 3,000 lb. inertia weight category slightly biased the test weight, and thus the test results, in the manufacturers' favor. The change in inertia weight categories eliminated this bias, effectively making the CAFE standards more stringent.

In adopting the finer inertia weight increments, EPA made dynamometers adjustable in 125 lb. increments up through 4,000 lbs. and in 250 lb. increments above 4,000 lbs. This introduced a new discontinuity in weight simulations for the 4,000 lb. test weight. Like the discontinuity for the 3,000 lb. category under the 1975 procedures, this new discontinuity also results in an unbalanced test interval. Here, the weight category ranges from

62 lbs. below the test weight to 125 lbs. above the test weight. For a uniform distribution of vehicles across the weight category, the test weight is 31.5 lbs. too low to accurately simulate the average of the vehicle weights represented. The degree of missimulation is not as great as that for the 3,000 lb. category under the old procedures, however. Thus, the net effect of adoptng the new procedures was that the average test weight simulated on the dynamometer for the whole range of vehicles necessarily increased. This directional shift in stringency caused EPA to propose a CAFE adjustment for this test procedure change.

GM and Ford were the only commenters on this specific issue. GM, consistent with its comments on other issues, recommended that the adjustment for change in inertia weight simulation be manufacturer-specific (that is, a unique value calculated for each manufacturer based on its own product line). But GM went considerably further in departing from EPA's proposal. GM recommended that each individual test vehicle be adjusted to account for the difference between its current test weight and the test weight it would have been tested at under the old regulations. As stated above, one of the purposes of going to finer inertia weight increments was to improve the accuracy of the weight simulation and thus limit the potential fuel economy bias due to inexact weight simulation. This bias would result if the distribution of actual vehicle weights in an inertia weight category on average did not equal the simulated test weight for that inertia weight category. For example, if the average actual vehicle weight was above the test weight for an inertia weight category, the vehicles, on average, would be tested at a weight lower than their actual weight. Since fuel economy tends to increase with decreases in vehicle weight, such a too low test weight would result in inappropriately high fuel economy estimates. Conversely, if the average vehicle weight was *below* the test weight, the vehicles, on average, would be tested at a weight higher than their actual weight. Thus, their measured fuel economy would be inappropriately low.

In recommending that EPA adjust each test vehicle back to its old test weight, GM, in effect, recommends that EPA revert to the old system where the potential for this fuel economy bias was much greater than under the current procedures. As suggested in the above example, a manufacturer would benefit from this added bias if it had tended to design vehicles so that their weights fell predominantly in the upper regions of the old inertia weight classes. Such test weight undersimulation would result in a significantly higher CAFE for the manufacturer than warranted by its vehicle designs, which are more accurately evaluated under the current finer inertia weight increments.

Under GM's method, many manufacturers would receive substantially less credit than GM in the 1980 through 1984 model years, in some cases zero or a negative CAFE adjustment. This is because, most likely by chance, these manufacturers tended to have more vehicles situated below the old test weights for the old inertia weight classes rather than above the test weights, in contrast to GM. EPA has discovered no technical reason why one manufacturer operating under the current inertia weight test procedures would tend to have vehicles situated above the old test weights while another manufacturer would be expected to have its vehicles situated below the test weight. How current vehicles' weights, developed in light of the current inertia weight test procedures, look when overlaid on the old inertia weight categories is technically irrelevant. Thus, adopting GM's method would provide some manufacturers, including GM, with substantial CAFE credit and a seemingly random group of other manufacturers with significantly less credits or even debits just on the basis of where their vehicles' weights happen to fall relative to the old weight categories. Such a scheme could inappropriately penalize manufacturers for designing their vehicles in light of the new categories, which were introduced not only to better simulate actual vehicle weight, but to encourage manufacturers to take additional weight off their vehicles. Additionally, the GM methodology allows significant CAFE biasing in the future and erosion of the stringency of the CAFE standards. Therefore, it cannot be considered a credible methodology for determining CAFE adjustments.

GM's methodology does suggest one other consideration with respect to the inertia weight issue. Under GM's methodology, positive credits result if more vehicles are situated above a test weight than below the test weight. EPA does not deny that in actuality a specific manufacturer's vehicle weigths may not be symmetrically distributed such that the average actual vehicle weight coincides exactly with the dynamometer test weight. EPA acknowledged this in the rulemaking which adopted the revised inertia weight procedures. However, the clear purpose of the test procedure has always been to test vehicles *on average* at their *actual vehicle* weight. Disallowing CAFE credit for vehicles which under the old procedures would have been tested at a weight lower than their actual weight (whether resulting from random occurrence or intentional efforts by the manufacturer) preserves the purpose of the original inertia weight procedure.

In establishing the CAFE program, Congress did not intend for manufacturers to take advantage of flexibilities in the test procedure to derive CAFE increases which are not the result of design improvements or marketing shifts and which would not result in any improvement in actual fuel economy. GM's recommendation would effectively undo EPA's efforts to assure that only actual fuel economy gains are reflected in a manufacturer's CAFE. GM's approach would necessarily decrease the stringency of the standards intended by Congress and as a result must be rejected by EPA.

Ford accepted EPA's general proposal, but recommended a slightly different methodology for calculating the impact on CAFE of the inertia weight test procedure change. Ford only considered the impact on vehicles in the original 3,000 lb. weight class when evaluating the test procedure change. Ford recognized that the revised test procedure eliminated the undersimulation of vehicle weights that had existed in the 3,000 lb. weight class prior to the test procedure change. Ford's methodology calculates a credit based on this elimination of undersimulation. However, it does not account for the fact that a new area of undersimulation was created by the revised procedures at the 4,000 lb. test weight. This acts to benefit the industry in a similar fashion, though not to as great an extent, as the old procedure. This new benefit at 4,000 lbs. should be used to partially offset the loss of benefit at 3,000 lbs. Ford's methodology does not do this. The method proposed by EPA adjusts for inertia weight offsets occurring over the full range of possible weights. Therefore, Ford's recommendation is accepted in principle, but EPA's specific methodology is adopted since it more comprehensively adjusts for the change in test procedure.

The EPA methodology includes calculating manufacturer-specific CAFE adjustments for this change in inertia weight test procedure. Each manufacturer's CAFE is credited by the loss in fuel economy due to the procedural change in the 3,000 lb.

category. This credit is a function of the manufacturer's sales in the current 3,000 lb. inertia weight class, an estimate of the manufacturer's fuel economy for that class, and an industry-wide sensitivity factor which accounts for the expected fuel economy impact due to the average test weight increase of 62 lbs. in that class. This credit is reduced by the beneficial fuel economy impact resulting from the weight undersimulation introduced by the revised procedures in the 4,000 lb. category. The beneficial impact is a function of the manufacturer's sales in the 4,000 lb. equivalent test weight category, an estimate of the manufacturer's fuel economy for that category, and the same industry-wide sensitivity factor which is used to account for the expected fuel economy impact due to the average test weight undersimulation of 31.5 lbs. in that category. As suggested by Ford and GM, the value of this industry-wide sensitivity factor has been revised to more accurately represent the average effect of weight changes on fuel economy. (For further information on the derivation of the test weight sensitivity factor, see Section B of the Summary and Analysis of Comments, contained in the docket.)

EPA has determined that the net impact of the inertia weight adjustment should not be less than zero; that is, no manufacturer should receive a net debit as a result of this inertia weight test procedure change. This could have occurred in the case of a manufacturer with such a very limited product line that, for example, it had no sales in the 3,000 lb. inertia weight category and thus received no CAFE adjustment credit. Any sales in the 4,000 lb. inertia weight category would then lead to a net CAFE debit for that manufacturer. This is inappropriate for several reasons. First, EPA's approach to adjusting CAFE's does not—and cannot with available sales data—determine exactly where a manufacturer's 1975 model year vehicles actually fell in the old inertia weight categories. As a result, EPA cannot make a direct comparison between how a manufacturer's vehicles were distributed in 1975 and in later model years in order to compute precisely how much a manufacturer has been hurt or helped by the change in inertia weight categories. EPA's approach is most accurate for manufacturers with large, diverse product lines, since there is a greater likelihood that their vehicles were evenly distributed about the 1975 test weight settings and continue to be evenly distributed about the current settings. However, in the case of limited product line manufacturers, that theoretical symmetry is less likely and the possibility of unfair results is consequently increased. For example, if a manufacturer's few models happened to be in the lower end of the 4,000 lb weight class under both the 1975 and current test procedures, it has not benefited by the new undersimulation created by the test change, but remains subject to a continuing oversimulation of its vehicles' actual weight. It would hardly be fair in such cases to debit the manufacturer for a potential benefit it has never enjoyed.

B. Manufacturer-Specific CAFE Adjustments

EPA proposed *industry-wide* CAFE adjustments to account for the test procedure changes which impact CAFE measurements. Thus, the first NPRM would have provided all manufacturers with the same CAFE adjustment of 0.2 mpg. The Agency determined that this fixed level of credit would provide all of the most affected manufacturers (i.e., those failing or in jeopardy of failing the CAFE standard) with a reasonable CAFE adjustment which adequately compensated these manufacturers for the adverse CAFE impact of the test procedure changes addressed. Further, the uniform credit had the advantage of treating all manufacturers alike, thus preserving their competitive position in regard to CAFE compliance. Finally, the fixed credit was very easy to implement, minimizing the administrative burden on both the industry and the Agency.

Nearly all the commenters supported the proposal to adopt industry-wide CAFE adjustments. There major reasons were cited. First, commenters stated that industry-wide adjustments would be reasonably accurate for the purpose of providing appropriate CAFE adjustments. Second, the fixed factors would be simple to implement. The smaller manufacturers in particular feared that calculating manufacturer-specific factors would place a disproportionately large administrative burden on them compared to the large manufacturers. Third, many commenters believed that the existing data did not support manufacturer-specific sensitivity factors to determine, for example, the fuel economy impact of a unit of test weight or humidity change for each manufacturer's designs. Requiring the manufacturers to determine manufacturer-specific sensitivity factors would then place a very substantial economic burden on most manufacturers.

GM, however, strongly supported manufacturer-specific calculation of CAFE adjustments. GM cited several reasons for its recommendations. First, it believed that manufacturer-specific adjustments would be consistent with the EPCA which requires each manufacturer, independent of other manufacturers, to comply with the CAFE standards. Second, GM pointed out that the equations which EPA used to estimate the fuel economy impact of the test procedure changes were in part dependent on several factors which could vary between manufacturers, specifically, the base CAFE to which the adjustments would apply, the average highway and city fuel economy values, and the fuel economy sensitivity of particular vehicle designs to changes in weight and humidity. Third, GM believed that for its particular designs, the appropriate fuel-economy adjustment factors to account for weight and humidity changes were higher than the values EPA used in its industry-wide calculation, in which case GM would warrant a larger CAFE credit. Fourth, as previously discussed in the inertia weight change context, GM's alternative methodology for adjusting CAFE's calculated manufacturer-specific credits. Under this methodology, the CAFE credits GM calculated for itself were considerably higher than what EPA had calculated for the inertia weight issue when developing its proposed industry-wide credits. GM determined that, due to these points, GM should receive a higher CAFE adjustment credit under its manufacturer-specific calculation than that provided by EPA's proposal.

After reviewing these comments, EPA has concluded that there are valid points on both sides of the issue. EPA agrees with GM that the equations EPA uses to determine CAFE adjustments do contain coefficients which vary among manufacturers. In particular, the base CAFE of a manufacturer's fleet can significantly affect the amount of CAFE credit that the manufacturer is due. For a number of the test procedure changes, the fuel economy impact is in direct proportion to the base level of fuel economy. Thus, a manufacturer with a higher base CAFE has been more adversely affected by these test procedure changes and therefore deserves a higher CAFE adjustment credit, than a manufacturer with a lower base CAFE. A similar argument can be made for credits dependent on a manufacturer's actual average city and highway fuel economy values.

In these circumstances, it is technically inaccurate to calculate adjustments using industry average base CAFE's and city and highway fuel economy values. Doing so necessarily overcompensates manufacturers with

lower than average fuel economy performance by awarding them credits which are greater than the CAFE penalty they incurred due to the test procedure changes. Conversely, manufacturers with high fuel economy values are undercompensated compared to the impact the test procedure changes had on their CAFE's.

The same type of CAFE adjustment dependence on actual fuel economy performance occurs in the case of the inertia weight issue. Here, the more technically appropriate CAFE adjustment is calculated using individual manufacturer sales and fuel economy performance for the affected 3,000 lb. and 4,000 lb. weight categories, rather than the industry-average fuel economies and sales EPA considered in developing the CAFE adjustment proposals.

Administratively, calculating CAFE adjustments on the basis of each manufacturer's base CAFE and city and highway fuel economy values is simple and straightforward. Similarly, it is not difficult to calculate a manufacturer's 3,000 lb. and 4,000 lb. vehicle fuel economies and sales volumes for the purpose of determining inertia weight credit. Sufficient data already exists in the CAFE program data base, and calculating adjustments on the basis of manufacturer-specific rather than industry-wide information adds no significant administrative burden.

Finally, although some smaller manufacturers feared that manufacturer-specific CAFE adjustments might in some way place a larger manufacturer at a competitive advantage, it appears that calculating CAFE adjustments on the basis of manufacturer-specific fuel economies does not introduce any anti-competitive pressure. Since the necessary data for calculating every manufacturer's CAFE adjustment is already in the CAFE data base, small manufacturers will not be disproportionately burdened by the adjustment procedures as compared to large manufacturers. Moreover, manufacturer-specific adjustments probably do a better job of restoring competitive position than industry-wide adjustments since those manufacturers who were most severely affected by the test procedure change would receive the proportionately higher CAFE adjustment credit they are due, while those manufacturers who were less affected would not receive a windfall.

After careful consideration of all the comments, EPA now agrees, in general, with GM's reasoning that manufacturer-specific adjustments are needed and that it is appropriate to calculate CAFE adjustment values on the basis of manufacturer-specific base CAFE, city and highway fuel economy performance and, for the inertia weight issue, on manufacturer-specific sales and fuel economies for the 3,000 lb. and 4,000 lb. weight categories.

GM also argued that it was technically appropriate to use manufacturer-specific factors to account for the fuel economy impact of the changes in test weight and laboratory humidity. EPA has determined that available data is insufficient to calculate such manufacturer-specific factors for individual manufacturers. Substantial additional data would be required, adding greatly to the cost borne by EPA and the industry of determining CAFE adjustments and substantially delaying the calculation of the adjustments while such data was procured. Further, review of available data does not support the GM hypothesis that different manufacturers have vehicle designs whose response to changes in test weight or humidity differs significantly. However, on the basis of the comments and test data supplied by manufacturers, EPA has revised the test weight and humidity sensitivity factors and has applied these revised sensitivity factors in calculating each manufacturer's CAFE adjustment. (See portions of preamble concerning inertia weight and humidity test procedure changes for discussion of the derivation of the sensitivity factors.)

C. Test Distance Measurement

In the 1975 model year, EPA calculated fuel economy by dividing the nominal test cycle distance (7.5 miles for the city cycle and 10.242 miles for the highway cycle) by the quantity of fuel consumed during the test. This test procedure was changed in 1976 (40 CFR 86.144) to require, beginning with the 1978 model year, measurement of the actual distance driven over the test and use of this measured distance in the fuel economy calculation. Ford later presented information to EPA which showed that the mean distance of the city driving cycle is actually 7.45 miles, 0.05 miles less than the nominal test cycle distance. This meant that the 1975 test procedure slightly overstated vehicles' fuel economy because it divided the amount of fuel consumed during the test into the nominal distance of 7.5 miles instead of the actual mean test cycle distance of 7.45 miles, which a vehicle would have accumulated if it had exactly followed the driving schedule. Thus, when EPA required that fuel economy be calculated according to actual distance driven, it eliminated the 1975 test's slight inherent bias in favor of manufacturers, thereby effectively increasing the stringency of the CAFE standards. Similarly, there was a slight difference between the nominal distance of the highway cycle (10.242) and the mean average highway cycle distance (10.256 miles).

Recognizing that the test procedure change consistently yielded lower CAFE results than the 1975 procedures, EPA proposed providing a CAFE correction to compensate for this change. EPA estimated that on an industry-wide basis a CAFE credit of approximately 0.1 mpg for the 1978 and later model years was due.

The commenters were satisfied with EPA's derivation of the CAFE adjustment for distance measurement. However, they stated that one parameter used in the EPA equation, the highway/city fuel economy ratio, should be revised. EPA had derived this parameter from the EPA Emissions Factors data base, a data base used to assess in-use fuel economy and emissions but not used to determine manufacturers' CAFE's. Ford stated that it would be more appropriate to use the EPA/manufacturer certification and fuel economy data base for consistency in the derivation of the CAFE adjustment.

EPA concurs that the highway/city fuel economy ratio used should be derived from the EPA/manufacturer data base. This is the data base from which CAFE values are calculated and all other correction parameters are obtained where possible. Thus, the distance correction term of this rule's CAFE adjustment equation uses highway/city fuel economy ratios which are derived from the EPA/manufacturer final CAFE data base.

D. Dynamometer Controllers

EPA proposed a CAFE adjustment to compensate for EPA's laboratory equipment change from manual to automatic dynamometer load controllers. The CAFE adjustment for automatic dynamometer controllers uses the highway/city fuel economy ratio in a fashion similar to the adjustment for distance measurement. As with the distance measurement issue, the only comments specific to this issue addressed the source of the highway/city fuel economy ratio. Since it is a more appropriate data base, the dynamometer controller term of this final rule's CAFE adjustment equation uses highway/city fuel economy ratios which are derived from the EPA/manufacturer final CAFE data base. The CAFE adjustments due to dynamometer controller changes have not changed significantly from the proposal.

E. Laboratory Humidity

In 1977, EPA raised the humidity level in its laboratory from a nominal 50 grains/pound (gr./lb.) to a nominal 75 gr./lb. This higher humidity level was maintained until February 1980 at which time the nominal humidity was returned to 50 gr./lb. Since measured fuel economy generally decreases when laboratory humidity is increased, EPA proposed a CAFE adjustment for the period when the EPA laboratory humidity increased from a nominal 50 gr./lb. to a nominal 75 gr./lb. (The actual average for this period was 71 gr./lb.) EPA calculated CAFE credits ranging from 0.01 mpg to 0.02 mpg for the major domestic manufacturers in the 1978–1980 model years as a result of this change in laboratory humidity level.

Ford and GM both commented that a larger CAFE adjustment for humidity is justified for several reasons. First, they pointed out that the EPA humidity level in 1975 was 49 gr./lb., not 52 gr./lb. as used in EPA's calculation of the proposed humidity correction. This difference would directionally increase the CAFE adjustment. Second, they noted that the EPA laboratory humidity level is presently higher than the 1975 humidity because of an April 1983 humidity monitoring instrumentation change which was not addressed in the proposal. Third, they asserted that the humidity/fuel economy sensitivity factor used by EPA was lower than that indicated by their data.

EPA's analysis of the comments revealed the need to revise the calculation of CAFE adjustments related to humidity issues. EPA's investigation confirmed that the baseline 1975 model year humidity level was approximately 49 gr./lb. This investigation also revealed that the average annual EPA laboratory humidity level varied slightly from year to year. Further, the April 1983 change in the type of humidity measuring equipment used in the EPA laboratory resulted in approximately a 5 gr./lb. increase in actual humidity. Finally, the humidity/fuel economy sensitivity factor required revision to correct for limitations in EPA's data base and calculations pointed out by manufacturers' comments and data. (For a discussion of the basis for EPA's revised humidity/fuel economy sensitivity factor, see Section E of the Summary and Analysis of Comments, found in the docket.) These changes have been incorporated in the term which compensates for the effect of laboratory humidity in the CAFE adjustment equation.

GM also requested additional credit for a humidity related change it made in its laboratory practice which hurt its fuel economy. Prior to EPA's installing the new humidity measuring equipment discussed above, GM installed the same equipment in its own facility. GM requested additional CAFE credit for its loss in calculated fuel economy at its facility between the time it installed the new humidity equipment and the time EPA adopted it.

GM's request must be rejected since it would provide fuel economy credit on the basis of laboratory practices largely within the control of individual manufacturers. Manufacturers are required to maintain a reasonable level of correlation with the EPA facility. However, EPA is not equipped to consider how each manufacturer's individual laboratory practices may affect fuel economy; the potential issues are too numerous and in many cases not precisely quantifiable. EPA's laboratory thus serves as the standard of comparability for all other laboratories. If manufacturers cannot maintain reasonably close correlation with the EPA facility, proportionately more of the manufacturer's vehicles are tested at EPA or the manufacturer's fuel economy testing program is halted until the cause of the lack of correlation can be corrected. Consequently, consideration of only those changes made in EPA's laboratory practice (coupled with the requirement for adequate correlation) provides a sufficient measure of CAFE impact.

F. Constant Volume Samplers

GM requested CAFE credits for the effects of malperforming constant volume samplers (CVS's) at the EPA laboratory. In November 1981, EPA reported that some or all of the CVS's had not been operating properly at critical flow conditions prior to September 1981 causing slightly non-proportional sampling. EPA modified the CVS's to correct the problem, installed monitoring and warning systems to insure that the problem would not occur in the future, and performed a test program to characterize the potential impact of the malperforming equipment on emissions and fuel economy measurements.

EPA's study [1] in 1982 was unable to ascertain the exact effect of the equipment malperformance on fuel economy. The effect depends on the degree of non-proportional sampling that existed and on individual test vehicle characteristics as they affect the sampling system. However, the degree of non-proportional sampling that occurred is not known. EPA's ongoing correlation program with the industry failed to detect this problem, as did the routine calibration and quality audit checks that were periodically performed. In addition, it is not known how long the CVS samplers were in non-critical flow. While EPA believes the samplers were operating properly when installed in 1975, it is possible the checks performed at that time could not detect this non-critical flow condition. Alternatively, the non-critical flow condition could have existed for a comparatively short period of time, thus affecting fewer tests. This uncertainty makes it impossible to calculate precise CAFE adjustments based on the exact adverse impact of non-critical flow.

EPA was also unable to discern from a controlled study a mathematically predictable pattern to the effects of the CVS malperformance on test vehicle fuel economy. The study did establish that for the vehicles used in the evaluation higher fuel economy was achieved using equipment at critical flow. Test conditions were established to simulate the worst out-of-critical flow conditions found. Under these conditions, the average fuel economy effect was estimated at: 0.6 percent of the city fuel economy value and 1.0 percent of the highway fuel economy value. The study also established that the impact varied across vehicles. However, the study did not test enough vehicles of the various designs in the industry's fleet to establish a specific fleet-wide impact. To test enough vehicles would have been unreasonably costly and time-consuming and was not warranted considering the uncertainty in the degree of non-critical flow and the time period over which non-critical flow existed.

Although these uncertainties make precise, manufacturer-specific adjustments impossible, it is clear that the malperforming CVS's did have some adverse impact on fuel economy test results. EPA has decided to provide CAFE adjustments in the 1980 through 1982 model years for this issue based on the average maximum effects determined in its limited study and as applied to the average portion of vehicle fuel economy tests conducted at EPA's test facility for the 1980 through 1982 model years. This is consistent with the suggestions of GM. EPA is confident that this CAFE adjustment fully compensates for the maximum adverse impact on manufacturers' CAFE that could have resulted from the non-critical flow

[1] See EPA report No. EPA–AA–EOD–84/2, "Non-Proportional Sample Rates in a Critical Flow Venturi Constant Volume Sampler: Effects on Federal Emission Test Fuel Economy, January, 1982.

operation of EPA's constant volume samplers.

G. Fuel Efficient Oils

In comments on the original NPRM, both GM and Ford proposed that manufacturers be granted CAFE credit due to EPA's prohibition on the use of fuel efficient oils in test vehicles during 1980 and 1981 model year testing. Beginning with the 1982 model year, EPA approved the use of oils which improve fuel economy by, on average, 1.8 percent. This approval was based on in-use oil availability data gathered during the 1981 model year, so the approval came too late for 1981 model year testing. EPA subsequently determined that such fuel-efficient oil was generally available during the 1981 production year and was typically recommended for consumer use in 1981 model year vehicles by the automobile manufacturers. Therefore, EPA proposed in the supplemental NPRM an additional 0.40 mpg (1.8 percent of the 22 mpg CAFE standard for 1981) industry-wide CAFE credit for the 1981 model year only. EPA did not propose fuel efficient oil credits for the 1980 model year, since fuel efficient oil availability and usage did not appear to be sufficient.

In their comments on the supplemental NPRM, GM and Ford both claimed they are due more CAFE credits for the fuel efficient oils issue than EPA proposed. They argued that manufacturers deserve CAFE credit for 1980, as well as 1981, based on their claim that fuel efficient oils were available in 1980. GM commented that it recommended to its customers in the 1980 model year use of higher quality engine oils labeled with the American Petroleum Institute (API) designation "SF" and oils which were labeled as "Energy Saving", "Gas Saving" or the like. Additionally, GM provided a list of energy efficient oils which were available to consumers in 1980. EPA had previously accepted the "SF" designation as adequately denoting for consumers oils with fuel-efficient properties; however, the "SF" designation only came into use midway through the 1980 model year. GM's list indicated, though, that fuel-efficient oils were available and adequately labeled throughout 1980, making their usage likely.

After considering the comments, EPA has concluded, within the constraints of its general policy, that a CAFE credit is appropriate for both the 1980 and 1981 model years. EPA has reached this conclusion based on the likelihood that fuel-efficient oil was recommended, available and used by consumers during the 1980 and 1981 model years.

GM and Ford also contended that manufacturers should be awarded a 2 percent, instead of 1.8 percent, CAFE credit for 1980 and 1981, since the Department of Transportation (DOT) in setting the 1981 through 1984 CAFE standards assumed a 2 percent fuel economy improvement from the use of improved engine oils. Moreover, GM claimed an additional 0.2 percent CAFE penalty for model years 1982 and later because the March 17, 1981 EPA approval for use of fuel-efficient oils effectively allowed use of only those oils offering up to a 1.8 percent improvement in fuel economy. Finally, GM and Ford requested that EPA remove all restrictions on the use of energy efficient oils during fuel economy testing for 1986 and later model years.

EPA considers its general requirement, that the oils used in test vehicles be representative of what is likely to be used by consumers, to be appropriate policy. EPA has always, including in the 1975 base year, required the use of representative oils to ensure that the fuel economy improvements measured by the test will probably be realized by the consumer as well. The current guidelines automatically allow manufacturers to upgrade test vehicle oils if oils in the marketplace improve. Furthermore, EPA's stated policies do not preclude alternative means to demonstrate that a given oil will likely be used by consumers. On the other hand, the guidelines prevent a manufacturer from using its sophisticated test and screening capabilities to locate and use in the fuel economy program the very best oil. If there is not a reasonable likelihood that the typical driver will be able to locate and use an oil of similar fuel savings capability, its use in the fuel economy program would result in unrepresentatively high fuel economy benefit. EPA thus considers it appropriate to maintain its general policy of denying the use of a fuel saving oil (and, hence, denying commensurate CAFE credit) unless such oils can be shown to be representative.

Regarding the magnitude of the credit for the 1980 and 1981 model years, when EPA approved the use of fuel efficient oils for the 1982 model year, it specified that the test vehicle oil could not provide more than the sales-weighted average fuel economy improvement offered by oils labeled "SF". Subsequent manufacturer surveys of the marketplace indicated the average improvement to be 1.8 percent. Therefore, EPA has decided to grant 1980 and 1981 model year fuel efficient oils CAFE credit equal to the 1.8 percent maximum improvement allowed for fuel efficient oils in test vehicles.

EPA disagrees with GM and Ford that an additional 0.2 percent credit is due based on DOT projections. In setting the 1981–1984 model year CAFE standards, DOT projected several technological improvements as options to improve fuel economy. One option, improved lubricants, was estimated to improve fuel economy by 2 percent. However, DOT decided not to set the standards so high that all of the technological options would be necessary within the period of 1981–1984. DOT stated that implementation of all of the technological options would result in average fuel economy levels in excess of 27.5 mpg. Thus, the standards which DOT promulgated were believed to be achievable without the full estimated benefit of improved lubricants being realized. Most importantly, EPA's approval for use of energy efficient oils which improve fuel economy by 1.8 percent was based on the fuel economy improvement of actual oils, representatively available and, therefore, expected to be used in typical service. DOT's 2 percent benefit, in contrast, was an estimate of potential improvement.

As indicated above, the EPA policy does not have a prescribed maximum limit on the percent fuel economy improvement that oils used in testing can contribute. A manufacturer can receive approval to use oils offering fuel economy improvements greater than the 1.8 percent level which was approved for GM. However, approval will only be granted if the guidelines of the EPA policy are met, thus providing assurance that these oils will be representative of oils in production vehicles as built and used in service. EPA has taken specific and appropriate steps to assure that manufacturers are properly credited for the use of fuel efficient lubricants representative of those readily available and in use in the field. The difference between the EPA's approval of GM's use of oils which improve fuel economy 1.8 percent and DOT's two percent fuel economy improvement represents the difference between actual test results and estimated potential. Consequently, EPA finds that the 1.8 percent CAFE credit appropriately compensates manufacturers for fuel economy lost as a result of EPA's past prohibition against use of fuel efficient oils in test vehicles. This final rule uses the 1.8 percent figure to calculate CAFE adjustments for fuel efficient oils.

H. Test Fuel Properties

On August 19, 1984, subsequent to the close of the NPRM comment period, GM requested additional CAFE credits to compensate for changes in the properties of the test fuel used for gasoline-fueled vehicles that have occurred since the 1975 model year CAFE baseline. Certain fuel properties affect the calculated fuel economy because a chemical balance technique is used to measure fuel economy. If these test fuel properties change, the fuel economy results will not be consistent with the results that would have been achieved using 1975 test fuels. This constitutes a test procedure change; therefore, on December 7, 1984, EPA issued a supplemental NPRM which proposed to adjust manufacturers' CAFE's to compensate for variations of test fuel properties. EPA proposed to calculate test fuel adjustments annually, using average annual EPA test fuel properties. The primary issue in the supplemental NPRM was how to calculate the appropriate test fuel CAFE credit. Secondary issues included granting adjustments for future test fuel changes and adjustments for changes in diesel test fuel properties.

The comments received in response to the supplemental NPRM favored CAFE adjustments to account for variations in test fuel properties. As a method of calculating such adjustments, the equation proposed by GM in its August 1984 request was unanimously supported. In response to concerns EPA had expressed regarding an experimentally derived term, "R", used in the GM equation, Ford submitted data from over 200 vehicle tests which substantiated the value "R" used by GM. After analyzing the comments, EPA has concluded that the equation proposed by GM is technically correct and should be used to calculate CAFE adjustments for test fuel properties.

The supplemental NPRM also requested comments on the properties of test fuel in the baseline model year, 1975. The commenters recommended that EPA use the fuel properties which were defined by EPA in 1976 as historical average values and which correspond to the values used to establish the EPA fuel economy equation. Additionally, the commenters recommended a net heating value for the baseline fuel. This value was determined from the average historic fuel properties. Given that the properties of the test fuel used at the EPA laboratory in the 1975 model year are not know, EPA agrees with the commenters that the suggested fuel property values seem to be the most appropriate baseline. Therefore, this rule establishes the baseline test fuel properties to be:

Specific Gravity = 0.739
Carbon Weight Fraction = 0.866
Lower Heating Value = 18,507 Btu/lb.

The final aspect of calculating this adjustment involves establishing the properties of test fuel used in the 1980 through 1985 model years. EPA proposed basing the credit on the fuels used by EPA during this period. The commenters generally stated that average industry-wide test fuel properties should be used for calculating adjustments, not just EPA data.

In the baseline model year of the CAFE standards, 1975, virtually all tests were performed at the EPA laboratory. In subsequent model years, EPA accepted test data from manufacturers' laboratories provided that their test results correlated well with EPA test results. If good correlation does not exist, the manufacturers' data is not accepted by EPA. Thus, the EPA laboratory is the standard against which all other laboratories are compared. Variation of the fuel used in the EPA laboratory consequently affects the standard by which all laboratories are compared.

EPA does not, however, have complete records of the fuels used by the EPA laboratory. Since the laboratories of EPA and the domestic manufacturers generally obtain their test fuel from the same supplier(s), it is logical to use average test fuel properties from the records of domestic manufacturer laboratories and the fuel suppliers to represent the properties of fuel used at the EPA laboratory in past model years. This rule uses such average fuel properties data to calculate the adjustments. The adjustments granted by this rule for test fuel variations are −0.8 percent for the 1980 model year, 0.10 percent for the 1981 model year, 0.75 percent for the 1982 model year, 1.34 percent for the 1983 model year, 1.29 percent for the 1984 model year and 0.68 percent for the 1985 model year.

The supplemental NPRM stated that EPA intended to analyze changes in diesel test fuel properties to determine if CAFE corrections are appropriate for the light-duty diesel category. Few comments and no data were received regarding diesel fuel. Volkswagen (VW) and GM supported EPA's intent to analyze diesel fuel. The Motor Vehicle Manufacturers Association (MVMA) and Ford both commented that there is no indication that an adjustment for diesel test fuel properties is necessary. EPA found that insufficient data are available to determine what, if any adjustment for diesel test fuel properties is necessary. Nonetheless, it is still possible that diesel fuel properties have varied and thus that some CAFE adjustment is due. (EPA is, in fact, seeking more data relevant to this issue in the NPRM on light truck CAFE's being published today.) Since an exact adjustment for diesel test fuel properties cannot be determined and since diesel-fueled vehicles constitute a small fraction of the overall vehicle fleet, EPA has decided to apply the gasoline test fuel adjustment to the vehicle fleet as a whole.

For future model years, EPA proposed granting adjustments based on the average annual properties of the fuel used by EPA. The commenters proposed several alternative approaches to future fuel-related adjustments. These included making test-specific adjustments, tightening the test fuel specifications, and making laboratory-specific fuels adjustments. These alternative approaches appear to have merit. However, changing the test fuel specifications or revising the equation which is used to calculate the fuel economy of a test to yield test-specific adjustments is beyond the scope of this rulemaking. This rule will grant future fuels adjustments based on the average annual properties of fuel used by EPA. However, EPA will pursue the suggested alternatives in a NPRM being issued concurrent with this final rulemaking.

I. Gas Guzzler Tax Applicability

Congress, in the Energy Tax Act of 1978, Pub. L. 95-618, established a tax schedule for those vehicles not achieving a minimum fuel economy level, commonly known as the Gas Guzzler Tax. The fuel economy levels were based upon EPA testing and calculation procedures in effect for the 1975 model year. Commenters noted that both the CAFE and the Gas Guzzler fuel economy levels are based on the 1975 model year procedures. Thus, the commenters stated, any correction factors applicable to CAFE should be applicable to Gas Guzzler Tax procedures. EPA agrees with this basic premise and will apply the correction factors determined for CAFE to the Gas Guzzler Tax calculation procedures.

Applying the correction factors to the model type Gas Guzzler Tax calculations that will occur after the effective date of this rule is straightforward. In the 1986 and later model years, any model type that meets or exceeds a 22.5 mpg fuel economy level will not be affected in any way. For those model types that are below

the 22.5 mpg fuel economy level there will be one additional step in the calculation procedures. A correction factor determined for each model type will be applied to the model type's fuel economy value prior to determining compliance with the gas guzzler standard and tax liability. This adjusted value will then be rounded to the nearest 0.1 mpg and the projected tax liability indicated in the tables of 40 CFR § 600.513 will be depicted on the fuel economy label.

Specific modifications to the CAFE adjustment calculation must be made to make it applicable to the gas guzzler determination. If a model type fails to exceed the fuel economy level of the Gas Guzzler Tax, a fuel economy adjustment will be calculated. The gas guzzler adjustment will be determined using the model type fuel economy value (calculated prior to the application of any of the test procedure fuel economy adjustments) as the base fuel economy, rather than the corporate average fuel economy as in the case of the CAFE adjustment. Similarly, the model type city and highway fuel economy values will be used to determine the appropriate city-highway ratio rather than the corporate average city and highway fuel economy values. The gas guzzler fuel economy will be credited in proportion to the 3,000 lb. inertia weight class sales within the model type and debited in proportion to the 4,000 lb. equivalent test weight sales within the model type. Consistent with the determination made for CAFE adjustment, no net negative adjustment will be incorporated for the inertia weight issue.

Finally, the gas guzzler adjustment calculation, like the CAFE adjustment calculation, incorporates a correction coefficient to account for test procedure changes. The exact value of this coefficient can only be determined subsequent to the applicable model year because it is based, in part, on EPA laboratory data of average test fuel properties and humidity for that model year. Determination of this coefficient subsequent to the end of the model year does not present any problems with regard to calculating CAFE's or gas guzzler taxes. However, gas guzzler labels are determined prior to and during a model year. Thus, manufacturers need to know prior to the start of the model year the value of the coefficient to determine gas guzzler labels. Therefore, EPA must provide a correction coefficient to be used for gas guzzler label calculations prior to actual testing. For 1986 and later model years, the EPA laboratory plans to maintain a stable humidity level (approximately 5 grains/lb. above the baseline conditions) and use test fuels which are like the baseline fuels. Therefore, for gas guzzler labeling purposes, a fixed correction coefficient can be established which accounts for test procedure changes.

The stated modifications describe the administrative procedures that will be employed for model types whose Gas Guzzler Tax liability will be calculated after the effective date of the regulations. For those model types that have already been determined to be gas guzzlers, if requested by the manufacturer, EPA will recalculate the fuel economy values. These calculations will be made available to the affected manufacturers and furnished to the Internal Revenue Service (IRS). EPA has coordinated this possibility with the IRS which is responsible for administering the Gas Guzzler Tax. The IRS has indicated that it will review any change in tax liability on a case-by-case basis.

J. Revised Mileage Accumulation Limit

In the original NPRM, EPA proposed to revise the limit on fuel economy test vehicle's accumulated mileage from 10,000 miles to some appropriate mileage between 4,250 miles and 6,200 miles. The background to this proposal was provided in detail in the NPRM (at 48 FR 56532) and will not be repeated in detail here. Essentially, EPA's position is that since a vehicle's fuel economy tends to improve as it accumulates mileage, allowing vehicles to be tested at 10,000 miles instead of at an average of around 4,000 miles, as was the practice in 1975, effectively eases the CAFE standard that manufacturers must meet. Rather than restrict actual vehicle mileage, which could raise test vehicle cost to the manufacturers, EPA proposed mathematically adjusting fuel economy results for vehicles tested at high accumulated mileages to levels corresponding to a 4,000-mile accumulated mileage limit.

EPA first implemented an adjustment requirement in a rule published on October 13, 1981 (46 FR 50497), which required the adjustment of fuel economy data generated by emission-data vehicles tested at greater than 6,200 miles. This was done for both CAFE and fuel economy labeling purposes. Subsequently, on April 6, 1984 (49 FR 13832), EPA published a final rule requiring that all data generated by fuel economy data vehicles over 6,200 miles be adjusted to 4,000-mile levels for labeling (but not CAFE) purposes. Today's final rule extends the same requirement (i.e., that all data generated above the 6,200-mile limit be adjusted to 4,000-mile levels) to all CAFE data and additionally, revises the fuel economy adjustment for mileage accumulation equations.

EPA received extensive comments on the proposal, primarily from Ford, GM, and the MVMA. The two major issues raised in comments involve the appropriateness of imposing the lower mileage accumulation limit on the associated CAFE adjustment, and the statistical validity of the adjustment equation itself.

The premise that fuel economy improves with mileage accumulation was not disputed by any commenters. Also unchallenged was the point that the inflation of CAFE by testing vehicles at higher mileages does not reflect any design improvement which will result in reduction of in-use fuel consumption. However, the proposed application of a mileage accumulation limit on fuel economy test vehicles for CAFE purposes was hotly disputed, especially by the manufacturers that tend to test vehicles at higher average mileages.

The first issue to be considered is whether such a mileage accumulation limit should be implemented. Clearly, as test vehicle mileage increases, the effectiveness of the CAFE standards in improving fleet-average fuel ecomomy is compromised. EPA has documented the trend of higher mileage accumulation for test vehicles since 1975. Maintaining the stringency of the CAFE standards definitely requires the enforcement of a mileage accumulation limit.

The proposal to adjust the fuel economy results of all fuel economy test vehicles to the 4,000-mile level was based on the assumption that Congress set the CAFE standards based on 4,000-mile data. The 4,000-mile baseline assumption stems from the CAFE statute's requirement to use 1975 test procedures, which included a requirement that emission-data certification vehicles be tested at 4,000 ±250 miles. However, the actual baseline used to set CAFE standards is not traceable to a particular data base such as the emissions certification data base. Also, data from some running change vehicles used in emissions certification and fuel economy data vehicles used in the voluntary labeling program may have been considered in establishing the CAFE standards. These vehicles often have test mileages above 4,250 miles. When Congress finally set the standards, it did not address every detail of how the testing was to be done, but instead simply referred to the 1975 test procedures. Since a 1975 model year fuel economy calculation could have included test results from vehicles with

greater than 4,250 miles, EPA now agrees that adjusting test results from *all* vehicles to a 4,000-mile level, as proposed, is not appropriate.

However, the basis of the proposal remains valid. It is not appropriate for manufacturers to further erode the accuracy of the CAFE estimates by continuously increasing the test fleet's average mileage accumulation over the 1975 level. The tenor of this rulemaking is to correct for changes made in the way vehicles have been tested since 1975. EPA's analysis shows that average milege accumulation since 1975 has steadily increased. If corrections are to be made which credit manufacturers for lost fuel economy due to test procedures changes, similar corrections could be justified for inappropriately high test results. However, EPA did not propose a "negative" CAFE adjustment for prior model years for these potential gains since the adjustment is necessarily sensitive to each manufacturer's test fleets and could have severe impacts not anticipated by each manufacturer when testing was conducted. Instead, the Agency proposed to stop the CAFE erosion in future model years.

As stated above, the option to adjust *all* data back to a 4,000-mile level has been rejected. However, to maintain the stringency of the CAFE standards as envisioned by Congress, an alternative mileage accumulation limit should be implemented. Presently, data for fuel economy labeling purposes generated by vehicles with more than 6,200 accumulated miles must be adjusted to the levels the vehicles would typically have generated at 4,000 miles. EPA has concluded that this also is an appropriate mileage limit for CAFE purposes for two reasons. First, adjustment of fuel economy data from vehicles exceeding 6,200 miles would ensure consistency with labeling practice and with the requirement that CAFE data from emission-data vehicles exceeding 6,200 miles must be adjusted to the 4,000-mile level. Second, about 90 percent of the industry's CAFE data are currently generated at less than 6,200 miles. Requiring mileage adjustment only for tests on vehicles exceeding 6,200 miles would recognize the considerable variability in the data used to generate the mileage adjustment equation and thus, the lack of precision that would otherwise be involved in adjusting the majority of the data for the relatively small fuel economy increases expected between 4,000 miles and 6,200 miles. Adjusting tests for vehicles between 6,200 and 10,000 miles would, however, compensate for the most serious cases of bias resulting from higher mileage accumulation. Thus, this change would retain the manufacturer's flexibility to test vehicles beyond 4,250 miles, but would prevent further significant inflation of CAFE estimates due to excessive mileage accumulation. There would be no test vehicle cost penalty since vehicles will still be allowed to accumulate mileage over the 6,200-mile limit, but the test data would then be adjusted to a 4,000-mile level.

The proposed fuel economy adjustment equation also received criticism. In light of the comments, EPA has performed a new analysis of the relationship between mileage and fuel economy. (See Section L and Appendix A of the Summary and Analysis of Comments to this rulemaking, contained in the docket.) An improved data base was developed from vehicle tests used for final CAFE calculations in model years 1979–1982. The analysis technique was improved by calculating the sensitivity of fuel economy changes to test mileage changes for all subconfigurations within the data set. The mean sensitivity was then used to develop an equation which adjusts fuel economy results to a 4,000-mile level. These changes, incorporated in the final rule, address the significant criticisms by commenters. The result is a reasonable estimate of the impact of mileage accumulation on fuel economy test resutls that will only be used if a manufacturer voluntarily exercises its option to test vehicles at over 6,200 miles.

EPA also had proposed that the new mileage limit on test results be effective beginning with the 1986 model year. However, since 1986 model year testing is underway and test plans may be well established, the CAFE data adjustment provision will take effect beginning with the 1987 model year for passenger cars only. (EPA also had proposed application of the 6,200-mile CAFE mileage limit to light trucks as well as passenger cars. However, as discussed below, the impact on light trucks will be addressed in a separate rulemaking.)

As noted above, the mileage adjustment equation has been updated and improved, which has resulted in a smaller adjustment. Since the equation is also used for adjusting data included in label calculations, EPA is finalizing the revised equation beginning with the 1986 model year for use in the labeling program. Any 1986 model year data already adjusted using the old equation and any 1986 model year label values already calculated at the time of this publication, may, at the maufacturer's option, be recalculated using the new equation published today.

K. CAFE Credits for Light Trucks

Light truck is a vehicle classification separate from passenger automobiles. The original NPRM did not propose any CAFE credit for light trucks. Some commenters stated that EPA should separately propose light truck CAFE adjustments to account for the same test procedure changes which affected passenger vehicles, including inertia weight simulation, distance driven measurement and laboratory humidity level. EPA agrees and is publishing elsewhere in today's **Federal Register** proposed light truck CAFE adjustments.

L. Changes for Which CAFE Credit is Denied

EPA received requests for CAFE credits for test procedure issues which were not addressed in the NPRM. EPA has determined that CAFE credits are unwarranted for the following four issues:

1. Manual Transmission Shift Speeds

In the 1975 model year, EPA regulations required that vehicles equipped with manual transmissions be shifted at minimum speeds of 15, 25, and 40 miles per hour (mph) unless the manufacturer recommended alternative shifts speeds. In 1975, the 15, 25, and 40 mph shift speeds were considered to be representative of in-use operation and nearly all manufacturers, in fact, used these shift speeds. Further, in allowing alternative shift speeds, EPA anticipated that manufacturers would only recommend shift points representative of expected in-use operation.

Subsequent to the 1975 model year, EPA revised the requirements concerning shift speeds several times. These revisions were intended to further define and provide guidance as to how to determine whether proposed shift schedules were representative of actual vehicle operation. Revisions to the procedures for determining representative shift speeds were particularly necessary to accommodate new technology such as improved transmission designs and better matching of engines and transmissions. Lower shift speeds tend to increase fuel economy measured during testing and if followed by drivers, in-use fuel economy should comparably increase. It is appropriate to allow shift schedules which result from new technology, but it is not appropriate to allow unrealistic shift schedules which optimize fuel economy during the test program but are unlikely to be followed in use and are therefore, unlikely to yield comparable fuel economy improvement expected in use. Since EPA has provided criteria for

allowing their use in CAFE testing, lower shift speeds than those used during the 1975 model year have resulted in significant improvement in manufacturers' CAFE.

GM stated that the changes EPA has made since 1975 regarding shift speeds are inconsistent with the comparability requirement of EPCA, are arbitrary, and are not within EPA's authority. Specifically, GM objected to the requirement that alternative shift speeds be demonstrated to be representative of in-use driving. GM based its claims for CAFE credits on the fuel economy difference between using the most fuel efficient shift speeds during the fuel economy test and using representative shift speeds as specified by EPA. GM contended that EPA's policies have reduced GM's ability to receive full CAFE credit for improvements in technology.

EPA cannot agree with GM's contentions. The EPA shift speed policies have been implemented to ensure that the test vehicles are shifted at speeds typical of in-use operation so that any associated fuel economy improvement is likely to be realized by the customer. This is fully consistent with the policies and practices in place in the 1975 model year. Throughout the fuel economy program, EPA has not allowed use of shift speeds so low that consumers are unlikely to use them. To allow unrealistically low shift speeds without any evidence that consumers would indeed shift at those speeds would result in inappropriately high fuel economy test values and manufacturer CAFE values. Test practices which allow increases in a manufacturer's CAFE without a corresponding reduction of in-use fuel consumption erode the effectiveness of the CAFE standards in reducing the nation's fuel consumption. Similarly, giving credit for practices beyond what is representative of in-use operation reduces the stringency of the CAFE standards and does not maintain comparability with the 1975 procedures as required by EPCA. Thus, no CAFE credit is warranted for the general changes EPA has made to refine and further delineate its policies for allowing alternative shift schedules. Credit for improvements in technology that allow lower shift speeds will still be available where manufacturers can show that alternative shift schedules are representative of in-use driving.

2. Shift Indicator Light Policy

As a particular aspect of EPA's manual transmission shift speed procedures, GM criticized EPA's policy concerning shift indicator lights. Shift indicator lights are intended to signal the driver when vehicle operating conditions would allow acceptable operation at the next higher gear. These signals typically occur at speeds lower than those at which drivers have normally been accustomed to shifting.

EPA's current shift light policy allows manufacturers to gain credit for fuel economy improvements for shift lights in proportion to the frequency with which drivers shift in response to the light. EPA has allowed two options for gaining this shift light fuel economy credit. First, manufacturers may survey the shift speeds of a random cross-section of drivers operating vehicles equipped with shift lights. The resulting average in-use shift points are then used during fuel economy program testing. Alternatively, manufacturers can survey for the percentage of time drivers follow their shift light signals. Under this alternative, test vehicles are tested according to the base (non-shift light) shift points and tested again according to the shift light shift points. The fuel economy results are then combined into a weighted average according to the percentage of usage determined in the manufacturer's survey. Under either approach, the fuel economy estimate reflects average in-use shift points.

GM, in its comments, claimed EPA has arbitrarily constrained GM from gaining the full fuel economy benefits deserved for such technology improvements as shift indicator lights. GM specifically claimed that EPA policy limited its shift light credit to a 65 percent usage frequency. This is not correct. For labeling purposes EPA allows up to a 65 percent usage frequency for new designs and applications for which no factual usage data exist. However, for CAFE purposes, EPA relies on survey-determined actual usage factors. As these surveys have demonstrated, actual adherence to the shift lights varies considerably in-use (from less than 40 percent to infrequently over 65 percent) which makes it impractical for EPA to establish any fixed usage factors. Consequently, EPA will continue to rely on in-use surveys to establish the appropriate fuel economy benefit due to shift indicator lights. Not only does this EPA policy give credit based on actual in-used data, but it also creates an incentive for manufactures to adopt the most effective designs. If the manufacturers were able to gain fuel economy credit that assumed 100 percent adherence to their shift lights, they would have an incentive to calibrate their lights to come on at even lower shift speeds to gain further CAFE benefit. This might actually result in decreased in-use fuel economy if drivers learn to generally ignore the shift light as a result of the recommended shift speeds being too low to all accepatable driveability.

In conclusion, no manufacturer, including GM, has been arbitrarily constrained as to the fuel economy benefit it can derive from technology improvements such as shift indicator lights. Rather, EPA has developed and implemented procedures which provide fuel economy credit consistent with the gains expected in-use. This maintains the fuel economy test's comparability with the 1975 test procedures as required by EPCA. To provide additional credits as suggested by GM would reduce the stringency of the standard by generating CAFE gains in excess of the actual impact on vehicle fuel economy. As such, GM's recommendations for additional credits must be denied.

3. Driving Schedule Compliance

The Federal Test Procedure (FTP) requires vehicles to operate on a fixed speed time schedule on a chassis dynamometer. The 1975 model year test procedure required test vehicles to follow this driving schedule as closely as possible within the limits of the vehicles' capability.

Ford commented that CAFE credit may be due for two changes which are related to test vehicle compliance with the driving schedule. First, Ford states that a Novermber 14, 1978 technical amendment which requires vehicles to be operated at *maximum available power*, if necessary, to follow driving schedule may qualify for a CAFE adjustment. For the 1975 model year, the exact requirement was for *wide-open-throttle* operation, if necessary to follow the driving schedule. Second, Ford stated that EPA's December 27, 1982 interpretation of the speed variation tolerance has increased the stringency of the tolerance. This interpretation was intended to prohibit deliberate deviations from the driving trace in order to minimize speed variations (termed "trace smoothing") which could improve emissions and fuel economy test results.

These two issues do not represent changes from the 1975 model year test procedures and, therefore, do not warrant a CAFE adjustment. The technical amendment which addressed using maximum available power only clarified the requirement that a vehicle should follow the driving schedule even if it requires operating at wide-open-throttle and selecting the proper

transmission gear for maximum available power. This requirement to follow the driving trace to the best capability of the car has existed throughout the fuel economy program. Likewise, EPA's interpretation of the speed variation tolerance clarified that the intended purpose of this tolerance has always been to permit reasonable speed deviations from the driving schedule, but not to allow purposeful deviations such as might occur if the driver were to try to bias fuel economy or emission test results. It should further be noted that these tolerances have a two-sided effect in that they limit biasing which could either increase or decrease fuel economy. Thus, the intent and effect of EPA's interpretation of the speed variation tolerance is to minimize the test-to-test variation in fuel economy test results. Therefore, no CAFE adjustment is warranted.

4. Vehicle Preconditioning

A vehicle's emissions and fuel economy can be influenced by the preconditioning received by the vehicle before testing. The EPA test procedure includes a vehicle preconditioning sequence to ensure that vehicles are tested in a manner and condition representative of typical operation and consistent across all vehicles. In 1976, EPA published, regulations (41 FR 35627, August 23, 1976) which deleted, as unnecessary, one hour of vehicle preconditioning driving which had been part of the test sequence. Ford commented that the deletion of one hour of the preconditioning driving schedule may affect fuel economy but provided no data or technical rationale which substantiated its claim.

Coupled with deletion of this one-hour drive from the preconditioning schedule, EPA issued Advisory Circular No. 50A which stated that manufacturers should deliver their vehicles to EPA test facilities in a condition which is representative of typical operation. Since the requirement that vehicles should be delivered for testing in a condition representative of typical operation involves use of a driving cycle identical to the deleted preconditioning driving cycle, the change in preconditioning procedure has no effect on CAFE, and no CAFE adjustment is warranted.

M. Future CAFE Adjustmemts

The NPRM proposed to provide CAFE adjustment for future test procedure changes which had, individually or as a group, a quantifiable impact of 0.10 mpg or more for any manufacturer. Consistent with the philosphy followed in determining adjustment for past test procedure changes, EPA proposed to consider the CAFE impact of procedure changes which require revision of the regulatory requirements as well as those which do not. Further, test procedure changes whose effect was to close loopholes or provide manufacturers with an improved ability to receive CAFE credit for real fuel economy improvements would not warrant CAFE adjustment. Finally, largely to allow timely implementation of certain test procedure changes that do not require revision of regulatory requirements, EPA stated its intent not to delay adoption of such changes pending rulemaking proceedings to determine their CAFE impact. Rather these test procedure changes could be adopted and any CAFE impact and resultant CAFE adjustment subsequently determined.

In commenting on the proposal, several manufacturers pointed out that the proposed regulations needed to be clarified to conform to the intent stated in the preamble. Specifically, the aggregate effect of several procedure changes with, for example, individually small CAFE impacts should be considered when determining if CAFE has been significantly impacted and an adjustment therefore warranted. The regulations have been revised to clarify the intent to consider the aggregate effect of procedure changes where individually they do not result in a significant CAFE impact.

GM also commented that 0.10 mpg should not define the threshold for providing CAFE adjustment. Rather, GM recommended that CAFE adjustments be provided if any manufacturer's CAFE would be affected by a test procedure change. Manufacturer CAFE's are determined by rounding off the calculated value to the nearest 0.1 mpg and CAFE adjustments of less than 0.10 mpg could affect this rounding off. This potential impact of more precise calculation of CAFE adjustment is evident in EPA's determination of adjustments for past test procedure changes. In several instances, CAFE adjustments have been provided for test procedure changes which have less than a 0.1 mpg impact. EPA concurs with the point brought out by GM. Therefore, EPA is not establishing a minimum threshold for consideration of whether future test procedure changes warrant a CAFE adjustment. All future changes will be addressed through rulemaking procedures to determine if their effect on CAFE are significant and if they appropriately warrant a CAFE adjustment.

Finally, Ford recommended that EPA consider the alternative of first considering via rulemaking the need for and likely CAFE impact of any test procedure change prior to implementing the change. For the same reasons stated in the proposal, EPA finds it unnecessary and disruptive to precede the implementation of a test procedure change with a rulemaking unless the nature of the change requires revision of the regulations.

EPA will continue its present methods of providing notification to industry of any changes in laboratory equipment and practices and any changes in certification and fuel economy program policies or practices which may be of interest to or have an impact on the manufacturers but which do not require modifications to the regulations. Routine equipment changes are announced to the industry through "Equipment-Procedure Change Notices." Depending on the type of equipment change, these notices request comment and submission of data on any effect on test results. Industry notice of any significant change in program or laboratory practice is provided by the EPA system of advisory circulars. Advisory circulars provide guidance to manufacturers on the acceptability of certain laboratory practices and test procedures. In issuing these Equipment-Procedure Notices and advisory circulars, EPA will assess the expected fuel economy impact. The industry will be notified of EPA's interim determination and provide the opportunity to comment at the time the revised procedure documentation is distributed. If EPA's assessment or industry's comments regarding advisory circulars or Equipment Change Notices, indicate that a manufacturer's CAFE will likely be affected EPA will initiate rulemaking to determine if a CAFE credit is appropriate and if it is, the level of that credit.

To summarize EPA's plans for determining future CAFE adjustments: (1) The CAFE impacts of only test procedure changes initiated subsequent to this rulemaking will be considered; (2) no adjustments will be provided for changes which close loopholes which permit manufacturers to gain measured improvements to fuel economy that are not the result of real improvement to actual vehicle fuel economy; (3) no debits will be assessed for test procedure changes which provide manufacturers with improved ability to receive credit for real fuel economy improvements; (4) adjustments will be based on changes initiated by EPA; no adjustment will be made for changes independently adopted by manufacturers; (5) changes will be assessed either individually or

collectively for their impact on manufacturers' CAFE; (6) the impact of the changes on CAFE will be determined via rulemaking; (7) for changes which involve specific changes to the regulations, the CAFE impact will be determined as part of the rulemaking implementing such changes; (8) for changes not requiring revised regulations, EPA may choose to implement the test procedure change prior to determining and providing any appropriate CAFE adjustment via rulemaking.

IV. Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will result in an annual effect on the economy of less than $100 million. Also, this regulation should not result in increased costs or prices for consumers, industries, or others, nor should it have adverse effects on competition, employment, investment, or productivity. In fact, the CAFE adjustments granted by this rulemaking will reduce the burden, including the costs of compliance with fuel economy requirements, for the industry as a whole. The results of EPA's calculation of the CAFE adjustments provided by this rule, shown in Appendix A, indicate that the position of all manufacturers' CAFE compliance is enhanced.

This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA responses to those comments are available for public inspection in the docket for this rulemaking: Docket No. A–83–44. The EPA's Central Docket Section (A–130) is located at 401 M Street, S.W., Washington, D.C. 20460.

V. Reporting and Recordkeeping Requirements

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA is required to determine whether a regulation will have a significant economic impact on a substantial number of small entities so as to require a regulatory flexibility analysis. This rulemaking will not affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

VII. List of Subjects in 40 CFR Part 600

Electric power, Energy conservation, Gasoline, Labeling, Motor vehicles, Reporting and recordkeeping requirements, Adminstrative practice and procedure, Fuel economy.

Dated: June 22, 1985.

Lee M. Thomas,

Administrator.

Appendix A

Note.—The following appendix will not appear in the Code of Federal Regulations.

1980 Model Year

Manufacturer	Compliance category	Unadjusted CAFE	Adjusted CAFE
American Motors	Domestic—PA	21.5	22.3
Chrysler	Domestic—PA	21.7	22.3
Ford	Domestic—PA	22.1	22.9
General Motors	Domestic—PA	21.9	22.6
Avanti	Domestic—PA	15.8	16.3
Checker	Domestic—PA	18.5	19.1
Chrysler	Import—PA	32.5	33.6
Ford	Import—PA	29.8	30.7
Alfa Romeo	Import—PA	21.7	22.4
BMW	Import—PA	25.9	26.7
Mercedes-Benz	Import—PA	23.9	24.6
Fiat	Import—PA	26.6	27.4
Honda	Import—PA	29.2	30.1
Jaguar Cars Inc.	Import—PA	21.6	22.2
Nissan	Import—PA	31.2	32.2
Peugeot	Import—PA	27.2	28.1
Renault	Import—PA	33.3	34.3
Rolls-Royce	Import—PA	11.1	11.4
Saab	Import—PA	23.4	24.3
Toyo Kogyo	Import—PA	26.0	26.8
Toyota	Import—PA	27.4	28.3
Volkswagen	Import—PA	31.3	32.3
Volvo	Import—PA	21.6	22.3
Fuji Heavy Ind.	Import—PA	27.9	28.7

1981 Model Year

Manufacturer	Compliance category	Unadjusted CAFE	Adjusted CAFE
American Motors	Domestic—PA	22.4	23.1
Chrysler	Domestic—PA	26.1	26.8
Ford	Domestic—PA	23.4	24.1
General Motors	Domestic—PA	23.2	23.8
Checker	Domestic—PA	18.6	19.1
Alfa Romeo	Import—PA	22.5	23.1
Chrysler	Import—PA	32.0	32.9
Ford	Import—PA	34.3	35.2
BMW	Import—PA	26.6	27.3
DeLorean	Import—PA	24.0	24.8
Mercedes-Benz	Import—PA	25.6	26.3
Fiat	Import—PA	27.6	28.4
Honda	Import—PA	30.8	31.6
Isuzu	Import—PA	34.7	35.6
Jaguar Cars Inc.	Import—PA	18.5	19.0
Maserati	Import—PA	10.2	10.5
Nissan	Import—PA	30.5	31.4
Peugeot	Import—PA	27.9	28.7
Renault	Import—PA	29.4	30.2
Rolls-Royce	Import—PA	10.9	11.2
Saab	Import—PA	23.3	24.1
Toyo Kogyo	Import—PA	31.1	31.9
Toyota	Import—PA	30.9	31.8
Volkswagen	Import—PA	34.2	35.2
Volvo	Import—PA	22.3	22.9

1981 Model Year—Continued

Manufacturer	Compliance category	Unadjusted CAFE	Adjusted CAFE
Fuji Heavy Ind.	Import—PA	31.2	32.0

1982 Model Year

Manufacturer	Compliance category	Unadjusted CAFE	Adjusted CAFE
American Motors	Domestic—PA	23.9	24.3
Chrysler	Domestic—PA	27.2	27.6
Ford	Domestic—PA	24.6	25.0
General Motors	Domestic—PA	24.2	24.6
Checker	Domestic—PA	18.4	18.7
Ford	Import—PA	34.4	34.9
Alfa Romeo	Import—PA	24.6	25.0
BMW	Import—PA	26.4	26.9
Mercedes-Benz	Import—PA	26.3	26.6
Fiat	Import—PA	25.7	26.1
Honda	Import—PA	33.4	33.9
Isuzu	Import—PA	37.6	38.1
Jaguar Cars Inc.	Import—PA	18.8	19.0
Maserati	Import—PA	10.1	10.2
Nissan	Import—PA	30.7	31.2
Peugeot	Import—PA	27.6	28.0
Renault	Import—PA	32.4	32.9
Rolls-Royce	Import—PA	10.8	11.0
Saab	Import—PA	24.1	24.6
Mitsubishi	Import—PA	33.1	33.6
Toyo Kogyo	Import—PA	29.4	29.8
Toyota	Import—PA	30.5	30.9
Volkswagen	Import—PA	32.9	33.4
Volvo	Import—PA	25.1	25.5
Fuji Heavy Ind.	Import—PA	31.6	32.0

1983 Model Year

Manufacturer[1]	Compliance category	Unadjusted CAFE	Adjusted CAFE
American Motors	Domestic—PA	33.5	34.2
Ford	Domestic—PA	23.8	24.3
General Motors	Domestic—PA	23.5	24.0
Chrysler	Import—PA	33.8	34.5
Alfa Romeo	Import—PA	25.2	25.8
BMW	Import—PA	25.6	26.2
Bertone	Import—PA	29.1	29.7
Mercedes-Benz	Import—PA	26.6	27.2
Ferrari	Import—PA	13.2	13.5
Honda	Import—PA	35.3	36.0
Isuzu	Import—PA	30.7	31.4
Jaguar Cars Inc.	Import—PA	18.8	19.2
Maserati	Import—PA	10.0	10.2
Nissan	Import—PA	32.7	33.4
Peugeot	Import—PA	25.1	25.6
Pininfarina	Import—PA	28.9	29.5
Renault	Import—PA	31.4	32.0
Rolls-Royce	Import—PA	11.0	11.2
Saab	Import—PA	25.9	26.6
Mitsubishi	Import—PA	30.2	30.8
Toyo Kogyo	Import—PA	28.9	29.4
Toyota	Import—PA	32.6	33.3
Volkswagen	Import—PA	30.0	30.7
Volvo	Import—PA	25.8	26.5
Fuji Heavy Ind.	Import—PA	32.4	33.0

[1] Does not include manufacturers whose CAFE's have not yet been confirmed.

1984 Model Year

Manufacturer[1]	Compliance category	Unadjusted CAFE	Adjusted CAFE
General Motors	Domestic—PA	24.4	24.9
BMW	Import—PA	27.4	28.0

1984 MODEL YEAR—Continued

Manufacturer [1]	Compliance category	Unadjusted CAFE	Adjusted CAFE
Bertone	Import—PA	29.2	29.8
Mercedes-Benz	Import—PA	25.7	26.2
Ferrari	Import—PA	14.1	14.4
Isuzu	Import—PA	28.4	29.2
Jaguar Cars Inc.	Import—PA	19.0	19.4
Peugeot	Import—PA	24.5	25.0
Pininfarina	Import—PA	28.5	29.0
Saab	Import—PA	25.3	26.0
Mitsubishi	Import—PA	30.9	31.6
Mazda Motor Corp.	Import—PA	30.0	30.6
Toyota	Import—PA	32.9	33.5
Volvo	Import—PA	26.4	27.0

[1] Does not include manufacturers whose CAFE's have not yet been confirmed.

PART 600—[AMENDED]

For the reasons set forth in the preamble, EPA amends 40 CFR Part 600 as follows:

1. The authority citation for Part 600 continues to read as follows:

Authority: Title III of the Energy Policy and Conservation Act of 1975, Pub. L. 94–163, 89 Stat. 871, Title IV of the National Energy Conservation Policy Act of 1978, Pub. L. 95–619, 92 Stat. 3295.

2. Section 600.006–86 is amended by revising paragraph (g)(1) to read as follows:

§ 600.006–86 Data and information requirements for fuel economy vehicles.

* * * * *

(g)(1) The manufacturer shall adjust all test data used for fuel economy label calculations generated by vehicles with engine-drive system combinations with more than 6,200 miles by using the following equation:

$$FE_{4,000_{mi}} = FE_T\,[0.979 + 5.25 \times 10^{-6}(mi)]^{-1}$$

Where:

$FE_{4,000_{mi}}$ = Fuel economy data adjusted to 4,000-mile test point rounded to the nearest 0.1 mpg.

FE_T = Tested fuel economy value rounded to the nearest 0.1 mpg.

mi = System miles accumulated at the start of the test rounded to the nearest whole mile.

* * * * *

3. A new § 600.006–87 is added to read as follows:

§ 600.006–87 Data and information requirements for fuel economy vehicles.

(a) For certification vehicles with less than 10,000 miles, the requirements of this section are considered to have been met except as noted in paragraph (c) of this section.

(b)(1) The manufacturer shall submit the following information for each fuel economy data vehicle:

(i) A description of the vehicle, exhaust emission test results, applicable deterioration factors, and adjusted exhaust emission levels.

(ii) A statement of the origin of the vehicle including total mileage accumulation, and modifications (if any) from the vehicle configuration in which the mileage was accumulated. (For modifications requiring advance approval by the Administrator, the name of the Administrator's representative approving the modification and date of approval are required.) If the vehicle was previously used for testing for compliance with Part 86 of this chapter or previously accepted by the Administrator as a fuel economy data vehicle in a different configuration, the requirements of this paragraph may be satisfied by reference to the vehicle number and previous configuration.

(iii) A statement that the fuel economy data vehicle, with respect to which data are submitted:

(A) Has been tested in accordance with applicable test procedures,

(B) Is, to the best of the manufacturer's knowledge, representative of the vehicle configuration listed, and

(C) Is in compliance with applicable exhaust emission standards.

(2) The manufacturer shall retain the following information for each fuel economy data vehicle, and make it available to the Administrator upon request:

(i) A description of all maintenance to engine, emission control system, or fuel system components performed within 2,000 miles prior to fuel economy testing.

(ii) In the case of electric vehicles, a description of all maintenance to electric motor, motor controller, battery configuration, or other components performed within 2,000 miles prior to fuel economy testing.

(iii) A copy of calibrations for engine, fuel system, and emission control devices, showing the calibration of the actual components on the test vehicle as well as the design tolerances.

(iv) In the case of electric vehicles, a copy of calibrations for the electric motor, motor controller, battery configuration, or other components on the test vehicle as well as the design tolerances.

(v) If calibrations for components specified in paragraph (b)(2) (iii) or (iv) of this section were submitted previously as part of the description of another vehicle or configuration, the original submittal may be referenced.

(c) The manufacturer shall submit the following fuel economy data:

(1) For vehicles tested to meet the requirements of Part 86 (other than those chosen in accordance with § 86.085–24 (c) and (h)), the city and highway fuel economy results from all tests on that vehicle, and the test results adjusted in accordance with paragraph (g) of this section.

(2) For each fuel economy data vehicle, all individual test results (excluding results of invalid and zero mile tests) and these test results adjusted in accordance with paragraph (g) of this section.

(d) The manufacturer shall submit an indication of the intended purpose of the data (e.g., data required by the general labeling program or voluntarily submitted for specific labeling).

(e) In lieu of submitting actual data from a test vehicle, a manufacturer may provide fuel economy values derived from an analytical expression, e.g., regression analysis. In order for fuel economy values derived from analytical methods to be accepted, the expression (form and coefficients) must have been approved by the Administrator.

(f) If, in conducting tests required or authorized by this part, the manufacturer utilizes procedures, equipment, or facilities not described in the Application for Certification required in § 86.087–21, the manufacturer shall submit to the Administrator a description of such procedures, equipment, and facilities.

(g)(1) The manufacturer shall adjust all test data used for fuel economy label calculations in Subpart D and average fuel economy calculations in Subpart F for passenger automobiles within the categories identified in paragraphs (a)(1) and (a)(2) of § 600.510. The test data shall be adjusted in accordance with (g)(3) or (g)(4) as applicable.

(2) The manufacturer shall only adjust the test data used for fuel economy label calculations, in Subpart D for light trucks within the categories identified in paragraphs (a)(3) through (a)(6) of § 600.510. The test data shall be adjusted in accordance with (g)(3) or (g)(4) as applicable.

(3) The manufacturer shall adjust all test data generated by vehicles with engine-drive system combinations with more than 6,200 miles by using the following equation:

$$FE_{4,000_{mi}} = FE_T[0.979 + 5.25 \times 10^{-6}(mi)]^{-1}$$

Where:

$FE_{4,000_{mi}}$ = Fuel economy data adjusted to 4,000-mile test point rounded to the nearest 0.1 mpg.

FE_T = Tested fuel economy value rounded to the nearest 0.1 mpg.

mi = System miles accumulated at the start of the test rounded to the nearest whole mile.

(4) For vehicles with 6,200 miles or less accumulated, the manufacturer is not required to adjust the data.

4. Section 600.510–80 is amended by adding and reserving paragraph (d), and adding paragraphs (e), and (f) to read as follows:

§ 600.510–80 Calculation of average fuel economy.

* * * * *

(d) [Reserved].

(e) For passenger automobile categories identified in paragraphs (a)(1) and (a)(2) of this section, the average fuel economy calculated in accordance with paragraph (c) of this section shall be adjusted using the following equation:

$AFE_{adj} = AFE\ [\{(0.55 \times a \times c) + (0.45 \times c) + (0.5556 \times a) + 0.4487\} / \{(0.55 \times a) + 0.45\}] + IW$

Where:

AFE_{adj} = Adjusted average combined fuel economy, rounded to the nearest 0.1 mpg.

AFE = Average combined fuel economy as calculated in paragraph (c) of this section, rounded to the nearest 0.0001 mpg.

a = Sales-weighted average (rounded to the nearest 0.0001 mpg) of all model types highway fuel economy values (rounded to the nearest 0.1 mpg) divided by the sales-weighted average (rounded to the nearest 0.0001 mpg) of all model types city fuel economy values (rounded to the nearest 0.1 mpg). The quotient shall be rounded to 4 decimal places. These average fuel economies shall be determining using the methodology of paragraph (c) of this section.

$c = 2.501 \times 10^{-3}$ for the 1980 model year
$c = 2.184 \times 10^{-3}$ for the 1981 model year
$c = 9.260 \times 10^{-3}$ for the 1982 model year
$c = 1.435 \times 10^{-3}$ for the 1983 model year
$c = 1.420 \times 10^{-3}$ for the 1984 model year
$c = 1.490 \times 10^{-3}$ for the 1985 model year

$IW = (9.2917 \times 10^{-3} \times SF_{3IWC} \times FE_{3IWC}) - (3.5123 \times 10^{-3} \times SF_{4ETW} \times FE_{4IWC})$

Note.—Any calculated value of IW less than zero shall be set equal to zero.

SF_{3IWC} = The 3000 lb. inertia weight class sales divided by total sales. The quotient shall be rounded to 4 decimal places.

SF_{4ETW} = The 4000 lb. equivalent test weight category sales divided by total sales. The quotient shall be rounded to 4 decimal places.

FE_{3IWC} = The sales-weighted average combined fuel economy of all 3000 lb. inertia weight class base levels in the compliance category. Round the result to the nearest 0.0001 mpg.

FE_{4IWC} = The sales-weighted average combined fuel economy of all 4000 lb. inertia weight class base levels in the compliance category. Round the result to the nearest 0.0001 mpg.

(f) The Administrator shall calculate and apply additional average fuel economy adjustments if, after notice and opportunity for comment, the Administrator determines that as a result of test procedure changes not previously considered, such correction is necessary to yield fuel economy test results that are comparable to those obtained under the 1975 test procedures. In making such determination, the Administrator must find that:

(1) A directional change in measured fuel economy of an average vehicle can be predicted from a revision to the test procedures;

(2) The magnitude of the change in measured fuel economy for any vehicle or fleet of vehicles caused by a revision to the test procedures is quantifiable from theoretical calculations or best available test data;

(3) The impact of a change on average fuel economy is not due to eliminating the ability of manufacturers to take advantage of flexibilities within the existing test procedures to gain measured improvements in fuel economy which are not the result of actual improvements in the fuel economy of production vehicles.

(4) The impact of a change on average fuel economy is not due to a greater ability of manufacturers to reflect in average fuel economy those design changes expected to have comparable effect on in-use fuel economy.

(5) The test procedure change is required by EPA or is a change initiated by EPA in its laboratory and is not a change implemented solely by a manufacturer in its own laboratory.

5. Section 600.510–86 is amended by adding paragraphs (e) and (f) to read as follows:

§ 600.510–86 Calculation of average fuel economy.

* * * * *

(e) For passenger categories identified in paragraphs (a)(1) and (a)(2) of this section, the average fuel economy calculated in accordance with paragraph (c) of this section shall be adjusted using the following equation:

$AFE_{adj} = AFE[\{(0.55 \times a \times c) + (0.45 \times c) + (0.5556 \times a) + 0.4487\} / \{(0.55 \times a) + 0.45\}] + IW$

Where:

AFE_{adj} = Adjusted average combined fuel economy, rounded to the nearest 0.1 mpg.

AFE = Average combined fuel economy as calculated in paragraph (c) of this section, rounded to the nearest 0.0001 mpg.

a = Sales-weighted average (rounded to the nearest 0.0001 mpg) of all model types highway fuel economy values (rounded to the nearest 0.1 mpg) divided by the sales-weighted average (rounded to the nearest 0.0001 mpg) of all model types city fuel economy values (rounded to the nearest 0.1 mpg). The quotient shall be rounded to 4 decimal places. These average fuel economies shall be determined using the methodology of paragraph (c) of this section.

c = A constant value, fixed by model year. For 1986 and later model years, the Administrator will specify the c values after the necessary laboratory humidity and test fuel data become available.

$IW = (9.2917 \times 10^{-3} \times SF_{3IWC} \times FE_{3IWC}) - (3.5123 \times 10^{-3} \times SF_{4ETW} \times FE_{4IWC})$

Note.—Any calculated value of IW less than zero shall be set equal to zero.

SF_{3IWC} = The 3000 lb. inertia weight class sales divided by total sales. The quotient shall be rounded to 4 decimal places.

SF_{4ETW} = The 4000 lb. equivalent test weight category sales divided by total sales. The quotient shall be rounded to 4 decimal places.

FE_{3IWC} = The sales-weighted average combined fuel economy all 3000 lb. inertia weight class base levels in the compliance category. Round the result to the nearest 0.0001 mpg.

FE_{4IWC} = The sales-weighed average combined fuel economy of all 4000 lb. inertia weight class base levels in the compliance category. Round the result to the nearest 0.0001 mpg.

(f) The Administration shall calculate and apply additional average fuel ecomony adjustments if, after notice and opportunity for comment, the Administrator determines that, as a result of test procedure changes not previously considered, such correction is necessary to yield fuel economy test results that are comparable to those obtained under the 1975 test procedures. In making such determinations, the Administrator must find that:

(1) A directional change in measured fuel economy of an average vehicle can be predicted from a revision to the test procedures;

(2) The magnitude of the change in measured fuel economy for any vehicle or fleet of vehicles caused by a revision to the test procedures is quantifiable from theoretical calculations or best available test data;

(3) The impact of a change on average fuel economy is not due to eliminating the ability of manufacturers to take advantage of flexibilities within the existing test procedures to gain measured improvements in fuel economy which are not the result of actual improvements in the fuel economy of production vehicles.

(4) The impact of a change on average fuel economy is not solely due to a greater ability of manufacturers to reflect in average fuel economy those design changes expected to have comparable effect on in-use fuel economy.

(5) The test procedure change is required by EPA or is a change initiated by EPA in its laboratory and is not a change implemented solely by a manufacturer in its own laboratory.

6. Section 600.513–81 is amended by adding paragraph (a)(3), redesignating paragraphs (c) through (f) as paragraphs (d) through (g) and redesignating the paragraph following (b)(2)(vi) as paragraph (c), and revising paragraphs (b)(1), (c)(1), (d)(1), (e)(1), (f)(1), and (g)(1) to read as follows:

§ 600.513–81 Gas Guzzler Tax.

(a) * * *

(2) * * *

(3) For 1980 and later model year passenger automobiles, the combined general label model type fuel economy value used for Gas Guzzler Tax assessments shall be calculated in accordance with the following equation, rounded to the nearest 0.1 mpg:

$$FE_{std} = Fe\ [[(0.55 \times a_g \times c) + (0.45 \times c) + (0.5556 \times a_g) + 0.4487]/[(0.55 \times a_g) + 0.45)] + IW_g$$

Where:

FE_{std} = Fuel economy value to be used for determination of gas guzzler tax assessment rounded to the nearest 0.1 mpg.

FE = Combined model type fuel economy calculated in accordance with § 600.207, rounded to the nearest 0.0001 mpg.

a_g = Model type highway fuel economy, calculated in accordance with § 600.207, rounded to the nearest 0.0001 mpg divided by the model type city fuel economy calculated in accordance with § 600.207, rounded to the nearest 0.0001 mpg. The quotient shall be rounded to 4 decimal places.

$c = 2.501 \times 10^{-3}$ for the 1980 model year
$c = 2.184 \times 10^{-3}$ for the 1981 model year
$c = 9.260 \times 10^{-3}$ for the 1982 model year
$c = 1.435 \times 10^{-2}$ for the 1983 model year
$c = 1.420 \times 10^{-2}$ for the 1984 model year
$c = 1.490 \times 10^{-2}$ for the 1985 model year
$c = 1.300 \times 10^{-3}$ for the 1986 and later model years

$$IW_g = (9.2017 \times 10^{-3} \times SF_{3IWCC} \times FE_{3IWCC}) - (3.5123 \times 10^{-3} \times SF_{4ETWC} \times FE_{3IWCC})$$

Note.—Any calculated value of IW less than zero shall be set equal to zero.

SF_{3IWCC} = The 3000 lb. inertia weight class sales in the model type divided by the total model type sales. The quotient shall be rounded to 4 decimal places.

SF_{4ETWC} = The 4000 lb. equivalent test weight sales in the model type divided by the total model type sales, the quotient shall be rounded to 4 decimal places.

FE_{3IWCC} = The 3000 lb. inertia weight class base level combined fuel economy used to calculate the model type fuel economy rounded to the nearest 0.0001 mpg.

FE_{4IWCC} = The 4000 lb. inertia weight class base level combined fuel economy used to calculate the model type fuel economy rounded to the nearest 0.0001 mpg.

(b) * * *

(1) Passenger automobiles with a combined general label model type fuel economy value of less than 17.0 mpg, calculated in accordance with paragraph (a)(3) of this section and rounded to the nearest 0.1 mpg, shall carry a Gas Guzzler Tax statement pursuant to section 403 of the National Energy Conservation Policy Act.

* * * * *

(c) This paragraph applies to 1982 model year vehicles.

(1) Passenger automobiles with a combined general label model type fuel economy value of less than 18.5 mpg, calculated in accordance with paragraph (a)(3) of this section and rounded to the nearest 0.1 mpg, shall carry a Gas Guzzler Tax statement pursuant to section 403 of the National Energy Conservation Policy Act.

* * * * *

(d) This paragraph applies to 1983 model year vehicles.

(1) Passenger automobiles with a combined general label model type fuel economy value of less than 19.0 mpg, calculated in accordance with paragraph (a)(3) of this section and rounded to the nearest 0.1 mpg, shall carry a Gas Guzzler Tax statement pursuant to section 403 of the National Energy Conservation Policy Act.

* * * * *

(e) This paragraph applies to 1984 model year vehicles.

(1) Passengers automobiles with a combined general label model type fuel economy value of less than 19.5 mpg, calculated in accordance with paragraph (a)(3) of this section and rounded to the nearest 0.1 mpg, shall carry a Gas Guzzler Tax statement pursuant to section 403 of the National Energy Conservation Policy Act.

* * * * *

(f) This paragraph applies to 1985 model year vehicles.

(1) Passengers automobiles with a combined general label model type fuel economy value of less than 21.0 mpg, calculated in accordance with paragraph (a)(3) of this section and rounded to the nearest 0.1 mpg, shall carry a Gas Guzzler Tax statement pursuant to section 403 of the National Energy Conservation Policy Act.

* * * * *

(g) This paragraph applies to 1986 and later model year vehicles.

(1) Passenger automobiles with a combined general label model type fuel economy value of less than 22.5 mpg, calculated in accordance with paragraph (a)(3) of this section and rounded to the nearest 0.1 mpg, shall carry a Gas Guzzler Tax statement pursuant to section 403 of the National Energy Conservation Policy Act.

* * * * *

FR Doc. 85–15711 Filed 6–28–85; 8:45 am]
BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 600

[AMS-FRL-2839-5A]

Fuel Economy Test Procedures Proposed Revision of Fuel Economy Calculation Equation and Consideration of Light Truck Fuel Economy Adjustments To Compensate for Test Procedure Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes a revised equation for the calculation of passenger automobile and light truck fuel economies for 1987 and later model years. Additionally, it considers light truck Corporate Average Fuel Economy (CAFE) adjustments to compensate for the effects of past test procedure changes.

Currently, the EPA test procedures calculate fuel economies using equations which are based on fixed test fuel properties. In practice, test fuel properties are not fixed and have, in fact, varied over time. Thus, measured fuel economy has been affected by variation of test fuel properties. A final rule being published elsewhere in today's **Federal Register** grants CAFE adjustments for passenger automobiles to compensate for variation of test fuel properties in past model years and establishes a procedure to adjust for variations in the future. The fuel economy calculation equation proposed today would compensate directly for variations in test fuel properties by changing the equations used to calculate fuel economy test results and would eliminate the necessity of separately providing future CAFE adjustments to compensate for variation of test fuel properties.

This notice also addresses the issue of CAFE adjustments for light trucks. As mentioned above, elsewhere in today's **Federal Register** EPA is granting passenger automobile CAFE adjustments to compensate for test procedure changes which influenced the stringency of the CAFE standards. The stringency of light truck standards may have also been influenced by several test procedure changes. Therefore, EPA is proposing light truck CAFE adjustments, where appropriate, to compensate for the fuel economy effects of test procedure changes.

DATE: Comments on this proposed rule must be received by July 31, 1985.

ADDRESS: Comments in response to this notice should be submitted to the Environmental Protection Agency Central Docket Section (A-130), Attn.: Docket No. A-85-16 Gallery 1, West Tower Lobby, Waterside Mall, 401 M. Street, S.W., Washington, D.C. 20460. The docket may be inspected between 8 a.m. and 4 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Matthew J. Wagner, Certification Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105: (313) 668-4345.

SUPPLEMENTARY INFORMATION:

A. Fuel Economy Equation

1. Background

Under the Energy Policy and Conservation Act (EPCA), 15 U.S.C. 2001 *et seq.* EPA is responsible for measuring automobile manufacturers' Corporate Average Fuel Economy (CAFE) so that the National Highway Traffic Safety Administration (NHTSA) can determine compliance with the CAFE standards set by either Congress or the Department of Transportation. In making this determination EPA is required by section 503(d) of EPCA to use 1975 model year test procedures or procedures which yield "comparable results."

In a final rule published in today's **Federal Register**, EPA assessed the impact on manufacturers' CAFEs of a number of test procedure changes it had enacted in the past, and granted CAFE adjustments where those changes had resulted in systematically lower test results than would have been obtained had 1975 procedures been used. EPA also considered the CAFE impact of variations in test fuel properties, and granted CAFE adjustments for past model years to compensate for the effects of those variations. For future model years, EPA stated that it would continue to adjust CAFE test results for year-to-year variations in test fuel properties, but left open the possibility of revising the equation for calculating CAFE to directly account for fuel property variations.

EPA's fuel economy test procedures specify equations for calculating fuel economy (40 CFR 600.113-78). These equations are based on the carbon balance technique which allows fuel economy to be determined from measurement of exhaust emissions. This technique relies upon the premise that the quantity of carbon in a vehicle's exhaust gas is equal to the quantity of carbon consumed by the engine as fuel. A general equation for calculating fuel economy in miles per gallon (mpg) using the carbon balance technique is as follows:

$$mpg = \frac{\text{grams carbon/gal fuel}}{\text{grams carbon in exhaust/mile}} \quad (1)$$

Although this general equation is applicable to any carbon-based fuel, the current equations for both gasoline and diesel fuel economy assume constant fuel properties based on EPA's 1975 test fuels. However, the current EPA test fuel specifications (40 CFR 86.113-82) do not define a unique fuel, so fuel properties can and have varied over time.

In an August 15, 1984[1] letter to EPA concerning the effect of test fuel properties on fuel economy testing and CAFE, General Motors (GM) stated that vehicle tests indicate that changes in test fuel properties have a measurable effect on calculated fuel economy. In the December 7, 1984 Supplemental NPRM concerning CAFE adjustments,[2] EPA acknowledged the effect these changing test fuel properties had on past model year fuel eonomony test results and proposed granting compensatory CAFE credits. EPA also proposed that future model year passenger car fuel economy test results be adjusted on the basis of average EPA test fuel specifications for the test year. EPA requested comments regarding this proposal and other future improvements in the fuel economy measurement methodology to account for test fuel properties.

Comments received in response to the December 7, 1984 Supplemental NPRM indicated two possible courses of action to preclude the need for any future fuel economy adjustments for test fuel properties. The majority of comments suggested revision of the current fuel economy equation. The revised equation would compensate for fuel property changes and yield a calculated fuel economy value equal to that which the current equation would yield if 1975 test fuel had been used. Other commenters suggested that EPA establish tighter test fuel tolerances which would preclude the need for any future adjustments.

In today's final rule granting passenger automobile CAFE adjustments, EPA established procedures to adjust future passenger car fuel economy on a model year basis

[1] See General Motors letter addressed to Mr. R.E. Maxwell, Certification Division Director, "Effect of Test Fuel Properties on Fuel Economy Testing and CAFE," August 15, 1984.

[2] See 49 FR 48024-48026, December 7, 1984.

using average EPA test fuel specifications for the particular test year. This procedure will remain in effect unless it is superseded by final regulations resulting from today's proposal to revise the fuel economy calculation equation to directly compensate for variations in fuel properties.

2. Revised Fuel Economy Equation (Proposed Action)

For calculation of fuel economy for 1987 and later model year test vehicles, EPA proposes to revise the current fuel economy equations to accommodate varying fuel properties. Fuel economy would be calculated by using fuel economy equations which account for test fuel properties in a manner identical to those used in today's final rule for passenger automobiles CAFE adjustments. However, whereas the current equation uses the fuel economy adjustment based on the average annual test fuel properties of the fuel used by EPA and applies this adjustment to the manufacturer's CAFE, the proposed equation would use the fuel economy adjustment based on the test fuel used in a vehicle during each test and apply the adjustment to each individual city and highway fuel economy test result.

The revised equations would require manufacturers and EPA to determine the properties of the fuel used in each fuel economy test, specifically the fuel's carbon weight fractions (CWF), net heating value (NHV) and specific gravity (sg). Although determining additional variables might appear burdensome for both EPA and manufacturers, this approach has several advantages that make it attractive for implementation.

Many manufacturers attempt to obtain test fuel from the same supplier as EPA in order to minimize potential fuel economy test result differences between their laboratories and EPA's. However, obtaining fuel from the same supplier is not always convenient, depending on the location of a manufacturer's laboratory. Some foreign manufacturers must use the fuel available to them locally or transport fuel over long distances at great expense. Ultimately, some foreign manufacturers must choose either to use potentially different test fuels or to face significant additional costs for shipping test fuels overseas.

The revised fuel economy equations would minimize the need for manufacturers to obtain test fuel from the same supplier in order to maintain comparability of fuel economy test results with EPA. The revised equations would adjust for the fuel properties of the test fuels actually used to calculate fuel economy values which would have resulted had the reference (1975) test fuel been used. Therefore, test fuels having a relatively wide range of property values within the currently specified tolerances could be used for fuel economy testing, yet the resulting measured fuel economy values would approximate the values that would have been obtained if all laboratories used the same fuel. At the same time, the proposed equations maintain the objective of the current CAFE adjustment procedures for test fuels to adjust fuel economy to approximate the value that would have been obtained using the 1975 model year reference fuel. This will maintain the stringency of the CAFE standards across manufacturers.

The majority of comments received concerning fuel economy adjustment due to changing test fuel properties supported this methodology. For example, Volvo commented that if this revised equation were implemented, purchasing test fuel may become much more convenient due to the revised equation's ability to accommodate fuels different from that used by EPA. Overall, the greater accuracy in calculating CAFE and convenience in obtaining fuel that the revised equation would provide, as well as the strong backing it has received from manufacturers, support its implementation.

If the fuel economy equation is revised to account for varying test fuel properties, then it would be appropriate to use fuel properties unique to diesel fuel when calculating diesel vehicle fuel economy. This would require EPA to establish the sensitivity of fuel economy to fuel energy content (i.e., the "R" factor) and the net heating value for diesel fuel. EPA proposes using an "R" factor of 0.6 for the diesel fuel economy equation, as was used in the gasoline fuel economy equation. EPA requests comments on the value of "R" for diesels. EPA also proposes to use 18,443 Btu/lb. as the reference net heating value of diesel test fuel based on an EPA Technical Support Report [3] published in 1976. Finally, EPA also proposes to use a specific gravity value of 0.850 and a carbon weight fraction value of 0.866 as reference diesel test fuel properties. Comments are requested as to the appropriateness of these values. If the comments support these values but the proposed revision of the fuel economy equation is not adopted, EPA may choose to revise its current CAFE adjustment methodology for future model years to more accurately reflect the impact of diesel test fuel variability. EPA requests comments on applying such a revision to the calculation of future CAFE adjustments.

The proposed revised fuel economy equation is in a form which calculates fuel economy according to the particular properties of the test fuel actually used. It is thus important to maintain an accurate account of test fuel property values by performing fuel analyses on a regular basis. The frequency of such analyses must be sufficient to track any change in test fuel property values which may significantly affect fuel economy, but must not make implementation of such a test procedure economically impractical.

Test fuel can be sampled for analysis using several different approaches. A fuel sample can be drawn from and analyzed for every vehicle tested. This practice would assure an accurate account of test fuel properties for each vehicle test. However, performing fuel analyses at this frequency would require significant additional technical support and funding. Therefore, an approach requiring somewhat less sampling would be more practical for implementation.

While the majority of manufacturers are in favor of a test-by-test fuel economy calculation, most comments in response to the supplemental NPRM indicate that fuel sampling should take place on a batch basis. A fuel sample could be drawn and analyzed following the fresh fuel's transfer to storage. If the receiving storage tank contained any residual fuel, a sample would not be drawn until the two fuels were allowed to mix and assume properties characteristic of that fuel mix. This method is most economically practical. However, one additional approach should be considered.

Test facilities having large volume storage tanks often can store up to a three- or four-month supply of test fuel. Although most storage environments are temperature controlled, this control does not maintain all chemical activity within the fuel to an undetectable level. Over time, reactive hydrocarbons and impurities in the fuel have a tendency to oxidize and form viscous liquids and solids which are known, descriptively, as gum. Chemical formation of gum can cause changes in the properties of the fuel itself. Thus, over extended fuel storage periods, these changes may be significant enough to affect fuel economy test results. Periodic fuel samples from a single batch would be required so that the changing fuel

[3] See "Methodology for Calculation of Diesel Fuel to Gasoline Fuel Economy Equivalence Factors," January 1976 Technical Support Report for Regulatory Action, EPA–AA–FE 76–01.

properties could be measured and recorded appropriately for purposes of fuel economy calculation.

Although all these approaches have potential, each approach presents some difficulties. The first approach (measuring each test vehicle's fuel properties) may require an amount of time and money beyond that which is available or necessary. While the second approach (batch sampling once after each new batch is added to existing fuel) seems feasible, EPA realizes that some test facilities have limited or no storage capabilities and thus receive fuel in barrels. Unless each shipment of barreled fuel was considered a batch, each individual barrel may require sampling to assure consistent fuel property values. Finally, it is not certain how consistently or at what rate a fuel's properties would change chemically. Since the fuel storage environment may vary between test facilities, a single specified frequency of fuel sampling and analysis may be impractical.

After considering each approach, EPA believes that fuel sampling and analysis either on a batch basis or on a batch basis supplemented by periodic resampling would be the most appropriate approach and proposes both in the alternative. EPA requests comments as to the need for and cost of supplemental resampling of a batch. Based on these comments and further analysis of this issue, EPA will select one of these alternatives for fuel sampling.

In developing this proposal EPA closely considered the option of improving the test fuel specifications in order to eliminate any significant fuel economy impact due to test fuel variation. The Ford Motor Company (Ford) showed strong support for this alternative. In its response to the supplemental NPRM Ford stated:

> Specifications and sufficient tolerances for fuel properties should be proposed by regulation to ensure comparability to the carbon balance equation and to preclude the need for on-going adjustment.[4]

While 40 CFR 86.113–32 gives specifications for certification test fuels, EPA realizes that these specifications do not define a unique fuel. As a result, certain CAFE related fuel properties have varied over time. However, if all fuel properties affecting CAFE results were included in the specifications for future test fuels and sufficiently narrow tolerances for these properties were defined, the need for future fuel economy adjustment might be eliminated.

This alternative appears to offer convenience and simplicity. However, the difficulties which would arise in implementing tightened fuel specifications downplay its advantages. EPA believes that test fuel specifications are sufficiently tight when changes in fuel property values within the specified tolerance do *not* change fuel economy test results by more than 0.01 miles per gallon (mpg). This is the degree of precision EPA has used in determining the effect of other test procedure changes on CAFE. This precision is necessary since as little as 0.01 mpg can affect manufacturers' CAFE as rounded off to the nearest 0.1 mpg.

Using this precision, for example, EPA has calculated the fuel carbon density tolerance which would limit the effect of variations in carbon density on fuel economy to less than or equal to 0.01 mpg. This tolerance is calculated by equating the sum of a given fuel economy and 0.01 mpg to a slightly modified form of the current fuel economy equation.[5] For vehicles having low fuel economy, such as 10 mpg, a tolerance as large as ±2.4 gC/gal would assure a change of no more than 0.01 mpg for a calculated fuel economy. However, at exceptionally high fuel economies, such as 50 mpg, the acceptable tolerance is less than ±0.5 gC/gal. At the 1985 CAFE standard (27.5 mpg), a tolerance of approximately ±0.9 gC/gal would be required in order to limit the impact of variations to 0.1 mpg. EPA believes obtaining sufficient test fuel with carbon density within such tight tolerances may be technically impossible and economically infeasible. According to EPA fuel purchasing specifications the tolerance on carbon density is ±20 gC/gal. This tolerance would allow a potential fuel economy change of approximately ±0.2 mpg at 27.5 mpg. EPA believes that production of a suitably specified fuel may not be possible given the current level of petroleum refinement technology.

Tightening test fuel's tolerances will also inconvenience some manufacturers. Due to the varying capabilities of refineries, the differences in fuel property tolerances of fuel acquired from various suppliers may be considerable. As a result, some manufacturers, particularly those overseas, may find it difficult to obtain fuel having the same property tolerances as those required by revised test fuel specifications. To secure a fuel identical to that specified by EPA, some foreign manufacturers might be forced to transport the fuel over long distances. Thus, even if fuel of sufficiently tight tolerance were available in the United States, foreign manufacturers might have to incur considerable additional cost to obtain it.

In summary, tightening the fuel specifications does not appear to be a viable option to controlling fuel property variation and, as a result, calculated fuel economy variation. Nevertheless, if comments indicate that such an alternative is possible on a practical basis, EPA will explore the fuel specifications alternative further.

EPA recognizes that it is preferable to use test fuel with properties as close as practical to the 1975 model year baseline fuel properties to minimize any unforeseen error that the adjustment equation may introduce in calculating fuel economy. Consequently, EPA will make every effort to purchase test fuel with properties close to the 1975 model year baseline test fuel and encourages manufacturers to do so as well.

Finally, should none of the options described above prove preferable, the current regulations will be retained and manufacturers' CAFEs will be adjusted according to the average annual test fuel properties as used by EPA at its laboratory.

B. Light Truck CAFE

1. Background

In today's final rule on CAFE adjustments, EPA finalized procedures to adjust passenger automobile fuel economy test results in light of test procedure changes. Fuel economy adjustments for light trucks must be determined separately because the National Highway Traffic Safety Administration (NHTSA) considered some, although not all, of EPA's test procedure changes in developing the light truck CAFE standards. This NPRM considers what, if any, adjustments are due for light trucks based on changes in fuel economy test procedures.

In December 1975, Congress adopted the Energy Policy and Conservation Act (EPCA), 15 U.S.C. 2001 *et seq.* Section 502(b) of EPCA requires the Administrator of the NHTSA to issue average fuel economy standards for 1979 and later model year light trucks. Under section 503(d), manufacturer compliance with these standards is to be determined by EPA using 1975 model year test

[4] See Ford Motor Company Letter addressed to Mr. Richard Wilson, Office of Mobile Sources Director, "Ford Motor Company Comments in Response to EPA's Supplemental Notice of Proposed Rulemaking Regarding Fuel Economy Test Procedure Adjustments," January 22, 1985.

[5] See EPA Draft, "Derivation of a Method of Calculation of Maximum Tolerance to Produce a Given Change in Fuel Economy," April 4, 1985, M. Wagner.

procedures or procedures which yield "comparable results."

To establish light truck CAFE standards, NHTSA analyzes fuel economy test data to determine light trucks' baseline fuel economy. It then sets standards from this baseline value at the level required by section 502(b), "the maximum feasible average fuel economy level which light trucks can achieve." To determine maximum feasible fuel economy, NHTSA is required by section 502(e) to consider the following factors:

a. Technological feasibility;

b. Economic practicability;

c. The effect of other Federal motor vehicle standards upon fuel economy; and

d. The need of the nation to conserve energy.

In setting light truck CAFE standards, NHTSA may have taken into account the fuel economy impact of EPA test procedure changes, thus making CAFE adjustments unnecessary. Since measured fuel economy is a function of fuel economy test procedures, any test procedure change may influence measured fuel economy values. If a test procedure change was reflected in NHTSA's baseline test data or in its determination of the "maximum feasible" level, however, the resultant light truck standards account for the fuel economy effects of that change. On the other hand, a test procedure change which was not considered in the establishment of the light truck CAFE standards may effectively change the stringency of those standards and an adjustment may be warranted. In the event that the stringency of light truck fuel economy standards have been influenced by test procedure changes, EPA proposes to adopt manufacturer-specific CAFE adjustments to adjust for these changes.

2. Light Truck CAFE Adjustment (Proposed Action)

EPA has reviewed NHTSA's rulemakings which established light truck CAFE standards for the 1979 through the 1986 model years in order to establish whether the test procedure changes at issue in the passenger automobile rulemaking were included in the baseline data used to set the light truck CAFE standards. In performing this assessment, EPA has restricted the applicability of possible light truck adjustments to 1981 and later model years for two reasons. One, no manufacturer failed to comply with light truck CAFE standards until the 1984 model year. Two, EPCA allows manufacturers to apply towards their current CAFE only those positive CAFE adjustments granted for the past three years.

EPA is proposing today to provide manufacturer-specific CAFE adjustments for two of the changes which were considered in the final rule for passenger automobiles. These changes include a positive adjustment for changes in test fuel properties and a small negative adjustment for reductions in laboratory humidity. The other changes were implemented prior to the years for which NHTSA determined light trucks' baseline fuel economy and so are reflected in the light truck CAFE standards. The findings with respect to each test procedure change generating passenger car CAFE adjustments are discussed below. (For a more detailed discussion of the test changes themselves, see the final rule on passenger automobile CAFE adjustment in today's **Federal Register**.) These findings have been made in coordination with NHTSA.

a. Test Distance Measurement

The Federal Test Procedure used by EPCA in 1975 calculated fuel economy by dividing the nominal test cycle distance (7.5 miles) by the test vehicle's fuel consumption. This procedure was changed in September of 1976 (40 CFR 86.144) to require measurement of the actual distance driven over the test cycle and use of this measured distance to calculate fuel economy.

The 1981 and later model year light truck CAFE standards were established using data generated from the 1979 and later model year fuel economy program, several years after the distance measurement change was made. Therefore, this test procedure change was taken into account in setting all 1981 and later model year light truck standards, and no CAFE adjustment for it is warranted.

b. Dynamometer Controllers

The chassis dynamometers used for vehicle testing are equipped with power absorption units (PAU's) which simulate the load on a vehicle during actual driving. In the 1975 model year, these PAU's were manually set before each test and no corrections were made during the test. Presently, EPA dynamometers are equipped with automatic load control circuits, which continuously monitor and adjust the dynamometer loading.

EPA converted to automatic dynamometer load controllers in 1977. Since 1981 and later model year light truck standards were established using 1979 or later model year baseline data, the change was taken into account for the standards, so no CAFE adjustment is warranted.

c. Laboratory Humidity

The ambient humidity level affects engine efficiency and hence, fuel economy; in general, as ambient humidity increases, a vehicle's fuel economy decreases. (The specific effects are discussed in the final rule for passenger automobiles.) EPA investigated the EPA laboratory humidity levels that existed at the time light truck baseline data were generated for the various model year light truck CAFE standards. EPA found that in the baseline year for the 1981 and later model year light truck standards, the humidity levels were in all cases equal to or above the humidity levels of the model years to which the standards applied. Specifically, the humidity in the 1979 model year, the baseline year, averaged 74 grains per pound dry air (gr/lb) wet bulb at EPA while the average in the years to which the standards based on the 1979 data applied was 55 gr/lb in 1981, 52 gr/lb in 1982 and 54 gr/lb in 1983. The 1984 average measured at EPA was 51 gr/lb but this was measured using new equipment; for comparison to the 1979 data, the 1984 wet bulb-equivalent humidity was 56 gr/lb.

Since fuel economy is increased with decreased humidity, manufacturers actually derived a fuel economy benefit in the 1981–1984 model years by their vehicles being tested at lower humidity levels than those on which the standards were based. Receipt of this fuel economy benefit effectively reduced the stringency of the applicable CAFE standard. Thus EPA proposes that debits, calculated for each manufacturer using the same sensitivity factor and methodology as in the final rule for passenger automobile CAFE adjustments, are warranted for 1981 through 1984 light truck CAFE's.

Future adjustments for laboratory humidity should not be necessary. Light truck CAFE standards for 1985 and future model years were based on 1984 EPA fuel economy data that was generated at 56 gr/lb humidity. The EPA laboratory humidity has remained relatively constant (52 to 56 gr/lb) for the past several years, and future humidity levels are expected to remain constant. Since humidity changes this small (less than 5 gr/lb) have an insignificant fuel economy impact at the fuel economy level of light trucks, no humidity related adjustments for 1985 and later model years are anticipated.

d. Inertia Weight Changes

In the final rule for passenger automobiles CAFE adjustment, EPA considered the effects that changes in the dynamometer operation had on fuel economy test results. A dynamometer is used to simulate a test vehicle's weight during fuel economy testing. EPA adopted the use of finer inertia weight increments beginning with the 1980 model year. In its March 23, 1978 final rule establishing the 1981 truck CAFE standards, NHTSA expressly acknowledged the planned inertia weight change and took this change into account when it set the standards (43 FR 12000, March 23, 1978).

When NHTSA revised the 1981 model year two-wheel drive light truck CAFE standards, the effect on inertia weight changes was again addressed. In the June 25, 1979 final rule NHTSA stated:

> In addition, refinements to the weight simulation used by EPA for fuel economy testing are now expected to reduce previously projected improvements in measured fuel economy (naturally, on-the-road improvements are unaffected). Although these refinements make testing more accurate, their effect on measured fuel economy must be accounted for. (44 FR 36979, June 25, 1979)

From these rulemakings, it is evident that the inertia weight change was taken into account when light truck CAFE standards were set for the 1981 model year. Accordingly, no CAFE adjustment is necessary for 1981 or later model years since all later model year standards set subsequent to the 1981 standards will account for this change also.

e. Fuel Efficient Oils

The events that led to the establishment of an fuel efficient oils policy, which provides criteria on which EPA bases its approval for use of fuel-efficient crankcase lubricants in CAFE test vehicles, are discussed in the final rule for passenger automobiles CAFE adjustments.

When NHTSA established the 1980 and 1981 model year light truck CAFE standards, EPA had not yet granted approval for the use of fuel-efficient lubricants. NHTSA projected the use of energy efficient oils in the 1981 model year. However, since approval to use these oils was beyond NHTSA's control, NHTSA set alternative fuel economy standards for the 1981 model year. On page 12005 of the March 23, 1978 final rule (43 FR 12005), NHTSA stated:

> In the unlikely event that EPA has not yet approved the use of these improved lubricants by January 1, 1980, a lower fuel economy standard, excluding the projected use of the lubricants, will be in effect.

EPA did not grant the approval until March 17, 1981 (effective beginning with the 1982 model year); consequently, the lower alternative 1981 model year standard went into effect. For light trucks, then, the 1981 model year CAFE standard took account of the fuel efficient oils issue, making a CAFE adjustment unnecessary. No CAFE adjustment for subsequent years is warranted for the same reasons that no adjustment was determined necessary by EPA in the final rule for passenger automobiles CAFE adjustments.

f. Test Fuel Properties

EPA fuel economy test procedures currently specify equations for calculating fuel economies which are based on fixed test fuel properties. In practice, test fuel properties are not fixed and have, in fact, varied over time. These variations of test fuel properties may have influenced measured fuel economy. This issue is discussed in more detail in the final rule for passenger automobiles CAFE adjustments. In that final rule, EPA adopted a procedure to adjust manufacturers' CAFE's for the difference between the annual average properties of the test fuel used at EPA's laboratory and the baseline model year test fuel properties. EPA deferred action on this issue for light trucks in order to consider all light truck CAFE adjustment issues in one rulemaking.

EPA proposes to adopt for light trucks the procedures in place for adjusting passenger automobiles' CAFE for variations in test fuel properties. The same equation would be used with one modification. Because the baseline model year for the 1981 through 1984 model year light truck standards was the 1979 model year, the fuel used by EPA for the 1979 model year test program would be used to establish the baseline fuel properties. Consistent with the passenger automobile CAFE adjustments, this fuel adjustment would be applied to each manufacturer's light truck CAFE's. For 1985 and later model years, each manufacturer's CAFE fuel economy would be adjusted on a model year basis using the annual average values of the EPA test fuel, unless EPA adopts the proposal included in this notice for a revised fuel economy calculation equation.

g. Mileage Accumulation Limit

In the December 21, 1983 NPRM on passenger autombile CAFE adjustment EPA proposed, beginning in the 1986 model year, the application of a mileage-based fuel economy adjustment factor to all vehicles with accumulated mileage greater than 4,250 miles. EPA has finalized mileage adjustment rules for passenger automobiles but has deferred final action on light trucks for this rulemaking.

Comments received in response to the proposed mileage-based fuel economy adjustment factor specifically addressed its applicabilities to light trucks. Those comments will be considered in this rulemaking and need not be repeated.

h. Constant Volume Samplers

Due to a period of constant volume sampler equipment malperformance at the EPA test facility,[6] EPA concluded that a CAFE adjustment was appropriate for passenger automobiles. EPA is not certain whether the samplers were malperforming in the 1979 model year, the model year on which the light truck standards were based. EPA has, however, determined that after the samplers were repaired in September 1981, measured fuel economy was increased. Therefore, the stringency of the 1983 through 1985 standards may have been reduced by the increased fuel economy which resulted from the sampler repairs. Thus, manufacturers may be due debits for the 1983 through 1985 model years. However, due to the uncertainty as to whether this malfunction actually existed in the baseline model year, EPA proposes no adjustments for the issue of sampler performance.

C. Public Participation

EPA requests written comments on the above proposals to revise the equation for calculating fuel economy and to adjust for light truck's CAFE's to compensate for changes in fuel economy test procedures. In particular, EPA requests comments concerning the following items:

1. Fuel Specifications

a. What fuel specifications for both gasoline and diesel test fuels would be required to reduce the variability of test fuel properties such that no other fuel-related CAFE adjustment is necessary?

b. How would tightened fuel specifications affect manufacturers with respect to cost and availability of test fuel?

2. Light Truck CAFE Adjustment

a. EPA requests comments on the Agency's proposed approach to granting manufacturer-specific CAFE adjustments for light trucks.

---

[6] See EPA report No. EPA-AA-EOD-84/2, "Non-Proportional Sample Rates in a Critical Flow Venturi Constant Volume Sampler: Effects on Federal Emission Test Fuel Economy," January, 1982.

D. Regulatory Analysis

1. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because if adopted, it will result in an annual effect on the economy of less than $100 million. Also, this regulation should not result in increased costs or prices for consumers, industries, or others, nor should it have adverse effects on competition, employment, investment, or productivity. In fact, the CAFE adjustments proposed by this rulemaking would reduce the burden, including the costs of compliance with fuel economy requirements, for the industry as a whole.

2. Paperwork Reduction Act

This action was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection in the docket for this rulemaking. This proposed rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 2051 *et seq.*

3. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to determine whether a regulation will have a significant impact on a substantial number of small entities such that a regulatory analysis is required. The revision of the fuel economy regulations established by this rulemaking should not significantly increase the burden including costs of compliance with fuel economy requirements, for the industry as a whole, as well as for small entities. Therefore, pursuant to 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant impact on a substantial number of small entities.

E. List of Subjects in 40 CFR Part 600

Electric power, Energy conservation, Gasoline, Labeling, Motor vehicles, Reporting and recordkeeping requirements, Administrative practice and procedure, Fuel economy.

Dated: June 22, 1985.

Lee M. Thomas,

Administrator.

PART 600—[AMENDED]

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR Part 600 as follows:

1. The authority citation for Part 600 continues to read as follows:

Authority: Title III of the Energy Policy and Conservation Act of 1975, Pub. L. 94–163, 89 Stat. 871, Title IV of the National Energy Conservation Policy Act of 1978, Pub. L. 95–619, 92 Stat. 3295.

2. A new § 600.113–87 is added to read as follows:

§ 600.113–87 Fuel ecomony calculations.

The calculations of the weighted fuel economy values require input of the test fuel's specific gravity, carbon weight fraction and net heating value and the weighted grams/mile values for HC, CO, and CO_2 for both the city fuel economy test and the highway fuel economy test. The city and highway fuel economy values shall be calculated as specified in this Section. A sample appears in Appendix II to this part.

(a) Calculate the weighted grams/mile values for the city fuel economy test for HC, CO, and Co_2 as specified in § 86.144 of this chapter.

(b) (1) Calculate the mass values for the highway fuel economy test for HC, CO and CO_2 as specified in paragraph (b) of § 86.144 of this chapter.

(2) Calculate the grams-mile values for the highway test for HC, CO and CO_2 by dividing the mass values obtained in (b)(1) by the actual distance traveled, measured in miles, as specified in paragraph (h) of § 86.135 of this chapter.

(c) Measure and record the test fuel properties specified below of the fuel used to determine emission values (obtained per paragraph (a) or (b) as applicable):

(1) Test fuel specific gravity per ASTM D 287.

(2) Test fuel carbon weight fraction per either ASTM D 2789 or the method of Pregle using ASTM E 191.

(3) Test fuel net heating value by mass (Btu/lb.) per ASTM D 240.

(d) Calculate the city fuel economy and highway fuel economy from the test fuel specific gravity, carbon weight fraction and net heating value and the grams/mile values for HC, CO, and CO_2. The emission values (obtained per paragraph (a) or (b) as applicable) used in each calculation of this section shall be recorded using two places to the right of the decimal point. The CO_2 values (obtained per paragraph (a) or (b) of this section as applicable) used in each calculation of this section shall be rounded to the nearest gram/mile. The specific gravity and the carbon weight fraction shall be recorded using three places to the right of the decimal point. The net heating value shall be recorded to the nearest whole Btu/lb. These numbers shall be rounded in accordance with the "Rounding Off Method" specified in ASTM E 29–67.

(e) For gasoline-fueled automobiles the fuel economy in miles per gallon is to be calculated using the following formula:

$$mpg = \{5174 \times 10^4 \times CWF \times sg\} / [\{(CWF \times HC) + (0.429 \times CO) + (0.273 \times CO_2)\} \{(0.6 \times sg \times NHV) + 5471\}]$$

Where:

HC = Grams/mile HC as obtained in paragraph (a) or (b) of this section.

CO = Grams/mile CO as obtained in paragraph (a) or (b) of this section.

CO_2 = Grams/mile CO_2 as obtained in paragraph (a) or (b) of this section.

CWF = Carbon weight fraction of test fuel as obtained in paragraph (c) of this section.

NHV = Net heating value by mass of test fuel as obtained in paragraph (c) of this section.

sg = Specific gravity of test fuel as obtained in paragraph (c) of this section

Round the calculated result to the nearest 0.1 miles per gallon.

(f) For diesel powered automobiles, calculate the fuel economy in miles per gallon of diesel fuel using the following formula:

$$mpg = \{5916 \times 10^4 \times CWF \times Sg\} / [\{(CWF \times HC) + (0.429 \times CO) + (0.273 \times CO_2)\} \{(0.6 \times sg \times NHV) + 6271\}]$$

Where:

HC = Grams/mile HC as obtained in paragraph (a) or (b) of this section.

CO = Grams/mile CO as obtained in paragraph (a) or (b) of this section.

CO_2 = Grams/mile CO as obtained in paragraph (a) or (b) of this section.

CWF = Carbon weight fraction of test fuel as obtained in paragraph (c) of this section.

NHV = Net Heating value by mass of test fuel as obtained in paragraph (c) of this section.

sg = Specific gravity of test fuel as obtained in paragraph (c) of this section.

Round the calculated result to the nearest 0.1 mile per gallon.

3. Appendix II is revised to read as follows:

Appendix II—Sample Test Value Calculations

1. Applicable to 1978 and through 1986 Model Year Automobiles.

(a) Assume that a gasoline-fueled vehicle was tested by the Federal Emission Test Procedure and the following results were calculated:

HC = 1.03 grams/mile

CO = 6.74 grams/mile

CO_2 = 785 grams/mile

According to the procedure in § 600.113, the city fuel economy or MPG_c for the vehicle may be calculated by substituting the HC, CO, and CO_2 gram/mile values into the following equation.

$$MPG_c = \frac{2421}{\{0.866 \times HC\} + \{0.429 \times CO\} + \{0.273 \times CO_2\}}$$

$$MPG_c = \frac{2421}{\{0.866 \times 1.03\} + \{0.429 \times 6.74\} + \{0.273 \times 785\}}$$

$$MPG_c = 11.1$$

(b) Assume that the same vehicle was tested by the Federal Highway Fuel Economy Test Procedure and calculation similar to that shown in (a) resulted in a highway fuel economy or MPG_h of 18.6. According to the procedure in § 600.113, the combined fuel economy (called $MPG_{c/h}$) for the vehicle may be calculated by substituting the city and highway fuel economy values into the following equation:

$$MPG_{c/h} = \frac{1}{\frac{0.55}{MPG_c} + \frac{0.45}{MPG_h}}$$

$$MPG_{c/h} = \frac{1}{\frac{0.55}{11.1} + \frac{0.45}{18.6}}$$

$$MPG_{c/h} = 13.6$$

2. Applicable to 1987 and Later Model Year Automobiles

(a) Assume that a gasoline-fueled vehicle was tested by the Federal Emission Test Procedure and the following results were calculated:

HC = 1.03 grams/mile
CO = 6.74 grams/mile
CO_2 = 785 grams/mile

(b) Assume that the test fuel used for this test had the following properties:

sg = 0.745
CWF = 0.868
NHV = 18,478 Btu/lb.

According to the procedure in § 600.113, the city fuel economy or MPG_c for the vehicle may be calculated by substituting the HC, CO, and CO_2 gram/mile values and the sg, CWF, and NHV values into the following equation:

$$MPG_c = \{5174 \times 10^4 \times CWF \times sg\} / [\{(CWF \times HC) + \{0.429 \times CO\} + \{0.273 \times CO_2\}\} \{\{0.6 \times sg \times NHV\} + 5471\}]$$

$$MPG_c = \{5174 \times 10^4 \times 0.868 \times 0.745\} / [\{0.868 \times 1.03 + 0.429 \times 6.74 + 0.273 \times 785\} \{0.6 \times 0.745 \times 18478 + 5471\}]$$

$$MPG_c = 11.2$$

(b) Assume that the same vehicle was tested by the Federal Highway Fuel Economy Test Procedure and a calculation similar to that shown in (a) resulted in a highway fuel economy of MPG_h of 18.6. According to the procedure in § 600.113, the combined fuel economy (called $MPG_{c/h}$) for the vehicle may be calculated by substituting the city and highway fuel economy values into the following equation:

$$MPG_{c/h} = \frac{1}{\frac{0.55}{MPG_c} + \frac{0.45}{MPG_h}}$$

$$MPG_{c/h} = \frac{1}{\frac{0.55}{11.2} + \frac{0.45}{18.6}}$$

$$MPG_{c/h} = 13.6$$

4. Section 600.510–86 is amended by adding paragraph (g) as follows:

§ 600.510–86 [Amended]

* * * * *

(g) For vehicle categories identified in paragraphs (a)(3) through (a)(6) of this section, the average fuel economy calculated in accordance with paragraph (c) of this section shall be adjusted using the following equation:

$AFE_{adj} = T \times AFE$

where:

AFE_{adj} = Adjusted average fuel economy, rounded to the nearest 0.1 mpg.
AFE = Average fuel economy as calculated in paragraph (c) of this section, rounded to the nearest 0.0001 mpg.
T = A constant value, fixed by model year. For 1985 and later model years, EPA will calculate and publish the T values when the required laboratory data becomes available.

5. Section 600.510–80 is amended by adding paragraph (g) as follows:

§ 600.510–80 [Amended]

* * * * *

(g) For vehicle categories identified in paragraphs (a)(3) through (a)(7) of this section, the average fuel economy calculated in accordance with paragraph (c) of this section shall be adjusted using the following equation:

$AFE_{adj} = T \times AFE$

where:

AFE_{adj} = Adjusted average fuel economy, rounded to the nearest 0.1 mpg.
AFE = Average fuel economy, as calculated in paragraph (c) of this section, rounded to the nearest 0.0001 mpg.
T = 1.0000 for the 1980 model year.
T = 0.9963 for the 1981 model year.
T = 1.0020 for the 1982 model year.
T = 1.0084 for the 1983 model year.
T = 1.0084 for the 1984 model year.

[FR Doc. 85–15710 Filed 6–28–85; 8:45 am]
BILLING CODE 6560–50–M

federal register

Monday
July 1, 1985

Part V

National Archives and Records Administration

36 CFR Parts 1200, 1202 and 1250
NARA Privacy Act, FOIA, and Official Seal Regulations; Final Rule

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1200, 1202, and 1250

NARA Privacy Act, FOIA, and Official Seal Regulations

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: This rule adds regulations concerning use of the official NARA seal and NARA procedures for implementing the Privacy Act of 1974 and the Freedom of Information Act. NARA is a new agency established by Pub. L. 98-497 and must publish regulations on these subjects.

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Adrienne C. Thomas or Nancy Allard at 202-523-3214 (FTS 523-3214).

SUPPLEMENTARY INFORMATION: NARA published a notice of proposed rulemaking concerning use of the official NARA seal and NARA procedures for implementing the Privacy Act of 1974 and the Freedom of Information Act on May 24, 1985 (50 FR 21461, May 24, 1985). No comments were received during the comment period. Only minor editorial corrections have been made in this rule.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities.

List of Subjects

36 CFR Part 1200

Seals and insignia.

36 CFR Part 1202

Privacy.

36 CFR Part 1250

Freedom of information.

For the reasons set forth in the preamble, Chapter XII of Title 36 of the Code of Federal Regulations is amended by adding Parts 1200, 1202, and 1250 to read as follows:

PART 1200—OFFICIAL SEALS

Sec.

Authority: 44 U.S.C. 2104(e), 2116(b), 2302.

§ 1200.1 Definitions.

For the purposes of this part—

"Embossing seal" means a display of the form and content of the official seal made on a die so that the seal can be embossed on paper or other medium.

"NARA" means all organizational units of the National Archives and Records Administration.

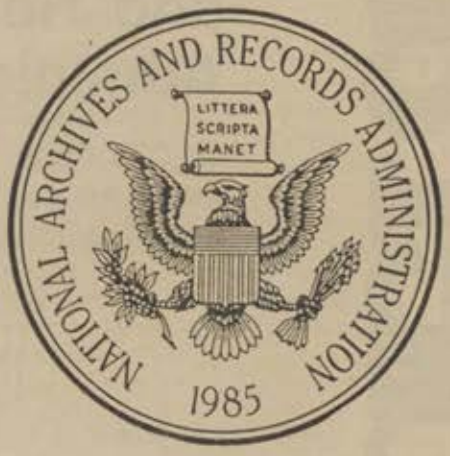
"Official seal" means the original(s) of the seal showing the exact form, content and color.

"Replica" or "reproduction" means a copy of the official seal displaying the form, content and color.

§ 1200.2 Description and design.

(a) *National Archives and Records Administration seal.* The design is illustrated below and described as follows:

Centered on a disc with a double-line border a solid line rendition of an heraldic eagle displayed holding in its left talon thirteen arrows, in its right talon a branch of olive, bearing on its breast a representation of the shield of the United States and displayed above its head a partially unrolled scroll inscribed with the words LITTERA SCRIPTA MANET one above the other; all within the circumscription NATIONAL ARCHIVES AND RECORDS ADMINISTRATION, with the date 1985 at bottom center.



(b) *National Archives seal.* The design is illustrated below and described as in paragraph (a) of this section, encircled by the circumscription THE NATIONAL ARCHIVES OF THE UNITED STATES, with the date 1934 at the bottom center.

(c) *National Archives Trust Fund Board seal.* The design is illustrated below and described as in paragraph (a) of this section, encircled by the circumscription NATIONAL ARCHIVES TRUST FUND BOARD, with the date 1941 at the bottom center.

§ 1200.4 Authority to affix seals.

The Archivist of the United States and the Archivist's designees are authorized to affix the official seals, embossing seals, replicas and reproductions to appropriate documents, certifications and other material for all purposes authorized by this part.

§ 1200.6 Use of the seals.

(a) The seals are the official emblems of NARA and their use is therefore permitted only as provided in this part.

(b) Use by any person or organization outside NARA may be made only with prior written approval by NARA.

(c) Requests by any person or organization outside NARA for permission to use the seals must be made in writing to the Archivist of the United States, National Archives (N), Washington, DC 20408, and must

specify, in detail, the exact use to be made. Any permission granted applies only to the specific use for which it was granted and is not to be construed as permission for any other use.

(d) Use of the NARA and the National Archives of the United States seals shall be primarily for informational purposes and for authentication of documents. The National Archives Trust Fund Board seal shall be used only for Trust Fund documents and publications. The seals may not be used on any article or in any manner which may discredit the seals or reflect unfavorably upon NARA or which implies NARA endorsement of commercial products or services, or of the user's policies or activities.

(e) Falsely making, forging, counterfeiting, mutilating, or altering the official seals, replicas, reproductions or embossing seals, or knowingly using or possessing with fraudulent intent any altered seal is punishable under section 506 of title 18, United States Code.

(f) Any person using the official seals, replicas, reproductions, or embossing seals in a manner inconsistent with the provisions of this part is subject to the provisions of 18 U.S.C. 1017, which provides penalties for the wrongful use of an official seal, and to other provisions of law as applicable.

PART 1202—REGULATIONS IMPLEMENTING THE PRIVACY ACT OF 1974

Sec.

Authority: 44 U.S.C. 2104(a); 5 U.S.C. 552a.

§ 1202.1 Scope of part.

This part sets forth policies and procedures concerning the collection, use, and dissemination of records maintained by NARA which are subject to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a. These policies and procedures govern only those records as defined in § 1202.4. Policies and procedures governing the disclosure and availability of NARA administrative records in general are in Part 1250 of this Chapter. This part also covers exemptions from disclosure of personal information; procedures for guidance of subject individuals in obtaining information and inspecting and disagreeing with the content of records; accounting for disclosures of information; special requirements for medical records; and fees.

§ 1202.2 Purpose.

This part implements the provisions of 5 U.S.C. 552a, popularly known as the "Privacy Act of 1974" (hereinafter referred to as the Act). This part prescribes procedures for notifying an individual of NARA systems of records which may contain a record pertaining to him or her, procedures for gaining access and contesting the contents of such records, and other procedures for carrying out the provisions of the Act.

§ 1202.4 Definitions.

For the purposes of this Part 1202:

"Access" means a transfer of a record, a copy of a record, or the information in a record to the subject individual, or the review of a record by the subject individual.

"Agency" means agency as defined in 5 U.S.C. 552(e).

"Disclosure" means a transfer of a record, a copy of a record, or the information contained in a record to a recipient other than the subject individual, or the review of a record by someone other than the subject individual.

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

"Maintain" includes maintain, collect, use, and disseminate.

"Record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his or her education, financial transactions, medical history and criminal or employment history and that contains his or her name or an identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, voiceprint, or photograph.

"Routine use" means, with respect to the disclosure of a record, the use of that record for a purpose which is compatible with the purpose for which it was collected.

"Solicitation" means a request by a NARA officer or employee that an individual provide information about himself or herself.

"Statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

"Subject individual" means the individual named or discussed in a record or the individual to whom a record otherwise pertains.

"System manager" means the NARA employee who is responsible for the maintenance of a system of records and for the collection, use, and dissemination of information therein.

"System of records" means a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifier assigned to that individual.

Subpart A—General Policy

§ 1202.10 Collection and use.

(a) *General.* Any information used in whole or in part in making a determination about an individual's rights, benefits, or privileges under NARA programs will be collected directly from the subject individual to

the extent practicable. The system manager also shall ensure that information collected is used only in conformance with the provisions of the Act and these regulations.

(b) *Solicitation of information.* System managers shall ensure that at the time information is solicited the solicited individual is informed of the authority for collecting that information, whether providing the information is mandatory or voluntary, the purposes for which the information will be used, the routine uses of the information, and the effects on the individual, if any, of not providing the information. The Assistant Archivist for Management and Administration shall ensure that forms used to solicit information are in compliance with the Act and these regulations.

(c) *Solicitation of social security number.* Before a NARA employee requests an individual to disclose his or her social security number, the officer or employee shall ensure that either:

(1) The disclosure is required by Federal law, or;

(2) The disclosure was required under a Federal law or regulation adopted before January 1, 1975, to verify the identity of an individual, and the social security number will become a part of a system of records in existence and operating before January 1, 1975.

If solicitation of the social security number is authorized under paragraph (c) (1) or (2) of this section, the NARA employee who requests an individual to disclose his or her social security number shall first inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority the number is solicited, and the uses that will be made of it.

(d) *Soliciting information from third parties.* A NARA employee shall inform third parties who are requested to provide information about another individual of the purposes for which the information will be used.

§ 1202.12 Standards of accuracy.

The system manager shall ensure that all records which are used by NARA to make a determination about any individual are maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual.

§ 1202.14 Rules of conduct.

All NARA employees involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, shall review the provisions of 5 U.S.C. 552a and the regulations in this part, and shall conduct himself or herself in accordance with the rules of conduct concerning the protection of personal information in the NARA Standards of Conduct.

§ 1202.16 Safeguarding systems of records.

The system manager shall ensure that appropriate administrative, technical, and physical safeguards are established to ensure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained. Personnel information contained in both manual and automated systems of records shall be protected by implementing the following safeguards:

(a) Official personnel folders, authorized personnel operating or work folders, and other records of personnel actions effected during a NARA employee's Federal service or affecting the employee's status and service, including information on experience, education, training, special qualifications and skills, performance appraisals, and conduct, shall be stored in a lockable metal filing cabinet when not in use by an authorized person. A system manager may employ an alternative storage system providing that it furnishes an equivalent degree of physical security as storage in a lockable metal filing cabinet.

(b) System managers, at their discretion, may designate additional records of unusual sensitivity which require safeguards similar to those described in paragraph (a) of this section.

(c) System managers shall permit access to and use of automated or manual personnel records only to persons whose official duties require such access, or to subject individuals or their representatives as provided by this part.

§ 1202.18 Inconsistent issuances of NARA superseded.

Any policies and procedures in any NARA issuance which are inconsistent with the policies and procedures in this part are superseded to the extent of that inconsistency.

§ 1202.20 Records of other agencies.

(a) *Other agencies' records managed and administered by NARA.* Rules governing the maintenance of systems of records of agencies other than NARA which are located in the National Archives of the United States and Federal Records Centers are in Subchapter C of this chapter.

(b) *Current records of other agencies.* If NARA receives a request for access to records which are the primary responsibility of another agency, but which are maintained by or in the temporary possession of NARA on behalf of that agency, NARA shall refer the request to the agency concerned for appropriate action. NARA shall advise the requester that the request has been forwarded to the responsible agency. Records in the custody of NARA which are the primary responsibility of the U.S. Office of Personnel Management (OPM) are governed by the OPM rules promulgated pursuant to the Act.

§ 1202.22 Subpoenas and other legal demands.

Access to NARA systems of records by subpoena or other legal process shall be in accordance with the provisions of Part 1250 of this chapter for administrative records and Part 1254 of this chapter for accessioned records, FRC records, and donated historical materials.

Subpart B—Disclosure of Records

§ 1202.30 Conditions of disclosure.

No NARA employee may disclose any record to any person or to another agency without the express written consent of the subject individual unless the disclosure is:

(a) To NARA employees who have a need for the information in the official performance of their duties;

(b) Required by the provisions of the Freedom of Information Act;

(c) For a routine use as published in a notice in the **Federal Register;**

(d) To the Bureau of the Census for uses pursuant to Title 13, United States Code;

(e) To a recipient who has provided NARA with advance adequate written assurance that the record will be used solely as a statistical research or reporting record. (The record shall be transferred in a form that is not individually identifiable. The written statement shall include as a minimum:

(1) A statement of the purpose for requesting the records; and

(2) Certification that the records will be used only for statistical purposes; these written statements shall be maintained as records. In addition to deleting personal identifying information from records released for statistical purposes, the system manager shall ensure that the identity of the individual cannot reasonably be

deduced by combining various statistical records.);

(f) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government;

(g) To another agency or instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, if the activity is authorized by law, and if the head of the agency or instrumentality or his or her other designated representative has made a written request to NARA specifying the particular portion desired and the law enforcement activity for which the record is sought;

(h) To a person showing compelling circumstances affecting the health or safety of an individual, not necessarily the individual to whom the record pertains (upon such disclosure, a notification must be sent to the last known address of the subject individual);

(i) To either House of Congress or to a subcommittee or committee (joint or of either House, to the extent that the subject matter falls within its jurisdiction);

(j) To the Comptroller General or any of his authorized representatives in the course of the performance of the duties of the General Accounting Office;

(k) To a consumer reporting agency in accordance with section 3711(f) of title 31; or

(l) Pursuant to the order of a court of competent jurisdiction.

§ 1202.32 Procedures for disclosure.

(a) Upon receipt of a request for disclosure, the system manager shall verify the right of the requester to obtain disclosure pursuant to § 1202.30. Upon verification, the system manager shall make the requested records available.

(b) If the system manager determines that the disclosure is not permitted under § 1202.30, he or she shall deny the request in writing and shall inform the requester of the right to submit a request for review and final determination to the Director, Legal Services Staff, National Archives (NSL), Washington DC 20408.

§ 1202.34 Accounting of disclosures.

(a) Except for disclosures made pursuant to § 1202.30 (a) and (b), an accurate accounting of each disclosure shall be made and retained for 5 years after the disclosure or for the life of the record, whichever is longer. The accounting shall include the date, nature, and purpose of each disclosure, and the name and address of the person or agency to whom the disclosure is made.

(b) The system manager also shall maintain in conjunction with the accounting of disclosures:

(1) A full statement of the justification for the disclosures;

(2) All documentation surrounding disclosure of a record for statistical or law enforcement purposes; and

(3) Evidence of written consent by the subject individual to a disclosure.

(c) Except for the accounting of disclosures made to agencies or instrumentalities in law enforcement activities in accordance with § 1202.30 or of disclosures made from exempt systems (see Subpart F of this part), the accounting of disclosures shall be made available to the individual upon request. Procedures for requesting access to the accounting are in Subpart C of this part.

Subpart C—Individual Access to Records

§ 1202.40 Forms of requests.

(a) Individuals seeking access to their records or to any information pertaining to themselves which is contained in a system of records should notify the system manager or applicable NARA official at the address indicated in the **Federal Register** notice describing the pertinent system of records.

(b) The request shall be in writing and shall bear the legend "Privacy Act Request" both on the request letter and on the envelope. The request letter shall contain:

(1) The complete name and identifying number of the NARA system as published in the **Federal Register**;

(2) The full name and address of the subject individual;

(3) A brief description of the nature, time, place, and circumstances of the individual's association with NARA; and

(4) Any other information which the individual believes would help the system manager to determine whether the information about the individual is included in the system of records.

The system manager or other NARA official shall answer or acknowledge the request within 10 workdays of its receipt by NARA.

(c) System managers at their discretion, may accept oral requests for access to a NARA system of records, subject to verification of identity.

§ 1202.42 Special requirements for medical records.

(a) A system manager who receives a request from an individual for access to those official medical records which belong to the Office of Personnel Management and are described in Chapter 339 of the Federal Personnel Manual (medical records which are otherwise filed in the Official Personnel Folder), shall refer the pertinent system of records to a Federal Medical Officer for review and determination in accordance with this section. If no Federal medical officer is available to make the determination required by this section, the system manager shall refer the request and the medical reports concerned to the Office of Personnel Management for a determination.

(b) If, in the opinion of a Federal Medical Officer, medical records requested by the subject individual indicate a condition about which a prudent physician would hesitate to inform a person suffering from such a condition of its exact nature and probable outcome, the system manager shall not release the medical information to the subject individual nor to any person other than a physician designated in writing by the subject individual, his or her guardian, or conservator.

(c) If, in the opinion of a Federal medical officer, the medical information does not indicate the presence of any condition which would cause a prudent physician to hesitate to inform a person suffering from such a condition of its exact nature and probable outcome, the system manager shall release the information to the subject individual or to any person, firm, or organization which the individual authorizes in writing to receive it.

§ 1202.44 Granting access.

(a) Upon receipt of a request for access to non-exempt records, the system manager shall make such records available to the subject individual or shall acknowledge the request within 10 workdays of its receipt by NARA. The acknowledgment shall indicate when the system manager will make the records available.

(b) If the system manager anticipates more than a 10-day delay in making a record available, he or she also shall include in the acknowledgment specific reasons for the delay.

(c) If a subject individual's request for access does not contain sufficient information to permit the system manager to locate the records, the system manager shall request additional information from the individual and shall have 10 workdays following receipt of the additional information in which to make the records available or to acknowledge receipt of the request and to indicate when the records will be available.

(d) Records will be made available for authorized access during normal business hours at the NARA offices where the records are located. Requesters should be prepared to identify themselves by signature (i.e., to sign the access log on the date of access and to produce other identification verifying the signature).

(e) Upon request, a system manager shall permit a subject individual to examine the original of a non-exempt record, shall provide the individual with a copy of the record, or both. Fees shall be charged only for copies requested by the individual and not for copies provided to the individual for the convenience of NARA.

(f) Subject individuals may request to pick up a record in person or to receive it by mail, directed to the name and address provided by the individuals in their request. A system manager shall not make a record available to a third party for delivery to the subject individual, except for medical records as outlined in § 1202.42.

(g) Subject individuals who wish to have a person of their choosing review, accompany them in reviewing, or obtain a copy of a record must, prior to the disclosure of their record, sign a statement authorizing the disclosure. The system manager shall maintain this statement with the record.

(h) The procedure for access to an accounting of disclosures is identical to the procedure for access to a record as set forth in this section.

§ 1202.46 Denials of access.

(a) A system manager may deny a subject individual access to his or her record only on the grounds that NARA has published rules in the **Federal Register** exempting the pertinent system of records from the access requirement. Exempt systems of records are described in Subpart F of this part.

(b) Upon receipt of a request for access to a record which the system manager believes is contained within an exempt system of records, he or she shall forward the request to the Assistant Archivist for Management and Administration. The system manager shall append to the request an explanation of the determination that the requested record is contained within an exempt system of records and a recommendation that the request be denied or granted.

(c) If the system manager is the Assistant Archivist for Management and Administration, that person shall retain the responsibility for denying or granting the request.

(d) The Assistant Archivist for Management and Administration shall, in consultation with legal counsel and such other officials as deemed appropriate, determine if the requested record is in fact contained within an exempt system of records and:

(1) If the record is not contained within an exempt system of records, the Assistant Archivist for Management and Administration shall notify the system manager to grant the request in accordance with § 1202.44, or

(2) If the record is contained within an exempt system of records, the Assistant Archivist for Management and Administration shall:

(i) Notify the requester that the request is denied, including a statement justifying the denial and advising the requester of the right to judicial review of that decision as provided in § 1202.74; or

(ii) Notify the system manager to make the record available to the requester in accordance with § 1202.44, notwithstanding the inclusion of the record within an exempt system of records.

§ 1202.48 Appeal of denial of access within NARA.

(a) Requesters denied access, in whole or part, to records pertaining to them, exclusive of those records for which the system manager is the Archivist of the United States, may file with NARA an appeal of that denial. All appeals should be addressed to the Deputy Archivist of the United States, National Archives (ND), Washington, DC 20408.

(b) Each appeal to the Deputy Archivist shall be in writing. The appeal should bear the legend "Privacy Act—Access Appeal," on both the face of the letter and the envelope.

(c) Upon receipt of an appeal, the Deputy Archivist shall consult with the system manager, the official who made the denial, legal counsel, and such other officials as may be appropriate. If the Deputy Archivist, in consultation with these officials, determines that the request for access should be granted because the subject records are not exempt, the Deputy Archivist shall immediately either instruct the system manager in writing to grant access to the record in accordance with § 1202.44 or shall grant access and shall notify the requester of that action.

(d) If the Deputy Archivist, in consultation with the officials specified in paragraph (c) of this section, determines that the appeal should be rejected, the Deputy Archivist immediately shall notify the requester in writing of that determination. This action shall constitute NARA's final determination on the request for access to the record and shall include:

(1) The reason for the rejection of the appeal; and

(2) Notice of the requester's right to seek judicial review of NARA's final determination, as provided in § 1202.74.

(e) The final NARA determination will be made no later than 30 workdays from the date on which the appeal is received by the Deputy Archivist. The Deputy Archivist may extend this time limit by notifying the requester in writing before the expiration of the 30 workdays. The Deputy Archivist's notification shall include an explanation of the reasons for the extension of time.

(f) Denial of access by the Archivist to records for which the Archivist is the system manager shall constitute the NARA final determination in such instances. Requesters shall be given notice of their right to seek judicial review of the determination, as provided in § 1202.74.

§ 1202.50 Records available at a fee.

The system manager shall provide one copy of a record to a requester at a fee prescribed in § 1258.10 of this chapter.

§ 1202.52 Prepayment of fees over $25.

If the system manager determines that the estimated total fee is likely to exceed $25, the system manager shall notify the individual that the estimated fee must be prepaid prior to NARA's making the records available. NARA will remit any excess amount paid by the individual or bill the individual for an additional amount if there is a variation between the final fee charged and the amount prepaid.

§ 1202.54 Form of payment.

Payment shall be by check or money order payable to the National Archives Trust Fund and shall be addressed to the system manager.

Subpart D—Requests To Amend Records

§ 1202.60 Submission of requests to amend records.

Subject individuals who desire to amend any record containing personal information about themselves should write to the NARA system manager specified in the pertinent **Federal Register** notice concerning NARA's systems of records. A current NARA employee who desires to amend personnel records should write to the Director of Personnel, National Archives (NAP), Washington, DC 20408. Each request shall include evidence of and justification for the need to amend the pertinent record. Each request should

bear the legend "Privacy Act—Request To Amend Record" prominently marked on both the face of the request letter and the envelope.

§ 1202.62 Review of requests to amend records.

(a) The system manager shall acknowledge receipt of a request to amend a record within 10 workdays. If possible, the acknowledgment should include the system manager's determination either to amend the record or to deny the request to amend as provided in § 1202.66.

(b) When reviewing a record in response to a request to amend, the system manager shall assess the accuracy, relevance, timeliness, and completeness of the existing record in light of the proposed amendment. The system manager shall determine whether the amendment is justified. With respect to a request to delete information, the system manager also shall review the request and existing record to determine whether the information is relevant and necessary to accomplish an agency purpose required to be accomplished by law or Executive Order.

§ 1202.64 Approval of requests to amend.

If the system manager determines that amendment of a record is proper in accordance with the request to amend, he or she promptly shall make the necessary amendment to the record and shall send a copy of the amended record to the subject individual. Where an accounting of disclosure has been maintained, the system manager shall advise all previous recipients of the record of the fact that an amendment has been made and give the substance of the amendment. Where practicable, the system manager shall send a copy of the amended record to previous recipients. The system manager shall advise the Assistant Archivist for Management and Administration that a request to amend has been approved.

§ 1202.66 Denial of requests to amend.

(a) If the system manager determines that an amendment of a record is improper or that the record should be amended in a manner other than that requested by an individual, the request to amend and the system manager's determinations and recommendations shall be referred to the Assistant Archivist for Management and Administration.

(b) If the Assistant Archivist for Management and Administration, after reviewing the request to amend a record, determines to amend the record in accordance with the request, the Assistant Archivist promptly shall return the request to the system manager with instructions to make the requested amendments in accordance with § 1202.64.

(c) If the Assistant Archivist for Management and Administration, after reviewing the request to amend a record, determines not to amend the record in accordance with the request, the Assistant Archivist promptly shall advise the requester in writing of the decision. The denial letter shall state the reasons for the denial of the request to amend; include proposed alternative amendments, if appropriate; state the requester's right to appeal the denial of the request to amend; and state the procedure for appealing.

§ 1202.68 Agreement to alternative amendments.

If the denial of a request to amend a record includes proposed alternative amendments, and if the requester agrees to accept them, the requester shall notify the Assistant Archivist for Management and Administration who immediately shall instruct the system manager to make the necessary amendments in accordance with § 1202.64.

§ 1202.70 Appeal of denial of request to amend a record.

(a) A requester who disagrees with a denial of a request to amend a record may file an appeal of that denial. The requester shall address the appeal to the Deputy Archivist of the United States, National Archives (ND), Washington, DC 20408. If the requester is an employee of NARA and the denial to amend involves a record maintained in the employee's Official Personnel Folder, as described in Chapter 293 of the Federal Personnel Manual, the appeal should be addressed to the Assistant Director, Workforce Information Office, Compliance and Investigations Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

(b) Each appeal to the Deputy Archivist shall be in writing and must be received no later than 30 calendar days from the date of the requester's receipt of a denial of a request to amend a record. The appeal shall bear the legend "Privacy Act—Appeal," both on the face of the letter and the envelope.

(c) Upon receipt of an appeal, the Deputy Archivist shall consult with the system manager, the official who made the denial, legal counsel, and such other officials as may be appropriate. If the Deputy Archivist, in consultation with these officials, determines that the record should be amended as requested, he or she immediately shall instruct the system manager to amend the record in accordance with § 1202.64 and shall notify the requester of that action.

(d) If the Deputy Archivist, in consultation with the officials specified in paragraph (c) of this section, determines that the appeal should be rejected, the Deputy Archivist immediately shall notify the requester in writing of that determination. This action shall constitute the NARA final determination on the request to amend the record and shall include:

(1) The reasons for the rejection of the appeal;

(2) Proposed alternative amendments, if appropriate, which the requester subsequently may accept in accordance with § 1202.68;

(3) Notice of the requester's right to file a Statement of Disagreement for distribution in accordance with § 1202.72; and

(4) Notice of the requester's right to seek judicial review of the NARA final determination, as provided in § 1202.74.

(e) The NARA final determination shall be made no later than 30 workdays from the date on which the appeal is received by the Deputy Archivist. In extraordinary circumstances, the Deputy Archivist may extend this time limit by notifying the requester in writing before the expiration of the 30 workdays. The Deputy Archivist's notification shall include a justification for the extension of time.

§ 1202.72 Statements of disagreement.

Upon receipt of a NARA final determination denying a request to amend a record, the requester may file a Statement of Disagreement with the appropriate system manager. The Statement of Disagreement shall include an explanation of why the requester believes the record to be inaccurate, irrelevant, untimely, or incomplete. The system manager shall maintain the Statement of Disagreement in conjunction with the pertinent record and shall include a copy of the Statement of Disagreement in any disclosure of the pertinent record. The system manager shall provide a copy of the Statement of Disagreement to any person or agency to whom the record has been disclosed only if the disclosure was subject to the accounting requirements of § 1202.34.

§ 1202.74 Judicial review.

Within 2 years of receipt of a NARA final determination as provided in § 1202.48 or § 1202.70, a requester may seek judicial review of that determination. A civil action must be filed in the Federal District Court in

which the requester resides or has his or her principal place of business or in which the NARA records are situated, or in the District of Columbia.

Subpart E—Report on New Systems of Records and Alteration of Existing Systems

§ 1202.80 Reporting requirement.

(a) Prior to the establishment of a new NARA system of records or the alteration of an existing NARA system of records, the system manager shall notify the Assistant Archivist for Management and Administration of the proposed new system or alteration. The system manager shall include with the notification a complete description and justification for each system of records that the system manager proposes to establish or alter. If the Assistant Archivist for Management and Administration determines that the establishment or alteration of a system of records is in the best interest of the Government, the Assistant Archivist for Management and Administration will submit, no later than 60 calendar days prior to the establishment or alteration of a system of records, a report of the proposal to the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Management and Budget for their evaluation of the probable or potential effect of the proposal on the privacy and other personal or property rights of individuals.

(b) The reports required by this regulation are exempt from reports control.

§ 1202.82 Federal Register notice of establishment of new system or alteration of existing system.

The NARA Assistant Archivist for Management and Administration shall publish in the **Federal Register** a notice of the proposed establishment or alteration of a system of records when:

(a) Notice is received that the Senate, the House of Representatives, and the Office of Management and Budget do not object to the establishment of a new system of records or to the alteration of an existing system of records, or

(b) No fewer than 30 calendar days have elapsed from the date of submission of the proposal to the Senate, the House of Representatives, and the Office of Management and Budget without receipt by NARA of an objection to the proposal.

§ 1202.84 Effective date of new systems of records or alteration of an existing system of records.

Systems of records proposed to be established or altered in accordance with this subpart shall be effective no sooner than 30 calendar days from the publication of the notice required by § 1202.82.

Subpart F—Exemptions

§ 1202.90 Specific exemptions.

(a) The following NARA systems of records are exempt from subsections (c)(3); (d); (e)(1); (e)(4) (G), (H), and (I); and (f) of the Privacy Act of 1974:

(1) Investigation Case Files, NARA–23.

(2) Personnel Security Case Files, NARA–24.

(b) These systems of records are exempt:

(1) To the extent that the systems consist of investigatory material compiled for law enforcement purposes; however, if any subject individual is denied any right, privilege, or benefit to which the individual would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the indentity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence; and

(2) To the extent the systems of records consist of investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualification for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

(c) These NARA systems of records have been exempted to maintain the efficacy and integrity of investigations conducted pursuant to NARA's responsibilities in the areas of Federal employment, Government contracts, and access to security classified information.

Subpart G—Assistance and Referrals

§ 1202.100 Requests for assistance and referrals.

Requests for assistance and referral to the responsible system manager or other NARA employee charged with implementing these regulations should be made to the Assistant Archivist for Management and Administration, National Archives (NA), Washington, DC 20408.

PART 1250—PUBLIC AVAILABILITY OF NARA ADMINISTRATIVE RECORDS AND INFORMATIONAL MATERIALS

Sec.

Authority: 44 U.S.C. 2104 (a); 5 U.S.C. 552.

§ 1250.1 Scope of part.

This part sets forth policies and procedures concerning the availability to the public of all records and informational materials generated, developed, or held by NARA with respect to:

(a) NARA organization and functions and regulations of general applicability;

(b) NARA final orders and staff manuals; and

(c) Operational and other appropriate agency records.

This part also covers exemptions from disclosure of these records; procedures for the guidance of the public in inspecting and obtaining copies of NARA records; and the service of a subpoena or other legal demand with

respect to NARA administrative records.

Subpart A—General Provisions

§ 1250.10 Purpose.

This part implements the provisions of the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, as amended. This part prescribes procedures by which the public may inspect and obtain copies of NARA records under FOIA.

§ 1250.12 Availability of records.

NARA administrative records are available to the greatest extent possible in keeping with the spirit and intent of FOIA. NARA will furnish them promptly to any member of the public upon request addressed to the office designated in § 1250.54 at fees specified in § 1250.42. The person making the request need not have a particular interest in the subject matter, nor must that person provide justification for the request. The requirement of FOIA that records be available to the public refers only to records in existence at the date of the request and imposes no obligation on NARA to compile or create information or records in response to a request.

§ 1250.14 Applying exemptions.

NARA may deny a request for a NARA record if the record falls within an exemption of FOIA as outlined in Subpart E of this part. Except when a record is classified or when disclosure would violate any Federal law, the authority to withhold a record is permissive rather than mandatory. NARA will not withhold a record unless there is a compelling reason to do so. In the absence of a compelling reason, NARA will disclose a record although it otherwise is subject to exemption.

§ 1250.16 Records of other agencies.

(a) *Other agencies' records managed by NARA.* The availability of records of other agencies in the physical custody of NARA and records which have been accessioned into the National Archives of the United States and Federal Records Centers is governed by Part 1254 of this chapter. (Availability of Records and Donated Historical Materials.)

(b) *Current records of other agencies.* If NARA receives a request to make available current records that are the primary responsibility of another agency, NARA shall refer the request to the agency concerned for appropriate action. NARA shall inform the requestor that NARA has forwarded the request to the responsible agency.

Subpart B—Publication of General Agency Information and Rules in the Federal Register

§ 1250.20 Published information and rules.

In accordance with 5 U.S.C. 552(a)(1), NARA publishes in the **Federal Register**, for the guidance of the public, the following general information concerning NARA:

(a) A description of its central and field organization and the established places at which, the employees from whom, and the methods whereby the public may obtain information, make submittals or requests, or obtain decisions;

(b) Statements of the general courses and methods by which functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure, descriptions of forms available or the places where forms may be obtained, and instructions on the scope and content of all papers, reports, and examinations;

(d) Substantive rules of general applicability adopted as authorized by law and statements of general policy or interpretations of general applicability formulated and adopted by NARA;

(e) Each amendment, revision, or repeal of the materials described in this section.

Subpart C—Availability of Orders, Regulations, and Manuals

§ 1250.30 General.

NARA makes available for public inspection and copying the materials described in paragraph (a)(2) of the FOIA (5 U.S.C. 552(a)(2)), which are listed in § 1250.32, and an Index of those materials as described in § 1250.34, at the National Archives Building located at 8th and Pennsylvania Avenue, Washington, DC. Reasonable copying services are available at fees specified in § 1258.10 of this chapter.

§ 1250.32 Available materials.

NARA materials available under this Subpart C are as follows:

(a) NARA orders;

(b) Written statements of NARA policy that are not published in the **Federal Register**;

(c) Administrative staff manuals and instructions to staff affecting a member of the public unless these materials are promptly published and copies offered for sale.

§ 1250.34 Index.

NARA will maintain and make available for public inspection and copying current indexes regarding any matter issued, adopted, or promulgated after July 4, 1967, and described in § 1250.32. NARA will publish quarterly and make available copies of each index or supplement thereto. The index will be maintained for public inspection by the Office of Management and Administration, National Archives (NA), Washington, DC 20408.

§ 1250.36 Public inspection and copying.

NARA will make records not subject to exemption available at the NARA facility where the records are located during normal working hours (see Part 1253 of this chapter), or at an alternative NARA facility as mutually agreed upon by NARA and the requester. NARA will agree to show the originals or a copy of the originals if the originals are located at another NARA facility, make one copy available at a fee, or a combination of these alternatives.

§ 1250.38 Waiver of fee.

Any request for waiver or reduction of a fee shall be included in the initial letter requesting access to NARA records under § 1250.54. The waiver request should explain how the information requested primarily benefits the general public and why it is, therefore, in the public interest for NARA to waive or reduce the fee.

§ 1250.40 Searches.

(a) NARA may charge for the time spent in the following activities in determining "search time" subject to the search fees in § 1250.42:

(1) Time spent in trying to locate NARA records which come within the scope of the request;

(2) Time spent in either transporting a necessary NARA searcher to a place of record storage, or in transporting records to the location of a necessary NARA searcher; and

(3) Direct costs involving the use of computer time to locate and extract requested records.

(b) NARA will not charge for the time spent in the following activities in determining "search time" subject to the search fees in § 1250.42:

(1) Time spent in examining a requested record to determine whether NARA should assert an exemption;

(2) Time spent in deleting exempt matter withheld from records otherwise made available;

(3) Time spent in monitoring a requester's inspection of disclosed NARA records; or

(4) Time spent in copying records.

§ 1250.42 Fee schedule.

(a) *Reproduction fees.* Copies of NARA records will be furnished at the fees for reproduction services in § 1258.10 of this chapter.

(b) *Search fees.* (1) This standard search fee if $8 per hour or fraction thereof, after the initial half hour, used to locate the requested records.

(2) When NARA must use professional staff to search for the requested records because clerical staff would be unable to locate them, the search fee is $18 per hour or fraction thereof, after the initial half hour, used to locate the requested records.

(3) When the search includes non-personnel expenditures to locate and extract requested records, such as computer time or transportation expenses, the applicable fee is the direct cost to NARA.

§ 1250.44 Form of payment.

Requesters shall pay fees by check or money order made payable to the National Archives Trust Fund, and addressed to the official named by NARA in its correspondence.

§ 1250.46 Prepayment of fees over $25.

NARA shall require prepayment of search and reproduction fees which are likely to exceed $25. When the estimated total fee exceeds $25, the requester will receive notice to prepay and will be advised that if prepayment is not received within 20 workdays from the date of NARA's notice, he or she may incur additional charges for time spent searching for the records an additional time.

Subpart D—Described Records

§ 1250.50 General.

(a) Except for records made available in accordance with Subparts B and C of this part, NARA promptly will make records available to a requester when the request describes the records so as to enable a professional NARA employee to identify and locate the record(s) unless NARA invokes an exemption in accordance with Subpart E of this part. NARA will consult with the requester, when necessary, to more specifically identify the requested record(s).

(b) Upon receipt of a request that does not reasonably describe the records requested, NARA may contact the requester to seek a more specific description. The 10-workday time limit set forth in § 1250.56 will not start until NARA receives a request reasonably describing the records.

§ 1250.52 Procedures for making records available.

This section sets forth initial procedures for making requested records available. These procedures do not apply to records of other agencies that have been transferred to NARA in accordance with 44 U.S.C. 2107 and 3103; in those cases, the procedures in Part 1254 of this chapter govern.

§ 1250.54 Submission of requests for described records.

For records located in NARA, the requester shall submit a request in writing to the NARA FOIA Officer, National Archives (NAA), Washington, DC 20408. Requests shall include the words "Freedom of Information Request" prominently marked on both the face of the request letter and the envelope. The 10-workday time limit for agency decisions set forth in § 1250.56 begins with receipt of the request by the NARA office which maintains the requested records. A requester who has questions concerning a FOIA request may consult the NARA FOIA Officer.

§ 1250.56 Response to initial request.

NARA shall mail a response to an initial FOIA request within 10 workdays (that is, excluding Saturdays, Sundays, and legal Federal holidays) after receipt of a request by the NARA office that maintains the records. In unusual circumstances, NARA will inform the requester of the agency's need to extend the time to respond to the request.

§ 1250.58 Appeal with NARA.

(a) A requester who receives a denial in whole or in part of a request may appeal that decision within NARA. The requester shall direct the appeal to the Deputy Archivist, National Archives (ND), Washington, DC 20408.

(b) The Deputy Archivist must receive an appeal no later than 30 calendar days after receipt by the requester of the initial denial of access.

(c) The requester shall appeal in writing and include a brief statement of the reasons he or she thinks NARA should release the records and enclose copies of the initial request and denial. The appeal letter shall include the words "Freedom of Information Appeal" on both the face of the appeal letter and the envelope. NARA has 20 workdays after receipt of an appeal to make a determination with respect to the appeal. The 20-workday time limit shall not begin until the Deputy Archivist receives the appeal.

(d) A requester who has received a denial of an appeal may seek judicial review of NARA's decision in the United States district court in the district in which the requester resides or has a principal place of business, or where the records are situated, or in the District of Columbia.

§ 1250.60 Extension of time limits.

In unusual circumstances the Assistant Archivist for Management and Administration may extend the time limits prescribed in § 1250.58. If necessary, more than one extension of time may be taken. However, the total extension of time shall not exceed 10 workdays with respect to a particular request. The extension may be divided between the initial and appeal stages or within a single stage. NARA shall provide a written notice to the requester of any extension of time limits.

Subpart E—Exemptions

§ 1250.70 Categories of records exempt from disclosure under the FOIA.

(a) 5 U.S.C. 552(b) provides that the requirements of the FOIA do not apply to matters that are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defence or foreign policy and that are, in fact, properly classified under the Executive order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute, other than the Privacy Act, provided that the statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person that are privileged or confidential;

(5) Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of these records would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(v) Disclose investigatory techniques and procedures; or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; and

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) NARA will provide any reasonably segregable portion of a record to a requester after deletion of the portions that are exempt under this section.

(c) NARA will invoke no exemption under this section if the requested records would be available under the Privacy Act of 1974 and NARA implementing regulations in Part 1202 of this chapter, or if disclosure would cause no demonstrable harm to any public or private interest.

Subpart F—Subpoenas or Other Legal Demands for NARA Administrative Records

§ 1250.80 Service of subpoena or other legal demand for NARA administrative records.

(a) A subpoena duces tecum or other legal demand for the production of NARA administrative records should be addressed to the Director of the Legal Services Staff, National Archives (NSL), Washington, DC 20408, with respect to NARA records.

(b) The Archivist of the United States and the Director of the Legal Services Staff are the only NARA employees authorized to accept, on behalf of NARA, service of a subpoena duces tecum or other legal demands for NARA administrative records.

(c) Regulations concerning service of a subpoena or other legal demand for records accessioned into the National Archives of the United States, records of other agencies in the custody of the Federal records centers, and donated historical materials are located at Part 1254 of this chapter.

Dated: June 25, 1985.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 85-15875 Filed 6-28-85; 11:09 am]

BILLING CODE 7515-01-M

federal register

Monday
July 1, 1985

Part VI

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 412

Medicare Program; Court Ordered Regulations Regarding Prospective Payment Amount and Administrative Review: Interim Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

Medicare Program; Court Ordered Regulations Regarding Prospective Payment Amount and Administrative Review

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

ACTION: Interim rule.

SUMMARY: This interim rule is being issued solely in response to an order of the United States District Court for the Northern District of California in *Redbud Hospital District* v. *Heckler*, No. C–84–4382 MHP dated June 14, 1985. HCFA disagrees with the court's order and has appealed the decision to the United States Court of Appeals for the Ninth Circuit. These interim rules modify the process for determining the Medicare prospective payment rate for inpatient hospital services to take into account extraordinary and unusual costs incurred after the base year; the special needs of hospitals serving disproportionate numbers of Medicare and low-income patients; and the special needs of sole community hospitals. In addition, they modify the requirements for administrative review of the hospital-specific portion of a hospital's PPS rate. These rules will be null and void in the event that either (a) a stay of the June 14, 1985 order is entered by a higher Court or (b) the June 14, 1985 order is reversed on appeal.

DATE: Effective August 1, 1985. To assure consideration, comments must be received by August 14, 1985.

ADDRESS: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, P.O. Box 26676, Baltimore, Maryland 21207, Attention: BERC–346–FC.

In commenting, please refer to file code BERC–346–FC. If you prefer, you may deliver your comments to Room 309–G Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C., or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202–245–7890).

FOR FURTHER INFORMATION CONTACT: Linda Magno, 301–594–9343.

SUPPLEMENTARY INFORMATION:

I. Background

A. General

Section 1886(d) of the Social Security Act (the Act), enacted by the Social Security Amendments of 1983 (Pub. L. 98–21) on April 20, 1983, established a prospective payment system for Medicare payment of inpatient hospital services, effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment is made at a predetermined, specific rate for each hospital discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs). This list contains 470 specific categories.

In order to implement the prospective payment system for inpatient hospital services as required by section 1886(d) of the Act, we published the following documents in the **Federal Register**:

- On September 1, 1983, we published an interim final rule (48 FR 39752), effective for hospital cost reporting periods beginning on or after October 1, 1983. Technical corrections were issued on October 19, 1983 (48 FR 48467).
- On January 3, 1984, we published a final rule (49 FR 234) that made changes as the result of our consideration of the public comments that were received in response to the interim final rule. Technical corrections were issued for this document on June 1, 1984 (49 FR 23010).
- In order to update the prospective payment rates for fiscal year 1985, we published a proposed rule on July 3, 1984 (49 FR 27422) and a final rule on August 31, 1984 (49 FR 34728), for which technical corrections were issued on October 15, 1984 (49 FR 40167).
- On March 29, 1985, we published a final rule (50 FR 12740) to redesignate the prospective payment regulations under a new Part 412. These regulations were previously located in 42 CFR 405.470 through 405.477.

B. The Court Order

In a case involving a hospital's challenge to the intermediary's determination of its initial PPS rate, on July 30, 1984 the United States District Court for the Northern District of California issued a preliminary injunction. *Redbud Hospital District v. Heckler*, No. C–84–4382–MHP (N.D. Cal, July 30, 1984) (order granting preliminary injunction). The court preliminarily directed the Secretary to promulgate regulations that:

a. Take into account in accordance with 42 U.S.C. 1395ww(b)(4)(A) the extraordinary and unusual costs not necessarily reflected in a hospital's base year costs but which if not considered in estimating the hospital-specific target rate are likely to result in a distortion in that rate;

b. Take into account the special needs of hospitals serving a disproportionate number of Medicare and low-income patients as provided in 42 U.S.C. 1395ww(d)(5)(C)(i);

c. Take into account in accordance with 42 U.S.C. 1395ww(d)(5)(C)(ii) and the pertinent legislative history the special needs of sole community hospitals and the unique effects of their status upon the hospital-specific rate;

d. Provide for timely and reasonable review and rendering of a final determination upon an intermediary's estimate of a hospital's hospital-specific target rate under the Prospective Payment System.

The court recently modified its previous order, to require specifically that:

> [The Secretary] shall publish these implementing regulations in the **Federal Register** as an interim final rule by no later than July 1, 1985, effective August 1, 1985.
>
> A 45-day comment period shall follow publication of the interim final rule. The regulations shall be published in the **Federal Register** as a final rule no later than October 1, 1985.

Redbud Hospital District v. *Heckler*, No. C–84–4382–MHP (N.D. Cal. June 14, 1985) (order modifying preliminary injunction). Although the court stayed that aspect of its earlier order requiring regulations to implement 42 U.S.C. 1395ww(b)(4)(A) above, it further stated that this does "not change the Secretary's responsibilities" under other unspecified statutory provisions, to "promulgate regulations or adopt policies accounting for any extraordinary and unusual costs not reflected in a hospital's base year costs but which if not considered in estimating the hospital specific target rate will result in distortion in that rate."

HCFA disagrees with the court's decision and has appealed the case to the United States Court of Appeals for the Ninth Circuit. *Redbud Hospital District* v. *Heckler* No. C–8404382 MHP (N.D. Cal. 1985), *appeal docketed* No. 85–2196 (9th Cir. June 19, 1985). The Department has also requested a stay of the order pending appeal, and the request should be acted upon shortly. Since the stay was not granted by June 27, 1985, the date by which it was necessary to submit documents for publication to the **Federal Register** so as

to comply with the July 1, 1985 deadline established by the district court, HCFA is issuing these interim regulations solely to comply with the court order. With the exception of the provisions related to sole community hospitals, which are the same as those to be separately proposed, the Department strongly disagrees with the appropriateness of these regulations and believes that they may significantly impair the Medicare prospective payment systems. In the event that the stay is granted or the court's order is otherwise vacated, these regulations no longer will be effective.

II. The Regulatory Provisions

A. Extraordinary and Unusual Costs

The district court in *Redbud* stayed that portion of its July 1984 order that would have required the Secretary to promulgate regulations that would provide for a modification of a hospital's hospital-specific rate pursuant to 42 U.S.C. 1395ww(b)(4)(A) to account for extraordinary or unusual costs not reflected in base year costs, but which if not considered, would result in a distortion of the rate. The court then, somewhat ambiguously, suggested that this stay "does not change the Secretary's responsibilities to promulgate regulations or adopt policies" along these lines. Although the court's decision does not clearly require it, out of an abundance of caution, these regulations set forth a process under which a hospital may submit an application to its fiscal intermediary requesting a modification of its hospital-specific rate to reflect extraordinary or unusual costs that will be experienced in the hospital's PPS years but result from circumstances that were not present during the base year. The application must: Include a description of, and evidence to support the existence of, extraordinary or unusual circumstances beyond the hospital's control that were essential to the provision of care to beneficiaries; specify the amount of additional costs experienced in the subsequent cost year; submit adequate documentation to support the specified amount; identify the cost containment efforts undertaken by the hospital to avoid the increased costs arising from the identified circumstances; and submit data showing that the PPS rate received by the hospital is inadequate to cover increased costs. The intermediary will forward the application, supporting documentation, and a recommendation to HCFA. Based on these materials and any other relevant information, HCFA will determine, based on facts in each specific case, whether an adjustment to the hospital-specific rate is warranted.

B. Disproportionate Share Hospitals

Section 1886(d)(5)(C)(i) authorizes discretionary adjustments to the prospective payment rates in consideration of the special needs of certain classes of hospitals that incur additional costs because they serve a significantly disproportionate number of low income patients or Medicare Part A beneficiaries or both. We did not make special provisions for these hospitals in the regulations because our current data do not show that an adjustment is warranted. However, the district court in *Redbud* has ordered HCFA to issue these regulations providing for such adjustments even in the absence of supporting data. The regulations establish an application process whereby a hospital can, on a case-by-case basis, establish its status as a disproportionate share hospital; identify the increased Medicare costs associated with the special needs arising from the disproportionate number of low income or Medicare patients served; and show that the hospital's current PPS payments (including indirect medical education and outlier payments) are inadequate to cover these increased costs. The process, as in the case of extraordinary circumstances discussed above, involves an application submitted to the fiscal intermediary and a determination by HCFA, based on facts in each specific case, as to whether an adjustment is appropriate.

C. Sole Community Hospitals (SCH)

HCFA has developed independently a notice of proposed rulemaking to allow an adjustment (if warranted) of the hospital-specific portion of the prospective payment rate for sole community hospitals. In substance, we are publishing that proposed rule as an interim final rule in response to the court order in *Redbud*. In light of the uncertain status of these regulations, however, HCFA intends to go forward with the normal rulemaking process on this issue and expects to publish a complete notice of proposed rulemaking shortly.

In enacting the Social Security Amendments of 1983 (Pub. L. 98-21), Congress acknowledged the unique contribution and vulnerability of SCHs by providing a special payment formula that places a continuing, heavy reliance on the hospital-specific rates calculated from Medicare costs in the base year, generally the 12-month hospital cost reporting period that ended on or after September 30, 1982 and before September 30, 1983. The legislative history of Pub. L. 98-21 expresses Congressional intent that the Secretary provide exceptions and adjustments under the prospective payment system to take into account the special circumstances faced by SCHs. (See Senate Report No. 98-23, 98th Cong., 1st Sess., p. 54 (1983) and House Report No. 98-25, Part I, 98th Cong. 1st Sess., p. 141 (1983)). Congress provided in section 1886(d)(5)(C)(iii) of the Act that, "the Secretary shall provide by regulation for such other exceptions and adjustments to such payment amounts as the Secretary deems appropriate. Thus, additional adjustments under the prospective payment system for SCHs are authorized as the Secretary finds are appropriate.

These regulations utilize the Secretary's authority under section 1886(d)(5)(C)(iii) of the Act to provide an additional adjustment for SCHs under certain circumstances. The regulations allow SCHs experiencing certain significant cost distortions to request an adjustment of the hospital-specific portion of their prospective payment rate. The SCHs are required to submit documentation to their fiscal intermediaries of the circumstances that gave rise to the cost distortion, the community need for the additional health care services or change in circumstances that has occurred and its resulting cost impact. Adjustments will not be granted if the cause of the cost distortion is not related to community medical needs. For example, an adjustment would not be authorized for any additional costs arising from entering a management contract or for expansion of beds in a hospital operating at low occupancy levels, regardless of the fact that a certificate of need had been granted for the expansion, because the changes are not required for purposes of the delivery of patient care.

The intermediary must forward within 90 days all submitted documentation, its analysis of the provider's claims, a copy of the cost reports and other overall cost data for the base year and the year in which the distortion occurs, and its recommendation for acceptance or rejection of the request to our central office for processing. HCFA will determine if an adjustment to the hospital-specific portion is justified and, if so, the amount of the adjustment granted. We would notify the intermediary of our decision within 90 days of receiving all the necessary information. Adjustments granted under this provision would be made on a *prospective basis* beginning with the

first day of the first cost reporting period after a favorable determination.

Generally, when a hospital adds to or expands existing services there may be significant cost distortions arising from the initiation of the services (that is, start-up costs). Additionally, there is likely to be an initial period of abnormally low utilization until the availability of the new services becomes well known in the medical community. This combination of abnormally high costs and minimal utilization is likely to result initially in cost per treatment that does not represent costs that the hospital would incur in future cost reporting periods.

Because the adjustment made to the hospital-specific portion of the prospective payment rate under this provision will, if renewed, carry forward to future cost reporting periods (when utilization should be higher and start-up costs no longer exist), we believe it would be inappropriate to establish an amount to be used for all future cost reporting periods that represents mainly start-up costs and initial low utilization. Similarly, we believe the costs recognized must be subject to a test of reasonableness.

Consequently, if we determine that an adjustment is warranted, we will calculate the per discharge adjustment amount recognizing reasonable costs and utilization levels appropriate to the time period involved.

D. Administrative Review

Under current HCFA policy, an intermediary's estimation of a hospital's base year costs and modifications thereto, made for purposes of determining the hospital-specific portion of the PPS rate is not considered a final decision. As a result, the Provider Reimbursement Review Board (PRRB) does not have jurisdiction to review that determination under section 1878 of the Act until a notice of program reimbursement (NPR) has been issued after the end of a PPS cost reporting period. HCFA Ruling 84–1, 49 FR 22413–4 (May 29, 1984). The district court in *Redbud* has ordered a change in this policy to provide for review and rendering of a final decision upon an intermediary's estimate of a hospital's hospital-specific rate under PPS.

In accordance with the order, these interim regulations provide for PRRB review of an intermediary's determination as to the hospital-specific rate if the hospital can show good cause for proceeding to such review in the absence of an NPR; and if the issue presented in the administrative appeal can be fairly determined before the end of the cost year and in the absence of the information available in an NPR.

III. Effective Date of the Regulations

As required by the court order in *Redbud*, these regulations will be effective on August 1, 1985. If a stay of the court's order is issued before that time, however, the regulations will not take effect on August 1, 1985. Moreover, in light of the fact that the Department does not necessarily agree with the court's conclusion that these regulations are authorized by the Medicare Act, if the court's order is stayed, vacated or otherwise rendered ineffective at any time after August 1, 1985 these regulations will also be automatically invalidated. In the event that the district court order is vacated or reversed, any actions taken by HCFA under these regulations will be void *ab initio*, any amounts paid out pursuant to such actions will be recouped, and any decisions rendered pursuant to the regulations will be cancelled and of no effect.

IV. Other Required Information

A. Waiver of Proposed Rulemaking

The Administrative Procedure Act (5 U.S.C. 553) requires us to publish general notice of proposed rulemaking in the Federal Register, and afford an opportunity for public comment on proposed rules. Such notice includes a statement of the time, place, and nature of rulemaking proceedings, reference to the legal authority under which the rule is proposed, and the terms or substance of the proposed rule or a description of the subjects and issues involved. However, this requirement does not apply when an agency finds good cause that such a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and its reasons in the rules issued.

These interim final rules are necessary for the timely implementation of the district court decision in *Redbud*. Failure to promulgate these rules could result in contempt proceedings against the Department. Therefore, affording a proposed rulemaking process is impracticable because it would result in the violation of a court order. Thus, we find good cause to waive proposed rulemaking.

B. Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or result in significant adverse effects on competition, employment, investment, productivity, or innovation. We expect that in most cases the amounts of adjustments allowed under these regulations would be small relative to total payment for all hospitals; however, we have not had the opportunity to complete an analysis of the economic effects of these regulations. We will do so before issuing a final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 through 612) requires us to prepare and publish a regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulations would not have a significant economic impact on a substantial number of small entities. For purposes of the Regulatory Flexibility Act, we treat all hospitals as small entities. However, we expect that a relatively small number of hospitals will apply and qualify for adjustments under these regulations. Therefore, the Secretary certifies under 5 U.S.C. 605(b) that this proposed rule would not result in a significant impact on a substantial number of small entities.

In any event, the Regulatory Flexibility Act allows the Secretary to waive this requirement if the rule is promulgated in response to an emergency that makes compliance impracticable. For the reasons discussed in section IV.A. above, we find that compliance with the requirements of this Act is impracticable in light of the court order in *Redbud*.

D. Paperwork Reduction Act

Certain sections of this proposed rule contain information collection requirements. As required by the Paperwork Reduction Act of 1980, (44 U.S.C. 3501 *et seq.*), we have submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of these requirements. In accordance with section 3507(g) of that Act and the implementing regulations, we are requesting emergency processing of our submission to OMB since a judicial deadline will be missed if normal procedures are followed. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Agency address stated earlier in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, D.C. 20503, Attn: Desk Officer for HCFA.

List of Subjects in 42 CFR Part 412

Cancer hospitals, Christian Science sanatoria, Discharges and transfers, Inpatient hospital services, Medicare, Outlier cases, Prospective payment, Referral centers, Renal transplantation centers, Sole community hospitals.

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

1. The authority citiation for Part 412 continues to read as follows:

Authority: Secs. 1102, 1871, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1395hh, and 1395ww).

2. Part 412 is amended by adding a new Subpart H to read as follows:

Subpart H—Court Ordered Adjustments Under the Prospective Payment System

Sec.
412.200 Basis and purpose
412.201 Adjustment of the hospital-specific rate for extraordinary and unusual costs
412.202 Adjustments for hospitals serving a significantly disproportionate number of low income or Medicare patients
412.203 Adjustment of the hospital-specific rate for sole community hospitals
412.204 Exception to jurisdictional requirements for administrative review

Subpart H—Court Ordered Adjustments Under the Prospective Payment System

§ 412.200 Basis and purpose.

This subpart implements the federal district court order of June 14, 1985 in *Redbud Hospital District* v. *Heckler*, No. C-84-4382 MHP, (N.D. Cal.). This subpart is effective on August 1, 1985 and will remain in effect only as long as the district court order is in effect. If the district court order is vacated or reversed, any actions that have been taken under these regulations will be void, and affected providers will be restored to their status prior to the actions.

§ 412.201 Adjustment of the hospital-specific rate for extraordinary and unusual costs.

(a) *General Rule.* HCFA may adjust the hospital-specific rate as determined under this part to take into account extraordinary and unusual costs not reflected in a hospital's base year costs but, which if not considered, would result in payments under PPS that are inadequate to cover those costs.

(b) To qualify for an adjustment to its hospital-specific rate under this section, a hospital must submit an application to its fiscal intermediary which includes, in addition to other cost information requested by HCFA, documentation establishing:

(1) The existance of extraordinary or unusual circumstances occurring after the base year which result in a distorted hospital-specific rate;

(2) That the circumstances identified in paragraph (a)(1) were beyond the control of the hospital and were essential to the provision of care to Medicare beneficiaries.

(3) The amount of additional cost experienced in the cost year as a result of the identified circumstances (including its Medicare cost report for the cost period at issue);

(4) The inadequacy of PPS and other Medicare reimbursement to meet the additional costs; and

(5) Cost containment efforts instituted by the hospital to keep costs within reasonable proximity of the prospective payment rates.

(c) The intermediary will forward the hospital's submittal, along with its analysis and recommendation, to HCFA within 90 days of receipt of the necessary documentation. HCFA will determine whether a payment adjustment is warranted and, if so, the appropriate amount of the adjustment. Adjustments authorized by HCFA under this section are effective beginning with the first day of the first cost reporting period after a final determination is made. Adjustments will be granted only for cost reporting periods beginning prior to October 1, 1986.

§ 412.202 Adjustments for hospitals serving a significantly disproportionate number of low income or Medicare patients.

(a) *General Rule:* HCFA may adjust the federal portion of a hospital's payment amount as determined under this part to take into account the increased costs incurred by hospitals that serve a significantly disproportionate number of patients who have low income or are entitled to benefits under Part A of Medicare.

(b) To qualify for an adjustment to its PPS rate under this section a hospital must submit an application to its fiscal intermediary which includes documentation establishing:

(1) That it serves a significantly disproportionate number of low income or Midicare Part A patients as compared to other hospitals that participate in the Medicare program;

(2) That the special needs of these patients resulted in additional costs to the hospital (including in the application its Medicare cost report for the cost period at issue) and the costs were essential to the provision of care to Medicare beneficiaries;

(3) The amount of additional costs identified in paragraph (b)(2) that have not been reimbursed adequately under the hospital's PPS rate, indirect medical education, outlier and other payments; and

(4) Cost containment efforts, instituted by the hospital to keep costs within reasonable proximity of the prospective payment rates, and revenue collection efforts.

(c) The intermediary will forward the hospital's submittal, along with its analysis and recommendation, to HCFA within 90 days of receipt of the necessary documentation. HCFA will determine whether a payment adjustment is warranted and, if so, the appropriate amount of the adjustment. Adjustments authorized by HCFA under this section are effective beginning with the first day of the first cost reporting period after a final determination is made.

§ 412.203 Adjustment of the hospital-specific rate for sole community hospitals.

(a) *General Rule.* HCFA may adjust the amount of operating costs considered in establishing the hospital-specific base payment rate for SCHs (as determined under § 412.71) to take into account factors necessary for patient care that would result in a significant distortion in the operating costs of inpatient hospital services. These factors may include, but are not limited to, the addition of needed health care services that were not available in the hospital during its base year.

(b) *Documentation.* To qualify for an adjustment to its hospital-specific rate under this section, an SCH must submit documentation, including cost information as requested by HCFA, to the intermediary demonstrating the—

(1) Occurrence responsible for the cost distortion;

(2) Necessity of, and justification for, the occurrence; and

(3) Amount of the distortion that results from the specified event.

(c) *Intermediary recommendation.* The intermediary forwards the hospital's submittal, along with its analysis and recommendation, to HCFA within 90 days of receipt of the necessary documentation.

(d) *Determination by HCFA.* HCFA determines, within 90 days of receiving all the necessary information from the intermediary, whether a per discharge payment adjustment amount is justified based on—

(1) The needs of the SCH and of the community;

(2) The increase in the SCH's operating costs arising from the

additional health care service or other change; and

(3) Reasonable utilization of the services, if the cost distortion is caused by the addition or expansion of services.

(e) Adjustments authorized by HCFA under this section, or that are based on an administrative decision (§ 405.1871 of this chapter) or judicial review decision (§ 405.1877 of this chapter) that is no longer subject to review by a higher reviewing authority, are effective beginning with the first day of the first cost reporting period after a final determination on a sole community hospital's request is made.

(f) Adjustments granted are effective for one cost reporting period and may be renewed by HCFA, in whole or in part, based upon the submission of such information as HCFA may require. In addition, HCFA may request information from the hospital at any time to determine whether an adjustment previously granted remains appropriate, and an adjustment may be terminated or revised upon 30 days' notice whenever HCFA determines that such action is appropriate.

§ 412.204 Exception to jurisdictional requirements for administrative review.

A hospital may obtain administrative review of an intermediary's determination as to its hospital-specific rate if:

(a) It files a request for a hearing before the Provider Reimbursement Review Board on the intermediary's determination within 30 days of receiving notice thereof or within 30 days of the effective date of this regulation, whichever is later;

(b) There is good cause shown to proceed with such review in the absence of a notice of program reimbursement for the cost year at issue; and

(c) The issues presented in the appeal can be fairly determined before the end of the cost year and in the absence of the information available on a completed notice of program reimbursement.

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare—Hospital Insurance Program)

Dated: June 27, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: June 27, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-15816 Filed 6-28-85; 8:45 am]

BILLING CODE 4120-01-M

Reader Aids

Federal Register

Vol. 50, No. 126

Monday, July 1, 1985

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JULY

LIST OF PUBLIC LAWS

Last List June 25, 1985

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 14/Pub. L. 99-55

To designate the Federal Building and United States Courthouse in Ashland, Kentucky, as the "Carl D. Perkins Federal Building and United States Courthouse". (June 26, 1985; 99 Stat. 98) Price: $1.00

S.J. Res. 125/Pub. L. 99-56

Designating the week of June 23, 1985, through June 29, 1985, as "Helen Keller Deaf-Blind Awareness Week". (June 26, 1985; 99 Stat. 99) Price: $1.00

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JULY 1985

This table is for determining dates in documents which give advance notice of compliance, impose time limits on public response, or announce meetings.

Agencies using this table in planning publication of their documents must allow sufficient time for printing production.

In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or a holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Dates of FR publication	15 days after publication	30 days after publication	45 days after publication	60 days after publication	90 days after publication
July 1	July 16	July 31	August 15	August 30	September 30
July 2	July 17	August 1	August 16	September 3	September 30
July 3	July 18	August 2	August 19	September 3	October 1
July 5	July 22	August 5	August 19	September 3	October 3
July 8	July 23	August 7	August 22	September 6	October 7
July 9	July 24	August 8	August 23	September 9	October 7
July 10	July 25	August 9	August 26	September 9	October 8
July 11	July 26	August 12	August 26	September 9	October 9
July 12	July 29	August 12	August 26	September 10	October 10
July 15	July 30	August 14	August 29	September 13	October 15
July 16	July 31	August 15	August 30	September 16	October 15
July 17	August 1	August 16	September 3	September 16	October 15
July 18	August 2	August 19	September 3	September 16	October 16
July 19	August 5	August 19	September 3	September 17	October 17
July 22	August 6	August 21	September 5	September 20	October 21
July 23	August 7	August 22	September 6	September 23	October 21
July 24	August 8	August 23	September 9	September 23	October 22
July 25	August 9	August 26	September 9	September 23	October 23
July 26	August 12	August 26	September 9	September 24	October 24
July 29	August 13	August 28	September 12	September 27	October 28
July 30	August 14	August 29	September 13	September 30	October 28
July 31	August 15	August 30	September 16	September 30	October 29

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $550 domestic, $137.50 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$5.50	Apr. 1, 1985
3 (1984 Compilation and Parts 100 and 101)	7.50	Jan. 1, 1985
4	12.00	Jan. 1, 1985
5 Parts:		
1-1199	13.00	Jan. 1, 1984
1-1199 (Special Supplement)	None	Jan. 1, 1984
1200-End, 6 (6 Reserved)	7.50	Jan. 1, 1985
7 Parts:		
0-45	14.00	Jan. 1, 1985
46-51	13.00	Jan. 1, 1985
52	14.00	Jan. 1, 1985
53-209	14.00	Jan. 1, 1985
210-299	13.00	Jan. 1, 1985
300-399	8.00	Jan. 1, 1985
400-699	12.00	Jan. 1, 1985
700-899	14.00	Jan. 1, 1985
900-999	14.00	Jan. 1, 1985
1000-1059	12.00	Jan. 1, 1985
1060-1119	9.50	Jan. 1, 1985
1120-1199	8.00	Jan. 1, 1985
1200-1499	13.00	Jan. 1, 1985
1500-1899	7.50	Jan. 1, 1985
1900-1944	12.00	Jan. 1, 1985
1945-End	13.00	Jan. 1, 1985
8	7.50	Jan. 1, 1985
9 Parts:		
1-199	13.00	Jan. 1, 1985
200-End	9.50	Jan. 1, 1985
10 Parts:		
0-199	17.00	Jan. 1, 1985
200-399	9.50	Jan. 1, 1985
400-499	12.00	Jan. 1, 1985
500-End	14.00	Jan. 1, 1985
11	7.50	Jan. 1, 1985
12 Parts:		
1-199	8.00	Jan. 1, 1985
200-299	14.00	Jan. 1, 1985
300-499	9.50	Jan. 1, 1985
500-End	14.00	Jan. 1, 1985
13	13.00	Jan. 1, 1985
14 Parts:		
1-59	16.00	Jan. 1, 1985
60-139	13.00	Jan. 1, 1985
140-199	7.50	Jan. 1, 1985
200-1199	15.00	Jan. 1, 1985
1200-End	8.00	Jan. 1, 1985
15 Parts:		
0-299	6.50	Jan. 1, 1985
300-399	13.00	Jan. 1, 1985
400-End	12.00	Jan. 1, 1985
16 Parts:		
0-149	9.00	Jan. 1, 1985
150-999	10.00	Jan. 1, 1985
1000-End	13.00	Jan. 1, 1985
17 Parts:		
1-239	14.00	Apr. 1, 1984
240-End	13.00	Apr. 1, 1984
18 Parts:		
1-149	12.00	Apr. 1, 1984
150-399	15.00	Apr. 1, 1984
400-End	7.00	Apr. 1, 1985
19	21.00	Apr. 1, 1985
20 Parts:		
1-399	8.00	Apr. 1, 1985
400-499	16.00	Apr. 1, 1985
500-End	14.00	Apr. 1, 1984
21 Parts:		
1-99	9.00	Apr. 1, 1985
100-169	11.00	Apr. 1, 1985
170-199	13.00	Apr. 1, 1985
200-299	4.25	Apr. 1, 1985
300-499	14.00	Apr. 1, 1984
500-599	16.00	Apr. 1, 1985
600-799	6.50	Apr. 1, 1985
800-1299	10.00	Apr. 1, 1985
1300-End	5.50	Apr. 1, 1985
22	17.00	Apr. 1, 1984
23	14.00	Apr. 1, 1985
24 Parts:		
0-199	11.00	Apr. 1, 1985
*200-499	19.00	Apr. 1, 1985
500-699	6.50	Apr. 1, 1985
700-1699	12.00	Apr. 1, 1984
*1700-End	9.00	Apr. 1, 1985
*25	18.00	Apr. 1, 1985
26 Parts:		
§§ 1.0-1.169	14.50	Apr. 1, 1984
§§ 1.170-1.300	12.00	Apr. 1, 1985
§§ 1.301-1.400	7.50	Apr. 1, 1985
§§ 1.401-1.500	15.00	Apr. 1, 1985
§§ 1.501-1.640	12.00	[2] Apr. 1, 1984
§§ 1.641-1.850	11.00	Apr. 1, 1985
§§ 1.851-1.1200	14.00	Apr. 1, 1984
§§ 1.1201-End	17.00	Apr. 1, 1984
2-29	15.00	Apr. 1, 1985
*30-39	9.50	Apr. 1, 1985
40-299	18.00	Apr. 1, 1985
*300-499	11.00	Apr. 1, 1985
500-599	8.00	[1] Apr. 1, 1980
600-End	4.75	Apr. 1, 1985
27 Parts:		
1-199	13.00	Apr. 1, 1984
200-End	12.00	Apr. 1, 1984
28	13.00	July 1, 1984
29 Parts:		
0-99	14.00	July 1, 1984
100-499	6.50	July 1, 1984
500-899	14.00	July 1, 1984
900-1899	7.50	July 1, 1984
1900-1910	15.00	July 1, 1984
1911-1919	5.50	July 1, 1984
1920-End	14.00	July 1, 1984
30 Parts:		
0-199	13.00	July 1, 1984
200-699	5.50	July 1, 1984
700-End	13.00	July 1, 1984
31 Parts:		
0-199	8.00	July 1, 1984
200-End	9.50	July 1, 1984

Title	Price	Revision Date
32 Parts:		
1–39, Vol. I	15.00	July 1, 1984
1–39, Vol. II	19.00	July 1, 1984
1–39, Vol. III	18.00	July 1, 1984
40–189	13.00	July 1, 1984
190–399	13.00	July 1, 1984
400–629	13.00	July 1, 1984
630–699	12.00	July 1, 1984
700–799	13.00	July 1, 1984
800–999	9.50	July 1, 1984
1000–End	6.00	July 1, 1984
33 Parts:		
1–199	14.00	July 1, 1984
200–End	13.00	July 1, 1984
34 Parts:		
1–299	14.00	July 1, 1984
300–399	8.50	July 1, 1984
400–End	14.00	July 1, 1984
35	7.50	July 1, 1984
36 Parts:		
1–199	9.00	July 1, 1984
200–End	12.00	July 1, 1984
37	8.00	July 1, 1984
38 Parts:		
0–17	14.00	July 1, 1984
18–End	9.50	July 1, 1984
39	8.00	July 1, 1984
40 Parts:		
1–51	13.00	July 1, 1984
52	14.00	July 1, 1984
53–80	18.00	July 1, 1984
81–99	14.00	July 1, 1984
100–149	9.50	July 1, 1984
150–189	13.00	July 1, 1984
190–399	13.00	July 1, 1984
400–424	13.00	July 1, 1984
425–End	14.00	July 1, 1984
41 Chapters:		
1, 1–1 to 1–10	13.00	July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	July 1, 1984
3–6	14.00	July 1, 1984
7	6.00	July 1, 1984
8	4.50	July 1, 1984
9	13.00	July 1, 1984
10–17	9.50	July 1, 1984
18, Vol. I, Parts 1–5	13.00	July 1, 1984
18, Vol. II, Parts 6–19	13.00	July 1, 1984
18, Vol. III, Parts 20–52	13.00	July 1, 1984
19–100	13.00	July 1, 1984
101	15.00	July 1, 1984
102–End	9.50	July 1, 1984
42 Parts:		
1–60	12.00	Oct. 1, 1984
61–399	8.00	Oct. 1, 1984
400–End	18.00	Oct. 1, 1984

Title	Price	Revision Date
43 Parts:		
1–999	9.50	Oct. 1, 1984
1000–3999	14.00	Oct. 1, 1984
4000–End	8.00	Oct. 1, 1984
44	13.00	Oct. 1, 1984
45 Parts:		
1–199	9.50	Oct. 1, 1984
200–499	6.50	Oct. 1, 1984
500–1199	13.00	Oct. 1, 1984
1200–End	9.50	Oct. 1, 1984
46 Parts:		
1–40	9.50	Oct. 1, 1984
41–69	9.50	Oct. 1, 1984
70–89	6.00	Oct. 1, 1984
90–139	9.00	Oct. 1, 1984
140–155	9.50	Oct. 1, 1984
156–165	10.00	Oct. 1, 1984
166–199	9.00	Oct. 1, 1984
200–499	13.00	Oct. 1, 1984
500–End	7.50	Dec. 31, 1984
47 Parts:		
0–19	13.00	Oct. 1, 1984
20–69	14.00	Oct. 1, 1984
70–79	13.00	Oct. 1, 1984
80–End	14.00	Oct. 1, 1984
48 Chapters:		
1 (Parts 1–51)	13.00	Oct. 1, 1984
1 (Parts 52–99)	13.00	Oct. 1, 1984
2	13.00	Oct. 1, 1984
3–6	12.00	Oct. 1, 1984
7–14	14.00	Oct. 1, 1984
15–End	12.00	Oct. 1, 1984
49 Parts:		
1–99	7.50	Oct. 1, 1984
100–177	14.00	Nov. 1, 1984
178–199	13.00	Nov. 1, 1984
200–399	13.00	Oct. 1, 1984
400–999	13.00	Oct. 1, 1984
1000–1199	13.00	Oct. 1, 1984
1200–1299	13.00	Oct. 1, 1984
1300–End	3.75	Oct. 1, 1984
50 Parts:		
1–199	9.50	Oct. 1, 1984
200–End	14.00	Oct. 1, 1984
CFR Index and Findings Aids	18.00	Jan. 1, 1985
Complete 1985 CFR set	550.00	1985
Microfiche CFR Edition:		
Complete set (one-time mailing)	155.00	1983
Complete set (one-time mailing)	125.00	1984
Subscription (mailed as issued)	185.00	1985
Individual copies	3.75	1985

[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1985. The CFR volume issued as of Apr. 1, 1980, should be retained.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1984 to March 31, 1985. The CFR volume issued as of Apr. 1, 1984, should be retained.

CFR ISSUANCES 1985
January—April 1985 Editions and Projected July, 1985 Editions

This list sets out the CFR issuances for the **January—April 1985** editions and projects the publication plans for the **July, 1985** quarter. A projected schedule that will include the **October, 1985** quarter will appear in the first **Federal Register** issue of October.

For pricing information on available 1984-1985 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. Individual announcements of the actual release of volumes will continue to be printed in the **Federal Register** and will provide the price and ordering information. The weekly CFR checklist or the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR volumes actually printed.

Normally, CFR volumes are revised according to the following schedule:

Titles 1-16—January 1
Titles 17-27—April 1
Titles 28-41—July 1
Titles 42-50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

Titles revised as of January 1, 1985:

Title	
CFR Index	200-End
1-2 (Revised as of Apr. 1, 1985)	**10 Parts:**
	0-199
3 (Compilation)	200-399
	400-499
4	500-End
5 Parts:	**11**
1-1199 (To be announced)	
1200-End	**12 Parts:**
	1-199
6 [Reserved]	200-299
	300-499
7 Parts:	500-End
0-45	
46-51	**13**
52	
53-209	**14 Parts:**
210-299	1-59
300-399	60-139
400-699	140-199
700-899	200-1199 (Revised as of Feb. 1, 1985)
900-999	1200-End
1000-1059	
1060-1119	**15 Parts:**
1120-1199	0-299
1200-1499	300-399
1500-1899	400-End
1900-1944	
1945-End	**16 Parts:**
	0-149
8	150-999
	1000-End
9 Parts:	
1-199	

Titles revised as of April 1, 1985:

Title	
17 Parts:	
1-239	**24 Parts:**
240-End*	0-199
	200-499
18 Parts:	500-699
1-149*	700-1699
150-399*	1700-End
400-End	
	25
19	
	26 Parts:
20 Parts:	1 (§§ 1.0-1-1.169)
1-399	1 (§§ 1.170-1.300)
400-499	1 (§§ 1.301-1.400)
500-End	1 (§§ 1.401-1.500)
	1 (§§ 1.501-1.640) (Cover only)
21 Parts:	1 (§§ 1.641-1.850)
1-99	1 (§§ 1.851-1.1200)
100-169	1 (§§ 1.1201-End)
170-199	2-29
200-299	30-39
300-499	40-299
500-599	300-499
600-799	500-599 (Cover only)
800-1299	600-End
1300-End	
	27 Parts:
22	1-199
	200-End*
23	

Projected July 1, 1985 editions:

Title	
28	300-399
	400-End
29 Parts:	
0-99	**35**
100-499	
500-899	**36 Parts:**
900-1899	1-199
1900-1910	200-End
1911-1919	
1920-End	37
30 Parts:	**38 Parts:**
0-199	0-17
200-699	18-End
700-End	
	39
31 Parts:	
0-199	**40 Parts:**
200-End	1-51
	52
32 Parts:	53-80
1-189	81-99
190-399	100-149
400-629	150-189
630-699	190-399
700-799	400-424
800-999	425-699
1000-End	700-End
33 Parts:	**41 Parts:**
1-199	1-100
200-End	Chap. 101
	Chap. 102-200
34 Parts:	Chap. 201-End
1-299	

Slip Laws

Subscriptions Now Being Accepted

99th Congress, 1st Session, 1985

Separate prints of Public Laws, published immediately after enactment, with marginal annotations, legislative history references, and future Statutes volume page numbers.

Subscription Price: **$104.00 per session**

(Individual laws also may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws and prices).

SUBSCRIPTION ORDER FORM
ENTER MY SUBSCRIPTION TO PUBLIC LAWS [P9801-File Code 1L]

☐ **$104.00 Domestic,** ☐ **$130.00 Foreign.**

MAIL ORDER FORM TO
Superintendent of Documents
Government Printing Office
Washington, D.C. 20402

COMPANY OR PERSONAL NAME

ADDITIONAL ADDRESS/ATTENTION LINE

STREET ADDRESS

CITY | STATE | ZIP CODE

(OR) COUNTRY

☐ REMITTANCE ENCLOSED (MAKE CHECKS PAYABLE TO SUPERINTENDENT OF DOCUMENTS)

☐ CHARGE TO MY DEPOSIT ACCOUNT NO.

PLEASE PRINT OR TYPE

Customer's Telephone No.'s
Area Code | Home | Area Code | Office

MasterCard and VISA accepted.

Credit Cards Orders Only
Total charges $_____
Fill in the boxes below

Credit Card No.

Expiration Date Month/Year

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays).

4-26-85